

Country Report  
**HONDURAS**

**IACHR** Inter-American  
Commission on  
Human Rights

# Situation of Human Rights in Honduras



Organization of  
American States



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# Situation of Human Rights in Honduras

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. This report addresses the human rights situation in Honduras and offers recommendations intended to assist the State in strengthening its efforts to protect and uphold human rights in the country.
2. Violence and insecurity are serious problems facing Honduran society, with major repercussions on the effective enjoyment and currency of human rights in the country. In 2013, the murder rate in Honduras was the highest in the world, with 79 homicides per hundred thousand inhabitants, according to figures published by the National Violence Observatory of the University of Honduras (UNAH). For 2014, the State reported that based on the UNAH's figures, the murder rate in Honduras had fallen to 66.4, whereas the UNAH published a figure of 68. Despite the discrepancy in the figures, the IACHR welcomes the decrease. However, the homicide rate remains one of the highest in the region and the world, and it particularly affects youth.
3. The IACHR notes that the levels of violence recorded—and the particular impact on defenders, indigenous peoples, women, children, adolescents and young people, LGBT people, migrants, *campesinos* from the Bajo Aguán, journalists and media workers, and justice operators—are the result of several factors, including the increased presence of organized crime and drug traffickers, the recruitment of children and adolescents, and an inadequate judicial response that fuels impunity, corruption, and high levels of poverty and inequality. In addition, according to the information received, part of that insecurity comes from the National Police, the Military Police, and the Army, through their illegitimate use of force, in some cases in complicity with organized crime. It is of particular concern to the IACHR that these rates of violence and insecurity are exacerbated by the lack of public and other policies to address the inequality and social exclusion that affect large segments of the population. Such is the situation of groups that are vulnerable due to historical discrimination, examined in this report; they face persistent obstacles to the full enjoyment of their rights and a lack of access to justice.
4. During the visit in December 2014, the Commission observed the serious situation faced by human rights defenders, who are targeted in attacks by individuals who have been identified as the perpetrators of human rights violations or, alternatively, by sectors and groups whose interests run contrary to their causes. In addition it noted that as a result of the risk of death or injury they face, a large number of human rights defenders in Honduras are covered by protective measures granted by the Commission, and that those measures require effective implementation by the Honduran State.

5. During the visit, civil society organizations presented the Commission with information on what they describe as repression and political persecution against human rights defenders throughout the country and, most particularly, among defenders of indigenous communities working to protect land rights. The defenders of LGBT people also face a pattern of violence, which is heightened by stereotyped and discriminatory attitudes toward members of that group.
6. The Commission also noted with concern that the situation of widespread violence in the country over recent years has led to a significant increase in the numbers of refugees and asylum seekers in other countries of the region, including unaccompanied children and adolescents and young people who are unaccompanied by or have been separated from their families.
7. The IACHR was also able to observe the grave situation of insecurity related to freedom of expression faced by journalists and other media workers, which makes them a particularly vulnerable segment of the population.
8. The high levels of violence that persist in the country have led to increased demands for justice which, in that they have not received an effective response from the State, have led to a situation of structural impunity. Official figures published in 2013 indicate that 80% of murders committed in Honduras go unpunished due to a lack of capacity on the part of the investigation agencies. During the visit, civil society organizations with which the Commission spoke claimed that the prevailing levels of impunity in Honduras were even higher.
9. Due to its failure to respond effectively and to allegations of corruption and ties with organized crime, the National Police has lost the public's trust. The State has therefore focused its efforts on legal and institutional reforms, whereby the armed forces have gradually become involved in tasks that do not necessarily correspond to their functions, in the area of regular citizen security, for example. Several stakeholders interviewed during the visit spoke of a process of growing militarization to deal with insecurity and consequently, of an increased military presence in the areas of greatest conflict and of an "open struggle against organized crime," without a clear process for strengthening the National Police. In this context, a Military Police force was created as well as a group of judges and prosecutors with jurisdiction over the entire nation, with a mandate to accompany the Military Police to ensure that their duties are framed within the law. These judges and prosecutors do not have sufficient guarantees of independence and impartiality to analyze human rights violations perpetrated by the members of said Police. Based on its analysis, the IACHR has identified a series of concerns among others that military forces carry out activities not related to the country's defense, but to law enforcement, matters that should correspond to the police.
10. The IACHR welcomes the Honduran State's openness toward international scrutiny and the measures the State has taken to address the situation described in the report. In particular, it commends the enactment of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators, which was passed unanimously by the National Congress on April 15, 2015. In addition, the IACHR applauds the government's decision to invite an enhanced presence in the country by the United Nations Office of the High Commissioner for Human Rights. The Headquarters agreement was signed on May 4, 2015. The

IACHR also notes the Collaboration and Good Faith Agreement for the Promotion of Transparency, the Fight against Corruption, and the Strengthening of Integrity Systems, signed by the Government of Honduras and Transparency International on October 6, 2014. The Commission also acknowledges that a step forward has been taken with the Public Policy and National Action Plan for Human Rights that is currently being implemented and the National Plan Against Violence against Women 2014-2022.

11. The Commission also notes the progress that has been made on the legislative front in recent years in the area of human rights, such as the adjustment of criminal legislation to international standards; the Law against Trafficking in Persons; the National Policy on Women and the II Plan on Gender Equality and Equity of Honduras; and the creation of the National Migration Institute and the Task Force on Migrant Children. Also in terms of access to justice, the Commission welcomes initiatives such as the Violent Death Unit of Bajo Aguán and the creation of criminal investigation agencies so as to centralize investigative efforts, even though in practice, according to information the Commission received, there may be a need for greater coordination and transfer of capacity between existing units. The IACHR also welcomes government initiatives to strengthen and improve the various entities that participate in the administration of justice. However, it takes note of some objections to certain aspects of the methodology. In addition, the IACHR notes that the creation of the Secretariat of Human Rights, Justice, Interior, and Decentralization (“Secretariat of Human Rights”) has demonstrated the capacity for effective coordination among institutions, and the Commission hopes that this agency is given sufficient funding to carry out its mandate effectively.
12. Regarding the administration of justice, during the visit the Commission received information on measures adopted in order to rebuild the public’s trust in the justice system, to bolster efforts against organized crime, and to reduce corruption. Nevertheless, the IACHR points out that important challenges to the effectiveness of the measures adopted remain in place. Several of those challenges arise from the regulatory framework deployed by the State to regulate the selection and disciplinary processes applicable to justice operators. Specifically, the Commission noted with concern the functioning of the Judicature Council: according to the information received, its procedures—in particular, its selection and appointment processes—are not being conducted transparently, nor are justice operators being guaranteed access under conditions of equality and in accordance with their merit. The IACHR also received information regarding the clean-up process in the judiciary and the administration of trustworthiness tests to several public officials—including justice operators—which reveals possible threats to the independence of judges and prosecutors.
13. At the same time, during the visit the Commission noted the continued existence of high levels of inequality and social exclusion affecting large sectors of the population. Specifically it observed the serious difficulties and challenges in their access to basic needs, employment opportunities, natural resources, including land, and means of subsistence. Women, indigenous peoples and Afro-descendants are some of the most vulnerable segments of the population as a result of discrimination and persistent economic and social exclusion, which in turn translates into violations of their human rights. In particular, the IACHR received

testimony on the grave situation faced by women employed at transnational textile companies and by Miskito divers.

14. As regards people deprived of their liberty, the IACHR has examined some of what it considers to be the most serious problems within the Honduran prison system such as internal control of security and internal matters and the associated lack of effective control by the authorities; overcrowding and deplorable detention conditions; and the failure to classify detainees, including the failure to separate men from women at some detention facilities and to separate convicted persons from those awaiting or standing trial, as well as major problems in the area of juvenile justice.
15. The Commission hopes that this report will assist the Honduran State in breaking the prevailing cycle of impunity and in adjusting the mechanisms it has created in recent years, in order to ensure the effective prevention and investigation of human rights violations and the prosecution and punishment of those responsible. Accordingly, the IACHR offers a series of recommendations to the State of Honduras.

CHAPTER 1  
INTRODUCTION





## INTRODUCTION

16. This report addresses the human rights situation in Honduras and offers recommendations with the objective of assisting the State in the strengthening of its efforts to protect and guarantee human rights in the country.
17. The Inter-American Commission on Human Rights (“Inter-American Commission” or “IACHR”) has monitored with special attention the human rights situation in the Republic of Honduras (“Honduras”, the “State”, or the “Honduran State”), through its various mechanisms, and has observed a number of structural issues concerning justice, security, marginalization, and discrimination, that have for decades impacted the human rights of its inhabitants. In particular, the Coup d’Etat of 2009 resulted in human rights violations that gravely impacted the Honduran population, some of the effects of which continue today and complicate the situation in the country
18. For this reason, from 2009 to 2012 the IACHR decided to incorporate Honduras in Chapter IV of its Annual Report, pursuant to Article 59(1)(h) of its Rules of Procedure, because it considers that the situation falls within the applicable criteria. Honduras was again included in Chapter IV of the 2013 Annual Report because the Commission considered that the information received on human rights in the country fell under Article 59, paragraph 6(d), of the Rules of Procedure of the IACHR that came into effect on August 1<sup>st</sup>, 2013. That article refers to “the presence of other structural situations that seriously affect the enjoyment of fundamental rights enshrined in the American Declaration, the American Convention or other applicable human rights instruments.” Among other factors to weigh appears the following: “i. serious institutional crises that infringe the enjoyment of human rights.”
19. The State of Honduras, through Official Memo SJDH-DM-0449-2013, dated August 21, 2013, extended an invitation to the Commission to conduct an on-site visit to Honduras in order to verify the human rights situation in the country. In a letter dated September 19, 2013, the Commission acknowledged the invitation and indicated its inability to conduct the visit in that year. In a communication dated August 19, 2014, and pursuant to discussions with the Honduran Government over the course of 2014, the Commission confirmed to Honduras that it would conduct an on-site visit to the country between December 1<sup>st</sup> and 5<sup>th</sup>, 2014. By Official Memo DSM-1000-2014, dated October 21, 2014, the State of Honduras reiterated to the Commission its commitment to facilitate the realization of the visit. Consequently, the Commission decided that the assessment of the human rights situation in Honduras would not be carried out through inclusion of Honduras in Chapter IV of the 2014 Annual Report, but instead by conducting an on-site visit

according to Article 59 of the Rules of Procedure, and the subsequent drafting of a report on the situation in the country.

20. The IACHR conducted the on-site visit from December 1st to December 5th, 2014. The visit was aimed at gathering relevant information on the human rights situation in the country, and assessing the actions taken by the State to address that situation.
21. The delegation was led by the Chair of the IACHR, Tracy Robinson; the First Vice-Chair, Rose-Marie Belle Antoine; and Commissioners José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi, and James Cavallaro. Other members of the delegation included the IACHR Executive Secretary, Emilio Álvarez Icaza; the Assistant Executive Secretary, Elizabeth Abi Mershed; and the Special Rapporteur for Freedom of Expression, Edison Lanza, as well as specialists from the Executive Secretariat.
22. The Commission held meetings with State authorities from the three branches of government, civil society organizations, and others who came forward to present information concerning the human rights situation in Honduras. The Commission went to several different regions, without restrictions—including Tegucigalpa, La Ceiba, Tocoa, El Progreso, San Pedro Sula, Bajo Aguán, and Comayagua—and visited care centers for migrant children, as well as Garífuna peoples and peasant communities. The IACHR also visited the San Pedro Sula National Penitentiary in San Pedro Sula, the Comayagua National Penitentiary in Comayagua, and the Rehabilitation Center for Adolescents "Renaciendo". The Commission also visited the detention center at the facility of the "Los Cobras" special police force and of the Armed Forces, both located in the Department of Francisco Morazán, the "Renaciendo" Rehabilitation Center for Adolescents, the "Marco Aurelio Soto" National Penitentiary, and the detention centers located at the Army's First and Third Infantry Battalions, located in the town of Naco, in the Department of Cortés.
23. The IACHR met with the President of Honduras, Juan Orlando Hernández; the Foreign Minister, Roberto Ochoa Madrid; the Secretary of Justice, Human Rights, Interior, and Decentralization, Rigoberto Chang Castillo; the Secretary of Labor and Social Security, Carlos Madero Erazo; the Deputy Foreign Minister, María del Carmen Nasser Selman; the Deputy Secretary of Justice and Human Rights, Karla Cuevas; the Secretary of Defense, Samuel Armando Reyes Rendón; the National Director of Investigation and Intelligence, Gen. Julián Pacheco Tinoco; the Secretary of Health, Edna Yolani Batres; the Attorney General of the Republic, Abraham Alvarenga; the Deputy Attorney General, Jorge Abilio Serrando; and the Director of Prosecutors in the Office of the Public Prosecutor, Rolando Edgardo Argueta. It also met with members of the Secretariat of Security; the Secretariat of Education; the Secretariat of the Development Sector and Social Inclusion; the State Secretariat in the Offices of Labor and Social Security; the National Human Rights Commission (CONADEH); the National Commission for the Prevention of Torture (CONAPREV); the National Prison Institute; the National Women's Institute (INAM); the Department of Children, Youth, and Families; the Institute for Access to Public Information; the National Agrarian Institute; the National Institute on Migration; and the National Telecommunications Commission (CONATEL). In the city of San Pedro Sula, the IACHR met with the Deputy Mayor, Liliana Humaña,

and other authorities. In the city of Tocoa, the Commission met with the Governor of Colón, Ghisell Padilla Pelayo; the Mayor, Adán Fúnez Martínez; the Coordinator of the Violent Deaths Unit of Bajo Aguán (UMVIBA), Javier Antonio Guzmán; the Attorney for UMVIBA, Mitzy Villatorio V.; the Commander of Operation Xatruch, Col. René Jovel Martínez; the Deputy Commissioner of Police Forces, Marco Tulio Cruz Aguilar; and a Representative of the Secretariat of Health, Jaime Rosales Anaya.

24. The IACHR also met with the President of the National Congress, Mauricio Oliva Herrera, and congressional representatives. The Inter-American Commission also met with representatives of the Supreme Court, the National Council of the Judiciary, and the National Coordinating Committee of Criminal Court Judges.
25. The IACHR met with the following civil society organizations: Asociación para una Ciudadanía Participativa (ACI-PARTICIPA), Asociación Civil Jóvenes Hondureños Adelante Juntos Avancemos (JAH-JA), Asociación de Defensores Públicos de Honduras (ASODEPH), Asociación de Fiscales de Honduras, Asociación Intermunicipal y Vigencia Social de Honduras (AIDEVISH), Asociación de Jueces por la Democracia (AJD), Asociación LGTB Arcoíris de Honduras (Asociación ARCOÍRIS), Asociación Libre Expresión, Asociación de Medios de Comunicación, Asociación de Medios Comunitarios de Honduras (AMCH), Asociación de la Prensa, Asociación de Productores Medicina (APROMENCOL), Asociación para una Sociedad más Justa (Honduras chapter of Transparency International), Asociación para una Vida Mejor de Personas Infechadas por el VIH/SIDA en Honduras (APUVIMEH), Asociadas por lo Justo (JASS), Atlántida, Brigadas Internacionales de Paz (PBI), Caritas de San Pedro Sula (CARITAS), Caritas Trujillo, Casa Alianza Honduras (CAH), Casa Asti, Central Nacional de Trabajadores del Campo (CNTC), Centro de Derechos de Mujeres (CDM), Centro de Estudios para la Democracia (CESPAD), Centro de Estudios de la Mujer-Honduras (CEM-H), Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH), Center for Justice and International Law (CEJIL), Central Nacional de Trabajadores del Campo (CNTC), Centro de Prevención, Tratamiento y Rehabilitación de Víctimas de la Tortura (CPTRT), Centro de Productos Naturales (CENAT), Colectiva de Mujeres Hondureñas (CODEMUH), Colectivo Unidad Color Rosa (CUCR), Colegio Profesional Unión Magisterial de Honduras (COPRUMH), Colegio Profesional Superación Magisterial Hondureña (COLPROSUMAH), Colegio de Profesores de Educación Media de Honduras (COPEMH), Colonia Los Cedros, Comisión Ciudadana de Transparencia (CCT), Comisión Internacional de Juristas (CIJ), Comité de América Latina y del Caribe para la Defensa de los Derechos de la Mujeres-Honduras (CLADEM), Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH), Comité por la Libre Expresión (C-Libre), Comité de Oxford para la Ayuda contra el Hambre (OXFAM), Comité Pro Defensa Aguán, Comunidad de Barra Vieja, Comunidad La Ceiba, Comunidad Gay Sampedrana para la Salud Integral (CGSSI), Comunidad Nueva Armenia, Comunidad Nueva Esperanza, Comunidad Santa Fe, Comunidad Santa Rosa de Aguán, Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH), Consejo Hondureño de la Empresa Privada (COHEP), Convergencia por los Derechos Humanos, Coordinadora de Instituciones Privadas por las Niñas, Niños, Adolescentes, Jóvenes y sus Derechos (COIPRODEN), Coordinadora de Organizaciones Populares del

Aguán (COPA), Diario Tiempo, El Herald, Empresa Asociativa Campesina de Isletas (EACI), Equipo de Monitoreo Independiente de Honduras (EMIH), Equipo de Reflexión, Investigación y Comunicación (ERIC-SJ), Escuela Raul Medrano, Federación de Tribus Pech de Honduras (FETRIIPH), Federación Unitaria de Trabajadores de Honduras (FUTH), Foro de Mujeres por la Vida, Foro Nacional de Sida (FOROSIDA), Frente Nacional de Resistencia Popular (FNRP), Fundación Alfredo Landaverde (FAL), Fundación Hondureña de Rehabilitación e Integración del Limitado (FUHRIL), Fundación Parque Nacional Pico Bonito (FUPNAPIB), Fundación Pestalozzi, Fundación San Alonso Rodríguez (FSAR), Gemelos de Honduras, Grupo Lésbico/Bisexual Litos (Go Lésbico), Grupo de Mujeres YAACHE, Honduras Solidarity Network (HSN), Hospital Atlántida, Iglesia Católica, Iglesia Evangélica Baustista Misr (IEBM), Instituto Oficial Unión y Esfuerzo (Unión y Esfuerzo), Instituto Psicopedagógico “Juana Leclerc” (IPJL), Instituto Tecnológico de Administración de Empresas (INTAE-SPS), Movimiento Ambientalista Santabarbarens (MAS), Movimiento Amplio por la Dignidad y la Justicia (MADJ), Movimiento Amplio Universitario (MAU), Movimiento Auténtico Reivindicador Campesino del Aguán (MARCA), Movimiento Campesino Refundación Gregorio Chávez (MCRGC), Movimiento Campesino Vallecito (MCV), Movimiento de Mujeres de la Colonia López Arellano (MOMUCLAA), Movimiento de Mujeres por la Paz Visitación Padilla, Movimiento Unificado Campesino del Aguán (MUCA), Municipal de San Pedro Sula, Observatorio Ecuménico Internacional de los Derechos Humanos (OEIDH), Observatorio Permanente de Derechos Humanos del Aguán (OPDHA), Oficina Municipal de la Mujer (OMM), Organización de Desarrollo Étnico Comunitario (ODECO), Organización Fraternal Negra Hondureña (OFRANEH), Pastoral Penitenciaria San Pedro Sula, Patronato Colonia D’Antoni, Patronato para el Desarrollo Cultural-La Ceiba (Patronato CD), Patronato Sambo Creek, Patronato Triunfo de la Cruz, SERSO – Jutiapa, Patronato 21 Oct., Pen Internacional-Honduras (PEN), Plan-Internacional, Plan-Internacional Honduras, Plan para la Niñez, Plataforma Agraria, Por el Derecho a una Alimentación Adecuada y a la Nutrición (FIAN-Honduras), Programa de Rehabilitación para Parálisis Cerebral (PREPACE), Proyecto de Acompañamiento Internacional en Honduras (PROAH), Proyecto Alternativas y Oportunidades, Radio Alter Eco, Radios Comunitarias Lencas-COPINH, Radio Comunitaria Sugua-Sambo Creek, Radio Exclusiva de Tela, Radio Globo and Globo TV, Radio Progreso, Radio Valle de Ángeles, Red Balance, Red de Desarrollo Sostenible, Red Discapacidad Honduras, Red Lésbica CATTRACHAS (CATTRACHAS), Red de Mujeres Jóvenes de Cortés, Red de Mujeres Mariposas Libres, Red Nacional de Defensoras de Derechos Humanos en Honduras (RNDH), Representantes del Pueblo Tolupeño, Servicios Técnicos, Legales y Económicos (SETELEC), Sindicato de Empleados Públicos de la Educación (SIEMPE), Sindicato de Trabajadores de la Empresa Nacional Autónoma de Honduras (STENEE), Sindicato de Trabajadores de la DEI (SITRADEI), Sindicato de Trabajadores de la Industria de la Bebida y Similares (STIBYS), Sindicato de Trabajadores del Instituto Nacional Agrario (SITRAINIA), Sindicato de Trabajadores de la DEI (SITRADEI), Sindicato de Trabajadores del Patronato Nacional de la Infancia (SITRAPANI), Sindicato de Trabajadores de la Universidad Nacional Autónoma de Honduras (SITRAUNAH), Tribuna de Mujeres contra los Femicidios (TMCF), Universidad Nacional Autónoma de Honduras (UNAH), YAAXCHE, and 45 TV.

26. The Inter-American Commission also met with various agencies of the United Nations Organization (hereinafter “UN or United Nations”), including the Pan

American Health Organization/World Health Organization (PAHO/WHO), the Office of the High Commissioner for Human Rights (OHCHR), the Joint United Nations Programme on HIV/AIDS (UNAIDS), UN Women, the United Nations Development Programme (UNDP), the World Food Programme (WFP), the UN Food and Agricultural Organization (FAO), the International Labour Organization (ILO), the Office of the UN High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), and the United Nations Office for Project Services (UNOPS).

27. This report is based on information that the Commission has collected and analyzed regarding the human rights situation in Honduras. To this end, the IACHR has relied on information received before, during, and after the on-site visit, its official investigations, inputs from the various mechanisms through which the IACHR has monitored the situation in the country, news reports, and decisions and recommendations of specialized international organizations, among other sources.
28. On November 25, 2015, the IACHR sent to the Honduran State a copy of the preliminary draft of this report, and requested that it send its observations to it within a period of three weeks. On December 14, 2015, the State submitted its observations.
29. The Commission thanks President Juan Orlando Hernandez and his Government for the invitation to conduct the visit, as well as for all the logistical support and other assistance that was provided to ensure the successful completion of the visit, particularly by the Secretariat of Human Rights. The Commission recognizes and appreciates the information provided by the Government as well as the Government's openness to establishing a constructive dialogue with the IACHR. The Commission is also grateful for the hospitality with which the Government and the people of Honduras received its delegation. The IACHR highlights the willingness, support and cooperation manifested both in the planning and execution of the visit.
30. The IACHR thanks all the people with whom it met during the visit, civil society, victims and relatives and values the information gathered and the testimonies received.
31. This report is divided into eight chapters. The first is this introduction. The second concerns the public security situation in Honduras, the particular effect it has on certain groups. The third chapter addresses the State's response and the reforms that have been adopted. The fourth chapter reviews the national institutions responsible for the protection of certain groups against violence, as well as existing protection mechanisms. The fifth chapter describes the situation of inequality and exclusion that particularly affects women, indigenous peoples and Afro-descendants. The sixth chapter deals with the situation of freedom of expression in Honduras. The seventh chapter describes the situation of persons deprived of liberty and the eighth chapter includes the conclusions and recommendations of the report.



CHAPTER 2  
CITIZEN SECURITY





## CITIZEN SECURITY

### A. *Violence and citizen insecurity*

32. Violence and insecurity are serious problems that face Honduran society, with major implications for the enjoyment and effective exercise of human rights in the country.<sup>1</sup> The homicide rate in Honduras is one of the highest in the region. According to a study by the United Nations Office on Drugs and Crime (UNODC), in Honduras the homicide rate per 100,000 inhabitants increased from 50.9 in 2000 to 81.8 in 2010, 91.4 in 2011, and 90.4 in 2012.<sup>2</sup> Regarding the number of homicides registered in 2012, the rector of the National University of Honduras (UNAH), using a different methodology from that of UNODC, stated that the rate was 85.6, and not 90.4 as UNODC had stated.<sup>3</sup>
33. In 2013, the homicide rate in Honduras was the highest in the world, with a rate of 79 per 100,000 inhabitants, according to figures released by the Observatory of Violence at UNAH.<sup>4</sup> By 2014 the State indicated that, based on figures from UNAH, the homicide rate in Honduras had dropped to 66.4, while UNAH published the figure of 68.<sup>5</sup> Despite the discrepancy in the figures, the IACHR welcomes the decrease. However, observes that the homicide rate remains one of the highest in the region and the world.<sup>6</sup>

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<sup>1</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015. Available at: <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/HO-Observaciones2015.pdf>

<sup>2</sup> UNODC. Global Study on Homicide 2013, Trends, Contexts, Data. Available at: <http://www.unodc.org/-documents/data-and-analysis/statistics/GSH2013/2014 GLOBAL HOMICIDE BOOK web.pdf>.

<sup>3</sup> UNAH. *Honduras no registró tasa de homicidios de 90.4 por cada 100,000 habitantes en 2012*, April 22, 2014. Available at: <https://presencia.unah.edu.hn/seguridad/articulo/honduras-no-registro-tasa-de-homicidios-de-90-4-por-cada-100-000-habitantes-en-2012>.

<sup>4</sup> *Observatorio de la Violencia*, Boletín Enero-Diciembre 2013, 32nd Ed., February 2014. Available at: <http://iudpas.org/pdf/Boletines/Nacional/NEd32EneDic2013.pdf>.

<sup>5</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR during its on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015. See also: *Observatorio de la Violencia*, Boletín Enero-Diciembre 2011, 24th Ed., March 2012. Available at: <http://iudpas.org/-pdf/Boletines/Nacional/NEd24EneDic2011.pdf>.

<sup>6</sup> The State, in its response to the draft of this report, indicated that CONADEH has recommended taking comprehensive measures to ensure citizen security for Hondurans, with the aim of preventing the high rate of homicides. Specifically, it indicated that CONADEH has recommended the implementation of urgent measures to attack the structural causes of violence and impunity, as well as to protect the population in view of this situation. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

34. By 2015, official figures reported in the media from the Online Police Statistical System (SEPOL) and the National Interagency Security Force (FUSINA) indicated that the total number of violent deaths recorded through October 31 amounted to 4,266 homicides.<sup>7</sup> That figure was a reduction of 480 cases compared to the same period in 2014.<sup>8</sup>
35. In its response to the draft of this report, the State of Honduras noted that one constant throughout the draft report of the IACHR is the grave situation of violence in Honduras, which has a greater impact on groups in a situation of vulnerability. The State indicated that as part of its new structure, it has therefore decided to create the Cabinet on Prevention, Peace, and Coexistence, which will be responsible for coming up with actions to combat insecurity, taking a comprehensive approach that empowers citizens to exercise their rights in a culture of peace and respect.
36. According to UNODC and civil society organizations, these levels of violence that have been recorded are the result of several factors among which are: the increase of organized crime and drug trafficking following the coup, due to ineffective maintenance of law and order<sup>9</sup>; the phenomenon of gangs; a poor legal response leading to impunity; corruption; and high levels of poverty and inequality. Also, according to civil society organizations, the atmosphere of insecurity is partly caused by the police force, military police, and armed forces themselves, through their illegitimate use of force and sometimes in collusion with organized crime. In this regard, during the visit several organizations made reference to a growing militarization of the country and therefore a greater military presence in the areas experiencing the most conflict.
37. In fact, during its visit the Commission noted that one of the central pillars of the State's response to the serious structural problems of violence, impunity, corruption, and organized crime in the country is the intervention of the Armed Forces in many spheres and functions. The Army actively participates in citizen security responsibilities through specialized forces such as "military police," despite international standards indicating that citizen security should be the exclusive jurisdiction of a civilian police force, one that is respectful of human rights. The Honduran Army is also said to have an influence on the investigation and punishment of crimes involving organized crime,<sup>10</sup> through the National Defense and Security Council. This has led to the creation, in point of fact, of a

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<sup>7</sup> Secretariat of Security of Honduras, *Sistema Estadístico Policial en Línea: Histórico Acumulado de Homicidios (Mensual)*. Available at: <https://www.sepol.hn/sepolestadisticas-honduras.php?id=136>.

<sup>8</sup> Secretariat of Security of Honduras, *Sistema Estadístico Policial en Línea: Histórico Acumulado de Homicidios (Mensual)*. Available at: <https://www.sepol.hn/sepolestadisticas-honduras.php?id=136>.

<sup>9</sup> United Nations. *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, Mission to Honduras (18–22 February 2013), A/HRC/24/45/Add.1, August 5, 2013, para. 12. Available at: <http://daccess-dds-ny.un.org/doc/UN-DOC/GEN/G13/160/95/PDF/G1316095.pdf?OpenElement>.

<sup>10</sup> In its response to the draft of this report, the State of Honduras indicated that the Armed Forces of Honduras have no influence on the investigation and punishment of crimes involving organized crime. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

- proceeding with characteristics that resemble a special jurisdiction for members of the military police.
38. The Armed Forces are also involved in matters related to the civic education and training of children at “social risk,” through the “Guardians of the Nation” program. The Commission expressed its concern regarding the risks involved in the fact that children and young people between 5 and 23 years of age are being trained at military installations and are using militarized plazas, parks, and soccer fields. The Army also plays a role in the prison system, and is sent to carry out security tasks in areas where there are agrarian and land conflicts, such as in Bajo Aguán.
  39. Over time, the high level of violence in Honduras has generated a situation of insecurity among the population; this is of such a magnitude that it has resulted in the widespread possession and carrying of firearms, a right that is protected under existing law. Indeed, the Law on Control of Firearms, Ammunition, Explosives, and other Similar, allows anyone to request one or more licenses for the possession and carrying of firearms, and to register up to five firearms<sup>11</sup>. It is estimated that in Honduras there are between 800,000 and 1,000,000 firearms in circulation, of which only 282,000 are registered.<sup>12</sup> In this sense, it is imperative that legislation on the use and possession of firearms be reviewed with the goal of regulating their sale, use, and carry permitting.
  40. In this context, according to the report on the mission to Honduras of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, private security companies dominate and control the security sector in Honduras. The above-mentioned report refers to the existence of 60,000 private guards, many of which are illegal and unregistered, compared with 14,000 police officers.<sup>13</sup> On the basis of that report, structural and institutional weaknesses, together with the climate of violence and insecurity in the country and the fact that the State cannot guarantee security, have created an environment in which these companies have acquired power and are working without proper supervision and control, and hence with impunity.<sup>14</sup>
  41. The high level of violence, and the lack of results of the State's efforts to combat it, has led in recent years to serious harm against people engaged in different sectors of society, in particular those affected by poverty and social exclusion. As an

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<sup>11</sup> Law on control of firearms, ammunition, explosives and others, issued on June 19, 2000.

<sup>12</sup> Casa Alianza. *Violencia, niñez y juventud en Honduras: Un acercamiento a las principales manifestaciones de la violencia contra niñas, niños y jóvenes*, July, 2014; Foro de Mujeres por la Vida- Convergencia por los Derechos Humanos, San Pedro Sula, December 3, 2014. A business known as “La Armería” of the Armed Forces is the only one responsible for importing and selling firearms in the country.

<sup>13</sup> United Nations. *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, Mission to Honduras (18–22 February 2013), A/HRC/24/45/Add.1, August 5, 2013, para. 14. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/160/95/PDF/G1316095.pdf?OpenElement>.

<sup>14</sup> United Nations. *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, Mission to Honduras (18–22 February 2013), A/HRC/24/45/Add.1, August 5, 2013. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/160/95/PDF/G1316095.pdf?OpenElement>.

example, the level of violence against children would have increased in the country and therefore has put children at a greater situation for vulnerability. Also, the situation of violence against the legal profession in the country is quite serious. According to information published by the media, as of December 2014 approximately 84 lawyers had been killed in the preceding five years. In this context, in early 2015 Honduran lawyers reported receiving death threats almost daily. In January 2015, 15 lawyers were murdered for practicing their profession.<sup>15</sup>

42. In the following section the Commission analyzes the violence being carried out against specific groups.

## **1. Rights Defenders and Justice Operators**

43. During the visit, the Commission received information on the persistence of attacks, threats, harassment, and alleged criminalization of social leaders and human rights defenders. In addition, it continued to receive information on the challenges facing justice operators in the performance of their duties.

### **a. Human Rights Defenders**

#### **i. Violence**

44. Human rights defenders in Honduras are targets of attacks by those who have been identified as responsible for rights violations, and by sectors and groups with interests opposed to their causes. The risk of losing their lives or suffering harm to their integrity has caused a great many human rights defenders in Honduras to have precautionary measures granted by the Commission that require implementation on the part of the Honduran government.
45. The Commission noted with concern the figures submitted by the Committee of Relatives of the Disappeared in Honduras (COFADEH), according to which there have been 3,064 prosecutions since 2010 as a result of misuse of the criminal law to intimidate human rights defenders.<sup>16</sup> According to COFADEH, in the last five years, 14 human rights defenders were killed during the time they were beneficiaries of IACHR precautionary measures, including the measure PM 196-14, which safeguarded thousands of people in the context of the coup d'état in

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<sup>15</sup> La Prensa, 2015. *Asesinan a abogado a pocas cuerdas del parque de San Pedro Sula*, March 14, 2015. Available at: <http://www.laprensa.hn/sucesos/822362-410/asesinan-a-abogado-a-pocas-cuadr-del-par-que-desan-pedro-sula>.

<sup>16</sup> Meeting with civil society organizations during the on-site visit to Honduras, December 4, 2014. For its part, in its response to the draft of this report, the State indicated that it could not confirm this statement, given that in many cases, there are no complaints lodged with the Public Prosecutor's Office or when there are such complaints, victims are summoned repeatedly to give a victim statement or to expand on one and they fail to appear, a situation that hampers the investigation process. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

Honduras. In this regard, the Commission has publicly condemned the killings of human rights defenders who had been beneficiaries of precautionary measures, such as Orlando Orellana in 2014<sup>17</sup> and Héctor Orlando Martínez in 2015.<sup>18</sup> The State noted, in its response to the draft of this report, that in both cases the Office of the Special Prosecutor for Crimes against Life has taken a number of procedural steps, including instituting administrative proceedings and locating individuals who might have knowledge about what occurred, so as to help clear up the motive behind their killings.<sup>19</sup> Also, regarding human rights defenders in general, there have also been: 22 murders; 2 disappearances; 15 kidnappings; 88 cases of theft of information; and 53 cases of sabotage of vehicles which were being used to transport human rights defenders.<sup>20</sup>

46. During the visit, civil society organizations presented information to the Commission of what they describe as repression and political persecution against human rights defenders throughout the country, and in particular defenders of indigenous communities and peoples in relation to the defense of their territory (for more information, see the section on indigenous peoples).
47. The IACHR has also received information concerning the situation of human rights defenders who advocate for the protection of natural resources, who reportedly are being subject to acts of violence, harassment, and death threats because of their work as environmental defenders. In these circumstances, on September 28, 2015, the Inter-American Commission adopted precautionary measures for Kevin Donaldo Ramírez and his family, given that they have reportedly faced repeated threats and acts of violence as a result of Kevin Donaldo Ramírez's activities as a community leader and environmentalist.<sup>21</sup>
48. The Commission also received information about the use of the criminal law by private and/or state actors to intimidate and threaten people with criminal proceedings for criminal offenses such as "incitement to violence." Such problems are most acute in places where there are conflicts over land ownership, such as Ceiba and Bajo Aguán which were visited by the Commission. In this context, the IACHR has followed the alleged judicial harassment against Ms. Berta Cáceres, general coordinator of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), a beneficiary of precautionary measures by the IACHR,

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<sup>17</sup> IACHR, Press Release 62/14 – *IACHR Condemns Killing of Human Rights Defender in Honduras*, Washington, D.C., May 28, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/062.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/062.asp).

<sup>18</sup> IACHR, Press Release 73/15 – *IACHR Condemns Killing of Union Leader in Honduras*, Washington, D.C., June 24, 2015. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/073.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/073.asp).

<sup>19</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>20</sup> Meeting with civil society organizations during the on-site visit to Honduras, December 4, 2014.

<sup>21</sup> IACHR, Precautionary Measure No PM 460-15, Kevin Donaldo Ramírez and Family, September 28, 2015. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC460-15-ES.pdf>. The State indicated, in its response to the draft of this report, that Mr. Kevin Donaldo Ramírez did not file a complaint with the Public Prosecutor's Office in connection with the incidents. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

who leads a campaign in defense of the river Gualcarque against the construction of a hydroelectric dam.

49. Furthermore, the Commission received information on the situation of several union leaders who have been prosecuted or subjected to surveillance and monitoring of both themselves and their immediate families, in order to intimidate and inhibit their performance and consequently achieve the dismantling of trade unions, within the context of poorer worker conditions.<sup>22</sup> The Commission received information from a union leader whose 18 year old son "was gone," and was "bound and then shot." Another trade unionist indicated that unknown persons entered his house, beat his wife and daughters and left them tied-up. "This is an act of terror and fear that they are doing to all union organizations to dismantle them," he said. In this context, the National Center for Agricultural Workers (CNTC) has 78 of its members facing prosecution.<sup>23</sup>
50. In addition, members of the Union of Workers of the National Autonomous University of Honduras (SITRAUNAH) have been and continue to be victims of threats and even murders, as a result of which the IACHR granted precautionary measures in their favor in 2015.<sup>24</sup> The IACHR condemned via press release the murder of Héctor Orlando Martínez, representative of SITRAUNAH, which occurred on June 17, 2015 in the community of Piedra Parada, Monjará, and urged the State to investigate and clarify the circumstances in which this event occurred and identify and punish those responsible.<sup>25</sup> Mr. Martínez was the beneficiary of precautionary measures requested by the IACHR since May 19, 2015. According to the information received, Mr. Martínez was subjected to threats and harassment in order that he leave his job as a union leader.<sup>26</sup> Likewise, with respect to the situation reportedly being faced by members of SITRAUNAH, on May 27, 2015, the Inter-American Commission granted precautionary measures for Donatilo Jiménez Euceda, as the union leader's whereabouts or fate had reportedly been unknown since April 8, 2015. The Commission was informed that the former President of the CURAL branch of SITRAUNAH had said before his disappearance that his life and personal integrity were in danger.<sup>27</sup>

<sup>22</sup> The Committee of Relatives of the Disappeared in Honduras (COFADEH). *Emblematic Cases, Situation of Human Rights in Honduras*, Tegucigalpa, December 2014.

<sup>23</sup> COFADEH. *Emblematic Cases, Situation of Human Rights in Honduras*, Tegucigalpa, December 2014.

<sup>24</sup> On May 27, 2015, the IACHR awarded precautionary measures in favor of Donatilo Jiménez Euceda, ex-president of the Union of Workers of the National Autonomous University of Honduras, whose whereabouts or destination have been unknown since April 8, 2015. IACHR. Precautionary Measure Number 147/15 – Donatilo Jiménez Euceda, Honduras. May 27, 2015. Available at: <http://www.oas.org/en/iachr/decisions/-precautionary.asp>.

<sup>25</sup> IACHR. Press Release 73/15 - *IACHR Condemns Killing of Union Leader in Honduras*. Washington, D.C., June 24, 2015. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/073.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/073.asp); *Diario la Prensa, Asesinan a catedrático de la UNAH en Choluteca*, June 18, 2015. Available at: <http://www.laprensa.hn/sucesos/850623-410/asesinan-a-catedratico-de-la-unah-en-choluteca>; *Diario El Heraldo, Asesinan a docente de la UNAH en Choluteca*, June 18, 2015. Available at: <http://www.elheraldo.hn/-sucesos/850631-331/asesinan-a-docente-de-la-unah-en-choluteca>.

<sup>26</sup> IACHR. Precautionary Measure Number 253/14 - Héctor Orlando Martínez and Family, Honduras. Available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

<sup>27</sup> IACHR, Precautionary Measure No. PM 147-15, Donatilo Jiménez Euceda, May 27, 2015. Available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp> In its response to the draft of this report, the State

51. With regard to women defenders, figures from 2012 indicate that Honduras had the second largest number of attacks against human rights defenders in the region that encompasses Mexico and Central America, with 119 attacks.<sup>28</sup> Of these attacks, 95 were against defenders of land and natural resources<sup>29</sup>. An advocate of women's rights in La Ceiba told the CIDH, "we are few and we are so exposed. Everyone knows where to find us."<sup>30</sup> Another said, "I am president of the defense of land, is that why they send them to threaten me?"<sup>31</sup> According to information received, 62% of the perpetrators have been state actors, percentage followed by private companies.<sup>32</sup> Information received also indicates that between 2002 and 2012 more than 684 cases of prosecutions against women defenders were reported in 23 courts in 15 departments of the country.<sup>33</sup>
52. Defenders of LGBT people also face a context of violence which is compounded by stereotypical and discriminatory attitudes toward this group. In the Second Report on the Situation of Human Rights Defenders in the Americas, the IACHR highlighted the wealth of information received on the murder, threats and criminalization of the activities of defenders of LGBTI people and on the absence of a differentiated approach to the investigation of violations of their human rights in

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noted that according to information presented by the Public Prosecutor's Office, various search operations have been carried out by an inter-institutional team (National Anti-Extortion Force, Law Enforcement Military Police, Honduran Air Force, and Technical Criminal Investigation Agency) in order to determine the victim's whereabouts. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>28</sup> CDM, Foro de Mujeres por la Vida, CEM-H, Red Nacional de Defensoras de Derechos Humanos de Honduras, JASS, Cladem. *Informe Honduras: Las Mujeres y los Mecanismos Internacionales de Observancia de los Derechos Humanos*, Annex 3. Report presented to the IACHR. Tegucigalpa, Honduras, December 1, 2014. Available at: [http://www.contralosfemicidios.hn/images/generales/publicaciones/2015/Mecanismos\\_internacionales\\_DDHH.pdf](http://www.contralosfemicidios.hn/images/generales/publicaciones/2015/Mecanismos_internacionales_DDHH.pdf).

<sup>29</sup> On September, 2014, the IACHR condemned the murder of Honduras of the campesino leader and human rights defender Margarita Murillo, president of the Las Ventanas Campesino Production Association and leader of the Valle del Sula Social Forum, together with the reported kidnapping of her 23-year-old son. According to the publicly available information, on August 27, 2014, in the community of El Planón, Villanueva, department of Cortés, Margarita Murillo — who had spent more than 40 years defending the rights of Honduran campesinos — was killed by a group of hooded men who shot her in the face four times. The plot of land where the incident took place had reportedly been recovered by the Las Ventanas Campesino Production Association, of which she was the president. IACHR. Press Release 101/14 - *IACHR Condemns Murder of Human Rights Defender in Honduras*. Washington, D.C., September 17, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/101.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/101.asp).

<sup>30</sup> Meeting with civil society organizations during the on-site visit, La Ceiba, December 2, 2014.

<sup>31</sup> Meeting with civil society organizations during the on-site visit, La Ceiba, December 2, 2014.

<sup>32</sup> CDM, Foro de Mujeres por la Vida, CEM-H, Red Nacional de Defensoras de Derechos Humanos de Honduras, JASS, Cladem. *Informe Honduras: Las Mujeres y los Mecanismos Internacionales de Observancia de los Derechos Humanos*, Annex 3. Report presented to the IACHR. Tegucigalpa, Honduras, December 1, 2014. Available at: [http://www.contralosfemicidios.hn/images/generales/publicaciones/2015/Mecanismos\\_internacionales\\_DDHH.pdf](http://www.contralosfemicidios.hn/images/generales/publicaciones/2015/Mecanismos_internacionales_DDHH.pdf).

<sup>33</sup> CDM, Foro de Mujeres por la Vida, CEM-H, Red Nacional de Defensoras de Derechos Humanos de Honduras, JASS, Cladem. *Informe Honduras: Las Mujeres y los Mecanismos Internacionales de Observancia de los Derechos Humanos*, Annex 3. Report presented to the IACHR. Tegucigalpa, Honduras, December 1, 2014. Available at: [http://www.contralosfemicidios.hn/images/generales/publicaciones/2015/Mecanismos\\_internacionales\\_DDHH.pdf](http://www.contralosfemicidios.hn/images/generales/publicaciones/2015/Mecanismos_internacionales_DDHH.pdf).



Honduras.<sup>34</sup> Also, in the report titled Honduras: Human Rights and the Coup d'Etat, the IACHR confirmed the worsening discrimination against, and risk faced by, members of the LGBT community in Honduras.<sup>35</sup> The Commission received many complaints about violations in which defenders of the rights of LGBT people were constantly subjected to attacks and harassment by groups seeking to bring about structural discrimination against them through violence, and moreover – according to the complaints – were repeatedly subjected to arbitrary arrests by the national police, allegedly for violating "morals and good customs." A trans woman advocate told the IACHR, "in Honduras the simple fact of being trans, being an advocate, being part of this society, is criminalized." The IACHR notes with concern that the vast majority of precautionary measures adopted by the Commission for the protection of LGBT defenders seek to protect the life and personal integrity of LGBT defenders in Honduras.<sup>36</sup>

53. In this context, on January 22, 2014, the Inter-American Commission asked the State of Honduras to grant precautionary measures for the members of the Association for a Better Life in Honduras (APUVIMEH). This was because due to the activities of support, advocacy, protest and protection of the rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons in Honduras, its members were subjected to assassinations, threats, acts of harassment, and violence, as retaliation for their activities.<sup>37</sup> In the context of its monitoring of the situation of the members of APUVIMEH, the IACHR has received troubling information concerning

<sup>34</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, 31 December 2011, para. 330. Available at: [http://www.oas.org/en/iachr/defenders/docs/pdf/defenders\\_2011.pdf](http://www.oas.org/en/iachr/defenders/docs/pdf/defenders_2011.pdf).

<sup>35</sup> See, IACHR, *Honduras: Human Rights and the Coup D'Etat*, OEA/Ser.L/V/II. Doc. 55, 30 December 2009, Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>.

<sup>36</sup> IACHR, PM 457/13 - Members of "Asociación para una Vida Mejor de Honduras" [Association for a better life in Honduras] (APUVIMEH). IACHR, Precautionary Measure Number 621-03 – Ellyn Johalby Suárez Mejía and other members of the Sampedrana gay community, Honduras; Precautionary Measure Number 210-08 – Marlon Cardoza and other members of the CEPRES Association, Honduras; Precautionary Measure Number 196-09 – Donny Reyes and others, Honduras; Precautionary Measure Number 18-10 - Indyra Mendoza Aguilar et al., Honduras. Available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

<sup>37</sup> Specifically, the request alleges that members of the association carried out awareness raising and protection activities and ran a shelter house called "Casa Renacer" [House of Rebirth] where they took care of persons living with HIV and other sexually transmitted diseases. Acts of aggression and assault against their members would have taken place in a context of violence against LGBTI persons, which would be the cause of approximately 115 killings in the last years, cases that would have ended in impunity. The IACHR asked that the State of Honduras take the necessary steps to ensure the life and physical integrity of the members of "Asociación para una Vida Mejor de Honduras" [Association for a better life in Honduras] (APUVIMEH), that it come to an agreement with the beneficiaries as to the measures to be taken, and that it inform the Commission about the steps taken to investigate the facts that gave rise to the adoption of precautionary measures. IACHR. Precautionary Measure Number 457/13 - Members of "Asociación para una Vida Mejor de Honduras" [Association for a better life in Honduras] (APUVIMEH). Available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp> The State, in its response to the draft of this report, indicated that the most recent monitoring of the precautionary measure for APUVIMEH took place in August 2015. The Secretariat of Security reported then that pursuant to the IACHR's order, the security measures adopted for APUVIMEH are as follows: patrols of APUVIMEH facilities; telephone calls to the police authorities, using emergency numbers, regarding the beneficiaries' security; personal escort; and security and accompaniment on international missions. Thus extensive protection measures have been agreed to. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

the violent deaths of two human rights defenders, a man and a woman, who were associated with the organization.<sup>38</sup> Moreover, during the time the precautionary measures have been in effect, the Commission has continued to receive information concerning acts of violence and threats against members of APUVIMEH because of their work in defending the rights of LGBTI persons in Honduras.

54. In a report published in 2012 by the RedLacTrans organization, it is reported that that defenders of the human rights of trans persons are in a situation of extreme vulnerability to suffering violence by state and non-state actors, as a reprisal for their human rights activism and the carrying out of sex work.<sup>39</sup> Trans women human rights defenders are also subjected to arbitrary arrest, extortion and threats from police officers. A transgender woman human rights defender in San Pedro Sula said:

the night is like it were another country; because during the day, the police have a little more respect to us about the reports we have brought [...] But at night is different, one is exposed when carrying out sex work in the street, it's like you do not exist, anything could happen to you. If we did not walk in the street at night, if we had opportunities for education and work, it would be another story.<sup>40</sup>

55. Defenders of LGBT people in Honduras have also been subjected to other forms of persecution such as searches. Indeed, the IACHR has previously expressed concern about the alleged raid on the headquarters of the LGBTI Rainbow Association in 2013, in which various equipment were stolen. The circumstances of the alleged illegal searches suggested that an attack was aimed specifically at the organization.<sup>41</sup>
56. The IACHR has also observed the effect of declarations of state authorities with regard to the work of human rights defenders that discredit their work and therefore increases their vulnerability. The Commission received with concern information about a complaint filed by the Legal Auditor of the Armed Forces at the General Inspectorate of Courts of the Supreme Court of Justice against judge Mario Rolando Díaz, President of the Association of Judges for Democracy (AJD), which was motivated by the participation of AJD with various organizations in a

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<sup>38</sup> The State, in its response to the draft of this report, made reference to the killing of Walter Orlando Tróchez in 2009, a case in which the Public Prosecutor's Office issued an order to prosecute two individuals for the crime of murder. The State indicated that the Public Prosecutor's Office has filed an appeal (*recurso de casación*) of the acquittal in the case. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>39</sup> RedLactrans. The night is another country: Impunity and violence against transgender women human rights defenders in Latin America. 2012. Available at: <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English1.pdf>.

<sup>40</sup> Trans activist in San Pedro Sula, Honduras, July 2012. RedLactrans. The night is another country: Impunity and violence against transgender women human rights defenders in Latin America. 2012. Available at: <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English1.pdf>

<sup>41</sup> See: IACHR. *Annual Report 2013*, Chapter IV. B Honduras.

paid advertisement in a national newspaper to mark the beginning of the on-site visit.

57. Similarly, the IACHR regrets the statements of certain government officials during the second Universal Periodic Review (UPR) to Honduras that was held on May 8, 2015, in which they accused the UPR Platform of Honduras of conducting a smear campaign against Honduras by their participation in such an event in which the human rights situation in the country is addressed.<sup>42</sup> The Commission also received information indicating that judicial authorities would not have granted the judge Mario Rolando Díaz, president of the Board of the AJD, permission to be absent from duty and participate in the UPR on behalf of the association and the panel of civil society organizations.<sup>43</sup>
58. The human rights organs of the Inter-American system have repeatedly stated that human rights defenders from different sectors of civil society and, in some cases, from state institutions, make fundamental contributions to the existence and strengthening of democratic societies. Hence, respect for human rights in a democratic state depends, to a large extent, on the human rights defenders enjoying effective and adequate guarantees for freely carrying out their activities.<sup>44</sup>
59. The Commission recalls that attacks on the lives of human rights defenders have a multiplier effect that goes beyond the effect on the defender's person, because when aggression is committed in retaliation for their activity, this produces an intimidating effect that extends to those who advocate similar causes.<sup>45</sup> The Inter-American Court has indicated that the fear caused by virtue of these acts against life can directly reduce the possibility of human rights defenders "exercising their right to defend human rights [...]".<sup>46</sup>
60. As noted above by the Commission, acts of violence and other attacks against human rights defenders not only infringes the rights that they themselves possess as human beings, but also undermine their fundamental role in society, resulting in the defenselessness of all those people for whom they work. The Commission also recalls that the work of defenders is essential to building a solid and lasting democratic society, and defenders play a leading role in the progress toward the full achievement of the rule of law and the strengthening of democracy.

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<sup>42</sup> Plataforma EPU Honduras. Press release of April 10, 2015.

<sup>43</sup> Asociación de Jueces por la Democracia. Press release: *Limitan el Derecho de AJD a participar en el EPU en Honduras*, May 6, 2015.

<sup>44</sup> IACHR. Report on the Situation of Human Rights Defenders in the Americas, para. 20-41. Available at: <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm>.

<sup>45</sup> IACHR. Report on the Situation of Human Rights Defenders in the Americas, para. 43. Available at: <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm>; I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Judgment of April 3, 2009 (Merits, Reparations and Costs). C Series, No. 196, para. 153. I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Judgment of March 3, 2005 (Merits, Reparations and Costs). C Series, Num. 21, para. 78.

<sup>46</sup> I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Judgment of November 27, 2008 (Merits, Reparations, and Costs). C Series, No. 192, para. 96.

61. Honduras should protect defenders when they encounter risks to their life and personal integrity, by adopting an effective and comprehensive prevention strategy, with the goal of preventing attacks. The State, in its response to the draft of this report, noted that the Office of the Special Prosecutor for Human Rights created a Special Unit to investigate such cases.<sup>47</sup> The Commission notes the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators approved on April 15<sup>th</sup> 2015 and how it requires to be strengthened. This needs granting appropriate funds and political support to institutions and programs. In cases in which human rights defenders suffer from violence, the State must investigate with due diligence and determine material and intellectual responsibilities.

## ii. Impunity

62. Impunity has serious and direct effects on the work of human rights defenders. In San Pedro Sula, the Commission collected the testimony of a human rights defender who indicated that, after making inquiries in search of justice over the killing of one of her brothers, “they grabbed me, put a pistol to my temple, got me into the house, and told me, ‘Shut up, because if you keep meddling we’ll kill you.’” In the end, she said, they ended up killing not her, but her other brother. She stressed that “nobody, absolutely nobody, is paying for these deaths.”
63. During the interviews it conducted, the Commission was concerned to receive information indicating that some authorities delegitimize and fail to recognize the work of human rights defenders. This, combined with the lack of a judicial response, has fostered an adverse climate for them to carry out their activities. Moreover, society has been polarized over the role of human rights organizations. For human rights defenders, “impunity is at the heart of all the violations that affect those of us who defend human rights.”<sup>48</sup> Instead of acknowledging and protecting their activities, justice would be manipulating against them. Figures provided to the IACHR indicate that from 2002 to 2012, there were more than 684 cases of human rights defenders being prosecuted in 23 courts in 15 of the country’s departments.<sup>49</sup>
64. The Commission also notes that declarations that delegitimize and discredit the work of human rights defenders increases their vulnerability. On several occasions, such statements have suggested that non-governmental human rights organizations collaborate with armed dissident groups or plan campaigns that threaten state security or discredit the international image of the country.<sup>50</sup> In

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<sup>47</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, [Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights](#), December 14, 2015.

<sup>48</sup> Meeting with civil society organizations, Tegucigalpa, December 2, 2014.

<sup>49</sup> Meeting with civil society organizations, Tegucigalpa, December 2, 2014. Asociadas por lo Justo (JASS), Centro de Estudios de la Mujer Honduras (CEMH), Centro de Derechos de Mujeres (CDM), Red Nacional de Defensoras de Derechos Humanos en Honduras, *Situación de los derechos humanos de las mujeres en Honduras*.

<sup>50</sup> IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, para. 176.

particular, the Commission considers that the statements by state representatives, expressed in the context of political violence, sharp polarization, or high levels of social conflict, puts out the message that acts of violence aimed at suppressing human rights defenders and their organizations enjoy the acquiescence or support of the government.<sup>51</sup>

65. The State must publicly acknowledge that the exercise of the promotion and defense of human rights is a legitimate action and that, in exercising these actions, human rights defenders do not act against state institutions or the State but, on the contrary, promote the strengthening of the rule of law and the enlargement of the rights and guarantees of all people. All state authorities and local officials should be aware of the principles governing the activities of defenders and their protection, as well as guidelines for compliance.
66. The Commission calls to mind that, in addition to their duty to investigate and punish those who break the law within their territories, States have the obligation to take all necessary measures to avoid having State investigations lead to unjust or groundless trials for individuals who legitimately claim the respect and protection of human rights. Opening groundless criminal investigations or judicial actions against human rights defenders not only has a chilling effect on their work, but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.<sup>52</sup> Along these lines, the IACHR has consistently recommended that States “ensure that their authorities or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders....”<sup>53</sup>

## **b. Justice Operators**

### **i. Violence and impunity**

67. With regard to justice operators in Honduras, the Commission has previously expressed concern about acts of violence against this group,<sup>54</sup> and during the visit received consistent information on the recurrent insecurity and lack of adequate protection measures for justice officers and their families in light of the threats and risks of the work they perform.<sup>55</sup> According to justice officers, the absence of a program to protect their life and personal integrity makes them a vulnerable group because of threats, intimidation, and interference in the independent and impartial

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<sup>51</sup> IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, para. 177.

<sup>52</sup> See: IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, para. 76.

<sup>53</sup> See: IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, March 7, 2006, Recommendation 11.

<sup>54</sup> IACHR, IACHR Condemns Murder of Justice Operators in Honduras, Press Release 139, 24 November 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/139.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/139.asp).

<sup>55</sup> See: IACHR, *Annual Report 2013*, Chapter IV.B. Honduras.

- performance of their functions.<sup>56</sup> The Commission also received information on standards and practices that would result in the impairment of their independence.
68. According to publicly available information, in 2014 at least 20 judges received death threats; from 2010 to October 2014, 86 lawyers were killed; and according to information provided by the AJD, at least 3 judges were killed between 2013 and 2014.<sup>57</sup> In October 2014, two prosecutors were killed in San Pedro Sula.<sup>58</sup> The Commission also received information about the October 23, 2014 attack against former justice of the peace and then-current public defender Iris Argueta, in the city of Catacamas, Olancho, who was in her vehicle when individuals on motorcycle attacked her with firearms. Iris Argueta died in the hospital after she underwent surgery for her bullet wounds.<sup>59</sup>
69. Regarding the murder of Efigenia Mireya Peña Mendoza, a trial court judge in El Progreso, Yoro, and Pro-Secretary of the AJD, which occurred on July 24, 2013, the Commission was informed that two years after her death, the authorities had only arrested one suspect, without explaining the motive, generating a climate of impunity for these acts.<sup>60</sup>
70. The Commission has also received troubling information concerning threats and acts of harassment allegedly being faced by police officers for reporting alleged crimes or improper activities of public interest to the relevant authorities.<sup>61</sup> In these circumstances, on July 27, 2015, the IACHR adopted precautionary measures for Rony Alejandro Fortín Pineda and his family members, who were said to be at risk due to a series of acts of violence and threats made against them because of the complaints Rony Alejandro Fortín had reportedly made as Assistant Inspector of the Police.<sup>62</sup>

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<sup>56</sup> See: IACHR, “Hearing on Independence on the Judiciary in Honduras”, 28 October 2013.

<sup>57</sup> Mireya Mendoza Peña, Trial Court Judge, El Progreso, Yoro, 24 July 2013; Lenin Adolfo Castañeda, *Juez de Paz*, Iriona, Colon, 13 March 2014; Rufino Zavala, *Juez de Paz*, Oropoli, El Paraiso, 24 June 2014

<sup>58</sup> Fiscal Marlene Banegas, Former coordinator of prosecutors in San Pedro Sula and coordinator of the Prosecution Office for Crimes against Life, and Prosecutor Olga Patricia Eufragio, who worked at the who served in the Prosecution Office of Environment. IACHR, IACHR Condemns Murder of Justice Operators in Honduras, Press Release 139, 24 November 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/139.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/139.asp).

<sup>59</sup> IACHR, IACHR Condemns Murder of Justice Operators in Honduras, Press Release 139, 24 November 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/139.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/139.asp)

<sup>60</sup> *Asociación de Jueces por la Democracia*. Updated Information on Security and Justice in Honduras. San Pedro Sula, 3 December 2014. See, IACHR, IACHR Condemns Murder of Judge in Honduras, Press Release 055, 30 July 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/055.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/055.asp).

<sup>61</sup> The State, in its response to the draft of this report, noted that Article 117-A was amended; it codifies the crime of Qualified Homicide and Murder, which applies to the death of judges, magistrates, prosecutors, public defenders, wardens or deputy wardens or security guards at prison facilities, and protected witnesses or any other type of justice operator linked to the fight against crime, provided that the crime was committed at the time of or during the exercise of his or her duties. This reform took effect on October 22, 2014. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>62</sup> IACHR, Precautionary Measure No. PM 293-15, Rony Alejandro Fortín Pineda and Others, July 27, 2015. Available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>. In its response to the draft of this

71. These situations are very serious because in a country with high levels of violence and impunity in the region, a special duty of protection is required by the State so that the justice operators can perform their duties against impunity without becoming victims of the same cases they investigate or decide. In its response to the draft of this report, the State informed the Commission that the Public Prosecutor's Office issued Agreement FGR 23-2014, dated October 14, 2014, which includes the Special Regulations of the System for the Protection of Civil Servants and Officials of the Public Prosecutor's Office who are at risk or have been threatened for reasons connected with the performance of their duties.<sup>63</sup>
72. In this regard, exposure to threats is a serious issue. The Commission was aware of the threats and intimidation against Judge Mayra Aguilera. According to publicly available information, on November 27, 2014, three armed men entered her home asking for her, intimidating her children and making threats.<sup>64</sup> Judge Aguilera served as a judge with national jurisdiction against organized crime until April 2014, during which time she was provided with security. This was discontinued after she was transferred to a sentencing court. In speaking to the press, Judge Aguilera was quoted as saying "I don't want to be part of the statistics."<sup>65</sup> According to information provided by the AJD, the Judiciary Council reinstated the required security measures.<sup>66</sup>
73. The Commission recalls the obligation of the State to investigate *ex motu proprio* crimes of this nature. The Commission emphasizes the need for special protocols for conducting investigations concerning cases of attacks against justice operators and to effectively punish those responsible. The Commission urges the State of Honduras to immediately adopt as a matter of urgency all necessary measures to ensure the right to life, integrity and security of all judges, magistrates, and all justice operators generally in Honduras.
74. Furthermore, during the visit, several judicial officials referred to the country's current limited budget for implementing comprehensive protection measures for themselves and their families and reported that due to the shortfalls they would prefer not to use security protection. They also indicated that the modalities of

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report, the State indicated that Mr. Rony Fortín Pineda had not filed a complaint with the Public Prosecutor's Office. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>63</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>64</sup> *El Heraldo*, Honduras: Judge unhappy with protection. December 2, 2014. Available at: <http://www.elheraldo.hn/pais/773299-331/honduras-jueza-inconforme-con-protecci%C3%B3n>.

<sup>65</sup> *El Tiempo*, Honduran Judge Threatened: "I don't want to be another statistic", November 28, 2014. Available at: <http://www.tiempo.hn/sucesos/item/9745-jueza-hondure%C3%B1a-amenazada-no-quiero-ser-parte-de-las-estad%C3%ADsticas>; *La Prensa*, Honduran Judge escapes thugs who came to her house, November 28, 2014. Available at: <http://www.laprensa.hn/sucesos/772039-410/jueza-hondure%C3%B1a-se-salva-de-matones-que-llegaron-a-su-casa>; *El Heraldo*, Honduras: Judge unhappy with protection. December 2, 2014. Available at: <http://www.elheraldo.hn/pais/773299-331/honduras-jueza-inconforme-con-protecci%C3%B3n>.

<sup>66</sup> AJD, *Updated Information on Security and Justice in Honduras*, on-site visit to Honduras, San Pedro Sula, December 3, 2014

protection did not necessarily correspond to their needs, given that the safety measures were assessed according to position instead of workload, cases involved and the risk circumstances. Given this situation, the Commission notes the lack of prosecutor protection mechanisms or units responsible for evaluating the risks. An interviewed prosecutor pointed out that "personal security measures sometimes tends to raise the profile, to create a more valuable target and to say, let's get his kids [...] it's no use my having security, while my family is at home alone".<sup>67</sup>

75. The Commission reiterates that if States do not guarantee the safety of judges and magistrates against all kinds of external pressures, including reprisals directly aimed at their person and family, the exercise of the judicial function may be severely affected, thus frustrating the free development of the judicial process and access to justice for victims of human rights violations.<sup>68</sup> Consequently, the Commission urges the State of Honduras to investigate, prosecute and punish those who attack justice operators. It must also ensure adequate protection schemes according to their needs.

## 2. Indigenous Peoples and Afro-descendants

### a. Violence

76. The Commission has previously expressed concern about the challenges faced by indigenous peoples, mainly relating to: (i) the high levels of insecurity and violence arising from the imposition of project and investment plans and natural resource mining concessions on their ancestral territories; (ii) forced evictions through the excessive use of force and (iii) the persecution and criminalization of indigenous leaders for reasons related to the defense of their ancestral territories.<sup>69</sup> Violence against indigenous peoples to a large extent grows out of the struggle for land and territory, which is exacerbated by the conditions of inequality and discrimination faced by these groups and the attendant barriers to their access to justice.
77. During its visit, the Commission received alarming information about murders, violence and death threats against indigenous and Afro-descendants leaders, particularly those who defend their territories and natural resources in the context of mega-projects carried out without prior and informed consultation with the objective of obtaining consent.<sup>70</sup> Among these killings, the IACHR was informed of

<sup>67</sup> Meeting with several prosecutors, San Pedro Sula, December 3, 2014.

<sup>68</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66. December 31, 2011.

<sup>69</sup> IACHR, *Annual Report 2013*. See section Ch. IV B. 2013.

<sup>70</sup> On January 21, 2014, the remains of the Lenca indigenous leader Justo Sorto were found on a farm at the Yance community in the Municipality of Jesús de Otoro, Department of Intibucá, Western Honduras. Justo Sorto was a member of COPINH. Front Line Defenders, *Honduras: Killing of human rights and defend Lenca Indigenous leader Mr Justo Soto*, January 24, 2014. Available at: <https://www.frontlinedefenders.org/node/24742>. On October 29, 2014, Maycol Ariel Garcia —a 15 year-old Lenca boy of the Rio Blanco community— was found, murdered; he was a member of COPINH and a defender of Rio Gualcarque and his territory. International Work Group for Indigenous Affairs, *The Indigenous World 2015*, April 2015, p. 92. Available at: [http://www.iwgia.org/iwgia\\_files\\_publications\\_files/0716\\_THE\\_INDIGENOUS\\_ORLD\\_2015\\_eb-](http://www.iwgia.org/iwgia_files_publications_files/0716_THE_INDIGENOUS_ORLD_2015_eb-)



the murder of the Lenca indigenous leader Tomas Garcia in July 2013, community leader and active member of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH) who received several bullet wounds allegedly from members of the Honduran Army, while participating in a peaceful sit-in at Achotal, Río Blanco, Department of Intibucá.<sup>71</sup> Concerning threats, the IACHR received information on an alleged incident against María Santos Domínguez, an indigenous defender and coordinator of the Indigenous Council of Río Blanco and Northern Intibucá Sector and member of COPINH. On March 5, 2015, when returning home, María Santos Domínguez was surrounded by seven individuals who attacked her with sticks, stones and a machete. Her husband and son came to her rescue and were also attacked; her son lost an ear.<sup>72</sup> A female defender of indigenous rights in La Ceiba informed the Commission: "[as] they told me, they will kill me. I'm not afraid. I am exposed, waiting for death".

78. As the Commission has mentioned, many of the attacks against the life and personal integrity of indigenous leaders and defenders are intended to reduce territorial and natural resource defense and protection activities, as well as the defense of the right to autonomy and cultural identity. According to information received, as of October 2014, there have been 27 leaders prosecuted for crimes such as theft of land, damage to the environment and private property, among others.<sup>73</sup> According to the Commission, the acts of aggression, attacks and harassment of leaders, while severely altering cultural integrity, can also

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.pdf According to the Honduran Promotion Center for Community Development (CEHPRODEC), in the first week of May 2015 the body of Silvestre Manueles Gómez –a neighbor of the Gualinga Community in the municipality of Santa Elena— was found at the banks of the river Chinacla. According to information received, there had been a conflict between indigenous leaders and a company regarding the construction of a hydroelectric project on their lands. CEHPRODEC, *Complaint before the Prosecutor for Ethnic Groups regarding the brutal murder of indigenous person on the banks of the River Chinacla*, June 8, 2015. Available at: <http://www.cehprodec.org/index.php/noticias/40-denuncia-en-la-fiscalia-de-las-etnias-el-brutal-asesinato-de-indigena-en-las-riberas-del-rio-chinacla>. In that same month, on May 20, 2015, Moisés Durón Sánchez –an indigenous leader and member of COPINH, who led the recovery of lands for the community of Somolagua, San Juan, Municipality of Ceguaca, Department of Santa Bárbara— was murdered. COPINH, *Moisés Durón Sánchez murdered, a COPINH community leader in Santa Bárbara!* May 20, 2015. Available at: <http://www.copinoh.org/article/asesinan-al-companero-moises-duron-sanchez-leader-c/>; Project Counselling Service, *Honduras gunmen kill community leader*, May 25, 2015. Available at: <http://www.pclatin.org/portal/index.php/component/content/article/152-sala-de-prensa/3072-honduras-sicarios-asesinan-a-lider-comunitario?temid=508%20>; Protection International, *Honduras: Assassination of indigenous community leader Moses Duron Sanchez*, May 22, 2015. Available at: <http://protectionline.org/es/2015/05/22/honduras-asesinato-de-lider-comunitario-indigena-moises-duron-sanchez/>. On January 5, 2015, the body of indigenous human rights defender Juan Francisco Martínez was found in the community of Tapuyman, Municipality of Santa Elena de La Paz, with his hands bound, signs of torture and multiple stab wounds. Juan Francisco Martínez was a member of MILPAH and worked for the rights of water, land and territory of the Lenca indigenous community. Front Line Defenders, *Honduras - Torture and killing of human rights advocate Juan Francisco Martínez*, January 16, 2015. Available at: <https://www.frontline-defenders.org/node/27936>, p. 18.

<sup>71</sup> IACHR *Condemns Murder of Lenca indigenous leader and injury to a child in Honduras operational Army*, Press Release No. 19-2013. Available at: [www.oas.org/en/iachr/](http://www.oas.org/en/iachr/).

<sup>72</sup> Front Line Defenders, *Honduras: Attempted killing of human rights advocate Ms. María Santos Domínguez*, March 7, 2015. Available at: <https://www.frontlinedefenders.org/node/25313>.

<sup>73</sup> Peace Brigades International – Honduras Project, *Bulletin PBI Honduras 2*, January 2015, p. 28. Available at: [http://www.pbi-honduras.org/fileadmin/user\\_files/projects/honduras/Publications/B02-16-SPA-rev.pdf](http://www.pbi-honduras.org/fileadmin/user_files/projects/honduras/Publications/B02-16-SPA-rev.pdf).

contribute to the breakdown of community cohesion around the defense of their rights.<sup>74</sup>

79. Among some of the serious cases of which the Commission is aware is the situation of the Tolupan people, on whose ancestral territory several mining exploitation and hydroelectric dam projects are being developed without consultation. In 2013, three indigenous Tolupanes were allegedly killed because of their struggle in defense of the natural resources in their community, San Francisco Locomapa, Yoro.<sup>75</sup> In this context, on December 19, 2013, the Commission requested the adoption of precautionary measures for the members of the Wide Movement for Dignity and Justice (MADJ) and their families after they received a series of threats, harassment and violence, because of their work in defense of the natural resources of indigenous peoples in this area.<sup>76</sup> Although the precautionary measures are in force, the information received indicates that the violence against this community and against the beneficiaries of the measures has not stopped. In April 2015, Marcia Luis Reyes, husband of Vilma Consuelo Soto, a beneficiary of the measures, was stabbed to death.<sup>77</sup> According to published information, on May 22, 2015, Vilma Consuelo Soto was the victim of an attempt on her life when a neighbor came to her home and fired three shots.<sup>78</sup>
80. The situation of indigenous and Afro-descendant peoples is aggravated by conflicts over territory, whether because of mining or tourism projects or other projects aimed at developing natural resources. Civil society organizations reported that there are 837 potential mining projects, which in territorial terms would account for almost 35% of the nation's territory.<sup>79</sup> Civil society pointed out to the IACHR that there are 98 mining concessions in the departments of Lempira and Santa Bárbara. It also reported that there are 76 hydropower projects with completed feasibility studies and/or operating contracts approved in 14 of the country's 18 departments (Atlántida, Colón, Comayagua, Copán, Cortés Francisco Morazán, Intibuca, La Paz, Lempira, Ocotepeque, Olancho, Patuca, Santa Bárbara, and Yoro).
81. The situation of the Garifuna community of Barra Vieja, which the IACHR visited, is an example of a land-related conflict associated with tourism investment. The members of this community, in the city of Tela, were reportedly victims of orders

<sup>74</sup> IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 298.

<sup>75</sup> The individuals murdered were María Enriqueta Matute, Ricardo Soto Fúnez and Armando Fúnez Medina See: "OFRANEH Press Communiqué, Masacre of Indigenous Tolupanes and the lack of prior free and informed consent" dated August 27, 2013.

<sup>76</sup> IACHR, Precautionary Measure No. 416-13, December 19, 2013. Available at: [www.oas.org/en/iachr](http://www.oas.org/en/iachr)

<sup>77</sup> *El Herald* Newspaper, *Indigenous Tolupan killed in Yoro*, *El Herald*, April 6, 2015. Available at: <http://www.elheraldo.hn/vida/828446-332/matan-a-ind%C3%ADgena-tolup%C3%A1n-en-yoro?kw=Tolup%C3%A1n%20asesinado>; *El Tiempo* Newspaper, *Indigenous person killed in Honduras in clashes with minors*, *El Tiempo*, April 6, 2015. Available at: <http://tiempo.hn/nacion/item/25902-asesinan-a-indigena-en-honduras-en-medio-de-conflicto-con-mineras>;

<sup>78</sup> *Radio Progreso*, *Threats continue against Tribu leaders in Francisco in Locomapa, Yoro*, *Radio Progreso*, May 29, 2015. Available at: <http://radioprogreso.hn/index.php/comunicaciones/noticias/item/2098-contin%C3%BAan-amenazas-a-l%C3%ADderes-de-tribu-francisco-en-locomapa-yoro>.

<sup>79</sup> Information provided by civil society during on-site visit to Honduras.

evicting them from their lands to clear the way for tourism investment projects.<sup>80</sup> The Garifuna people, the product of cultural syncretism between indigenous and African peoples, have asserted their rights in Honduras as an indigenous people.<sup>81</sup> In 2013, the first hotel resort complex opened, and threats, intimidation and persecution of leaders and the population in general continued.<sup>82</sup> Approximately 400 individuals were victims of eviction on September 30, 2014, with the participation of the armed forces and police.<sup>83</sup> This eviction order issued by the First Court of Appeals of La Ceiba, had been the result of an alleged irregular appropriation of part of Garifuna territory in the Bahía de Tela area by the Honduran National Port Authority, which in 2006 had granted 25 hectares of expropriated land from the Miami community with a community title. Later, these lands were illegally sold on to San Pedro Sula businessmen.<sup>84</sup>

82. Regarding the corporations that are implementing these projects, a member of the indigenous people in La Ceiba stated in a meeting with the IACHR that: “they do not want to respect our culture, they do not want to respect our traditions, even worse they mislead us by telling us there will be jobs and that is a bad joke.” Regarding this, the IACHR was informed that megaprojects would be implemented on the land of the indigenous peoples, using their natural resources, without any prior, free, and informed consultation. As for the megaprojects developed on indigenous territory, “We do not want anything that is not ours,” said a member of the Garifuna People in La Ceiba.<sup>85</sup> “What we want is to retrieve what is ours, what they have stolen from us. Our parents, our grandparents, our great-grandparents taught us what is ours,” he said. “Before we had coconuts, now we have to go and buy them. And there is no land to plant cassava. Neither is there any source of employment. Here we have young people who have graduated from school, young people who’ve studied, but there are no jobs,” said a woman over 60 years old who was born and raised there.
83. Out of fear of becoming the victims of violence and due to the threats because of their work opposing several mining projects, some indigenous leaders have had to leave their communities. One example is the case of eight leaders of the Nueva Esperanza and the “Patronato Regional” of the Sector Florida communities, in the

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<sup>80</sup> CIPRODEH, *Informe de la Situación de los Pueblos Afrohondureños, Caso Barra Vieja*, Information received during the Inter-American Commission’s on-site visit to Honduras. La Ceiba, December 2, 2014.

<sup>81</sup> IACHR, *Garifuna Community of “Triunfo de la Cruz” and its Members (Honduras)*, Case 12.548, Report No. 76/12, November 7, 2012, para. 190.

<sup>82</sup> CIPRODEH, *Report on the Situation of Afro-Honduran Peoples, Case of Barra Vieja*, Information received during the Inter-American Commission’s on-site visit to Honduras. La Ceiba, December 2, 2014.

<sup>83</sup> Peace Brigades International – Honduras Project, *Bulletin PBI Honduras 02*, January 2015, p. 29. Available at: [http://www.pbi-honduras.org/fileadmin/user\\_files/projects/honduras/Publications/B02-16-SPA-rev.pdf](http://www.pbi-honduras.org/fileadmin/user_files/projects/honduras/Publications/B02-16-SPA-rev.pdf).

<sup>84</sup> CIPRODEH, *Report on the Situation of Afro-Honduran Peoples, Case of Barra Vieja*, Information received during the Inter-American Commission’s on-site visit to Honduras. La Ceiba, December 2, 2014.

<sup>85</sup> CIPRODEH, *Report on the Situation of Afro-Honduran Peoples, Case of Barra Vieja*, Information received during the Inter-American Commission’s on-site visit to Honduras. La Ceiba, December 2, 2014.

<sup>86</sup> IACHR, Case 12.761, *Garifuna Community Punta Piedra and its members, Honduras*, submitted to Court on 1 July 2013; IACHR, Case 12.548, *Garifuna Community of Triunfo de la Cruz and its Members, Honduras*, submitted to Court on 21 February 2013.

municipality of Tela, Department of Atlántida who are the beneficiaries of precautionary measures from the IACHR.<sup>86</sup>

84. The situation of the Independent Indigenous Movement Lenca de la Paz-Honduras (MILPAH) vis-a-vis the construction of hydroelectric projects on its territory has been the subject of concern to various civil society organizations. According to the information received, since November 2013 there has been death threats recorded against some community members.<sup>87</sup>
85. Similarly, in a communication dated July 24, 2014, under the provisions of Article 41 of the American Convention on Human Rights, the Commission requested information from the State of Honduras regarding the situation of the members of the COPINH and other members of the Lenca indigenous community. This was due to the alleged murders, assaults and threats against the community that occurred between May and June 2014.<sup>88</sup> It also requested information concerning the criminal proceedings initiated against 36 leaders of the Lenca indigenous community for the alleged crimes of "sedition prejudicial to the internal security of the State of Honduras and usurpation of functions". These charges related to the alleged seizure of the City Hall building by the above community after rejecting the results of the November 2013 elections, where Mr. Socorro Sanchez was the winner. In response to that request, the State indicated that on July 22, 2014, at the preliminary hearing, the public prosecutor and the defense requested the provisional acquittal of the accused for the offense of sedition, since the elected authorities had taken up their position without interference with the free exercise of their authority. On July 23, 2014, following the preliminary hearing, the First Court of the Intibucá Department ordered a final dismissal of the case for the offense of usurpation of functions due to a lack of evidence that the offense had been committed, and a provisional acquittal with regard to the offense of

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<sup>86</sup> On December 24, 2013, the IACHR requested the adoption of precautionary measures on behalf of Adonis Romero and several community leaders and human rights defenders due to the alleged situation of risk developing in the area. According to the information received, eight leaders were displaced from their communities because of violent threats against their lives. IACHR, Precautionary Measure No. 195-13, Leaders and Human Rights Defenders of the Nueva Esperanza Community and the Regional Board of Sector Florida, Honduras, December 24, 2013 Available at: [www.oas.org/en/iachr/](http://www.oas.org/en/iachr/).

<sup>87</sup> Martín Gómez Vázquez, Félix de Benítez, Pedro Amaya, Calixto Vázquez, Juan Bautista and July González received death threats from supporters of the hydroelectric dam, in order to deter the opposition. Their homes are under surveillance. Peace Brigades International – Honduras Project, *On International Human Rights Day PBI Honduras urges the International Community to Monitor the Security Situation of Small Scale Farmers and Indigenous Peoples in the Municipality of Santa Elena, Department of La Paz, Honduras*, December 2014. Available at: [http://www.pbi-honduras.org/fileadmin/user\\_files/projects/honduras/-Publications/Pbi\\_Honduras\\_briefing\\_Santa\\_Elena\\_10\\_December\\_2014\\_EN.pdf](http://www.pbi-honduras.org/fileadmin/user_files/projects/honduras/-Publications/Pbi_Honduras_briefing_Santa_Elena_10_December_2014_EN.pdf).

<sup>88</sup> According to publicly available information on May 24, 2014, William Jacobo Rodríguez—a defender from Río Gualcarque who opposed the development of the hydroelectric project Agua Zarca— was murdered in Río Blanco. Local organizations reported that the same night the Police force based in Río Blanco engaged in a special operation allegedly directed against the Lenca people. During the course of this operation, they arbitrarily and violently arrested Lindolfo Benitez and Salvador Sanchez, both COPINH members, who were allegedly tortured. It was also alleged that the President of the Indigenous Council of Río Blanco and member of the General Coordination of COPINH, Francisco Javier Sanchez, and some children received death threats from the Police. Also, according to information received, on May 25, 2014, in the municipality of San Francisco de Opalaca, Intibucá, Irene Meza and Plutarco Bonilla, members of COPINH, were shot by three men allegedly employed by the Mayor of the Municipality. On their way to hospital, they were intercepted again by a group of gunmen who shot at them, killing Mr. Meza.

sedition.<sup>89</sup> In its response, the State did not provide any information about the other acts of violence and threats.

86. Furthermore, the IACHR received information that indicates that on September 3, 2014, members of the police and armed civilians arrived at the premises of the Indigenous Council of Santiago Apóstol firing shots into the air, burning belongings, destroying crops, and stealing agricultural implements. On November 3, 2014, the indigenous rights defender, Calixto Vasquez, was arbitrarily arrested while participating in a peaceful march. It has been reported that since that day, the municipality, its surroundings and the territory where the company has started its work, has been highly militarized.<sup>90</sup>
87. The Commission considers that the initiation of baseless criminal proceedings against defenders may entail a violation of the right to personal integrity when the harassment caused by these actions affects the normal course of daily life and causes great and worrying disruption to the person subject to legal proceedings and his family.<sup>91</sup> Such severity is confirmed by the constant uncertainty about their future.<sup>92</sup> The State must ensure the existence of safeguards to prevent that authorities or third parties manipulate the punitive power of the State and its organs of justice to harass those who are engaged in legitimate activities such as human rights defenders.<sup>93</sup> In this regard the State should also adopt measures to respond to evidence of abuse or manipulation of authorities and third parties.
88. It is important to note that violence against indigenous peoples in Honduras has been exacerbated by the presence of organized crime. Information from certain organizations indicates that in the need to secure drug trafficking routes, violent incursions onto indigenous lands have occurred. Some allegedly drug gangs have forcibly occupied indigenous territories to construct clandestine airstrips. On July 17, 2014, members of the Garifuna community in northeastern Honduras, including the human rights activist Miriam Miranda, were kidnapped by armed men, because in a previous visit to the area they had discovered an illegal landing strip used by drug traffickers. Although at first they were told that they were going to be killed, they were subsequently released.<sup>94</sup> Members of the Tolupan

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<sup>89</sup> State of Honduras. Note No. 1277-DGPE/DPM-14, November 3, 2014.

<sup>90</sup> Peace Brigades International – Honduras Project, *On International Human Rights Day PBI Honduras urges the International Community to Monitor the Security Situation of Small Scale Farmers and Indigenous Peoples in the Municipality of Santa Elena, Department of La Paz, Honduras*, December 2014. Available at: [http://www.pbi-honduras.org/fileadmin/user\\_files/projects/honduras/Publications/Pbi\\_Honduras\\_briefing-Santa Elena 10 December 2014\\_EN.pdf](http://www.pbi-honduras.org/fileadmin/user_files/projects/honduras/Publications/Pbi_Honduras_briefing-Santa Elena 10 December 2014_EN.pdf)

<sup>91</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 120. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> IACHR, Report on the Merits No. 43/96, Case 11.430, *José Francisco Gallardo (Mexico)*, October 15, 1996, para. 79.

<sup>92</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 120. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> IACHR, Report on the Merits No. 43/96, Case 11.430, *José Francisco Gallardo (Mexico)*, October 15, 1996, para. 79.

<sup>93</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 11.

<sup>94</sup> Global Witness, *¿Cuántos más? El medio ambiente mortal de 2014: intimidación and asesinato de activistas ambientales and de la tierra, con Honduras en primer plano*, p. 19. Available at: <https://www.global->

Community of San Francisco de Locomapa in the Yoro department have denounced the threats and systematic persecution perpetrated by armed groups linked to organized crime and mining companies.<sup>95</sup>

89. The Commission considers particularly serious the information that police officers take part directly in acts of harassment, intimidation and violence against indigenous communities and their members. In this regard, it urges the Honduran government to put an end to these acts and to ensure that any activities carried out by the security forces where the defense of indigenous peoples and communities' ancestral territories are concerned, are consistent with the fundamental role of protecting individuals' rights to life, liberty and security.
90. On the other hand, the Commission recalls that indigenous peoples have the right to be protected by the State from attacks by third parties, especially when they occur in the context of conflicts over ancestral territory.<sup>96</sup> In such cases, when the State knows or should know about the risk, state authorities are obliged to adopt reasonable measures to prevent the occurrence of such conflicts, protect indigenous communities from violent attacks, and effectively investigate and punish those responsible.<sup>97</sup>
91. The Commission recommends that the State investigate and punish those responsible for the threats, harassment, violence, intimidation and damage done to the property of members of indigenous communities, and in particular to their leaders and authorities. It should also adopt an effective and simple remedy to protect the right of indigenous peoples of Honduras to assert and access their traditional territories and to allow them to protect these lands from actions by the State or others who violate their property rights.<sup>98</sup>

## **b. Impunity**

92. According to information presented by the Observatorio de Derechos Humanos de los Pueblos Indígenas y Negros de Honduras [Human Rights Observatory of the Indigenous and Black Peoples of Honduras], in its Alternative Report for the Committee on the Elimination of Racial Discrimination, even though there is an Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage,

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[witness.org/campaigns/environmental-activists/cuantos-mas/](http://witness.org/campaigns/environmental-activists/cuantos-mas/). In regard to Miriam Miranda on September 16, 2011, the IACHR granted precautionary measures on her behalf. The request for precautionary measure alleges that Miriam Miranda has been subjected to threats and harassment because of her work defending the rights of Garifuna communities in Honduras, MC 322-11.

<sup>95</sup> International Work Group for Indigenous Affairs, *The Indigenous World 2015*, April 2015, p. 92. Available at: [http://www.iwgia.org/iwgia\\_files\\_publications\\_files/0716\\_THE\\_INDIGENOUS\\_ORLD\\_2015\\_eb.pdf](http://www.iwgia.org/iwgia_files_publications_files/0716_THE_INDIGENOUS_ORLD_2015_eb.pdf)

<sup>96</sup> IACHR. *Third Report on the Human Rights situation in Colombia*. Doc. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter X, Recommendation 3.

<sup>97</sup> IACHR. *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paras. 1062-1066; 1071; 1137 – Recommendations 1-4.

<sup>98</sup> The remedies should take into account their particularities, social and economic characteristics, their customary law, values, practices and traditions. They should also be effective in solving their territorial claim, ensuring the right of the community and the people to be heard with due guarantees and within a reasonable time to guarantee their rights and obligations.

complaints filed by indigenous peoples or communities of African descent are not investigated or, in cases in which officials do initiate a process, no orders to prosecute are issued.<sup>99</sup> These organizations believe that one of the main problems faced by indigenous peoples in Honduras has to do with the crisis in the administration of justice, given the lack of independence by the branches of government.

93. The Committee on the Elimination of Racial Discrimination (CERD) indicated that between 2002 and 2013 the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage received 55 complaints for discrimination offenses, of which 31 are under investigation, 17 were dismissed, 4 were brought to trial, and 3 resolved by other means. Apparently no penalties have been imposed for this offense. The CERD expressed particular concern over the small number of complaints filed with the Special Prosecutor's Office, as well as the disproportionality between the number of complaints dismissed and those brought to trial.<sup>100</sup>
94. The State, in its response to the draft of this report, indicated that in the context of its area of responsibility, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage has taken cognizance of complaints filed for the crime of discrimination in which the complainants have been indigenous women; these have been prosecuted in cases where there has been relevant evidence. Likewise, to raise justice operators' awareness regarding this issue, the Office of the Special Prosecutor held training sessions in 2013 for indigenous organizations and prosecutors from the Public Prosecutor's Office. In this context, men and women leaders were given training regarding their rights and access to justice and the responsibilities of the justice institutions to which they should turn to ensure recognition of those rights.<sup>101</sup>
95. The State also indicated that a manual has been drafted for the investigation of violations of the rights of indigenous peoples and Afro-Hondurans—it is still pending publication—in order to provide training regarding crimes committed against indigenous peoples, and specifically the crime of discrimination.<sup>102</sup> The State reported that the manual covers the application of international standards regarding the rights of indigenous peoples, including the obligation of justice operators to offer translation services in criminal proceedings both when members of indigenous or Afro-descendant peoples are complainants and defendants, so as to ensure due process.

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<sup>99</sup> *Observatorio de Derechos Humanos de los Pueblos Indígenas y Negros de Honduras. Informe Alternativo de Honduras. Convención sobre la Eliminación de Toda Forma de Discriminación Racial*, January 7, 2014, p. 15. Available at: [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HND/INT\\_CERD\\_NGO\\_HND-16234\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HND/INT_CERD_NGO_HND-16234_S.pdf).

<sup>100</sup> United Nations. Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, CERD/C/HND/CO/1-5, March 13, 2014, para. 16.

<sup>101</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>102</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

96. The State also made reference to the fact that on December 10, 2015, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage obtained a conviction in the respective court against members of the Army for the homicide of indigenous leader Lenca Tomás García Domínguez.<sup>103</sup>
97. The IACHR considers it necessary to strengthen the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage and for this office to be provided with adequate financial and human resources so that it can function properly.

### 3. Children and Adolescents

#### a. Violence

98. The context of violence and insecurity in Honduras puts children and adolescents in a particularly vulnerable position, especially considering that children represent 48% of the country's population.<sup>104</sup> The Commission received information from civil society that 1,031 children, adolescents, and young adults (18-23 years old) have died violently in the country between January and December 2014, representing an increase of 18 cases from 2013.<sup>105</sup> Of the 1,031 cases recorded, 864 were boys and 167 were girls. With regard to age, 283 victims were aged between 0 and 17, and 748 victims between 18 and 23 years old.<sup>106</sup> The leading cause of death was from bullet wounds (from firearms) at 78%.<sup>107</sup>
99. According to the information gathered between January and November 2014, in 81% of cases the person responsible for the deaths remains unknown. In only 11% of cases is the identity of the alleged perpetrator discovered. In the remaining 9% of cases, the deaths are linked - according to information provided by witnesses and relatives at the respective crime scenes - to confrontations with the Law

<sup>103</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>104</sup> IACHR, Public Hearing, *Situation of Human Rights in Honduras*, 152 Extraordinary Period of Sessions, Mexico City.

<sup>105</sup> Observatory of the Rights of Children and Adolescents in Honduras, Casa Alianza, *Situation of the Rights of Children and Adolescents in Honduras, Childhood, Migration and Violence*. Summary January-December 2014. Available at: <http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Infor-mes.Mensuales.2015/situacin%20de%20derechos%20de%20nios%20nias%20y%20jvenes%20en%20honduras.pdf>.

<sup>106</sup> Observatory of the Rights of Children and Adolescents in Honduras, Casa Alianza. *Situation of the Rights of Children and Adolescents in Honduras, Childhood, Migration and Violence*. Summary January-December 2014. Available at: <http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Infor-mes.Mensuales.2015/situacin%20de%20derechos%20de%20nios%20nias%20y%20jvenes%20en%20honduras.pdf>.

<sup>107</sup> Observatory of the Rights of Children and Adolescents in Honduras, Casa Alianza. *Situation of the Rights of Children and Adolescents in Honduras, Childhood, Migration and Violence*. Summary January-December 2014. Available at: <http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Infor-mes.Mensuales.2015/situacin%20de%20derechos%20de%20nios%20nias%20y%20jvenes%20en%20honduras.pdf>.



Enforcement Military Police (POMP),<sup>108</sup> the National Police, members of the army, and to *maras* and/or gangs. The departments of Cortés and Francisco Morazán account for 86% of violent deaths nationwide.<sup>109</sup> According to the report of the Observatory of the Rights of Children and Young People in Honduras, there has been an increase in cases where bodies are found with signs of torture before execution, in sacks, plastic bags, tied with ropes or wrapped in sheets; some the victims had been strangled to death.<sup>110</sup>

100. Part of the general atmosphere of violence that pervades the country is attributed to the presence of gangs or *maras* and their control over certain neighborhoods and areas, especially in urban populations where the problem is more acute. This context places children and adolescents in a particularly vulnerable situation; on the one hand, they are harassed and threatened by *maras*, or are pressured to collaborate or join them.<sup>111</sup> On the other hand, the State security forces tend to regard as gang members those adolescents living in areas under the influence of *maras*, or who match stereotypical characteristics associated with a certain physical appearance and social status, and therefore receive abusive and discriminatory treatment by State agents.<sup>112</sup>

<sup>108</sup> In its response to the draft of this report, the State indicated that there have been no confrontations with the Law Enforcement Military Police or with members of the Armed Forces. It stated that since the creation of the Xatruch Task Force, violent deaths have gone down considerably. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015, Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>109</sup> Observatory of the Rights of Children and Adolescents in Honduras, Casa Alianza. *Situation of the Rights of Children and Adolescents in Honduras, Childhood, Migration and Violence. Summary January-December 2014*. Available at: <http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Infor-me-s.Mensuales.2015/situacin%20de20derechos%20de20nios%20nias%20y%20jvenes%20en%20honduras.pdf>.

<sup>110</sup> Observatory of the Rights of Children and Adolescents in Honduras, Casa Alianza. *Situation of the Rights of Children and Adolescents in Honduras, Childhood, Migration and Violence. Summary January-December 2014*. Available at: <http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Infor-me-s.Mensuales.2015/situacin%20de20derechos%20de20nios%20nias%20y%20jvenes%20en%20honduras.pdf>.

<sup>111</sup> In this regard see IACHR press release [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/056.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/056.asp).

<sup>112</sup> Estimates on the number of members of *maras* and violent gangs do not coincide and they vary depending on the source; their reliability is limited. It is difficult, therefore, to find accurate information on the number of children and adolescents involved in the *maras*. The National Program for Prevention, Rehabilitation, and Social Reintegration reported approximately 4,728 active *maras* and gang members, of which 447 are in custody. This report, however, does not break down the figure among boys, girls and adolescents under the age of 18 linked to *maras*. While these figures are approximate—the research was narrowed to 14 cities—they seem to be close to the over all number as they include the largest and worst affected cities. Of the 14 municipalities analyzed, San Pedro Sula would have 60% of the total, followed by Tegucigalpa with 21%, and the remaining 19% would be distributed among the other 12 cities. This National Program contrasts these figures with official police sources (Gang Prevention Unit) which, in 2000, had reported approximately 36,000 gang members and more than 75,000 supporters. When analyzing the discrepancy in the data, the National Program indicates that after the amendment of Article 332 of the Criminal Code criminalizing the mere participation in these groups, their members opted for anonymity and their actions became more complex and less visible (e.g., dress codes and speech patterns—traditional hallmarks of gangs—were abandoned in favor of discretion). The National Program for Prevention, Rehabilitation, and Social Reintegration considers that this search for anonymity could have led to an under estimation of the figures handled, while at the same time questioning the high figures provided by other public bodies such as the Police, and pointing to the need for objective and reliable information. *Status of maras and gangs in Honduras*. National Program for Prevention, Rehabilitation, and Social Reintegration, with the support of UNICEF (2011), p. 39.

101. A report done in Honduras by the National Program for Prevention, Rehabilitation, and Social Reintegration provides valuable information for understanding the complexity of the *mara* phenomenon:

As with all social phenomena, the rise of *maras* and gangs does not have a single explanation. Various converging risk factors such as basic unmet needs, little access to education both in quantity and quality, the rupture of the community social fabric, limited or nonexistent opportunities for youth recreation or organization, the lack of work opportunities, and an inadequate system for treating young offenders have been and continue to be the breeding ground for the emergence of these groups that would come to capture the attention of society in general.<sup>113</sup>

102. The same report refers to opinions expressed directly by current and former members of *maras* who were surveyed. The main findings are summarized as follows:

Children and adolescents feel attracted to *maras* because of factors that have to do with power, a sense of identity, relationships between individuals connected by close ties of solidarity and group feelings, social recognition, respect, admiration, and access to goods and money, as well as because this is supposedly an easy, fast way to be able to support themselves and to have the necessary means to do so.<sup>114</sup>

103. The State, in its response to the draft of this report, indicated that according to information provided by CONADEH, “children and adolescents are often forced to become part of a *mara* or gang because their lives and integrity have been threatened and if they do not join, they will be killed, taking into consideration that the majority of the children and adolescents most affected are those who live in communities and settlements that are controlled by these criminal organizations.” The State further indicated that street children and adolescents are victims of *maras* and gangs and are often used by them to commit crimes. “These gangs control whole neighborhoods and in some cases their leaders are clearly identifiable.”<sup>115</sup>

<sup>113</sup> “Situación de maras y pandillas en Honduras”. National Program for Prevention, Rehabilitation, and Social Reintegration, with the support of UNICEF. 2011, p. 13 <http://www.pnp.gob.hn/Archivos%20Para-%20Descarga/Estado%20de%20Maras%20y%20%20Pandillas%20Honduras%202010-2011%20PNPRRS.pdf>

<sup>114</sup> “Situación de maras y pandillas en Honduras”. National Program for Prevention, Rehabilitation, and Social Reintegration, with the support of UNICEF. 2011, p. 28. *Maras* incorporate symbolic group and identity symbols attractive to children and adolescents: “*Maras* have their own language, aesthetics, and certain rituals that provide the value of identity and cultural socialization tools within the gang. Thus within the *mara* or gang a language is developed with particular features, which gives them a sense of belonging, exclusivity, and secrecy. They have a verbal language (codified through the “wila,” a coded alphabet); body language (the “caloo,” a language of signs and shapes using the hands, arms, and body); and a graphic language (through tattoos that communicate their membership in a certain gang and their accomplishments and place in the hierarchy, as well as graffiti, used to express themselves and mark their territory).” Nowadays, the identity symbols most visible to the outside world tend to become more flexible and even to disappear, mainly since the advent of anti-*mara* legislation and the establishment of the crime of membership in a *mara* or gang. See p. 31.

<sup>115</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

104. The Commission received alarming information about sexual abuse against children in general.<sup>116</sup> According to *Casa Alianza* figures, cases of sexual abuse of children and adolescents has increased by 200%, according to statistics kept by the authorities of the Public Prosecutor for Children and organizations dedicated to providing assistance to child victims of such crimes.<sup>117</sup> On average, 35 children and adolescents become victims of sexual violence every month and the most common crimes are sexual rape, “special rape” and lewd and lascivious conduct.<sup>118</sup> Most of these crimes occur in the home environment.<sup>119</sup> Similarly, while children and adolescents are particularly vulnerable to recruitment by gangs or suffer various forms of physical violence, young and teenage girls are additionally particularly vulnerable in this context to sexual and gender violence.<sup>120</sup>
105. The Commission has already stated its concern in addressing the situation of children and adolescents linked to *maras* or violent gangs only from the perspective of public security, security forces and the criminal justice system, with the consequence of stigmatization and disregard for the structural causes underlying the current situation in Honduras.<sup>121</sup> In that sense it is necessary to emphasize the children and adolescents’ lack of protection and vulnerability. This does not exclude the fact that, when children and adolescents commit acts contrary to criminal law, measures can be taken, consistent with international human rights standards, to hold them responsible for their actions, to the extent appropriate and that these meet the objective of rehabilitation and social reintegration.
106. Honduras must adopt all necessary and adequate measures, especially at the local level to prevent and confront the structural causes of violence, that is, measures of a legal, political, administrative, social and cultural nature, including the creation and/or adaptation of the necessary institutions to promote the prevention of violence against children. Similarly, according to the Commission, among the

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<sup>116</sup> The State, in its response to the draft of this report, indicated that the Department of Children, Youth, and Families (DINAF) provides immediate protection to child and adolescent victims of sexual abuse who are referred by the Public Prosecutor’s Office. This protection consists of removing the children or adolescents from their dangerous environment, providing them with psychological and medical care and counseling, incorporating them into the educational system, and keeping track of judicial actions against the assailant so that the children or adolescents can return to their family and community. The State also reported that DINAF handles cases involving rights violations in which *maras* and gangs have taken control using threats, blackmail, and forced recruitment and in which children and adolescents are affected by these types of abuse. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>117</sup> Diario La Prensa, *Honduras: Sexual abuses against children increase in 200%*. 20 June 2015. Available at: <http://www.laprensa.hn/honduras/851404-410/honduras-abusos-sexuales-contra-ni%C3%B1os-crece-en-un-200>.

<sup>118</sup> Diario La Prensa, *El 95% de abusos a niños se da en el seno familiar*, 22 May 2015. Available at: <http://www.laprensa.hn/honduras/842457-410/el-95-de-abusos-a-ni%C3%B1os-se-da-en-el-seno>.

<sup>119</sup> Casa Alianza, Report May 2015. Available at: [http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/05.%20informe%20mensual%20May%202015\\_casa%20alianza%20honduras.pdf](http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/05.%20informe%20mensual%20May%202015_casa%20alianza%20honduras.pdf).

<sup>120</sup> In the same sense, see, UNHCR, “Children on the run”, pp. 26, 27 and 29. Available at: [http://www.unhcr-washington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcr-washington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)

<sup>121</sup> For example, consult press release <http://www.cidh.org/Comunicados/English/2004/26.04.htm>.

measures aimed at guaranteeing children the right to a life free from violence, it is essential that Honduras encourage the modification of structural and institutional conditions as well as social norms and cultural patterns which serve to legitimize and reproduce these forms of violence against children and adolescents, and to ensure the effective implementation of existing laws on the subject. The Commission also encourages the State to establish a system for the promotion and protection of the rights of children and adolescents in the three levels of government, to carry out and coordinate public policies geared toward this sector.

## **b. Impunity**

107. The Commission was informed by civil society organizations that even though there are judges designated to handle children’s issues, these public officials are not specialized in children’s rights. Likewise, the IACHR received information indicating that there are not enough public defenders to handle the various proceedings related to children in Honduras. For its part, the State reported that no provisions exist concerning the eligibility of judges specialized in this area, and that there is still work to be done to guarantee that children and adolescents in Honduras have specialized public representation. Based on the information it obtained, the Commission urges the Honduran State to strengthen its capacity to protect and defend the rights of children and adolescents, and especially to have judges, prosecutors, and public defenders who are specialized in this field, so as to remove one of the obstacles that stand in the way of effective access to justice for children and adolescents.
108. Children and adolescents are one of the groups most severely affected by conditions of insecurity, violence, and crime in Honduras. In contexts where criminal groups and gangs are present, together with a limited official presence, children and adolescents are often pressured, threatened, or deceived into collaborating with criminal organizations;<sup>122</sup> drug use and addiction, for example, is one of the strategies used by traffickers to recruit new children and adolescents for small-scale dealing.<sup>123</sup> Once inside those structures, they are abused and deployed in a wide range of actions related to maintaining the groups’ interests and, since they are considered disposable and replaceable, they are generally assigned activities that pose great risks to their physical integrity or the risk of being arrested by the police. One of the consequences associated with these contexts of insecurity is the pronounced increase in the number of unaccompanied migrant children and of migrant families with children. The rise in those figures is a sign of the worrying security situation that currently prevails: many of these

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<sup>122</sup> With reference to the average age at which children and adolescents join gangs in Honduras, a survey conducted among former gang members at detention facilities revealed that the predominant age range for joining a gang was from 11 to 20 years (80% of respondents). “Situación de maras y pandillas en Honduras,” National Program for Prevention, Rehabilitation, and Social Reintegration, with the support of UNICEF. 2011, p. 57.

<sup>123</sup> The State, in its response to the draft of this report, indicated that according to CONADEH, the drug trade has been established as one of the most widespread forms of illegal child labor in the country. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

children and their families leave Honduras, driven by the situation of violence, by threats, and by their fear of gangs and organized crime, in conjunction with other causes related to the lack of opportunities in their country of origin or to the desire to reunite with their families in their destination countries.

109. Chapter 7 of this report addresses in more depth the situation of children and adolescents deprived of liberty.

## 4. Women

### a. Violence

110. During its visit, the Commission received troubling information about the high levels of violence against women, including murder, domestic and family violence and rape. In the words of the United Nations Special Rapporteur on Violence against Women after her visit to Honduras, "violence against women is widespread, systematic and its impact is manifest in various forms on women and young girls".<sup>124</sup>
111. With respect to the murders of women, civil society organizations reported an increase in Honduras of 263.4% in the last nine years, from 175 in 2005 to 636 in 2013.<sup>125</sup> Between 2002 and October 2014, at least 4,283 women have died violently.<sup>126</sup> According to figures from the Observatory of Violence of the UNAH, between January and December 2014, 531 violent deaths of women were recorded, representing a rate of 12 per 100,000 inhabitants, and a reduction of 2.6 points compared to 2013.<sup>127</sup> It was reported that one woman dies violently on average every 17 hours. According to the Observatory, 70.4% of the recorded deaths of women in 2014 were by firearms.<sup>128</sup> The highest incidence of violent deaths and murders of women because of their gender occurs between the ages of 20-24.<sup>129</sup> It also notes that violence against girls aged between 0-14 years

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<sup>124</sup> United Nations. *Preliminary Report on the Visit to Honduras by the office of the UN Special Rapporteur on Violence against Women*, July 7, 2014. Available at: <http://www.hn.undp.org/content/honduras/es/-home/presscenter/articles/2014/07/07/informe-preliminar-de-la-visita-a-honduras-realizada-por-la-relatora-especial-de-la-onu-sobre-la-violencia-contra-las-mujeres-.html>.

<sup>125</sup> La Prensa Newspaper, *Asking for an end to Violence against Women in Honduras*, November 25, 2014. Available at: <http://www.laprensa.hn/honduras/771004-410/piden-en-honduras-el-fin-a-la-violencia-contra-las-mujeres>.

<sup>126</sup> Foro de Mujeres por la Vida, Human Rights Federation, San Pedro Sula, December 3, 2014.

<sup>127</sup> UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf).

<sup>128</sup> UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf).

<sup>129</sup> UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf)

represents 7.3% of all deaths.<sup>130</sup> San Pedro Sula and Tegucigalpa account for almost 50% of murders of women.<sup>131</sup>

112. The available statistics show that from January to September 2014, there were 7,020 prosecution requests for an official physical examination nationwide; 42.6% for injuries, followed by 26.4% for abused women; and sexual offenses at 24.4%.<sup>132</sup> Among the sexual offenses, 91.5% of evaluations were performed on women and young girls between the ages of 0 and 24. The Commission's attention is drawn to the fact that among this group, those most affected, at 70.8%, were girls aged between 10-19.<sup>133</sup> Evaluations of women victims beaten due to domestic violence constitute 26.4% for that period.
113. In relation to the aggressors, 75.6% of cases presumably fall into the category of known offenders. The Commission notes that unknown and uncategorized assailants represent 26.4% and in three cases two soldiers and a policeman were identified; in 113 cases, the victims did not disclose the aggressor's identity.<sup>134</sup> Specifically with regard to violence against women in the family, in 2012, figures of the Statistical Observatory of the Public Ministry reported more than 16,000 complaints of violence against women, with incidents of domestic and family violence being the most frequent (at 74.6%).<sup>135</sup> During its visit, a female magistrate of the Supreme Court of Justice indicated to the IACHR that "violence against women is considered as something natural".<sup>136</sup>
114. Besides this, regarding reports of missing women and girls, in 2008, 91 women were reported missing and 347 in 2013.<sup>137</sup> The Commission has not received any information on the figures for 2014. In addition, there have been 155 complaints of offenses involving disappearances such as unjust imprisonment, kidnapping and human trafficking.<sup>138</sup>

<sup>130</sup> UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf)

<sup>131</sup> Asociados por la Justo (JASS), Centro de Estudios de la Mujer Honduras (CEMH), Centro de Derechos de las Mujeres (CDM), Red Nacional de Defensoras de Derechos Humanos en Honduras. *Situation on the Human Rights of Women in Honduras*, issued by the IACHR, December 1, 2014.

<sup>132</sup> Followed by prosecution requirements for forensic evaluation of abused minor lower with 1.5% and other requirements with 5.2% of the total UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf).

<sup>133</sup> UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf).

<sup>134</sup> UNAH, Special Bulletin on the Violent Deaths of Women, January-December 2014 Bulletin, Special Edition No. 25, January 2015. Available at: [http://iudpas.org/pdf/Boletines/Especiales/BEP\\_Ed25.pdf](http://iudpas.org/pdf/Boletines/Especiales/BEP_Ed25.pdf).

<sup>135</sup> *Report Honduras: Women and the International Mechanisms for Observance of Human Rights*, Annex 3. Report presented to the Inter-American Commission on Human Rights (IACHR), Tegucigalpa, December 1, 2014. CDM, Foro de Mujeres por la Vida, CEM-H, Red Nacional de Defensoras de Derechos Humanos de Honduras, JASS, Cladem.

<sup>136</sup> Meeting between the IACHR and State representatives, Tegucigalpa, December 1, 2014.

<sup>137</sup> Asociados por la Justo (JASS), Centro de Estudios de la Mujer Honduras (CEMH), Centro de Derechos de las Mujeres (CDM), Red Nacional de Defensoras de Derechos Humanos en Honduras. *Situation on the Human Rights of Women in Honduras*, issued by the IACHR, December 1, 2014.

<sup>138</sup> *Report Honduras: Women and the International Mechanisms for Observance of Human Rights*, Annex 3. Report presented to the Inter-American Commission on Human Rights (IACHR), Tegucigalpa, December 1,

115. Given this situation, the Commission has repeatedly stated that gender-based violence is one of the most extreme and perverse forms of discrimination, and severely undermines and nullifies the enjoyment of human rights of women.<sup>139</sup> Specifically, the Commission has stressed that discrimination against women is a major cause of both the violence in itself and the lack of response to it. To cope with the discrimination that underlies violence against women, its root causes in all its principal manifestations must be tackled.<sup>140</sup>
116. The Commission recommends that the State of Honduras guarantee due diligence to ensure that all cases of gender-based violence are subject to a timely, thorough and impartial investigation, together with the appropriate punishment of those responsible, and reparations for the victims. The State must also provide effective guarantees to enable victims to report acts of violence. Specifically, it should adopt protective measures for complainants, survivors and witnesses. It also recommends that the State strengthen its policies to prevent violence and discrimination against women, through a comprehensive approach, embracing all sectors, and that it address the various manifestations of violence and the contexts in which it occurs.

## b. Impunity

117. Civil society organizations believe there are serious shortcomings in the administration of justice with respect to cases involving violence against women, and they refer, for example, to delays in cases. “When a woman files a complaint about violence, they give her an appointment in three months. From now until March, either the victim reconciles with her assailant or he ends up killing her,” a woman who defends women’s rights in Tegucigalpa told the IACHR. According to

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2014. CDM, *Foro de Mujeres por la Vida*, CEM-H, *Red Nacional de Defensoras de Derechos Humanos de Honduras*, JASS, Cladem.

<sup>139</sup> According to the Committee on the Elimination of All Forms of Discrimination against Women, the definition of discrimination includes gender-based violence, that is, violence directed against a woman because of her sex or that affects women disproportionately. It includes acts that cause damage or physical, mental or sexual suffering, threats of such acts, and coercion and other deprivations of liberty. CEDAW Committee, *General Observation 19: Violence against Women*, (Session 11 1992) U.N. Doc.A/47/38 para. 1 (1993). See, for example, United Nations, General Assembly, Resolution of the Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, June 16, 2010; United Nations, Declaration on the Elimination of Violence against Women, General Assembly, Resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

<sup>140</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination*. OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 11. Similarly, in a 2011 Report entitled *Violence against Women: its causes and consequences*, the Special Rapporteur on violence against women, its causes and consequences stated that: “Violence against women is not the fundamental problem in most societies; violence against women occurs because other forms of discrimination are allowed to flourish.” United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, May 2, 2011, para. 65.

information the IACHR has received, there is a 95% impunity rate for crimes against women.<sup>141</sup>

118. The State referred to the legal classification of femicide as a crime,<sup>142</sup> one that carries a sentence of 30 to 40 years, in amendments made to the 2013 Criminal Code. Figures provided by the State indicate that there have been 70 orders to prosecute and 20 convictions, with the rest of the cases reportedly under investigation to determine whether they qualify as femicides. The State referred to the recent creation of the Technical Agency for Criminal Investigation, which since January 2015 is said to be directly responsible for investigating femicides, sexual violence, trafficking, pornography, and rape, with the investigations carried out by specialized staff with sensitivity training.
119. However, according to civil society organizations, as of December 2014 the Public Prosecutor's Office had issued orders to prosecute in only five cases and had produced only one conviction for femicide in the city of Tegucigalpa.<sup>143</sup> According to information received by the IACHR, some public officials are apparently unaware of the legal definition of this crime or disagree with its creation.<sup>144</sup> Reference was also made to the lack of a single protocol for investigating these crimes in order to ensure effective enforcement.
120. A recent report by UN Women and the United Nations Development Programme (UNDP) expressed concern about the transfer of the Unit for Investigation of Crimes against Women's Lives—which had been part of the Office of the Special Prosecutor for Women since 2008, handling femicides, trafficking in women, and violent deaths of girls and women—to the Office of the Special Prosecutor for Crimes against Life, resulting in the loss of a gender perspective.<sup>145</sup> The State, in its response to the draft of this report, noted that the Office of the Special Prosecutor

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<sup>141</sup> Asociados por lo Justo (JASS), Centro de Estudios de la Mujer Honduras (CEMH), Centro de Derechos de las Mujeres (CDM), Red Nacional de Defensoras de Derechos Humanos en Honduras. *Situación de los derechos humanos de las mujeres en Honduras*, presented to the IACHR on December 1, 2014; United Nations. *Special Rapporteur on violence against women finalizes country mission to Honduras*, July 7, 2014. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833&LangID=E>.

<sup>142</sup> According to Decree 23-2013, Art. 118-A, “the crime of femicide is committed when a man or men cause a woman’s death for gender reasons, with hate and contempt for her status as a woman...”

<sup>143</sup> Foro de Mujeres por la Vida – Convergencia por los Derechos Humanos. Information presented to the IACHR during its on-site visit to Honduras. San Pedro Sula, December 3, 2014. According to a recent report by the United Nations, since femicide was classified as a crime in the Criminal Code (2013), no cases involving this crime have reached the criminal courts or sentencing courts. UN Women, UNDP. *Violencia y Seguridad Ciudadana: Una mirada desde una perspectiva de género* [Violence and Citizen Security: A View from a Gender Perspective].

<sup>144</sup> Foro de Mujeres por la Vida – Convergencia por los Derechos Humanos. Information presented to the IACHR during its on-site visit to Honduras. San Pedro Sula, December 3, 2014. The State, in its response to the draft of this report, indicated that the investigative staff of the Femicide Investigation Unit has received training through diploma programs in the investigation of femicide deaths. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>145</sup> This unit has a presence in seven regions of the country and has 19 prosecutors and 15 investigative analysts assigned to it. UN Women, UNDP. *Violencia y Seguridad Ciudadana: Una mirada desde una perspectiva de género*, June 2015. Available at: <http://www.hn.undp.org/content/dam/honduras/docs/publicaciones/-diagnosticogeneroyviolencia.pdf>.



for Crimes against Life was created at the end of 2013; this office absorbed all the special units involved in investigating deaths, including the unit that handles femicides. As part of this transfer, assigned personnel trained in investigating crimes with a gender perspective were also absorbed into this office. According to the State, the gender perspective has not been lost; to the contrary, the office has become specialized, concentrating already-trained human resources.<sup>146</sup>

121. According to the State, violence against women accounts for the largest procedural caseload of the Office of the Special Prosecutor for Women.<sup>147</sup> The State indicated that it has offices for comprehensive victim assistance in order to prevent re-victimization, with facilities set up to ensure that women have privacy when they come to file a complaint and offer testimony. The State also referred to activities carried out from 2009 to 2013 for the purpose of training police officers, judges, prosecutors, and administrative personnel who deal with victims of gender-related violence.<sup>148</sup> The State also indicated that it has “worked hard to protect victims of domestic violence.”<sup>149</sup> To that end, it has created centers to address violence against women, to give them comprehensive protection as well as information about their rights and how they can exercise them effectively. Women are also provided with psychological support and legal assistance to file complaints.
122. In its response to the draft of this report, the State pointed to the creation of CAPRODEM—a State initiative that includes the participation of civil society which implements coordinated actions to assist and advise women victims of violence. The Public Prosecutor’s Office has created Comprehensive Specialized Assistance Modules (Módulo de Atención Integral Especializada, MAIE) to create access to justice for women who are victims of gender-related violence.<sup>150</sup>
123. The IACHR notes that the Office of the Special Prosecutor for Women has only two prosecutors assigned to investigate intra-family and sexual domestic violence in the city of Tegucigalpa; one in San Pedro Sula (with jurisdiction over Choloma); and one in the city of La Ceiba (with jurisdiction over La Ceiba and Tela).<sup>151</sup>

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<sup>146</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>147</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>148</sup> It also referred to the Comprehensive Assistance Module (Módulo de Atención Integral, MAI), which makes legal advice available to women on different matters and accompanies them throughout the entire process. If a victim requires special protection as a protected witness, this is coordinated with the Unit for Witness Protection, which is responsible for moving her to other cities, hiding her identity to ensure her physical integrity. This measure is extended to her immediate family. Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>149</sup> The State indicated that it has strengthened the Council of the Judiciary’s Gender Unit to address the situation of violence against women.

<sup>150</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>151</sup> Meeting with civil society organizations, Tegucigalpa, December 2, 2014. UN Women, UNDP. *Violencia y Seguridad Ciudadana: Una mirada desde una perspectiva de género*, June 2015. Available at: <http://www.hn.undp.org/content/dam/honduras/docs/publicaciones/diagnosticogeneroyviolencia.pdf>. In its

Moreover, according to civil society, the existence of family courts in three departments fails to adequately guarantee that cases are investigated, especially in other parts of the country. Specifically with respect to this Prosecutor's Office, civil society organizations complained that the prosecutors assigned are not specialized or trained to investigate crimes with a gender perspective. "Women who go there leave worse than when they arrived, because they are told they are responsible for the attacks on them because of how they dress or because they don't take proper care of their husbands or partners," a defender of women's rights in Tegucigalpa told the Commission. According to information the Commission received, justice operators continue to show a lack of commitment and sensitivity, which contributes to the lack of due process. They indicated that women are re-victimized, there is no follow-up to their cases, and sometimes there is influence peddling in the justice system, to the detriment of women.<sup>152</sup> In light of this situation, they lamented the small budget provided to this Prosecutor's Office. It reportedly amounts to 2% of the total budget assigned to the Office of the Public Prosecutor, while specialized courts against domestic violence have reportedly been assigned 1% of the total budget of the Supreme Court.<sup>153</sup> The State, in its response to the draft of this report, indicated that in 2014 training was provided to 636 justice operators, administrative personnel from the Public Prosecutor's Office, the judiciary, and human rights and municipal offices, "placing emphasis on the handling and application of the international rules on assistance to victims."<sup>154</sup>

124. In its response to the draft of this report, the State noted that INAM and the feminist movement have undertaken efforts seeking to have the Public Prosecutor's Office reopen the special unit on violent deaths of women so as to effectively investigate crimes of femicide, prosecute more cases, and as a result reduce impunity in these specific cases.<sup>155</sup>
125. The Commission observes that the serious situation of violence against women demands a much stronger response by the State. On this point, the IACHR has maintained that the Convention of Belém do Pará, ratified by the Honduran State,

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response to the draft of this report the State provided the following numbers for 2014. Regarding domestic violence: six (7) prosecutors; for sex crimes: three (3) prosecutors and one Unit for Disobedience which is in charge two (2) prosecutors. Instruction Unit for the Investigation of Crimes: four (4) prosecutors. Crime Unit: seven (7) prosecutors and in the Module for Integral Care: 1 prosecutor. Total of 24 and adding up two (2) prosecutors that can cover hearings, sustain trials in Tegucigalpa. For 2015, the State indicated that they have 25 prosecutors because the Module of Integral Care was strengthened by converting it into a separate structure. They also have the support of two (2) psychologists. In San Pedro Sula, they have six (6) prosecutors. In the city of La Ceiba, with three (3) prosecutors. Also, the Local Prosecutor Office of Tela has four (4) prosecutors and any of them can address women's issues. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>152</sup> Meeting with civil society organizations, La Ceiba, December 2, 2014.

<sup>153</sup> Meeting with civil society organizations on children's issues, during the Commission's on-site visit to Honduras, December 4, 2014.

<sup>154</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>155</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

establishes that the due diligence obligation has a special connotation in cases of violence against women.<sup>156</sup> The Inter-American Court, for its part, has stated that in cases involving violence against women, the obligation to investigate effectively has a wider scope.<sup>157</sup>

126. The Commission stresses that judicial ineffectiveness in cases involving violence against women creates a climate conducive to violence and discrimination against women “since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”<sup>158</sup> The impunity of the crimes committed “sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice.”<sup>159</sup> It is essential that the State take women’s needs more into account in designing its citizen security policy, and that it pay special attention to the situation of women in rural areas where there is scant presence of government institutions.
127. The United Nations Special Rapporteur on violence against women, its causes and consequences noted in her report on her 2014 visit to Honduras that women, especially indigenous and Afro-descendant women, are restricted in their access to justice by a range of institutional and procedural factors. These include insufficient resources and poor infrastructure; the lack of specialized units and staff trained on gender issues within the different criminal justice institutions, including police, prosecutors, and judges; and the length of trials and delays in the criminal justice process. The report also indicated that the lack of proper investigation, evidence collection, and forensic facilities and capacities further hinder women’s access to justice.<sup>160</sup> In its response to the draft of this report, the State indicated that the Special Prosecutor for Women has been asked to draft and implement policies that will guarantee access to justice for indigenous women—especially as regards the violence they suffer in the country—in a way that incorporates their worldview and culture. To this end, it indicated that this office should generate statistical data that reflect the specific situation of indigenous women, as these issues are under the purview of that Special Prosecutor’s Office.<sup>161</sup>
128. The Commission also considers it pertinent to note that addressing violence against women is not enough unless the underlying factors of discrimination,

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<sup>156</sup> IACHR. *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 32.

<sup>157</sup> Inter-American Court of Human Rights. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 293.

<sup>158</sup> IACHR. Merits Report No. 54/01, *María da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>159</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 400.

<sup>160</sup> United Nations. *Report of the Special Rapporteur on violence against women, its cause and consequences, Rashida Manjoo*, Mission to Honduras, March 31, 2015, A/HRC/29/27/Add.1. Available at: <http://www.-ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>.

<sup>161</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

which give rise to and exacerbate the violence, are also addressed comprehensively—including the disparity of the impact both between genders and within each gender. The United Nations Special Rapporteur on violence against women, its causes and consequences has stated that interpersonal, institutional, and structural forms of violence perpetuate gender inequalities, but also racial hierarchies, ethnic group exclusionary practices, and resource allocation that benefit some groups of women at the expense of others. “Interventions that seek only to ameliorate the abuse and which do not factor in women’s realities are not challenging the fundamental gender inequalities and discrimination that contribute to the abuse in the first place,” the Special Rapporteur has stated.<sup>162</sup>

129. Finally, the Commission recommends that the State of Honduras strengthen the institutional capacity of its judicial institutions to combat the pattern of impunity; provide training in women’s human rights to all civil servants involved in handling cases of violence against women; and adopt measures for collaboration and information exchange among the authorities responsible for investigating acts of violence against women.

## 5. Lesbians, Gays, Bisexuals, Transgender Persons (LGBT)<sup>163</sup>

### a. Violence

130. Discrimination and violence against members of the lesbian, gay, bisexual, and transgender (LGBT) community in recent years have been a matter of concern and action by the Commission.<sup>164</sup> In relation to violence, civil society organizations denounced the high number of murders of lesbians, gays, bisexuals and transgender people in the country. Since 2009 up until December 1, 2014, there have been 174-recorded violent deaths of LGBT people in the country (90 gays, 15 lesbians and 69 trans gender people), mainly in the departments of Cortés and Francisco Morazán.<sup>165</sup>
131. For the organization CATTRACHAS, lesbian deaths are recorded in the media or in the Murder Impact Unit of the Public Prosecutor’s Office, and thus are not

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<sup>162</sup> United Nations. *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26*, May 2, 2011, para. 31.

<sup>163</sup> The IACHR notes that it received no specific information about intersex people. Therefore, the report will address the situation of human rights of lesbian, gay, bisexual and trans gender people, and use the acronym: LGBT.

<sup>164</sup> IACHR, *Honduras: Human Rights and Coup d’état*, OEA/Ser.L/V/II. Doc. 55, December 30, 2009, paras. 198 et seq. In January 2011, the IACHR expressed its deep concern at the murders of trans gender people in Honduras, particularly considering that seven trans gender people had been murdered over a period of two months. In 2012, the IACHR continued to express concern regarding these murders. During 2013, it received information indicating that the high rates of violence against LGBTI persons persist, and that despite efforts by the State, there is still a situation of generalized impunity for these acts.

<sup>165</sup> Meeting with civil society organizations, Tegucigalpa, December 1, 2014. *Report on the Situation of the LGBTI community in Honduras*, presented by Cattrachas to the IACHR, December 1, 2015.

considered as a number adjusted to reality.<sup>166</sup> Of the 15 lesbians registered as murdered, 13 were killed by firearms, one with a knife, and one featured in the category of other forms of murder. Also, 7 were executed, 6 being riddled with bullets and one was beheaded.<sup>167</sup>

132. Civil society organizations complained of a social environment existing in Honduras of traditional discrimination against LGBT people, leading to violence motivated by prejudice. In this regard, the legislative amendment of 2013, important in the area of LGBT's rights, was welcomed by civil society organizations working for the promotion and defense of the rights of this population. In particular, the National Congress adopted several amendments to the Criminal Code, including: (i) establishing the commission of aggravating crimes due to "hatred or contempt by reason of [...] [the] sexual orientation or gender identity" of the victim; (ii) sentences of imprisonment and fine in case of the arbitrary and illegal restriction or cancellation of the exercise of individual and collective rights, or the denial of provision of professional services on the grounds of sexual orientation and gender identity, among other reasons; and (iii) sentences of imprisonment and fines in cases of public incitement to hatred or discrimination by reason of sexual orientation and gender identity, among other reasons.<sup>168</sup>
133. The Commission has previously held that notwithstanding these legislative changes, legislation still exists in Honduras, which, in practice, creates situations that violate human rights, in particular to the detriment of transgender people.<sup>169</sup> For example, the 2001 Police and Social Coexistence Act <sup>170</sup> has been widely criticized by civil society organizations because it facilitates police abuse and arbitrary detention of transgender people.<sup>171</sup> Under this law, the police has the function of safeguarding and eliminating disturbances of the peace, morality and traditions. This law also gives police the authority to arrest anyone who "violates modesty, decency and public morals" or who "by their immoral behavior disturbs the tranquility of the neighbors." Thus, it is indicated that transgender people, particularly transgender women, are at risk of being subjected to abuse and

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<sup>166</sup> Contextual Analysis "Life as a Lesbian and Violence in Central America", Espacio Regional de Articulación Lésbico Feminista. June 2015.

<sup>167</sup> Contextual Analysis "Life as a Lesbian and Violence in Central America", Espacio Regional de Articulación Lésbico Feminista. June 2015.

<sup>168</sup> Decree 23-2013, signed by Juan Orlando Hernández Alvarado, President of the National Congress, Amendment of Articles 27 and 321 of Decree No. 144-83 dated August 23, 1983, inclusive of the Criminal Code, May 14, 2013. Published in the Official Gazette of April 6, 2013.

<sup>169</sup> See IACHR *Annual Report 2013*, Chapter IV B. Honduras.

<sup>170</sup> Under this law, the police has the function of safeguarding and eliminating disturbances of the peace, morality and traditions. This law also gives police the authority to arrest anyone who "violates modesty, decency and public morals" or who "by their immoral behavior disturbs the tranquility of the neighbors." Articles 1, 5, 142.3, and 142.9, Law on Police and Social Coexistence, 2001.

<sup>171</sup> Human Rights Watch, *You're not worth a dime: Human Rights abuses against trans gender people in Honduras*, May 2009, available at: [http://www.hrw.org/sites/default/files/reports/honduras0509sp-web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/honduras0509sp-web_1.pdf). See also, Global Rights: *Partners for Justice, Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Honduras, a Shadow Report*, October 2006.

arbitrary arrest by the police, regardless of whether or not they are engaged in the sex trade.<sup>172</sup>

134. Given the close relationship between violence and discrimination against LGBT individuals, the IACHR urges the Honduran government to address the underlying causes of violence related to sexual orientation and gender identity, or related to the expression of gender identity by individuals who challenge society's traditional norms regarding gender. This includes the adoption of policies and public campaigns to promote awareness and respect for the human rights of LGBT individuals in all sectors, including in the field of education, health and in the family, in order to combat the prejudices underpinning the violence relating to sexual orientation and gender identity or expression. To this end, the Commission calls upon Honduras to collect and produce data and official records on violence against LGBT individuals, with the purpose of promoting public policies geared towards protecting their human rights.
135. With regard to trans gender individuals, the IACHR urges the Honduran government to adopt a gender identity law or similar measures to ensure the full recognition of the identity of trans gender persons. The Commission has received information on how state recognition of the identity of trans gender individuals contributes to the reduction of violence and discrimination against them.
136. Finally, the Commission considers that in the context of a country with high levels of insecurity and organized crime, it is particularly important for Honduras to adopt a differentiated approach to guarantee the rights to life and integrity of LGBT individuals and their human rights defenders who, reportedly, are particularly vulnerable to violence by armed groups and law enforcement. It is also vital to move forward in adopting legislation and public policies, among others, that provide effective protection for defenders of the rights of LGBT and Intersex persons. The Commission also urges the State to fully implement the precautionary measures granted to LGBT defenders.<sup>173</sup>

## **b. Impunity**

137. With regard to LGBT people, the IACHR has received information indicating that killings of LGBT people or those perceived as such tend to go unpunished, and that such cases are tainted from the start by discriminatory stereotypes based on victims' sexual orientation or gender identity or expression. In the words of one

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<sup>172</sup> Human Rights Watch, *You're not worth a dime: Human Rights abuses against transgender people in Honduras*, May 2009, available at [http://www.hrw.org/sites/default/files/reports/honduras0509sp-web\\_1-.pdf](http://www.hrw.org/sites/default/files/reports/honduras0509sp-web_1-.pdf).

<sup>173</sup> IACHR, Resolution 1/2014, PM 457/13 - Members of "Asociación para una Vida Mejor de Honduras" [Association for a better life in Honduras] (APUVIMEH). IACHR. Precautionary Measure Number 621-03 - Elkyn Johalby Suárez Mejía and other members of the Sampedrana gay community, Honduras; Precautionary Measure Number 210-08 - Marlon Cardoza and other members of the CEPRES Association, Honduras; Precautionary Measure Number 196-09 - Donny Reyes and others, Honduras; Precautionary Measure Number 18-10 - Indyra Mendoza Aguilar et al., Honduras. Available at: <http://www.oas.org/en/iachr/-decisions/precautionary.asp>.

LGBT rights defender, “these killings are motivated by hatred and by prejudice toward sexual diversity.”

138. According to information received by the Commission, of 141 violent deaths reported between 2010 and 2014, only 30 cases had been prosecuted, that is, fewer than one fourth of the violent deaths of LGBT people.<sup>174</sup> Nine of these cases reportedly resulted in convictions; 10 cases had defendants in custody, six of whom were awaiting an oral and public trial; and four cases had resulted in acquittals, two of which were under appeal by the prosecution.<sup>175</sup> Civil society organizations indicated that there are few prosecutions or convictions because the national investigation system lacks the necessary tools to recover evidence, and the judicial system does not provide effective protection for witnesses in cases involving violence against LGBT people.
139. For its part, the State reported that the Unit on Deaths with a High Social Impact, part of the Office of the Public Prosecutor for Crimes against Life, is investigating these deaths, and that this has made it possible to bring certain cases to trial.<sup>176</sup> The State reported that between 2013 and 2014, 32 investigations were opened into violent deaths, and in 15 of these cases orders to prosecute were issued. Arrest warrants were issued in two of the cases, and there were three convictions and four acquittals. In its response to the draft of this report, the State indicated that as of May 2015, there had been 42 prosecutions of cases involving homicides of individuals from the LGBTI community. It also noted that there are already judicial precedents in cases that resulted in convictions in which it was recognized that the homicides of members of the LGBTI community were motivated by hate or contempt based on the victims’ sexual orientation.<sup>177</sup>
140. The IACHR points to the link between discrimination against LGBT people and violence against them as a result of the prejudice. “There is no government proposal to prevent violent deaths,” one LGBT rights defender stated.
141. The IACHR urges the State of Honduras to carry out thorough investigations with all due diligence to prosecute and punish those responsible for killings and other acts of violence directed against LGBT people. In investigating such crimes, the State should investigate leads that take into account whether the crimes were

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<sup>174</sup> Context analysis “*Existencia lésbica y violencias en Centroamérica*.” Espacio Regional de Articulación Lésbico Feminista, an initiative sponsored by the Fondo Centroamericano de Mujeres (FCAM), June 2015.

<sup>175</sup> *Informe sobre la Situación de la Comunidad LGTBTTI en Honduras*, presented to the IACHR by Cattrachas in Honduras, December 1, 2015. Context analysis “*Existencia lésbica y violencias en Centroamérica*.” Espacio Regional de Articulación Lésbico Feminista, an initiative sponsored by the Fondo Centroamericano de Mujeres (FCAM), June 2015.

<sup>176</sup> In its response to the draft of this report, the State indicated that the creation of the Unit on Deaths with a High Social Impact handles cases involving this group. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>177</sup> The State mentioned the following case files: No. 1242-2012 against José Ignacio Pérez Girón for the murder of Manuel Johan Valladares Chávez (Cariño) and No. 999-2012 against Leonel Enrique Amador Méndez for the homicide of César Noel Moreno Figueroa (Cynthia Nicole Moreno). Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

committed based on the victim's sexual orientation and/or gender identity, whether real or perceived. Moreover, the State should adopt public policies geared toward preventing violence against this group.

## 6. Migrants, asylum seekers and refugees

142. In recent years, the Inter-American Commission has received information on the multiple causes leading to the migration of Honduran people, both internally and internationally. To understand the reasons why hundreds of thousands of Honduran people migrate, it is essential to consider the push and pull factors of migration existing both in Honduras and in the countries to which its individuals migrate, mainly the United States of America, Mexico and other Central American countries. The socioeconomic, political, and environmental situations, and citizen security in Honduras are decisive for an understanding of why people decide to migrate.<sup>178</sup>
143. In the case of Honduras, the Commission notes that among the factors forcing migrants to leave are the high levels of inequality, poverty, violence, lack of opportunities and the effects of high-impact natural disasters; while in regard to factors attracting migrants are the chances of survival, of getting jobs in these countries, family reunification and, in general, the possibility of better living conditions. The various causes of Honduran migration explains why this is a mixed migration flow, including economic migrants, asylum seekers, refugees, migrants victims of environment disasters, victims of organized crime, human trafficking, unaccompanied children or adolescents or those separated from their families, among others. In particular, the Commission has noted with concern that the situation of widespread violence occurring in many areas of Honduras in recent years has led to a significant increase in the number of Honduran asylum seekers and refugees in other countries in the region.<sup>179</sup>
144. Both civil society organizations and state representatives maintained during its visit that the causes of migration by Hondurans was linked with poverty and a lack of opportunities for work and study and from the State's inadequate response in combatting it. Also, the violence prevalent in the country was attributable to delinquency, organized crime and the presence of drug trafficking, as well as to the forced recruitment of increasingly young adolescents, both men and women by *maras* or gangs.
145. The impact of various forms of violence is of particular concern in relation to Honduran migrant children and adolescents who often travel unaccompanied as a result of the violence they experience in their communities especially that caused

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<sup>178</sup> See, IACHR, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*. Adopted July 24, 2015, paras. 111-112; IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*. December 30, 2013, para. 72.

<sup>179</sup> See, IACHR, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*. Adopted July 24, 2015, paras. 109-112; IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*. December 30, 2013, para. 61.



by organized crime; and as a result of violence or abuse in their homes.<sup>180</sup> The number of detentions of unaccompanied migrant children and adolescents from Honduras for the 2014 fiscal year was 18,244.<sup>181</sup> This number is higher than the 12,703 recorded from 2009 to 2013. In fiscal year 2015, the figure for detentions in the United States of unaccompanied migrant children from Honduras was 5,409.<sup>182</sup>

146. During its visit to Honduras, the Commission also received information on various forms of violence to which migrants are exposed in transit through other countries. In this regard, the Commission notes with concern information from the Committee of Disappeared Migrant Families (COFAMIPRO) that during recent years, around 400 Honduran migrants have been reported missing on their way to the United States without any official measure to search for these individuals or even establish a technical team to discover and identify their remains. Another situation of deep concern to the Commission has to do with the precarious situation and lack of public assistance for returned migrants who face special needs and challenges, such as minors, individuals who are under threat, and persons with disabilities, in many cases disabilities they acquired in transit to the United States, for example.<sup>183</sup>
147. In this regard, and according to information provided to the Commission, organized crime both in Honduras and elsewhere in the region has managed to exert control over strategic territories, with the commission of acts of violence and unrest inflicting a high degree of damage, including deprivation of life and liberty and forced displacement.<sup>184</sup> The impact of organized crime is evident in the high levels of violence and the growing number of Honduran asylum seekers and refugees in other countries. According to UNHCR figures, between 2012 and 2014

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<sup>180</sup> In this sense, see, *Revista Proceso* (Marcela Turati), *Cacería de “ángeles” para frenar la migración de menores*. August 23, 2014. Available at: <http://www.proceso.com.mx/?p=380347>.

<sup>181</sup> In the United States, fiscal year 2014 runs from October 1, 2013, through September 30, 2014. IACHR, *Refugees and Migrants in the United States: Families and Unaccompanied Children*. July 24, 2015, p. 54; U.S. Customs and Border Protection Agency (CBP), *Southwest Border Unaccompanied Alien Children*. Available at: <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

<sup>182</sup> IACHR, *Refugees and Migrants in the United States: Families and Unaccompanied Children*. July 24, 2015, p. 54; U.S. Customs and Border Protection Agency (CBP), *Southwest Border Unaccompanied Alien Children*. Available at: <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

<sup>183</sup> According to the Association of Returning Migrants with Disabilities (AMIREDIS), in Honduras, there are at least 700 returning migrants who have suffered some disability during their transit to the United States. Many of these people have suffered amputations in Mexico due to accidents by falling from the freight train, known as "The Beast", and in which migrants trying to reach the United States travel. *El País* (Silvia Ayuso) *"The mutilated dreams Central American migrants"*. June 24, 2015. Available at: [http://internacional.elpais.com/internacional/2015/06/23/actualidad/1435088948\\_696048.html](http://internacional.elpais.com/internacional/2015/06/23/actualidad/1435088948_696048.html).

<sup>184</sup> The Center for Gender and Refugee Studies at the School of Law of the University of California, Hastings and the Migration and Asylum Program of the Center for Justice and Human Rights at the National University of Lanus, Argentina, *Childhood and Migration in Central and North America: causes, policies, practices and challenges* (2015), p.46 (hereinafter "*Childhood and Migration in Central and North America*"). A study conducted in 2012 at the request of the UNHCR found that the criminal activities of organized crime have generated a forced displacement in the region that "has become more conspicuous in the last three years." *Forced displacement and the need for protection*.

there was a 1,153% increase in the number of asylum applications filed by Hondurans, and a 59% increase in the number of refugees from Honduras.<sup>185</sup>

148. The term "asylum seeker" refers to the person requesting recognition of refugee status whose claim has not yet been definitively evaluated in the host country. According to Article 1 of the Convention relating to the Status of Refugees of 1951, as amended by the Protocol Relating to the Status of Refugees of 1967, the term "refugee" makes reference to a person who owing to a well-founded fear of being persecuted for race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality; or who, not having a nationality and being outside the country of habitual residence, is unable or, owing to such fear, is unwilling to return to it.<sup>186</sup>

**NUMBERS OF ASYLUM SEEKERS AND REFUGEES  
COMING FROM HONDURAS WORLDWIDE, 2012-2014**

	2012	2013	2014	TOTAL	% CHANGE BETWEEN 2012 AND 2014
<b>ASYLUM SEEKERS</b>	810	5,293	10,146	<b>16,249</b>	<b>1,153%</b>
<b>REFUGEES<sup>187</sup></b>	2,613	3,301	4,159	<b>10,073</b>	<b>59%</b>
<b>TOTAL</b>	<b>3,423</b>	<b>8,594</b>	<b>14,305</b>	<b>26,322</b>	

149. In this vein, the Commission considers it necessary to reiterate that a person is a refugee as soon as he or she fulfills the criteria contained in the definition, which necessarily occurs prior to the time at which his or her refugee status is formally determined. Thus, recognition of refugee status is not of constitutive but rather, declarative character. That is, a person does not become a refugee because of recognition, but is recognized because he or she is a refugee.<sup>188</sup>
150. During its visit, the Commission also received information on the reintegration programs for repatriated citizens or "returnees" at the local level. In San Pedro

<sup>185</sup> UNHCR, *Global Tendencies 2014: World at War*, Table 1: Refugees, asylum seekers, internally displaced persons, stateless persons under the mandate of UNHCR and other persons of concern in the Americas by origin, end of 2014, p. 45. Available at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2015/10072>; UNHCR, *Global Tendencies 2013: Human Cost of the War*, Table 1: Refugees, asylum seekers, internally displaced persons, stateless persons under the mandate of UNHCR and other persons of concern in the Americas by origin, end of 2013, p. 41. Available at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9562>; UNHCR, *Global Tendencies 2012*, Table: Refugees, asylum seekers, internally displaced persons, stateless persons under the mandate of UNHCR and other persons of concern in the Americas by origin, end of 2012, p. 42. Available at: <http://www.acnur.org/t3/fileadmin/Documentos/Publicaciones/2013/9180.pdf?view=1>.

<sup>186</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, para. 22.

<sup>187</sup> It includes the total number of refugees and others in "a similar situation to refugees." The latter is defined as "groups of persons who are outside their country or territory of origin and who face similar security risks to those of refugees, but to whom for practical or other reasons, refugee status has not been granted." See UNHCR, *Global Tendencies 2012*, Table 1: Refugees, asylum seekers, internally displaced persons, stateless persons under the mandate of UNHCR and other persons of concern in the Americas by origin, end of 2012, p. 46, note 3.

<sup>188</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, 1979, para. 28.

Sula, the Commission visited the Migrant Attention Center, which receives families trying to emigrate and who are deported. Authorities indicated a series of initiatives aimed at facilitating the reintegration of children and adolescents into school, and at giving some support in terms of basic needs in order to address some of the factors that led to their migration. They also reported the measures being implemented to prevent families from assuming the reintegration in precarious conditions. However, the Commission was able to observe that such measures are inadequate, particularly when it comes to children who migrate alone. The Commission learned of a case involving a child refugee who had received death threats; he was deported anyway and returned to his grandmother, even though the authorities had been notified about these threats.

151. The State, in its response to the draft of this report, indicated that it now applies the Protocol for the Immediate Protection, Repatriation, Admission, and Monitoring of Child Migrants, which establishes the specialized care each child receives to ensure the protection of his or her rights. As a complement to the protocol, the Department of Children, Youth, and Families (DINAF) signed a tripartite agreement with the UNHCR and Casa Alianza, so as to apply protection guidelines for children who are victims of violence (ill-treatment, threats, forced recruitment, extortion), to ensure that children are not returned to their communities of origin if this could jeopardize their physical or psychological integrity and their best interests.<sup>189</sup>
152. The IACHR also notes that the ‘push factors’ of migration in Honduras pose profound challenges, which require structural measures. As indicated to the IACHR, civil society has the expectation that Honduras will find specific solutions to the root causes of migration generated by various forms of violence, persecution, discrimination and social exclusion facing children.
153. Regarding the situation of the deported Honduran individuals, figures from UNHCR indicate that in 2014, 81,017 Honduran persons were deported, 36,427 by air (United States) and 44,590 by land (Mexico and Guatemala).<sup>190</sup> 73% of deportees were for men over 18.
154. Figures provided by the State indicate that the situation of returning children increased in 2014 by 70% compared to 2013, representing 2,700 unaccompanied migrant children and 240 family units.<sup>191</sup> According to CONADEH figures, at least 3,100 Honduran migrant children were returned, mostly from Mexico, between

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<sup>189</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>190</sup> Diario El Herald, *Más de 81,000 hondureños fueron deportados en 2014*, April 15, 2015. Available at: [http://www.laprensa.hn/honduras/831446-417/m%C3%A1s-de-81000-hondure%C3%B1os-fueron-deportados-en-2014?utm\\_source=laprensa.hn&utm\\_medium=website&utm\\_campaign=noticias\\_relacionadas](http://www.laprensa.hn/honduras/831446-417/m%C3%A1s-de-81000-hondure%C3%B1os-fueron-deportados-en-2014?utm_source=laprensa.hn&utm_medium=website&utm_campaign=noticias_relacionadas) (Spanish only).

<sup>191</sup> Government of Honduras, Statistical Report on Individuals Repatriated/Returned to Honduras (January – November 25, 2014). National Center for Social Sector Information.

January and May 2015.<sup>192</sup> Of all returnees, some 1,655 travelled with relatives or friends, while 1,445 others made the trip to the United States unaccompanied. According to Casa Alianza figures, between January and May 2015, 3,265 children and adolescents were reported as being deported from Mexico and the United States, a slight decrease compared to 2014.<sup>193</sup> For the same period in 2014, 3,678 children and adolescents were recorded as being deported.<sup>194</sup>

155. Against this background, the Commission urges the State to take steps to identify the people who have been forced to migrate in order to provide the required assistance and protection. Also, it must take the measures necessary to ensure full family and community reintegration of returning migrant adults and children as well as design strategies that address the structural factors leading to the forced migration of the Honduran population.
156. Internal forced displacement is another of the serious human rights violations responsible for the different forms of violence that have arisen in Honduras over recent years.<sup>195</sup> According to the Internal Displacement Monitoring Centre, at the end of 2014 there were estimated to be at least 29,400 internally displaced persons in Honduras.<sup>196</sup>
157. The Inter-American Commission has been receiving information indicating that the impact of the violence generated by *maras*, gangs and organized crime is leading, both directly and indirectly, to the internal forced displacement of tens of thousands of people in Honduras. Some of the areas identified as the most severely affected by internal displacements include the departments of Francisco Morazán, Cortés, and El Paraíso. The Internal Displacement Monitoring Centre has identified displacements from periurban to urban areas, from rural to periurban areas, and intra-urban displacement between Tegucigalpa and San Pedro Sula.<sup>197</sup>
158. The IACHR recognizes the importance of the Honduran State's creation in November 2013 of the Interinstitutional Commission for the Protection of Persons Displaced by Violence, which is tasked with promoting the formulation of policies and the adoption of measures to prevent forced displacements caused by violence

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<sup>192</sup> *La Opinión* Newspaper, At least 3,100 immigrant children returned to Honduras, January 21, 2015, Available at: <http://www.laopinion.com/devuelven-a-honduras-al-menos-3100-ninos-inmigrantes-en-2015>.

<sup>193</sup> Casa Alianza, *Observatory of the Rights of Children and Adolescents in Honduras*. Monthly Report May 2015. Available at: [http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/05.%20Informe%20mensual%20May%202015\\_casa%20alianza%20honduras.pdf](http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/05.%20Informe%20mensual%20May%202015_casa%20alianza%20honduras.pdf).

<sup>194</sup> Casa Alianza, *Observatory of the Rights of Children and Adolescents in Honduras*. Monthly Report May 2015. Available at: [http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/05.%20Informe%20mensual%20May%202015\\_casa%20alianza%20honduras.pdf](http://www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/05.%20Informe%20mensual%20May%202015_casa%20alianza%20honduras.pdf).

<sup>195</sup> See: Internal Displacement Monitoring Centre, *New Humanitarian Frontiers: Addressing Criminal Violence in Mexico and Central America*. October 2015, pp. 7 *et seq.*; Internal Displacement Monitoring Centre, *Global Overview 2015: People Internally Displaced by Conflict and Violence*. 2015, pp. 16-19; ACAPS, *Otras Situaciones de Violencia en el Triángulo del Norte Centroamericano: Fronteras Invisibles, Espirales de Violencia y Normalización del Terror*. May 2014, pp. 18 *et seq.*

<sup>196</sup> Internal Displacement Monitoring Centre, *Global Overview 2015: People Internally Displaced by Conflict and Violence*. 2015, pp. 16-19.

<sup>197</sup> Internal Displacement Monitoring Centre, *Global Overview 2015: People Internally Displaced by Conflict and Violence*. 2015, p. 18.

and to provide attention, protection, and solutions for displaced people and their families.<sup>198</sup> The Interinstitutional Commission began operating in March 2014. Nevertheless, the Commission notes that in response to this problem, the State has not yet enacted a law on internal displacement, as required by the Guiding Principles on Internal Displacement. The Commission considers it necessary for the Honduran State to adopt a comprehensive policy to address the problem. It should be based on the following measures and obligations: (i) measures to prevent internal displacement; (ii) measures to protect the displaced during displacement; (iii) measures to provide and enable humanitarian relief for the displaced; and (iv) measures to facilitate the return, resettlement, and/or relocation of the displaced.<sup>199</sup>

159. Accordingly, the Commission expresses its concern at the grave impact that internal displacement is having, and at the lack of a comprehensive diagnostic assessment of the problem and of a comprehensive policy to prevent it and to protect, assist, and search for lasting solutions for internally displaced persons in Honduras. In its response to the draft of this report, the State indicated that on November 23, 2015, the Interinstitutional Commission for the Protection of Persons Displaced by Violence, in coordination with UNHCR and ERIC-S and the National Institute of Statistics (*Instituto Nacional de Estadística*: INE), released the Characterization Study on Displacement Caused by Violence in Honduras, and it is also in the process of designing a Strategy for the Protection of Persons Displaced by Violence. The State also referred to the recent mission to Honduras that the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons carried out November 23-28, 2015.<sup>200</sup>

## 7. Bajo Aguán

### a. Violence

160. The Commission has closely followed-up on the situation in Bajo Aguán during several years in the report on Honduras under Chapter IV of its Annual Report. In Bajo Aguán, Tocoa, there is a long-standing land dispute between peasants and businessmen recording an alarming number of deaths, threats, harassment and intimidation against the peasants engaged in defending their land, even including disappearances. The Commission was informed that since the June 28, 2009, coup d'état, there has been an increase in the number of deaths, threats and intimidation against farmers in the area; and the stigmatization and criminalization of the agrarian struggle continues, together with evictions.<sup>201</sup> In April 2010, the National

<sup>198</sup> Executive Decree No. PCM-053-2013 of 2013.

<sup>199</sup> See IACHR, *Truth, Justice and Reparation: Fourth Report on [the] Human Rights Situation in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, 31 December 31, 2013, para. 537.

<sup>200</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>201</sup> Information submitted by the Permanent Observatory for Human Rights in the Aguán (OPDA), Foundation San Alonso Rodríguez (FSAR) in a Thematic Hearing, Information on Violations of Human Rights in the agrarian conflict in the Aguán Colon, August 13, 2014, Mexico City.

Government signed an agreement with peasant organizations in the area, aimed at resolving the problem. However, the violence has continued in a context of increasing militarization with Operation 'Xatruch'.

161. In this context, the Commission has requested the adoption of precautionary measures on behalf of 123 identified members of the organizations "Peasant Recuperation Movement of Aguán" (MOCRA), "the Gregorio Chávez Peasant Movement Foundation" (MCRGC), "the Unified Peasant Movement of Aguán" (MUCA) and "the Authentic Peasant Revindicator Movement of Aguán (MARCA) in Honduras.<sup>202</sup> Also, on April 7, 2015, the IACHR granted precautionary measures in favor of Martha Lígia Arnold Dubond and her five children because of the risk, in view of her activities as a human rights defender in the Bajo Aguán region.<sup>203</sup>
162. With regard to violence in this area, the State has indicated to the Commission that there are not only records of peasants' deaths but also deaths of security guards, of farm laborers and of people who are neither laborers nor guards. In the words of the State, "this shows the true extent of the situation in that region, and not as a criminalization and persecution of the peasant movement".<sup>204</sup> Figures provided by the State indicate that the total number of deaths occurring in the Bajo Aguán region has reached 127, including farmers, security guards and others.<sup>205</sup> In its response to the draft of this report, the State of Honduras indicated that to help reduce the intensity of the conflict in the Bajo Aguán Valley, the executive branch created the Xatruch Task Force; the Public Prosecutor's Office opened the Violent Deaths Investigation Unit of Bajo Aguán; and the Secretariat of Human Rights established the Interinstitutional Commission to address the conflict in Bajo Aguán. According to the State, these steps have fostered dialogue, security, and coordination among justice operators. The State indicated that as a result of these actions, no homicides or violent deaths linked to social conflicts were reported between 2014 and 2015.<sup>206</sup>

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<sup>202</sup> IACHR, MC 50-14, Resolution 11/2014. Available at: <https://www.oas.org/en/iachr/decisions/-pdf/2014/M-C50-14-ES.pdf>.

<sup>203</sup> IACHR, MC 65-15, Martha Lígia Arnold Dubond and her five children, Honduras. April 7, 2015. Available at: [www.oas.org/en/iachr/](http://www.oas.org/en/iachr/).

<sup>204</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015. The State, in its response to the first draft of this report, indicated that according to information provided by CONADEH, there are also internal problems within the different campesino movements and communities, such as the community of La Confianza, where complaints have been filed regarding, among other things, violence, thefts, threats, and violations of labor rights among the members themselves with no participation by public officials or security forces. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>205</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

<sup>206</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015. The State indicated that this information was also presented to the United Nations Human Rights Council in Geneva on May 8, 2015, in the context of the second cycle of the Universal Periodic Review in reference to Bajo Aguán.

163. At a meeting held at the community center named after Gregorio Chavez, a leader assassinated in 2012, organizations in the area and members of the community of Panama offered the Commission testimony on the continuing serious security crisis and militarization in the area. Especially, testimonies were received about the inhabitants described as continued killings, disappearances, kidnappings, torture in detention centers, the discovery of a clandestine cemetery, the practice of conducting violent evictions breaching international standards and threats to human rights defenders in the area.<sup>207</sup> In relation to the murders, the State reported that between 2014 until March 2015, not one violent death occurred in connection with the conflict.<sup>208</sup>
164. In relation to evictions, through a press release issued in August 2014, the Commission expressed concern at a series of violent evictions that occurred in the area. According to publicly available information, on May 21, 2014, members of the police and army, as well as private security guards, allegedly participated in the violent eviction on the La Trinidad and El Despertar farms, in the municipality of Trujillo, Colón. According to the information available, 300 families affiliated to the Authentic Peasant Revindicator Movement of Aguán (MARCA) were evicted. It is alleged that security forces used tear gas and pepper spray and fired into the air to intimidate and displace families living on the farm since July 2012. This operation allegedly injured about 50 farmers and 8 members of the security forces. In addition, 15 individuals were arrested and allegedly beaten, among them the beneficiaries of precautionary measures granted by the Commission weeks before the event occurred.<sup>209</sup>
165. In addition, according to the information received by the Commission, on July 3, 2014, the National Preventive Police, members of the Xatruch III Joint Task Force and the 15th Special Forces battalion carried out the eviction of 350 families of the Gregorio Chávez Peasant Movement Foundation (MCRCG) who had been at the Paso Aguán farm since May 2014. The families were allegedly violently evicted by the use of tear gas. Additionally, several of the peasants were injured and seven arrested, including two of the peasant leader beneficiaries of precautionary measures granted by the IACHR. In that statement, the Commission addressed the alleged persecution of human rights defenders Martha Arnold, Irma Lemus and Rigoberto Durán, members of the Permanent Human Rights Observatory of Bajo Aguán, as well as threats by the military and security guards to the peasant leader Santos Torres, member of the Gregorio Chávez Peasant Movement and beneficiary of precautionary measures granted by the Commission.<sup>210</sup>

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<sup>207</sup> Meeting with Civil Society organizations, Tocoa, December 2, 2014.

<sup>208</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

<sup>209</sup> IACHR, *Commission communiqué expresses concern at threats and detentions of peasant leaders in Bajo Aguán*, Honduras, August 29, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PRelease/-20-14/094.asp](http://www.oas.org/en/iachr/media_center/PRelease/-20-14/094.asp).

<sup>210</sup> IACHR, *Commission communiqué expresses concern at threats and detentions of peasant leaders in Bajo Aguán*, Honduras, August 29, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PRelease/-2014/094.asp](http://www.oas.org/en/iachr/media_center/PRelease/-2014/094.asp).

166. According to information received during its visit, more than 500 Prosecutor's subpoenas were issued in Aguán against human rights defenders. In this context, a subpoena was issued against Irma Lemus in September 2014 in the local Criminal Court in the area on charges of illegal occupation, criminal damage and theft of cattle. At the preliminary hearing, the judge ordered a provisional dismissal. According to information received, during the hearing, when the judge asked her for her profession and she replied that she was a human rights defender, the former replied, laughing, "so this is how you occupy land?"<sup>211</sup> In its response to the draft of this report, the State indicated that the acts of violence have disappeared since the implementation of Operation Xatruch, which is composed of military and police forces. It stated that in 2014 and 2015, evictions were carried out by means of court orders, and all agencies involved were present during the operation, including the Office of the Prosecutor for Human Rights and the National Human Rights Commission.<sup>212</sup>
167. The local organizations and members of the Panamá community presented information on the close cooperation between the public authorities and the private farm owners in the area.<sup>213</sup> In 2013, the United Nations Working Group on the use of mercenaries "expressed concern about the involvement in human rights violations of private security companies hired by landowners, including killings, disappearances, forced evictions and sexual violence against representatives of farmers' associations in the Bajo Aguán region."<sup>214</sup> "Here the police, military, prosecutors, judges, everyone is here to defend the owners of large estates, while those who die are us," an inhabitant of the Panamá community told the Commission. A peasant movement leader said that, as part of an eviction carried out by the military, "they insulted us in a painful way, they knocked us to the ground and beat us, they told us they would shoot each of us, while [the military] put their weapons in our ears". Also, another resident said: "I lost my mother and father, because hit men killed my family [...] we've been to several areas to complain about the events and we have not been successful."
168. The State, for its part, indicated that it is taking a human rights approach to address the situation related to the land conflict, in order to lay the groundwork for a solution that can be sustained over time. Moreover, the government reported that the Secretariat of Human Rights, Justice, Interior, and Decentralization had created the "Interinstitutional Committee on Prevention and Alternative Conflict Resolution from a Human Rights Perspective," made up of all State agencies, in

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<sup>211</sup> Information presented to the IACHR during its visit. Tegucigalpa, 2014.

<sup>212</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>213</sup> In its response to the draft of this report, the State indicated that the case involving the Community of Panamá is being investigated by the La Ceiba Office of the Prosecutor for Human Rights. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>214</sup> Communication of February 25, 2013, from the Office of the UN High Commissioner for Human Rights, *Private Military and Security Companies in Honduras need robust and effective monitoring, says UN expert group* See en: <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=13032&LangID=S>.



order to adopt decisions geared toward resolving the climate of insecurity and violence in the area.<sup>215</sup>

169. It noted that in March 2014 it created the Violent Deaths Unit of Bajo Aguán to clear up any deaths in the region that may be related to the land conflict; this has had an impact on reducing the number of these deaths. According to the State, from the time the Violent Deaths Unit was created through March 2015, there were no violent deaths related to the conflict.<sup>216</sup> A roundtable was also created with the *Observatorio Permanente de Derechos Humanos en el Bajo Aguán* (Permanent Human Rights Observatory in Bajo Aguán, OPDHA), made up of peasant delegates from the various organizations in the area. The State said that it maintains a fluid communication with the delegates, providing updates on cases, and that the delegates are providing full cooperation in the investigation of these cases.<sup>217</sup>
170. The Commission welcomes the creation of this committee and recommends strengthening the Violent Deaths Unit of Bajo Aguán in order to investigate any deaths in the area that may be related to the land conflict. The Commission also supports the establishment of the roundtable made up of peasant delegates from different organizations in the area, and urges the State to ensure that the highest levels of communication are maintained between the parties involved, with a view to peacefully resolving the conflict.

## **b. Impunity**

171. For the Commission, the situation of impunity in Bajo Aguán continues to be alarming. Despite patterns of violence that peasant organizations have identified regarding the possible participation of State authorities in the incidents alleged to have occurred, the testimonies the Commission received tell of a lack of effectiveness in addressing complaints of gross human rights violations in this region and especially in conducting a proper investigation and identifying those presumed to be implicated.<sup>218</sup>
172. A sampling of 14 cases taken in May 2014, out of 90 registered to date in Aguán, produced the following results: nine cases that have been “dormant” since 2012; four with case files that cannot be located or without case files; and one case that

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<sup>215</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>216</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>217</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>218</sup> In its response to the draft of this report, the State provided information from CONADEH which reported that while it is true that there is widespread impunity for human rights violations in Bajo Aguán, especially homicides and disappearances, some of the family members do not cooperate when it comes to clarification of the facts, for example by providing statements to the relevant authorities or enabling exhumations to be done so as to try to identify the remains of possible victims. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

has provisionally been dismissed on grounds that the order to prosecute had not been properly substantiated.<sup>219</sup>

173. An investigation done by the organization Human Rights Watch on the situation in Bajo Aguán determined that the investigations in this region do not meet minimum due diligence standards. When investigations are carried out, they are slow; they do not pursue lines of inquiry conducive to clearing up what happened; key witnesses are not interviewed; autopsies are not performed; key evidence, such as the weapon used, is not secured; and victims' relatives are ignored.<sup>220</sup> In 13 of the 29 killings investigated by Human Rights Watch, and one disappearance, evidence suggests the possible involvement of private guards.<sup>221</sup>
174. With regard to the exhumations done by the Violent Deaths Unit of Bajo Aguán between June and September 2014, the State indicated that 31 autopsies had been performed, with the participation of the respective judge, the public defender, the prosecutor, medical staff, journalists, a forensic doctor specializing in exhumations, members of the OPDHA, and others. The State indicated that all the expert examinations that were done confirmed that the deaths were violent, and orders to prosecute were issued.<sup>222</sup> The State indicated that the third round of 17 exhumations is pending, and that forensic doctors from other countries are expected to participate as observers.<sup>223</sup>
175. The Commission recommends the State to strengthen efforts in the investigation of the violent events, which occurred in Bajo Aguán, and to punish the perpetrators and masterminds, in particular to clarify responsibility in case of a possible involvement of State forces. Also, the State must address the structural causes of discrimination and violence affecting Bajo Aguán, including the ownership and sale of land in consultation with stakeholders.

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<sup>219</sup> Observatorio Permanente de Derechos Humanos en el Aguán. *Informe de Monitoreo y Seguimiento de la Situación de Derechos Humanos en El Bajo Aguán relacionada al Conflicto Agrario* [Monitoring and Follow-Up Report on the Human Rights Situation Related to the Land Conflict in Bajo Aguán], July 17, 2014.

<sup>220</sup> Human Rights Watch. *There Are No Investigations Here: Impunity for Killings and Other Abuses in Bajo Aguán, Honduras*, February 12, 2014.

<sup>221</sup> Human Rights Watch. *There Are No Investigations Here: Impunity for Killings and Other Abuses in Bajo Aguán, Honduras*, February 12, 2014.

<sup>222</sup> With regard to the exhumations being done in Bajo Aguán and the request by some human rights organizations that these be suspended until a group of independent forensic experts can review the procedures, the State said that the Violent Deaths Unit of Bajo Aguán had indicated that the OPDHA was invited to provide international forensic doctors to participate as observers for the second round of exhumations. Given that the members of the OPDHA indicated that they had taken the appropriate steps without results, the exhumations were done without the presence of observers, taking into account the damage to remains with the passage of time and the fact that exhumations must be performed to confirm the violent deaths of individuals in the land conflict. Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>223</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the on-site visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

## 8. Journalists and Media Workers

### a. Violence

176. During its on-site visit, the Commission paid particular attention to violence perpetrated against journalists and media workers in the country, and its effects on the respect and guarantee of the right to freedom of expression. While acknowledging that the problem of violence and the high homicide rate affecting all sectors of the Honduran population, the IACHR confirmed the serious situation of insecurity in which journalists and media communicators work and exercise their freedom of expression, making them a particularly vulnerable population group.<sup>224</sup>
177. In the course of meetings held with State authorities, members of civil society and journalists in the country, the Commission received troubling information about the high number of murders of journalists and communication media workers perpetrated in 2014. The reasons for this have not been clarified; as well as other serious incidents affecting the exercise of the profession, such as threats, assaults and harassment. According to the information gathered, these facts can be included into the general context of violence against journalists and media workers in Honduras, which worsened after the 2009 coup d'état<sup>225</sup> and that persist to date.
178. Given the gravity of the situation faced by those engaged in journalism in the country, the Commission has recommended that the State adopt defined and specialized protective mechanisms permanently to guarantee the life and integrity of journalists at risk, and to investigate effectively crimes in accordance with international standards in this area.<sup>226</sup> The recent adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators on April 15, 2015, is a significant step in this direction.
179. In this regard, the Commission has indicated that violence against journalists not only violates in a particularly egregious way the freedom of thought and expression of the person concerned, but also affects the collective dimension of this right. The acts of violence committed against journalists and people working in the media, which are linked to their professional activity, violate the right of these people to express and impart ideas, opinions and information. It also violates the rights of citizens and society in general to seek and receive information and ideas of any kind.<sup>227</sup> As noted by the Inter-American Court of Human Rights, "journalism

<sup>224</sup> IACHR. December 5, 2014. *Preliminary Observations concerning the Human Rights Situation in Honduras*.

<sup>225</sup> IACHR. *Honduras: Human Rights and Coup d'Etat*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. In its Report Honduras: *Human Rights and Coup d'Etat*, the IACHR noted with concern the increase in the murders of journalists recorded in 2010; threats, attacks and harassment perpetrated against journalists and media, particularly on those journalists who expressed their opposition to the coup; and the widespread impunity for these crimes.

<sup>226</sup> IACHR. *Honduras: Human Rights and Coup d'Etat*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009.

<sup>227</sup> I/A Court H.R., *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012*. Series C No. 248. Para. 142-149; IACHR. Special Rapporteur for the Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists*

can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”<sup>228</sup>

180. According to international human rights standards, the State of Honduras is not only obliged to ensure that its agents do not commit acts of violence against journalists, but also to reasonably prevent attacks from third party individuals. The State also has an obligation to investigate, prosecute and, if necessary, punish the perpetrators of such violence, even when those responsible are not state actors. In this sense, Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

### i. Murders

181. According to official figures, between 2003 and 2014, 50 journalists and media workers were killed in Honduras.<sup>229</sup> Ten of these journalists and media workers were killed in 2014. These were: the journalists José Roberto Ugarte, radio host and television producer; Carlos Mejía Orellana, marketing manager of *Radio Progreso*; Hernán Cruz Barnica, a journalist at *Radio Opoa*; Antony Oscar Torres Martínez, *Patuca Stereo Radio* announcer; Luis Alonso Funez Duarte, announcer of the *Super 10* radio station; Herlyn Ivan Espinal Martínez, a journalist of the ‘Hoy mismo’ of *Channel 3*; Nery Francisco Soto Torres, *Channel 23* of Olanchito; Dagoberto Díaz, owner of *Channel 20* and *Cable Visión*; Dorian Argenis Ortez Rivera, host of the program “The World of Little Giants” in *La Nueva 96.1*; and Reinaldo Paz Mayes, owner of *RPM TV, Channel 28*.<sup>230</sup>
182. In the first half of 2015, the Commission registered a worrying number of unclarified murders of communicators and media workers. On February 5, 2015, the communicator Carlos Fernandez, host of the news program on Channel 27 *Naked City*, was killed in the municipality of Roatán, Department of Islas de la Bahía.<sup>231</sup> The operator of *Radio Globo* Erick Arriaga was killed on February 23, 2015 in Tegucigalpa.<sup>232</sup> On April 23, 2015, radio host Artemio Deras Orellana died after being shot while he was traveling in the western department of Lempira, in

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during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67.

<sup>228</sup> I/A Court H.R., *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012*. Series C No. 248. Para. 209.

<sup>229</sup> National Human Rights Commission (CONADEH). February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*.

<sup>230</sup> CONADEH. February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*. See, also, C-Libre. December 15, 2015. *Asesinan a otro periodista en Honduras*.

<sup>231</sup> Conexión. February 6, 2015. *Periodista de Rapcos asesinado al finalizar noticiario*; Univisión. February 7, 2015. *El periodista Carlos Fernández fue asesinado a tiros en Honduras*

<sup>232</sup> La Prensa. February 24, 2015. *Matan a operador de Radio Globo en Tegucigalpa*; Tiempo. February 24, 2015. *Asesinan a operador de Radio Globo en la capital de Honduras*.

the vehicle of Justice of the Peace Jorge Pérez Aleman, who was also killed;<sup>233</sup> the next day Cristel Jactan López Bermúdez, editor of VTV's *Channel 12*, in Tegucigalpa was killed.<sup>234</sup> In May, Johan Franklin Dubon, host of *Radio Sulaco*, Yoro was murdered.<sup>235</sup> On June 23, Juan Carlos Cruz Andara, *Teleport* channel journalist in Puerto Cortes was found stabbed to death.<sup>236</sup> On June 27, Deibi Adali Rodríguez, a cameraman for *Channel 13 Telemás* in Copan was murdered.<sup>237</sup> On July 3, hitmen murdered Joel Aquiles Torres, owner of *Channel 67* and shareholder of a cable television company in Taulabé, Comayagua.<sup>238</sup>

183. According to the information received by the Commission through its meetings with journalists and civil society organizations during its on-site visit, organized crime - with which public officials and agents of the State security forces have been found to be involved - is perceived as the greatest threat to the life and physical integrity of those journalists in Honduras covering local news about corruption, land claims, drug trafficking, organized crime and public safety. Similarly, the information gathered during the on-site visit helped to confirm that there is a high risk to life and integrity of journalists exercising critical journalism and who are critical of governments following the 2009 coup d'état. This violence particularly affects journalists working in departments within the country and in rural areas, including, among others, the departments of La Ceiba, Yoro and Olancho.
184. The lack of effective investigations - which according to official figures affects "about 96%" of these cases<sup>239</sup> - has impeded clarification as to whether a majority of these crimes are connected with the information role of communicators. In this regard, the civil society organizations consulted expressed concern because the investigations promoted the notion that the killings were unrelated to the practice of this profession, without adopting strict criteria for evaluating evidence and monitoring avenues of enquiry.<sup>240</sup> After its 2010 on-site visit, the Commission questioned the conclusion reached by some authorities that the murder of a group of journalists was not linked to their professional work and emphasized the State's obligation to "investigate the deaths, including [...] the determination whether the crimes were related to the exercise of the profession and to allow the prosecution and conviction of those responsible for them."<sup>241</sup> The Commission is pleased to

<sup>233</sup> La Tribuna. April 24, 2015. *Muere comunicador social que iba con juez asesinado*; Cerigua. April 27, 2015. *Dos periodistas asesinados en Honduras*.

<sup>234</sup> La Prensa. April 25, 2015. *Matan a balazos a camarógrafo de canal de televisión en Tegucigalpa*; Cerigua. April 27, 2015. *Dos periodistas asesinados en Honduras*.

<sup>235</sup> La Prensa. May 14, 2015. *Locutor asesinado en Yoro había sido amenazado and golpeado*; CNN en español. May 14, 2015. *Asesinan a locutor invidente en Honduras*.

<sup>236</sup> Reporters without Borders (RSF). July 8, 2015. *Honduras: otros tres asesinatos en el país de la impunidad*; *Hondudiario*. June 23, 2015. *Asesinan a comunicador en Puerto Cortés*.

<sup>237</sup> *El Tiempo*. June 28, 2015. *Honduras: Ultiman a camarógrafo en La Entrada, Copán*; La Tribuna. June 29, 2015. *Ultiman camarógrafo de medio de comunicación en Copán*.

<sup>238</sup> RSF. July 8, 2015. *Honduras: otros tres asesinatos en el país de la impunidad*; *El Tiempo*. July 4, 2015. *Asesinan a dueño de canal de televisión en Taulabé*.

<sup>239</sup> CONADEH. February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*.

<sup>240</sup> IACHR. December 5, 2014. *Preliminary Observations concerning the Human Rights Situation in Honduras*.

<sup>241</sup> IACHR. *Preliminary Observations of the Inter-American Commission on Human Rights on its visit to Honduras, May 15 to 18, 2010*. OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

- observe that during its 2014 on-site visit, the State authorities consistently expressed their willingness to investigate and clarify these crimes and pledged to exhaust the avenues of investigation related to the profession or occupation of the victims. It also appreciates the creation in 2014 of the Technical Criminal Investigation Agency, a specialized unit of public prosecutors, who are dedicated to the investigation and prosecution of serious offenses with a strong social impact<sup>242</sup> and their ability to investigate the murders of journalists.
185. For the Inter-American Commission it is essential that the Honduran government fully, effectively and impartially investigate these crimes affecting the whole of Honduran society, to clarify the motives and to judicially determine the relationship they may have with journalism and the freedom of expression . The authorities should not exclude the practice of journalism as a motive for the murder and/or aggression before completing their investigation. In this regard, in the context of his 2012 official visit, the former UN Special Rapporteur on the promotion and protection of the right to freedom of expression, Frank La Rue, recommended to the State of Honduras that “[i]n all cases of violence directed at journalists or human rights defenders, the initial presumption – until proven otherwise – should be that the incident occurred as a result of the person’s profession or activities.”<sup>243</sup> In this regard, the Commission stresses the need to create special investigation protocols requiring the definition and exhaustion of criminal theories related to the assaulted individual’s exercise of their profession.
186. The omission of logical avenues of investigation or lack of diligence in the gathering of evidence in this respect can have a serious impact on the development of proceedings at the indictment or trial stages.<sup>244</sup> The failure to completely exhaust all logical avenues of investigation leads, above all, to the inability to identify the masterminds.<sup>245</sup>
187. The IACHR and its Special Rapporteur for Freedom of Expression reminds the State that "it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible." Likewise, "a simple but highly effective protective measure consists of the highest authorities of the State recognizing in a consistent, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the

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<sup>242</sup> Official Gazette of the Republic of Honduras. Decree Law No. 379-2013, reforming Public Ministry Law. March 18, 2014.

<sup>243</sup> United Nations. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Addendum. Mission to Honduras. A/HRC/23/40/Add.1. March 22, 2013. Para. 40.

<sup>244</sup> IACHR. Special Rapporteur for the Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

<sup>245</sup> IACHR. Special Rapporteur for the Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126; IACHR. Special Rapporteur for the Freedom of Expression. Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia. OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 65-66.

information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government.<sup>246</sup>

188. The Commission acknowledges the initiatives promoted by the CONADEH, under the leadership of Roberto Herrera Caceres, who has publicly condemned the crimes against journalists and urged the competent authorities to prevent, protect and investigate the murder, kidnapping, intimidation and the threats to members of the media.<sup>247</sup> The dissemination of such messages is a highly positive practice that should be made official policy by high-ranking government authorities, including the Secretariat of Security and the agencies responsible for law enforcement.
189. Likewise, the Commission has acknowledged that "the media also have a key role to act against aggression committed against a journalist."<sup>248</sup> The condemnation of the attacks by the media, their reports on the facts and monitoring the measures taken by the State to protect journalists and investigate attacks are essential to ensure that the State complies with its obligations to prevent violence against communicators, take protective measures, and combat impunity for the crimes committed.<sup>249</sup>

## ii. Attacks and Threats

190. The Commission also received information about physical assaults, attacks and threats against journalists for exercising their profession of reporting during 2014 and the first half of 2015 in several cities. Although many of these attacks and threats were not formally denounced due to a lack of confidence in the actions by the respective authorities, various sources consulted confirm that the number of attacks and threats is still high.<sup>250</sup>

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<sup>246</sup> IACHR. *Annual Report 2013. Report of the Special Rapporteur for the Freedom of Expression*. Chapter III (Violence against Journalists and media workers: Inter-American standards and national practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 37. In the same sense the observations of Frank La Rue, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in the context of his official visit to Honduras. *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*. Addendum. Mission to Honduras. A/HRC/23/40/Add.1. March 22, 2013. Para. 93 a).

<sup>247</sup> CONADEH. February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*; CONADEH/Prensa. May 7, 2015. *Ante el CONADEH: Periodista denuncia que teme por su vida and pide protección para él and su familia*.

<sup>248</sup> IACHR. *Annual Report 2013. Report of the Special Rapporteur for the Freedom of Expression*. Chapter III (Violence against Journalists and media workers: Inter-American standards and national practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 274.

<sup>249</sup> United Nations. The United Nations Organization for Education, Science and Culture (UNESCO). *San José Declaration*. May 2-4, 2013.

<sup>250</sup> Committee for Freedom of Expression (C-Libre). December 1, 2014. *Acts of Aggression against Journalists in Honduras* (information received during the IACHR's on-site visit to Honduras held between December 1-5, 2014). Available at: file of the Special Rapporteur for the Freedom of Expression; Pen International. *Honduras; Journalism in the shadow of Impunity*. 2014; National Human Rights Commission (CONADEH). February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*; CONADEH/Prensa. May 7, 2015. *Ante el CONADEH: Periodista denuncia que teme por su vida and pide protección para él and su familia*.

191. During the period under review in this Report, the Commission recorded an act of aggression in January 2014, against the car of journalist Hector Antonio Madrid Vallecillo, of *Channel 35* and *Channel 10* in the city of Tocoa, Department of Colón. The journalist's car was shot at by unknown individuals. The journalist filed a complaint with the National Directorate of Criminal Investigation (DGIC).<sup>251</sup> Also, in February 2015, there was a report of an attack with several shots fired at the building of the *National Radio of Honduras*. The incident occurred in the early hours of the morning and there were no injuries.<sup>252</sup> There were reports of attacks by police on journalists while covering student demonstrations in the city of Catacamas.<sup>253</sup> The IACHR received information on acts of aggression against a journalist and a cameraman of *Televisión* by alleged members of the Military Police. Given this fact, the spokesperson of the National Force of Interagency Security, Santos Nolasco, said: "We will investigate this [...] to punish the perpetrator if necessary, because this type of behavior can definitely not be tolerated".<sup>254</sup>
192. The Commission was also informed on alarming incidents of threats to the lives and safety of journalists in 2014 and 2015. This is the case with journalists: Alex Sabillón, presenter and reporter of the news "Events of Choloma" which was broadcast by the *Multicanal* channel<sup>255</sup>; Ramon Rojas, a correspondent for the newspaper *Tiempo* and *Channel 5*<sup>256</sup>; Yanina Romero, Carlos Rodriguez and Lourdes Ramirez of the *KTV*<sup>257</sup> channel; Rogelio Trejo, *Honduvision TV* journalist and correspondent for "*Hable como Habla*"<sup>258</sup>; journalist Maria Chinchilla, *Abriendo Brecha*<sup>259</sup> news correspondent; Carlos Posadas, of "*Hable como Habla*"<sup>260</sup>;

<sup>251</sup> C-Libre. January 3, 2014. *Desconocidos tirotean vehículo de periodista frente al canal de televisión*; Proceso Digital. January 2, 2014. *Corresponsal de Abriendo Brecha espera pronta acción judicial tras atentado criminal*.

<sup>252</sup> *La Prensa*. February 2, 2015. *Disparan contra la Radio Nacional de Honduras*; Committee for Freedom of Expression. February 3, 2015. *Disparan dos balazos contra edificio de Radio Nacional de Honduras*.

<sup>253</sup> C-Libre. March 27, 2015. *Policías amenazan con sus armas a 10 periodistas*.

<sup>254</sup> *Televisión* (via YouTube). March 14, 2015. *TVC TN5 Matutino – Policías Militares agreden a personal periodístico de Televisión en SPS (video)*.

<sup>255</sup> C-Libre. December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR's on-site visit to Honduras held between December 1-5, 2014. Available at: on file with the Special Rapporteur for the Freedom of Expression.

<sup>256</sup> C-Libre. February 5, 2014. *Por difundir información deportiva, periodista recibe amenazas de muerte*.

<sup>257</sup> Reporters without Borders (RSF). July 25, 2014. *AMENAZAN DE MUERTE A TRES PERIODISTAS DE INVESTIGACIÓN POR UN REPORTAJE EN HONDURAS*; El Herald/EFE. July 25, 2014. *Piden a Honduras que proteja a tres periodistas amenazados de muerte*; Centro Knight para el Periodismo en las Américas. July 30, 2014. *RSF pide protección a gobierno de Honduras para su correspondiente no país*.

<sup>258</sup> Conexihon/C-Libre. August 18, 2014. *Periodista responsabiliza a hijo de alcalde municipal si sufre atentado*; Noticias Honduras. August 31, 2014. *Reportero responsabiliza a hijo de alcalde por cualquier atentado*.

<sup>259</sup> Conexihon/C-Libre. September 3, 2014. *Hombres armados amenazan de muerte a periodista en Choluteca*; El Libertador. September 3, 2014. *Hombres armados amenazan de muerte a periodista hondureña*.

<sup>260</sup> CONADEH. May 7, 2015. *Ante el Conadeh: Periodista denuncia que teme por su vida and pide protección para él and su familia*; *La Prensa*. May 7, 2015. *Amenazan a muerte a dos periodistas hondureños*; C-Libre. May 12, 2015. *Dos periodistas hondureños amenazados a muerte*.



Ely Vallejo, of *Cholusat Sur Canal 36*<sup>261</sup>; David Romero Ellner, director of *Radio Globo* and *Globo TV*<sup>262</sup>; and Cesar Silva, a journalist for *Globo TV*, all of whom were seriously threatened during that period.<sup>263</sup>

193. There is special concern for the situation of journalist Alex Sabillón, presenter and news reporter of “Events of Choloma” broadcast by the outlet *Multicanal*. According to sources consulted by the Commission during its visit, Sabillón was a victim of continuing acts of intimidation and death threats following a report on corruption in the Aguas de Choloma Company, in the Department of Cortés.<sup>264</sup> On May 23, 2014, a young man photographed him several times at his home and then fled in an unlicensed car. On May 27, Sabillón captured images of a young man who also photographed him performing his investigative work. The journalist also reported intimidation and threats through text messages and phone calls. Following these complaints, the police have taken over the journalist’s security granted by the Secretariat of Security.<sup>265</sup> On June 16, 2014, the director of the Road Commission of the Choloma Mayor’s Office, Miguel Callejas, threatened to kill Sabillón in the presence of the officer responsible for the journalist’s security. “I don’t care if you go with the police, you bastard, we’ll kill you” the official told him.<sup>266</sup> Indeed, according to information provided to the Commission by the NGO *C-Libre*, in 2014, the police officer escorting Sabillón was murdered. The President of the Water Board of San Francisco Ceibón, Benito López was also murder after denouncing, through the journalist Sabillón, acts of alleged corruption in the Aguas de Choloma Company. As a result of this situation, on August 30, 2014, the journalist fled his home to somewhere else in the country.<sup>267</sup>
194. Likewise, the Commission is concerned to learn about the death threats and harassment against journalists of *Radio Globo* and *Globo TV*. According to the information received, journalist David Romero Ellner, director of *Radio Globo* and *Globo TV* indicated that he had received death threats after disclosing an investigation into the misappropriation of funds from the Honduran Institute of

<sup>261</sup> C-Libre. January 26, 2015. *Periodista abandona el país por amenazas a muerte*; Cholusat Sur Canal 36. January 28, 2015. *Video: Periodista Ely Vallejo sale del país por temor a perder su vida*; C-Libre. January 8, 2015. *Periodista perseguido por desconocidos después de interrogar al presidente de Honduras*.

<sup>262</sup> Reporters without Borders (RSF). June 10, 2015. *RSF pide protección para el director de Radio Globo, que padece graves amenazas*; Conexihon C-libre/You Tube. May 19, 2015. *Amenazas a muerte para periodista que denunció corrupción del IHSS*.

<sup>263</sup> C-Libre. January 29, 2015. *Periodista amenazado por el Jefe de Seguridad del presidente del Congreso Nacional de Honduras*.

<sup>264</sup> C-Libre. December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR’s on-site visit to Honduras held between December 1-5, 2014. Available at: on file with the Special Rapporteur for the Freedom of Expression.

<sup>265</sup> C-Libre. May 28, 2014. *Persiste la intimidación and el asecho en contra de reportero de televisión*; RSF. May 30, 2014. *ASESINAN AL PERIODISTA HERNÁN CRUZ BARNICA: ¿DÓNDE PARARÁ LA VIOLENCIA EN HONDURAS?*; Connection. December 2, 2014. *Alex Sabillón, un retrato de la impunidad de los agresores*.

<sup>266</sup> C-Libre. June 17, 2014. *Frente a custodia policial empleado municipal amenaza de muerte a reportero*; RSF. June 19, 2014. *RSF ANIMA A HONDURAS PARA QUE ACRECIENTE SUS ESFUERZOS EN LA LUCHA CONTRA LA IMPUNIDAD*.

<sup>267</sup> C-Libre. December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR’s on-site visit to Honduras held between December 1-5, 2014. Available at: on file with the Special Rapporteur for the Freedom of Expression.

Social Security to the ruling National Party.<sup>268</sup> Romero Ellner, whom the IACHR granted precautionary measures in 2009,<sup>269</sup> had received threats and had been attacked in the past.<sup>270</sup> Also in January 2015, *Globo TV* journalist César Silva reported that he was intimidated by the head of special security of the president of the National Congress of Honduras, who, according to the journalist, pointed at him and said: "Keep spreading videos of military 'dog eaters' and you'll be gagged in a ditch with yellow feet." This comment was in reference to a report released a few days earlier on television.<sup>271</sup> Silva was beneficiary of precautionary measures granted by the Commission in 2009, after being kidnapped.<sup>272</sup> According to available information, five workers of *Radio Globo* and *Globo TV* have been killed since 2011.<sup>273</sup> The most recent is the case of the radio operator Erick Arriaga murdered on February 23, 2015. *Radio Globo* and *Globo TV* have been opposition media outlets since the 2009 coup d'état.

195. In this context, the Commission has monitored the situation of the independent journalist and president of PEN Honduras, Dina Meza Elvir. According to available information, during 2014, threats against Meza Elvir increased, "by telephone, by email and directly on the streets. Unknown individuals constantly follow her and take her picture."<sup>274</sup> Also during 2015, the journalist and human rights defender reported "20 security incidents", some of which were linked to the defense of journalists who have denounced the alleged corruption of the Honduran Institute of Social Security.<sup>275</sup> The Commission adopted precautionary measures in favor of Dina Meza in 2006.<sup>276</sup>
196. During its on-site visit, the Commission received information on the lack of effectiveness of internal protection mechanisms implemented by the Human Rights Unit of the Secretary of State's Bureau of Security,<sup>277</sup> and the institutional

<sup>268</sup> RSF. June 10, 2015. *RSF pide protección para el director de Radio Globo, que padece graves amenazas*; Conexihon C-libre/You Tube. May 19, 2015. *Amenazas a muerte para periodista que denunció corrupción del IHSS*.

<sup>269</sup> IACHR. July 3, 2009. *IACHR expresses concern at the suspension of guarantees in Honduras and grants precautionary measures*.

<sup>270</sup> IACHR. *Annual Report 2014. Report of the Special Rapporteur for the Freedom of Expression*. Chapter II (Evaluation of the Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2015. Para. 635; IACHR. *Annual Report 2011. Report of the Special Rapporteur for the Freedom of Expression*. Chapter II (Evaluation of the Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 69. December 30, 2011. Para. 342.

<sup>271</sup> C-Libre. January 29, 2015. *Periodista amenazado por el Jefe de Seguridad del presidente del Congreso Nacional de Honduras*.

<sup>272</sup> IACHR. Undated. *Precautionary Measures granted in Honduras*.

<sup>273</sup> *Luz Mariana Paz Villalobos* (December 6, 2011); *Aníbal Barrow* (June 24, 2013); Manuel Murillo Varela (October 23, 2013); *Juan Carlos Argeñal Medina* (December 7, 2013). See: Reporters without Borders (RSF). May 2015. *Entre crímenes, amenazas, acosos and más, los periodistas de Radio Globo and Globo TV transmiten la información*; Pen International. Honduras; *Periodismo a la Sombra de la Impunidad*. 2014.

<sup>274</sup> RSF. July 29, 2014. *RSF pide medidas cautelares para su corresponsal en Honduras Dina Meza*.

<sup>275</sup> C-Libre. June 22, 2015. *Presidenta de PEN Honduras corre riesgo por 20 incidentes en su contra*.

<sup>276</sup> IACHR. *Annual Report 2006*. OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Vol. I. Chapter III.

<sup>277</sup> CIPRODEH. Report on compliance with provisional and precautionary measures granted by the Commission and Inter-American Court of Human Rights, 2013. On file with the IACHR; Pen International. *Honduras; Periodismo a la Sombra de la Impunidad*. 2014.

constraints of this entity. Also, whilst many journalists and civil society organizations acknowledged the efforts made by the Government and CONADEH to ensure protection of some journalists,<sup>278</sup> they expressed concern regarding the institutional weaknesses of the State institutions charged with protecting journalists' rights in terms of mutual coordination, and stressed the importance of creating a special protection mechanism for this population group.

197. In this regard, the Commission notes with satisfaction the adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators in April 2015, which provides the State with a clear legal framework for the adoption of effective and appropriate measures in this area, representing a significant improvement over the pre-existing situation. As will be explained below, the new legislation contains several valuable features, such as: a wide and functional definition of journalists and media communicators; the participation of press and civil society representatives working on freedom of expression in the National Council for Protection; the adoption of the principle of a differentiated approach; establishing clear rules on the implementation of precautionary and provisional measures of the Inter-American system; and the existence of rapid proceedings to protect journalists who face an imminent risk of serious injuries. The State, in its response to the draft of this report, noted that according to a July 30, 2015, report by the Secretariat of Security, 21 journalists and media workers have internal security measures in place for them, which are implemented at the request of the Office of the Special Prosecutor for Human Rights.<sup>279</sup>
198. Finally, and without prejudice to the primary obligation that the protection of the life and integrity of journalists lies with the State, the Commission takes note that the UN has urged media organizations to provide adequate training and guidance on security issues, risk awareness and self-defense to permanent employees or to those rendering such services independently, as well as safety equipment when necessary.<sup>280</sup> As such, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity points to the importance of convening "the media industry and its professional associations, to establish general safety provisions for journalists including but not limited to safety training courses, health care and life

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<sup>278</sup> Also, according to the information available, CONADEH issued precautionary measures in favor of journalists during the period covered by this report. Such is the case of journalists Francisco Zuñiga and Carlos Posada, of HRN and news program "Hoy mismo" of the channel *Televiscentro*, who requested protection on May 7, 2015, from the CONADEH after receiving death threats. CONADEH reported that it asked the government to take precautionary measures to safeguard the integrity of journalists and their families CONADEH/Prensa. May 7, 2015. *Ante el CONADEH: Periodista denuncia que teme por su vida and pide protección para él and su familia*.

<sup>279</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>280</sup> UN Special Rapporteur on the Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Special Rapporteur of the Organization of American States (OAS) for Freedom of Expression and the Special Rapporteur on Freedom of Expression and access to Information of the African Commission on Human and Peoples' Rights (ACHPR). June 25, 2012. *Joint Declaration on Crimes against the Freedom of Expression*.

insurance, access to social protection and adequate remuneration for free-lance and full-time employees.<sup>281</sup>

199. In this connection, the Commission recommends that the State makes public statements that contribute to the prevention of violence against journalists, including the acknowledgement of the role of journalists and public condemnation of the assassination of and any physical violence towards journalists, omitting any statements that might raise the risk for them; and to adopt training and exercise programs, as well as formulating and implementing behavioral guidelines and directives, for public servants and especially the police or security forces about respect for the media, including those specifically related to gender.
200. Similarly, the State must ensure the urgent adoption of effective and specific protective measures to guarantee the safety of those who are subject to special risk by exercising their right to freedom of expression, whether the threats emanate from State officials or third party individuals. The measures should ensure that journalists can continue the exercise of their professional activity and their right to freedom of expression. Similarly, the State must take the necessary measures for those media workers who have been displaced or exiled for being in a risk situation to be able to return home in safety. When it is not possible for these individuals to return, the States must adopt measures enabling them to remain in the place chosen in dignity, with security measures and the financial support needed to keep their jobs and family life.

## **b. Impunity**

201. During its on-site visit, the IACHR and its Office of the Special Rapporteur for Freedom of Expression asked the State for detailed information on the status of investigations involving the killings of journalists and media workers. According to the information provided by the State, in 2013 six investigations were opened into cases in which journalists were killed, orders to prosecute were issued in two cases, and one conviction and two acquittals were handed down. In 2014, seven investigations were opened into these types of cases, orders to prosecute were issued in two cases, and there were two convictions.<sup>282</sup> According to figures the IACHR received, in only 4 of the 50 cases in which members of the media were killed in 2013 and 2014 have the authorities handed down convictions.<sup>283</sup>
202. According to the information provided, on March 14, 2014, a children's court found an 18-year-old youth guilty of perpetrating the killing of journalist Aníbal Barrow, who was kidnapped on June 24, 2013, by armed subjects in the city of San Pedro

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<sup>281</sup> United Nations. The United Nations Organization for Education, Science and Culture (UNESCO). International Programme for the Development of Communication. *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*. Point 5.22.

<sup>282</sup> IACHR. *Preliminary Observations concerning the Human Rights Situation in Honduras*. December 5, 2014.

<sup>283</sup> CONADEH. February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*.

Sula.<sup>284</sup> The journalist's body was found on July 9 near a lagoon in the municipality of Villanueva. According to news accounts, the journalist's body had been mutilated and partially burned.<sup>285</sup> The journalist had been host of the TV program "Aníbal Barrow y nada más," which aired on Globo TV. The other suspects in the crime are reportedly in custody and awaiting trial. However, the masterminds apparently have not been identified or arrested.<sup>286</sup> According to the information available, Barrow's killing was ordered by a drug trafficker.<sup>287</sup>

203. Also, on June 11, 2014, the Tegucigalpa Sentencing Court of National Jurisdiction handed down a prison sentence for three men who had been found guilty of killing journalist Alfredo Villatoro in May 2012. According to the information received, Marvin Alonso Gómez and two brothers, Osman Fernando and Edgar Francisco Osorio Arguijo, were arrested weeks after the killing, and in March 2014 the court had found them guilty but they were still awaiting sentencing.<sup>288</sup> Villatoro was kidnapped by armed men on May 9. On May 15, his body turned up on a lot on the southern outskirts of Tegucigalpa with two gunshots to the head and dressed in the uniform of a special police squadron, with a red handkerchief across his face. Villatoro was a well-known and influential journalist who worked as news coordinator at the HRN radio network, one of the most important in the country, where he hosted a morning program.<sup>289</sup>
204. In 2013, the man who killed Héctor Francisco Medina Polanco was reportedly convicted. Medina Polanco was host of the TV9 news program on the cable channel Omega Visión in San Pedro Sula.<sup>290</sup> In 2012, the man who killed Jorge Alberto Orellana was sentenced to 28 years in prison. Orellana directed the program "En vivo con Georgino," broadcast by Televisión de Honduras in San Pedro Sula. The

<sup>284</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 15, 2013. Press Release R50/13. Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras; Proceso Digital. July 10, 2013. Fiscalía confirma que cuerpo encontrado en Siboney pertenece a Aníbal Barrow; La Prensa. July 10, 2013. Honduras: Confirman que cadáver hallado es de Aníbal Barrow.

<sup>285</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 15, 2013. Press Release R50/13. Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras; Proceso Digital. July 10, 2013. Fiscalía confirma que cuerpo encontrado en Siboney pertenece a Aníbal Barrow; La Prensa. July 10, 2013. Honduras: Confirman que cadáver hallado es de Aníbal Barrow.

<sup>286</sup> La Prensa. March 15, 2014. Declaran culpable al "Chele" por el asesinato de Aníbal Barrow; Honduprensa/El Tiempo. March 14, 2014. Ocho años de cárcel para asesino de Aníbal Barrow.

<sup>287</sup> El Heraldito. July 13, 2013. Intensifican búsqueda del autor intelectual de crimen contra Barrow.

<sup>288</sup> Inter American Press Association (IAPA). June 12, 2014. IAPA welcomes conviction in Alfredo Villatoro case in Honduras; El País. June 12, 2014. Cadena perpetua a los asesinos de un periodista hondureño; El Universal/AFP. June 12, 2014. Cadena perpetua para asesinos de periodista en Honduras; El Heraldito. June 11, 2014. Cadena perpetua a asesinos de Alfredo Villatoro; Clases de periodismo. June 12, 2014. Honduras: Asesinos de periodista son condenados a cadena perpetua.

<sup>289</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 17, 2012. Press Release R52/12. The Office of the Special Rapporteur Condemns Murder of Journalist Kidnapped in Honduras; Knight Center for Journalism in the Americas. May 16, 2012. Kidnapped Honduran radio journalist found dead; Comité por la Libre Expresión (C-Libre). May 16, 2012. Ángel Alfredo Villatoro Rivera; Reporters without Borders (RSF). May 16, 2012. Kidnapped Radio Journalist Alfredo Villatoro Found Shot Dead.

<sup>290</sup> Radio Progreso. Roger Mauricio condenado por asesinato de periodista Héctor Polanco. November 2013; Proceso Digital. March 24, 2014. Justicia hondureña ha logrado sentencias en cuatro de 40 casos de periodistas asesinados.

- investigations that were carried out determined that the journalist's killing was not connected to his work in journalism.<sup>291</sup>
205. On the occasion of its visit, the IACHR and its Office of the Special Rapporteur also requested detailed information from the State concerning the killing of Carlos Hilario Mejía Orellana, who was marketing director for Radio Progreso and a beneficiary of precautionary measures issued by the IACHR.<sup>292</sup> Radio Progreso was one of the media outlets taken over by the armed forces on June 28, 2009. Since then, it has been subjected to various pressures, and a number of journalists from the radio station have received repeated threats.<sup>293</sup> On April 11, 2014, Mejía Orellana was stabbed to death in his home.<sup>294</sup> According to information the Commission received, in November 2014 the Criminal Court in the city of El Progreso, Yoro, ordered that Edwin Donald López Munguía be held in “judicial detention” as the person allegedly responsible for the death of Carlos Mejía Orellana.<sup>295</sup> The authorities reported that preliminary results of the investigation indicate that the killing was not linked to Mejía Orellana’s work at Radio Progreso. The IACHR welcomed the efforts undertaken to investigate this crime and urged the authorities to duly exhaust all theories that would suggest that the crime was connected with his job at the radio station.<sup>296</sup>
206. The prosecutions and criminal convictions in these cases represent steps forward in combatting the impunity that prevails in the vast majority of crimes against journalists and media workers in Honduras. The IACHR has indicated a number of times that this impunity creates a widespread inhibiting effect that restricts people’s freedom of expression, their right to have access to information, and the richness and vigor of public debate.
207. Notwithstanding this progress, it is of concern to the Commission that, according to information provided by civil society organizations and CONADEH, nearly 96%

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<sup>291</sup> IFEX/Reporters without Borders (RSF). September 12, 2012. *Robber Gets 28 Years in Prison for Murdering TV Journalist*; La Tribuna. September 11, 2012. *28 años de cárcel para el homicida de “Georgino” Orellana*; IACHR. Office of the Special Rapporteur for Freedom of Expression. April 22, 2010. Press Release R45/10. *Office of the Special Rapporteur Expresses its Concern at the Latest Murder of a Journalist in Honduras and at the Grave Vulnerability of the Media There*.

<sup>292</sup> IACHR. Annual Report 2011. Chapter III (The Petition and Case System). OEA/Ser.L/V/II. Doc. 69.30. December 2011, para. 74. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2011/-TOC.asp>.

<sup>293</sup> IACHR. *Honduras: Human Rights and the Coup d’État*. OEA/Ser.L/V/II. Doc. 55.

<sup>294</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. April 15, 2014. Press Release R29/14. *Office of the Special Rapporteur Condemns Murder of Radio Worker in Honduras*; Reporters without Borders (RSF). April 14, 2014. *Radio Progreso Employee Murdered after Getting Threats*; Religión Digital. April 14, 2014. *Carlos Mejía Orellana, asesinado en Honduras*; La Prensa. April 14, 2014. *Organizaciones condenan asesinato de empleado de Radio Progreso*; Knight Center for Journalism in the Americas. April 16, 2014. *Honduran media employee killed after having requested police protection for years*.

<sup>295</sup> IACHR. December 5, 2014. *Preliminary Observations concerning the Human Rights Situation in Honduras*; Radio Progreso. November 21, 2014. *Dictan detención judicial a supuesto asesino del jefe de mercadeo de Radio Progreso*.

<sup>296</sup> IACHR. December 5, 2014. *Preliminary Observations concerning the Human Rights Situation in Honduras*; Radio Progreso. November 21, 2014. *Dictan detención judicial a supuesto asesino del jefe de mercadeo de Radio Progreso*.

of killings of journalists and media workers remain unpunished.<sup>297</sup> Moreover, the IACHR is extremely concerned that so far none of the masterminds in these cases have been identified or convicted. The State has the obligation to investigate and criminally punish everyone who participates in a crime, including the masterminds, accomplices, collaborators, and those who later participate in covering up the human rights violations committed. The State must also investigate the structures involved in the execution of the crimes or the criminal structures to which the perpetrators belong.<sup>298</sup>

208. Specifically, the IACHR received information regarding the delay and ineffectiveness of investigations into crimes committed against journalists over the exercise of their freedom of expression in opposition to the coup d'état. These crimes include the killing on March 10, 2010, of Nahúm Palacios Arteaga, a journalist from Canal 5 in Tocoa, and the killing the next day of David Meza Montesinos, a journalist with Radio El Patio, Radio América, and Canal 45, in La Ceiba.<sup>299</sup>
209. It is not only killings that have high levels of impunity; physical assaults, attacks, and threats against journalists and media workers are not investigated effectively either.<sup>300</sup> In this regard, the IACHR reiterates that the lack of protection measures and a failure to immediately investigate assaults and threats significantly hampers clarification of the facts and the possibility of criminally prosecuting those responsible.<sup>301</sup> Under these circumstances, many journalists choose not to report threats or attacks on them, further fueling the cycle of impunity.<sup>302</sup>

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<sup>297</sup> CIPRODEH. *Informe de cumplimiento de las medidas cautelares y provisionales otorgadas por la Comisión y la Corte Interamericana de Derechos Humanos*. 2013. Available in the IACHR archives. PEN International. *Honduras: Journalism in the Shadow of Impunity*; Reporters without Borders (RSF). May 2015. *Entre crímenes, amenazas, acosos y más, los periodistas de Radio Globo y Globo TV transmiten la información*; Comité por la Libre Expresión (C-Libre). December 1, 2014. *Agresiones contra periodistas en Honduras* (information on attacks on journalists, provided during the IACHR's on-site visit to Honduras, December 1-5, 2014). Available in the archives of the Office of the Rapporteur for Freedom of Expression; National Human Rights Commission (CONADEH). February 6, 2015. *11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas*.

<sup>298</sup> IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 166.

<sup>299</sup> PEN International. *Honduras: Journalism in the Shadow of Impunity*. 2014; Reporters without Borders (RSF). May 2015.

<sup>300</sup> CIPRODEH. *Informe de cumplimiento de las medidas cautelares y provisionales otorgadas por la Comisión y la Corte Interamericana de Derechos Humanos*. 2013. Available in the IACHR archives. PEN International. *Honduras: Journalism in the Shadow of Impunity*; Reporters without Borders (RSF). May 2015. *Entre crímenes, amenazas, acosos y más, los periodistas de Radio Globo y Globo TV transmiten la información*; Comité por la Libre Expresión (C-Libre). December 1, 2014. *Agresiones contra periodistas en Honduras* (information on attacks on journalists, provided during the IACHR's on-site visit to Honduras, December 1-5, 2014). Available in the archives of the Office of the Rapporteur for Freedom of Expression.

<sup>301</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism*. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, paras. 117-118.

<sup>302</sup> Meeting with civil society in Tegucigalpa and San Pedro Sula. See also, United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and

210. According to various sources consulted, the impunity of these crimes is the result of the ineffectiveness and institutional weakness of the agencies in charge of investigating and prosecuting these crimes; the failure to meet international standards in carrying out effective investigations; and the high levels of corruption and influence of criminal organizations in the security forces and the judiciary.<sup>303</sup> These issues were addressed by nongovernmental organizations that participated in the hearing about “Reports of Killings of Journalists and Impunity in Honduras,” held on March 25, 2014, during the 150<sup>th</sup> regular session of the IACHR. The organizations indicated that violence against journalists and the current state of impunity for those crimes “has had a devastating effect on the exercise of freedom of expression in Honduras.”
211. The State, for its part, indicated that of the cases that had been prosecuted, the homicides had been committed by common criminals or organized crime. They further indicated that the Office of the Public Prosecutor has a Special Prosecutor to investigate and prosecute cases of violence against journalists in which members of the National Police, the armed forces, or the judicial branch may be involved (Special Prosecutor’s Office for Human Rights), as well as a Special Prosecutor’s Office for Crimes against Life, which is in charge of investigating killings of journalists,<sup>304</sup> through its Technical Agency for Criminal Investigation. This special agency of the Public Prosecutor’s Office was created in 2014, and it apparently handles the investigation and prosecution of serious crimes that have a high social impact.<sup>305</sup>
212. In adopting an adequate institutional framework for the investigation, trial, and criminal sanction of crimes against journalists, the State has a duty to “clearly define the formal jurisdiction of the authorities in charge of investigating and processing these crimes.”<sup>306</sup> The absence of clear rules regarding jurisdiction can lead to delays and procedural errors that can affect the investigations carried out, thus contributing to impunity. Moreover, the authorities ultimately assigned to the investigation must be those who can act with the most autonomy and independence. Along these lines, the IACHR and its Office of the Special Rapporteur have indicated that:

States must ensure not only the hierarchical and institutional independence of the authorities responsible for moving the investigations and judicial

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expression, Frank La Rue. A/HRC/20/17. June 4, 2012, para. 66. Available for consultation at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/137/87/PDF/G1213787.pdf?OpenElement>.

<sup>303</sup> United Nations. *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión. Addendum. Misión a Honduras*. A/HRC/23/40/Add.1. March 22, 2013.

<sup>304</sup> IACHR. 150<sup>th</sup> session. Reports of Killings of Journalists and Impunity in Honduras. Hearing on March 25, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; IACHR. April 4, 2014. Press Release No. 35/14. *IACHR Wraps Up its 150<sup>th</sup> Session*; IACHR. May 13, 2014. Press Release No. 35/A/14. *Report on the 150<sup>th</sup> Session of the IACHR*.

<sup>305</sup> *Diario Oficial de la República de Honduras*. Decreto Ley No. 379-2013, que reforma la Ley del Ministerio Público. March 18, 2014.

<sup>306</sup> IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 183.



proceedings forward, but also that their independence can be verified in practice in the case in question. The State must ensure that the judges and prosecutors with authority to act in cases of violence against journalists can operate without being subjected to influence by the public official or criminal organization allegedly involved in the crime, given the existence of indications that said persons participated in the act of violence. Should the investigation and criminal prosecution agencies be acting within such a sphere of influence, the State has the duty to provide them with sufficient capacity to resist it.<sup>307</sup>

213. In any case, it is essential for all institutions to have special protocols in place that require the authorities to exhaust all lines of inquiry related to the practice of journalism in cases involving crimes against journalists. The institutions must also have adequate resources and personnel specialized in investigating such matters.
214. Finally, during its on-site visit, the Commission received complaints from civil society and groups of journalists concerning the lack of official information on progress in the investigation of crimes against journalists and media workers. The obligation to compile detailed, disaggregated statistics as an essential prerequisite for designing, implementing, and evaluating effective public policies of prevention, protection, and criminal prosecution of violence against journalists has been addressed by the IACHR on numerous occasions.<sup>308</sup> At a minimum, these statistics should include: the type of crime committed (murder, assault, etc.), the suspected person and/or group responsible (if known), the investigating authority and relevant investigation reference number or code, and the current status of the investigation and/or prosecution.<sup>309</sup> This information should be disseminated regularly and proactively by the State, to ensure broad access to the information and to promote public debate and scrutiny of the policies implemented in this area. The Inter-American Commission has indicated that this obligation necessarily involves producing information and statistical data on the reporting and processing of cases involving violence against women journalists.<sup>310</sup>
215. With regard to this point, the IACHR recommends that the State carry out diligent, impartial, and effective investigations into the killings, attacks, threats, and acts of

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<sup>307</sup> IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 176.

<sup>308</sup> IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 60.

<sup>309</sup> IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, paras. 59-61.

<sup>310</sup> IACHR. *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser.L/V/II. Doc. 68, January 20, 2007, paras. 42-43. See also: United Nations. CEDAW. General Recommendation No. 19: Violence against women. UN Doc. A/47/38.1. 11<sup>th</sup> session 1992. Para. 24.c). Available for consultation at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>; ECLAC. *Cuaderno 99. Si no se cuenta, no cuenta: Información sobre la violencia contra las mujeres*. April 2012.

intimidation committed against journalists and media workers, in accordance with what has been laid out in this report. This assumes the existence of special units and investigative protocols, as well as the identification and exhaustion of all possible theories that would link the attack to the victim's practice of journalism. Moreover, the State should promote the investigation, prosecution, and conviction of the masterminds behind the killings of those exercising the right to freedom of expression; provide appropriate technical training and formulate and implement guidelines and manuals for action with regard to crimes against freedom of expression, including those that are specifically gender-related, for officials in charge of investigating and prosecuting such crimes, including police, prosecutors, and judges; and strengthen the Technical Agency for Criminal Investigation in the Office of the Public Prosecutor, providing it with sufficient human and financial resources and clearly defining its jurisdiction with respect to the investigation of crimes against freedom of expression. The State should ensure that all those responsible for killings, attacks, threats, and acts of intimidation motivated by the exercise of freedom of expression are judged by impartial and independent courts; remove any legal obstacles to the investigation and punishment of such crimes; ensure the broadest participation possible by victims and their family members in the investigations and judicial proceedings, as well as ensure them adequate reparation and eliminate gender barriers that stand in the way of access to justice; prepare and maintain accurate statistics on violence against journalists and the prosecution of such crimes; and generate reliable indicators on the various factors conducive to violent or criminal acts. Finally, in the context of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, the State should continue to work with international human rights organizations in the preparation and implementation of effective measures to end impunity for crimes against journalists and members of the media.



CHAPTER 3  
STATE'S RESPONSE



## STATE'S RESPONSE

### A. *State Strategies to Deal with the Violence*

216. In a context of great insecurity, where the national police has lost the confidence of the public due to a lack of effective response, allegations of corruption and links to organized crime, the State has focused its efforts on legal and institutional reforms, with the increased participation of the Armed Forces in functions that do not necessarily suit their natural role, relating, for example, to regular citizen security tasks. Various actors interviewed during the Commission's visit referred to the existence of a process of militarization to address insecurity and an "open fight against organized crime" without a clear process for strengthening the national police. In what follows, the Commission will point out some of the major measures adopted by the State in this area.
217. As the Commission already indicated, one of the central pillars of the State's response to the serious structural problems of violence, impunity, corruption, and organized crime in the country is the intervention of the Armed Forces in many different spheres and functions. The Army actively participates in citizen security responsibilities through specialized forces such as "military police," despite international standards indicating that citizen security should be the exclusive jurisdiction of a civilian police force, one that is respectful of human rights. The Armed Forces are also involved in matters related to the civic education and training of children at "social risk," through the "Guardians of the Nation" program.
218. From the previous government and continuing into the current government, which began in January 2014, a series of laws have been enacted regularizing the intervention of the Armed Forces in internal security tasks. On December 3, 2011, a decree interpreting Article 274 of the Constitution was approved, according to which the Armed Forces can perform specific functions of the police when a State of Emergency in Public Security is exceptionally declared through the issue of an Executive Order approved by the President of the Republic in Council of the Secretaries of State.<sup>311</sup> On December 5, 2011, the first exceptional state of emergency in national security was declared, and this was extended three times.<sup>312</sup>
219. In that same year, the National Defense and Security Council was created, with the participation of: the President of the Supreme Court; the Attorney General; the Secretary of State for Security; the Secretary of State for National Defense; and

<sup>311</sup> IACHR, Public Hearing, *Situation of the Democratic Rule of Law in Honduras*, 150th Ordinary Period of Sessions, March 25, 2014. Available at: [www.oas.org/en/iachr/](http://www.oas.org/en/iachr/)

<sup>312</sup> PCM-075-2011 of December 5, 2011 (90 days); PCM-009-2012 of April 19, 2012 (90 days); PCM-020-2012 of June 26, 2012 (90 days); and PCM-037-2012 of September 25, 2012 (180 days).

chaired by the President of the Republic, with the purpose of "guiding, designing, and overseeing general public policies" in the areas of security, national defense and intelligence, as well "harmonizing" actions to improve the performance of the entities involved.

220. April 2013 saw the creation of the National Bureau of Investigation and Intelligence, attached to the National Defense and Security Council, as an independent structure from other ministries and institutions, with the aim of collecting and providing accurate and confidential information to members of the executive, legislative and judicial powers before taking decisions in the area of the fight against crime. Civil society organizations expressed their concern to the IACHR about this Council due to the lack of control over the information gathered in view of the fact that its director - who reports directly to the President - has discretionary powers over its use.<sup>313</sup> Similarly, they also indicated that this structure diminishes transparency, credibility, and legal certainty vis-a-vis official public prosecutions since it may intermingle with criminal investigations, within the competence of the Public Ministry.<sup>314</sup>
221. Furthermore, in 2014, the Inter-Agency Security Force (FUSINA) was created, with a permanent presence in the 18 departments of the country with the "aim of reducing the incidence of violence".<sup>315</sup> The FUSINA objective "is to work and run police and military-style security operations aimed at achieving a strategic goal: achieving peace and security for the Honduran citizen."<sup>316</sup> FUSINA is composed of the National Police, the Armed Forces of Honduras, the Public Ministry, the Supreme Court of Justice and the National Bureau of Investigation and Intelligence (DNII).<sup>317</sup>
222. According to the State, since its inception, it has undertaken 27,153 saturation operations; 64,238 foot patrols; 117,278 mobile patrols; 198,045 fixed checkpoints; 55,025 mobile checkpoints and 455 raids. In addition, from January 28, 2014 to March 2015, 2,661 arrest warrants were executed; there were 57,010 preventive detentions for public order offenses; 3,079 people arrested for domestic violence; the capture of 943 criminal gangs amounting to 2,862 people

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<sup>313</sup> IACHR, Public Hearing, *Situation of the Democratic Rule of Law in Honduras*, 150th Ordinary Period of Sessions, March 25, 2014. Available at: [www.oas.org/en/iachr](http://www.oas.org/en/iachr).

<sup>314</sup> IACHR, Public Hearing, *Situation of the Democratic Rule of Law in Honduras*, 150th Ordinary Period of Sessions, March 25, 2014. Available at: [www.oas.org/en/iachr](http://www.oas.org/en/iachr).

<sup>315</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015; Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

<sup>316</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

<sup>317</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015; Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

arrested for various crimes and 7 captures of the most wanted by extradition request.<sup>318</sup>

223. In particular, the Commission notes that in recent years there has been an increase in military spending. World Bank figures show that from military spending of 1% of GDP in 2012, it rose to 1.3% for 2014.<sup>319</sup> Similarly, according to information received, members of the military occupy high government positions, such as in Civil Aviation, the Merchant Navy, Immigration and the telephone company.<sup>320</sup>
224. The next section examines the creation of the “TIGRES” Special Police Unit, the Law Enforcement Military Police, the role of the National Police, and the “Guardians of the Nation” program.

## 1. Creation of the Special Police Unit the ‘TIGRES’ and of the Law Enforcement Military Police

225. In this context, decree 103-2013 came into force on June 27, 2013, which created a special police unit known by its acronym TIGRES, which operates within an Inter-Institutional Security Strategy and Comprehensive Governmental Response to Special Security. Institutional Security Strategy and the TIGRES Unit have the following functions, among others: 1) strengthening institutional State action to combat insecurity through the development of interdisciplinary and focused policing; 2) ensuring the protection of persons and property; implementing resolutions, regulations, mandates and legal decisions; 3) ensuring the maintenance of public order, prevention, control, criminal investigation and prosecution, capture and prosecution of perpetrators and accomplices; performing preventive, permanently deterrent and sustained plans, as well as action plans focused on strategic points and sectors of urban or rural areas.<sup>321</sup>
226. Two months after the creation of the TIGRES, on August 23, 2013, the Congress created the Law Enforcement Military Police.<sup>322</sup> According to the State, this measure is indented to establish a security corps to confront the challenges to citizen security brought by organized crime and other threats to the general public, in an effective manner, while measures are taken to face the alleged discredit and deficiencies of the National Police. The abovementioned law’s preamble states that

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<sup>318</sup> Also, as an integral part of the security strategy of human rights, they have developed prevention programs, social development and attention to vulnerable groups in areas affected by organized crime. In January 2014, the Under-Secretariat for Security and Prevention was created, which is working on the development of a Public Policy for Prevention of Violence, in the context its strategic plan ‘Plan for All for a Better Life’, Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015.

<sup>319</sup> World Bank Indicators. Available at: <http://datos.bancomundial.org/indicador/MS.MIL.XPND.GD.ZS>

<sup>320</sup> La Prensa Newspaper, *Honduras goes backwards with militarization of public institutions*, December 3, 2014. Available at: <http://www.laprensa.hn/honduras/773467-410/honduras-retrocede-con-militarizaci%C3%B3n-de-instituciones-p%C3%ABablicas>.

<sup>321</sup> Decree 103-2013, Interagency Security Strategy and Comprehensive Governmental Response on Security (TIGRES).

<sup>322</sup> Law Enforcement Military Police Law, Decree No. 168-2013, published in the Gazette on August 24, 2013.



"the security crisis currently facing the country highlights the need for the creation of a military unit specializing in the up-front fight against organized crime and common crime which have evolved into more dangerous forms of operation, significantly altering the social peace and public order." Among the obligations of the Law Enforcement Military Police are:<sup>323</sup>

- Act quickly in circumstances of insecurity affecting public order constituting emergency situations and/or affecting people and property;
- Cooperate in the recovery of areas, neighborhoods, colonies and other human settlements and public spaces where organized crime pursues its criminal activities limiting free movement or putting the life or physical integrity of persons and their property in danger or altering in any way the public order;
- To capture and bring before the competent authorities the individuals associated with criminal organizations, or those who in any way disturb the public order, as well as present the evidence required for their due prosecution; and
- Perform research and intelligence tasks in the fight against organized crime activities and others granted to the National Police in the legislation.

227. The State informed the Commission that the short-term goal of the Military Police is to be incorporated as a force to respond to the needs and demands of public security and the restoration of order and security to the benefit of the population.<sup>324</sup> The medium-term goal is to become a force operating hand in hand with each of the justice operating institutions in order to consolidate efforts for the reduction and eventual eradication of crime. The long-term goal is to have more human and material resources in the service of the general population for safety and security functions; to provide an immediate response to situations of insecurity that violate public order affecting people and their property; to become a rapid response to situations of insecurity and riots in criminal and social rehabilitation centers nationwide.<sup>325</sup> In its response to the draft of this report, the State made reference to its statement before the United Nations Human Rights Council in May 2015, indicating that: "While the process of purging and strengthening the National Police is being completed, the Law Enforcement Military Police will carry out a temporary role in support of police efforts. We expect this process to be concluded in three years."<sup>326</sup>

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<sup>323</sup> Law Enforcement Military Police Law, Decree No. 168-2013, published in the Gazette on August 24, 2013.

<sup>324</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

<sup>325</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014, Request SSDH-093-2015 of March 24, 2015.

<sup>326</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

228. The Commission's attention is drawn to the breadth and the low level of legal specification of the functions of the military police; in particular the provision providing that the Military Police also have all those functions and actions which the President of the Republic may order.<sup>327</sup> The Commission also notes that according to the legal framework, the TIGRES unit and the Military Police have the permanent support of prosecutors and judges with national jurisdiction and experience in organized crime, which in principle should ensure that their actions are in accordance with the law. Indeed, Article 8 of the Law on Law Enforcement Military Police, creates the office of National Prosecutor, indicating the accompanying of these prosecutors with the military police as technical legal advisers in proceedings within this Law, in the fight against organized crime and common crime.
229. As to judges with national territorial jurisdiction, the Special Law on Courts with National Territorial Jurisdiction in Criminal Matters entered into effect in January 2011; its purpose is to "complement and strengthen efforts to fight organized crime groups, through the creation of Courts with National Territorial Jurisdiction and the regulation of their organization and operations."<sup>328</sup> According to the State, in order to free up the courts that hear cases involving ordinary crimes, the State established National Jurisdiction Judges, who handle crimes with greater social impact and those of a transnational nature.<sup>329</sup> These Courts with National Territorial Jurisdiction in Criminal Matters may hear cases involving crimes committed by organized crime groups and legal proceedings involving the final forfeiture of assets.<sup>330</sup> According to Article 18 of the decree, the Supreme Court shall appoint by consensus the judges and magistrates with national jurisdiction, through a "rigorous selection process, choosing irreproachable judges and magistrates who fit a profile based on merit."<sup>331</sup>
230. The Commission notes that prosecutors and judges with territorial jurisdiction or "national jurisdiction" are appointed by the National Security Council, a situation that calls their independence into question because the following personas

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<sup>327</sup> Subsection 5, of Article 7 of Decree 168 (supplemented by Decree 286 of 2013).

<sup>328</sup> Article 1. Special Law on Courts with National Territorial Jurisdiction in Criminal Matters, Decree Law 247-10, published in the Diario Oficial La Gaceta, January 15, 2011. Available at: <http://www.tsc.gob.hn/-leyes/Ley%20Especial%20de%20Organos%20Jurisdiccionales%20con%20Competencia%20Territorial%20Nacional%20en%20Materia%20Penal.pdf>. According to Article 2, an organized crime group is defined as a structured group with three or more members that has been in existence for some time and that acts in a concerted way to commit the following crimes: (a) Murder; (b) All crimes related to illegal drug trafficking regulated in the Law on Improper Use and Illicit Trafficking in Drugs and Psychotropic Substances; (c) Kidnapping; (d) Vehicle theft; (e) Money laundering; (f) Human trafficking; (g) Commercial sexual exploitation; (h) Terrorism; and (i) Forestry-related crimes.

<sup>329</sup> Government of Honduras. Information presented to the IACHR on December 4, 2014.

<sup>330</sup> Article 6. Special Law on Courts with National Territorial Jurisdiction in Criminal Matters, Decree Law 247-10, published in the Diario Oficial La Gaceta, January 15, 2011. Available at: <http://www.tsc.gob.hn/-leyes/Ley%20Especial%20de%20Organos%20Jurisdiccionales%20con%20Competencia%20Territorial%20Nacional%20en%20Materia%20Penal.pdf>.

<sup>331</sup> Article 18. Special Law on Courts with National Territorial Jurisdiction in Criminal Matters, Decree Law 247-10, published in the Diario Oficial La Gaceta, January 15, 2011. Available at: <http://www.tsc.gob.hn/-leyes/Ley%20Especial%20de%20Organos%20Jurisdiccionales%20con%20Competencia%20Territorial%20Nacional%20en%20Materia%20Penal.pdf>.

participate in this Council: the President of the Supreme Court of Justice; the Attorney General; the Secretary of State in the Office of National Security; the Secretary of State in the Office of National Defense and the President of the Republic, who presides it.<sup>332</sup>

231. To do that, they have to pass “trust tests” and be assigned by the relevant authorities through the National Defense and Security Council. According to statistics provided by the State, there are 275 cases under investigation by national jurisdiction prosecutors, in support of the Law Enforcement Military Police, in which there are reasonable indications that a crime has been committed and a prosecutor has ordered an investigation. Meanwhile, 291 cases are being prosecuted; in other words, a criminal action has been initiated and the judicial process continues, but the case has not reached the sentencing stage. The State also indicated that 35 cases have been finalized; that is, the judicial process has ended or been completed as a result of a court resolution that ends the process or imposes a sentence.<sup>333</sup> With regard to this point, the State indicated the following:

[...] the National Jurisdiction Prosecutor becomes part of a whole, determined by the group of institutions that make up the backbone of FUSINA, as an instrument or strategy to work as a team to combat crime. The role of the prosecutor transcends or goes beyond the Law Enforcement Military Police, and the prosecutor ends up being the legal technical adviser of all FUSINA institutions, besides being the one who in some cases initiates a criminal case where warranted or forwards the case to other already existing prosecutorial units specialized in specific issues, such as the Anti-Drug Trafficking Office or the Office of the Special Prosecutor against Organized Crime, among others.<sup>334</sup>

232. The Commission observes that despite such an important role taken on by these justice operators, the law does not specify that the judges and prosecutors in question are to be appointed through a transparent and objective selection process. Taken together with the lack of clarity regarding the qualifications needed for these justice operators to be appointed, in view of the information the Commission received during its visit and that laid out in previous paragraphs of this report, the concept of “national jurisdiction” prosecutors and justices is highly problematic.<sup>335</sup> There are various aspects related to their appointment, how their duties are regulated, and the possibility of penalizing them that open them up to possible interference on the part of other agencies or branches of the government, jeopardizing their ability to act independently.

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<sup>332</sup> IACHR, Public Hearing, *Situation of the Democratic Rule of Law in Honduras*, 150th Ordinary Period of Sessions, March 25, 2014. Available at: [www.oas.org/en/iachr](http://www.oas.org/en/iachr).

<sup>333</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the onsite visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>334</sup> Government of Honduras. Information provided by the State of Honduras to the IACHR following the onsite visit held December 1-5, 2014, Document SSDH-093-2015 of March 24, 2015.

<sup>335</sup> IACHR. *IACHR Wraps Up On-site Visit to Honduras*, Tegucigalpa, December 5, 2014. Annex to the Press Release with Preliminary Observations. Available at: [http://www.oas.org/en/iachr/media\\_center/-PRReleases/2014/146A.asp](http://www.oas.org/en/iachr/media_center/-PRReleases/2014/146A.asp).

233. First, as it has been stated in earlier paragraphs, the Commission notes that the appointment of this corps of prosecutors and judges is confirmed in a context in which a number of authorities jointly participate on the National Defense and Security Council. Specifically, they include the President of the Supreme Court; the Attorney General; the head of the Office of the Secretary of State for Security; the head of the Office of the Secretary of State for National Defense; and the President of the Republic, who presides for the purpose of “guiding, designing, and overseeing general public policies related to security, national defense, and intelligence” as well as “harmonizing” actions to improve the performance of the participating agencies. Throughout the Commission’s visit, this common purpose shared by the prosecutor’s office, judges, and members of the military was consistently identified by a number of organizations to be an aspect that affects the impartiality of these justice sector operators.<sup>336</sup>
234. Second, under the law creating the Law Enforcement Military Police, the teams of prosecutors and judges to “accompany” these police are appointed subject to vetting through trust tests administered by the National Bureau of Investigation and Intelligence, an agency whose director is appointed by the National Defense and Security Council, outside the judiciary and the Public Prosecutor’s Office.
235. Third, the applicable law indicates that these judges and prosecutors can hold hearings without having to specify their physical location; these can be done online or even from outside the country, as determined by the National Defense and Security Council, which makes the judges and prosecutors subordinate to that Council. The Commission received information concerning at least five cases before courts of national jurisdiction in which hearings were held in military facilities, an aspect that would affect the perception of impartiality in those trials.<sup>337</sup>
236. Fourth and finally, the Commission notes that the President of the Supreme Court and the Attorney General, who participate in and enter into agreements as part of the National Defense and Security Council, hold significant sway in disciplinary proceedings for judges and prosecutors. This situation creates the risk that these justice operators will guide their actions in accordance with agreements adopted by the National Defense and Security Council, out of fear that they will be subject to disciplinary proceedings if they do not do so.
237. To sum up, the Commission cautions that the involvement of the appointed judges and prosecutors in providing day-to-day support to the military police and the strategy of joint action on the part of the authorities who make up the Defense and Security Council and who share a common purpose means that there is always a degree of direct or indirect participation by authorities outside the Public

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<sup>336</sup> IACHR. *IACHR Wraps Up On-site Visit to Honduras*, Tegucigalpa, December 5, 2014. Annex to the Press Release with Preliminary Observations. Available at: [http://www.oas.org/en/iachr/media\\_center/Preleases/2014/146A.asp](http://www.oas.org/en/iachr/media_center/Preleases/2014/146A.asp).

<sup>337</sup> Asociación de Jueces por la Democracia (Association of Judges for Democracy, AJD). *Actualización de Información sobre Seguridad y Justicia en Honduras*. On-site Visit to Honduras, San Pedro Sula, December 3, 2014. See also: El Heraldo. *A prisión militares por muerte de dos hermanos en Tegucigalpa*, December 2, 2014; and La Prensa. *Apresan a exjefe que liberó a presunto narco hondureño*, December 11, 2013.

Prosecutor's Office and the judicial branch in procedures for the appointment or removal of justice operators or in the course of their employment. These outside authorities include the executive branch and, specifically, its Secretary for National Defense, who in fact represents the military police.

238. This strategy is concerning from a human rights perspective.<sup>338</sup> Basically because according to the law it is precisely these prosecutors and judges that besides accompanying the military police who are also exclusively entitled to institute criminal proceedings and hear cases of crimes committed by military police officers they accompany, respectively.<sup>339</sup>
239. The Commission expresses its concern given that these judges and prosecutors could lack sufficient guarantees of independence and impartiality to try cases involving human rights violations committed by members of the military police, creating a model of special justice with the characteristics of a special jurisdiction. This model also leads to a serious imbalance in the rights of those who are investigated and prosecuted, whose cases, as will be seen later in this report, can even be heard in military installations or facilities.
240. The Inter-American Commission reiterates its concern at the involvement of the armed forces in professional tasks, which, by their nature, should be reserved exclusively to the police.<sup>340</sup> On several occasions, the Commission has noted that, since the armed forces lack the proper training to control public safety, it falls to an efficient civil police force, which respects human rights to combat insecurity, crime and violence domestically.<sup>341</sup> The State, in its response to the draft of this report, indicated that "all the Armed Forces as well as all members of the Law Enforcement Military Police have been trained for the duties they perform; and the training of the Law Enforcement Military Police is carried out in a context of citizen protection and security (actions such as the proper use of force and firearms)."<sup>342</sup>
241. As the Commission stated in its report on Citizen Security, a public policy on citizen security, comprising an effective tool for Member States to properly fulfill their obligations to respect and guarantee human rights of all people living in its territory, must have an institutional framework and professional operating structure appropriate for those purposes<sup>343</sup>. The distinction between the duties falling to the armed forces, limited to the defense of national sovereignty, and those that fall to the police forces, as their exclusive responsibility for public safety, is the essential starting point that cannot be ignored in designing and implementing this public policy. The Court noted in this connection that "[...] States must restrict to the maximum extent the use of armed forces to control domestic

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<sup>338</sup> IACHR, *IACHR wraps up On-Site Visit to Honduras*, Tegucigalpa, 5 December 2014. Annex with Preliminary Observations. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/146.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/146.asp).

<sup>339</sup> Article 13.

<sup>340</sup> IACHR, *Annual Report 2013*, Ch. IV. B Honduras.

<sup>341</sup> IACHR, *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 100.

<sup>342</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>343</sup> IACHR, *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 109.

disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.”<sup>344</sup>

242. In the region it is frequently thought, or directly stated, that military troops take over internal security based on the argument of the increase in violence and violent offenses. The Commission has also referred to this point, stating that such arguments confirm the confusion between "the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the State".<sup>345</sup> This is because the role of the police is to enforce the law and to work with the citizenry to prevent and investigate threats to citizen security, while the role of the army is to fight the enemy. In this context, the role of the military police would seem to reinforce the overlap between duties that are not compatible.
243. In Honduras, the participation of the armed forces in internal security matters is not limited to territorial deployment, by implementing operational plans whose central objective is to increase the visibility of personnel by the techniques of preventive or deterrent patrols; rather, according to the rules creating the Military Police, participation is materialized in criminal investigations and intelligence activities.
244. Finally, the Commission reiterates that the issues involving citizen security should be in the exclusive competence of a duly organized and trained civilian police, in the terms identified above. On this point, the Commission shares the notion that "there is a requirement to be vigilant and prepared to overcome conflicts through peaceful means under the axiomatic perspective of citizen security, according to which the differences are between citizens to be protected, and not against enemies that must be fought".<sup>346</sup>
245. The Inter-American Commission considers that the management of this new Military Police must be governed by strict criteria of transparency of information

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<sup>344</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 78.

<sup>345</sup> IACHR. *Report on Citizen Security*, para. 103. IACHR, *Report on the Human Rights Situation in Mexico*, 1998, Chapter V, para. 403.

<sup>346</sup> Ramírez Ocampo, *Augusto Seguridad ciudadana and derechos humanos*, Andean Commission of Jurists, Lima, Peru, 1999. In the same vein, the United Nations High Commissioner for Human Rights, Louise Arbour, stated at the end of her visit to Mexico, on February 8, 2008: "(...) during my visit, I have seen and heard that the situation of human rights at the national level raises persistent concerns in a number of areas. Foremost amongst the issues brought to my attention has been the question of the use of the military to engage in law enforcement activities. I emphasize that it is the primary obligation of the State to protect and defend life and physical security. In a situation of serious challenges to the State's authority from heavily-armed organized criminals and severe deficiencies in law enforcement agencies, including widespread corruption, I acknowledge the dilemma faced by the authorities in discharging their responsibility to protect. However, recourse to the military remains problematic, as it is fundamentally unsuited – in training, philosophy, equipment and outlook - to perform civilian law enforcement functions. The focus must be on devoting urgently the necessary resources for reinforcing civilian agencies that work with integrity and professionalism. In the meantime, civilian courts should have jurisdiction over the acts of military personnel performing law enforcement functions, and effective remedies must be available for human rights violations perpetrated by military personnel". Available at [Http://www.hchr.org.mx/documentos/comunicados/-declaracionAltaComisionada8defebrero.pdf](http://www.hchr.org.mx/documentos/comunicados/-declaracionAltaComisionada8defebrero.pdf).

to the public. In this sense, it is essential that there is a genuine legal and institutional supervision of the legality of this security force's actions, and that any eventual human rights violations perpetrated in this context for which they are responsible are properly investigated and punished.

246. The Commission urges the State of Honduras to revise this law and make it compatible with the standards of independence and impartiality that ought to exist in the investigation and punishment of those responsible for human rights violations.

## 2. Role of the National Police

247. The Commission notes that the National Police has undergone a cleansing process since 2012, when Congress enacted the Police Purging Act, which declared a National Emergency Situation in Public Security "in order to implement an accelerated and reliable expedited purging process of the National Police [...]."<sup>347</sup> Through this law, the Director General of the National Police of Honduras was authorized to order the taking of evidence for trust assessment - polygraph and toxicological tests - and to evaluate the efficiency and performance of any member of the police profession.

248. According to information in the press, due to possible "ghost" payrolls that would not match with the real numbers of policemen in the country, a census on the number of policemen in Honduras was carried out. In May 2014, the police in Honduras amounted to 14,472 police on the payroll, of which only 8,406 policemen were allegedly included in the census.<sup>348</sup> That same year, the director of public prosecutors told the media that "reportedly we are talking about nine thousand people missing in the Police rosters, however we have information that the Secretariat of Security authorized two thousand placements be suspended, but we believe that vacancies are higher". This official added: "I do not know if I contributed the final piece of information or the journalists did - that's why they talk about a grand total of nine thousand - but you really have to verify your information. The information being given by the Secretariat of Security and the (DIECP) is different each month, and that they cannot consolidate their lists."<sup>349</sup> Despite this context of obscurity about the total number of police in Honduras, the State informed the Commission that the process of purging the National Police of Honduras has shown significant progress.<sup>350</sup> In particular, it stated that a total of 1,132 police officers had been removed from their duties for various reasons,

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<sup>347</sup> See Decree No. 89-12 published on May 25, 2012 in the Official Journal and Decree No. 202-12 published on December 22 2012 in the Official Journal, in which several articles of the Organic Law of the National Police of Honduras were reformed.

<sup>348</sup> Diario Proceso Digital, *How many Police are there in Honduras?*, August 20, 2013. Available at: <http://www.-proceso.hn/component/k2/item/16267.html>.

<sup>349</sup> Diario Proceso Digital, *How many Police are there in Honduras?*, August 20, 2013. Available at: <http://www.-proceso.hn/component/k2/item/16267.html>.

<sup>350</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015.

- including for abuse of authority, dereliction of official duty, illegal detentions and other reasons.<sup>351</sup> Also, 25 of those agents received final guilty convictions.
249. The State also pointed out the implementation of administrative control and monitoring mechanisms for human and material resources, including activities such as filing daily shift reports; the relocation of more than 1,665 agents, payroll checks ending with the completion of six censuses of all staff of the Secretariat of Security; the creation of a digital archive of the members of the National Police; Inspector General audits; controls on foot patrols or by vehicle via GPS, and control over operating costs through metered mileage.
250. Also as part of the process of transformation and modernization of the National Police, on January 28, 2014, the State indicated that the Department of Security established the Department of Human Rights in order to reduce violence and eradicate abuses of authority, and respond to national and international complaints of human rights violations. This Department is a specialized agency in the field that provides the necessary advice and in turn is responsible for planning, organizing, directing, executing, controlling and monitoring activities in the field of human rights by the higher authorities.<sup>352</sup>
251. The State also reported that in 2014 the Human Rights Department conducted human rights training programs for the National Police, benefiting 4,747 members. Also, in cooperation with the Secretariat of Human Rights, 1,470 members of the armed forces also benefited.<sup>353</sup> Unannounced inspections were also conducted on 107 police stations in the 18 departments of the country; there was success in the implementation, monitoring and follow-up of 3 provisional measures and 42 precautionary measures granted by the IACHR.<sup>354</sup>
252. In conclusion, the Commission appreciates the State's efforts to lower rates of violence in Honduras. Similarly, it also appreciates their efforts to combat drug trafficking and organized crime, which have begun to yield positive results during the last year, particularly in reducing the trafficking of drugs.<sup>355</sup> However, despite the steps taken to strengthen the National Civil Police, the Commission considers that such efforts should be intensified to ensure that the National Police fulfills its indispensable mission as quickly as possible for the proper functioning of the democratic system, for its key role in protecting the right to life, liberty and

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<sup>351</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015.

<sup>352</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015.

<sup>353</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015.

<sup>354</sup> Government of Honduras. Information presented by the State of Honduras to the IACHR subsequent to the on-site visit made between December 1 and 5, 2014. Request SSDHJ-090-2015 of March 20, 2015.

<sup>355</sup> <http://www.latribuna.hn/2015/05/28/james-nealon-reconoce-disminucion-de-trasiego-de-droga-en-honduras/>; <http://latino.foxnews.com/latino/espanol/2015/05/28/eeuu-destaca-disminucion-de-trafico-de-droga-en-honduras-y-reafirma-apoyo/>.



security of persons.<sup>356</sup> In this regard, the Commission noted, following the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, that Member States should take into account that the work of the police "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".

253. Meanwhile, the Commission continues to be concerned about the fact that in practice there is a type of duplication of functions between the Military Police and the National Civil Police, with no clear definition of what the activity areas are, including the geographical and operational areas, of each of these security forces. Nor is there sufficient clarity about the TIGRES coordination with other police units, their role in the investigations that are central to the fight against organized crime, and in the accountability processes for the actions of their agents.<sup>357</sup> This situation can have a negative effect on the human rights of citizens.
254. By virtue of the situation affecting the Honduran people with regard to public security, the Commission sees it necessary to reiterate to the State the recommendations made by the IACHR in its *Report on Citizen Security and Human Rights*.<sup>358</sup> The State has the duty to protect and guarantee human rights, and in this sense, the State must:
- Discharge their international obligations to protect and ensure the human rights at stake in citizen security by designing and implementing comprehensive public policies involving simultaneous performance of specific measures and strategic plans at the operational, normative, and preventive levels. These policies must be sustainable, which will necessitate the required political and social consensus. At the same time, evaluation and accountability systems will have to be in place to check these policies in a context of broader citizen participation;
  - Generate the institutional capacity within the public sector to carry out the measures included in the plans and programs associated with public policy on citizen security, while making available adequate human, technical, and economic resources. This means, *inter alia*, improving the process for selecting and training the personnel of the institutions involved in implementing the policy on citizen security (especially the police, the members of the judicial branch, the staff of the public prosecutor's office and those of the prison system) and earmarking the material resources needed to provide the public with quality service;

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<sup>356</sup> In this regard, it has state that "the police force is a fundamental institution to uphold the rule of law and to guarantee the security of the population. Given its nationwide coverage and the variety of its functions, it is one of the State institutions that most often has relations with the public." [IACHR. *Report on the Situation of Human Rights in Venezuela*, 2003, Chapter III, "State Security: Armed Forces and the Police Security Forces" para. 294]. Similarly, it stressed that a police force that is "honest, professional, prepared and efficient, is the basis for developing the trust of citizens" [IACHR. *Report on the Human Rights Situation in Mexico* 1998, Chapter V, para. 392]. Cited in: IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 100.

<sup>357</sup> IACHR, Public Hearing, *Situation of the Democratic Rule of Law in Honduras*, 150th Ordinary Period of Sessions, March 25, 2014. Available at: [www.oas.org/en/iachr](http://www.oas.org/en/iachr)

<sup>358</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 232.

- Adapt the domestic laws and State apparatus to ensure democratic governance of citizen security. The legitimate political authorities of the State will have to shoulder their responsibility for designing, executing and monitoring public policy on citizen security, with the support of multidisciplinary technical teams;
- Put into practice accountability systems and procedures that apply to all those authorities that have some role in the policy on citizen security. The procedures will use internal and external control mechanisms, thereby strengthening the institutions of democratic government, fostering transparency in the exercise of public office, and implementing measures to deal with impunity and corruption; and
- Ensure the special standards of protection needed for those persons or groups that are particularly vulnerable to violence and crime, such as children and adolescents, women, the indigenous population, Afro-descendants, migrants and their families, notwithstanding the obligations that the Member States have undertaken to protect and ensure the human rights at stake in the policy on citizen security to all persons subject to their jurisdiction.<sup>359</sup>

### 3. The "Guardians of the Nation" program

255. During the visit, the State presented the implementation of the "Guardians of the Nation" program, which consists of contributing to the training of children and youth at risk, with a preventive and educational work based on indicators that strengthen the body, mind and spirit for the benefit of society. The State indicated that it expected to benefit 10,135 children and youth in 2014.<sup>360</sup>
256. On this, on several occasions, representatives of civil society have expressed concern about this program, because it promotes a military culture by involving armed forces in civic and religious formation of children and adolescents in Honduras.<sup>361</sup> During the visit, the IACHR was informed that children were collected in communities by members of the armed forces, who carry their weapons, in army vehicles. In the designated places, children and adolescents do the activities and exercises, divided into groups with names of battalions. They stated that in some indigenous peoples, children would have no option but to join the program.
257. It is clear to the Inter-American Commission that the implementation of the Guardians of the Nation program, as an education initiative aimed at children and adolescents, is not a natural function of the army. The expansion of the scope of the

<sup>359</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 232.

<sup>360</sup> Government of Honduras. Note 949-DGPE-DPM-14 of 11 July 2014.

<sup>361</sup> Statement of Casa Alianza Honduras to "Guardians of the Nation" Program, 14 April 2014. Available at: <http://www.redlamyc.info/images/documentos/pronunciamientocasaalianzahondurasguardianesdelaPatria.pdf> (Spanish only); Global Movement for Children asked to review program "Guardians of the Nation", May 16, 2014. Available at: <https://presencia.unah.edu.hn/seguridad/articulo/movimiento-mundial-por-la-infancia-pide-revisar-programa-guardianes-d3e-la-patria> (Spanish only); Meeting with civil society on children's issues during the on-site visit to Honduras, December 4, 2014.

Armed Forces to the field of education and indoctrination of children and adolescents is another manifestation of this phenomenon of militarization of public spaces.

258. Under the powers conferred by Article 41 of the American Convention on Human Rights, on 20 June 2014 the IACHR had requested information from the State of Honduras on the program. During the visit, the State affirmed that through this program, the military only provide their facilities and coordinate with other entities, such as the Church and other volunteers, so that they provide civic and religious education to children and adolescents living in "social risk."<sup>362</sup> According to authorities, the program aims to contribute to the training of young people and reduce the risk of being involved with organized crime. Also, the Honduran government expressed its belief that this program will generate a culture of peace in a country "ruled by violence."<sup>363</sup>
259. The IACHR considers the State's legitimate interest in providing safe spaces for training children and adolescents. However, the role of the Armed Forces, which is the defense of the country against security threats coming from abroad, is incompatible with the coordination, supervision and implementation of programs of civic education for children. Furthermore, it is pertinent to note that the initiative is inserted in a context of militarization of various state functions, which correspond to other state entities. Therefore, trusting the Armed Forces with this initiative reflects the inadequacies of the state mechanisms responsible for training children, and exemplifies the great pending challenges to build and consolidate a system of comprehensive protection for the children and adolescents.
260. The IACHR notes that as reported, the program contents are appointed and directly influenced by the participation of the military and its implementation, held in military detachments, could involve particular risks to children. Also, children are overexposed to military attitudes. The Commission recommends that the State develop the necessary competences to provide opportunities and training for children most in need, through bodies specialized in the rights and needs of children, as another step in this process.
261. The Commission has also stated that the issues that have to do with citizen security are of the exclusive competence of civilian police forces, properly organized and trained. In this regard, the IACHR reiterates that given that the armed forces lack the proper training to control citizen security, it belongs to a civil police force, efficient and respectful of human rights, to combat insecurity, crime and violence internally.

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<sup>362</sup> Meeting with state authorities during the on-site visit to Honduras.

<sup>363</sup> Meeting with state authorities during the on-site visit to Honduras.

## **B. Violence and access to justice**

262. The effective observance of the rule of law is achieved, to a large extent, by ensuring an administration of justice that does not tolerate impunity. Society must perceive that the judicial branch applies the law equally and ensures all inhabitants the effective enjoyment of their rights. The Inter-American Commission has maintained that impunity is one of the serious problems related to the administration of justice in the hemisphere, and one of the obstacles to the definitive strengthening of the rule of law in a number of States of the region.
263. In Honduras, the IACHR notes with concern that the high rate of violence that persists in the country has been correlated with a high demand for justice, which has not been met with an effective response by the State and has created a situation of structural impunity. In this regard, the IACHR has made previous reference to the weaknesses in the administration of justice associated with high rates of violence and impunity in the country.<sup>364</sup> Figures made public in 2013 by then-Attorney General Luis Alberto Rubí indicated that 80% of the homicides committed in Honduras went unpunished because of the lack of capacity of the investigative bodies.<sup>365</sup> Civil society organizations interviewed believe that rates of ongoing impunity in Honduras range between 95 and 98%.<sup>366</sup>
264. The Commission received the testimony of Wilfredo Yáñez, whose son was killed in May 2012, allegedly by a military patrol, while he was riding his own motorcycle.<sup>367</sup> Even though a complaint was filed with the Public Prosecutor's Office because "I didn't want this to remain a statistic...,"<sup>368</sup> and despite the existence of witnesses and evidence, the case has not gone to trial. "It hasn't been easy to become one of the 3% of crimes that end up being tried in this country," he said.<sup>369</sup> The IACHR also received the testimony of Aurora Rodríguez de Pineda, whose son Carlos David was reportedly killed by eight police officers; more than three years after this occurred, there has not been justice. In the words of Mrs. Rodríguez:

I've been battling this for three years. My loved ones deserve justice. The right to justice is not guaranteed, and for the few of us who end up having 'access to justice,' they end up involving us in 'intrigues and manipulations,'

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<sup>364</sup> IACHR. *Annual Report 2013*, Chapter IV.B, Honduras.

<sup>365</sup> In 2013, as part of a process of accountability and measurement of outcomes in the judicial system, Attorney General Luis Alberto Rubí appeared before the National Congress and stated publicly that 80% of homicides committed in Honduras remained unpunished due to the lack of capacity of the investigative bodies.

<sup>366</sup> Meetings with civil society during the on-site visit.

<sup>367</sup> According to the account provided, the military patrol shot the son in the back when he did not heed a command to stop.

<sup>368</sup> Meeting with civil society organizations on children's issues, during the Commission's on-site visit to Honduras, December 4, 2014.

<sup>369</sup> Meeting with civil society organizations on children's issues, during the Commission's on-site visit to Honduras, December 4, 2014. In its response to the draft of this report, the State indicated that a conviction was obtained in the case, but that an appeal (*recurso de casación*) is still pending resolution. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

in addition to re-victimizing us.... The biggest problem in the investigations is the manipulation of evidence on the part of the Public Prosecutor's Office.<sup>370</sup>

265. Various civil society organizations told the Commission that the possibility of attaining justice is thwarted beginning with the first steps in the investigation. They pointed to the poor management of crime scenes, the failure to take key witness statements in a timely fashion, and irregularities in the handling of evidence, among other problems. In addition, the Commission was informed that there is a general state of “disorder,” in which actions are implemented, transfers and organizational changes made, commissions created, personnel removed, and special security taxes imposed, and even a new military police force established,<sup>371</sup> and that these have not solved the problems in investigations and access to justice.
266. In a country such as Honduras, where there is high turnover of personnel and duties, the State needs to invest in the permanent training of its personnel on their specific responsibilities depending on their role in the investigation of acts of violence. Honduras needs to strengthen its institutional capacity and its procedures designed to respond to violence, including assigning additional human and material resources to the Public Prosecutors' Offices and other bodies responsible for addressing and suppressing these violations of rights.
267. For some civil society organizations, the proliferation of institutions created with the authority to investigate crimes has led to confusion among the authorities themselves as to what their duties are, as there is apparently no coordination among them. Thus, for example, there is the National Bureau of Criminal Investigation (2008), whose purpose is to investigate ordinary crimes, identify those responsible, and provide the necessary elements for prosecution; at the same time, there is the National Bureau of Special Investigative Services (2008), whose purpose is to address matters related to the investigation of special crimes such as contraband, fraud, and tax evasion, among others. As it was pointed out, there is also the “TIGRES” Strategy (2013), whose duties include “safeguarding the public order [and] preventing and investigating crime...” or the Technical Agency for Criminal Investigation (ATIC) (2014), which investigates serious crimes with a significant social impact; this office is responsible for investigating the crimes specified in Article 184 of the Criminal Procedure Code, that is those that do not allow substitute measures to be imposed. Similarly, the ATIC has the powers that the Criminal Procedure Code assigns to the National Bureau of Criminal Investigation. There is also the military police; while this body has specific duties related to the investigation of organized crime, it also has the authority to carry out its own investigations, under orders from the National Defense and Security Council.

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<sup>370</sup> Meeting with civil society organizations on children's issues, during the Commission's on-site visit to Honduras, December 4, 2014. In its response to the draft of this report, the State reported that a conviction was obtained in the case, but that an appeal (*recurso de casación*) is still pending resolution. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>371</sup> Centro de Derechos de Mujeres. *Acceso a la justicia en casos de muertes violentas y femicidios*, December 2014.

268. A similar situation can apparently be seen in the Public Prosecutor's Office. Currently, the General Office of Public Prosecutors is divided as follows<sup>372</sup>: (a) Offices of Special Prosecutors—against Organized Crime; for Transparency and Combatting Public Corruption; for Human Rights; for Women; for Minors; for the Environment; for Consumer Protection and Senior Citizens; for Ethnic Groups and Cultural Heritage; for the Defense of the Constitution; for Appeals; for Civil Matters; for Prosecution of Officials and Civil Servants of the Public Prosecutor's Office; and for Crimes against Life; (b) Office of the Public Prosecutor for Common Crime; and (c) Offices of Regional Public Prosecutors.
269. Specifically, the Commission received information regarding the role of the Office of the Special Prosecutor for Crimes against Life, in which all investigations affecting the right to life in Honduras are apparently centralized, including investigations that require a specialization. For example, gender-motivated killings of women, which previously were investigated by the Office of the Special Prosecutor for Women, are now investigated by this Special Prosecutor's Office. According to some individuals interviewed, this separation of the investigation has not been accompanied by coordination between these two units, nor has there been a transfer of capacities, a situation which could affect the gender analysis in cases in which women are killed because of their gender.
270. This duplication of offices, and in some cases functions, can create confusion with regard to each entity's obligations, which in turn could have repercussions in terms of an effective and timely State response. The procedures for investigating, as well as the entity in charge, should be clearly defined and should not give rise to confusion. Thus it is essential for the State to adopt all necessary measures to ensure that all civil servants at the institutions involved in investigating a crime have specialized capacity, knowledge and experience, understand the procedures established for each type of crime, as well as the entities and authorities responsible and their obligations under the established rules.
271. The State informed the Commission that the Law on the Public Prosecutor's Office was amended to create the ATIC, so as to ensure effectiveness in the collection of evidence in the context of the law, to be able to substantiate a criminal accusation.<sup>373</sup> According to the State, in 2013 the Office of the Special Prosecutor for Human Rights received 1,141 complaints; issued 73 orders to prosecute; obtained 29 indictments, 17 convictions, and 8 acquittals; and proceeded with the administrative closure of 179 cases. As of December 2014, 367 complaints were reported; 12 orders to prosecute were issued; 7 cases were tried; 6 convictions were obtained, as well as 1 acquittal; and 432 cases were closed administratively.<sup>374</sup>
272. For its part, the Office of the Special Prosecutor for Crimes against Life received 2,379 complaints in 2013; 177 orders to prosecute were issued, 115 cases were

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<sup>372</sup> Information from the website of the Public Prosecutor's Office of Honduras.

<sup>373</sup> Government of Honduras. Information received on December 4, 2014.

<sup>374</sup> Government of Honduras. Information received on December 4, 2014.

tried, and 53 convictions and 22 acquittals were handed down. In 2104, the Office of the Special Prosecutor for Crimes against Life received 1,079 complaints, issued 294 orders to prosecute, and obtained 188 indictments, 106 convictions, and 32 acquittals. In addition, the Office of the Special Prosecutor against Corruption attended to a total of 829 complaints, issued 10 orders to prosecute, tried 11 cases, and obtained 13 convictions and 11 acquittals.<sup>375</sup>

273. For the Commission, impunity frustrates the expectations of justice for the direct victims of attacks and forces them to limit its situations and plans in the context of violence in which it is immersed. Both the Inter-American Commission and Court have condemned the impunity of violations of fundamental rights, as impunity facilitates the continuing repetition of human rights violations and the total defenselessness of victims and their families.<sup>376</sup> The adequate and effective administration of justice on the part of the judicial branch and, to an appropriate extent, of disciplinary entities, has a fundamental role not only in terms of reparations but also in terms of the lessening of the risk and the scope of violence.<sup>377</sup>
274. On another matter, the Commission noted that as of 2015, the human rights violations perpetrated during the coup d'état appears to remain in impunity. The authorities responsible for investigating, prosecuting, and punishing the human rights violations are said to continue to systematically deny the existence of the violations committed, which has resulted in inaction, tolerance, and even dismissal of any charges against those who carried out the coup and the aforementioned violations.<sup>378</sup>

### ***C. Access to justice and judicial independence***

275. Within the Inter-American system, the right of access to justice follows from articles 8 and 25 of the American Convention, which set out the state obligations necessary to ensure that any person can seek protection and justice for acts that violate his or her rights. From those state obligations follow certain guarantees that States must afford to the justice operators so as to ensure their independence; with that, the State fulfills its obligation to afford persons access to justice. The Inter-American Court has written that unlike other public officials, judges have

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<sup>375</sup> Government of Honduras. Information received on December 4, 2014. The State, in its response to the draft of this report, presented different statistics for 2014: 679 complaints, 40 orders to prosecute issued and 32 indictments obtained, 16 convictions, 8 acquittals, and 97 cases closed. The State reported that as of September 2015, 421 complaints had been received, 41 orders to prosecute issued, 18 indictments, 14 convictions, and 8 acquittals obtained, and 167 complaints closed. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>376</sup> IACHR. *Report on Citizen Security and Human Rights*, December 31, 2009, para. 36. Available at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf>.

<sup>377</sup> IACHR. *Report on Citizen Security and Human Rights*, December 31, 2009, para. 36. Available at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf>.

<sup>378</sup> IACHR. *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras*, May 15 to 18, 2010. Available at: <http://www.cidh.org/countryrep/Honduras10eng/IACHRPreliminaryObservationsHondurasVisitMay2010.pdf>.

certain guarantees due to the independence that the judicial power must have for the sake of those on trial or parties to litigation, which the Court has understood as “essential for the exercise of the judicial function.”<sup>379</sup> Those guarantees are a corollary of the right of access to justice that every person enjoys and, in the case of judges, are “reinforced guarantees” of tenure so as to thereby ensure the necessary independence of the Judicial Branch.<sup>380</sup>

276. The IACHR highlights that it is also important to have a system that contains mechanisms to ensure the professional responsibility of the judges and prosecutors, as well as the compliance of their duties. These mechanisms, according to the Inter-American Court “implies that the disciplinary proceedings and sentencing proceedings in cases involving judges must necessarily respect the guarantees of due process and shall offer those affected an effective remedy.”<sup>381</sup>
277. The Commission has closely followed the reconstruction of the democratic order in Honduras following the coup d'état and has observed that justice operators have faced a number of challenges over the course of these years so that they can administer justice independently. This in turn has affected the confidence of the Honduran population in the institutions of justice.
278. Despite the fact that in various meetings with the State, the Commission received information concerning measures adopted for the purpose of restoring the confidence of society in the institutions responsible for the administration of justice,<sup>382</sup> the Commission notes that key challenges remain. A number of these challenges stem from the legal framework provided by the State to regulate the administration of justice—for example, the concept of prosecutors and judges of “national jurisdiction,” already addressed in this report; judicial independence; and the situation of the Public Prosecutor's Office. In the next section, the Commission will focus on the following issues of greatest concern: judicial independence and the situation of the Public Prosecutor's Office.

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<sup>379</sup> IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*. OEA/Ser.L/V/II. Doc. 44. 5 December 2013, para. 24.

<sup>380</sup> IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*. OEA/Ser.L/V/II. Doc. 44. 5 December 2013, para. 24.

<sup>381</sup> I/A Court H.R., *Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 147.

<sup>382</sup> The State pointed to some measures to strengthen the judicial branch: In a qualitative follow-up of judicial cases with a social impact involving human rights violations, the Human Rights Department of the judiciary has identified 45 cases of possible violations of human rights. In addition, in order to facilitate access to justice, support has been given to the National Service for Judicial Facilitators, which currently has a staff of 864. The Office of the Inspector General of the Courts in 2013 received 821 complaints, 307 of which were found to have merit, with the respective disciplinary process begun; 394 were found to be without merit; and 120 are being investigated. Of the complaints investigated, 24 were sent to the Office of the Public Prosecutor because they appeared to constitute criminal acts. Meanwhile, in order to help reduce the judicial backlog, a “purging of case files” was carried out, and 12,298 files out of a total 40,660 reviewed were voided. In addition, the Center for Non-Formal Justice has resolved 267 reconciliations, provided 1,147 consultations, and benefited 9,818 men and 10,024 women. Government of Honduras. Information presented on December 4, 2014.



## 1. Judicial Independence

279. The principle of the independence of the Judiciary has been recognized as “international custom and general principle of law” and has been established in numerous international treaties. The independence of any body or organ that performs jurisdictional functions is a condition sine qua non for the observance of the standards of due process as a human right. The lack of such independence affects exercise of the right of access to justice and creates mistrust and even fear of the courts, which discourages those who would otherwise turn to the courts for justice.<sup>383</sup>
280. The Inter-American Commission has established that the guarantees necessary to ensure the correct and independent operation of the judicial branch include the mechanisms whereby judges are appointed, the stability they enjoy in their appointments, and their proper professional training. In addition, the courts must also be independent of the other branches of government—that is, free of all influence, threats, or interference, irrespective of their origin<sup>384</sup>. These guarantees do not mean that judges will not exercise their duties according to law and to an adequate accountability. It means that any questioning to their work cannot be motivated on other interests and that the applicable processes must respect due guarantees.
281. The Commission calls to mind that even though States may establish different procedures for the appointment of justice operators,<sup>385</sup> not just any procedure satisfies the conditions demanded by the American Convention for the adequate implementation of a truly independent regime.<sup>386</sup> Only an appointment process that is transparent, one that is based on objective criteria and guarantees the equality of opportunity for candidates, is a fundamental guarantee for judicial independence.<sup>387</sup> Thus States must publish in advance the vacancy announcements and procedures for applying, the qualifications required, the criteria, and the deadlines, so that any person who believes he or she meets the requirements can have the opportunity to apply for a post as a prosecutor, a judge, or a public defender.<sup>388</sup>
282. In Honduras, the Commission has identified some challenges in the design and structure of the Judiciary. In this section the IACHR will focus on aspects related to the functioning of the Council of the Judiciary, specifically with regard to selection

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<sup>383</sup> IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*. OEA/Ser.L/V/II. Doc. 44, 5 December 2013, para.30.

<sup>384</sup> IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, para. 185.

<sup>385</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 74.

<sup>386</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 74.

<sup>387</sup> IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II. Doc. 54, December 30, 2009, para. 187. Available at: <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf>.

<sup>388</sup> IACHR. *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2014, para. 79. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

and appointment procedures, the process of judicial purging, and the application of trust test. Also, in the framework of access to justice, it will address aspects related to the Public Prosecutor's Office.

### a. Council of the Judiciary

283. The Commission has consistently stressed the importance for due process to be observed in cases involving the punishment of judges, so as to ensure their independence and thus guarantee due process in the cases they try. Having learned, in June 2009, about the arbitrary dismissal from office of a number of magistrates and judges in the context of the coup d'état,<sup>389</sup> and in 2012 about the summary dismissal of four Supreme Court justices,<sup>390</sup> the Commission believes it is necessary to pay special attention to the results obtained by the Council of the Judiciary in conducting disciplinary proceedings of judges during the more than one year since it began operations.
284. The Council of the Judiciary was created in November 2011. The law creating it establishes that the Council's functions include appointing and removing magistrates on Courts of Appeals, judges, and other judicial and administrative personnel.<sup>391</sup> The members of the Council of the Judiciary were appointed in 2013, and since then that body has reportedly embarked on a purge of the Honduran judicial system which will continue for the next five years, as one of its members stated publicly.<sup>392</sup>
285. The Commission stresses, first of all, that the creation of the Council of the Judiciary is in principle an important step to differentiate the functions involved in imparting justice from those involved in managing and governing the judiciary.<sup>393</sup> The IACHR also observes that, unlike the previous system, the current legal framework does not obstruct the filing of appeals to challenge decisions, whether through an action seeking constitutional relief (*amparo*) or through a contentious-administrative proceeding. Nevertheless, throughout its visit the Commission noted with concern that a number of justice operators expressed to the IACHR their fear over the Council's lack of proper investigative proceedings, and over the

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<sup>389</sup> See Case 12.816, *Adán Guillermo López Lone et al.* Date of submission to the Court: March 17, 2014. Available at: <http://www.oas.org/en/iachr/decisions/cases.asp>.

<sup>390</sup> By way of background to this second event, the information available indicates that on November 27, 2012, the Constitutional Chamber ruled that Legislative Decree No. 89-2012, which contained the so-called "Police Purge Law," was unconstitutional. On December 12, 2012, the National Congress decided to remove the following Supreme Court justices from office: Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, Gustavo Enrique Bustillo Palma, and José Antonio Gutiérrez Navas. That same day, Congress appointed and swore in the new justices to serve on the Constitutional Chamber's bench. See IACHR, Annual Report 2013, Chapter IV(B).

<sup>391</sup> Legislative Decree 219-2011. Law on the National Council of the Judiciary. Available at: <http://www-tsc.gob.hn/biblioteca/index.php/leyes/280-ley-del-consejo-de-la-judicatura-y-la-carrera-judicial>.

<sup>392</sup> La Prensa, *Depuración del Poder Judicial de Honduras durará 5 años*, February 18, 2014.

<sup>393</sup> The National Council of the Judiciary was created on November 17, 2011, by means of Decree 219-2011, Law on the Council of the Judiciary. Available at: <http://www-tsc.gob.hn/biblioteca/index.php/leyes/280-ley-del-consejo-de-la-judicatura-y-la-carrera-judicial>.

possibility for its actions to be motivated by political interests without respecting the independence of judges.<sup>394</sup>

## **b. Selection and Appointment Procedures**

286. With regard to procedures for selecting and appointing judges, the IACHR was informed that in March 2014, the Council of the Judiciary had appointed 23 judges to substitute those who had been removed or suspended, but through a process that allegedly lacked transparency, as those named on an interim basis—pending the administration of trust tests—had reportedly gone through a “selective process” and had also been “promoted.”<sup>395</sup>
287. In fact, the report on the first year of the Council of the Judiciary and the Judicial Career Service specifies that in September 2013 an internal process was begun to select personnel from several cities in the country.<sup>396</sup> The report also indicates that 75 public servants in the judiciary participated and that the performance evaluation part was done by the members of the Council when in a selection process the evaluation should be done by a Selection Tribunal.<sup>397</sup> Moreover, a National Jurisdiction Judge on Anti-Tax Evasion was reportedly named without there being any information about a selection process for this post.
288. The Commission notes that while the creation of the Council of the Judiciary represents a positive aspect in the sense of having an autonomous, specialized agency that can take charge of the selection and appointment of judges, the information received raises concerns about whether in practice such procedures may not be carried out with transparency or may not ensure that candidates have access to public service in conditions of equality and based on merit.<sup>398</sup> In this regard, the Commission urges the State to ensure that such procedures meet international standards, not only in law but in practice.<sup>399</sup>

## **c. Process of Judicial Purgings and the Application of Trust Tests**

289. The Commission received information during the visit indicating that, beginning in November 2013, the Council had undertaken an intense “purgings” of the judiciary.

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<sup>394</sup> Radio Progreso. [Clima de intimidación genera proceso de depuración judicial](#), May 23, 2014. Meeting with civil society organizations during the on-site visit to Honduras. Meeting in Tegucigalpa.

<sup>395</sup> AJD. *Actualización de Información sobre Seguridad y Justicia en Honduras*. On-site Visit to Honduras, San Pedro Sula, December 3, 2014.

<sup>396</sup> Judiciary of Honduras. Council of the Judiciary and the Judicial Career Service. *Informe Primer Año. Rendición de Cuentas*. October 11, 2014, p. 8.

<sup>397</sup> According to the provisions of Article 33 of the Law on the Council of the Judiciary, “The selection process shall be conducted by a Selection Tribunal appointed by the Council for each job posting.”

<sup>398</sup> AJD. *Actualización de Información sobre Seguridad y Justicia en Honduras*. On-site Visit to Honduras, San Pedro Sula, December 3, 2014.

<sup>399</sup> IACHR. *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2014, paras. 56 and ff. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

Twenty-nine judges were removed, 28 were suspended, and 18 were suspended but have already served their punishment.<sup>400</sup> According to the information received, judicial aides had also been suspended and/or dismissed.<sup>401</sup> A number of the suspended judges reportedly filed *amparo* actions, and the IACHR was informed about four judgments granting *amparo* relief to the sanctioned judges.<sup>402</sup> Some judges expressed concern that some members of the bench who rule on these appeals could fear being subject to disciplinary proceedings. According to information in the news media, in 2014 some 161 judicial officials were suspended in Honduras.<sup>403</sup>

290. The IACHR appreciates the State's initiatives to strengthen and improve the various entities that participate in the administration of justice. However, it takes note of some objections to certain aspects of the methodology.
291. A number of civil society organizations reported that this purging got underway quickly, with no law in place establishing the grounds for discipline and the penalties to be applied, based solely on a circular issued by the members of the Council themselves.<sup>404</sup> This situation produced uncertainty and intimidation among judges. According to civil society, "the independence of judges has been weakened as a result of their fear at being sanctioned by the Council if their rulings turn out to be 'uncomfortable.'"<sup>405</sup>
292. Meanwhile, in February 2014 various articles of the Law on the Council of the Judiciary and the Judicial Career Service were amended, modifying and expanding the jurisdiction of the Council of the Judiciary. Among the changes is the authority to have "magistrates of Courts of Appeals, judges, officials, and administrative, judicial, and technical personnel from the judicial branch, generally or selectively take trust tests such as toxicological, psychometric, or psychological tests or polygraphs, studies and investigations of assets, performance evaluation, and compliance with legal terms...."<sup>406</sup>
293. The Association of Judges for Democracy (AJD) filed an *amparo* action against the implementation of trust tests such as polygraphs, arguing that these violate justice operators' right against self-incrimination, the right to psychological and moral

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<sup>400</sup> Judiciary of Honduras. Council of the Judiciary and the Judicial Career Service. *Informe Primer Año. Rendición de Cuentas*. October 11, 2014, p. 10. According to information received, a number of the judges who were suspended filed *amparo* actions. The IACHR was informed of four judgments granting *amparo* relief.

<sup>401</sup> IACHR, Public Hearing, *Situation of the Democratic Rule of Law in Honduras*, March 25, 2014.

<sup>402</sup> AJD. *Actualización de Información sobre Seguridad y Justicia en Honduras*. On-site Visit to Honduras, San Pedro Sula, December 3, 2014.

<sup>403</sup> El Heraldo. *Más de 100 suspendidos ha dejado depuración judicial de Honduras*. October 14, 2014.

<sup>404</sup> General Secretariat of the Council of the Judiciary and the Judicial Career Service. Circular No. 5. Document No. 216-SCJYCJ-2013. Available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Decretos-CircularesAcuerdosPoderJudicial/Documents/Circulares%20Diciembre%20de%202013.pdf>

<sup>405</sup> AJD. *Actualización de Información sobre Seguridad y Justicia en Honduras*. On-site Visit to Honduras, San Pedro Sula, December 3, 2014.

<sup>406</sup> Decree No. 291-2013. Amendments to the Law on the Council of the Judiciary and the Judicial Career Service, February 19, 2014. See Article 3. Available at: [http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Decreto%20291-2013%20Reforma%20a%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20y%20la%20Carrera%20Judicial%20\(4,2mb\).pdf](http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Decreto%20291-2013%20Reforma%20a%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20y%20la%20Carrera%20Judicial%20(4,2mb).pdf).

integrity, and the right to honor and recognition of dignity.<sup>407</sup> The Constitutional Chamber of the Supreme Court, in a judgment of December 9, 2014, denied the appeal, arguing that polygraph tests are taken voluntarily. It also indicated that if someone does not submit voluntarily, such a test is not binding for imposition of sanctions, but it is when taken in conjunction with other tests that must be analyzed.<sup>408</sup>

294. Along these lines, the Regulations to the Law on the Council of the Judiciary and Judicial Career Service were published in the *Gaceta Oficial* [Official Gazette] on September 17, 2014. The Regulations establish grounds for separation from employment and penalties. Chapter XII regulates the trust tests, which should be administered to all employees and officials of the judicial branch.<sup>409</sup> Its Article 81 establishes that in those cases in which officials or employees of the judicial career service do not submit to trust tests having been summoned to do so without just cause, they shall be removed from the judicial career service “with no institutional liability.”<sup>410</sup> This, in spite of the fact that the same article establishes that the failure to pass a polygraph and psychometric test shall not, in and of itself, be justified grounds for dismissal, nor for keeping someone out of the judicial career service.<sup>411</sup>
295. Even though the Constitutional Chamber of the Supreme Court determined that polygraphs are done on a voluntary basis, according to the provisions of the Regulations to the Law on the Council of the Judiciary and the Judicial Career Service, justice operators are “compelled to submit to this test, regardless of their nonconformity or disagreement with it.”<sup>412</sup>
296. It is of interest to the Commission that the aforementioned Regulations establish that trust tests “shall be done with the assistance” of the following institutions: the Office of the Inspector General of Judicial Agencies; Office of Forensic Medicine of the Public Prosecutor’s Office; the National Bureau of Investigation and

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<sup>407</sup> AJD. *Actualización de Información sobre Seguridad y Justicia en Honduras*. On-site Visit to Honduras, San Pedro Sula, December 3, 2014; AJD, CEJIL. *Aplicación de pruebas de polígrafo a operadores y operadoras de justicia en Honduras*, April 22, 2015. According to civil society organizations, despite the *amparo* actions filed, members of the National Council of the Judiciary and the Judicial Career Service submitted to trust tests to “set an example.”

<sup>408</sup> Supreme Court, Constitutional Chamber. AA 236-2014. Judgment of December 9, 2014.

<sup>409</sup> Regulations to the Law on the Council of the Judiciary and the Judicial Career Service. September 2, 2014. Published in *La Gaceta* on September 17, 2014. Article 79. Available at: [http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20\(8.70%20MB\).pdf](http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20(8.70%20MB).pdf).

<sup>410</sup> Regulations to the Law on the Council of the Judiciary and the Judicial Career Service. September 2, 2014. Published in *La Gaceta* on September 17, 2014. Article 81. Available at: [http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20\(8.70%20MB\).pdf](http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20(8.70%20MB).pdf).

<sup>411</sup> Regulations to the Law on the Council of the Judiciary and the Judicial Career Service. September 2, 2014. Published in *La Gaceta* on September 17, 2014. Article 81. Available at: [http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20\(8.70%20MB\).pdf](http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20(8.70%20MB).pdf).

<sup>412</sup> AJD, CEJIL. *Aplicación de pruebas de polígrafo a operadores y operadoras de justicia en Honduras*, April 22, 2015.

Intelligence; the National Commission on Banks and Insurance Companies; the Property Institute; the Superior Court of Accounts, and other agencies that may be required.<sup>413</sup> Specifically, it calls the attention of the Commission that institutions external to the organs of justice, including the National Bureau of Investigation and Intelligence – described in this Chapter - should have the authority to administer tests to judicial employees.<sup>414</sup>

297. According to information received from civil society, approximately 96 justice operators, including magistrates and judges, have had to take polygraphs. According to testimony obtained from these individuals, the “mere manner in which these tests are performed is an affront to the dignity of justice operators, as it generates anxiety and stress, and at times, moreover, some of the questions asked of them are particularly invasive, as they have to do with aspects of their private life.”<sup>415</sup>
298. The impact of the administration of the polygraph as an element of the trust tests is of concern to the Commission. According to some judges’ testimony, sometimes justice operators who must submit to polygraphs are not given the results, and the test becomes a factor of insecurity for judges in case they “do not behave themselves.”
299. According to civil society organizations, in light of the regulations an appeal was lodged challenging the application of disciplinary sanctions based on regulations and not on the law itself, in contravention of Article 317 of the Constitution, which establishes that judges and magistrates may not be separated, suspended, transferred, demoted, or retired except for cause and with the guarantees provided for under the Law.<sup>416</sup> As of the date this report was approved, this appeal was said to be pending.
300. Meanwhile, the Commission received information regarding other possible ways the work of justice operators comes under pressure. During the visit, a number of justice operators reported that prosecutors had used the criminal charge of “prevarication” to intimidate judges for issuing decisions against their interests. In fact, under Decree 56-2013,<sup>417</sup> the Code of Criminal Procedure was amended to establish mandatory pretrial detention as an assurance measure for a catalog of 21 crimes, among them the crime of “prevarication.” This means that the deprivation

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<sup>413</sup> This provision is in compliance with the General Law of Superintendence for the Application of Trust Assessment Tests, a supplemental law that applies to the tests administered to judicial employees. Regulations to the Law on the Council of the Judiciary and the Judicial Career Service. September 2, 2014. Published in La Gaceta on September 17, 2014. Article 80. Available at: [http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20\(8.70%20MB\).pdf](http://www.poderjudicial.gob.hn/-CEDIJ/Leyes/Documents/Acuerdo%20N.5%202014%20Reglamento%20de%20la%20Ley%20del%20Consejo%20de%20la%20Judicatura%20(8.70%20MB).pdf).

<sup>414</sup> According to information received, on March 9, 2015, the AJD filed an *amparo* action challenging the decision to administer the polygraph test. The appeal was admitted but the challenged practice has reportedly not been suspended.

<sup>415</sup> *Aplicación de pruebas de polígrafo a operadores y operadoras de justicia en Honduras*. Document presented to the by CEJIL and the Asociación de Jueces por la Democracia on April 22, 2015.

<sup>416</sup> Article 317 of the Constitution of Honduras.

<sup>417</sup> This decree, dated April 25, 2013, entered into force on May 17, 2013.

of liberty of someone accused of committing one of these crimes will depend solely on the classification of the crime made by the prosecutor's office. The Commission notes with concern that several judges expressed their fear of being the target of this type of criminal prosecution.<sup>418</sup>

301. During the visit, the Commission also heard concerns regarding threats made to frame judges through sham disciplinary proceedings, for the purpose of frightening them and manipulating their decisions. As an example of this, a trial attorney in San Pedro Sula said that when he told a judge that he was going to present a psychiatric expert to seek changes to the pretrial detention regime being requested by the Public Prosecutor's Office, the judge answered, "Let me be clear. As a criminal court judge, if I dismiss the case against that girl, I'll be fired the next day."
302. In light of these findings, the Commission observes with concern that justice operators are apparently still being separated from their posts without observance of the due process guarantees that States are called on to observe in proceedings to impose punishment. In fact, the Commission notes that through the purging process, justice operators reportedly find themselves the target of reprisals or intimidation as a result of the decisions they make in the cases before them.
303. The Commission reiterates that justice operators have "reinforced guarantees" of tenure so as to ensure that they are able to act independently. These guarantees mean that justice operators should not be subject to removal as a result of lawful decisions they make in the course of their work. The State must ensure adherence to the law in procedures meant to sanction them, but must also ensure that justice operators can be penalized only after a procedure in which the guarantees of due process are provided and they have had recourse against any possible violations of their rights.
304. The Commission urges the State to ensure that "purges" and the application of the criminal charge of "prevarication" are not used as an instrument of reprisal against justice operators for acting independently. It also calls to mind that, in accordance with international law, the grounds for any sanctions imposed on justice operators "should never be the legal judgment developed in a decision."<sup>419</sup>

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<sup>418</sup> The IACHR was informed that Decree 56-2013 had been challenged on grounds of unconstitutionality through an appeal filed by the AJD on May 27, 2014. As of the date of this report, this appeal had not been resolved.

<sup>419</sup> IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 376. Along these same lines, see the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the report of activities of the African Commission at the Second Summit and Meeting of Heads of State of the African Union, held in Maputo July 4-12, 2003, Principle A (4)(n). The Commission calls to mind that even in cases in which there may be an inexcusable judicial error, the disciplinary authority has an irrevocable duty to provide grounds for the seriousness of the conduct and the proportionality of the penalty, so as to ensure that a serious sanction can be imposed only when the competent authority has properly established that the justice operator's suitability for the job has been compromised. See Inter-American Court. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 90.

## D. *Public Prosecutor's Office*

305. With regard to the Public Prosecutor's Office, the IACHR received information regarding the recent reform of the Law on the Public Prosecutor's Office, which gives the Attorney General's Office the authority to rotate prosecutors without their having the right to file an appeal challenging these decisions.<sup>420</sup> As a result, rotations are reportedly being used as a means to intimidate prosecutors. These reforms also establish expressly that prosecutors may not give public statements concerning cases they are handling. On this point, despite the principle of secrecy of investigations that already exists in the Criminal Procedure Code, for some justice operators the Commission interviewed, this legislative change sends a message of intimidation in the work done by prosecutors, who now do not know whether or not they should publicly denounce human rights violations—including those directed against them—for fear of being penalized and losing their jobs. The IACHR recognizes that, in principle, these objectives aim to combat impunity. However, according to the information it has received, some of these reforms would seem to go beyond the desired objective, and while they may well constitute legitimate aims, they could also be applied arbitrarily.
306. Moreover, during the visit the Commission was informed that on April 17, 2013, an Intervening Commission was named because of existing complaints of alleged illegal enrichment by some prosecutors. As of December 2014, these complaints had not led to an assertion of responsibility. The State indicated that the Office of the Special Prosecutor for Prosecution of Officials and Civil Servants of the Public Prosecutor's Office has tried 12 cases against prosecutorial officials who have been implicated in irregular activities.<sup>421</sup> According to information received by some justice operators, the establishment of the Intervening Commission has resulted in prosecutors being placed and removed without due process and those with a specialization not being assigned to the appropriate Special Prosecutor's Office. In addition, competitions are reportedly not being held for promotions, in contravention of the prosecutorial career service and the Law on the Public Prosecutor's Office. It is important to note that justice operators from the Public Prosecutor's Office have also had to submit to trust tests.
307. The IACHR calls to mind that given the essential role the Public Prosecutor's Office plays in moving criminal investigations forward, the independence, impartiality, and suitability of its officials must be guaranteed to ensure that their work is effective and to help eliminate the factors of impunity in cases involving human rights violations.<sup>422</sup> International law has underscored how important it is that investigations and, on a broader level, any activities associated with the

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<sup>420</sup> Article 24 of Decree 110-2014. The State, in its response to the draft of this report, indicated that paragraph 23 of Article 24 of Decree 110-2014 does not deny a prosecutor the right to file an appeal of the Attorney General's decisions in cases involving internal movement or rotation. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>421</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit. *Informe Final de la Visita*, December 4, 2015.

<sup>422</sup> IACHR. *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. Available at: <http://cidh.org/pdf%20files/BOLIVIA.07.ENG.pdf>.



prosecution of crime, be independent and impartial so that crime victims are assured access to justice. The Inter-American Court has emphasized that investigations into human rights violations must be immediate and thorough, but they must be independent and impartial as well. The United Nations Special Rapporteur has stressed how important it is that prosecutors are able to conduct their own functions independently, autonomously, and impartially.<sup>423</sup> The IACHR emphasizes that the lack of institutional autonomy can erode the credibility of the prosecutorial authority and undermine public confidence in the justice system.<sup>424</sup>

308. In this regard, the Commission cautions with great concern that the appointment of prosecutors by the Intervening Commission without clear and transparent parameters may mean that those selected are not suitable or do not have the necessary capacity to carry out their work independently. Moreover, the lack of due process for the removal of prosecutors by the Intervening Commission may not only violate the rights of the civil servants involved, but may also lead to a situation in which they are unable to defend themselves against that body's decisions. This lack of job security jeopardizes prosecutors' independence as a result of their fear of being removed from their positions in reprisal for their actions. In this regard, the IACHR urges the State to guarantee that prosecutors are selected and appointed based on applicable standards of international law<sup>425</sup> and that they are not targeted for separation from their jobs without a process that offers them due process guarantees and the opportunity to have recourse for protecting their rights in the case of violations that could be committed against them in such procedures. Along these lines, the IACHR urges the State to revise the reforms to the Law on the Public Prosecutor's Office in accordance with applicable international human rights standards, in particular with respect to the independence, impartiality, and suitability of the work of prosecutors and with respect to the right to a fair trial and to judicial protection.

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<sup>423</sup> IACHR. *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2014, para. 36. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

<sup>424</sup> IACHR. *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2014, para. 44. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

<sup>425</sup> IACHR. *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2014, para. 56 and ff. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

CHAPTER 4  
NATIONAL INSTITUTIONS —  
STRENGTHS AND WEAKNESSES



## NATIONAL INSTITUTIONS — STRENGTHS AND WEAKNESSES

309. In this section, the IACHR analyzes the response of Honduras to violence through its various institutions. The information provided in this section is essential to enable the Commission to assess, from a human rights perspective, the progress and challenges faced by the State in its efforts to address the human rights situation in the country.

### A. *Positive aspects*

310. The IACHR emphasizes the openness of the State of Honduras to international scrutiny. Special Rapporteurs of the United Nations and the Inter-American System have visited Honduras and have had great receptivity from the Honduran government.<sup>426</sup> Likewise, most notably, the IACHR welcomes the Government's decision to invite a greater presence in the country of the Office of the High Commissioner for Human Rights of the United Nations. The Headquarters agreement was signed on May 4, 2015.<sup>427</sup> In addition, the IACHR notes that the

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<sup>426</sup> The State referred to the following visits: From the 7 to 14 February 2012 visit of the Special Rapporteur of the United Nations on the Situation of Human Rights Defenders, Margaret Sekaggya; from 23 to 27 April 2012 the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights (IACHR); on August 2, 2013 the IACHR presented the report on the situation of Persons Deprived of Liberty in Honduras; from August 30 to September 7, 2012, Najat Maalla M'jid Special Rapporteur of the United Nations on the sale of children, child prostitution and child pornography visited Honduras; from 21 to 25 April 2014 the Special Rapporteur of the United Nations on the sale of children, child prostitution and child pornography Najat Maalla M'jid visited Honduras again in order to assess the progress since her first visit to the country in 2012, and follow up on her recommendations; from August 7 to 14, 2012, the Rapporteur of the United Nations for the promotion and protection of the right to freedom of opinion and expression Frank La Rue made an official visit in order to observe and investigate the situation of the right to freedom of expression in the Republic of Honduras; from 14 to 16 October 2013 the Special Rapporteur on the rights of the child of the Inter-American Commission on Human Rights (CIDH), Rosa María Ortiz, visited Honduras to be informed on violence against boys and girls; from 18 to 23 February 2013 visit of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; between 14 and 18 May 2013, the Rapporteur for Honduras, Commissioner Tracy Robinson, and the Executive Secretary, Emilio Alvarez Icaza Longoria, visited Honduras as part of their participation as speakers at the Third Assembly of the Latin American and Caribbean Network for Democracy (REDLAD). Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>427</sup> Diario La Prensa, Con oficina del Alto Comisionado vigilarán los derechos humanos, April 15, 2015. Available at: <http://www.laprensa.hn/honduras/831417-410/con-oficina-del-alto-comisionado-vigilar%C3%A1n-los-derechos-humanos> (Spanish only); Diario el Heraldo, Oficina del Alto Comisionado de Derechos Humanos abre el lunes, May 3, 2015. Available at: <http://www.elheraldo.hn/pais/836377-214/oficina-del-alto-comisionado-inicia-functions>.

Secretariat of Human Rights, Justice, Interior, and Decentralization has demonstrated the capacity for effective coordination among institutions.

311. In this context, the IACHR welcomes the recent call by the Government of Honduras to a National Dialogue to address the discontent of Honduran society expressed in demonstrations across the country against various acts of corruption, among which was a millionaire embezzlement of the Honduran Institute of Social Security (IHSS) with the alleged participation of about 400 people. To this end, the President proposed the creation of a Honduran Integral System to Combat Corruption and Impunity.<sup>428</sup> In public statements, the President of the Republic said that such a comprehensive system would have five components:<sup>429</sup>

- **First:** A UNIT FOR THE SUPERVISION OF AND SUPPORT TO THE PUBLIC MINISTRY AGAINST CORRUPTION AND IMPUNITY, which would consist of prestigious Honduran and international prosecutors with proven expertise for technical and scientific support.
- **Second:** A UNIT FOR THE SUPERVISION OF AND SUPPORT TO THE JUDICIARY COUNCIL AND THE MONITORING OF COURTS AGAINST CORRUPTION AND IMPUNITY, composed of Honduran jurists and international judges of recognized standing and proven expertise for technical and scientific support.
- **Third:** A SPECIAL UNIT FOR THE SAFETY OF JUDGES, PROSECUTORS, THEIR FAMILIES AND FACILITIES, under the responsibility of the National Council of Defense and Security.
- **Fourth:** AN OBSERVATORY OF THE JUSTICE SYSTEM, composed of academic organizations and civil society guided by a matrix of permanent evaluation of the justice system; and
- **Fifth:** A SYSTEM OF BUSINESS INTEGRITY governed by the internationally accepted principles of transparency and integrity and with the appropriate legal framework for its implementation.

312. In this context, the President of Honduras invited the Organization of American States (OAS) and the United Nations to facilitate the National Dialogue. The OAS accepted to participate in this initiative<sup>430</sup> and designated a Chilean diplomat John Henry Biehl Del Río as its facilitator.<sup>431</sup> Amb. Biehl visited the country on two occasions, first in August<sup>432</sup> and then in September<sup>433</sup> of 2015. In those visits, Amb.

<sup>428</sup> Government of the Republic, General Secretariat of Government Coordination, Honduran President Proposes Creation of Integral System Against Impunity and Corruption, June 24, 2015.

<sup>429</sup> Government of the Republic, General Secretariat of Government Coordination, Honduran President Proposes Creation of Integral System Against Impunity and Corruption, June 24, 2015.

<sup>430</sup> The terms of the collaboration were agreed in Washington, DC, by the Secretary General of the OAS, Luis Almagro, the Foreign Minister of Honduras, Arturo Corrales, and the Under-Secretary-General for Political Affairs of the United Nations, Jeffrey Feltman. OAS. *Press Release E-203/15 - Honduras: OAS and UN to Facilitate National Dialogue on Corruption and Impunity*. June 29, 2015. Available at: [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-203/15](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-203/15).

<sup>431</sup> OAS. *Press Release E-210/15 – OAS Secretary General Supports Process of National Dialogue in Honduras with Designation of Special Representative*. July 28, 2015. Available at: [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-210/15](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-210/15).

<sup>432</sup> OAS. *Press Release AVI-143/15 - OAS Secretary General to Attend the Beginning of the National Dialogue against Impunity*. August 7, 2015 Available at: [http://www.oas.org/en/media\\_center/press\\_release-asp?sCodigo=AVI-143/15](http://www.oas.org/en/media_center/press_release-asp?sCodigo=AVI-143/15).

Biehl met with representatives of the national government, as well as with different social and political sectors of the country.<sup>434</sup> As a result of those visits, he proposed the Honduran government a number of strategic lines of action in order to establish an integral mechanism of fight against corruption and impunity. Likewise, he suggested to accompany and provide advice on a reform of the Honduran justice system, in order to guarantee its complete independence, as well as its transparency and professional competence.<sup>435</sup>

313. After these first two visits, on September 28, 2015, the President of Honduras sent a letter in which he requested the OAS Secretary General, Luis Almagro Lemes, to present a proposal to fight corruption and impunity.<sup>436</sup> In response, on September 28, 2015, the Secretary General officially announced the creation of the Mission to Support the Fight Against Corruption and Impunity in Honduras (MACCIH), in order to “improve the quality of services provided by the justice system in Honduras, and for said purpose it will work jointly with State institutions and civil society.”<sup>437</sup> MACCIH will be coordinated under the supervision of the Secretariat for Political Affairs. The following objectives were established:

*Official objectives:*

- Contribute to compliance with the country’s international human rights commitments, in accordance with inter-American instruments.
  - Support, strengthen and contribute to the institutions of the State of Honduras responsible for preventing, investigating and sanctioning acts of corruption.
  - Improve the coordination between different institutions of the State that work on this issue.
  - Propose reforms to the Honduran system of justice.
  - Strengthen the mechanism of accountability from the civil society.
314. The IACHR also highlights the Cooperation Agreement for the Promotion of Transparency, Combating Corruption and Strengthening National Integrity Systems, signed between the Government of Honduras and Transparency International on 6 October 2014. The agreement’s main goal is to encourage and

<sup>433</sup> OAS. Press Release AVI-160/15 - *Diálogo Nacional Honduras: Facilitador de la OEA John Biehl viaja a continuar diálogo con actores políticos*. September 4, 2015. Available at: [http://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=AVI-160/15](http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=AVI-160/15).

<sup>434</sup> OAS. Press Release E-219/15 - *Honduras-National Dialogue: OAS Optimistic After Listening to All Sides*. August 14, 2015. Available at: [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-219/15](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-219/15).

<sup>435</sup> OAS. Press Release E-234/15 - *International Judges, with OAS Support, to Supervise Judicial Reform in Honduras to Avoid Impunity*. September 16, 2015. Available at: [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-234/15](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-234/15).

<sup>436</sup> OAS. Press Release E-303/15 - *OAS Secretary General Announces Initiative to Combat Corruption and Impunity in Honduras*. September 28, 2015. Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-303/15](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-303/15).

<sup>437</sup> OAS. Press Release E-303/15 - *OAS Secretary General Announces Initiative to Combat Corruption and Impunity in Honduras*. September 28, 2015. Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-303/15](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-303/15).

promote transparency, accountability and tackle corruption in all state institutions.<sup>438</sup>

315. The Commission also recognizes as a positive development the Public Policy and National Plan of Action on Human Rights that are being implemented.<sup>439</sup> According to the State, through this policy, product of an extensive process of national and regional consultations, it seeks to integrate a human rights perspective in all actions of the State of Honduras.<sup>440</sup> In this sense, on April 22, 2014 was signed by the Council of Ministers, the Inter-Institutional Agreement for the Implementation of the Public Policy and National Plan of Action on Human Rights (National Plan) in order to be applied on the agenda of each Secretariat of State. This way, according to the State, institutional foundations are laid to ensure continuity of the implementation process in future administrations placing the individual as the center of government activity.<sup>441</sup> The State indicated that in compliance with the Convention, each institution appointed two liaison officers that were trained in the implementation of the action points contained in the National Plan in the Annual Operating Plans (POAs) of each institution, incorporating 260 action points in those POAs.
316. The State also indicated that the Special Response Group on Human Rights was formed as an inter-institutional space integrated by governmental and nongovernmental institutions. The Group aims to create a permanent link in these institutions so they can provide accurate, reliable and timely information that constitutes the basis for the preparation of country reports, in compliance with the human rights commitments made by the State of Honduras.<sup>442</sup>
317. Regarding the commitment to advance in the compliance with the recommendations of the Report of the Truth Commission, during the Universal Periodic Review in 2015, the State indicated that 69 of the 84 recommendations were met or in the process of compliance (37 fulfilled recommendations and 32 in process of fulfillment), which amounts to 82.6%.<sup>443</sup> The State indicated that some institutions have given priority in their operational budgets and plans for 2015 to

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<sup>438</sup> Government of Honduras, President of the Republic, government is the first in the world to sign an agreement with Transparency International to combat corruption, October 6, 2014. Available at: <http://www.presidencia.gob.hn/?p=3388> (Spanish only).

<sup>439</sup> This policy was adopted on January 22, 2013 through Executive Decree PCM-003-2013. Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>440</sup> Government of Honduras. Information submitted by the State of Honduras to the Commission after the on-site visit undertaken from 1 to 5 December 2014. Communication SSDHJ-090-2015 of March 20, 2015.

<sup>441</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>442</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>443</sup> Government of Honduras. National report submitted in accordance with paragraph 5 of the annex to resolution 16/21 of the Human Rights Council, Honduras, February 9, 2015. Available at: [http://www.upr-info.org/sites/default/files/document/honduras/session\\_22mai2015/a\\_hrc\\_wg.6\\_22hnd\\_1\\_en.pdf](http://www.upr-info.org/sites/default/files/document/honduras/session_22mai2015/a_hrc_wg.6_22hnd_1_en.pdf); See also: Second Report to follow up the recommendations of the Commission of Truth and Reconciliation, December 2013. Available (in Spanish) at: <http://www.sdhjgd.gob.hn/biblioteca-virtual/informes-recomen-daciones-y-documentos-de-la-uscvr/24-segundo-informe-de-seguimiento-a-las-recomendaciones-de-la-cvr/file>.

some action points in the Public Policy and National Plan of Action on Human Rights in conformity with those recommendations.<sup>444</sup> The Commission welcomes the progress, and in order to fully comply with the recommendations of the Report of the Truth Commission, the IACHR recommends reinstalling a follow-up committee to implement the recommendations, as well as to develop jointly with civil society a roadmap regarding compliance of outstanding recommendations.

318. The IACHR also recognizes as a positive development the adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators, unanimously approved by the National Congress on April 15, 2015 in the third and final debate.<sup>445</sup> Later in this section, the IACHR analyzes the content of this Law, its achievements and challenges. The IACHR calls on the State to implement this law as soon as possible.
319. Regarding the situation of detainees, at the level of the regulatory framework, the Commission notes that the new General Regulation of the Law of the National Prison Institute was adopted, through the Executive Agreement No. 322- 2014, enacted by the Executive Power on December 2, 2014, and published in the Official Gazette on 12 March 2015. Also drafted and approved this year were the Special Rules on Prison Service Career and the Disciplinary Rules for Persons Deprived of Liberty, of the National Prison Institute (INP).<sup>446</sup> Both are reportedly pending publication.<sup>447</sup> In its response to the draft of this report, the State also noted that the National Prison Policy was also drafted with support from the United Nations Development Programme (UNDP). According to the State, this policy “includes a change from a system focused on punishment through deprivation of liberty to a new prison model geared toward the person’s reintegration, restorative justice, and prevention of violence. This approach also includes prison employees, who carry out their duties in very difficult conditions, and of course the human rights of victims and of all of society in general.”<sup>448</sup> The State also reported that in January 2015 the INP Unit for the Protection of Human Rights began functioning as its own unit within the institution. One of this entity’s primary responsibilities, among others, is to conduct routine “in situ” inspections in prison facilities and pretrial detention centers throughout the country to verify the treatment and living conditions of persons deprived of liberty in the custody of the State. To that end it

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<sup>444</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>445</sup> National Congress of Honduras. Decree No. 34-2015. Law and protection for human rights defenders, journalists, media and judicial officers (spanish only). The project had been submitted by the Executive Branch on May 28, 2014 before the National Congress. In early June 2014, Congress had passed the first debate. On August 6, 2014, Congress had approved on second debate the law.

<sup>446</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>447</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>448</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.



will make appropriate recommendations to the authorities of the INP National Board.<sup>449</sup>

320. The meals budget was also increased to 30 Lempiras (equivalent to US\$1.37) per day per inmate for the 16,000 people deprived of liberty throughout the country in the last quarter of 2014, establishing a nationwide meals budget of HNL 158,775,000.00. (The equivalent of US\$7,292,669.91).<sup>450</sup> This represents an improvement over previous budgets. In fact, between 2009 and 2014, the budget set by the State for food was 13 Lempiras per day per inmate (equivalent to US\$0.60), which the State itself said “resulted in the preparation of food lacking in the proteins and vitamins needed for a balanced diet.”<sup>451</sup> In its response to the draft of the report, the State also indicated that in 2015 the total food budget was 172,260,000 Lempiras (equivalent to approximately US\$7,656,000).<sup>452</sup> In this regard, the Commission takes note of this development and urges the State to take appropriate measures increase the budget allocation.
321. In addition, the establishment of a prison school or academy was reported, which would aim at institutionalizing the training of agents that would gradually work in the prison system. As part of this initiative, cooperation agreements with the Honduran Red Cross and the Vocational Training Institute (INFOP) were signed. According to information submitted by the State, by December 2014 350 penitentiary officers had been trained. In this regard, the Commission evaluated as positive the fact that Honduras had taken the step to create an institution dedicated to the training of penitentiary staff; and hopes to receive in the future more detailed information from the State in aspects such as: its rules of operation, the curriculum taught, duration of the training that is provided, the process of selecting candidates, and the specific training on human rights and democracy. The IACHR also observes that the Congress of the Republic adopted the Mandatory Labor Law for Persons Deprived of Liberty.<sup>453</sup>
322. The Commission also notes that in the interest of providing public services in the best way possible and rationalize resources, the State decreed to optimize the Law to Optimize the Public Administration, Improve Citizen Services and Strengthen Transparency in Government, by which government ministries were reduced from

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<sup>449</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>450</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the visit, 4 December 2015. According to the statement by the State these funds come from the “security fee”.

<sup>451</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>452</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>453</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

38 to 15.<sup>454</sup> This change was one of the main topics that were widely criticized by civil society since the Secretariat of Justice and Human Rights, created in 2010,<sup>455</sup> was converted from a Secretariat of State to a Under-Secretariat of the Secretariat on Human Rights, Justice, Interior and Decentralization.<sup>456</sup> In this regard, the Commission takes note of the change of profile of the institution and of the concerns that have arisen regarding the multiplicity of areas that are currently under the Secretariat. However, the IACHR recognizes the openness and the efforts of the Under-Secretariat and hopes that it is provided with adequate human and financial resources to effectively fulfill its mandate.

## **B. The role of the Ombudsman**

323. On March 25, 2014 the new National Human Rights Commissioner (CONADEH), Hector Roberto Herrera Caceres, was elected by a majority in Congress. CONADEH is present in the 18 departments of Honduras, through offices or regional and departmental delegations and main headquarters. Its responsibilities include: ensuring compliance with constitutional rights and guarantees, as well as those who are recognized in the treaties and conventions ratified by Honduras; pay immediate attention and follow up on complaints of human rights violations; request specific information to anybody or institution regarding human rights violations; submit to the relevant national authorities, observations, recommendations and suggestions regarding compliance with the legal order; and prepare and develop prevention and awareness programs on human rights, in the political, legal, economic, educational and cultural fields; among others.<sup>457</sup>
324. Figures provided by the State indicate that during 2013, the CONADEH received 10,889 cases, of which 9,248 were completed (87%).<sup>458</sup> According to the State, of the total number of complaints, 40% resulted in the restoration of violated rights; in 1% of cases the existence of crimes and offenses was concluded. Between March and November 2014, 9,530 complaints were received, of which 6,024 have been completed.<sup>459</sup>
325. Also, the CONADEH made 1,345 oversight visits<sup>460</sup> at the national level to hospitals, health centers, social security clinics; police stations; detention centers; juvenile detention centers; among others. Regarding the health system, it conducted

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<sup>454</sup> Decree No. 266-2013, Law to Optimize Public Administration, Improve Citizen Services and Strengthen Transparency in Government, published in the Official Gazette on January 23, 2014.

<sup>455</sup> With the issuance of Legislative Decree No. 177-2010; Reform of Articles 28 and 29 of Decree No. 146-86, dated October 27, 1986, based on the General Law of Public Administration and the Secretariat of Human Rights.

<sup>456</sup> Decree No. 266-2013, Law to Optimize Public Administration, Improve Citizen Services and Strengthening Transparency in Government, published in the Official Gazette, January 23, 2014.

<sup>457</sup> Article 9 paragraphs 1, 2, 3, 5, 7 of the Organic Law of the National Commissioner for Human Rights.

<sup>458</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>459</sup> Summary for the IACHR in the occasion of its visit to Honduras on November 1 to 5, 2014, December 2014.

<sup>460</sup> The oversight or inspections are carried out to give support and research to the complaints, as well as check the status of the establishments visited, through observations, interviews and other media.

inspections to 28 hospitals, more than 100 state health centers and 14 clinics. It also made oversight committees to monitor the effective implementation of forestry legislation.<sup>461</sup> In its annual report, the CONADEH highlights the training this entity has provided to 78 officials on economic, social and cultural rights; conducting 572 educational events for more than 23,000 people on human rights. Also conducting 2050 awareness actions, including radio and television interviews, press conferences, for the establishment of a democratic culture of human rights.<sup>462</sup>

### ***C. Policies and programs for the protection of certain groups***

326. Regarding policies and programs to protect groups outlined in this report, the Commission received information on various aspects of some of the current programs. Given the importance of such programs for the consolidation of a state policy of respect for human rights, the Commission will examine some policies and programs outlined by the state.

#### **1. Boys, girls and adolescents**

327. During the visit, the Commission noted the particularly fragile institutions of the Honduran State regarding the protection and promotion of rights of children and adolescents. Civil society organizations reported the persistence of an absence of a comprehensive protection and a lack of access to basic services for adequate attention, in the local and municipal level, to ensure the rights of children and adolescents. In particular, they stated that institutions that concern children are "deficient", their actions are isolated and they have no links with each other or with civil society.
328. For its part, the State reported on the new stewardship of the Department of Children, Youth, and Families (DINAF) established in 2014 to replace the Honduran Institute for Children and the Family (IHNFA), which will allow to advance in the development of a comprehensive system of promotion and protection. Indeed, under Executive Decree PCM 27-2014 the DINAF was created to replace the IHNFA as a decentralized entity under the Secretariat of Development and Social Inclusion and on children.<sup>463</sup>

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<sup>461</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>462</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>463</sup> Its objectives are to direct, develop, manage, coordinate and monitor the implementation of national policies and legislation on children and the family, strengthen state capacities to promote, coordinate and develop and monitor plans, programs and public services and private for children care, adolescents and families, promoting national responsibility and social participation in the promotion, defense and protection of the rights of children, adolescents, and families, and others that are compatible with the above. Executive Decree PCM-27-2014 published in the Official Gazette, June 6, 2014.

329. Among powers of the DINAF are the formulation, coordination, management, monitoring and evaluation of public policies, programs and specialized services relating to children, adolescents, and families. To that end, the legislation provides that financial resources will be transferred to the agencies that are responsible for the direct implementation of assistance programs for these groups, as well as the control and supervision of the use of these resources. Also, the DINAF has among its functions: promoting development of local programs for comprehensive care for children<sup>464</sup> with either its own resources or through public-private partnerships with non-governmental development agencies, NGO networks; attend to the formalities for the declaration of abandonment of children, as well as in all matters related to the infringement of their rights; among others. According to figures provided by the State, the 2015 budget for DINAF is of L. 90,000.00 Lempiras.<sup>465</sup>
330. In its response to the draft of this report, the State indicated that DINAF, as part of its responsibilities and as the governing institution on issues involving children, adolescents, and families, promotes the local coordination mechanism of the National System for the Protection of Children, called the Municipal Forum on the Comprehensive Protection of Children, Youth, and Families. These are local coordination spaces led by municipal mayors' offices with the support of DINAF and its regional offices, and their aim is to implement comprehensive, special protection for children at the local level.<sup>466</sup>
331. Civil society organizations expressed concern about the current situation of the DINAF, and the need to strengthen their capacities to perform their work as well as possible. They stated that there is a need to move forward with the creation of a system for the comprehensive promotion and protection of the rights of children and adolescents in the three levels of government, with emphasis on the local level. To that end, they called for the budgetary increase that would be necessary, and a specific investment in the strengthening of support programs for families and the community to prevent violence against children. They also pointed to the need to increase the budget for childhood education, with an emphasis on children with disabilities and indigenous children.<sup>467</sup> They stated in particular that the situation of children with disabilities is completely obscured in protection programs, due to the lack of data on this group and the minimal funding provided to civil society organizations.<sup>468</sup>

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<sup>464</sup> Article 6 of Executive Decree PCM-27-2014.

<sup>465</sup> The State also referred to the start of the project of rehabilitation and construction of educational complexes for juvenile offenders with an investment of L.47 million raised from the security tax. Government of Honduras. Information submitted by the State of Honduras to the IACHR after the on-site visit undertaken between 1-5 December 2014, communication SSDH-093-2015 of March 24, 2015. Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>466</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>467</sup> Meeting with civil society on children's issues during the on-site visit to Honduras, December 4, 2014.

<sup>468</sup> According to civil society organizations, the "Better Life" Program, related to disabilities, is a welfare-type program.

332. They also expressed concern that the DINAF has no centers for children under its management, only the creation of legislation, regulation, and supervision<sup>469</sup>. According to the information received, children at risk who have been under protection and care of IHNFA will be placed with municipalities, NGOs and churches.<sup>470</sup> For the organizations, the NGOs are not sufficient to give attention to the children in Honduras that do not have support to live with the family and called the establishment of DINAF as an attempt by the State of distancing itself from its duty by delegating responsibility for care of children to civil society organizations and churches.<sup>471</sup> On the other hand, the DINAF, having been created by a presidential decree rather than by a legislative decree, lacks the drawing power of a government ministry to convene the collaboration of other entities.
333. The IACHR hopes that with the recent creation of the DINAF and the upcoming creation and establishment of a system of comprehensive promotion and protection, the State will be able to deal with the current and serious deficiencies and count on the necessary resources and institutional hierarchy required to ensure effective coordination of state actors and civil society at all government levels.
334. With regard to specific programs related to violence against children, the State said that the Council on Prevention of Violence against Children and Youth (COPREV) developed a roadmap for the sustainability of the National Policy for the Prevention of Violence against Children and Youth in the process of transition of the government. Among its actions, the State highlighted the dissemination of the policy in Tegucigalpa, San Pedro Sula, Santa Rosa de Copan, La Ceiba, and Amapala.<sup>472</sup>
335. The State also presented the following progress in the field of child protection<sup>473</sup>: approval in the National Congress of the Law against Trafficking in Persons by Legislative Decree No. 59-2012 of 25 April 2012. It also referred to the Regional

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<sup>469</sup> COIPRODEN Document presented by the Coordinator of Private Institutions for the Rights of the Child (COIPRODEN) to be used as input to the Universal Periodic Review of the State of Honduras to be held in 2015.

<sup>470</sup> The State, in its response to the draft of this report, maintained that most of the children and adolescents who were under the care of IHNFA had been reintegrated into their families, and others were transferred to centers that provide care for children in vulnerable situations. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>471</sup> Meeting with civil society on children's issues during the on-site visit to Honduras, December 4, 2014.

<sup>472</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015.

<sup>473</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2015. The State also referred to the reform of Article 191 of the Family Code which stated that "parents are entitled to rebuke and punish appropriately and moderately children under their parental authority" it was replaced by the following: "the father and mother shall not apply to the child(ren) under their custody corrective or disciplinary measures that threaten dignity of them and their fundamental rights enshrined in the Convention on the Rights of the Child, the Code on Children and Adolescents and other laws" physical punishment at home and other care settings are expressly prohibited in the Code of Childhood and Adolescence and if necessary may be criminally prosecuted for the crime of abuse by transgression."

Conference on Migration, during which an assessment of indicators of compliance with the commitments made by the country's comprehensive approach to trafficking of persons -framed in the Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially women and children- was made. According to the State, the results showed that Honduras meets a high %age of the expectations of these indicators. The Secretariat of Human Rights, Justice, Interior, and Decentralization, assigned to the Commission against the commercial sexual exploitation and trafficking in Honduras (CICESCT), as of the second semester of 2014, an annual budget of 4 million Lempiras to fulfill its respective responsibilities under the work plan of each fiscal year. Similarly, the Office of Administration of Seized Assets, OABI gave the CICESCT in August the amount of 1,238,201.17 Lempiras, of which 30% was allocated for assistance to victims through the establishment of a cooperation agreement between the NGO *Casa Alianza* of Honduras and CICESCT and the rest for institutional strengthening processes.

336. The State, in its response to the draft of this report, indicated that 19 local committees have been established and sworn in across the country; these are made up of representatives of governmental and nongovernmental institutions that specialize in the issue of commercial sexual exploitation and human trafficking. These committees are responsible for encouraging coordination of actions geared toward preventing and eradicating these crimes, in their various manifestations, in their own jurisdictions. In addition, a cooperation agreement was signed between the Secretariat of Development and Social Inclusion and the CICESCT to provide secondary care to victims and survivors of the crime of human trafficking, through services provided by the Better Life Program when these victims return to their families or communities. The services that can be provided to them, depending on the specific needs of each victim, include: a “better life” voucher; programs to promote healthy housing, healthy floors, healthy roofs, healthy kitchens, and healthy gardens; food assistance; student scholarships; and assistance in finding a job.<sup>474</sup>
337. The Commission notes the urgent need to set up a national system of comprehensive promotion and protection of children's rights with a strong preventive approach to guarantee the right of children to a family and community life free from all violence.<sup>475</sup>

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<sup>474</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>475</sup> The State, in its response to the draft of this report, indicated that “with the reduced budget allocated by the government for attending to children, youth, and families, DINAF has managed to reduce by 40% the cases it handles involving human rights violations by shifting functions to various sectors, for example the health sector, education, the Public Prosecutor’s Office, the judiciary, and the Secretariat of Security. It has also coordinated efforts with more than 50 nongovernmental organizations that focus on care and assistance for children and adolescents across the country, and has entered into agreements with a number of these organizations in which they have been given a monthly budget to provide comprehensive assistance for children who lack legal representation and for whom the State takes on this responsibility in the absence of a family member.” Communication from the State of Honduras, Note No. SG/064/MHOEA/2015,

## 2. Women

338. With regard to policies and programs for the protection of women, the State reported that the National Institute for Women (INAM), with a budget of 22,519,584.00 Lempiras, is responsible for formulating, developing, coordinating and monitoring policies that guarantee and protect the rights of women, adolescents and girls with gender equality, to contribute to the sustainable human development of the country.<sup>476</sup> During the visit, civil society organizations criticized that with the reforms made to the government's structure, INAM passed to be a Sub-secretary. According to the information received, said modification denaturalized the importance of having an autonomous institution at the highest level, guiding public policies and with sufficient resources for addressing the specific problems that women confront in the country. In its response to the draft of this report, the State indicated that INAM is currently in the Development and Social Inclusion Cabinet and maintains its autonomy in every aspect, citing Articles 3 and 13 of Executive Decree PCM-001-2014, as regards Article 1 of the Law on the INAM.<sup>477</sup>
339. In its response to the draft of this report, the State noted that Honduras has a National Plan to Combat Violence against Women 2014-2022, which was approved via Executive Decree PCM-012-2014; this had been extensively discussed and consulted and validated, over a period of nearly two years, with many social actors. This plan aims to follow through with actions to combat violence against women in all its forms and in different settings; it incorporates international human rights principles; and ensures that practices to combat violence against women integrate issues such as shared responsibility, with the understanding that men must also be involved in combating violence against women.<sup>478</sup>
340. The State reported that preventing and eradicating violence against women in all its forms is one of the signature issues of the current government. To that end, it has taken steps at the highest level to ensure implementation of the "II Plan on Gender Equality and Equity of Honduras 2010-2022" through general budget provisions for 2016, so as to make it possible to put into operation the actions included in that State policy to promote the human rights of women in Honduras.<sup>479</sup>

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Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>476</sup> Government of Honduras. Information submitted by the State of Honduras to the Commission after the on-site visit from 1 to 5 December 2014. Communication SSDHJ-090-2015 of March 20, 2015.

<sup>477</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>478</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>479</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

341. The State also indicated that it is now in the process of carrying out consultations on the Honduran Criminal Code with government and private institutions, women's organizations, and civil society, in order to end up with a document that guarantees protection for women; it will incorporate a section titled "Regarding Gender Violence." This includes the crimes of femicide and ill-treatment, by which any gender-related attacks on women will be punished. The State also indicated that it is in the process of developing the Comprehensive Law on Violence against Women, which aims to protect women from the many forms of discrimination and violence that exist.<sup>480</sup>
342. The State pointed out as an important achievement of the past government the approval in 2010 of the National Policy on Women "II Plan on Gender Equality and Equity of Honduras 2010-2022 (II PIEGH 2010-2022)."<sup>481</sup> The agenda of this Plan contains six sets of rights, among which is set 5 corresponding to the "Promotion, protection and guarantee of economic, labor, employment, access, use and control of resources." It also indicated that to achieve equal pay and non-discrimination in employment and occupation in compliance with ILO conventions, agreements have been signed with public institutions such as the Secretariat of Labor and Social Security.
343. On the other hand, the State reported on the implementation of the Gender Equity Management System, a set of procedures and measures taken by public, private and social organizations to reduce gender gaps in the workplace.<sup>482</sup> The State also referred to the design, printing and dissemination of the basic labor rights guide of Honduran women, development and dissemination of labor rights through brochures, guide, and others, development and dissemination of a toolkit as part of one of the strategies of the II Plan of Equality and gender Equity of Honduras 2010-2022, promoting and advocating so that equality between men and women is implemented through gender offices in each public sector institution.<sup>483</sup>
344. According to the State, 298 municipal offices for women have been installed throughout the country. These offices do not have a homogeneous structure as each municipality responds to its specific context and reality.<sup>484</sup> For some civil

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<sup>480</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>481</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>482</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014. Thus, according to the State it is committed to review their policies and internal practices to reorganize and define mechanisms to mainstream a gender perspective and instrumented affirmative action and / or on behalf of staff in accordance with the requirements of the Honduran Standard.

<sup>483</sup> The State also reported that for the first time in the history of INAM a television spot opened called "We are concerned about women" that is transmitted through the official channel of the Honduran State, in order to publicize the laws that protect them as well the dissemination of advertisements related to workplace discrimination and promoting equal opportunities law. Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>484</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.



society organizations, after the reforms to the Law of Municipalities in 2010, moment in which the municipal offices were to take care of several population groups, women, in particular who live in rural areas, have confronted setbacks in the specific care they require.<sup>485</sup>

345. The IACHR recognizes the measures undertaken by the State.<sup>486</sup> It urges the State of Honduras to increase its efforts to provide a comprehensive approach to the situation of violence against women, including by allocating human and financial resources to effectively address violence against women. It also must encourage further measures to regain the confidence of women's organizations in the INAM and to achieve a joint effort in protecting and promoting the rights of women. It should also evaluate the effectiveness of the programs designed to ensure gender equality, as part of the effort to develop good public policies. .

### 3. LGBT People<sup>487</sup>

346. In relation to LGBT people, the State indicated that in recent years it has put in motion actions in favor of the recognition and enforcement of equality of this group, including actions to include and protect their rights. As an example of these actions, it noted the adoption in March 2012 of the Social Protection Policy, which with a life-cycle approach, integrated within the subjects of attention of this policy, victims of stigma and discrimination because of their sexual orientation and gender identity, in order to allow them access to prevention and protection measures and opportunities to ensure their active inclusion in society.<sup>488</sup>

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<sup>485</sup> Report of Feminist organizations in Honduras: Situation of violence against women in Honduras. Presented to the UN Rapporteur on Violence against Women, its causes and consequences, in her visit to Honduras.

<sup>486</sup> Among other measures adopted, the State mentioned the following: violence prevention campaigns as part of the B.A.1 Project of the Central American Security Strategy (ESCA): Prevention of Violence against Women in Central America, along with the allocation of seed capital to women survivors of violence in areas covered by that project. The areas identified as having a high degree of social conflict are Tegucigalpa, San Pedro Sula, La Ceiba, Tela, Copán Ruinas, Omoa, Trojes, Ocotepeque, Choloma, and Sana Rosa de Copán. Other measures include opening and strengthening safe houses around the country; strengthening and equipping Municipal Women's Offices (OMM); coordinating the integration of a gender perspective into the various Municipal Observatories on Coexistence and Citizen Security; and working with the relevant agencies to harmonize the national legal framework, with two major efforts at stake this year, the reform of the Criminal Code and the drafting of the Comprehensive Law on Violence against Women, both of which are being promoted in coordination with and with the support of the women's movement and international cooperation. Moreover, work is being done in coordination with the Office of the First Lady and the Secretariat of Development and Social Inclusion (SEDIS), with financial support from the Inter-American Development Bank (IDB), to implement the "Ciudad Mujer" government initiative. This program provides comprehensive care to all Honduran women who are survivors of violence and addresses their basic needs, the promotion of their human rights, and the financial autonomy that will enable them to bring about their development, all this for the purpose of improving their quality of life and that of their family. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>487</sup> The IACHR notes that no specific information was received about intersex people. Therefore, the current section will address the situation of human rights of lesbian, gay, bisexual and transgender, and use the acronym: LGBT.

<sup>488</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

347. Similarly, the State reported that the broad approach from the National Policy and Plan of Action on Human Rights adopted in 2012, has allowed the construction of clear guidelines to further overcome the obstacles of discrimination, exclusion and lack of opportunity, in particular regarding the LGBT population. Among some specific actions the State highlighted the harmonization with international standards of the national criminal legislation to protect against discrimination people of sexual diversity, through the adoption of the amendment to article 27 of the Criminal Code adding as a generic aggravating paragraph 27: "When the offense is committed with hatred or contempt among others because of sexual orientation or gender identity of the victim."
348. Article 321 of the same legal code was reformed establishing severe penalties of imprisonment to the person who arbitrarily and unlawfully obstruct, restrict, reduce, prevent or defeat the exercise of individual and collective rights or deny the provision of a professional service on grounds (among others) of sexual orientation, gender identity that violates the dignity of the victim.<sup>489</sup> The Commission hopes that these reforms are maintained in the drafting of the new Criminal Code (see section on Citizen Security: LGBT People)
349. Regarding training, the State reported that the new Secretariat of Human Rights, Justice, Interior and Decentralization, is leading constant training of public servants on human rights, based on international standards, especially on equality and non-discrimination, in coordination with the people of sexual diversity and the development of training programs and training for police and judicial officials to promote respect for the rights of all persons, regardless of sexual orientation or gender identity, in coordination with people of sexual diversity since 2015.<sup>490</sup>
350. Furthermore, civil society organizations indicated to the IACHR the need to create a specific public policy to protect the human rights of LGBT people, as well as a guiding entity to monitor its compliance. Likewise, it is required programs and policies aimed at the general population on tolerance towards sexual diversity, non-discrimination on the grounds of sexual orientation and gender identity as well as the rights of LGBT people.<sup>491</sup>
351. The State also indicated that it integrated the group of countries promoting before the Human Rights Council of the United Nations Resolution 27/L.27 on Human Rights, Sexual Orientation and Gender Identity adopted on September 24, 2014.<sup>492</sup> In this regard, the State said that President Juan Orlando Hernández expressed at the International Conference on Population and Development on September 22, 2014 the commitment to take immediate measures to meet the expectations of

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<sup>489</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>490</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>491</sup> Meeting with civil society organizations. Tegucigalpa, December 1, 2014.

<sup>492</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

Honduran population and eliminate the prevailing inequalities, with particular emphasis on groups in vulnerable conditions.<sup>493</sup>

352. The Commission recommends to the State of Honduras to continue with the training of government officials, both security and justice system officials, on human rights and gender, including the gender identity diversity. The State should promote public information campaigns on non-discrimination against LGBT people, in consultation with them. In addition, the IACHR recommends that the State create a public policy that guarantees the rights of LGBT people, one that among other issues addresses tolerance of sexual diversity and non-discrimination based on gender orientation or identity.

#### 4. Indigenous People and Afro-descendants

353. With regard to the rights of indigenous people and Afro-descendants in Honduras, the IACHR was informed that the Secretariat of Indigenous and Afro-Honduran Peoples (SEDINAFROH), created under the previous government by executive decree, in order to promote the comprehensive development of nations, was eliminated and the state agency that monitors the issue was changed for the Directorate of Indigenous and Afro-Honduran peoples (DINAFROH), under the Secretariat of Development and Social Inclusion.<sup>494</sup>
354. Despite existing criticism from civil society on the functioning of SEDINAFROH, particularly the alleged use of the Secretariat for political purposes at the international level, the rank of secretariat was abolished and it is now a General Direction. According to information received, the current DINAFROH lacks decision-making capacity to enforce the rights of indigenous peoples and their action is limited to follow up on the actions of other state agencies. For some representatives of civil society, DINAFROH is a secondary body and with limited budget that does not respond to the demands of indigenous peoples.<sup>495</sup>
355. In this sense, in La Ceiba, representatives of civil society expressed concern over the lack of political will to address the situation of indigenous peoples and Afro-descendants, reflected in the lack of a comprehensive government policy to address the specific situation of these populations. In its response to the draft of this report, the State noted that in the first week of December, the Public Policy against Racism and Racial Discrimination for the comprehensive development of indigenous and Afro-Honduran peoples (P-PIAH) was approved. According to the State, this public policy not only addresses the problem of discrimination suffered by the country's nine indigenous and Afro-Honduran peoples, but it has also been framed based on the creation of a development plan which established the needs recognized by each of the peoples. In this way, the State indicates, a great many

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<sup>493</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>494</sup> Decree No. 266-2013, published in the Official Gazette on January 23, 2014.

<sup>495</sup> CIPRODEH, *Alternative Report Universal Periodic Review, Rights of Indigenous Peoples and Afro-Honduran*, October 2014.

objectives and actions are being addressed “to compensate for their vulnerability throughout history.”<sup>496</sup>

356. The IACHR urges the State of Honduras to develop a comprehensive government policy to address the specific situation of indigenous and Afro-descendant groups, in consultation with them. Also, to take the necessary measures to ensure that sufficient budget is allocated for DINAFROH to fulfill its duties.

## 5. Migrants

357. Regarding the situation of the deported Honduran individuals, figures from the United Nations High Commissioner for Refugees (UNHCR) indicate that in 2014, 81,017 Honduran persons were deported, 36,427 by air (United States) and 44,590 by land (Mexico and Guatemala).<sup>497</sup> 73% of deportees are for men over 18. Of the total figure, 8,369 were children and adolescents. These figures are higher than in 2013, when 72,679 Honduran deportees were recorded.
358. Faced with this problem, first, the State reported on the creation of the National Institute of Migration as a decentralized agency of the Secretariat of Human Rights, Justice, Interior, and Decentralization, with administrative, functional and budgetary independence, and which is responsible for the application of the Law of Migration and Alien Status, its regulations, and the implementation of the migration policy established by the Government of the Republic<sup>498</sup>. The State also indicated that it currently works with the National Institute of Statistics in the collection of primary information in order to identify people who are victims of forced displacement, as well as identifying the ejector and host cities to create strategies and public policies to protect these people and prevent this situation from continuing happening. Also it has trained 30 people on the issue of forced displacement, who, in turn, will make the multiplier effect at the national level to raise awareness on this issue.<sup>499</sup>
359. Regarding migrant children, to respond to the serious situation of this group, the State of Honduras informed the Commission that the return of migrant children in Honduras involves the urgency of the construction of public policies that promote deterrent and prevention mechanisms to address migration in coordination with various public and private entities. This way, the President, through Executive Decree No. PCM-033-2014 declared the Humanitarian Emergency prioritizing

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<sup>496</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>497</sup> Diario El Herald, *Más de 81,000 hondureños fueron deportados en 2014*, April 15, 2015. Available at: [http://www.laprensa.hn/honduras/831446-417/m%C3%A1s-de-81000-hondure%C3%B1os-fueron-deportados-en-2014?utm\\_source=laprensa.hn&utm\\_medium=website&utm\\_campaign=noticias\\_relacionadas](http://www.laprensa.hn/honduras/831446-417/m%C3%A1s-de-81000-hondure%C3%B1os-fueron-deportados-en-2014?utm_source=laprensa.hn&utm_medium=website&utm_campaign=noticias_relacionadas) (Spanish only).

<sup>498</sup> Executive Decree PCM 031-2014 / 063-2014. A trust is also constituted by Legislative Decree 396-2013 in order to finance, design, streamline, modernize, operate and transfer the modernization project, improvement, management and issuance of passports of Honduras. State Information December 4, 2014.

<sup>499</sup> Government of Honduras. Information submitted to the IACHR on December 4, 2014.

national and international cooperation in order to articulate an appropriate response.

360. In this regard, the IACHR has noted with concern that, during the height of the "humanitarian crisis" that occurred in 2014 along the migratory corridor - between the so-called "Northern Triangle" (the countries of El Salvador, Guatemala and Honduras), Mexico, and the United States - the State of Honduras began to take measures such as militarization and securitization of its borders, in June 2014 to prevent migration of children and adolescents of the country. Among these measures, the program named "Rescue of Angels" where "elite groups of the National Police and the Armed Forces of Honduras were placed in the border area between Honduras, and Guatemala to detain children and adolescents under 21 years of age that travel[ed] to Mexico or the United States, if they [were] not accompani[ed] with a parent."<sup>500</sup> According to information provided to the IACHR, those elite groups were created in 2012 and trained by the Federal Bureau Investigation (FBI) and the Border Patrol Tactical Unit, both agencies of the United States, as well as specialized units of other countries.<sup>501</sup>
361. Specifically, the State reported on the creation of the Task Force on Migrant Children, led by the First Lady, who directs the efforts of the DINAF, COPECO, Foreign Affairs Office, Secretariat of Social Development, Secretariat of Human Rights, Justice, Interior, and Decentralization, Secretariat of Security, Secretariat of Defense, Secretariat of Labor and Social Security, Secretariat of Economic Development, Secretariat of Education, Secretariat of Health, the National Migration Institute, National Registry of Persons, Institute of Professional Training and the Prosecutor's office on Children, as well as the National Commissioner for Human Rights.<sup>502</sup> To do this, she commissioned the newly created DINAF to provide support and protection to children and families in the process of repatriation and reintegration.
362. The State indicated that the Task Force on Migrant Children has managed to reduce to approximately 68% the flow of Hondurans minors who leave the country; and the care and monitoring of a little over 900 children and family units. Also, the "Return to Happiness" program was launched, which aims to reduce the migration of Honduran children, and caring for those who have returned.<sup>503</sup>
363. Without prejudice to the impact of the program, "Return to Happiness", civil society organizations have indicated that, with respect to Honduran children and

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<sup>500</sup> These groups, made up the Special Operations Group Tactics (GOET) of the National Police, whose members wear uniforms with armored vests and carry weapons as knives and guns, among others; Troop Group Intelligence and Security Special Response (TIGRES), whose members dress in camouflage clothing in addition to carrying long-range weapons and specialized communications equipment; Crime and Criminal Investigation Unit (UTIC), who are responsible for judicially investigate suspected coyotes. *See Childhood and Migration in Central and North America*, p. 106.

<sup>501</sup> *See Childhood and Migration in Central and North America*.

<sup>502</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>503</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

adolescent returnees, there are still gaps in their protection and reintegration into society. Specifically, the organizations mentioned that several functions under the Protocol for the Repatriation of Children and Adolescents Victims or Vulnerable to Trafficking (2006) (hereinafter "Protocol for the Repatriation") to be followed by each institution in the frame of repatriation of children and adolescents, domestic or foreign, are not being met, namely:

- a. The comprehensive approach to the situation of the child or adolescent, to examine whether they have been a victim of trafficking or other situation that violates their rights, given the limited time they remain on the premises of the DINAF before being reunited with their families. This even prevents the officer to determine that the return would be in the best interests of the particular child or adolescent.
- b. The form for interviews conducted by the DINAF does not contain an adequate question to detect the situation of trafficking or being vulnerable to it (it only asks if "there were any problems during the transit to the place of destination or during the return transit").
- c. The interviews are not being carried out in private places; therefore the spaces provided do not guarantee children and adolescents a climate of trust that allows a wider disclosure of information that could be of very sensitive nature.<sup>504</sup>

364. In that regard, the State, in its response to the draft of this report, indicated that:

The Protocol for the Immediate Protection, Repatriation, Admission, and Monitoring of Child Migrants was drawn up to provide specialized care, and it has been undergoing continuous and progressive improvement. The children remain at the Center for a long enough time to detect conditions of greater vulnerability. At the "El Edén" Center for Admission and Referral there are four psychologists who conduct in-depth interviews using a methodology that avoids re-victimization yet facilitates the identification of special cases: victims of trafficking, ill-treatment, threats, and extortion. The questionnaire or form used upon admission has undergone significant changes in order to improve each question and reduce the time it takes to fill it out, also to avoid the use of multiple forms by different institutions. As of December 2015, the interviews done by the professionals in psychology, law, or social work or by representatives of each institution will take place in separate friendly, appropriate spaces, as the Center underwent significant remodeling.<sup>505</sup>

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<sup>504</sup> *Childhood and Migration in Central and North America*, p. 11, 102-04. Although the repatriation protocol is for children, and adolescents trafficked or vulnerable to it, the Commission considers that migrant children, particularly those from countries of Central America and Mexico, are exposed to several risks and dangers before undertaking and along the migration route and therefore encourages the State to implement the Protocol in its broadest sense to detect these situations before placing children and adolescents again in an insecure environment.

<sup>505</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

365. Regarding Honduran adult migrant returnees, the Commission notes that once they have been deported back to the country, they face a lack of services that prevent them from being reintegrated into society. In particular, these people often work in precarious conditions, and in many cases there are no government programs that provide assistance for their reintegration into the community. The situation regarding returning migrants with disabilities is even worse. The Commission has received information on the situation of Honduran migrants who fell from the freight train called "the Beast" running through Mexico and as a result some part of their body had to be amputated. They have indicated that they have great difficulty in finding work and that they are not given the medical and psychological services they require.<sup>506</sup>
366. The IACHR collected testimonies from different people deported from the United States arriving as first point of entry to the Center for Deported Migrants in San Pedro Sula. There they are provided with their birth certificate should they require it, are registered and are provided with a transportation aid. One of the migrants deported after living several years in the United States, said "now I stay here and my children and my partner over there." Most deported migrants interviewed, mostly young men, said they would try to leave a country that does not offer them the slightest chance of a decent life. One of the deported migrants said: "I stay to spend Christmas and then I return."<sup>507</sup> During its visit, the IACHR noted the commitment of the staff of the center with 114 deportees who arrived that day.
367. Since the push and pull factors that are behind these mixed migration flows in the region are complex, the Commission notes the importance for Honduras of establishing strategies in coordination with the countries of the region to develop joint migration policies with a human rights approach to address these push and pull factors comprehensively, and take effective measures to prevent the causes of forced migration. In this regard, due to the humanitarian crisis, the State informed that it led along with Guatemala and El Salvador, the design of the Partnership for Prosperity Plan: a regional strategic plan, which addresses solutions in the short, medium and long term. In the short term, it seeks to reduce the migratory flow of undocumented persons into the United States, working together decisively in the protection, care and dignified and safe repatriation; and consequently in their reception, educational and productive reintegration and proper follow-up of returnees. In the medium and long term, the Plan proposes to eliminate the structural factors that drive undocumented migration by promoting new and greater economic opportunities and better social services, strengthening of the

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<sup>506</sup> Videoconference with members of the Association of returning migrants with Disabilities on April 11, 2014. See also, e.g., Gardenia Mendoza Aguilar, "crippled by 'The Beast' Migrants are treated as nuisances", *El Diario* (April 9, 2014). Available at: <http://www.eldiariony.com/2014/04/09/migrantes-mutilados-por-la-bestia-son-tratados-como-estorbos/> (Spanish only); "Tegucigalpa protest of returning migrants", *El Heraldo* (March 11, 2014). Available at: <http://www.elheraldo.hn/pais/703019-214/tegucigalpa-protesta-de-migrantes-retornados> (Spanish only).

<sup>507</sup> This is also reflected in the assessment prepared by UNHCR on the characterization of the Honduran returnee population in need of protection, *Magnitude, Trends, Causes, profiles and needs of protection*, 2015. "44% of people who have been mobilized by violence claimed to have concrete plans to re-launch the migration route "(Executive Summary).

democratic institutions and of the cooperation in dismantling organized crime, particularly trafficking of migrants, drugs, weapons and money laundering.<sup>508</sup>

## 6. Bajo Aguán

368. With regard to the situation of violence in Bajo Aguán, at a public hearing before the IACHR, the State reported that in order to find the solution of the conflict, the government created an Interinstitutional Technical Committee for the Prevention and Alternative Conflict Resolution in the Bajo Aguán with a human rights approach, consisting of several state institutions such as the Secretariat of Human Rights. As progress made by this Technical Committee, the State mentioned the development of a human rights training process for members of the Law Enforcement Police in Bajo Aguán, aimed at the recognition, promotion and respect for human rights, having trained 100 agents. Meetings with human rights defenders in the Bajo Aguán, where held and the network of defenders of Bajo Aguán was formed.<sup>509</sup>
369. Peasant organizations indicated that the evolution of the conflict has exacerbated situations of inequality and exclusion in Bajo Aguán. On the basis of information received, the situation of the severe conflict over land in that area of the country has not only led to severe acts of violence but also erected major obstacles to the enjoyment of economic, social, and cultural rights of the peasant communities. To this must be added the absence of access to justice, inequality in the balance of power in the area, discrimination because of poverty, and economic and social exclusion. “If there is no land, we cannot grow crops, we cannot produce. Because of that, our fight shall be permanent and shall continue until we achieve the goal we want: land,” a 65-year-old peasant from Comunidad Panamá, in the Department of Colón, said.
370. The IACHR identified high tension between the interests of large corporations and the subsistence needs of the area’s peasants. One peasant woman of the Bajo Aguán area indicated to the IACHR: “There is no food, we are dying of hunger, when we do get something, all we get is rice and beans, there are no sources of employment, there’s nothing to eat, and these children here [referring to the community’s children] have nothing to eat.”
371. At the public hearing with the IACHR on the situation of children and adolescents in Bajo Aguán, civil organizations addressed cases of child malnutrition and health problems among children, high teenage pregnancy rates, as a result of the absence of a sexual and reproductive health education program for adolescents, limited coverage of family planning methods, failure to supply HIV testing reagents or medical and surgical materials in the San Isidro Regional Hospital, and the absence

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<sup>508</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>509</sup> IACHR, Public Hearing, *Human Rights Situation of Children and Adolescents in Bajo Aguán*, Honduras, October 30, 2014. Available at: [www.cidh.org](http://www.cidh.org).



of primary health care.<sup>510</sup> Although organizations recognized that the current government has included this problem on the First Lady's agenda and recognized the establishment of the Inter-agency Committee for the Prevention and Alternative Settlement of Disputes with a Human Rights Approach as a positive initiative, they deemed it was important to give priority to this problem.

372. As for the State, it mentioned that, since 2012, school-age children have been going to class in real time and that improvement in the students' performance can be observed.<sup>511</sup> Of the population of children enrolled in school, more than 50,000 benefit from free school meals supplied by grade, with the collaboration of parents and teachers for their distribution.<sup>512</sup> As for health, the State of Honduras indicated that it has taken various actions such as the Expanded Program on Immunization; between 2013 and 2014, vaccination services were provided in certain municipalities to achieve the goal of the National Vaccination Plan.<sup>513</sup>
373. Furthermore, through the Multisector Plan for the Prevention of Teenage Pregnancies and the Office of the First Lady, the State approved the drafting of a strategic institutional capacity building plan for the development and harmonization of policy regulations and partnerships to enforce rights and sexual and reproductive health using a human rights approach. It also indicated that they shall be undertaking actions to prevent pregnancies in adolescents, including training in contraceptive methods, promoting the participation of adolescent boys and girls in pregnancy prevention strategies.<sup>514</sup>
374. As for housing and food, there is the Presidential Program for Health, Education and Nutrition called "Bono 10 Mil" (Subsidy 10,000) which is aimed at breaking the cycle of poverty by providing opportunities and building capacities and skills in education and health for families living in extreme poverty. The State reported that it has been able to provide coverage to 217,000 beneficiary families in the first quarter of 2014; of this number 10,000 are from the region of Bajo Aguán.

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<sup>510</sup> IACHR, Public Hearing, *Human Rights Situation of Children and Adolescents in Bajo Aguán, Honduras*, October 30, 2014. Available at: [www.cidh.org](http://www.cidh.org).

<sup>511</sup> IACHR, Public Hearing, *Human Rights Situation of Children and Adolescents in Bajo Aguán, Honduras*, October 30, 2014. Available at: [www.cidh.org](http://www.cidh.org).

<sup>512</sup> Regarding administrative actions, the State reported that, since 2012, ten teachers started the work at no cost with the registration of 228 adolescents in high school in 2013, to improve services and guarantee the right to education; in addition, eight schools were established. In 2014, teachers were invited to participate in a process to be assigned to various schools: 15 were assigned to peasant settlements, 12 permanent and 13 substitutes. IACHR, Public Hearing, *Human Rights Situation of Children and Adolescents in Bajo Aguán, Honduras*, October 30, 2014. Available at: [www.cidh.org](http://www.cidh.org).

<sup>513</sup> The State indicated it was able to vaccinate 95% of the population under one year of age administering various necessary vaccines. In the age group of children from 2 to 4 years old, it was able to vaccinate 100% of the target population in five municipalities, administering various vaccines. Regarding adolescents, the State mentioned that vaccination drives were carried out, achieving a 100% vaccination rate for the target population in three municipalities and 80% in three other municipalities.

<sup>514</sup> IACHR, Public Hearing, *Human Rights Situation of Children and Adolescents in Bajo Aguán, Honduras*, October 30, 2014. Available at: [www.cidh.org](http://www.cidh.org).

Likewise, the School Meal Program is being distributed to more than 50,000 boys and girls in the Department of Colón in the region of Bajo Aguán.<sup>515</sup>

375. The State also referred to the signing in February 2012 of an agreement between the President, the Unified Movement of UAN and the *Movimiento Auténtico Campesino Marca*, with funding from the Honduran Bank for housing financing BANPROBI with an annual interest of 6%, to give land to the above-referred farmer's groups.<sup>516</sup> The IACHR does not have any information regarding progress or challenges involving access to lands pursuant to this agreement.
376. The Commission recognizes the efforts made by the State to address the situation in Bajo Aguán and recommends that Honduras adopt all necessary measures to remove the structural factors that have led to and perpetuated the territorial conflict in Bajo Aguán. In particular, state authorities must adopt measures to tackle the causes of the conflict and apply the principle of equality and nondiscrimination so as to dismantle the obstacles and barriers to the exercise of, respect for, and safeguarding of the economic, social, and cultural rights of the peasant communities of Bajo Aguán.

#### **D. Protection mechanisms**

377. As regards the protection of human rights defenders, justice operators, journalists, among others, the IACHR took note of the information provided by the State authorities regarding the implementation of the protection program currently implemented and the efforts to modernize it, to make it more effective. It also takes note that the persons who work in these activities still confront situations of grave risk. The Commission, meanwhile, has granted precautionary measures to protect various human rights defenders, journalists, among other persons, against alleged situations of gravity and urgency and need to avoid irreparable harm. Such situations have been related to serious threats, intimidation, attacks and, in some cases, the murder of people. The Secretariat of Security is responsible for implementing, monitoring and follow up on compliance with the precautionary measures and investigating the causes for which protective measures were requested. The State indicated to the IACHR that 219 security measures have been granted at the request of the National System of Protection of Human Rights.<sup>517</sup> There are also 34 active precautionary measures, of these, 9 are collective measures, 5 determined and 4 non determinate; with a total of 365 beneficiaries. There are also 3 provisional measures granted by the Inter-American Court.<sup>518</sup>

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<sup>515</sup> IACHR, Public Hearing, *Human Rights Situation of Children and Adolescents in Bajo Aguán*, Honduras, October 30, 2014. Available at: [www.cidh.org](http://www.cidh.org).

<sup>516</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>517</sup> Government of Honduras. Information submitted by the State of Honduras to the IACHR after the on-site visit between 1 and 5 December 2014, Communication SSDH-093-2015 of March 24, 2015.

<sup>518</sup> Government of Honduras. Information submitted by the State of Honduras to the IACHR after the on-site visit between 1 and 5 December 2014, Communication SSDH-093-2015 of March 24, 2015.

378. Under the monitoring of the precautionary measures granted, the Commission has found serious deficiencies in the response provided by the State—despite the State’s efforts, which the IACHR has been able to observe in various working meetings that have been held. In the frame of the various meetings held with civil society, including beneficiaries of precautionary and provisional measures of the Inter-American system, the Commission received information on continuing shortcomings in implementing the program. In particular, it was noted that: there are no clear procedures on the catalog of available protective measures, and on the monitoring systems of the measures implemented; differential approaches in the risk analysis and allocation of protective measures are not applied; and there is a lack of funds for the implementation of physical protective measures. Several witnesses claimed that the feeling of insecurity among the beneficiaries of the program persist, despite joining it and that many times the adoption or order of a measure is not reflected in an efficient and effective implementation. In this regard, the Commission considers of utmost importance that the State reinforce all necessary actions to implement effectively its protection system. In particular, it is essential to have sufficient trained and skilled human resources to respond to requests for protection, assess the level of risk, adopt and implement protection measures and monitor the measures in force.

## **1. Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators**

379. The IACHR welcomes the adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators, unanimously approved by the National Congress on April 15, 2015 in the third and final debate.<sup>519</sup> According to information provided by the State in its response to the draft of this report, the protection mechanism’s sustainability has been ensured with the allocation of 10 million Lempiras.<sup>520</sup>

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<sup>519</sup> National Congress of Honduras. Decree No. 34-2015. Law of protection for human rights defenders, journalists, media and judicial officers (Spanish only). The project had been submitted by the Executive Branch on May 28, 2014 before the National Congress. In early June 2014, Congress had passed the first debate. On August 6, 2014, Congress had approved on second debate the law.

<sup>520</sup> Communication from the State of Honduras, Note No. SG/O64/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015. The IACHR has closely monitored the discussion of the Draft Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators. After the project was approved in first debate, the IACHR received information about a number of concerns that civil society had. In this regard, it was noted that the mechanism would involve the representation in the National Council for the Protection of the Bar Association, the Association of Journalists and five representatives of human rights organizations, but not include the participation of journalists not affiliated with the Association of Journalists such as community radio journalists. It was also noted that the functions of the General Directorate of Mechanisms and Ancillary Units would be similar as to dictate, modify and suspend measures, which could generate confusion. On the other hand, it was stressed that the fact that resource allocation would be progressive according to budget availability was of concern. It was also noted that the project did not refer to the characteristics of each target group in relation to the root causes of risk, the nature of the risks they face and their specific protection needs. Further to the information received, on August 1, 2014 the IACHR sent a request for information to the State on the bill. The state in its response to the inquiry said Congress had opened a consultation process with civil society and other stakeholders. In particular, it noted that on August 6 a first meeting with civil society took place, especially people working in the promotion and defense of human rights, which delivered a document with recommendations. The second meeting had been

380. The approved text of the law provides for the creation of the "National Council for the Protection of Human Rights Defenders"<sup>521</sup> which is the consultative and advisory body of the System whose powers are reflected in Article 24 of the Law. Additionally, it creates a General Directorate of the Protection Mechanisms, which will be part of the structure of the Secretariat of Human Rights, Justice, Interior and Decentralization, constituting the executive body of the National System of Protection for Human Rights Defenders<sup>522</sup>. Among its functions is that of: receiving all requests for protection and to address them; develop operating protocols required for the effective implementation of the Law; and request and follow-up on a regular basis on provisional measures from the Inter-American Court of Human Rights, precautionary measures from Inter-American Commission on Human Rights and the corresponding security measures adopted by the courts of the State. The Law also provides for the creation of a Technical Committee of the Protection Mechanism, responsible for conducting the risk analysis, deliberation and decision on requests for protection submitted to the Directorate General.<sup>523</sup> Additionally, Title IV of the Law provides the provisions concerning the technical and financial assistance and its transitional provisions contemplate that within three months of the entry into force of the Law, the regulations and respective protocols to implement the law shall be issued.
381. The IACHR received information indicating that several civil society organizations have positively assessed the initiative of Congress, nevertheless expressed some concerns about the final text of the law, among which are: (i) the National System of Protection of Human Rights Defenders would not have the necessary characteristics of functional autonomy; (ii) the incorporation of the Secretariat of Defense in the National Council for the Protection of Human Rights Defenders would not be appropriate for securing the safety of beneficiary groups and could jeopardize the trust of users in the mechanism; and (iii) reducing the number of representatives of the civil society in the National Council for the Protection of Human Rights Defenders would affect the participation of beneficiary groups in the mechanism.<sup>524</sup>

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done with media directors, journalists, associations of journalists and the Honduran Press Association. The third meeting with justice officials that included representatives of the Supreme Court of Justice, the Attorney General's office, the Bar Association, the Association of Judges and Prosecutors. The fourth was done with representatives from the Secretariat of Security, Secretariat of Defense and representatives of the Armed Forces, National Police, National Bureau of Investigation and Intelligence, and FUSINA. The State also reported that the particularities of each target group would be addressed via regulations, manuals and protocols that would be issued by the Secretary of Human Rights, Justice, Interior and Decentralization through the General Directorate of Protection Mechanisms and Analysis of Social Conflicts in coordination with the Secretariat of Security because for the risk assessment a causal link between the generating cause of risk, the specific needs and the legal right to be protected, had to exist. Republic of Honduras. Attorney General of the Republic. Office GT HDI-326-2014 dated September 8, 2014 that transmits Note No. SP-A-111-2014 signed by Assistant Attorney General of the Republic sent to the Executive Secretary of the IACHR, dated September 8.

<sup>521</sup> National Congress of Honduras. Decree No. 34-2015. Law of protection for human rights defenders, journalists, media and judicial officers (Spanish only), article 20.

<sup>522</sup> National Congress of Honduras. Decree No. 34-2015. Law of protection for human rights defenders, journalists, media and judicial officers (Spanish only), article 28.

<sup>523</sup> National Congress of Honduras. Decree No. 34-2015. Law of protection for human rights defenders, journalists, media and judicial officers (Spanish only), article 31.

<sup>524</sup> Protection International, Honduras: Project for Human Rights Protection Act at risk, April 16, 2015.

382. The State, in its response to the draft of this report, indicated that under the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators, “the State recognizes the right of every person, individually or collectively, to defend, seek, promote, protect, and realize human rights, as well as the obligation of the State to respect rights defenders’ human rights and reasonably prevent threats, harassment, and attacks that may be carried out against them, regardless of whether these come from State institutions or private parties.”<sup>525</sup> It also noted that with the approval of this law, the National System of Protection was created, which lays the groundwork for coordination among sectors for the enforcement of the law. The State also indicated that on August 3, 2015, organizations of human rights defenders held a public assembly and elected their representatives to the National Council for Protection. The State reported that this council was formally installed and sworn in by the Secretary Coordinator General of Government on December 10, 2015.<sup>526</sup>
383. In addition, in its response to the draft of this report, the State indicated that the process of developing regulations to this law is underway.<sup>527</sup> The State indicated that the regulation development process, which is participatory and includes the sectors protected by the law, will be supported by Freedom House, a leader on this issue and a driver behind the “National Mechanism of Mexico.”<sup>528</sup>
384. The State also made reference to four cases of human rights defenders—without mentioning which ones—who have accepted the protection mechanism as the legal avenue for the implementation of any relevant actions established in the law.<sup>529</sup> The State, in its response to the draft of this report, also indicated that as a reflection of its commitment to this issue, on September 22, 2015, Honduras joined a group of countries at the United Nations Human rights Council in supporting a joint declaration to condemn any type of acts of intimidation or reprisals against human rights defenders.<sup>530</sup>

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<sup>525</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>526</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>527</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>528</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>529</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>530</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

385. The adoption of specialized protection mechanisms is a significant step forward in implementing its recommendations. In this regard, the IACHR stated that the proper implementation of these mechanisms may facilitate the State to fulfill its obligation of protection by allowing closer and concrete knowledge of the particular situation of human rights defenders at risk, and consequently to provide timely intervention, specialized and proportionate to the risks that the defender might face.<sup>531</sup>
386. In turn, the IACHR recalls that for a protection program to be effective, it requires to be backed by a strong political commitment of the State and have sufficient trained and skilled human resources to receive requests for protection, assess the level of risk, adopt and implement protection measures and monitor the measures in force.<sup>532</sup> It is worth noting that following the decision of the Inter-American Court in case *Antonio Luna Lopez vs. Honduras*, the State will implement within a reasonable time a comprehensive public policy to protect human rights defenders.<sup>533</sup>

## 2. Trainings

387. The State has provided information on human rights trainings in various areas. Regarding human rights education, it indicated that between 2011-2014 it has provided training to 8,694 public officials in 30 institutions of central and decentralized government. Also, 572 officers of the Penitentiary Police and 1,136 officers of the Law Enforcement Military Police were trained in human rights and eradication of torture, cruel, inhuman and degrading treatment, and on the use of force and firearms; 138 Municipal police officials were trained in national and international regulatory framework for juvenile offenders of the law; 1,068 people deprived of their liberty were informed of their rights; 331 students of schools and colleges began their training process as promoters of human rights and a culture of peace; and 316 teachers began the process of training in human rights. According to the State, the Secretariat of Human Rights, Justice, Interior, and Decentralization and the Secretariat of Education signed an agreement with the purpose of promoting the training of young students as promoters of human rights and culture of peace.<sup>534</sup>
388. It also indicated that in 2014, 113 municipal technicians from 32 municipalities in five departments (Francisco Morazan, Cortes, Atlantida, Copan and Comayagua) were trained in the Public Policy and National Plan of Action on Human Rights and the Manual for the Mainstreaming with a Human Rights Based Approach Municipal Plans and Budgets. The Public Policy and National Plan of Action on Human Rights

<sup>531</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OAS / Ser.L / V / II. Doc 66, December 31, 2011, para. 484.

<sup>532</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*. OAS / Ser.L / V / II. Doc 66, December 31, 2011, para. 487.

<sup>533</sup> I/A Court H.R., *Case Luna Lopez vs. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, paras. 239-244.

<sup>534</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

has been socialized in 5 Regions (Valle de Olancho, 12 Centro, Cordillera Nombre de Dios, Sula Valley and Valle del Aguán) and attended by 200 people including from the following sectors: Boards, Water Boards, Departmental Directorate of Education, Municipal Commissioner, Police Court, CONADEH Regional Commissioner, Public Defense, Regional Health centers and the Academia.<sup>535</sup>

389. On the other hand, the Registration and Monitoring Unit attached to the Secretariat of Human Rights, Justice, Interior, and Decentralization has been modernized to make more transparent the processes for registration and monitoring of such organizations. Compared to 2013, the process of registration and monitoring of NGOs has been streamlined by 70%.<sup>536</sup> In its response to the draft of this report, the State indicated that the Unit for the Registration and Monitoring of Civil Associations (URSAC) keeps the registry of civil associations whose legal status as an organization is granted or cancelled by the President of the Republic himself or herself or through the Secretariat of Human Rights. As of June 2015, 2,706 associations and 122 corporations were registered.<sup>537</sup>

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<sup>535</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014.

<sup>536</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit, Final Report of the Visit, December 4, 2014

<sup>537</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

CHAPTER 5  
INEQUALITY,  
SOCIAL EXCLUSION  
AND DISCRIMINATION





## INEQUALITY, SOCIAL EXCLUSION AND DISCRIMINATION

390. During the visit, the Commission observed the persistence of high levels of inequality and social exclusion affecting large sectors of the population. It specifically observed the severe difficulties and challenges in gaining access to basic needs, job opportunities, natural resources such as land and means of livelihood.
391. During the visit, the Commission received information specifically regarding the situation of women and indigenous and Afro-descendant peoples, some of the population groups that are most vulnerable as a result of economic and social inequality and exclusion and persistent discrimination, a situation that in turn translates into violations of their human rights.
392. With a population amounting to more than 8.5 million persons, 64.5% are living in conditions of poverty and 42.6% in extreme poverty.<sup>538</sup> The National Statistics Institute (*Instituto Nacional de Estadística*—INE) specifies that, although poverty is more severe in the rural sector, it also affects more than half of all households in the urban sector. Honduras has the second highest poverty rate in Latin America.<sup>539</sup>
393. In that respect, Honduras is one of the four most unequal countries in Latin America, with a Gini coefficient of 0.54 in 2013. While 60% of the national income is earned by the wealthiest 20% of the nation, the poorest 20% earn just 2.02% of the income.<sup>540</sup> According to UNDP, the Human Development Index for Honduras in 2013 amounted to 0.617, keeping the country in the category of medium human development and ranking the country 129th out of 187 countries and territories.
394. The Commission has underscored that laws and policies must be assessed to ensure that they are compatible with the principles of equality and nondiscrimination. This analysis must assess the potential discriminatory impact stemming from the laws and policies being examined, even when their drafting or

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<sup>538</sup> Using the Poverty Line Method. National Statistics Institute, Honduras. RESUMEN EJECUTIVO XLIV ENCUESTA PERMANENTE DE HOGARES DE PROPÓSITOS MÚLTIPLES (EPHPM) [Executive Summary, 44th Permanent Multipurpose Household Survey], MAY 2013. Available at: <http://www.ine.gob.hn/>.

<sup>539</sup> La Tribuna: Cepal, *Honduras el Segundo país más pobre de América Latina*, 26 de enero de 2015. Available at: <http://www.latribuna.hn/2015/01/26/cepal-honduras-el-segundo-pais-mas-pobre-de-america-latina/>.

<sup>540</sup> United Nations. *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, A/HRC/29/27/Add.1, 31 March 2015.

wording appear to be neutral and their text does not openly establish a discriminatory application.<sup>541</sup>

395. Specifically, the IACHR received testimony concerning the dire situation faced by women employed at transnational textile companies and by Miskito divers. The next section examines the situation of these population groups in more detail.

## A. Women

396. “Violence against women occurs because other forms of discrimination are allowed to flourish.”<sup>542</sup> Although women account for 52% of the population of Honduras, for the United Nations Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, there is still considerable gender inequality in the civil, political, economic and social spheres, which precludes the full enjoyment of human rights by women and girls.<sup>543</sup> According to the United Nations Rapporteur: “Obstacles to the promotion, protection and fulfilment of women's human rights and a life free from all forms of violence include deeply rooted patriarchal attitudes and the pervasiveness of a *machista* culture that reinforces stereotypes about the roles and responsibilities of women and men in the family, in the workplace and in society.”<sup>544</sup>
397. According to the United Nations Special Rapporteur “power imbalances and structural inequality between men and women are among the root causes of violence against women”<sup>545</sup> and “this makes violence against women a matter of inter-gender inequality between women and men.”<sup>546</sup> In addition, she indicated that various United Nations resolutions have acknowledged that discrimination is understood as having multiple forms that combine to heighten the vulnerability of some women and girls to violence. This reflects an understanding that discrimination and violence against women is also a matter of intra-gender inequality among women.<sup>547</sup>

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<sup>541</sup> IACHR, Report 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011, para. 107; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 90.

<sup>542</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, May 2, 2011, para. 65.

<sup>543</sup> United Nations. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/29/27/Add.1, 31 March 2015. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/068/67/PDF/G1506867.pdf?OpenElement>.

<sup>544</sup> United Nations. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/29/27/Add.1, 31 March 2015, para. 49. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/068/67/PDF/G1506867.pdf?OpenElement>.

<sup>545</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 16.

<sup>546</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 16.

<sup>547</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 16.

398. For the Commission, this inequality and stereotypes prevailing in Honduran society and perpetuated in the public sphere expose women to a higher risk of being victims of many forms of violence. In this framework, the Commission is concerned about constraints on women in the exercise of their sexual and reproductive rights. For example, the IACHR received information of concern about sterilization without prior informed consent of women living with HIV.<sup>548</sup>
399. The IACHR also received information about the impact that the prohibition of using emergency contraceptives adopted in 2009 is having, including in cases of rape.<sup>549</sup>
400. The IACHR notes with alarm that under-age women account for 26% of all pregnancies.<sup>550</sup> The IACHR urges the State of Honduras to adopt measures to safeguard the sexual and reproductive rights of women, as well as their right to the highest standard of health.
401. In that regard, the IACHR urges the State to revise its public policies so as to modify stereotypes about women's role in society and the family and promote the elimination of sociocultural patterns that restrict their options to entering the labor, political, and economic realm of activities. Because of this, mechanisms must be established to empower women throughout the country. Regarding health, the IACHR urges the State to guarantee access to reproductive health services without any discrimination for the purpose of safeguarding the enjoyment of sexual and reproductive rights.
402. The IACHR was also informed on the risks that girls and adolescent girls confront in their communities, in particular gender based violence. For example, girls and adolescents must often deal with threats by gang members, at school or in the community, for them to have sex or emotional bonds with them, and there have even been reports of cases of girls and adolescents being killed because they refused to do so.<sup>551</sup> These situations have an impact on the right of girls to education, leading to absenteeism and dropping out, in addition to restricting their personal liberty and their possibility of carrying out daily activities in the community because of the pressure and threats against them, many of them staying at home as a way to protect themselves.

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<sup>548</sup> The State, in its response to the draft of this report, indicated through CONADEH that it has received no complaints of any kind in relation to this information, but that it “will verify this in due time.” Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>549</sup> Meeting with civil society organizations on children during the on-site visit in Honduras, December 1, 2014; IACHR, *Hearing on reproductive rights and emergency contraception in the Americas*, October 2013.

<sup>550</sup> United Nations Population Fund. *Informe de Maternidad en la niñez: Afrontar el desafío de un embarazo adolescente* [Report on Maternity in Childhood: Tackling the Challenge of a Teenage Pregnancy]. Available at: <http://www.unfpa.org.mx/publicaciones/SP-SWOP2013.pdf>.

<sup>551</sup> In that regard, the following can also be examined: “*Situación de maras y pandillas en Honduras*” [Situation of gangs and bands in Honduras]. National Program for Prevention, Rehabilitation, and Social Reintegration, with support from UNICEF, 2011, p. 69.

403. Various United Nations agencies have stressed that the empowerment of women, which includes economic empowerment and their full access to resources on the basis of equal conditions, their full integration into the formal economy, especially with respect to economic decision making, and their full participation on an equal footing in all levels of public, political, and cultural life are essential to combat the underlying causes of both sexual and other kinds of violence against women.<sup>552</sup> In the Vienna+20 Declaration, it was established that "the intersection of gender-based discrimination, poverty, socio-economic marginalization and violence must be addressed by States."<sup>553</sup>
404. Although women's literacy rate is almost the same as men's, on average women are paid 67.6% of the wage earned by men, and women's unemployment rate is double that of men. As indicated by the United Nations Rapporteur and the Commission, during their visit it was observed that the sectors where women work, especially the *maquiladora* industry [assembly/manufacturing plants for the export market], tend to be less subject to regulation. Women are thus "exposed to poor working conditions, low wages, little job security and the potential risk of exploitation and violence."<sup>554</sup> Below, the IACHR shall focus on the severe situation of women working in these assembly plants (*maquilas*).

## 1. Women working in the *maquilas*

405. The IACHR received information of concern about the situation of women working in the *maquilas* of transnational companies benefiting from special systems,<sup>555</sup> who are tackling a series of violations of their right to humane treatment and the absence of safe working conditions because of a series of factors, among which the most noteworthy are: exhausting work days much longer than those legally permitted; adverse consequences for their health; and low pay because of the State's failure to monitor these activities.
406. Honduras ranks first among those countries exporting garments to the United States. It is currently estimated that 52.8% of workers in the *maquilas* are

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<sup>552</sup> United Nations, General Assembly, Resolution adopted by the Human Rights Council, 23rd session, *Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence*, A/HRC/RES/23/25, 25 June 2013.

<sup>553</sup> The Vienna+20 CSO Declaration, adopted in Vienna on 26 June 2013, para. 8.

<sup>554</sup> United Nations. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/29/27/Add.1, 31 March 2015, para. 40. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/068/67/PDF/G1506867.pdf?OpenElement>.

<sup>555</sup> According to information received, transnational companies operate on the basis of three special systems whereby they are exempt from paying taxes, deductions, and municipal fees: 1) the Basic Law on the Free Zone of Puerto Cortés of 1976 extended to the entire national territory in 1998; 2) the Territorial Import System of 1984; and 3) the Fiscal Incentives System for Export Enterprises, Industrial Processing Zones of 1990. Likewise, in 2013, the Employment and Economic Development Zones (*Zonas de Empleo y Desarrollo Económico*—ZEDE) were established as autonomous cities with special legal frameworks where the State cannot exercise its sovereignty." CODEMUH and CEJIL, Follow-up Report: Thematic hearing on the economic, social, and cultural rights of women in Honduras, "*Violation of Labor Rights and the Right to Safe Working Conditions of Women who Work Manufacturing Garments*."

women.<sup>556</sup> 79% of the women working in the *maquilas* are young people between 18 and 35 years old, with a low level of schooling, with 52.6% having completed a six-year elementary school and 21.8% having started secondary education.<sup>557</sup>

407. The IACHR gathered witness statements regarding the inadequate conditions in which these women perform their work, especially with regard to a daily work shift of up to 12 hours, although this type of workday breaches the Constitution of Honduras, which provides for an 8-hour workday.<sup>558</sup> According to information received, this same number of hours is also applied for night shifts and, as result of the obligation to work long shifts, working women may be working up to 72 hours per week.<sup>559</sup> Likewise, production is based on a quota or target system, a situation which leads women to work outside the formal workday schedule.
408. This type of work shift, using forced postures and repetitive work required by the activity itself, exposes the working women to ergonomic risk factors<sup>560</sup> which in many cases lead to occupational illnesses and/or job accidents. According to information provided, as a result of ergonomic risks and the requirements of their working posture, there are high rates of symptoms indicative of Work-related Musculoskeletal Disorders<sup>561</sup> among women working in *maquilas* for garment manufacturing, with 62% of the employees working 9 hours a day, and 66% of them working up to 12-hours shifts.<sup>562</sup> In that regard, the Commission listened to the testimony of a woman working in a *maquila*, who has been waiting since 2010 for a review of her working conditions, in response to the ruling issued by the Technical Commission on Disabilities of the Honduran Social Security Administration. She indicated: "I have come to depend on my sister and family. I cannot travel in a bus standing up, I always have to be seated. I can't even carry five oranges. I can't get dressed alone. I have been suffering from acute depression; and many of my co-workers as well."<sup>563</sup>

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<sup>556</sup> CODEMUH and CEJIL, Follow-up Report: Thematic hearing on the economic, social, and cultural rights of women in Honduras, "*Violation of Labor Rights and the Right to Safe Working Conditions of Women who Work Manufacturing Garments.*"

<sup>557</sup> Meeting with women working in *maquilas* and CODEMUH, San Pedro Sula, December 3, 2014.

<sup>558</sup> Article 128, subparagraph 1, Constitution of the Republic, Decree No. 131 of January 11, 1982.

<sup>559</sup> Meeting with women working in *maquilas* and CODEMUH, San Pedro Sula, December 3, 2014.

<sup>560</sup> They consist of those factors that are inadequate in terms of the man-machine interface, from the standpoint of design, construction, operation, location of machinery, know-how, skills, conditions, and characteristics of the operator(s) and interactions with surroundings and working environment such as monotony, fatigue, bad postures, repetitive movements, and physical stress. CODEMUH and CEJIL, Follow-up Report: Thematic hearing on the economic, social, and cultural rights of women in Honduras, "*Violation of Labor Rights and the Right to Safe Working Conditions of Women who Work Manufacturing Garments.*"

<sup>561</sup> They consist of injuries to muscles, tendons, nerves, and joints most frequently located in the neck, back, shoulders, elbows, wrists, and hands, and they are also known as musculoskeletal injuries, microtraumas, repetitive strain injury or cumulative trauma disorder, excessive use syndrome, and degenerative joint disease. CODEMUH and CEJIL, Follow-up Report: Thematic hearing on the economic, social, and cultural rights of women in Honduras, "*Violation of Labor Rights and the Right to Safe Working Conditions of Women who Work Manufacturing Garments.*"

<sup>562</sup> See CODEMUH and CEJIL, Follow-up Report: Thematic hearing on the economic, social, and cultural rights of women in Honduras, "*Violation of Labor Rights and the Right to Safe Working Conditions of Women who Work Manufacturing Garments.*"

<sup>563</sup> Meeting with women working in *maquilas* and CODEMUH, San Pedro Sula, December 3, 2014

409. As for the wages under the system for transnational companies, according to the information received, they had not increased in two years since 2009, leading to a gap between the wages between garment workers and other sectors of production. According to information received, five years since changes in the minimum wage, the women working in *maquilas* have not as yet been able to earn the minimum wage of 5,500 Lempiras per month that was set in 2009 (the equivalent of US\$248).<sup>564</sup> In view of this situation, the women working in the *maquilas* indicated that they benefit from hardly any inspections, or none at all, by the Labor Secretariat and have limited access to justice.
410. Organizations representing these groups indicated that the Honduran State has failed to respond to the complaints filed with respect to alleged violations of the rights to work and health by the respective private corporations.<sup>565</sup> In particular, it was highlighted that the highly demanding working conditions were leading to high rates of depression and anxiety among the working women.<sup>566</sup> The IACHR takes note of how general medical services have been subrogated to the Medical System for Enterprises, thereby limiting workers' access to the Honduran Social Security Administration (IHSS). The IACHR urges the State guarantee women working in the *maquilas* access to the IHSS when needed.
411. As for the State, it indicated that, in November 2013, CODEMUH submitted to the executive office of the Secretariat of Labor and Social Security a working plan or roadmap to follow in the case of women affected by and benefiting from a job relocation ruling issued by the Commission on Disabilities of the Social Security Administration. This plan included a request for labor inspectors to notify enterprises about job rotation. In response, the Labor and Social Security Secretariat reviewed the files of the working women. The Department of Medicine is also in the process of drawing up procedures for conducting ergonomic assessments. At present, the Labor and Social Security Secretariat have a standardized procedure for working women who need job relocation because of occupational hazards.<sup>567</sup>
412. The State also reported that, in 2014, the Labor and Social Security Secretariat had imposed penalties on eight *maquila* enterprises and filed 135 proceedings against *maquilas* for breaking the law. As for policies and legislation, the State indicated that the National Policy for Women and the Public Policy and Plan of Action for Human Rights includes a wide-ranging chapter on women's rights, which includes working women. In terms of the regulatory framework, the General Regulations on Measures to Prevent Accidents at Work and Occupational Illnesses has been in force since 2004. Thanks to coordination with the National Women's Institute, the regulatory framework has been drawn up to adopt the Gender Equity Management

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<sup>564</sup> CODEMUH and CEJIL, Follow-up Report: Thematic hearing on the economic, social, and cultural rights of women in Honduras, "Violation of Labor Rights and the Right to Safe Working Conditions of Women who Work Manufacturing Garments."

<sup>565</sup> IACHR, Public Hearing, *Economic, Social and Cultural Rights of Women in Honduras*, October 30, 2014.

<sup>566</sup> Meeting with women working in *maquilas* and CODEMUH, San Pedro Sula, December 3, 2014.

<sup>567</sup> IACHR, Public Hearing, *Economic, Social and Cultural Rights of Women in Honduras*, October 30, 2014.

System, which is aimed at promoting equal opportunities and preventing discrimination and harassment at work.<sup>568</sup>

413. Regarding access to justice, the State indicated that the forum having jurisdiction is the Labor Secretariat, which has a Program for Working Women. It also pointed out that another forum for filing complaints are the Municipal Offices for Women.
414. According to information in press, an *amparo* action in favor of 49 *maquila* workers was ruled on by the Supreme Court of Justice. The Court ordered the Secretary of Labor and Social Security to adopt an inspection mechanism that would allow to diminish the risk at the job posts, review the work day of almost 12 hours per day and ensure that persons that won the *amparo* action an ordinary work day of 8 hours per day, including a dignified salary.<sup>569</sup> The IACHR welcomes said ruling and hopes that it is duly implemented by the State.
415. The IACHR recommends that the State implement adequate monitoring and surveillance measures for the workplace and services for women working in the *maquilas*, including due control over work shifts and accessible mechanisms to file complaints, as well as the need to remedy the wage gap and review laws currently in force, especially on occupational health to prevent labor hazards, as well as to install an occupational health diagnostic registry.

## **B. Indigenous peoples and Afro-descendant persons**

416. In the case of indigenous and Afro-descendant peoples, violence to a large extent grows out of the struggle for land and territory, which is exacerbated by the conditions of inequality and discrimination facing these groups and the attendant barriers to their access to justice. In this section, the Commission shall address the situation of indigenous peoples and Afro-descendants in Honduras, especially the situation of Miskito divers.
417. The IACHR highlights with concern the information that indicates that indigenous and Afro-descendant peoples suffer from higher levels of poverty than the rest of the country's population. In that regard, the Concluding observations on the combined initial and second to fifth periodic reports of Honduras of the UN Committee on the Elimination of Racial Discrimination observed that the

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<sup>568</sup> It also indicated that a plan has been drawn up for implementing this System in the enterprises; there are three enterprises in the advisory phase, and four are being approached to socialize the System. An agreement is about to be signed with CARE to start a process of advisory services to enterprises supported by the Nourishing the Future Project. In terms of economic rights, education and development for women, the Labor and Social Security Secretariat is implementing a Program for Working Women, aimed ensuring equality at work. Training has been provided to 9,362 educators through the National Professional Training Institute in 16 departments of the country.

<sup>569</sup> Radio Progreso y el Eric. *Organizaciones debaten sobre retos para garantizar derechos a la salud en el trabajo*, 29 de mayo de 2015. Available at: <http://radioprogreso.net/index.php/comunicaciones/-noticias/item/2095-organizaciones-debaten-sobre-retos-para-garantizar-derechos-a-la-salud-en-el-trabajo>; Defensores en línea, 28 de abril de 2015. Available at: [http://www.defensoresenlinea.com/cms/index.php?option=com\\_content&view=article&id=3483:dia-mundial-de-las-victimas-del-trabajo-28-de-abril-del-2015&catid=81:muj&Itemid=197](http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=3483:dia-mundial-de-las-victimas-del-trabajo-28-de-abril-del-2015&catid=81:muj&Itemid=197).



indigenous peoples and Afro-Honduran communities were particularly badly affected by poverty and social exclusion (especially the Garifunas and the English-speaking Afro-Hondurans).<sup>570</sup> Malnutrition and the lack of access to services was constantly presented by civil society organizations as a problem for these groups that needed immediate attention because, as a result of it, the indigenous peoples were being forced to leave their communities.<sup>571</sup>

418. The CERD referred to the figures provided by Honduras, which indicated that poverty is affecting 88.7% of indigenous and Afro-Honduran children (relative poverty—10.4%; extreme poverty—78.4%).<sup>572</sup> It also indicated that, according to data provided by the State, poverty is a particular problem among Tolupan, Lenca, and Pech children, where figures of over 88% are reported.<sup>573</sup> In particular, the indigenous and Afro-descendant peoples record lower literacy rates than the rest of the population, high levels of malnutrition, and a high rate of contagious and infectious diseases. These inequalities are more marked among indigenous and Afro-descendant women. The maternal mortality rate among indigenous women is also substantially higher than that among non-indigenous women.<sup>574</sup>
419. The CERD urged Honduras to continue implementing social inclusion policies and identity-based development programs that reduce inequalities and poverty with a view to eliminating structural and historical discrimination in the State.<sup>575</sup> It also recommended that action be taken to break the link between poverty and racism, *inter alia*, by the adoption of special measures or affirmative action.<sup>576</sup> Such action should include multilingual intercultural education activities, bearing in mind the need to strengthen or revive the languages of the indigenous peoples and Afro-Honduran communities.

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<sup>570</sup> United Nations, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, CERD/C/HND/CO/1-5, 13 March 2014, para. 7. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En).

<sup>571</sup> Meeting with civil society organizations on children's issues during the on-site visit to Honduras, December 4, 2014.

<sup>572</sup> United Nations, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, CERD/C/HND/CO/1-5, 13 March 2014, para. 7. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En).

<sup>573</sup> United Nations, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, CERD/C/HND/CO/1-5, 13 March 2014, para. 7. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En).

<sup>574</sup> According to PAHO, in Colón, Copán, Intibuca, Lempira, and La Paz, the maternal mortality rate fluctuates between 190 and 255 for every 100,000 live births, whereas the national average is 147. *Maternal mortality, higher among the indigenous peoples*, June 7, 2004.

<sup>575</sup> United Nations, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, CERD/C/HND/CO/1-5, 13 March 2014, para. 7. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/HND/CO/1-5&Lang=En).

<sup>576</sup> Taking into consideration General Recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention and Recommendation No. 34 (2011) on racial discrimination against Afro-descendants.

420. Furthermore, at meetings held during the visit, the Commission noted with concern that leaders and defenders of the Garifuna People complained that the State was rendering their identity and culture invisible by not calling them Garifuna, but rather "Afro-Hondurans," in addition to constantly targeting them as victims of racism.<sup>577</sup> On this point, as the Commission indicated in the case involving the Garifuna community of Triunfo de la Cruz and its members (Case 12.548), the Garifuna people, the product of cultural syncretism between indigenous and African peoples, have asserted their rights in Honduras as an indigenous people.<sup>578</sup> The Garifuna people have preserved their own cultural forms, organizations, and social and cultural institutions, their way of life, worldview, customs, practices, ceremonial rites, language, clothing, and their special relationship to the earth. Those factors make the Garifunas a unique culture and ethnic group, whose members share social, cultural, and economic characteristics not found in other sectors of Honduran society, particularly the special relationship with the land they occupied historically, as well as their collective notion of ancestral property.<sup>579</sup> Regarding this, the IACHR urges the State to recognize and protect the identity of the Garifuna People and protect them against racial discrimination. About this specific matter, the IACHR points out that prevailing attitudes of discrimination involving race contribute to the vulnerability of the indigenous peoples. On occasion, these attitudes are the reasons behind acts of violence, as they contribute to stereotypical and discriminatory perceptions against the indigenous and Afro-descendant peoples. On other occasions, these attitudes are evident in the disdainful responses from state authorities and society in general and in the omissions made when providing assistance when it is needed, which renders the indigenous peoples more vulnerable and therefore more prone to becoming potential victims.
421. The IACHR also received information of concern about the impact of some events on further spreading poverty in these communities. For example, the Garifuna Community of Santa Rosa indicated that, because of the activities of businessmen who are growing African palm trees for oil in the Department of Colón, the course of the Aguán River has changed, and this has had devastating consequences for their environment and their access to water, because of the high salt content of the

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<sup>577</sup> In its response to the draft of this report, with respect to the term "Afro-Honduran," the State indicated that this stems from a process to raise awareness among all indigenous and Afro-Honduran peoples at the time the State Secretariat with a mandate and responsibility in this area was created. The State indicated that it was most advantageous to include all peoples of African descent who arrived at the time of the Spanish conquest or later, since the Garifuna people were not the only ones who migrated to Honduras. At the time of the XVII National Population and Housing Census of 2013, the proportion of the Afro-descendant population was divided among Miskitos, first of all, who represent 11.1% of the ethnic population (they are the second largest group, surpassed only by the Lencas, with 63.2%), followed by the Garifunas with 6% (the fourth largest group in this representation), and English-speaking blacks with 1.7%; therefore the use of that term is so that the three peoples are included. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>578</sup> IACHR, *Garifuna Community of "Triunfo de la Cruz" and its Members (Honduras)*, Case 12.548, Report No. 76/12, November 7, 2012, para. 190.

<sup>579</sup> IACHR, *Garifuna Community of "Triunfo de la Cruz" and its Members (Honduras)*, Case 12.548, Report No. 76/12, November 7, 2012, para. 190.

river, in collusion with local authorities.<sup>580</sup> Likewise, the members of the Community of Nueva Armenia indicated that they had been the victims of extortion and that several of their houses had been burned down. Members of the Community of Cristals indicated that their water supply, over which the community had ancestral rights, had been allegedly destroyed by the local authority. The IACHR urges the State to investigate these complaints and to identify those responsible, where appropriate.

422. During the visit, the Commission went to the indigenous community of San Juan and was able to ascertain the disastrous state of the main streets. "In summer there is a bulldozer because there are tourists and they repair the street for them, but then it gets damaged again," remarked a young Garifuna to the delegation.
423. The Commission visited the health center of this community, but it had no physician but rather a local resident with nursing skills. When asked about this, a Garifuna woman explained to the IACHR: "There is no doctor and there are no medicines. If you get really sick, you have to go all the way to Tela in a taxicab and it costs 100 lempiras or more." In addition, residents of Colonia D'Antoni voiced their concern about alleged continuous pollution as a result of hospital waste from the Hospital Regional Atlántida, which is affecting the population.
424. Civil society organizations indicated that there is no legislation or regulation enforcing the rights recognized in Convention No. 169 of the International Labor Organization (ILO), ratified by the State in 1994. They complained that the Law on Employment and Economic Development Zones (*Zonas de Empleo y Desarrollo Económico—ZEDES*) "has placed the Garifuna People in imminent danger of being expelled from the northern coastal region of Honduras."<sup>581</sup> They allege that this law envisages the establishment of "model cities" and that five of them would be in Garifuna communities who had not been consulted about it. As for the State, it informed the IACHR during the visit that it "recognizes the right of ethnic groups to protection and holding of land." As an example of this, it indicated the recent transfer of land to some "indigenous peoples."
425. The IACHR urges the State of Honduras to implement public policies that tackle the needs of the indigenous and Afro-descendant peoples, especially socioeconomic marginalization, by means of effective measures that combat poverty and improve education and employment. Any initiative, program, and policy for the indigenous and Afro-descendant peoples must be adapted to their needs and concerns and must be consulted with these groups.
426. The State must also step up its actions to respect and guarantee land and adopt the state measures needed to fulfill its obligation to ensure prior, free, and informed consultation of the indigenous peoples about projects to be developed on their land and territories and that affect their natural resources, taking into

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<sup>580</sup> Meeting with civil society organizations, La Ceiba, December 2, 2014.

<sup>581</sup> See Decree No. 236-2012 ratified by Decree 9-2013, whereby the Constitution of the Republic was amended and Employment and Economic Development Zones (*Zonas de Empleo y Desarrollo Económico—ZEDE*) were established.

consideration the special relationship between these peoples and the land and natural resources.

## 1. The situation of the Miskito divers

427. Furthermore, the IACHR received information about the precarious conditions that about 2,000 divers are exposed to, most of them indigenous persons from the Miskito People, when they engage in diving activities to catch seafood in the region of Mosquitia, in the Department of Gracias a Dios. This region, which is one of the poorest and remotest areas of Honduras, has no road connecting it to the rest of the country and is only accessible by air or sea; it has a population of about 74,014 persons, most of them belonging to the Miskito indigenous people.<sup>582</sup>
428. Lobster catching is the principal source of work for the inhabitants of La Mosquitia, especially for the Miskito men, who start this kind of activity when they are about 14 years old. Nevertheless, the work of the divers takes place informally without any contract or safety, and involves the use of defective equipment and exploitation. According to information received, the equipment used for diving is old and does not benefit from any maintenance, nor is there adequate training, which is provided by co-workers who have not had any training either. The divers spend periods of time diving extending from 12 to 17 days and in order to fish larger amounts of seafood, they have to stay for a long deep in the sea and go back to the surface very quickly against diving safety standards.<sup>583</sup> All of this takes place without due supervision by the State. Therefore, divers run the risk of suffering from preventable accidents such as drowning or decompression sickness.
429. According to information received, indeed, as a result of these conditions, various Miskito divers have died or sustained permanent physical and mental injuries. "I started diving when I was 16 years old because in La Mosquitia there are no other job opportunities. The only source of income is diving. We dive for 12 days and at an excessive depth, between 120 and 140 feet. We don't have adequate equipment. We get very tired and we have accidents," one of those providing testimonies to the IACHR. Another indicated: "One day, at about 5 in the afternoon, after having used 12 tanks at a depth of about 140 feet, I felt dizzy, I couldn't keep diving, I went to the surface. I got the sickness (decompression); I felt bad and half paralyzed, my stomach started aching; it was very hard for me to walk, I couldn't urinate or defecate. When the sickness gets to you, you feel half dead. After that happened, I was only able to recover the use of one leg and from then on I had to use a walking stick."
430. The absence of rehabilitation measures and a hyperbaric chamber that would be able to immediately help divers suffering from decompression sickness in La Mosquitia has led to permanent disabilities for hundreds of them over the years. Nevertheless, neither the company selling the lobsters that gives them work nor

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<sup>582</sup> Information received at the meeting with civil society organizations, Tegucigalpa, December 1, 2014.

<sup>583</sup> Information received at the meeting with civil society organizations, Tegucigalpa, December 1, 2014.

the State has adopted measures to prevent this situation from continuing or to take care of those suffering from some type of disability.<sup>584</sup>

431. The Commission was informed that, in 2013, 20 persons were reported dead as a result of underwater fishing accidents and about 400 persons were reported injured.<sup>585</sup> Honduras is the country that has the world's highest number of persons suffering from decompression sickness.<sup>586</sup> Likewise the State does not keep a log with information about accidents sustained or the number of divers injured or killed.
432. The IACHR learned as well that, once the Miskito divers are physically disabled for life, they find no empowerment, rehabilitation, medical care, or any other employment alternatives. "Three months after we get sick, the owner of the boat no longer remembers the workers who suffered from an accident. He provides us no treatment. He forgets us," complained a man who now can no longer work. Another pointed out: "We encounter economic need. As heads of household and with a disability we have no way to provide economic support or education for our children. We suffer a great deal."
433. Even when they start living as injured persons, because of the absence of other job alternatives, on many occasions Miskito divers continue to carry out their respective activities. According to information received by the Commission, the above leads to worsening of the disability and even more severe impacts on the family, such as difficulties in ensuring access to education for those who depend on them financially and breakup of the nuclear family.
434. According to the information received, there are no mechanisms to supervise the working conditions of the Miskito divers. Also, there is little presence of the State in the area to offer protection and judicial guarantees for the divers. The State indicated that it would examine the subject in depth to find a solution.
435. The IACHR urges the State of Honduras to revise the 2001 Law on Underwater Fishing to meet the needs of the divers and ensure that the law is duly enforced. They must also implement urgent supervisory mechanisms over all of the companies engaged in underwater fishing. The IACHR urges the State to provide a hyperbaric chamber in La Mosquitia, as a rehabilitation measure for the injured and disabled divers, as well as job options for those who have been the victims of this fishing activity without benefiting from any minimum safeguards.

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<sup>584</sup> The State, in its response to the draft of this report, presented information from CONADEH indicating that training activities are being carried out in coordination with authorities, institutions, and local organizations. These are geared toward active divers, with a focus on prevention issues, and toward individuals who have acquired a disability because of diving, who receive training on the legal procedures to obtain their respective compensation. In addition, divers with disabilities who so request are provided support in seeking compensation from the various agencies until they receive redress for their labor rights. Family members of divers who have died doing this activity can also receive this type of assistance until they are paid the compensation they are due. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>585</sup> Information received at the meeting with civil society organizations, Tegucigalpa, December 1, 2014.

<sup>586</sup> Meeting with representatives from CEJIL, La Ceiba, December 2, 2014.

CHAPTER 6  
STATE OF FREEDOM OF  
EXPRESSION



## STATE OF FREEDOM OF EXPRESSION

### A. *Pluralism and diversity in radio broadcasting*

436. During the on-site visit, the IACHR and the Special Rapporteur for Freedom of Expression evaluated the current state of pluralism and diversity in radio broadcasting in Honduras, as one of the fundamental requirements of the right to freedom of expression.

437. The IACHR has stated:

the right to freedom of expression is based on one hand on the right to establish or use a media outlet to exercise freedom of expression and, on the other, on society's right to have access to a free, independent, and pluralistic media that allows for the most and most diverse information. In other words, the media – and especially the audio visual media- perform an essential function in guaranteeing the freedom of expression of individuals, as the media serve to distribute individuals' thoughts and information while at the same time allowing them access to the ideas, information, opinions, and cultural expressions of other individuals.<sup>587</sup>

Therefore, freedom and diversity should be guiding principles in broadcast regulation, and media activities protected by the standards of the right to freedom of expression.<sup>588</sup>

438. At different meetings with civil society and State authorities, the IACHR has received information regarding the regulation of the radio spectrum and the way in which the State manages the assignment of frequencies within the framework of the transition to the broadcast technology digital dividend, as well as the acknowledgment of community radio in Honduras.

#### 1. **Regulation of the radio spectrum for broadcasting in the new digital dividend**

439. The IACHR has noted that the regulation of the radio spectrum should not only guarantee freedom of expression for the greatest number of people or

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<sup>587</sup> IACHR. 2009 Annual report of the Inter-American Commission on Human Rights. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser, L/V/II. Doc. 51. December 30, 2009, par. 4.

<sup>588</sup> Inter. Amer. Ct. HR. *Compulsory Membership in Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OCS-/85 of November 13, 1985. Series A Nbr. 5, Par. 34; IACHR. Special Rapporteur for the Freedom of Expression. Standards for Free and Inclusive Broadcasting. December 3, 2009. Par. 7.



perspectives, but also provide equal opportunity to media access and right to plural and diverse information of contemporary society.<sup>589</sup>

440. The regulatory framework governing the radio spectrum in Honduras is established by the Framework Act on the Telecommunications Sector [*Ley Marco del Sector de Telecomunicaciones*]<sup>590</sup> and its rules.<sup>591</sup> It regulates all audio-visual and telecommunications media activity as well as information technology and communication (ICTs), pursuant to a recent amendment to the Act that was published in 2014<sup>592</sup>.
441. This law creates the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (CONATEL), a state agency that is independent from the President of the Republic, with administrative, technical, budget and financial independence. CONATEL has three commissioners who are appointed to a four-year term by the President of the Republic, said term is renewable for additional terms. The 2014 amendment included “the legitimately recognized corporate organizations and professional associations at the university level may submit candidate lists to the President of the Republic for consideration as members of the agency”<sup>593</sup>. In accordance with the Law, CONATEL has been tasked with the administration and control of the radio spectrum, as well as the regulation and oversight of telecommunications operations and use, specifically: the granting, renewal and revocation of titles for radio and television services and ICT applications. Likewise, CONATEL is empowered with the application of the sanctions pursuant to the Law and its Rules. In accordance with the most recent reform, “in no case shall sanctions be used as an indirect method of affecting or restricting the free broadcasting of expression.”<sup>594</sup>
442. According to the legislation, the State may grant permits for broadcasting services in 15-year terms, with automatic renewal for the same period of time, as long as requirements are met and the conditions and stipulations for the permit have been met. The Law does not specifically establish the procedures to grant these permits. Pursuant to CONATEL Regulations, in order to grant direct broadcasting permits, the interested party must apply for the permit (Art. 141 a) or participate in open competition. The Framework Law does not expressly recognize community media,

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<sup>589</sup> IACHR. 2009 Annual Report. Special Rapporteur for the Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. 2014 Annual Report. Special Rapporteur for the Freedom of Expression. Chapter III (Freedom of Expression Standards for the Transition to Open, Diverse, Plural and Inclusive Free-to-Air Digital Television). OEA/Ser.L/V. II Doc. 13. March 9, 2015.

<sup>590</sup> Honduras. Legislative Branch. Ley Marco del Sector de Telecomunicaciones. Decreto No. 185-95. November 28, 1995, amended by Decreto No. 118-97 October 25, 1997.

<sup>591</sup> Honduras. Legislative Branch. Reglamento General de la Ley Marco del Sector de Telecomunicaciones. December, 2002.

<sup>592</sup> Honduras. Legislative Branch. Reformas a la Ley Marco del Sector de Telecomunicaciones. Decreto No. 325-2013. March 4, 2014.

<sup>593</sup> Honduras. Legislative Branch. Reformas a la Ley Marco del Sector de Telecomunicaciones. Decreto No. 325-2013. March 4, 2014.

<sup>594</sup> Honduras. Legislative Branch. Reformas a la Ley Marco del Sector de Telecomunicaciones. Decreto No. 325-2013. March 4, 2014.

nor is it incorporated in the regulations. Nevertheless, in 2013 CONATEL issued Resolution 009/13, the Community Broadcast Services Regulation [*Reglamento de Servicios de Difusión con Fines Comunitarios*].

443. According to the May 2015 CONATEL report on telecommunications performance; at the end of 2014 there were 649 television and radio broadcast operators, 1 community television, 412 radio sound broadcasting stations, 6 community radio broadcasting stations and 126 national audiovisual service operators. According to the information there are 101 television services, 1 community television service 412 radio sound broadcasting, 6 community radio broadcast and 126 national audiovisual services in operation authorized by the agency.<sup>595</sup>
444. During its visit, the IACHR learned of the efforts made by the State of Honduras for transitioning into digital television. CONATEL announced that television in Honduras will be digital by 2018 and gave the television operators a five year time limit in order to switchover to the standard ISDB-T. The agency approved a “National Transition Plan from Analog Television to Digital Television Broadcasting” [*Plan Nacional de Transición del Servicio de Radiodifusión de Televisión Analógica a Televisión Digital*] wherein it establishes channel distribution for the 10 regions the country is divided into,<sup>596</sup> however there has been no information on key aspects of the process such as: the criteria for the distribution of the higher number of frequencies that are available in the digital arena; measures to be adopted in order to impact the historical processes of concentration; and the inclusion of the community sector in radio broadcasting.
445. In the 2010 Universal Periodic Review of the United Nations Human Rights Council, Honduras committed to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is was line [sic] with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”<sup>597</sup> After his visit to Honduras in August of 2012, the former United Nations Special Rapporteur on the Promotion and Protection of Freedom of Expression, Frank La Rue, recommended the government should “amend the Telecommunications Framework Act, in line with international human rights standards, to ensure that permits for the use of telecommunications frequencies are awarded on an equitable basis to organizations and communities of indigenous peoples and persons of African descent”. In that regard, the former Rapporteur Frank La Rue, explained that:

auctioning off bandwidths is an essentially discriminatory procedure that favors sectors that wield economic power; therefore, auctions should be used only for the allocation of commercial frequencies, not for the bandwidths used for community or public non-profit purposes, including

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<sup>595</sup> Republic of Honduras Government. CONATEL. *Informe Trimestral sobre el Desempeño del Sector de Telecomunicaciones (4to Trimestre 2014)*. May 2015.

<sup>596</sup> Republic of Honduras Government. CONATEL. *Resolución NR002/15*. January 30, 2015.

<sup>597</sup> UN. Human Rights Council. A/HRC/16/10. November 15, 2010. *Report of the Working Group on the Universal Periodic Review Honduras*, par 85b.

those used by different peoples and ethnic groups in the country. Commercial uses should not prevail over public service applications.<sup>598</sup>

446. In that regard, the Commission on Truth and Reconciliation for Honduras Report recommended the State “amend the National Telecommunications Commission Law, specifically with regard to the system established by said commission for granting frequencies, as it is not the most appropriate for promoting a true exercise of freedom of expression and information.”<sup>599</sup>
447. According to the information received during his on-site visit on May of 2013 the Executive Branch proposed an amendment to the Telecommunications Law before the Legislative Branch wherein the intent was to regulate both the assigning and managing of radio spectrum frequencies as well as media content. The bill was highly criticized by different civil society sectors. The media believed the bill contained language restricting freedom of press and ambiguous content control provisions for audiovisual media.<sup>600</sup> Lastly, the bill was not debated in the National Congress and the community sector was partially included by a lower regulation.
448. Likewise, during the visit the IACHR received information from several civil society organizations affirming that the obstacles remain to equal access for use and management of radio frequencies. They noted that although during these recent years CONATEL attempted the “rechanneling” of bandwidths in order to make more FM radio frequencies and more television channels available, the vast majorities were auctioned off to private parties paying high prices in a manner that lacked transparency. On the other hand, it was noted that CONATEL denied frequency requests from social organizations known to “critically oversee” the State, although they met the requirements in the regulations at that time.
449. Likewise, during the visit, different stakeholders expressed concern about the levels of media concentration in Honduras. As in other countries in Latin America, the trending high concentration of ownership and control of the larger media outlets in Honduras, especially those that are acquired by transnational capital, is of concern. Information was also received about the municipalities and departments having a higher concentration of smaller media outlets with a larger number of owners, nonetheless most are owned by political leaders producing targeted ideological content. According to experts, “the coup d’état affecting the country in 2009 created media spots for the opposition, but was unable to promote a communications model that was different from the traditional one. The main difference is the party banner or leader that is followed, however plurality in information *per se* does not exist.”<sup>601</sup>

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<sup>598</sup> United Nations. *Report of the Special Rapporteur for the Promotion and Protection of Freedom of Opinion and Expression*. Addition. Mission of Honduras. A/HRC/23/40/Add.1. March 22, 2013. para. 65.

<sup>599</sup> Commission on Truth and Reconciliation for Honduras. Report: Findings and Recommendations. July 2011.

<sup>600</sup> Observacom. April 25, 2013. Comisión comparte separar contenidos en “ley mordaza”; La Prensa/EFE. April 30, 2013. *Periodistas hondureños rechazan ley de Telecomunicaciones*; El Heraldo. March 19, 2013. *Gobierno de Honduras copia proyecto de “ley mordaza” de Ecuador*; La Prensa. August 15, 2013. *Otro rechazo a “ley mordaza”*

<sup>601</sup> Observacom. September 2014. *Concentración y dispersión mediática en Honduras*.

450. As the IACHR and Special Rapporteur have stated,<sup>602</sup> the regulation of broadcasting should strive to establish a framework wherein freedom of expression is broad, free and independent therefore; facilitating access to the greatest number of groups or persons; in order to guarantee this power is not used for indirect censorship, but rather guarantees diversity and plurality in radio broadcasting. In that regard, the criteria for the assigning licenses shall have, as one of the goals, the promotion of plurality and diversity of voices. Due to this, the requirements for granting them should not constitute disproportionate barriers. In that regard, when paying money or economic criteria is the principal or excluding factor to assign television or radio frequencies then equal access to these is compromised, undermining advances in plurality and diversity. Although these may be considered objective or non-discretionary criteria, when used to assign all frequencies they actually exclude large social sectors from access. In that regard, the IACHR has indicated that “auctions based solely on economic criteria or that grant concessions without equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights [...] and the Declaration of Principles on Freedom of Expression”. For the same reasons, procedures for assigning licenses should not include technical or administrative requirements that are unreasonable and require all license holders to hire technicians or specialists. Such requirements indirectly raise an economic barrier to access to radio frequencies. Neither should geographic distance serve as a barrier to access to licenses by, for example, requiring rural media outlets to travel to the capital to file a request.<sup>603</sup>
451. The IACHR recalls that digital television poses regulatory challenges that are not always properly accounted for within the analog broadcast legal framework therefore review of the current legislation may be necessary. In that regard, the transition from analog to digital television signals requires specific regulation for the adoption of new technical standards for transmission; for establishing requirements, procedure and criteria so the current or new operators have access to the new technology; and for the approval of plans, time frames and stages occur before the transmission of analog signals cease.
452. In that regard, the Commission recommends the State ensure, through legislation, transparent, public and equal criteria for assigning radio frequencies in the new digital dividend. These criteria must consider media outlet control and ownership concentration, and assign broadcasting administration to a body with political and economic independence, subject to due process and judicial review. In that regard it encourages the State of Honduras to utilize “broadcast possibilities deriving from the use of digital frequencies, taking this technological change as an opportunity to broaden diversity in voices and increase media outlet access by new sectors of the population” in an efficient manner.

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<sup>602</sup> IACHR. 2009 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.

<sup>603</sup> IACHR. 2009 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras 65 and 66.

453. Regarding this, the IACHR notes that although CONATEL has autonomy in “administration, technology, budget and finances”<sup>604</sup> the Commission is under the Executive Branch and the President of the Republic has full discretion in member appointment. In that regard, it recalls “regulation of the media to promote diversity, including governance of public media, is legitimate only if it is undertaken by a body that is protected against political and other forms of unwarranted interference, in accordance with international human rights standards.”<sup>605</sup>
454. In that regard, the IACHR and Special Rapporteur have recommended the authority on broadcasting use and oversight, be an autonomous body, independent from the executive branch so it is independent from both political pressure of the government and pressure from the private sector linked to broadcasting. For this reason, it is necessary the State move forward on establishing rules that ensure this body has sufficient operating, organizational and administrative guarantees to maintain independence from the pressure of both the political majority and economic interest groups.<sup>606</sup>

## 2. Acknowledgment of the community sector

455. On several occasions the IACHR and Special Rapporteur have recognized that community media outlets play a fundamental role in our region for the exercise of freedom of expression and access to information by different sectors of society.<sup>607</sup> The aforementioned establish that it is necessary for States to legally recognize and consider reserving portions of the spectrum for these types of media outlets, as well as equal access to licensing keeping the different conditions of private non-commercial media in mind.<sup>608</sup>
456. During the on-site visit the IACHR Office of the Special Rapporteur for the Freedom of Expression was afforded the opportunity of a meeting with CONATEL authorities. During that meeting welcomed information was received regarding the positive measures taken by CONATEL to guarantee community audio-visual broadcasting media outlets have access to frequencies on the radio spectrum, as of the enactment of the Community Broadcast Services Regulation [*Reglamento de*

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<sup>604</sup> *Ley Federal de Telecomunicaciones*, published in the Diario Oficial de la Federación on June 7, 1995, amendment published on November 30, 2010, art. 9-A. Available at: <http://www.diputados.gob.mx/-LeyesBiblio/pdf/118.pdf>.

<sup>605</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression and Access to Information,

<sup>606</sup> IACHR. 2009 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Available at: <http://www.-oas.org/en/iachr/expression/reports/annual.asp>.

<sup>607</sup> IACHR. *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*. Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118.Doc. 5 rev 1. December 29, 2003, para. 414; IACHR. 2002 Annual Report. Report of the Special Rapporteur for Freedom of Expression. Chapter IV (Freedom of expression and poverty).OEA/Ser.L/V/II.117. March 17, 2003, para. 41.

<sup>608</sup> IACHR. 2007 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter III (Conclusions and Recommendation). OEA/Ser.L/V/II. 131 Doc. 34 rev. 1. March 8, 2008, para. 5.

*Servicios de Difusión con Fines Comunitarios*] in August of 2013. During the visit, the authorities provided details regarding the process for granting licenses and assigning frequencies on the radio spectrum to different communities in the country, among them communities of the Miskito peoples.<sup>609</sup>

457. Without prejudice to these advances, the IACHR learned through several civil society organizations and community media outlets about procedural deficiencies and flaws in the process of assigning frequencies to community media outlets and the need to have these regulations adopted as law, in its formal and tangible sense. Specifically, according to the information provided, the regulation will establish rules that could affect broadcasting access by new community stakeholders and make community radio operation difficult. In that regard, some civil society organizations have noted that the regulation will establish unequal requirements for community media outlets to access frequencies, for example by requiring “documentation by the Community Media Association of Honduras [*Asociación de Medios Comunitarios de Honduras*] (AMCH), duly legalized, stating the applicant is in operation and belongs to the association” (Art. 6 b) iv) as well as the requirement that all necessary documents for the application “be originals or certified copies, authenticated by a Notary Public, with every page signed and numbered” (Art. 6).
458. Likewise, the Commission was interested to learn that some representatives of the Garífuna, and Indigenous Peoples of Honduras, maintain that the regulatory framework establishes conditions to access that do not recognize traditional customs and forms of social organization and land use of the people and have a disproportionate impact to the exercise of their rights to freedom of expression, information and culture, a violation of ILO Convention 169, which obliges the States to adopt special measures to protect people, institutions, property, and culture of these peoples. Additionally, it establishes that said special measures should be adopted pursuant to the freely expressed will of these peoples.<sup>610</sup>
459. In that context, the IACHR learned of the citation that was issued by the National Telecommunications Commission (CONATEL) for the country to *Radio Comunitaria Suga 100.9 FM* located in the garífuna community Sambo Creek, in the department of Atlántida. According to the information received, in the citation issued by CONATEL the body noted that “installing, building or operating a telecommunications service without CONATEL authorization” is a violation of Article 25 of the Telecommunications Law. It also noted that said station belonged to the Fraternal Order of Black Hondurans [*Organización Fraternal Negra Hondureña*] (OFRANEH). CONATEL stated that “pursuant to its power to administer and control the radio spectrum, on December 4, 2013, it verified that the OFRANEH was illegally using frequency 100.9 Mhz, in the Sambo Creek community in the department of Atlántida, without the proper authorization

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<sup>609</sup> IACHR. December 5, 2014. *Preliminary Observations on the IACHR visit to Honduras* CONATEL. No dte. Operadores del Servicio de Radiodifusión Sonora FM y de Televisión con Fines Comunitarios (information provided to the Office of the Special Rapporteur during the on-site visit December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>610</sup> IACHR. December 5, 2014. *Preliminary Observations on the IACHR visit to Honduras* .

granted by this body, therefore the OFRANEH was in violation as of September 17, 2014, in accordance with the constitutional right of defense, so they may present the appropriate defense in this situation.” It also noted that “the Office of the Prosecutor will be contacted pursuant to Article 39 of the Framework Law on the Telecommunications Sector [*Ley Marco del Sector de Telecomunicaciones*] and other parts of the regulation, to wit: When there is indicia of a crime, the Office of the prosecutor must be alerted.”<sup>611</sup> OFRANEH made a public plea to “prevent the abusive act of closing the SUGUA community radio station,” which reportedly had gone off the air in 2009, following the coup d’état in Honduras.

460. On this matter, in its Joint Declaration of 2007, the Special Rapporteurs on Freedom of Expression for the UN, OAS, OSCE and African Commission state “[d]ifferent types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms.” In that regard, community media outlets should benefit from fair and simple licensing procedures, should not have to meet technological or other criteria creating disproportionate barriers in access to licensing, and while operating they should not be subject to unjustified different treatment.<sup>612</sup>
461. Legal recognition for licensing is not enough to guarantee freedom, plurality and diversity if there are rules establish arbitrary or discriminatory conditions for the access and use of the license. To that end, it is essential that administrative, economic and technical requirements for use and access of licenses be only those that are strictly necessary to guarantee operation, be clearly and precisely established in the regulation and remains unaltered without proper justification during the life of the license.
462. In that regard, the IACHR recommends the State of Honduras address the matter through legislation and review the established criteria and formal requirements to ensure that only the truly necessary ones to promote plurality and diversity of voices remain, without creating a disproportionate barrier to this end. Specifically, the current regulation includes a requirement that may be discriminatory and seems unnecessary; the endorsement from a radio association. The requirement of and endorsement from an established radio association implies that those stations that do not belong to the association would face a barrier to accessing frequencies. In the same regard, the existence of indigenous peoples in different regions of Honduras makes legislation necessary in order to facilitate expedited mechanisms of access to frequencies with minimal administrative requirements, aligned with their organizational forms.
463. On the other hand, some civil society organizations also noted that the 2013 Regulation of Community Broadcast Services [*Reglamento de Servicios de Difusión*

<sup>611</sup> Comité por la Libre Expresión (C-Libre). September 30, 2014. *Comisión Nacional de Telecomunicaciones pretende cerrar radio qarifuna*; Communication sent by Radio Comunitaria Garífuna Sugua to the Office of the Special Rapporteur for Freedom of Expression, dated September 23, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>612</sup> IACHR. 2009 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 92 on. Available at: <http://www.oas.org/en/iachr/expression/reports/annual.asp>

*con Fines Comunitarios*] limits community media outlets information content and programming, with vague rules, that could become a barrier due to the lack of clarity and indeterminate nature that allows for several different interpretations of the regulation. The regulation states “in principle information content should be for progress, development and general wellbeing of the inhabitants of said community, without going against public interest.” Likewise, it states, “the transmission of open programming should mainly be to serve the community” and cannot have “a political agenda – for any party whatsoever.” They expressed concern over the provisions that establish this programming should, among other things, “praise ethical, civic and cultural values”; respect honor, dignity, private affairs and all rights and freedoms enshrined in the Constitution of Honduras; “report on national and international events”; and “commit to promote truthful communication”. In that regard, they noted that the CONATEL officials would be the ones to determine the scope and content.

464. In that regard, the IACHR learned about an administrative hearing opened against radio station “La Voz de Puca,” in the community of Asomada, Gracias Lempira municipality. Said hearing was requested by CONATEL for “spreading criticism of the government and its discriminatory social compensation policies”. According to the information received, during the hearing CONATEL threatened with shutting the station down, citing the Community Broadcast Services Regulation [*Reglamento de Servicios de Difusión con Fines Comunitarios*], which prohibits the broadcasts of programs that are “political-partisan in any way.”<sup>613</sup>
465. According to international standards, the legal framework must provide for citizen judicial security, in the most clear and precise manner possible, the conditions and limits should be the same as those on the exercise of freedom of expression<sup>614</sup>. In that regard, it is important to note that the State must remain neutral regarding the content broadcast by media outlets, except for the restrictions specifically granted by Article 13 of the American Convention, in accordance with international Human Rights Law and as prescribed by it. As the Inter-American Doctrine notes: “[v]ague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression.”<sup>615</sup>

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<sup>613</sup> Asociación de Medios Comunitarios de Honduras [Community Media Association of Honduras] (AMARC), undated. Information given to the IACHR during the on-site visit. Available in the archives of the Office of the Special Rapporteur.

<sup>614</sup> In addition in European Court case-law “prescribed by law” used in Articles 9 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms not only require that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the quality of the law in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”. *Glas Nadezhda Eood and Elenkov v. Bulgaria*, No. 14134/02, § 45, E.C.H.R. (11/10/2007). Available at: <http://echr.ketse.com/doc/14134.02-en-20071011/view/>

<sup>615</sup> IACHR. *2007 Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter III (Conclusions and Recommendations). OEA/Ser.L/V/II. 131 Doc. 34 rev. 1. March 8, 2008, para. 72.



466. Extensive restrictions in administrative provisions or broad or ambiguous regulations that are imprecise as to the area of the law that is protected and where its interpretation may lead to arbitrary decisions illegitimately compromising the right to the freedom of expression run counter to the American Convention,<sup>616</sup> by rewarding or punishing media outlets because of their editorial line. Due to the foregoing, the regulation should be written in a manner to avoid vagueness or ambiguity.
467. The foregoing is important especially since the lack of clear and precise requirements could unjustifiably impede the operation or even the very existence of the media or create an intimidation effect that is incompatible with a democratic society. Even more, if non-compliance with communication content requirements allows for sanctioning comments that are of public interest.<sup>617</sup>
468. Due to the foregoing, it is recommended the State legislate on community broadcasting so it receives an equitable portion of the radio spectrum and television channels in the digital dividend, by establishing democratic criteria that guarantee all individuals equal opportunity to access and operate these media outlets equally, without disproportionate or unreasonable restrictions. Likewise, the regulation should identify the conditions of the exercise of the right to broadcast and the limitations community radio broadcasting is subject to in the most clear and precise manner possible; therefore preventing the possibility of State authorities to assign frequencies or sanction media outlets in order to reward or punish the media outlet for its editorial line, and simultaneously promote plurality and diversity in public discourse.

## ***B. Legal action as it relates to the exercise of freedom of expression***

469. During the on-site visit to Honduras, the IACHR was concerned by the increase in legal actions related to the exercise of freedom of expression, specifically criminal action for defamation and slander. According to the information received, legal action is used to criminalize and sanction criticism of public officials and matters of public interest, which has disproportionately affected the work of journalists and human rights defenders.

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<sup>616</sup> United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013, para. 26. Available at: [http://ap.ohchr.org/documents/dpage\\_s.aspx?m=85](http://ap.ohchr.org/documents/dpage_s.aspx?m=85)

<sup>617</sup> In that regard, it should be noted that principle 10 of the IACHR Declaration of Principles states that: "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the journalist had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news". Likewise, principle 11 of the Declaration establishes that "[p]ublic officials are subject to greater scrutiny by society".

470. The IACHR and Office of the Special Rapporteur have noted that the use of criminal action as a mechanism of ulterior responsibilities in the face of protected discourse is a violation of freedom of expression protected by Article 13 of the American Convention and Article IV of the American Declaration on the Rights and Duties of Man. The Commission and the Inter-American Court have pointedly maintained that these types of expressions enjoy a greater protection within the Inter-American System.<sup>618</sup> Said protection has been justified, among other reasons, by the importance of maintaining judicial framework that promotes public discourse; in light of the fact that public officials have voluntarily exposed themselves to more social scrutiny and are better equipped to respond to public discourse.<sup>619</sup>
471. In fact, in a democratic society entities and public servants of the State are subject to greater scrutiny and criticism, therefore their activities are subject to societal control<sup>620</sup>. In that regard the Commission has established that “[t]he sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy.”<sup>621</sup>
472. According to the information learned, on December 9, 2013 journalist Julio Ernesto Alvarado was convicted by the Supreme Court of Justice Criminal Court [*Sala de lo Penal de la Corte Suprema de Justicia*] for the crime of “defamation and expressions constituting slander”. He was convicted to one year and four months of incarceration, special ban on the exercise of journalism during the principal

<sup>618</sup> IACHR. 1994 Annual Report. Chapter V: Report on the Compatability of “Desacato” Laws with the American Convention on Human Rights. OEA/Ser.L/V/II.88. Doc. 9. Rev. February 17, 1995; IACHR. 2004 Annual Report. Office of the Special Rapporteur for Freedom of Expression. Chapter VI (“Desacato” Laws and Criminal Defamation). OEA/Ser.L/V/II.122. Doc. 5 rev. 1 February 23, 2005. Par. 155 and on; IACHR. 2009 Annual Report Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression) OEA/Ser.L/V/II. Doc. 51. December 30, ç2009. P. 245 and on; Inter-Am. C.H.R. *Case Ivcher Bronstein v. Perú. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74; *Case Herrera Ulloa Vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107; *Case Ricardo Canese Vs. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111; *Case Palamara Iribarne Vs. Chile Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; *Case Kimel Vs. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177. Technical note regarding the international parameters on freedom of expression and crimes against honor and the modification of mechanisms regarding crimes against honor present in the Brazilian Criminal code Reform Bill. November 4, 2013 in: IACHR. 2013 Annual Report Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 125. November, 4, 2013.

<sup>619</sup> Inter-Am. C.H.R. *Case Tristán Donoso v Panama. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C. No 193, para. 122.

<sup>620</sup> In that regard, Principle 11 of the Declaration on Principles of Freedom of Expression adopted by the IACHR states: “[p]ublic officials are subject to greater scrutiny by society”. Available at: <http://www.cidh.oas.org/basicos/basicos13.htm>; Inter-Am. C.H.R.. *Case Herrera Ulloa Vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Par. 129; *Case Kimel Vs. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177. Para. 86; *Case Ricardo Canese Vs. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Parr. 103; IACHR2009 Annual Report Office of the Special Rapporteur for Freeom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression) OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 106.

<sup>621</sup> IACHR. 1994 Annual Report. Chapter V: Report on the Compatability of “Desacato” Laws with the American Convention on Human Rights. Title III Subparagraph B. OEA/Ser.L/V/II.88. Doc. 9. Rev. February 17, 1995

portion of the sentence, and civil interdiction during that same time, as well as the corresponding civil penalties. According to the information learned, on April 28, 2014, the Sentencing Execution Judge of the Tegucigalpa Judicial Unit [*Juez de Ejecución de las Penas de la Sección Judicial de Tegucigalpa*] ruled in favor of commuting the sentence and accompanying sanctions imposed on the journalist. This judgment was partially overturned by the Court of Appeals in September of 2014, stating “revoking the commutation on the accompanying sanctions” (civil interdiction and special ban) of his sentence, and upholding the commutation in the execution of the incarceration portion of the sentence.<sup>622</sup> In addition, the journalist filed a complaint stating he was a victim of stalking and harassment as a result of orders issued in this case<sup>623</sup>.

473. On November 5 2014 the IACHR issued precautionary measures on the matter and requested the State stay the execution of the sentence issued on December 9, 2013, by the Supreme Court of Justice and to abstain from taking any action to ban Julio Ernesto Alvarado from working as a journalist until the IACHR makes a determination on the case lodged by him.<sup>624</sup> In spite of the precautionary measures, the IACHR has continued to receive information about actions to enforce the decision disqualifying Julio Ernesto Alvarado from the practice of journalism. Accordingly, and given the IACHR’s on-site visit to Honduras in December 2014, the reiteration of the precautionary measures on October 15, 2015, and a recent working meeting held during its 154<sup>th</sup> session, the Inter-American Commission has requested compliance with the precautionary measures in order to prevent irreparable harm to the rights of Mr. Julio Ernesto Alvarado to freedom of expression and practicing journalism as a manifestation that cannot be separated from the exercise of this freedom.
474. The Supreme Court of Justice accepted a case filed against journalist David Romero Ellner by attorney Sonia Inés Gálvez for defamation and libel. David Romer is a journalist for *Radio Globo y TV Globo*. Gálvez also filed a complaint against *Radio Globo and TV Globo* journalists Ivis Alvarado, César Silva and Rony Martínez for 15 counts of defamation for alleged expressions on the “*Interpretando la Noticia*” and

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<sup>622</sup> Republic of Honduras. Secretary of State for Foreign Affairs and International Cooperation. Note No. 882-DGPE/DPM-14 to the IACHR Executive Secretary dated June 10, 2014, forwarded as No. SP-A-073-2014 June 5, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression Conexihon/C-Libre. April 30, 2014. *Carta de libertad para periodista Julio Ernesto Alvarado*; PEN International. October 1, 2014. *Honduras: PEN member barred from journalism after covering corruption in state university*; RSF. October 1, 2014. *BROADCASTER BANNED AGAIN FROM WORKING AS JOURNALIST*. Honduprensa/Honduras Tierra Libre. 29 de septiembre de 2014. *Honduras: Funesta decisión de Corte de Apelaciones contra periodista hondureño*.

<sup>623</sup> IACHR. 150<sup>th</sup> Period of Sessions. *Reports of Killings of Journalists and Impunity in Honduras*. March 25, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; PEN International. March 25, 2014. *Audiencia sobre la situación de la violencia contra periodistas y el problema de la impunidad en Honduras ante la Comisión Interamericana de Derechos Humanos*. Document given to the IACHR at the thematic hearing on March 25, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Knight Center for Journalism in the Americas. March 5, 2014. *Organizations denounce government harassment against two Honduran journalists in recent months*; PEN International. October 1, 2014. *Honduras: PEN member barred from journalism after covering corruption in state university*; RSF, October 1, 2014. *BROADCASTER BANNED AGAIN FROM WORKING AS JOURNALIST*.

<sup>624</sup> IACHR. Precautionary Measure No. 196-14. Resolution 33/2014 of November 5, 2014.

“*Noticias Radio Globo*” programs. The Court did not take the case against the later three journalists.<sup>625</sup> Days earlier, Romero Ellner denounced the threats he received after publishing a story stating that Gálvez and her husband, the Deputy Attorney General, were involved in corruption cases in the Office of the Public Prosecutor.<sup>626</sup> On September 22, 2014, a judge ordered an oral and public trial after mediation of the dispute failed.<sup>627</sup> According to Gálvez, Romero Ellner defamed her because ten years ago she was the prosecutor on the case wherein Romero Ellner was convicted and sentenced to imprisonment for raping his daughter. Romero Ellner was to appear before the Court on June 11, 2015, but on that day the proceedings were continued because a judge was absent. According to one report, the judges ruled that a continuance would be granted until December or even until 2016 because of case overload. Hours later, the hearing was set for June 18<sup>628</sup>.

475. In this context, the IACHR notes with satisfaction the draft bill presented by the Secretary of Justice and Human Rights for Honduras, [*Secretaría de Justicia y Derechos Humanos de Honduras*], proposing to reform the Criminal Code to decriminalize libel, slander and defamation, following the recommendation of the Office of the Special Rapporteur for Freedom of Expression to the States in the region found in the 2012 Annual Report of the Inter-American Commission of Human Rights regarding the regulations that punish expression in criminal or civil actions.<sup>629</sup> The Inter-American Commission invites the State to move forward with this draft bill, which could contribute to ensuring these cases are heard in civil court, ensuring criminal law is not used as a tool for intimidation which affects freedom of expression, especially when used by public officials to silence criticism.

<sup>625</sup> RSF. August 27, 2014. *Leading opposition broadcaster facing criminal libel charges*. Radio HRN. August 25, 2014. *Corte Suprema admite querrela en contra de David Romero*; El Heraldo. August 21, 2014. *Por 15 delitos de difamación acusan a periodistas*.

<sup>626</sup> C-Libre. August 20, 2014. *Periodista que denunció corrupción por parte del Fiscal General Adjunto, teme por su vida*; RSF. August 27, 2014. *LEADING OPPOSITION BORADCASTER FACING CRIMINAL LIBEL CHARGES*. Honduras Tierra Libre. August 20, 2014. *Honduras: periodista David Romero denuncia amenazas de fiscal adjunto // Periodista que denunció corrupción por parte del Fiscal General Adjunto, teme por su vida*.

<sup>627</sup> C-Libre. September 22, 2014. *Un juicio oral y público afrontará periodista acusado de injurias y calumnias*; Conexihon. September 22, 2014. *A juicio oral el periodista David Romero por 15 casos de difamación*

<sup>628</sup> C-Libre. Junio 15, 2015. *Poder Judicial recibe presiones para reactivar juicio de periodista*; La Prensa. June 11, 2015. *Reprograman juicio al periodista David Romero*; Conexihon. September 22, 2014. *A juicio oral el periodista David Romero por 15 casos de difamación*; C-Libre. September 22, 2014. *Un juicio oral y público afrontará periodista acusado de injurias y calumnias*; La Prensa. September 23, 2014. *Periodista David Romero irá a juicio oral y público*.

<sup>629</sup> Secretary of State, Office of Justice and Human Rights. May 22, 2013. Communication to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. In its response to the draft of this report, the State referred to the fact that CONADEH has recommended that the State of Honduras amend the Criminal Code to decriminalize libel, slander, and defamation. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

### C. *The right to access public information*

476. The right to seek information is a fundamental right protected by Article 13 of the American Convention. It is of particular importance for the consolidation, functioning and preservation of a democratic society.<sup>630</sup>
477. Honduras passed the Transparency and Access to Public Information Act [*Ley de Transparencia y Acceso a la Información Pública*] in 2006.<sup>631</sup> The aforementioned law's primary objective is the "development and execution of the national transparency policy, as well as the exercise of the right of every person to access public information to strengthen the Rule of Law and consolidate democracy through citizen participation".
478. The law created the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) as "an independent body, in operation, decision making and budget, charged with the promotion and facilitation of citizen access to public information, as well as regulation and oversight of the procedures for those institutions responsible for the protection, classification and safekeeping of public information in accordance with this Law" (Art. 8). The Institute is an independent entity, it is not beholden to governmental oversight. It has national jurisdiction and the power to create and establish regional offices in places where deemed necessary.<sup>632</sup> The IAIP is composed of three commissioners elected by the National congress by a two-thirds majority.<sup>633</sup>
479. The Institute has the power to resolve disputes on access to public information. Its resolutions are binding and the only remedy is "amparo recourse as defined by the Law of Constitutional Justice [*Ley de Justicia Constitucional*]" (Art. 4[15] and 26). This body also has the power to implement rules of transparency, as follows: a) establish manuals and guides for the classification, archiving, and safekeeping of public information; b) support actions of the national archive in regards to the creation and protection of National documentary collections; c) establish criteria and recommendations for the operation of the National Public Information System [*Sistema Nacional de Información Pública*]; and d) promote and make individuals aware of their right to seek public information (Art. 11).<sup>634</sup>
480. The legislation also establishes the creation of a National Public Information System [*Sistema Nacional de Información Pública*] (SINAIP) that "shall integrate,

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<sup>630</sup> IACHR. 2009 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. CIDH/RELE/INF. 1/09. December 30, 2009, para. 1.

<sup>631</sup> Honduras. National Congress/ Instituto de Acceso a la Información Pública. Ley de Transparencia y Acceso a la Información Pública. Legislative Decree No, 170 -2006. Diario Oficial La Gaceta. December 30, 2006.

<sup>632</sup> Honduras. La Gaceta/Instituto de Acceso a la Información Pública. Reglamento de la Ley de Transparencia y Acceso a la Información Pública. March 6, 2008. Article 11.

<sup>633</sup> Honduras. National Congress/ Instituto de Acceso a la Información Pública. Ley de Transparencia y Acceso a la Información Pública. Legislative Decree No, 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Information sent by the Instituto de Acceso a la Información Pública de Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>634</sup> Honduras. National Congress/ Instituto de Acceso a la Información Pública. Ley de Transparencia y Acceso a la Información Pública. Legislative Decree No, 170 -2006. Diario Oficial La Gaceta. December 30, 2006.

organize, publish and provide access to public information utilizing all available information subsystems, which shall be integrated into a uniformed format pursuant to the rules and regulations established therein” (Art. 12). The IAIP, in coordination with other entities, is in charge of establishing the necessary procedures for the organization and functioning of said system.

481. During the on-site visit, the Office of the Special Rapporteur of the IACHR had the opportunity to meet with IAIP authorities. During the meeting, information on the notable advances made by the IAIP, despite its limitations, in the implementation of the National Public Information System was welcomed. According to the information received, in 2014 the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] officially launched the SINAIP online, an “automated system based on a web platform with sufficient tools to access public information from or to other subsystems of the institutions bound by the law.”

482. One of the tools available is the Electronic Information System of Honduras [*Sistema de Información Electrónico de Honduras*] (SIELHO):

is a mechanism designed for processing requests for information and for online review. The system standardizes the process and redirects the requests for information from citizens to Public Information Officers [*Oficial de Información Pública*] (OIP) for each of the institutions bound by the law. It also provides the requestor with feedback regarding the status of the request. SIELHO allows OIP to monitor all pending requests and prioritize them according to their due date.<sup>635</sup>

According to official data, in 2013, before SIELHO, the government received 1,363 requests for public information. Once the system began to operate in 2014, two thousand one hundred fifty-three requests were received online. Another tool SINAIP has established is the Sole Portal on Transparency [*Portal Único de Transparencia*]. This portal is designed to be the only website used by state entities to publish the information they are required to publish by law, pursuant to Article 13 of the Transparency and Access to Public Information Act [*Ley de Transparencia y Acceso a la Información Pública*]. In 2014, the site had 26,486 hits.

483. Likewise, according to available information, in May of 2015 the IAIP presented the Policy on National Transparency [*Política Nacional de Transparencia*] and the 2015-2030 Action Plan, which includes several steps and strategic goals to achieve transparency and access to information.<sup>636</sup>

484. The IACHR acknowledges that these actions demonstrate the commitment by the IAIP and the ability it has to protect the rights individuals have to seek information and to promote the development of a culture of transparency in public administration entities. The IACHR encourages the State to continue adopting

<sup>635</sup> Instituto de Acceso a la Información Pública de Honduras. [Sistema De información Electrónico de Honduras \(SIELHO\)](#).

<sup>636</sup> IAIP. May 29, 2015. [Se presenta la Política Nacional de Transparencia](#); La Tribuna. June 5, 2015. [IAIP presenta Política Pública de Transparencia](#).

measures for the effective and efficient implementation of access to information legislation. It should also provide the IAIP with sufficient human, economic and material resources, as well as guaranteed independence for the Commissioners. There should also be a redoubling of efforts so the National Public Information System is accessible and effective in the rural areas of the country.

485. Without prejudice to these important advances, during the visit to Honduras, the Commission learned about concerning information regarding the passing and enactment of the Law for Classification of Public Documents Related to National Security and Defense [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*].<sup>637</sup> It imposes limitations and restrictions on the right to information in this arena. The aforementioned law would not be in agreement with the law on access to public information or the international standards.
486. According to the information received during the on-site visit to Honduras, said law was not subject to consultation with civil society and specialized entities. The Commissioners of the Institute for Access to Public Information and different civil society organizations presented to the Office of the Special Rapporteur text which contains regressive provisions on the publicity standard established by the current law on access to information, contradicts the current regulations on access to information and is contrary to international standards on access to public information and protection of national security interests.<sup>638</sup> The IACHR notes that the approved legal language establishes the possibility of security agencies classify security and defense information as “secret” and “top secret” in the name of “national interest.”<sup>639</sup>
487. In fact the law empowers the National Defense and Security Council to classify and protect information deemed “risky to national defense and security, and the achievement of national goals if revealed.” To this end, the law establishes four classification categories for public information “as to the degree of protection required”. Information will be considered restricted if it is “information, documentation or material that refers to the internal strategic environment of State entities” if their dissemination could “produce unwanted institutional effects [...] counter to the effective development of State policy or normal functioning of public sector institutions”. This type of information may be declassified after five years. Information will be deemed confidential if publication could “create eminent risk or direct threat to security, national defense and public order” and “damage or

<sup>637</sup> DECREE No. 418-2013 (Published in the Gazette on January 24, 2014).

<sup>638</sup> See Reporters Without Borders (RSF). January 16, 2014. *SECRECACY LAW DEALS MAJOR BLOW TO PUBLIC'S RIGHT TO BE INFORMED*; Knight Center for Journalism in the Americas. January 20, 2014. *Honduran Secrecy Law endangers access to public information: RSF*; El Heraldo. January 16, 2014. *Ley de Secretos cercena al IAIP y convenios*; CNN en Español. January 17, 2014. *Descontento en Honduras por la aprobación de la Ley de Secretos Oficiales*; La Prensa. January 15, 2014. *“Ley de secretividad es inconstitucional”: directora de Instituto de Transparencia*; Conexihon. December 2, 2014. *Análisis del riesgo de la Ley de secretos en Honduras*.

<sup>639</sup> IACHR. December 5, 2014. *Preliminary Observations on the Human Rights situation in Honduras* Republic of Honduras. Gaceta del Diario Oficial de Honduras. *Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*. March 7, 2014.

harm internal national security”, therefore it may be declassified after 10 years. Information classified as secret may keep its secret classification up to 15 years if it could “cause eminent risk or directly threaten constitutional order, security, national defense, international relations and the achievement of national objectives” and eventually cause “serious internal and external harm to national security.” Information classified as top secret could be confidential for up to 25 years. This category includes information that “if publically available, could cause serious internal and external damage to national security” (Art. 4 and 7).<sup>640</sup>

488. According to Article 7 of the law, “if the circumstances under which a matter was classified persist, the National Defense and Security Council could expand the original classification time frame, through a duly supported and well founded edict.” Furthermore, it establishes that a request for declassification outside of the time limits imposed will only be considered “in cases of national interest, or for investigations of possible crimes.”<sup>641</sup>
489. Article 10 provides “[i]f a person receives classified information or material, pursuant to this law, and as long as the person is aware the information is classified, they must keep it secret and turn it over to the closest civil, police or military authority.” In that regard, it states “when it is foreseen that classified material will be made known to the media, the outlets will be notified of the classification so said classification is respected.”<sup>642</sup>
490. Lastly, Article 14 of the law provides that: “no public administration official or employee is forced to reveal classified matters in public or private hearings, be it administrative or judicial proceedings”, except in cases where “information related to alleged genocide, extrajudicial executions, torture, forced disappearance, mass sexual violence, or crimes against humanity.” If an authority requires classified information or material, said authority shall take steps to receive the appropriate authorization from the National Defense and Security Council.<sup>643</sup>
491. In July of 2014, the National Defense and Security Council issued Resolution 069/2014 based on this law, wherein it classified the information from the following agencies as confidential: (a) Supreme Court of Justice; (b) Secretariat of the Interior Security and National Police Directorate; (c) Office of the Public Prosecutor for Drug Trafficking; (d) National Bureau of Investigation and Intelligence; (e) Armed Forces Strategic Investigation Agency; (f) Ministry of the Interior Foreign Affairs and International Cooperation Directorate; (g) National Migration Institute; (h) Executive Revenue Agency; (i) National Registry of People; (j) Social Security Institute of Honduras; (k) Property Institute; (l) Financial Intelligence Unit for the Bank and Securities Commission; (m) Merchant Marines;

<sup>640</sup> Republic of Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>641</sup> Republic of Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>642</sup> Republic of Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>643</sup> Republic of Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.



(n) Aviation Authority; (o) National Electric Power Firm; and (p) Autonomous National Service of Aqueducts.<sup>644</sup> The Council considered these state entities “administer information in the interest of national defense and security” and should therefore “provide the corresponding information, and input and update data bases”, with the object of “contributing to the fight against conventional and unconventional crime.”

492. The Commission observes that on July 28, 2015 the Institute for Access to Public Information (IAIP) issued an important decision determining the Classification of Public Documents Related to National Security and Defense Act [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*] is inconsistent with the international obligations of the State of Honduras and ordered the legislature to: (i) amend the Law so it complies with the Constitution, Transparency Act, American Convention on Human Rights, and international principles, (ii) amend the law so it specifically defines “National Security”, so it may not be used in a “discretionary or subjective” manner; (iii) amend the law so when something is classified as confidential, the person who has information regarding alleged acts of corruption may testify about it without being subject to retaliation or personal risk; amend the law so restrictions apply only to the specific information that is confidential and not the information in its entirety, to repeal Articles 4 and 10 of the law, and (iv) while discussing the reform as ordered, to include IAIP opinions.<sup>645</sup>
493. The Inter-American Commission especially recognizes the IAIP for adopting measures to guarantee the right to seek information on matters of national security, simultaneously it calls upon the State to review the Classification of Public Documents Related to National Security and Defense Act [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*] and legislation adopted later, to guarantee it is compatible with International Human Rights Law. For example, The Joint Declaration on Access to Information and on Secrecy Legislation the Special Rapporteurs for Freedom of Expression recalled “[c]ertain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label “secret” for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate”<sup>646</sup>. In that regard, this Rapporteurship has emphasized that a restriction of

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<sup>644</sup> Republic of Honduras. National Defense and Security Council. National Bureau of Investigation and Intelligence. July 14, 2014.

<sup>645</sup> *Instituto de Acceso a la Información Pública de Honduras*. File No. 001-2015. Resolution No. SO-001-2015. July 28, de 2015.

<sup>646</sup> UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. December 6, 2004.

freedom of expression that seeks to justify itself on grounds of national security cannot be based on an idea that is not compatible with democratic society.<sup>647</sup>

494. In addition, the IACHR recommends not establishing subsequent sanctions against public officials who disseminate confidential information when it pertains to serious corruption cases, human rights violations and other matters of obvious general interest. As the Office of the Special Rapporteur noted on the 2010 Joint Statement on Wikileaks, and the 2013 Joint Declaration on Surveillance Programs and their impact on Freedom of Expression, “[p]ublic authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, government “whistleblowers” releasing information on violations of the law, on wrongdoing by public bodies, [serious corruption cases], on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal. The imposition of criminal sanctions must be exceptional and strictly limited according to necessity and proportionality.”<sup>648</sup> Similarly, the Global Principles on National Security and the Right to Information (Tshwane Principles),<sup>649</sup> states that the law should protect public employees from retaliation for the disclosure of information concerning wrongdoing so long as, among others, “the person making the disclosure had reasonable grounds to believe that the information disclosed tends to show wrongdoing” that falls into one of the following categories “(a) criminal offenses; (b) human rights violations; (c) international humanitarian law violations; (d) corruption; (e) dangers to public health and safety; (f) dangers to the environment; (g) abuse of public office; (h) miscarriages of justice; (i) mismanagement or waste of resources; (j) retaliation for disclosure of any of the above listed categories of wrongdoing; and (k) deliberate concealment of any matter falling into one of the above categories.”<sup>650</sup>

<sup>647</sup> IACHR. 2013 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II.149. Doc. 50. Decemer 31, 2013, para. 60.

<sup>648</sup> UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression, Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. Joint Statement On Wikileaks; United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. Joint Declaration on surveillance programs and their impact on freedom of expression.

<sup>649</sup> Open Society Foundations. June 12, 2013. The Global Principles on National Security and the Right to Information (The Tshwane Principles).

<sup>650</sup> Open Society Foundations. June 12, 2013. The Global Principles on National Security and the Right to Information (The Tshwane Principles). Principles 37-40. See also: IACHR. 2013 Annual Report of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser. L/V/II.149. Doc. 50. December 31, 2013.

## **D. Freedom of Expression on the Internet and privacy of communication**

495. The right to freedom of expression has found in the Internet a unique tool for incrementally extending its enormous potential to broad sectors of the population. The Internet is transforming and is a medium where people in the entire world can express their opinions, while simultaneously significantly increasing their capacity to access information, it promotes pluralism and the dissemination of information.<sup>651</sup> Similarly, freedom of expression in the digital sphere presents enormous challenges, the IACHR and Office of the Special Rapporteur for Freedom of Expression were interested in learning about these challenges and follow up on them during the visit to Honduras. According to the information learned during the on-site visit, in March of 2014 Honduras reformed the Framework Law on the Telecommunications Sector [*Ley Marco del Sector de Telecomunicaciones*].
496. According to the information received, the Telecommunications and Information Technology Investment Fund [*Fondo de Inversión de Telecomunicaciones y Tecnologías de la Información*] (FITT), was created as a strategy to achieve universal access to the Internet and Communication and Information Technology (ICT) services, as well as bridging the digital divide. The aforementioned Fund will finance the promotion and development of telecommunications projects and application in ICTs. It is tasked with bridging the digital divide and guaranteeing equal opportunity for beneficiaries, through subsidized projects and/or projects that “will be financed in order to strengthen growth in neglected areas or communities”<sup>652</sup> and the country as a whole. Likewise, it shall promote access to quality telecommunications services, in a timely manner, efficiently and at accessible and competitive prices, for the inhabitants of the country who do not have sufficient resources to access them.<sup>653</sup>
497. According to the most recent performance report on the telecommunications sector, during the final quarter of 2014 advances were made. Specifically, the number of subscribers to fixed Internet reached 159,276, which, according to the report, represents a 21.24% growth from the previous quarter. The number of subscribers to mobile Internet reached 1,350,109, a 19.73% growth from the previous quarter. The number of Honduran Internet users increased by 16.4% from 2012 to 2013.<sup>654</sup>
498. The IACHR and the Office of the Special Rapporteur for Freedom of Expression take note of the advances to ensure universal and effective enjoyment of the right to freedom of expression online. In that regard, it encourages the State of

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<sup>651</sup> IACHR. *2013 Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

<sup>652</sup> According to FITT regulations, “rural, marginal urban, or underserved areas in national territory , in other words, places that are a social interest priority, where there are no telecommunications services, or insufficient services to meet current and future demands”.

<sup>653</sup> CONATEL. *Resolution NR 007/14. Reglamento del Fondo de Inversión de Telecomunicaciones y Tecnologías de la Información y las Comunicaciones*. May 7, 2014.

<sup>654</sup> CONATEL. *Desempeño del Sector de Telecomunicaciones. Informe Trimestral*. May, 2015.

- Honduras to continue adopting positive measures of inclusion, or bridging the digital divide in a progressive manner; and to continue efforts on the development of plans to ensure the infrastructure and services tend to increasingly guarantee universal access.
499. Without prejudice to these notable advances, the Commission received information from different actors of civil society regarding the prejudicial impact the implementation of the Special Law on Interception of Private Communication [*Ley Especial para la Intervención de las Comunicaciones Privadas*]<sup>655</sup> would have on the exercise of the right to privacy and freedom of expression in the country.<sup>656</sup>
500. The IACHR observes that the law, passed in 2011, has the goal of establishing a “legal framework for rules of procedure in the intervention of communications, to be used rarely in investigations, thus making it a tool to combat conventional crime and especially organized or non-conventional crime, guaranteeing the human right to communication, without more restrictions than those provided for by law” (Art. 1).
501. According to the law, communications by any means or transmission may be intercepted.<sup>657</sup> In order to intercept the “Office of the Public Prosecutor, the National Police, or any other competent authority” shall obtain a court order. The judge shall resolve the petition immediately, not to exceed 4 hours, and said authority shall continue “the investigation, processing and persecution of crimes requiring the use of this special technique, taking into account the seriousness, usefulness and appropriateness of the measure in regards to the crime” (Articles 7, 8, and 16). Furthermore, this law created the Communication Interception Unit [*Unidad de Intervención de Comunicaciones*], which falls under the National Investigation and Intelligence Directorate of the National Defense and Security Council and shall be the body tasked with executing the interception court order (Art. 33).
502. Moreover, Article 39 of the aforementioned law requires “company[ies], institution[s], or any other natural or juridical entity that offers communications

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<sup>655</sup> Judicial Branch. The Gazette. Decree No. 243-2011. *Ley Especial para la Intervención de las Comunicaciones Privadas*. January 26, 2012.

<sup>656</sup> Conexihon. December 5, 2011. *Análisis sobre la Ley Especial de Intervención de las Comunicaciones Privadas*; PEN Internacional, et al. September 15, 2014. *Contribución a la 22a sesión del Grupo de Trabajo de la presentación del Examen Periódico Universal sobre Honduras*; El Comité de Familiares de Detenidos Desaparecidos en Honduras, COFADEH, et al. September, 2014. *Informe Conjunto presentado para el Segundo Exámen Periódico Universal al Estado de Honduras*.

<sup>657</sup> Article 3. Definitions (...) 11) Communication interception. “Communication interception is a special investigation technique, part of the special process of investigation, consisting in the process of listening, capturing, registering, saving, recording, or observing, by the authorities, without the consent of the owners or participants, a communication that occurs by any means of signal transmission, emission, or reception, or written signs, images, sounds, emails, or any type of information made by cord, radioelectricity, optical, or other media, electromagnetic system, telephone, radio communication, telegraphy, computer or telematics, of similar nature or analog, just as communication through any other means or transmission”. National Congress. The Gazette. Decree No. 243-2011. *Ley Especial para la Intervención de las Comunicaciones Privadas*. January 26, 2012.

services”, the obligation to “keep the data on all connections of each user for the period of 5 years”. Data includes all contacted telephone numbers, length and time of the call, and if on a cellular telephone, the location from where the call is made, answered or a message is sent.<sup>658</sup>

503. The IACHR notes with concern, that the aforementioned Article 39 does not clearly define who is responsible for data retention on the connections, or the type or category of data to be preserved. The clear definition of those subject to data retention and the type of data is crucial given the number of communication service providers and access to Internet and information actors, as well as the complexity of the data according to the type of service provided. The Act is not clear on the obligations of personal data retention by Internet service providers; and those are precisely the platforms used to transmit electronic communication, like email, social networks and messaging services.

504. The aforementioned is even more serious, since the Act does not clearly define the types of crimes subject to these methods for their investigation and prosecution. It establishes one of the longest and most onerous time limits (5 years) in the region, and does not provide for destroying the preserved data at the end of the retention period. To that extent, the Office of the Special Rapporteur for Freedom of Expression of the IACHR has expressed concern over the adoption of policies that obligate Internet and telecommunications service providers to retain the communications metadata for historical surveillance, in contrast to selective retention mechanisms clearly defined by law. In that regard, the Special Rapporteurs of the UN, OSCE, OAS and African Commission have affirmed that:

requirements to retain or practices of retaining personal data on an indiscriminate basis for law enforcement or security purposes are not legitimate. Instead, personal data should be retained for law enforcement or security purposes only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs and the rights to freedom of expression and privacy.<sup>659</sup>

505. The Commission reiterates that all possible effects on the freedom of expression and right to privacy shall be truly necessary and proportionate to the legitimate goals of a democratic State. Freedom of Expression is invaluable for democracy and individuals, that is why it enjoys special protection in both national constitutions and the American Convention on Human Rights.

506. In that regard, the IACHR reiterates a call to the state of Honduras to review its legislation keeping international standards and principles in mind in light of our report on Freedom of Expression and the Internet and Resolution 68/167, The

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<sup>658</sup> Judicial Branch. The Gazette. Ley Especial sobre Intervención de las Comunicaciones Privadas. December 12, 2011.

<sup>659</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2015. Joint Declaration on Freedom of Expression and Response to Conflict Situations.

right to privacy in the digital age, adopted by the United Nations General Assembly, wherein it calls upon the States to review:

their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law.<sup>660</sup>

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<sup>660</sup> UN. General Assembly, Resol. 68/167, December 18, 2013. The Right to Privacy in the Digital Era, p. 3, number 4.c).



CHAPTER 7  
SITUATION OF PERSONS  
DEPRIVED OF LIBERTY





## SITUATION OF PERSONS DEPRIVED OF LIBERTY

### A. *Situation of the National Prison System and the Human Rights of Persons Deprived of Liberty*

507. In this chapter, the Inter-American Commission analyzes what it deems among the most serious issues still faced by the Honduran prison system, such as the hazardous delegation of internal control of prisons to the prisoners themselves (uncontrolled self-governance) and the corresponding lack of responsible management by authorities; overcrowding and deplorable incarceration conditions; and lack of classification of persons deprived of liberty, including lack of segregation of men and women in some prison centers. It also refers to other relevant aspects drawing the attention of the delegation during the on-site visit, such as the sharp increase in the prison population; progressive use of the Armed Forces in prisons; the high %age of detained defendants; the situation of juveniles deprived of liberty; and lack of prompt and effective investigation of the Comayagua fire. The IACHR is aware that these are not the only problems faced by the Honduran State in this area. Other major challenges exist in areas such as: the situation of the maximum security cellblocks and the situation of those held in police stations. However, in view of the nature of this report and of the aspects covered during the on-site visit, these matters are not examined herein, without this in any way implying that they are less relevant than those presented here.
508. As relevant background, the Inter-American Commission points to its *Report on the Situation of Persons Deprived of Liberty in Honduras*,<sup>661</sup> adopted on March 18, 2013, the outcome of a monitoring visit made in April 2012, in response to a fire at Comayagua National Penitentiary, on February 14 of that year.<sup>662</sup> In that report, the Commission referred to what it considered the main structural problems of the Honduran prison system, many of which persist, as verified in this visit. Likewise, the Commission verified, in the course of visit, that the fire that occurred at the Comayagua Penitentiary was mostly the result of the lack of preventive measures on the part of the State after the fire occurred at the Penitentiary of San Pedro Sula in 2004, in which 107 people lost their lives. These facts were analyzed by the Inter-American Court of Human Rights in its 2012 judgment on the case of *Rafael Arturo Pacheco Teruel and others*. In this decision the Court ordered Honduras to

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<sup>661</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013. Available at: <http://www.oas.org/en/iachr/pdl/docs/pdf/HONDURAS-PPL-2013ENG.pdf>.

<sup>662</sup> This Report was formally presented to then-President of the Republic Porfirio Lobo Sosa, on August 2, 2013, in the context of a promotional visit made for its dissemination in Honduras. IACHR, Press Release No. 58/13: IACHR Presents Report on Persons Deprived of Liberty in Honduras, *Tegucigalpa, Honduras*, August 2, 2013.

adopt a number of *erga omnes* measures directed to prevent the loss of human lives in penitentiary facilities in emergency situations.<sup>663</sup>

## 1. Sharp increase in the prison population and the State's response to the problem

509. According to official information provided to the delegation, in November 2014, the total prison population of Honduras was 14,805 persons deprived of liberty. Of that number, 6,758 (45.64%) were convicts and 8,047 (54.35%) were detained as defendants. Female inmates totaled 669, i.e., 4.5% of the prison population.<sup>664</sup>
510. This constitutes a sharp increase over the figures observed by the Inter-American Commission in its April 2012 visit, during which it received information that the total prison population of Honduras was 11,727 persons deprived of liberty (52.02% convicted and 47.98% awaiting trial).<sup>665</sup> Therefore, from early 2012 to end 2014, a period of under three years, the prison population rose by over 3,000, i.e., by over 25%.<sup>666</sup> This change is most striking if it is borne in mind that the total prison population of Honduras had been relatively constant for the decade leading up to 2012.<sup>667</sup>
511. In its comment on the draft of this report, the State indicated that the total available housing increased this year, and there are now (25) prisons with a current capacity of 10,503 slots for (16,000) inmates, which means that nationally there is a deficit of approximately (5,597) slots.<sup>668</sup> Information received by IACHR indicates that overcrowding is worst in prison facilities located in the main urban areas. Additionally, in the different prison facilities, some areas and sectors are

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<sup>663</sup> IACHR, *Report on the Situation of Persons Deprived of Liberty in Honduras*. OEA/Ser.L/V/II.147, 18 March 2013, para. 105

<sup>664</sup> *Instituto Nacional Penitenciario*, Special Committee on Transition, Daily communication on the prison population, Thursday, November 20, 2014.

<sup>665</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, par. 19. Information contained in the *Diagnóstico de los Juzgados de Ejecución Penal*.

<sup>666</sup> According to information provided by the State, in January 2013, the total prison population of Honduras was 12,263 (IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, par. 21. Information contained in Official Note No. 188-DGAE-13 of February 14, 2013, issued by the General Bureau of Special Affairs of the Secretariat of Foreign Affairs of the Republic of Honduras, transmitting Official Note No. SP-A-24-2013 of February 8 2013, issued by the Office of the Attorney General of the Republic, to the IACHR. Source: National Bureau of Special Preventive Services. Daily communication of Monday, January 28, 2013. Then, in December 2013, it reported that the prison population was 13,091 (IACHR, Annual Report 2013, Chapter V.B, Honduras, OEA/Ser.L/V/II. Doc. 50 corr. 1, adopted on December 31, 2013, par. 384. Information contained in State of Honduras Official Note No. SP-A-166-2013, of December 19, 2013, "Observations of the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras").

<sup>667</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, para. 57.

<sup>668</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

much more overcrowded than others, a fact directly related to the system of uncontrolled self-governance and illicit commercial activities still in practice in the prisons.

512. Moreover, the State reported that the National Prison Institute has begun to implement the provisions established in Article 66 of the National Prison System Act as of 2015. That article states the following: “The number of inmates housed in each facility shall be pre-established based on its actual capacity and shall not be exceeded, in order to ensure acceptable coexistence.”<sup>669</sup> The State also indicated that since September 2015 it has been implementing the Project to Reduce Overcrowding among persons deprived of liberty, which the judiciary is supporting through the sentencing courts and public defenders’ offices. According to information provided by the State, this project consists of identifying individuals in custody throughout the country who may be eligible for benefits established under domestic law such as commutation, parole, release due to terminal illness, or pre-release for community work, as well as senior citizens. In its first phase, the project has identified 1,100 individuals serving time who would be eligible for such benefits.<sup>670</sup> The IACHR values the efforts and looks forward to more information about this project’s developments and concrete results.
513. In Honduras, nearly half the prison population is concentrated in San Pedro Sula National Penitentiary (PN-SPS) and Marco Aurelio Soto National Penitentiary (PN-MAS). During the visit, it was found that the number of inmates in PN-SPS had risen from 2,199, as observed in 2012,<sup>671</sup> to 2,725 (120 of whom were women),<sup>672</sup> although its official capacity is approximately 800.<sup>673</sup> In this Honduran prison facility is most evident the unequal distribution of spaces and the marketing thereof under the “coordinator” system. For its part, at the time of the visit, PN-MAS, located in Támara Valley, had a population of 4,080 persons deprived of liberty.<sup>674</sup> According to the Director of this facility, its capacity is 2,600 to 3,000 slots. This is the prison most impacted by the general increase in prison

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<sup>669</sup> Art. 66, LSPN Decree No. 64-2012, in effect as of December 3, 2012, requirement made by the Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding Observations Honduras. CCPR/C/HND.CO/1, December 13, 2006, para. 13, and pursuant to the friendly settlement agreement in Case 12.680, Pacheco Teruel v. Honduras, commitment 2, subparagraph B, 2012. Communication from the State of Honduras. Note No. SG/064/MHOEA/2015. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>670</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>671</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, para. 60.

<sup>672</sup> Office of the Director of San Pedro Sula National Penitentiary, *Recuento de internos por bartolina* [Inmate Count by Cellblock], as of December 3, 2014.

<sup>673</sup> Although a true idea of the actual housing capacity of this prison is being lost over time through the disorganized expansion of its facilities.

<sup>674</sup> Office of the Director of Marco Aurelio Soto National Penitentiary (PN-MAS), Daily communication on the prison population, of December 4, 2014.

population, since, the number of inmates housed rose from 2,800 in early 2012<sup>675</sup> to 4,080 in late 2014.

514. The delegation also found that, at the time of the visit, Comayagua National Penitentiary held a total of 565 inmates, within a reasonable range of its 560 slot capacity. According to information received, *the Juez de Ejecución Penal* (judge in charge of monitoring the execution of sentences, hereinafter “*Juez de Ejecución*”\*) with jurisdiction has issued resolutions for that prison facility ordering that it house inmates only up to the limit of its installed capacity.<sup>676</sup>
515. The Inter-American Commission observes, based on information received during the visit, that Honduras’ ten most overcrowded national prison and penitentiary facilities, apart from the three mentioned in the preceding paragraphs, are:

PRISON FACILITY	NUMBER OF SLOTS	PRISON POPULATION <sup>677</sup>	OVERPOPULATION
Santa Bárbara Prison Center	70	346	394%
Puerto Cortés Prison Center	50	209	318%
Puerto Lempira Prison Center	20	82	310%
Progreso Prison Center	120	415	246%
Esperanza Prison Center	100	340	240%
Trujillo Prison Center	120	371	209%
Danlí Prison Center	240	652	171%
Santa Rosa National Penitentiary	240	644	168%
Olanchito Prison Center	60	158	163%
Nacaome Prison Center	120	309	157%

516. In that context, the National Mechanism for the Prevention of Torture (CONAPREV) indicates in one of its press releases that: “nationwide, 1,700 persons deprived of liberty sleep on the floor,”<sup>678</sup> which, at the time of the visit, was 11% of the prison population.
517. From a substantive standpoint, the Inter-American Commission reiterates that overcrowding of persons deprived of liberty may itself constitute a form of cruel, inhuman, and degrading treatment, violating the right to humane treatment (in the

<sup>675</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, para. 17.

<sup>676</sup> National Coordinator of Supervising Judges, additional information submitted to the IACHR by Note of May 4, 2015.

<sup>677</sup> National Coordinator of Supervising Judges, October 2014 Statistical Report, prison population (defendants and convicts).

<sup>678</sup> MNP-CONAPREV press release: *Amotinamiento en PNMAS, por traslado de internos* [Riots in PNMAS from inmate transfers], March 9, 2015. Available at: <http://www.conaprev.gob.hn>.

terms of Articles 5.1 and 5.2 of the American Convention).<sup>679</sup> Therefore, in view of the impossibility of offering inmates decent conditions, the State cannot continue placing persons in such spaces, because on doing so it is deliberately placing the person in a situation that violates his or her fundamental rights. In effect, in a state under the rule of law, the aim of retribution of the sentence never justifies its use entailing the continuing violation of the detainees' human rights.<sup>680</sup>

518. To address the serious problem of prison overcrowding, the State has proposed as a fundamental response the construction of two new “mega-prisons”; and in parallel has opted to install detention centers for common criminals at military installations.
519. The first of these mega-prisons was built in Tumba la Olla Village, El Porvenir municipality, Francisco Morazán Department, with a 2,000 prisoner capacity, and inaugurated by the National Prison Institute (INP) on February 12, 2015. According to information received, the INP, together with the *Juzgados de Ejecución Penal* [supervisory courts], has developed a classification of persons deprived of liberty who would enter this new prison center. Since this was initially considered a minimum and medium security facility, these two entities conducted studies and did preliminary work on the transfer of those persons deprived of liberty from the south-central and eastern areas of the country whose profile was consistent with the nature of this new prison center. However, according to information received, this was not carried out in the manner coordinated with the *Juzgados de Ejecución Penal*. In fact, the prison authorities transferred criminals from the country's largest prisons who were considered “chiefs” or “heads” of criminal gangs and of cellblocks.<sup>681</sup> These prisoners were housed in 40 disciplinary cells; only allowed one family visit a month after their transfer; did not have conjugal visits, hospital care, legal counsel, or other administrative officers normally needed for the normal operation of a prison center; and were transferred without the corresponding administrative files.<sup>682</sup>
520. The Commission observes that Article 92 of the Prison System Act provides that the respective *Juez de Ejecución* must be informed at least 24 hours in advance of transfers of persons deprived of liberty from one prison facility to another. Therefore, by law, the INP and the prison center directors must take the judiciary into account at the time of ordering the transfer of prisoners.
521. The second “mega-prison” is located in Quimistán Santa Bárbara municipality, Santa Bárbara Department, and its planned capacity is 2,500 slots. During the visit, the delegation visited the site, observing that it was under construction. This

<sup>679</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, adopted on December 31, 2011, paras. 456-460.

<sup>680</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, adopted on December 31, 2013, Chap. 6(G), para. 1127.

<sup>681</sup> National Coordinator of Supervising Judges, Additional information submitted to the IACHR by note of May 4, 2015.

<sup>682</sup> National Coordinator of Supervising Judges, Additional information submitted to the IACHR by note of May 4, 2015. According to this information, as of its date, 58 prisoners had been transferred to the El Porvenir Prison Center.

prison complex consists basically of groups of cellblocks built by joining or assembling containers, lined with insulating material and fitted out as housing. The new prison center is intended to replace the existing PN-SPS.<sup>683</sup>

522. The Commission recognizes that the creation of new prison capacity—either through the construction of new facilities or the modernization and expansion existing ones—may be a necessary measure to combat overcrowding, especially when existing facilities are old, in poor condition, and inadequate. However, this measure alone does not represent a sustainable solution over time.<sup>684</sup> Merely increasing prison capacity is not a suitable solution to overcrowding because the increase in the prison population is ultimately the direct consequence of the implementation of the State’s criminal justice policy. Moreover, the systematic construction of prisons as a way to solve the increase in the number of persons deprived of liberty is fiscally unsustainable.<sup>685</sup>
523. In some cases, such as that of PN-SPS, whose facilities are old, hazardous, anomalous, and disorganized, construction of a new prison center to replace it is urgently required, as indicated by the Commission, and ordered by the Inter-American Court in the cited judgment in the case of *Rafael Arturo Pacheco Teruel*. However, the Commission recognizes that the construction of “mega-prisons” is not necessarily an ideal solution to the existing problems of the Honduran prison system. The Commission, for its part, considers reasonable for and propitious to good prison management the construction of detention centers with a 300 to 500 inmate capacity.
524. As regards the construction and operation of “mega-prisons” or “mega-penitentiary complexes”, the IACHR concurs with the following aspects of the views of experts of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD):<sup>686</sup>

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<sup>683</sup> According to press information published in April 2015, this work was still under construction, at a total cost of LHN. 450,000,000 (approximately US\$20,590,000). However, thus far, about LHN 90,000,000 had been invested (approximately USD\$4,120,000). In this regard, see, for example: *La Prensa* newspaper (Honduras): *En mes and medio finalizarán obra gris del nuevo centro penal*, April 7, 2015. Available at: <http://www.laprensa.hn/honduras/828580-410/en-mes-y-medio-finalizar%C3%A1n-obra-gris-del-nuevo-centro-penal>; the newspaper *El Heraldo.hn*: *Siete de cada 10 reos que salen del penal regresan antes de los tres meses*, March 24, 2015. Available at: <http://www.elheraldo.hn/pais/825460-364/siete-de-cada-10-reos-que-salen-del-penal-regresan-antes-de>.

<sup>684</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, para. 91; IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, adopted on December 31, 2011, para. 461.

<sup>685</sup> IACHR. *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, adopted on December 31, 2013, Chap. 6(G), para. 1125.

<sup>686</sup> These criteria are a summary of information presented by ILANUD consultant and research Guillermo Arroyo Muñoz in a series of forums held with the theme: “Overcrowding and Human Rights” in March 2014. This content is related to the document “*Manual de Gestión Penitenciaria*” (2012), for prison personnel of Panama and El Salvador. In that regard, see: Ramón Parés I Gallés, *Efectos de la Sobrepoblación en la Organización Penitenciaria de Cataluña*, in: *Justicia Penal y Sobrepoblación Penitenciaria: Respuestas Posibles*, Elías Carranza (Coordinator), Siglo XXI, Mexico, 2001, p. 200.

- a. Mega-prison complexes create conditions contrary to the principle of individualized sentence enforcement. The uniqueness of the person deprived of liberty is lost in the crowd of the prison population.
- b. Mega-prison complexes promote still further the risk and vulnerability conditions of members of groups historically subject to discrimination.
- c. In mega-penitentiary complexes, health and health care services,<sup>687</sup> food, special diets for health conditions, education, and work, among other things, are not sufficient for the population as a whole, and access to them is highly restricted.
- d. Although the rationale for mega-penitentiary complexes is that allegedly they are cheaper or more profitable, since the cost per prisoner per day is divided among more persons, they usually lack external controls that would guarantee the basic standards or basic performance indicators; or fall far short in terms of maintenance of the facilities and equipment required for their daily operation, and in dealing with normal wear and tear from vandalism.
- e. In mega-penitentiary complexes, prison guards are unable to fulfill their responsibility and legal obligation to guarantee the rights of prisoners to life and humane treatment, given the difficulty of exercising internal control of facilities owing to the size of the prison population.
- f. In mega-penitentiary complexes, the occurrence of situations of violence, such as riots, fights, vandalism, and trafficking in substances and prohibited items and the risk of emergencies such as fires, tremors-earthquakes, and floods; and of serious situations jeopardizing prisoner health, such as diarrhea and meningitis outbreaks, and the spread of skin and respiratory disorders, are exponentially higher. Additionally, the massive size of the prison population and its increased capacity to resist authority mean that in serious situations of violence, the State must use greater force in its response, which, in turn, increases the risk of loss of life and of injury in these operations.
- g. In mega-penitentiary complexes, relations between prison personnel and the prison population tend to be anonymous, distant, bureaucratic, and dominated by critical events or emergencies.

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In fact, in the existing San Pedro Sula National Penitentiary-although by definition not a mega-jail, in fact houses over 2,700 inmates-the Commission verified that there are no medications in its infirmary. For example, it does not have: ibuprofen, amoxicillin, metoclopramide, (for asthmatics: hydrocortisone, prednisone), (for gastritis: omeprazole and ranitidine), neogel, metformin; or gauze, suture thread, gloves, masks, acetaminophen, condoms, anti-spasmodics; in the dentistry area it lacks: anesthesia, x-ray film, gloves and masks, and amalgam for fillings; in the gynecology area, it lacks: antibiotics for vaginal infections, folic acid and ferrous sulfate (for prenatal use), additionally, there is no gynecologist (inmates are sent for hospital appointments), or to the Women's Social Rehabilitation Penitentiary in Francisco Morazán Department (the only prison designed specifically for the country's female population); in the laboratory area, it lacks: film, masks, Bunsen burners, and special pencils for marking slides. Moreover, there are no personnel to take inmates to such medical appointments as they manage to make in external hospitals or clinics, and inmates usually cannot keep these appointments.



- h. In mega-penitentiary complexes, coexistence among persons deprived of liberty is complicated by the heterogeneity of the prison population.
  - i. The very structure of mega-penitentiary complexes tends to impede the classification of persons deprived of liberty.
  - j. The high investment and operating costs of mega-penitentiary complexes is the rationale for public authorities to tend to favor models of privatization of prison center administration and services. This turns the deprivation of liberty into a financially profitable business for all parties involved in these privatization processes.
  - k. Lastly, “with regard to geographic distribution, there is also a tendency to make the mistake of building hyper-prisons [sic] far from urban areas, judicial circuits, and the places of residence of the immediate family and close relatives of prisoners.”<sup>688</sup>
525. On this subject, the State indicated the following, in its response to the draft of this report:<sup>689</sup>

With the construction of these new prisons, we hope to carry out an effective classification and placement of inmates, which will be done based on an analysis of their legal, personal, social, and security circumstances, and their capacity to live side by side with others. For classification purposes, the Interdisciplinary Technical Council will use the following objective and subjective criteria: 1) Objective: sex, age, and legal status; 2) Evaluative: the inmates’ individual and social situation; 3) Criminological: criminal record and types of crimes; 4) Prison track record: means and intent with which the offense was committed; and 5) Institutional: need for physical confinement, technical and institutional security needs [pursuant to Article 106 of the Regulations to the Honduran Prison System Act]. The aforementioned regulations will significantly help groups in a situation of vulnerability to live together tranquilly and peacefully in these prison facilities, with the primary goal of safeguarding their physical and moral integrity.

526. The IACHR urges the State to implement Article 106 of the Regulations to the Honduran Prison System Act referred to by the State.
527. To summarize, the Commission recognizes that there is, in fact, consensus that smaller prison centers tend to be less violent, safer, and less susceptible to control by criminal groups; they make a more comprehensive contribution to rehabilitation, hence, to reducing recidivism; moreover, they may reduce costs. In any event, the design and implementation of appropriate public prison policy focusing on, for example, the roots of the prison crisis, including the high levels of incarceration and preventive detention, judicial delays, and corruption, would be a

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<sup>688</sup> Elías Carranza, *Sobrepoblación Penitenciaria en América Latina and El Caribe*, in: *Justicia Penal y Sobrepoblación Penitenciaria: Respuestas Posibles*, Elías Carranza (Coordinator), Siglo XXI, Mexico, 2001, p. 38.

<sup>689</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

more appropriate long-term solution.<sup>690</sup> In that regard, expanding prison capacity should be part of a broader public policy that includes specific strategies aimed at reducing overcrowding from the standpoint of a technical understanding of the crime problem, effective operation of the criminal justice system and general crime prevention strategies.<sup>691</sup>

528. In its response to the draft of this report, the State indicated that in April 2015 construction began on two new prison facilities other than those mentioned in this report—in Ilama, Santa Bárbara, and Moroceli, in the department of El Paraíso. These have a smaller capacity, but their design and infrastructure meet international standards for prisons.<sup>692</sup>
529. The Commission also reiterates that prison management in general must be governed by strict criteria of transparency, openness, and independent monitoring;<sup>693</sup> implying that the administrative processes of awarding contracts, procurement, construction, etc. of prison system facilities and inputs should be governed at all stages by these principles.

## **2. Uncontrolled self-governance, violence, lack of classification of persons deprived of liberty, and reports of torture, and cruel, inhuman, and degrading treatment and punishment**

530. In its *Report on the Situation of Persons Deprived of Liberty in Honduras*, the IACHR referred extensively to the unsupervised delegation of internal control of prison centers to prisoners themselves and to the lack of security, supervision, and internal control measures in prisons as one of the structural problems of the Honduran prison system. The primary structural deficiency recognized by the Inter-American Commission was that in general the country's prison centers operate under uncontrolled "self-governance" or "shared governance" systems whereby certain prisoners, known as "coordinators," exercise internal control and direct activities essential to the lives of most of the prison population without control or criteria decided by the prison administration. The most serious aspect of this system is that it essentially places most prisoners in a position of heightened

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<sup>690</sup> In this regard, see, for example: IACHR, thematic hearing: Situation of persons deprived of liberty in Panama, 149<sup>th</sup> Period of Sessions, organized by Alianza Ciudadana, International Human Rights and Conflict Resolution Clinic, Stanford University, and International Human Rights Clinic, Harvard University, October 31, 2013, as well as the report: *La crisis en Panamá continúa: ¿Hacia un sistema penitenciario que respete los derechos humanos?* [available only in Spanish], presented at that hearing. Available at: <https://humanrightsclinic-law.stanford.edu/wp-content/uploads/2013/11/La-Crisis-Continua-Final-for-web.pdf>.

<sup>691</sup> IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. Doc.46/13, adopted on December 30, 2013, para. 293.

<sup>692</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>693</sup> IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. Doc.46/13, adopted on December 30, 2013, par. 303; IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, adopted on December 31, 2013, Chap. 6(G), para. 1120.

risk and subordination, with the result that those most vulnerable in the power relationship are those most highly impacted.

531. The need for this system was systematically justified by the authorities on the argument that it was a “necessary evil” given the lack of resources and personnel. However, in the light of international human rights law and the most basic principles of good prison administration, this system of unsupervised “coordinators” is completely dysfunctional, anomalous, and hazardous. Given these considerations and the negative consequences generated by this system in prisons, the Inter-American Commission urged the State to “take decisive measures—as part of its compliance with its international obligations in the area of human rights—progressively and irreversibly, to retake effective control of all prison facilities”; and stressed that the State must ensure that all persons under its custody have access to prison conditions ensuring that their basic needs are met and that they have a decent life.<sup>694</sup> The Commission also distinguished between this hazardous system of prisoner interaction and the possibility of establishing systems where inmates, with adequate supervision, could themselves organize their own recreational, cultural, sporting, social, or religious activities. Proper operation of these activities is a best practice recognized by the international standards;<sup>695</sup> promotes the physical and mental wellbeing of prisoners and their sense of responsibility and dignity; and, therefore contributes to the fulfillment of sentencing objectives.
532. Despite this and similar pronouncements issued by different national and international human rights organizations, during its on-site visit, the IACHR noted that the system of coordinators, without adequate controls, remains in effect in Honduras. In its visit to PN-SPS, it was possible for the IACHR delegation to enter the yard once agreement regarding this activity had been reached by the Director of that facility and the IACHR Rapporteur for the Rights of Persons Deprived of Liberty with the “general coordinator.”<sup>696</sup> The tour was made with the “assistance” and under the supervision of the network of “sub-coordinators” who “organize” life in the different prison cellblocks. The delegation members also had to request the approval of the respective coordinators to enter the other cellblocks outside the area known as the “yard” and to interview inmates. Moreover, in Comayagua National Penitentiary, the inmates interviewed consistently answered that although disciplinary punishments by coordinators were less frequent, the coordinator system remained in place and that coordinators continued to administer many commercial activities within the prison, and to carry out other “administrative” activities, such as collections of funds to paint the cellblocks [*bartolinas*], despite statements by the Director of that penitentiary, who gave

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<sup>694</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, paras. 55 and 56.

<sup>695</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 78. See also Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XIII.

<sup>696</sup> CONAPREV recently posted on its institutional web page a video, broadcast on Honduran television on April 9, 2015, in which other persons deprived of liberty allege abuses perpetrated by Noé Betancourt, a prisoner, who, at the time of the last two visits by the IACHR, was serving as general coordinator of San Pedro Sula National Penitentiary. This video is available at: <http://conaprev.gob.hn/index.php/noticias/246-tras-las-rejas>.

assurances that the coordinator system had been “eradicated” and that it had become “symbolic.”

533. According to CONAPREV, 85% of the country’s prison centers now have uncontrolled “self-governance” systems. This institution has documented cases where “coordinators”:

have beaten, removed from cells, and punished other persons deprived of liberty with the acquiescence of the authorities of those prison centers. [...] This self-governance situation has also meant that persons deprived of liberty must contribute each week amounts ranging from 10 to 30 Lempiras, depending on the center, to purchase cleaning materials for prison facilities.<sup>697</sup>

534. Another consequence of the lack of effective control by the authorities in prison centers is the high rate of violence in prisons, also reflecting the generalized violence within the country. In that regard, and as observed by the IACHR, between 2006 and 2012, a total of 641 violent deaths (and 114 deaths from natural causes) occurred in Honduran prisons.<sup>698</sup> According to information received during the on-site visit, from 2013 to October 2014, a total of 38 violent deaths and 36 deaths from natural causes occurred in Honduras prisons.<sup>699</sup> These deaths range from homicides with firearms, to attacks between groups of inmates with explosives and military weapons, to deaths from prison police gunfire to prevent inmates from escaping.<sup>700</sup>
535. Additionally, on October 16, 2014, the Director of La Ceiba Prison Center allegedly was killed in a street shootout.<sup>701</sup> On February 20, a grenade exploded in the maximum security cellblock of PN-MAS, causing only structural damage. Days later, on March 2, another grenade exploded against Convicts Cellblock I of that prison, leaving one prisoner dead and another wounded.<sup>702</sup>
536. In April 2015, the IACHR issued its view regarding the deaths of at least 12 persons deprived of liberty in different violent incidents that occurred in March of that year

<sup>697</sup> CONAPREV, *IV Informe Anual a la Nación*, 2014, p. 22. Available at: <http://www.conaprev.gob.hn/>.

<sup>698</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, para. 44.

<sup>699</sup> National Coordinator of Supervising Judges: Índice de muertes naturales and violentas ocurridas en las cárceles de Honduras hasta octubre de 2014.

<sup>700</sup> CONAPREV, *IV Informe Anual a la Nación*, 2014, p. 15; CONAPREV, Informe sobre los hechos violentos acaecidos en la Penitenciaría Nacional Marco Aurelio Soto “PNMAS” el sábado 3 de agosto de 2013.

<sup>701</sup> *El Tiempo* newspaper, Honduras: *Asesinan al director del centro penal de La Ceiba*, October 16, 2014. Available at: <http://www.tiempo.hn/sucesos/item/5124-asesinan-al-director-del-centro-penal-de-la-ceiba>; *La Prensa* newspaper (Honduras), *Acribillan a balazos al director del centro penal de La Ceiba*, October 17, 2014. Available at: <http://www.laprensa.hn/sucesos/758665-410/acribillan-a-balazos-al-director-del-centro-penal-de-la-ceiba>.

<sup>702</sup> MNP-CONAPREV-PNMA communications: Estalla granada de la II guerra mundial, February 23, 2015; MNP-CONAPREV communications: Segunda explosión de granada en PNMAS, March 4, 2015.

in three of the country's main prisons. In that press release, the Commission indicated that:<sup>703</sup>

According to publicly available information, in the morning hours of Wednesday, March 11, an exchange of heavy gunfire took place at the National Penitentiary of San Pedro Sula, leaving three inmates dead and more than 30 people wounded, including eight military police. According to the spokesman for the Inter-Institutional Security Force (FUSINA), these events took place in the context of an operation to transfer certain high-risk inmates to other prisons. Once the riot had been brought under control, with the intervention of approximately 400 police and military personnel, a search was carried out in which high-caliber weapons were confiscated, including AK-47 assault rifles, as well as bulletproof vests, drugs and alcohol, cell phones, and other banned items. State security forces also transferred 32 inmates considered leaders (“coordinators”) to other prison facilities. All these events stemming from the prisoner transfer operation took place during a family visiting day at the prison.

On Saturday, March 28, a disturbance took place at the National Penitentiary of Comayagua which involved the use of firearms. Two prisoners lost their lives and at least three were seriously wounded. Following these events, some 42 inmates from this prison were reportedly transferred to other correctional facilities. A few days before these events, on March 24, another inmate had reportedly been killed in this prison as a result of being stabbed with a blade.

Moreover, according to widely reported accounts, on Sunday, March 29, a total of seven inmates with ties to the “Mara 18” gang were killed: four of them that afternoon at the National Penitentiary of Támara (“Marco Aurelio Soto”) in Tegucigalpa, and three that night at the National Penitentiary of San Pedro Sula. According to consistent accounts published by various media outlets, these seven inmates were executed by other members of their own gang.

All these grave acts of violence have been directly or indirectly related to the systematic transfer of inmates considered to be very dangerous to maximum-security prison units and cells that have recently been installed on military bases (infantry battalions). In all these cases, both the transfer operations and the subsequent control of these outbreaks of violence have been FUSINA's responsibility.

537. In this context, the Commission's attention was drawn to the fact that although the Armed Forces are in charge of periphery security and the administration of the country's main prison centers, prisoners continue to have in their possession high-caliber weapons, explosives, and a wide array of illicit items. For example, the two above-mentioned grenade detonations in February and March 2015, in Marco Aurelio Soto National Penitentiary, took place when that center was in a state of full militarization.

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<sup>703</sup> IACHR, Press Release 39/15: *IACHR Deplores Violent Deaths in Honduran Prisons, Tegucigalpa, Honduras*, April 14, 2015.

538. Another serious situation in PN-SPS observed by the Inter-American Commission during its April 2012 visit and that continues today is the lack of segregation of men and women.<sup>704</sup> Despite its urgent appeal, and similar appeals made to the State by other international mechanisms for the protection of human rights, lack of segregation of men and women deprived of liberty in Honduras remains a problem still not overcome. During the on-site visit, the delegation verified in PN-SPS that “home” or “cellblock” No. 7, which houses the female population (90 women at the time of the visit), remains in the main yard, and that the female inmates living there are exposed to interaction with the male population. Additionally, in the periphery area (the area outside the main yard but within the prison’s external wall, where groups who may not be mixed with the general population are held), it was noted that in cellblock No. 17, occupied by members of “Gang 18,” were living 26 women and 300 men; and that in cellblock No. 8, for members of the “Salvatrucha Gang,” were living one woman and 54 men.<sup>705</sup> There is no effective segregation between the two groups in these cellblocks, and the mixing of genders in living quarters is organized by the respective coordinators.
539. This being the reality, the Inter-American Commission emphatically calls on the State and, especially, the INP authorities, to take all measures necessary as a matter of urgency to remove women deprived of liberty from PN-SPS and to ensure the effective segregation of men and women in all prison centers where female inmates are held. It is contrary to the most basic standards of civilized society to hold women in a men’s prison without guaranteeing their effective segregation. It is entirely possible to correct this situation in Honduras in the short term.
540. These uncontrolled “self-governance” systems and, in many prison centers, the lack of classification of the prison population also affects especially LGBT people deprived of liberty. In that regard, the Commission has, for example, received information according to which lesbian prisoners in PN-SPS are in a heightened situation of vulnerability owing to their resistance to participating in the dynamics of submission and control exercised by male prisoners (specifically, the “coordinators”) governing that prison center. According to a report by the Association for the Prevention of Torture, in PN-MAS, LGBT people are held together with inmates with mental disabilities and those with difficulties of coexistence with the rest of the prison population. During the IACHR’s visit to San Pedro Sula National Penitentiary, in December 2014, the delegation was able to talk with LGBT people deprived of liberty, who were being held in a specific cell for LGBT people. One of those interviewed indicated that she felt safer in that cell than

<sup>704</sup> In its *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, the Commission indicated that “although this reality is seen by the prisoners and by some authorities as natural [...] the situation is totally anomalous, aberrant and contrary to international law. It is aggravated by the fact that it is a prison in which internal control is exercised completely by the prisoners [...]”; and urged the State of Honduras to “take immediate steps to ensure the effective segregation of men and women, and in particular, should remove from those prisons such as San Pedro Sula and El Progreso the cellblocks in which women openly mix with men, and put a definitive end to this system.” IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, paras. 92 and 97.

<sup>705</sup> Office of the Director of San Pedro Sula Prison, *Recuento de internos por bartolina*, December 3, 2014.

when she was with the general population in the prison, but that she continued to be subjected to instances of sexual and physical violence from other prisoners, owing especially to their perception of her sexual orientation.

541. In that regard, the IACHR takes note of the Yogyakarta Principles, according to which: “Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person’s dignity.” This implies, specifically, that States shall “[e]nsure that placement in detention avoids further marginalizing persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse.”<sup>706</sup>
542. The IACHR has urged the Member States to develop exhaustive policies and guidelines for appropriate treatment of LGBT people deprived of liberty, including medical care. The IACHR has also called on the Member States to prevent violence against LGBT people deprived of liberty, which would include, among other aspects, independent and effective procedures for lodging complaints of rape and abuse; personalized risk assessments at time of entry to ensure appropriate assignment, in consultation with the affected persons; careful compilation of data on LGBT people deprived of liberty—respecting the principles of confidentiality and privacy—and on the violence to which they have been subjected; and diversity awareness and training programs for security and migration personnel and police officers. In that regard, the Commission emphasizes that the State should take, in the short term, effective steps to guarantee the life, safety, and personal integrity of LGBT people, and of those perceived as such, held in detention centers.
543. The Commission has also received information from the Center for Prevention, Treatment and Rehabilitation of Victims of Torture (CPTRT) according to which this nongovernmental organization, from June 2012 to June 2014, handled a total of 38 cases of persons alleging that they had been victims of torture or cruel, inhuman, and degrading treatment or punishment. Additionally, a study conducted by the CPTRT from December 2013 to October 2014 in the cities of Tegucigalpa and San Pedro Sula showed that six of every 10 detainees are subjected to torture or cruel, inhuman, or degrading treatment or punishment, whether at time of arrest, during transfer to the police station, or at the police station. In particular, it was found that the most serious cases of torture were attributable to the National Anti-Extortion Force. The CPTRT also indicated that from 2009 to 2014, the Office of the Human Rights Ombudsman received 253 reports of torture or cruel, inhuman, or degrading treatment or punishment. However, only 37 indictments were brought in that period (in 15% of the cases).
544. In that regard, the Inter-American Commission emphatically reiterates that the State has the obligation to investigate *ex officio* all allegations of torture and to exclude evidence obtained under torture or through violations of fundamental rights. All pertinent steps should be taken to prevent the use of torture or cruel, inhuman, or degrading treatment or punishment as a criminal investigation method, as well as impunity in cases of such acts. A clear message should also be

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<sup>706</sup> Yogyakarta Principles. Available at: <http://www.yogyakartaprinciples.org/>.

sent from the highest levels of government condemning the use of torture or cruel, inhuman, or degrading treatment or punishment.

### 3. Increasing use of the armed forces in prisons

545. As examined above in this report, in recent years, Honduras has experienced ongoing militarization of public security in general, for which a series of legal and institutional reforms are being adopted entrusting different tasks to the Armed Forces that in principle should correspond to other institutions and security services. The militarization of the prison function is taking place in that context, essentially manifest as indicated below:

- a. The designation of high military officers to prison system management.<sup>707</sup> This is especially relevant if account is taken of the absolute verticality of the chain of command within the Armed Forces, as well as the decisive influence that high military officers will have on the drafting of the regulations to the National Prison System Act and on the adoption of other resolutions governing, for example, the rollout of new detention centers.
- b. By extension, the directors of the main prison centers are military members.<sup>708</sup>
- c. The National Prison Institute, by Agreement (No. 001-2014) for “immediate implementation,” adopted on April 7, 2014, authorized “the creation of three prison facilities as “prevention centers,” using the physical facilities located at [...] a. Cobras Squadron of the National Police [...]; b. First Infantry Battalion of the Armed Forces of Honduras [...]; and c. Third Infantry Battalion of the Armed Forces of Honduras.”<sup>709</sup> Subsequently, in February 2015, the INP authorized another “prevention center” at the facilities of the Second Infantry Battalion, located in Támara, Francisco Morazán Department.

It is of note that nowhere does that Agreement mention the legal basis for that decision or the legal basis of the authority of the INP, as an institution ascribed to the Secretariat of Governance, Justice, Human Rights, and Decentralization, to order unilaterally the use of Armed Forces military bases for the installation of prison facilities. Moreover, under said agreement, the above-mentioned facilities “shall be protected by prison guards or personnel, assisted by the National Police and Armed Forces of Honduras,” which has not been the practice.

- d. The use of army troops in security tasks in prison centers, even in juvenile detention centers, as observed by the IACHR delegation.

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<sup>707</sup> At the time of the visit, the Director del INP was Infantry Colonel Francisco Gálvez Granados. Subsequently, on April 30, 2015, he was replaced by Infantry Colonel Orlando Francisco García Maradiaga.

<sup>708</sup> For example, at the time of the on-site visit, the Director of PN-MAS was Lieutenant-Colonel of Infantry Guillermo Sandoval; and the Director of San Pedro Sula Prison was Lieutenant-Colonel of Infantry Víctor Orlando Sarabia Martínez.

<sup>709</sup> Published in the *Gaceta Oficial* (No. 33,401) on April 9, 2014.



- e. The calling up of army reservists as future prison agents. According to information submitted by the State, in late 2014, 350 such prison agents had been trained, and by 2015, another 1,200 were expected to be trained.<sup>710</sup>
546. In that regard, the directors of the INP indicated to the IACHR delegation that in view of the institutional weakness of the prison system, the government had had to resort to the armed security services, but that it hoped that there would be neither police nor military members in prisons going forward.
547. For its part, the IACHR recognizes that beyond the alleged security considerations, the National Prison System Act provides that the process of transitioning the prison system from the National Police to the new National Prison Institute must be executed within a period not exceeding two years from the date of entry into force of the Act, December 3, 2012; and that said process was to be planned, directed, and supervised by a Special Committee on Transition composed of three members (Article 109). In that regard, the Inter-American Commission observes that far from the transfer of the prison function to civilian institutions, what has in fact happened has been to progressively involve the Armed Forces in prison system administration. In fact, Article 37(1) of the National Prison System Act itself provides that “no one on active duty with or discharged from the military or police career service may enter the national prison career service,” so that clearly, although no regulations governing the prison career service have yet been issued, the spirit of the law is to exclude members of the armed security forces from these functions.
548. The Inter-American Commission has also indicated that the administrative and internal security personnel of incarceration centers should be suitable civilian employees and officers. That is, professional prison personnel specifically trained for and assigned to that task.<sup>711</sup>
549. The Commission further recognizes that from the standpoint of prison administration, the Armed Forces are not an ideal long-term solution because, among other reasons, they are not security forces trained for prison functions. In that regard, it is essential to have a strategy for the withdrawal of the Armed Forces from the prison system that clearly defines the objectives sought through

<sup>710</sup> Government of Honduras. Information provided by the State of Honduras during the on-site visit. *Informe Final de la Visita*, December 4, 2015. In that regard, see also the newspaper *La Prensa* (Honduras) – *Con militares formarán guardias penitenciarios*, September 17, 2014. Available at: <http://www.laprensa.hn/~honduras/tegucigalpa/748500-98/con-militares-formar%C3%A1n-guardias-penitenciarios..>

<sup>711</sup> In that regard the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* establish that “[a]s a general rule, members of the Police or Armed forces shall be prohibited from exercising direct custody of persons deprived of liberty, unless it is a police or military institution” (Principles XX), and that the deployment of members of the armed forces to control security in prisons must be exceptional, commensurate with the gravity of the situation prompting it, and restricted to exceptional cases explicitly contemplated by law and geared to achieving legitimate goals in a democratic society. In such cases, the actions of the armed forces must be subject to the scrutiny and control of the civilian authority, in particular as regards the establishment of the corresponding legal liabilities. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, adopted on December 31, 2011, paras. 215 and 217.

the use of the army in tasks of this type. These objectives must be clearly defined so that parameters can be developed to measure their fulfillment, hence, to have a true idea of the progressive separation of the Armed Forces from prison functions. Moreover, and bearing in mind that working with persons deprived of liberty calls for specific training and qualities, the State should ensure that those elements of the Armed Forces assigned to prison functions receive specific training on basic aspects of the prison function, such as treatment of inmates and their families, coordination with judicial authorities and other professionals working in prison centers, and on transparency in prison administration and openness to human rights entities.

550. With regard to the alleged temporary nature of the use of the Armed Forces for prison functions, the Commission observes that despite the manifestations of INP authorities, the reality observed suggests the reverse. For example, during the on-site visit, the delegation observed that in both the First Infantry Battalion facilities and those of the Third Infantry Battalion, additional detention cellblocks were being built with the aim of doubling the prisoner holding capacity of the two battalions. Additionally, as indicated above, in February 2015, the imprisonment of persons in the facilities of the Second Infantry Battalion was ordered, so that what was observed was an expansion of the capacities of the detention centers located on military bases. According to a CONAPREV press release, in April 2015, a total of 102 persons deprived of liberty were being held in the four above-mentioned prevention centers.<sup>712</sup>
551. In its visit to cells located in the barracks of the Cobras Squadron of the National Police—cellblocks directly subordinate to the Director of the PN-MAS, despite being located in police facilities—the IACHR delegation established that three days prior to the visit, six of the 14 detainees held in that cellblock, whose capacity was for seven persons, had been transferred. Of the eight persons found there, two were women. As regards detention conditions, the IACHR established that: inmates had the right to only one hour of daylight per day, which they could spend inside the building or outside in a 7" 4'x 7" 4' cage (literally a metal box); a 23 hour/day confinement regime was in place; the windows in the halls had also been opened days prior to the IACHR's visit—inmates said that previously it had been very difficult to breathe because of lack of ventilation; previously, high-powered central air conditioning had been operating 24 hours per day—; the light bulbs in the cells were left on 24 hours a day and could only be turned on and off outside the cells by the guards; previously, there had been cameras in the cells and during our visit, only in the halls; prisoners did not have the right to telephone calls; and sanitary and hygiene conditions were deplorable—one of the detainees indicated that the toilet in his cell had been covered with fecal material for 19 days and that the floor of the cells was often flooded—. One of the women detained there indicated that for the first 15 days she had been in that cellblock, she had had to sleep on the floor; later she moved to a small room that had no bathroom or other facilities, and that she had now spent a month in a bigger room that had been fitted out for herself and the other female detainee there at the time. As regards treatment by the police,

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<sup>712</sup>

MNP-CONAPREV communications: Más de cien presos en centros preventivos, April 14, 2015.

they indicated that it was respectful and that they were even allowing her to use their bathroom, which they also used to wash and air dry their underwear.

552. In this regard, the Inter-American Commission reiterates<sup>713</sup> that prison conditions in the prevention center of the Cobras Squadron of the National Police in themselves constitute a form of cruel, inhuman, and degrading treatment or punishment, in violation of Article 5 of the American Convention. The Commission also concludes that the only reason for maintaining this detention cellblock is that it serves as a place of punishment or for pressuring specific prisoners. It makes no sense that since the PN-MAS has capacity for over 2,500 persons deprived of liberty, it keeps separate and under the command of the Director of the PN-MAS a detention center with capacity for fewer than 10 persons.
553. As regards the situation observed in the prison centers located at the facilities of the First and Third Infantry Battalions, it is troubling that detainees were only allowed to leave the cells for one hour per day, based on an internal security concept not necessarily based on individualized risk assessment and that does not take account of other international standards applicable to the situation of persons deprived of liberty. At a meeting held with the Director of the PN-MAS, Lieutenant Colonel Guillermo Sandoval, he went so far as to indicate, regarding the prison center at the First Battalion, that “the reason for placing [the prisoners] there is so that they say whatever they are told to say—these are orders from upstairs.”
554. As regards the situation of the [prison center at the] Second Infantry Battalion, authorized following the visit by the IACHR, CONAPREV indicated its concern regarding the complaints made by some families of prisoners regarding the treatment they were allegedly receiving from soldiers during visits; and regarding other irregularities, such as the alleged lack of access to drinking water and lack of adequate medical care.<sup>714</sup>
555. Regarding the treatment by authorities of families of persons deprived of liberty, the Inter-American Commission has indicated that implementation of security systems in prisons must take place in a way that respects the fundamental rights of inmates and their families. It is essential that prison guards and external security personnel be trained to strike a balance between exercising their security functions and treating visitors with dignity.<sup>715</sup>

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<sup>713</sup> IACHR, Press Release 146A/14, Preliminary Observations concerning the Human Rights Situation in Honduras, December 5, 2014, annexed.

<sup>714</sup> According to this statement: the inspection that families of persons deprived of liberty go through is such that elderly women suffering from arthritis are made to take off their underwear and squat 10 times. This exercise is mandatory for all family members wishing to visit a person deprived of liberty, regardless of age or sex, thus amounting to inhuman treatment of family members [...]. Family members are not allowed physical contact with persons deprived of liberty, they may only hug or shake hands, and are only allowed to stay for 10 minutes, even to eat food that families take to prisoners. Persons deprived of liberty have limited physical contact with their children during visits. MNP-CONAPREV communications: Tortura en el Segundo Batallón de Infantería, April 14, 2015.

<sup>715</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, adopted on December 31, 2011, para. 591.

#### 4. High rate of detained defendants

556. The IACHR observes with concern the increased %age of persons deprived of liberty who are defendants in Honduras; i.e., who have not been convicted. As established during the visit, 54.35% of the prison population was unconvicted detainees, who therefore now constitute the majority of the population of persons deprived of liberty.
557. In this context, the Commission reiterates its concern regarding the adoption of Decree No. 65-2013, of April 25, 2013, amending Article 184 of the Code of Penal Procedure so as to establish mandatory preventive detention as security measure for a catalogue of 21 crimes mentioned earlier in the report.<sup>716</sup> Under that Decree, deprivation of liberty of a person charged with one of these offenses will depend solely on the public prosecutor's description of the crime.
558. In this regard, the IACHR emphasizes that preventive detention should be the exception, not the rule, whose only legitimate and permissible purposes, under the American Convention, are risk of flight or hampering the course of investigations; and that the court must justify the admissibility of that measure in accordance with the specific characteristics of each case.<sup>717</sup> In that regard, both the Commission and the Inter-American Court have consistently held that the application of mandatory preventive detention based on type of offense is a violation of the right to personal liberty in the terms of Article 7.5 of the American Convention on Human Rights<sup>718</sup>; and constitutes unlawful interference by the legislator in the judge's authority to assess the need for the measure.<sup>719</sup>
559. It is of concern that the crimes established by Decree No. 65-2013 as not bailable offenses include criminal association, contained in Article 332 of the Code of Penal Procedure, as amended by Decree No. 117-2003 ("Anti-Gang Law"), which, although having been declared as violating Article 7.3 of the American Convention, has not yet been modified by the State, as ordered by the Inter-American Court.<sup>720</sup>

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<sup>716</sup> Homicide (without probable cause), murder, parricide, rape, human trafficking, child pornography, abduction, falsification of coin and bank notes, vehicle theft, assassination of head of state, genocide, criminal association, extortion, crimes related to war weapons, terrorism, contraband (in specific cases), tax fraud (in specific cases), crimes related to illicit drug and narcotic trafficking, money laundering, malfeasance, and femicide.

<sup>717</sup> IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. Doc. 46/13, adopted on December 30, 2013, para. 21.

<sup>718</sup> I/A Court HR. *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, par. 98; I/A Court HR. *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 135; I/A Court HR. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 81. As in the Inter-American system, the European Court considers that "Any system of mandatory detention on remand is *per se* incompatible with Article 5 § 3 of the Convention." ECHR. *Case of Iljiov v. Bulgaria* (Application No. 33977/96), Judgment of July 26, 2001 (Fourth Section of the Court), para. 84.

<sup>719</sup> IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. Doc.46/13, adopted on December 30, 2013, para. 137.

<sup>720</sup> I/A Court HR. *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012 Series C No. 241, paras. 61, 101-103, and 143.

560. Moreover, the Commission observes the existing inconsistency between the discourse of the State, according to which the main challenges faced by prison administration are overcrowding and budgetary limitations, and the legislative reforms introduced, which, in addition to their incompatibility with the American Convention, contribute to the growth of the prison population.
561. The Commission recognizes that the scale of the challenges faced by the Honduran prison system warrant decisive action—judicial, political, and administrative. These actions must necessarily include implementation of a sustainable criminal policy that provides guarantees, the outcome of a serious and sound reflection exercise, and that is based on technical considerations rather than the punitive populist diatribe characteristic of some political sectors.

## 5. Situation of juveniles deprived of liberty

562. The Commission further indicates its profound concern regarding the conditions observed in the Renaciendo Juvenile Rehabilitation Center. In the course of its visit to this facility, the delegation verified that since the violent riot in July 2012, its facilities have been in highly deplorable condition (60% of structures are destroyed). For example, the school, playground, and one entire cellblock, among other facilities, have been unusable since that event. The IACHR considers it unacceptable that adolescents are confined in cellblocks without any educational or recreational activity and that in general the inmate population lacks medical care, medications, cleaning materials, mattresses, recreational items, bedclothes, and other basic elements that the State should provide; nor is there any way for inmates to receive telephone calls since the only existing line is in the Director's office; and inmates are only allowed 1½ hours of outdoor recreation per week outside the cellblocks. Of particular concern is the climate of latent violence existing in that facility owing to the power of the group of youths allegedly associated with "Gang 18," who, according to different testimony received, have made threats against the lives of other youths associated with rival gangs, who are also fewer in number.
563. According to a study prepared by the *Jueces de Ejecución* (of adult jurisdiction), the fundamental problems of the juvenile incarceration system are: the existing rehabilitation centers are not ideal establishments for fulfilling the aims of the juvenile criminal justice system or to guarantee the human rights of juvenile offenders; in general, detention center administrative staff and guards alike lack professional training; there is virtually no presence of juvenile court judges or public defenders; the rehabilitation centers' daily activities are governed by an instrument that was not adopted based on any legislative or legal procedure; small budgets; lack of appropriate security systems in some centers, such as the above-mentioned Renaciendo Center; uncontrolled self-governance systems and lack of internal control by authorities, generating high levels of violence; an educational system is in operation in only one of the four rehabilitation centers (Jatelva); and, in all centers, there are serious deficiencies in the medical, psychological, and social work services.<sup>721</sup>

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<sup>721</sup> Supervisory Courts, *Diagnóstico sobre la situación de niños y niñas en centros de menores*, August 2014.

564. Moreover, at the time of the on-site visit, the administration of Honduras' four juvenile rehabilitation centers was being placed in the hands of the nongovernmental organization "American Red Point Association (ARPA)," which had been granted a license to administer these services. In fact, the day that the delegation visited Renaciendo Rehabilitation Center, this organization and its staff were taking over its administration. Although the delegation interviewed representatives of ARPA, it did not obtain specific information on ARPA's background or expertise in the area of administration of juvenile detention centers; or on the licensing process by which the State had awarded it this contract. The Commission considers it relevant to have greater information going forward on the impact of ARPA's work.
565. The State, in its response to the draft of this report, indicated that it had been deemed that ARPA was not fully meeting its commitment to create decent living conditions for these offenders, and by mutual agreement the relationship of cooperation established through the signing of the aforementioned interinstitutional agreement was brought to an end. As a result, the President of the Republic, through Executive Decree PCM-010-2015,<sup>722</sup> Executive Decree No. 001-2015, and Executive Decree PCM-056-2015,<sup>723</sup> established the Technical Advisory Committee on Educational Facilities for Adolescent Offenders, made up of the State Secretariats in the areas of Human Rights, Justice, Interior, and Decentralization; Defense; Security; Finance; Development and Social Inclusion; Health (SESAL); and Education (SEDUC), as well as the Permanent Commission on Contingencies (COPECO); the Department of Children, Youth, and Families (DINAF); and the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (MNP-CONAPREV).<sup>724</sup>
566. According to the State, the efforts of that committee, which has a budget of 32 million Lempiras for its first semester of operations, are focused on the following objectives<sup>725</sup>:
- a. Reestablish the human rights guarantees of youthful offenders;
  - b. establish an innovative management model in the facilities to provide quality and caring service;
  - c. implement a differentiated security strategy that reestablishes governance in the facilities and guarantees the right to life of the juvenile inmates and the personnel who work in these correctional facilities; and

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<sup>722</sup> Published in Official Gazette No. 33,675, dated March 6, 2015.

<sup>723</sup> Published in Official Gazette No. 33,834, dated September 14, 2015.

<sup>724</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>725</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

- d. establish strategic alliances with NGOs and international cooperation agencies specialized in issues involving juvenile reintegration.

567. In view of these considerations, the IACHR reaffirms that, in accordance with the binding obligations assumed by Honduras in the Convention of the Rights of the Child, “[e]very 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” (Article 37.c). In that regard, the Inter-American Court has indicated that the State must be all the more diligent and responsible in its role as guarantor when the person the State deprives of his or liberty is a child. [...], to protect a child’s life, the State must be particularly attentive to that child’s living conditions while deprived of his or her liberty. [...] [W]hen the person the State deprives of his or her liberty is a child [...] it has the same obligations it has regarding to any person, yet compounded by the added obligation established in Article 19 of the American Convention.<sup>726</sup> Moreover, the United Nations’ Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) provide that “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.” (Rule 26.2)<sup>727</sup>

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<sup>726</sup> I/A Court HR. *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 160.

<sup>727</sup> The State, in its response to the draft of this report, indicated that each educational complex has been staffed with multidisciplinary teams made up of personnel in the areas of psychology, social work, and medicine and nursing, as well as legal representatives who work in coordination with staff from the Special Criminal Justice area of DINAF to provide supervision and support throughout the development of criminal case at every stage contemplated in the Code on Children and Adolescents. They also handle requests for review of penalties to seek to reduce punishment. The State indicates that this has made it possible to keep the children who are deprived of liberty informed about their legal status and the completion of the measure or penalty imposed by the relevant court, which helps to reduce overcrowding in the educational complexes. According to the information received, the Report on the Situation at Centers for Adolescent Offenders, generated by the Secretariat of Development and Social Inclusion, as of November 2015 the efforts carried out have made it possible to provide broader coverage of urgent health care (quality and caring services) for the population of offenders, as well as coordinate with the Healthy Schools Program and with hospitals in the respective regions to send them cases that require special attention, including for oral health. To date, an average of 1,228 health appointments were registered in the five educational complexes for the population of 381 adolescents, for an average of three medical consultations per month for each adolescent offender deprived of liberty.

In the area of reeducation and rehabilitation, the Technical Advisory Committee has begun implementation in the five educational centers of the “I Am the Change” strategy, “in order to improve the quality of services and guarantee adequate living conditions based on the restitution of rights, through the execution of strategies designed to respond to the needs that afflict adolescent and youth offenders, with primary emphasis on the creation of opportunities for the development of technical, educational, and social skills so that adolescents can develop resilient behavior that enables them to truly reintegrate into society.”

Similarly, with the support of the United Nations Children’s Fund (UNICEF-Honduras), the State reported that the second phase has begun for the training of technical teams at the educational complexes, including guidance counselors, as part of the Amigonian methodology of reeducation and reintegration spearheaded by the Order of the Capuchin Tertiary Friars of Our Lady of Sorrows. The aim is to provide methodological tools for a technical-professional approach to the population of offenders, in line with their needs and circumstances. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

568. Moreover, the UN Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in a recent thematic report on children deprived of liberty, concluded, among other things, that:

An essential safeguard against torture and other forms of ill-treatment is the availability of multidisciplinary and qualified staff working in children's institutions. [...] Children should be appropriately separated in detention, including but not limited to children in need of care and those in conflict with the law, children awaiting trial and convicted children, boys and girls, younger children and older children, and children with physical and mental disabilities and those without. [...] An important safeguard against torture and other forms of ill-treatment is the support given to children in detention to maintain contact with parents and family through telephone, electronic or other correspondence, and regular visits at all times. [...] The child's contact with the outside world is an integral part of the human right to humane treatment, and should never be denied as a disciplinary measure. Children in detention should be provided throughout the day with a full programme of education, sport, vocational training, recreation and other purposeful out-of-cell activities. This includes physical exercise for at least two hours every day in the open air, and preferably for a considerably longer time<sup>728</sup>.

569. The State, in its response to the draft of this report, maintained that with the efforts made by DINAF, through its Regional Office for the Western Region, a special detention cell was developed, for the purpose of having a different type of space in which adolescents who are presumed to be or have been declared to be offenders can stay during the 48-hour maximum period established by law. This initiative will begin to be extended to the other regional offices in coordination with the police agencies in the respective jurisdictions.<sup>729</sup>
570. Lastly, the Commission deplores the fact that as of the date of adoption of this report, the Judiciary Council of the Supreme Court of Justice had not appointed the *Juez de Ejecución* with specialized jurisdiction for juvenile offenders, as ordered in Decree No. 35-2013, which creates this type of judge through an amendment to Article 213 of the Child and Adolescent Code.<sup>730</sup> In view of the lack of specialized judges, this function was initially assigned to the *Jueces de Ejecución* with jurisdiction for adults, and subsequently to the ordinary juvenile court judges, who have responsibility for the pre-sentencing phases.<sup>731</sup> In that regard, the Commission observes that despite the temporary measures being adopted, the legal mandate to establish specialized judges to supervise the enforcement of the punishments imposed on juveniles has not yet been implemented. The effective appointment of these justice officials is essential to the protection of the human

<sup>728</sup> UN, *Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68, 5 March 2015, pars. 63, 76-78.

<sup>729</sup> Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

<sup>730</sup> Published in the *Gaceta Oficial* (No. 33,222) on September 6, 2013.

<sup>731</sup> Supreme Court of Justice, General Secretariat, Official Letter No. 900-SCSJ-2014 (Circular No. 06), of June 14, 2014, informing of the Act Agreed on May 28, 2014; Supreme Court of Justice, General Secretariat, Official Letter No. 1562-SCSJ-2014 (Circular No. 10), of October 3, 2014.



rights of children deprived of liberty, especially for monitoring their detention conditions. According to testimony received during the visit, ordinary juvenile court judges, to whom the function of supervising sentence enforcement is now assigned, are not making regular visits to the juvenile rehabilitation centers or actively monitoring the detention conditions therein.<sup>732</sup>

571. In view of these considerations, the Inter-American Commission considers it essential, first of all, for the State to adopt the security and control measures necessary to guarantee the life and integrity of children and adolescents deprived of liberty, particularly those who are exposed to the violence generated by gangs or *maras*. It is also essential for the State to provide the institutional support and resources necessary to ensure that the conditions at the centers meet at least the basic standards in terms of housing, medical and psychological care, nutrition, conditions of health and hygiene, and all those educational, sports, and recreational services required under international standards as well as under domestic law. In this regard, the IACHR urges the State to designate judges specialized in carrying out sentences in juvenile courts to be in charge of systematically monitoring the human rights situation in these establishments.

## 6. The Comayagua National Penitentiary

572. At a meeting held on December 2, 2014, with representatives of the families of the victims of the fire that occurred on February 14, 2012, at Comayagua National Penitentiary, in which 362 died, they alleged that there had been unreasonable delay in the proceedings, since more than three years had gone by without an initial hearing being held. The Attorney General's Office was not acting with due diligence in the taking of evidence. For example, statements had not been taken from key witnesses and not all possible lines of investigation were being pursued. They further alleged that they, as representatives of the victims, had received anonymous threats; and that one of the survivors, Mr. Rubén Tabora, had even been murdered, on June 3, 2014, 18 days after giving an interview to a television channel during which he had set out his version of the causes of the fire and its possible perpetrators.
573. Subsequently, the Commission received information according to which, in May 2015, the criminal action regarding these facts had been opened for oral and public testimony, and the date was about to be set for the corresponding hearing on the merits. The Inter-American Commission has already referred at length in its *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras* to the conditions of risk existing at the time of the fire at Comayagua National Penitentiary and to the reaction of the authorities at

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<sup>732</sup> In this regard, the Commission agrees with the view of the UN Rapporteur on Torture that: “[The] regular and independent monitoring of places where children are deprived of their liberty is a key factor in preventing torture and other forms of ill-treatment. Monitoring should be conducted by an independent body, such as a visiting committee, a judge, the children’s ombudsman or the national preventive mechanisms with authority to receive and act on complaints and to assess whether establishments are operating in accordance with the requirements of national and international standards”. UN *Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68, March 5, 2015, para. 83.

the time the facts occurred. The Commission recognizes that this case is now being heard by the authorities with jurisdiction and emphatically reiterates that “it is essential that the State investigates both the theory that the fire was the result of an accident, as well as a hypothesis that might find criminal motives [...]”; and that “it is the obligation of the State to exhaust all possible lines of investigation, and to clarify the events that occurred in Comayagua [...]”<sup>733</sup>. This also entails the duty of the investigation services to take statements for all those who might shed light on the facts, especially the survivors of the fire; and to make available conditions of security for all those whose participation in this process might jeopardize their lives or personal integrity, especially when such persons are deprived of liberty. The IACHR expects the State to satisfy the demands for truth, justice, and reparation made by the families of the victims of the fire at Comayagua National Penitentiary.

574. The group of victims’ representatives recognized that although the State has provided some families of the deceased with financial assistance, others have not thus far received any type of financial compensation. They indicated their concern that when government representatives appear before the media announcing financial assistance for families of victims of the fire, they irresponsibly put them at risk of being targeted for extortion by gangs or “maras” operating in the places where these families live. They also indicated that in practice, following the government’s public political announcement, the promised assistance is not provided. In that regard, the Inter-American Commission emphasizes that “Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.”<sup>734</sup>
575. In another vein, the IACHR takes a positive view of the progress made by the INP in appointing interdisciplinary teams in several of the country’s prison centers, such as Comayagua National Penitentiary, whose team is now composed of a legal advisor, psychologist, social worker, and a psychiatrist.<sup>735</sup>
576. To sum up, the Inter-American Commission considers that despite recent progress, there are still serious challenges with regard to the main areas of concern covered by this report. The Commission observes that the State has turned to the Armed Forces to carry out administration and security tasks in prisons; however, quite aside from any practical motivations that may have led to this decision, the Commission believes that this should be a temporary arrangement and that concrete objectives should be established to bring it to an end. Along these lines, it is essential for the State to direct its efforts to carry out the transition to a new

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<sup>733</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras*, OEA/Ser.L/V/II.147, adopted on March 18, 2013, para. 144.

<sup>734</sup> UN, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Adopted by General Assembly resolution 60/147 of 16 December 2005.

<sup>735</sup> National Coordinator of Supervising Judges, Additional information submitted to the IACHR by communication of May 4, 2015. This is allegedly the country’s only prison facility where psychiatric services are available.

prison system, one that is professional and civilian in nature, as established since 2012 in the new law on the national prison system.

CHAPTER 8  
CONCLUSIONS AND  
RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

577. The situation of violence and insecurity in Honduras described in this report has direct repercussions on the population's enjoyment of their human rights. The Commission acknowledges the State's efforts to address that situation. However, the information received indicates that Honduras still faces major challenges in ensuring the effectiveness of the measures adopted, as well as challenges to adopt additional reforms to strengthen the legal framework and the public policy. Those challenges involve the prevention of violence, the State's response to it, and the subsequent investigation and punishment of violent acts.
578. In addition, the high levels of inequality and social exclusion still found in the country and which affect broad sectors of the population demand the urgent adoption of plans and policies and the strengthening of institutions in order to ensure access to basic needs and services, health, education, employment opportunities under conditions of equality, and natural resources such as land.
579. According to the above analysis and the particular monitoring that the IACHR has given to the human rights situation in Honduras, the Commission extends the following recommendations to the State:

### **A. *General Recommendations***

#### **1. Citizen Security**

1. Take comprehensive steps to ensure citizen security, particularly as regards the murder rate; this will require the adoption of urgent measures to attack the structural causes of that violence and of impunity, and to protect the population from those situations. It is vital that the State of Honduras undertake, on an urgent basis, investigations to clear up the deaths of campesinos, people deprived of freedom, human rights defenders, journalists and media workers, women, children and adolescents, and LGBT people, and to prosecute and punish the persons guilty of those offenses.
2. Increase and intensify the training for the public servants responsible for law and order on protecting and respecting human rights.
3. Retire the Armed Forces gradually from law enforcement activities. On the meantime, the Military Police must be regulated by strict criteria related to transparency of information to the citizens. In this regard, an effective judicial and institutional supervision on the lawfulness of their actions is essential. Also, any human rights violation perpetrated in this context by this group should be duly investigated and prosecuted.

4. Strengthen the capacity of police on law enforcement activities according to the international human rights standards.
5. Guarantee the conditions so that defenders of human rights can freely pursue their activities, and refrain from taking any actions or adopting any legislation that could restrict or hinder their work.
6. Implement the actions necessary to make the protection system operational, in consultation with the beneficiaries and those other people who are at risk. That will require adequate numbers of trained personnel to deal with protection requests, assess the level of risk, adopt and enforce protective measures, and to monitor those measures that are already in force.
7. Ensure due control and oversight of private security companies in Honduras.
8. Review the legislation on the use and possession of firearms in order to regulate their sale and licensing.
9. Increase and improve the human and material resources assigned to the prompt, diligent, and impartial investigation of killings of defenders, indigenous peoples and Afro-descendants, union leaders, children and adolescents, journalists and media workers, women, LGBT people, and apply the corresponding criminal sanctions, in order to avoid impunity and the repetition of similar incidents.
10. Ensure public involvement in the design and implementation of public policies in the area of human rights and those related to corruption and impunity. This includes the adoption of measures to increase transparency in public spending and to enforce accountability among all government agencies.
11. Provide the CONADEH with the resources and conditions needed for it to operate with independence and effectiveness.

## **2. Administration of justice**

12. Increase and improve the human and material resources assigned to the prompt, diligent, and impartial investigation of acts of violence against defenders (including the defenders of indigenous peoples and Afro-descendants), union leaders, children and adolescents, journalists and media workers, women, LGBT people, and justice operators, and apply the corresponding criminal sanctions, in order to avoid impunity and the reoccurrence of similar incidents.
13. Guarantee the independence and impartiality of justice operators and their freedom from all types of pressure, as a necessary condition for them to perform their tasks of investigating, prosecuting, and punish offenders who violate human rights.
14. Pursue actions for institutional strengthening and judicial independence in processes for the appointment and promotion of judges, in accordance with international standards.

15. Establish specific protection mechanisms for justice operators and their families.
16. Ensure that the offenses and sanctions applicable to justice operators are duly established by law and in compliance with international human rights standards.
17. Review the Law for the Classification of Public Documents Related to National Security and Defense and the corresponding regulations, to ensure their compatibility with the principles set out in international human rights law.
18. While the State is adopting the necessary measures to ensure that the institution in charge of law enforcement is the police, take the necessary steps to ensure proper judicial and institutional oversight of the actions of the military police and ensure that any human rights violations they perpetrate are duly investigated and punished.
19. In connection with the judges and prosecutors with jurisdiction over the entire nation, the Commission urges the State of Honduras to review those provisions and ensure that they are compatible with standards of independence and impartiality that must exist in the investigation and punishment of those responsible for human rights violations.
20. Strengthen the juvenile justice system, in accordance with international human rights standards.

## ***B. Specific recommendations:***

### **1. Women**

21. Take the steps necessary to ensure that cases of gender-based violence are investigated with due diligence and in a timely, complete, and impartial fashion, that the people responsible are duly punished, and that the victims receive comprehensive redress.
22. Adopt a comprehensive and coordinated state policy and assign adequate resources to ensure that victims of violence have full access to proper judicial protection. This will require training all public officials involved in both investigations and judicial proceedings, together with strengthening the logistics of the institutions.
23. Further its efforts for equipping its institutions to deal comprehensively with the situation of violence against women, in particular by assigning the necessary human and financial resources. Pay particular attention to the situation of women in rural areas where the presence of state institutions is weak.
24. Implement state policies to address the stereotypes and roles historically subordinated on women in accordance with the principles of equality and nondiscrimination.



25. Prepare a comprehensive, gender-aware public policy with guidelines for health prevention, care, and attention for the employees of apparel factories.
26. Regarding maquilas workers, review its legislation, particularly as regards workplace health, to prevent occupational risks. Implement workplace surveillance and control measures, as well as appropriate care, which include due control of working hours and accessible complain mechanisms.

## **2. Indigenous peoples and Afro-descendants**

27. Further its efforts to protect the effective enjoyment of the right to territory of indigenous peoples and their members, as a first step in safeguarding their basic rights, bearing in mind the particular importance that inter-American human rights law has assigned to the territorial rights of indigenous peoples and the central role that ancestral territories play in respecting and upholding their rights.
28. Strengthen its actions aimed at establishing—within a reasonable time and with the indigenous peoples' full participation—the legislative, administrative, or other measures necessary to enforce the right of consultation and prior, free, and informed consent, in accordance with the applicable international standards; amend those provisions that hinder its full and free exercise; and refrain from adopting provisions that undermine that right.
29. Step up its actions to respect and guarantee land rights, and adopt the state measures necessary to meet the obligation of carrying out the prior, free, and informed consultation of indigenous peoples regarding projects underway on their lands and territories and that affect their natural resources, taking into consideration the special relationship that exists between such peoples and their lands and natural resources.
30. Take the steps necessary to assign an adequate budget to the state agency responsible for monitoring the rights of indigenous and Afro-Honduran peoples. Implement public policies according to their needs and concerns in consultation with them.
31. Address the education, nutrition, health, and maternal health needs of indigenous and Afro-descendant peoples.
32. In relation to Miskito divers, review the underwater fishing law of 2001 considering the divers needs. Implement urgent supervision mechanisms for companies dedicated to submarine fishing. Provide a hyperbaric chamber in La Mosquitia.
33. Take immediate steps to ensure that the activities carried out by the Police and National Army in the context of the defense of indigenous peoples and communities, their ancestral territories, and the exercise of their rights are in accordance with their functions within a democratic system and with the applicable inter-American standards.

### 3. LGBT people

34. Conduct exhaustive investigations with all due diligence to prosecute and punish the people responsible for killings and other acts of violence against LGBT people. In investigating killings and other acts of violence against LGBT people, the State must explore lines of investigation that examine whether the crimes were committed by reason of the victim's real or perceived sexual orientation and/or gender identity.
35. Address the underlying causes of violence based on prejudice toward the sexual orientation and gender identity or expression of people who defy the gender rules established by society. This includes adopting policies and conducting public campaigns to promote awareness and respect for the human rights of LGBT people in all sectors, including education, health, and the family, in order to combat the prejudices that underpin violence related to sexual orientation and gender identity or expression.
36. Produce statistics and official records of violence against LGBT and intersex people, in order to promote public policies for protecting their human rights.
37. Adopt a gender-identity law or similar measures to allow the full recognition of the identity of trans people.
38. Adopt a differentiated approach to ensure the rights to life and integrity of LGBT people and of defenders of LGBT people's human rights, given that they are particularly vulnerable to violence from State agents as well as private parties.
39. Progress with the adoption of legislative measures, public policies, and the like that afford effective protection to the defenders of the rights of LGBT and intersex people.

### 4. Children

40. Establish a System of Promotion and Protection for the rights of children and adolescents in the three level of government for the implementation and coordination of public policies, with an emphasis on the local level, which guarantee the right to life free of violence and prevent forced migrations of this sector. The coordinated effort will help to address the structural causes of violence by means of legal, political, administrative, social and cultural measures. For this purpose, provide the DINAF with the necessary resources to execute its mandate. Evaluate how it is functioning and possible areas that require strengthening in coordination with civil society organizations.
41. Strengthen the capacity to protect and defend the rights of children and adolescents, in particular by providing judges, prosecutors, and defenders who are specialized in the topic to lift the obstacles that prevent effective access to justice by children and adolescents.

42. Develop the necessary skills to provide opportunities and training for the neediest children, through the agencies specializing in the rights and needs of children, as a further step in this process.
43. Adopt safety and control measures necessary to guarantee the life and integrity of children and adolescents deprived of their liberty, particularly those who are exposed to generalized violence by gangs or maras.
44. Ensure the rehabilitation centres' conditions meet at least the basic international standards on human rights.
45. Appoint specialized judges in the enforcement of judgments in juvenile jurisdiction, who systematically monitor the human rights situation in these establishments.

## **5. Migrants, asylum seekers, refugees, and forced displacement**

46. Adopt the policies and measures necessary to deal with the factors whereby people are forced to migrate from Honduras. In this regard, it is particularly important that such problems as inequality, poverty, and violence are addressed.
47. Develop regional instruments and mechanisms to combat the criminal activities of transnational criminal organizations involved in migrant abductions, trafficking in persons, and migrant smuggling.
48. Increase the DINAF's human, administrative, and financial resources so that its officers can provide returnee children and adolescents with comprehensive attention, in accordance with its obligations under the Protocol on Repatriation.
49. Improve its mechanisms and capacity for detecting trafficking victims and survivors and people who might be vulnerable to trafficking.
50. Develop education and job training programs and ensure that repatriated children have access to them.
51. Implement reintegration programs for adult Honduran migrants in all the departments and municipalities where repatriated migrants are to be found. For repatriated Honduran migrants with disabilities, ensure that they are given the social services that they need, including health care, together with other education programs so they can acquire training in other skills that will enable them to contribute to society anew and enjoy a decent life.
52. As regards disappeared and unlocatable migrants and unidentified remains, the Honduran State must implement a national mechanism to facilitate the exchange of forensic information on the unidentified remains of Hondurans who have disappeared in Mexico or the United States with other similar mechanisms that exist in such countries as Mexico or the United States, together with any others that may be created. This national mechanism must be integrated with a similar

regional mechanism to allow forensic information to be exchanged between the countries of Central and North America. The management of both mechanisms must involve representatives of civil society.

53. Prepare a national diagnostic assessment to examine internal displacement in Honduras and, subsequently, to adopt a national policy and the measures necessary to respond in accordance with the applicable international standards, in particular the Guiding Principles on Internal Displacement.
54. Enact specific legislation at the national level to deal with internal displacement, in accordance with the Guiding Principles on Internal Displacement.
55. The Commission reiterates its call for the region's states—in particular, the United States, Mexico, and other Central American countries that Honduran migrants cross—to adopt, in conjunction with Honduras:
  - All the policies, laws, and practices necessary to guarantee the right to safe and orderly migration and to comply with their other international obligations as regards protecting the human rights of migrants who leave, cross, or enter their territories; and
  - Take joint responsibility of States in managing migratory flows which can under no circumstances lead to the failure of those states to comply with their human rights obligations toward people under their jurisdiction.

## **6. Bajo Aguán**

56. Step up its efforts to resolve the land conflict in Bajo Aguán. To this end, the State must take steps to resolve the causes of the conflict and apply the principle of equality and nondiscrimination, in order to address the obstacles and barriers to the exercise, respect, and upholding of the economic, social, and cultural rights of the campesino communities of Bajo Aguán.
57. Conduct serious and effective investigations into the killings and other human rights violations committed in Bajo Aguán.
58. Guarantee respect for the rights of children and youths, in particular their right to education and to health, by equipping schools and health facilities with adequate staffs and budgets, with personnel who are trained in dealing with campesino communities.

## **7. People deprived of liberty**

59. The IACHR reiterates to the State the series of recommendations it formulated in the Report on the Situation of Persons Deprived of Liberty in Honduras. Also, in light to the nature of the context and its complementarity, the IACHR urges the State to fully comply with the Inter-American Court's decision in the case Pacheco Teruel and others. In this decision the Court ordered the implementation of a

series of measures of general scope to be applied to the Prison System. Its compliance is essential to guarantee the life and integrity of the persons deprived of liberty in situations of emergency.

60. Adopt the administrative, legal, and judicial measures necessary—for either the short, medium, or long terms—to stabilize and reduce the growth in the prison population, in accordance with the remarks made in this chapter.
61. Review, amend, or, if applicable, repeal Decree 65-2013, which establishes obligatory preventive custody for 21 offenses, in accordance with the relevant international obligations assumed by the State and the applicable international standards.
62. Adopt, with resolve and on an urgent basis, the measures necessary to reassert internal control over all prison facilities, so that it is the State that controls internal security at prisons and all those prison administration functions that cannot be delegated to the inmates. Accordingly, the Commission emphatically urges the State to eradicate once and for all the practice of delegating disciplinary authority to inmates, particularly the power to impose sanctions.
63. Ensure the effective separation of men and women inmates, particularly at the San Pedro Sula National Penitentiary and the Progreso Penal Center. In addition, take the steps necessary to keep remand prisoners and convicts separate.
64. Establish a strategy for removing the armed forces from prison duty that clearly and transparently defines the specific objectives sought through the use of this exceptional measure.
65. Allow, without any unnecessary or arbitrary restrictions, the entry of the CONAPREV, the National Commissioner for Human Rights, sentence oversight judges, and officials of the Secretariat of the Interior, Human Rights, Justice, and Decentralization to all the country's detention centers, in particular to the detention facilities that have been set up on bases of the armed forces.
66. Conduct a diligent, prompt, and impartial investigation of the events that occurred at the Comayagua National Penitentiary on February 14, 2012; provide suitable medical and psychological attention to the surviving inmates and to the families of those who lost their lives in the fire; and provide the victims and their next-of-kin with redress.
67. Equip the National Torture Prevention Mechanism (CONAPREV) with the resources, tools, and institutional support necessary for that agency, created pursuant to an international treaty, to be able to discharge its mandate effectively.
68. Ratify the Inter-American Convention to Prevent and Punish Torture, to which Honduras has been a signatory since March 11, 1986.

## 8. Freedom of expression

69. Adopt a public discourse that helps prevent violence against journalists, including recognizing reporting work and publicly condemning killings and all physical violence against journalists, and refraining from all statements that could raise risk levels for media workers.
70. Adopt training and education programs and formulate and implement guidelines and manuals for public officials—in particular, for the police and security forces—on respect toward the media, including those specifically related to gender issues.
71. Ensure that effective and specific protective measures are adopted, on an urgent basis, to ensure the security of those who are at particular risk on account of their exercise of the right of free expression, regardless of whether the threats are made by state agents or private citizens. Those measures must guarantee journalists the possibility of continuing to pursue their professional activities and exercise their right of free expression.
72. Take the steps necessary so that media workers who have been forced to relocate or go into exile because of the risks they face can safely return to their homes. Should the return of those individuals not be possible, the State must adopt measures so they can remain in the places they choose in decent conditions, with security measures, and with the economic support necessary to maintain their work and their family lives.
73. Conduct diligent, impartial, and effective investigations into killings, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with the content of this report. This assumes the existence of special investigation units and protocols, together with the identification and exhaustion of all possible criminal hypotheses linking the attack to the victim's professional activities.
74. Provide appropriate technical training and formulate and implement guidelines and manuals on crimes against freedom of expression, including those specifically related to gender issues, for the public officials charged with investigating and prosecuting such crimes, including police officers, prosecutors, and judges.
75. Strengthen the Technical Criminal Investigation Agency of the Public Prosecution Service, equip it with sufficient human and material resources, and clearly define its competence in the investigation of crimes against freedom of expression.
76. Prepare and maintain precise statistics on violence against journalists and the prosecution of those offenses, and create reliable indicators on the different factors that lead to violent or criminal acts.
77. Continue working in concert with international human rights organizations on the formulation and implementation of effective measures to eradicate the impunity surrounding crimes against journalists and media workers.