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Ежегодный доклад Верховного комиссара

Организации Объединенных Наций по правам человека

и доклады Управления Верховного комиссара

и Генерального секретаря

Положение в области прав человека в Гондурасе

Доклад Верховного комиссара Организации Объединенных Наций по правам человека о положении в области прав человека в Гондурасе* **

Резюме

В настоящем докладе Верховный комиссар Организации Объединенных Наций по правам человека описывает положение в области прав человека в Гондурасе с 1 января по 31 декабря 2018 года, уделяя особое внимание нищете и экономическим и социальным вопросам; насилию и отсутствию безопасности; борьбе с коррупцией и безнаказанности; демократическому пространству; и положению правозащитников, журналистов, коренных народов, женщин, а также лесбиянок, гомосексуалистов, бисексуалов, трансгендеров и интерсексуалов. Верховный комиссар также освещает некоторые виды деятельности Управления Верховного комиссара Организации Объединенных Наций по правам человека в Гондурасе и в заключение представляет рекомендации.

* В связи с обстоятельствами, не зависящими от представителя, было решено издать настоящий доклад после стандартной даты его опубликования.

** Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на испанском языке.



Annex

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras

I. Introduction

1. On 4 May 2015, the United Nations High Commissioner for Human Rights signed an agreement with the Government of Honduras to establish a country office. The Office of the United Nations High Commissioner for Human Rights (OHCHR) in Honduras monitors the situation of human rights and provides capacity-building and technical assistance to State institutions and civil society organizations, with the overall goal of enhancing the promotion and protection of human rights in the country.

II. National context

2. President Juan Orlando Hernández Alvarado was sworn in on 27 January 2018, in a volatile social and political context following massive citizen protests against the outcome of the presidential election.

3. Recognizing the existence of political divisions, the President called for an open national dialogue to find a way forward and heal the nation, asking the United Nations to support its facilitation. Several political parties and civil society organizations also called for United Nations support. In February 2018, the Department of Political Affairs conducted an exploratory mission to the country. Recognizing the existence of a long-standing political crisis, profound polarization within the society and distrust vis-à-vis “traditional politics”, it recommended the implementation of confidence-building measures before a dialogue could be established.¹

4. On 28 August, following over six months of negotiations under the auspices of the United Nations, the Government and three of the main political parties signed a joint “Commitment for Honduras” and established a mechanism for inter-party dialogue composed of four working groups on, respectively, the 2017 electoral process and the presidential re-election, human rights, constitutional reforms and the rule of law, and electoral reforms. The dialogue concluded on 11 December without any formal agreement.² An amnesty proposal to address the legal situation of individuals accused of crimes committed in the context of the electoral protests was tabled but found no consensus; there was no agreement on the holding of a referendum to reform the Constitution and abrogate the prohibition of presidential re-election.

5. As reflected by the outcome of the United Nations-supported dialogue, the country remains profoundly polarized, and the fractures generated by the striking down of the presidential term limit established in the Constitution, allegations of fraud and involvement of criminal groups in the 2017 elections remain unhealed (A/HRC/37/3/Add.2, para. 3). Impunity is pervasive, including for human rights violations, as shown by the modest progress made in the prosecution and trial of members of the security forces for the human rights violations committed in the context of the 2017 elections.

6. Poverty and inequality are deep-rooted and a core cause of ongoing migration, as reflected in the participation of thousands of Hondurans in a caravan that left the country in October aiming for the United States of America.

7. In an effort to strengthen State institutions in charge of the protection and promotion of human rights, the Ministry of Human Rights began operating on 27 January 2018.

¹ See <http://hn.one.un.org/content/unct/honduras/es/home/presscenter/nota-para-corresponsales-de-prensa--honduras.html>.

² The working groups developed 169 recommendations for legislative and policy reform, which, however, were not formally endorsed. The executive submitted the recommendations to Congress.

However, independent State institutions such as the Office of the National Commissioner for Human Rights (CONADEH) and the National Committee for the Prevention of Torture (CONAPREV) remain challenged, politically and financially.

III. Poverty and economic and social issues

8. Honduras is a lower-middle-income country, marked by pervasive poverty affecting over 67 per cent of its population; 58.9 per cent of the rural population lives in extreme poverty.³ In 2016, the Government adopted a multidimensional poverty index, which reflects the extent of the challenges facing Honduras as it estimates that 70.7 per cent of the population faces severe deprivation with respect to education, health and living standards.⁴ The country is one of the most unequal in Latin America in terms of income distribution.

9. Honduras has made the 2030 Agenda for Sustainable Development a centrepiece of its national development programme, prioritizing 13 Sustainable Development Goals and 43 targets, and developing 66 indicators. The adoption of a human rights approach based on disaggregated data and strict monitoring of the situation of the groups experiencing the most discrimination is urgently required if the pledge that no one will be left behind in the implementation of the Goals is to be met (CRPD/C/HND/CO/1, paras. 65–66).

10. In 2016, the Committee on Economic, Social and Cultural Rights expressed its concern at the limited impact of programmes on reducing poverty (E/C.12/HND/CO/2, paras. 39–40). Poverty trends show that monetary transfers to poor families under social protection programmes such as “Better Life” helped to alleviate urgent needs, but have not resulted in sustainable progress towards fulfilling the right to an adequate standard of living and other economic and social rights.

11. Corruption diverts essential resources away from the State, and independent studies estimated that the cost of corruption has reached 10 per cent of the gross domestic product (GDP).⁵ In 2018, official data indicate that 11.4 and 5.9 per cent of the budget respectively were allocated to the education and health sectors. Despite this relatively high level of investment, results in terms of the delivery of services have been below expectations, including in terms of coverage, quality and quantity. Despite a progressive expansion of the national budget, poor management and corruption in key sectors of the State continue to hamper the requirement for maximum use of available resources. In November, the National Anti-Corruption Council reported that between 2015 and 2018, corruption affected 49 per cent of the health budget.⁶

12. On 15 September, the executive introduced before Congress the 2019 draft budget law, which was approved on 18 December and published on 20 December.⁷ In the current budget, the resources for education and health have been increased by 7.18 and 1.95 per cent respectively. The increased prices of electricity and fuel affected the costs of transport and the basic food basket, and triggered strikes in parts of the country in July and August.

13. There is a close relationship between persistent poverty and migration. In 2017, remittances represented 18.6 per cent of GDP and the third most important source of financial inflows for Honduras. Deportations of Hondurans had increased by 38 per cent by November 2018 compared with 2017; 66,000 migrants were returned in 2018, mainly from Mexico and the United States (including 11,000 women and girls), and the continuing returns are likely to exacerbate existing poverty.⁸

³ National Statistics Institute, Household Survey, 2018.

⁴ See the speech of President Hernández before the General Assembly in September 2018, available at www.scgg.gob.hn/es/node/64.

⁵ See <http://transparencia.programaimpactos.org/Debilitamiento%20institucionalidad%20publica%20repercusiones%20lucha%20por%20transparencia.pdf>.

⁶ National Anti-Corruption Council, press release, 28 November 2018.

⁷ Article 13 of the law requires that Congress publish legislative proposals within 10 days of receiving them.

⁸ Consular and Migratory Observatory of Honduras, at www.conmigho.hn.

A. Access to, use of and control over land

14. Conflict over land and the frequent undue use of the criminal justice system against individuals advocating against large-scale projects affecting land remain a concern. In January, illegal trespassing and appropriation of land were added to the list of crimes that can be committed by organized criminal groups.⁹ OHCHR is concerned about the impact of this reform in a context of recurrent social conflict related to land. For instance, in October, in Guapinol, Department of Colón, 18 individuals (including 2 women) belonging to community and environmental organizations camping in the area of a mining project were charged with illegal trespassing and appropriation. Under the new Penal Code, adopted by Congress in January 2018 but not yet promulgated, the punishment for trespassing and appropriation of land has been increased to four years of imprisonment.

15. Given the pervasiveness of conflict over land in Honduras, OHCHR urges the authorities to shift their approach from criminalization to addressing the socioeconomic conditions underlining the phenomenon and effectively protecting indigenous rights over their ancestral territory.

B. Labour rights

16. The Honduran labour context facilitates the maintenance of forms of economic inequality. Official data indicate that 68.5 per cent of the population is either unemployed or underemployed, with women disproportionately facing substandard conditions of work.¹⁰ Labour organizations are weak and union members stigmatized and targeted, affecting meaningful collective bargaining and protection of labour rights. In January/February alone, trade unions registered acts of violence against 13 trade unionists, including 6 women, in the education, agroindustry and public sectors. Of 19,837 inspections conducted by the labour inspectorate of the Ministry of Labour and Social Security between January and September 2018, over 60 per cent revealed breaches of laws, rules and regulations.¹¹ The law on labour inspections remains without regulations, which limits its impact.

17. The conditions of work in the underwater fishing industry in La Mosquitia remain of concern, as the mainly indigenous Miskito workers are subjected to exploitation and precarious labour conditions. In 2018, the labour inspectorate followed up on incidents involving eight divers, three of whom had died while the others suffered injuries resulting in disabilities. Since its inauguration in 2016, the centre for the care of divers with disabilities in Puerto Lempira has treated over 2,200 patients, representing a fraction of all affected divers as the cost of travelling from remote areas, the length of the journey and the degree of impairment limit access to that health service. OHCHR worked with the inter-institutional commission on underwater fishing to review the regulations on occupational health and safety in that field. OHCHR is concerned about the limited participation of the workers and the private sector in the process, and notes the need to comply with the right to free, prior and informed consultation.

18. In June, the Inter-American Commission on Human Rights transmitted to the State its confidential report on the merits of the case *Opario Lemoth Morris and others v. Honduras*.¹² In June, the Ministry of Labour and Social Security replaced the Directorate for Indigenous and Afro-Honduran Peoples at the head of the inter-institutional commission. It is hoped that the higher rank of the new chair will help strengthen coordination and consolidate political will by the participating institutions.

⁹ Decree 112-2017.

¹⁰ National Statistics Institute, Household Survey, 2018.

¹¹ Corresponding to 12,043 inspections. Data from the Ministry of Labour and Social Security.

¹² The complaint (No. 1186-04) filed against Honduras adduced failure to protect the rights to life, humane treatment and others of deep-sea divers who suffered disabilities and health complications as a result of their working conditions.

C. Business and human rights

19. In June, the Government of Honduras announced its readiness to promote the development of a national action plan on business and human rights. In cooperation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, OHCHR shared a proposed methodology for drafting such a plan, advising on the importance of broad consultations involving the business sector as well as unions and communities, including rural, indigenous and Afro-Honduran communities. The Government has developed a preliminary road map.

IV. Violence and insecurity

20. Between January and June, the National Police recorded 1,808 violent deaths (including of 190 women), a decrease of 11.7 per cent from 2017.¹³ The national homicide ratio dropped from 59.05 per 100,000 inhabitants in 2016 to 43.5 per 100,000 in 2017 and to 40.72 in 2018, and the traditionally violent municipality of San Pedro Sula as well as the Central District experienced reductions in the homicide rate of up to 25 per cent, a greater reduction than in the national rate.¹⁴ At the same time, the large number of deaths that are classified as “unidentified”¹⁵ could affect the estimation of the reduction in the homicide rate.

21. Organized crime, including cartels, criminal families and gangs such as *maras* and *pandillas* play an important role in the violence and insecurity. Through corruption and collusion, organized crime has infiltrated government agencies and the broader political arena, as demonstrated by the profile of the individuals prosecuted in ongoing criminal cases in national courts or extradited or arrested in foreign jurisdictions.¹⁶

22. In such a complex environment, the public discourse tends to focus largely on street gangs as the main causes of violence.¹⁷ However, official disaggregated data on the situational context and types of homicidal violence, which are instrumental for the measurement of progress towards Sustainable Development Goal 16, are not available.¹⁸ In 2017, the special criminal court established to prosecute and try cases involving organized crime networks handled 133 criminal cases, only 31 of which involved homicide. The scarcity of judicial data, with few homicides resulting in charges and even fewer progressing to trial, hinders the analysis of and trends in homicidal violence. OHCHR is concerned that the political discourse focuses too much on certain types and perpetrators of violence, underestimating others such as criminal networks with close political and economic ties, which has an impact on the effectiveness of security and criminal policies.

23. The Government has intensified its advocacy to have the Honduran *maras* and *pandillas* recognized as armed non-State actors and human rights violators, in line with the position expressed in 2013 at the time of the establishment of the Public Order Military Police. OHCHR reiterates that such a designation can only be made using a casuistical approach that incorporates country- and time-specific elements and is based on such criteria as control of territory and population, exercise of governance functions and identifiable political structures. In the current context, Honduras should intensify its efforts to prevent violence, continue to tackle violence by *maras* and *pandillas* through criminal legislation and intensify its fight against organized crime and economic crimes, including corruption.

¹³ See www.sepol.hn/sepol-estadisticas-honduras.php?id=158.

¹⁴ Ibid.

¹⁵ The National University of Honduras recorded 308 “unidentified” deaths between January and June 2018 and 596 in 2017.

¹⁶ See, for reference, Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), at www.oas.org/es/sap/dsdme/maccih/new/default.asp.

¹⁷ See interview with Minister Luis Fernando Suazo in *La Tribuna*, 17 October 2018, at www.latribuna.hn/2018/10/17/el-80-por-ciento-de-los-homicidios-son-cometidos-por-las-maras-y-pandillas/.

¹⁸ See International Classification of Crime for Statistical Purposes, at <https://unstats.un.org/sdgs/files/metadata-compilation/Metadata-Goal-16.pdf>.

A. Security forces

24. In January 2018, the laws on the Ministry of Security, the national police and the police career came into force. At the same time, the Ministry of National Security and Defence adopted the general regulations on the law of the Ministry, the general regulations on the police career law, and the regulations on the organization and functions of the directorate of police disciplinary affairs. OHCHR recognizes the advances made by this new framework, including by strengthening the independence of investigative and disciplinary bodies, civilian oversight and the professionalism of the police force. In 2018, 2,671 new recruits joined the national police, which now has a force of 15,661 personnel.

25. In July 2018, the Government strengthened joint police-military work by establishing a national force of 500 officers to fight *maras* and *pandillas*. The Public Order Military Police, with 5,000 officers, has remained in operation since 2013. Decree 223-2011 has interpreted article 274 of the Constitution to provide for the armed forces to cooperate in public order functions “exceptionally” and “in situations of emergency”.

26. OHCHR observes that what was established as an exceptional regime in the context of a “security crisis ... representing a threat to the security of the State”¹⁹ has become a normalized practice.²⁰ OHCHR and relevant international human rights mechanisms have consistently recommended that Honduras reconsider the role played by the military in public order functions²¹ and noted the high risk of human rights violations, as highlighted by the concerns arising from the participation of the military in the policing of the 2017 protests related to the elections.

27. In March, Congress abolished article 335 B of the Penal Code which defined conduct constituting incitement to terrorism too broadly. However, no steps have been taken to address the concerns expressed by the High Commissioner and international human rights mechanisms regarding article 335 and the overly broad definition of the crime of terrorism.²²

28. As the majority of deaths continues to be caused by firearms, OHCHR hopes that the implementation of the recently adopted law on firearms, which reduces to three the number of weapons allowed per person and establishes improved registration and permit procedures, will contribute to reducing violence. OHCHR notes that an effective arms control system is not yet in place as the law fails to regulate the possession of arms by security companies.

29. Excessive use of force by law enforcement officials continued to be reported. One member of the Public Order Military Police is currently on trial for the assassination of three members of the Miskito indigenous community during a night operation in May in Warunta, Department of Gracias a Dios. In October, in San Pedro Sula, three children travelling in a vehicle were struck by bullets as the Public Order Military Police were engaged in an operation against street gangs. On 26 November, a journalist reporting on a protest in Tegucigalpa on the anniversary of the 2017 elections was injured in the arm when penitentiary guards on transport duty opened fire when approaching the protest. Tear gas appears to be routinely used, often indiscriminately and on questionable grounds of necessity.

30. To remedy the gaps contained in the currently fragmented legal framework on the use of force, since 2016 the Ministry of National Security and Defence has been working on a comprehensive bill to regulate the use of force by all law enforcement actors. The adoption of human rights-compliant and comprehensive legislation and protocols is urgent, not least given the expanded participation of civil and military forces in Special Forces activities.

B. Children in conflict with the law

31. The establishment of the National Institute for the Care of Juvenile Offenders (INAMI) in January brought some improvement to the juvenile justice system. By

¹⁹ Decree 168-2013.

²⁰ See, in this regard, CAT/C/HND/CO/2, para. 13.

²¹ CCPR/C/HND/CO/2, para. 20.

²² A/HRC/37/3/Add.2, para. 20.

September, the number of children deprived of liberty had decreased by 23 per cent, while alternative measures to detention grew by 40 per cent, affecting 862 children.²³ Reports, including by social workers tasked with following children in conflict with the law, reveal significant child protection gaps, including at the family and community levels.

32. The ongoing restructuring of the pedagogical centre in Jalteva, funded through the security tax, will allow the transfer of juvenile offenders from the centre within the police antiterrorist battalion (Cobra) to upgraded civilian facilities, reduce overcrowding and provide for separate detention of juvenile offenders who have reached adulthood. Despite some progress in implementing educational programmes, respect for social and educational rights during internment and monitoring of the implementation and evaluation of alternative measures require urgent attention and adequate investment.

33. Reports of excessive use of force to control disturbances in the centres have been received, including at the Renaciendo centre in February, in the juvenile centre at the Cobra battalion in August and at the girls' centre of Sagrado Corazón de María in February.

C. Individuals deprived of their liberty

34. Despite the opening of new prisons in 2017, overcrowding continued to increase, reaching 100 per cent over capacity in the Tamara centre and over 30 per cent in the newly opened centre of Ilama. By September 2018, the number of incarcerated adults had reached 20,583 (including 1,240 women), compared with 19,000 in December 2017 (including 1,050 women). The overall percentage of inmates held in pretrial detention decreased from 58 to 53 per cent, but grew from 63 to 68 per cent among the female population. In 2017, one in every five inmates in pretrial detention was being held on charges of criminal association, for which pretrial detention is mandatory under article 184 of the Code of Criminal Procedure.²⁴ As only 30 per cent of such cases progress to trial, the majority of individuals held on charges of criminal association are released after being held in pretrial detention for up to two years. The damaging impact of pretrial detention should be carefully factored into any decision to apply this measure.²⁵

35. As of September, 23 inmates had died, 4 in a violent manner while on early release, 2 of accidents, 1 of suicide and 16 of natural causes.²⁶ Poor health services accounted for several of these deaths. Such was the case of two women who died of aggravated respiratory complications at the National Penitentiary of Tamara in September, allegedly because they did not receive timely medical assistance. By August, 144 cases of tuberculosis had been recorded in prisons throughout Honduras.²⁷ Inmates in the maximum security prisons of La Tolva and Moroceli were particularly affected, as conditions of detention and limited access to open air resulted in deteriorated physical condition and facilitated the spread of the disease.

36. As of September, five inmates had died violently in prison riots, including in September in Moroceli and in October in Ilama. Deplorable conditions of detention, transfer without notification to families and lack of adherence to procedures were the main grievances behind the protests. In March, CONAPREV transmitted to the Office of the Special Prosecutor for Human Rights information related to a joint military-police security operation in the detention centre of El Porvenir, during which over 80 inmates were injured. By the end of November, CONAPREV had transmitted to the Office information on 284 incidents related to torture or ill-treatment in places of detention, including two cases which appeared

²³ In May 2017, 572 children were detained; in September 2018, the number was 445 children, including 47 girls.

²⁴ Article 184 of the Code of Criminal Procedure contains a list of 20 crimes for which pretrial detention is mandatory.

²⁵ Data from the Electronic Centre for Documentation and Judicial Information.

²⁶ Data from the National Prison Institute.

²⁷ World Health Organization, Honduras, at www.paho.org/hon/index.php?option=com_content&view=article&id=1555:atencion-integral-de-salud-para-privados-de-libertad&Itemid=229.

to have resulted in the death of the victim in police custody, one in Pespire, Department of Choluteca, and another in the city of La Ceiba.

37. Visiting regulations are restrictive, and the cost of obtaining a visitors permit disproportionately affects low-income and large families as each member is required to obtain an individual permit that is valid for only six months. Conjugal visits are allowed subject to the presentation of five health certificates, including on HIV status. This is a concern from the perspective of mandatory testing, which the domestic law forbids, and affects the right to private and family life as visits are barred if a test is refused or yields positive results. Relatives of detainees continue to report arbitrary application of the visiting regulations and demands for bribes in the centres of Ilama, Moroceli, El Porvenir and the maximum security module in Tamara. On 20 December, Congress approved legislation whereby family members can obtain the necessary documentation free of charge.²⁸

38. The independence and autonomy of CONAPREV has come under challenge by the administrative restructuring mandated by decree 009-2018, which places the mechanism under the responsibility of the executive. Independence as well as operational and financial autonomy are key principles in the establishment and functioning of a national preventive mechanism.²⁹ In 2013, human rights mechanisms had already recommended that the legislative framework of CONAPREV be reformed to allow for it to have its own budget.³⁰ In 2016, they expressed concern that the system currently in place for selecting and appointing the three expert members of CONAPREV did not include the necessary procedures to ensure the candidates' functional independence and the absence of any conflicts of interest.³¹

V. Justice

A. Independence of the judiciary and selection and appointment of high-level judicial authorities

39. Legal reforms are urgently required to guarantee an independent and effective justice system able to sustain efforts against impunity and corruption. Following the decision of the Supreme Court of Justice in 2016 to declare the law on the judicial council unconstitutional, there has been no progress in the establishment of an independent governance structure for the judiciary that separates disciplinary and administrative functions. Identified weaknesses of the law on the judicial career remain unaddressed in the ongoing process to recruit judges against 193 posts.

40. In June, Congress reappointed the Attorney General to another term of office, disregarding the legal procedure which requires the candidate to be selected from a list developed by a nominating committee.³² In addition, the work of the nominating committee lacked transparency and public oversight, including by not allowing full disclosure of its decision-making to interested national and international entities, including OHCHR and the Mission against Corruption and Impunity in Honduras (MACCIH).³³ The recommendations of OHCHR, the Special Rapporteur on the independence of judges and lawyers and the Inter-American Commission on Human Rights regarding the need for transparent and publicly available information on criteria for the selection of the candidates were not taken into account.³⁴

²⁸ *La Gaceta*, No. 34,825, 20 December 2018, art. 245.

²⁹ See CAT/OP/12/5.

³⁰ CAT/OP/HND/3, para. 11.

³¹ CAT/C/HND/CO/2, paras. 29–30.

³² See <https://oacnudh.hn/oacnudh-expresa-su-preocupacion-en-relacion-al-reciente-proceso-de-eleccion-del-fiscal-general/>.

³³ See <https://oacnudh.hn/oacnudh-expresa-su-preocupacion-por-la-falta-de-publicidad-en-la-conformacion-de-la-nomina-de-5-candidatos/>.

³⁴ OHCHR, press releases, 26 and 29 June 2018, available at <https://oacnudh.hn/>.

41. In September, in compliance with the ruling of the Inter-American Court of Human Rights on the case *López Lone and others v. Honduras*, the Supreme Court reinstated to their posts two judges who had been arbitrarily dismissed for their participation in peaceful protests after the 2009 coup.

B. Fight against corruption and impunity, including prosecution of human rights violations

42. In 2018, the special prosecution unit to fight corruption-related impunity of the Office of the Attorney General, with the support of MACCIH, took steps against corrupt political networks.³⁵ Between May and June, it opened prosecutions against 38 high-profile individuals, including members of Congress and former ministers, on the grounds of misappropriation of public funds, fraud and money laundering to support party campaigns in the context of the 2013 elections. In February, the spouse of former President Lobo was arrested and tried under the recently created special anti-corruption court; in November, charges were brought against his brother for fraud and embezzlement of public funds.

43. However, such efforts face significant resistance. In January, the reform of the 2018 budget law by Congress attracted a national and international outcry, and was criticized by MACCIH as an attempt to block investigations as part of an “impunity pact” at the highest institutional levels. In March, Congress adopted bills to reform the asset forfeiture law and the law against money-laundering to prevent the seizing of assets held by State officials; these bills were finally vetoed.

44. The presence of MACCIH in Honduras was challenged when, in March, members of Congress filed a constitutional challenge against the decree approving the agreement establishing the Mission. Although the Supreme Court affirmed its constitutionality in May, it also restricted the scope of the technical assistance provided by MACCIH. Civil society organizations denounced the ruling as “political” and argued that it undermined judicial independence.³⁶

45. Important legislative initiatives to strengthen the prosecution of corruption and organized crime remain pending. The bill on effective collaboration has yet to be discussed, although it was presented to Congress in April 2017. The law on classification of public documents related to security and national defence requires significant reform to comply with standards on access to information. In May, the Chief Justice established a special protection unit for judges, magistrates and public defenders to provide protection to personnel at risk. The Office of the Attorney General was in the process of establishing a similar mechanism. Witness and victim protection mechanisms urgently require strengthening.

46. The prosecution of human rights violations faces important obstacles. As of mid December, the Office of the Attorney General had brought charges against 24 security agents (10 members of the national police, 8 members of the armed forces and 6 members of the Public Order Military Police) in connection with 15 incidents which occurred during the post-electoral crisis. The majority of the charges relate to violations of State employees’ duties under article 333 of the Penal Code.

47. On the other hand, investigations into deaths that occurred during the protests proceed slowly and charges have been filed in only one case, involving the killing of a child in the Department of El Progreso. According to official information, investigations continue on 21 cases. On 17 October, the Attorney General publicly requested the armed forces to make available the information necessary to advance the investigations; the armed forces responded that all cooperation had been made available.

48. OHCHR observed delays in proceedings resulting from securing the participation of military personnel in proceedings, reluctance of witnesses and victims to engage, security

³⁵ See General Secretariat of the Organization of American States and MACCIH, Fifth Biannual Report, 19 October 2018.

³⁶ See <http://asjhonduras.com/webhn/tag/fallo-csj/>.

considerations, and a focus on individual accountability to the detriment of command and control responsibilities within the security forces.

49. In May, 10 members of the navy were convicted for the killing of two members of the Garifuna indigenous community of Iriona, thanks to the coordinated efforts of the Office of the Special Prosecutor for Crimes against Life and the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage. However, the pronouncing of sentence was still pending in November.

50. In June, in Tegucigalpa, the decision of a court dismissing charges of torture, illegal detention and abuse of authority against three senior police officers attracted a wide public outcry. The three had been accused of pepper spraying the faces of students and human rights defenders while arresting them during a protest at the National University of Honduras in September 2017.

51. On 29 November, the trial of eight individuals charged in connection with the assassination of human rights defender Berta Cáceres concluded, with seven of the defendants found guilty and one acquitted. Four of the accused were also found guilty of the attempted murder of a Mexican environmentalist. Several shortcomings were apparent in the handling of the case, including restricted access to the investigation materials by the lawyers of the victim and their eventual exclusion from the trial. At the same time, the company Desarrollos Energéticos S.A. (DESA) was found to be involved in the planning and execution of the killing, and the President of the company is on trial in a separate proceeding.

52. Despite initial steps in the implementation of the judgment of the Inter-American Court of Human Rights in the *Escaleras Mejía and others v. Honduras* case in 2017, the Office of the Attorney General has not developed a protocol for the investigation of crimes against human rights defenders. OHCHR reiterates the usefulness of such an instrument to enable a context, gender and pattern analysis in the investigation of such cases.

53. In March 2018, the Office of the Attorney General established the Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Media Workers and Justice System Actors. In September, two prosecutors were assigned to the Office.

VI. Democratic space

A. Media and right to information

54. The right to access to public information remains arbitrarily restricted. No steps have been taken to review the 2014 law on classification of public documents related to security and national defence, despite the recommendations of national, regional and international bodies. Information was obtained about ministerial resolutions from 2008 and 2018 that declared technical information related to licences for environmental projects, including their location, to be confidential.³⁷ OHCHR shared with the Institute on Access to Public Information an analysis of legal standards and jurisprudence, highlighting the incompatibility of the measures with international norms as well as with domestic legislation.

55. The telecommunications framework act of 1995 has not addressed problems related to the concentration of ownership of the media. From the perspective of promoting diversity, the act and its accompanying regulations have weaknesses and resulted in limiting the development of alternative media, including community radio stations. According to information received, only 19 out of over 300 radios broadcasters in the country have a licence, while the others operate under the constant threat of closure.³⁸

56. The Criminal Code provides for sentences of up to three years of imprisonment for slander, two years for libel and up to four years for defamation in the media despite numerous

³⁷ Ministerial decisions No. 725-2008 and No. 1402-2018.

³⁸ Data provided by the NGO C-LIBRE.

recommendations of international and regional human rights mechanisms to regulate these matters through civil law.³⁹

B. Human rights defenders and journalists

57. Attacks, criminalization, harassment and smear campaigns against human rights defenders, as well as burglaries of their offices and private residences remained of deep concern.

58. Between January and September, the national mechanism for the protection of human rights defenders, journalists, media workers and justice system actors of the Ministry of Human Rights received 140 requests for protection measures, accepting 118 and dismissing 22. As of November, the mechanism was implementing 201 protection measures, 26 corresponding to measures requested by the Inter-American Commission on Human Rights; the other 175 concerned 105 human rights defenders, 28 journalists, 23 media workers and 17 justice system actors, and included 15 measures ordered as a result of a risk to human rights defenders and journalists that emerged in the post-electoral crisis. The measures issued by the Inter-American Commission applied to 19 human rights defenders, 3 journalists, 1 media worker and 3 justice system actors. In 2018, the mechanism expanded the range of measures, adding self-protection training and psychosocial support to traditional measures such as police escorts, emergency contact numbers and upgrading of infrastructure.

59. The council of the national mechanism remains weak, mainly due to the modest engagement with the mechanism of some of its member institutions. By October, the Office of the Attorney General had participated in only one out of eight meetings of the council, and the judiciary in two. This lack of engagement deepens the distrust many human rights defenders hold vis-à-vis national institutions. The adoption of a comprehensive policy on human rights defenders could help overcome coordination challenges and consolidate commitment by all actors concerned.

60. In May, the Special Rapporteur on the situation of human rights defenders visited Honduras and concluded that despite strong efforts to establish an effective mechanism of protection, the vast majority of human rights defenders in Honduras are not able to operate in a safe and enabling environment.⁴⁰ At the end of a visit in November, the Working Group on the issue of discrimination against women in law and in practice expressed similar concerns about the situation of women human rights defenders.⁴¹

VII. Equality and non-discrimination

A. Rights of indigenous peoples

61. On 23 May 2018, the executive submitted to Congress a draft law on free, prior and informed consultation of indigenous peoples. OHCHR was informed that a consultation on the draft law would be conducted by a special committee. The involvement of the legislative committee on indigenous issues is unclear.

62. OHCHR considers that, in its current form, the draft falls short of human rights standards and does not fully safeguard indigenous peoples' rights to land, territories, natural resources and free, prior and informed consultation and consent. Indigenous peoples' organizations voiced opposition to the draft law in various forums. OHCHR is concerned that, should the law be adopted with the current gaps, social conflict related to development and investment projects in indigenous and Afro-Honduran territories may increase.

63. OHCHR continued monitoring situations of social unrest caused by lack of consultation with indigenous communities in the approval and execution of hydroelectric and

³⁹ CCPR/C/HND/CO/2, para. 41 (e).

⁴⁰ See www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=23081&LangID=S.

⁴¹ See https://drive.google.com/file/d/1yC1HFFPGm1i40GLdIExdME6J1b_CKnbg/view.

other projects. Self-identification of indigenous communities and traditional ownership of land are at the core of such conflicts, as in the case of the Petacon hydroelectric project in Reitoca, Department of Francisco Morazán, and the El Tornillito dam in Chinda, Department of Santa Barbara. In 2018, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage investigated 10 cases of abuse of authority and violation of public duties by municipal and State officials who had authorized hydroelectric, mining and other types of projects without prior consultation, with resulting environmental damages.

64. The slow implementation of the 2015 decisions of the Inter-American Court of Human Rights on cases involving the Garifuna communities of Triunfo de la Cruz and Punta Piedra remained of concern.⁴² By December, 6 of the 19 points of the judgment had been implemented. Initial steps to delimit lands in Triunfo de la Cruz have been taken; however, conflicts continue due to the lack of compliance with the resettlement and compensation of third party settlers ordered by the Court. Criminal investigations into the murders of five members of both communities have resulted in only one arrest warrant for the murder of Félix Ordóñez Suazo.

65. In La Moskitia, Miskito and Tawahka indigenous representatives continued to report acts of aggression, violence and intimidation against their communities, including as a result of cattle ranching and drug trafficking.

66. Development and investment projects in indigenous lands and territories take place in contexts of profound marginalization and poverty. In the Department of Gracias a Dios, for example, 78 per cent of the households are indigenous, and some 90 per cent experience multidimensional poverty. Serious gaps in the enjoyment of core human rights tend to produce undue pressure on indigenous communities, which may agree to projects in exchange for the promise by private business to provide services such as health and education.

B. Women's rights

67. Domestic legislation recognizes the principle of non-discrimination based on sex and gender. However, the effective implementation of policies to prevent and address discrimination against women and girls, including temporary special measures, are neglected.

68. Although the principle of parity was formally observed during the general elections of 2017,⁴³ the modality of implementation as a result of the rules and regulations of the law led to a decrease in women's representation from 26 to 21 per cent, with only 27 women elected to Congress. Moreover, key committees of Congress do not include women, such as the committees on the budget, mining and hydrocarbons, energy, housing and transportation. The Academy of Parliamentary Women was inaugurated as a space for exchange and empowerment.⁴⁴

69. Sexual violence remains widespread. OHCHR welcomes the development of the national protocol for assistance to victims of sexual violence, and it is hoped that it will enable emergency contraception to be made available to survivors.⁴⁵

70. The Penal Code adopted in January maintains the absolute prohibition and criminalization of abortion in all its forms, violating women's sexual and reproductive rights. Between January and September 2018, seven women were charged with the "crime" of undergoing an abortion; in some cases, the national police brought them before the public after their arrest and published their names and pictures on social media, thereby violating their human rights, including the rights to privacy and due process.

⁴² See www.corteidh.or.cr/docs/casos/articulos/seriec_304_esp.pdf; and www.corteidh.or.cr/docs/casos/articulos/seriec_305_esp.pdf.

⁴³ Decree 44-2004.

⁴⁴ Supported by OHCHR, the United Nations Development Programme, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the National Democratic Institute, Oxfam and the Netherlands Institute for Multiparty Democracy.

⁴⁵ Pending signature of the Minister of Health.

71. As of 15 November, at least 320 women had been violently killed⁴⁶ although charges of femicide were brought in only 13 cases by August, indicating that the gender dimension of those killings was not taken into account. In response, in August the executive formally established a commission for the follow-up of femicide which, along with the creation of special units for the investigation of gender-related crimes, represents an important step in addressing the impunity associated with these crimes, using an interinstitutional approach. These efforts need to be complemented by the rapid adoption of a dedicated investigative protocol and by preventive actions addressing the causes of violence.

C. Rights of lesbian, gay, transgender, bisexual and intersex persons

72. Lesbian, gay, transgender, bisexual and intersex persons continue to be discriminated against in all areas of life. An action filed in March by the lesbian organization Cattrachas against the constitutional prohibition of same-sex marriage remains pending before the Supreme Court. The law on adoption passed by Congress in August explicitly excludes same-sex couples from adopting.

73. According to reports, in 2018, at least 22 lesbian, gay, transgender, bisexual or intersex persons were killed, and by November trials were ongoing in four of these cases.

D. Rights of migrants

74. According to the International Organization for Migration (IOM), about 7.8 per cent of the Honduran population lives outside Honduras, including 35,000 asylum seekers.⁴⁷ In May, the United States decided to discontinue the temporary protected status for Hondurans agreed in 1999, effective as of January 2020.

75. In October, thousands of Hondurans, including men, women, boys and girls, joined a “caravan of migrants” to reach the United States, travelling through Guatemala and Mexico. On 20 October, following warnings that international aid and assistance would be cut “with immediate effect” unless migrants were stopped, the Honduran authorities temporarily closed the main crossing point to Guatemala, reportedly “for the purpose of saving the life and physical integrity of citizens and preventing human trafficking”. The Observatory on Migration reported that 7,208 people had returned to Honduras between 15 October and 13 December (not all of whom left with the caravan).⁴⁸ It is reported that 9,400 people remained in Mexican territory as of 15 December.⁴⁹

76. The Government announced the adoption of a safe return plan, but OHCHR has been unable to obtain a copy of it. Returnees interviewed by OHCHR indicated their intention to attempt migration again, due to the lack economic and social opportunities and reintegration assistance. A narrative stigmatizing the migrants’ caravan appeared in national and international media, suggesting that the movement had been infiltrated by organized crime, including jihadists and *maras* and *pandillas*, and orchestrated by the political opposition for “political and criminal purposes”.

VIII. Activities of the Office of the United Nations High Commissioner for Human Rights in Honduras

77. OHCHR provided technical advice on human rights in the context of the national political dialogue, advising the Political Commission and the Human Rights Working Group.

⁴⁶ Data of the Observatory on Violence of the National Autonomous University of Honduras.

⁴⁷ IOM, *World Migration Report 2018*.

⁴⁸ See www.conmigho.hn/direccion-general-de-proteccion-al-hondureno-migrante/retornados-2018/.

⁴⁹ Inter-agency response by the Office of the United Nations High Commissioner for Refugees (UNHCR), IOM and the United Nations Children’s Fund (UNICEF), 15 October–15 December 2018.

78. OHCHR conducted 55 missions throughout the country to monitor the situation of human rights. It monitored eight trials, including the trial of the persons accused of the assassination of human rights defender Berta Cáceres.

79. On 10 December, OHCHR and the Ministry of Human Rights launched a technical cooperation programme. By December, the training programme on human rights for State officials had been launched and two training modules were conducted. OHCHR advised the Ministry to develop a national action plan on business and human rights, jointly with the Working Group on the issue of human rights and transnational corporations and other business enterprises.

80. OHCHR supported the national mechanism for the protection of human rights defenders, journalists, media workers and justice system actors.

81. OHCHR provided advice to Congress and civil society on international human rights standards, including on the bill on cybersecurity and hate crimes and the bill on domestic workers. OHCHR supported congresswomen through the Parliamentary Academy. It also supported indigenous and Afro-Honduran members of Congress through training on human rights and the right to free, prior and informed consent.

82. OHCHR observed the election of the Attorney General and the Deputy, and shared relevant international standards and good practices through forums, publications and press releases.

83. OHCHR held training sessions on human rights standards for staff of the Office of the Attorney General, judges and magistrates, including for the Supreme Court.

84. OHCHR and CONAPREV jointly trained members of the national police, the armed forces, penitentiary guards and representatives of the newly established local torture prevention boards on international and domestic standards. The United Nations Voluntary Fund for Victims of Torture, administered by OHCHR, contributed funding to CONAPREV.

85. OHCHR promoted human rights standards through forums and public debates. In October, with MACCIH and the Center for Justice and International Law (CEJIL), it held a forum on criminal networks, corruption and human rights. Other events included a public debate on women's rights, on standards for the election of the Attorney General (in Tegucigalpa and San Pedro Sula), on illicit associations and their impact on human rights and on the situation of human right defenders. OHCHR participated in events organized by national and international non-governmental organizations on a range of human rights themes.

86. OHCHR promoted the implementation by concerned United Nations agencies of the human rights due diligence policy on United Nations support to non-United Nations security forces in Honduras, reviewing projects for compliance with the policy.

87. OHCHR promoted a human rights-based approach in the implementation of the Sustainable Development Goals by the State and the United Nations Country Team, also discussing human rights indicators with the Ministry of Government Office of the Chief of Staff.

88. OHCHR presented the annual report of the High Commissioner to the Human Rights Council (A/HRC/37/3/Add.2) and the report of the High Commissioner entitled *Human Rights Violations in the Context of the 2017 Elections in Honduras*. It promoted human rights through press releases, interviews, editorials and social media and launched the campaign for the seventieth anniversary of the Universal Declaration of Human Rights.

89. OHCHR has been implementing projects financed by Canada, the Netherlands, Sweden, Switzerland and the United States.

IX. Cooperation with regional and international human rights mechanism

90. In May and November respectively, the Special Rapporteur on the situation of human rights defenders and the Working Group on the issue of discrimination against women in law and in practice visited Honduras.

91. In May, the Committee on Enforced Disappearances reviewed the State party report of Honduras (CED/C/HND/1), noting in its concluding observations the partial compliance of legislation and State actions with the International Convention for the Protection of All Persons from Enforced Disappearance.⁵⁰ In July, it conducted a follow-up visit to Honduras to promote understanding of its observations and recommendations. In November, the Committee on the Elimination of Racial Discrimination reviewed the combined sixth to eighth periodic reports of Honduras (CERD/C/HND/6-8).

92. OHCHR assisted the Inter-American Commission on Human Rights during its visit to Honduras in July, and joined its mission to the Departments of Cortés and El Progreso, as well as to the Bajo Aguán region.

X. Recommendations

93. **The High Commissioner urges the authorities of Honduras to implement the recommendations of her predecessor and of United Nations human rights mechanisms, in consultation with civil society.**

94. **In the area of poverty and economic and social issues, the High Commissioner urges the Government and/or institutions to:**

(a) **Improve the development of disaggregated indicators and the collection of disaggregated data, promoting a human rights, multicultural and gender approach in public policies and planning;**

(b) **Take the necessary steps to ensure fair access to land and natural resources, shifting the focus away from criminalization of land encroachment and towards the socioeconomic conditions underlining the issue;**

(c) **Ensure that the Ministry of Labour and Social Security fully exercises its mandate to monitor employment conditions and imposes sanctions where labour rights are infringed, in coordination with the judiciary;**

(d) **Adopt a policy or plan to guide business enterprises concerning their human rights responsibilities to ensure that the private sector exercises due diligence and assesses the impact of business activities on human rights, and that remedies are in place for any human rights impact generated by such activities.**

95. **Concerning violence and insecurity, the Government is urged to:**

(a) **Strengthen efforts to pursue organized crime in all its forms, recognizing its close connection with economic crimes, including corruption;**

(b) **Design and implement a security plan providing for measurable progress towards the demilitarization of public order functions, strengthen transparency concerning defence and security matters and guarantee the development of a professional and accountable civilian police force that is properly vetted and trained;**

(c) **Ensure that legislation is adopted or revised in line with human rights and other international law standards, prioritizing areas such as the use of force, organized crime, the control of firearms and ammunition and the regulation of private security companies; and reform terrorism-related legislation and abrogate articles 335 of the Penal Code;**

⁵⁰ CED/C/HND/CO/1, para. 9

(d) Bring prison conditions and policies in line with international norms and implement alternative restrictions in full compliance with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(e) Prioritize interventions preventing the institutionalization of children and favouring the best interest of the child, and increase resources for juvenile justice and child protection.

96. In the area of justice, the Government should:

(a) Adopt the necessary legal reforms to strengthen the sector's independence and career structure, and reform the process for the election of the Attorney General to ensure transparency and publicity;

(b) Step up efforts to fight impunity, including with regard to human rights violations, and promote coordination among specialized units of the Office of the Attorney General;

(c) Assign the necessary resources to the investigation of the human rights violations which took place in the context of the 2017 elections, prioritizing deaths and injuries; bring to justice and ensure the accountability of the security and law enforcement sector; and support access to justice by victims.

97. With regard to the development of democratic space, the Government should:

(a) Review legislation and regulations that hamper the right to access public information, address concentration of ownership of the media by reforming the Telecommunications Act and decriminalize defamation and slander;

(b) Promote coordination across the State entities with responsibilities related to the protection of human rights defenders, including through the development and adoption of a comprehensive, rights-based and gender-responsive policy;

(c) Make progress in the development of an inclusive, rights-based and gender-responsive protocol for the investigation of crimes against human rights defenders and the strengthening of the new specialized unit.

98. Concerning equality and non-discrimination, the Government should:

(a) Duly consult with indigenous peoples, through their representative institutions, on any law or regulation to implement free, prior and informed consultation, and redouble efforts to delimit, demarcate, register and protect the integrity of indigenous lands;

(b) Adopt temporary special measures to promote women's participation in public life; revise protocols to investigate and prosecute gender-based violence and femicide in compliance with international human rights standards; lift the absolute prohibition on abortion, in accordance with the State's regional and international obligations; and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(c) Take concrete steps towards eliminating discrimination based on sexual orientation and gender identity, and ensure prompt, effective and gender-responsive investigations and prosecution of crimes committed against women and lesbian, gay, bisexual, transgender and intersex persons, including effective remedies;

(d) Strengthen measures to address the protection needs of migrants, in particular those in situations of vulnerability; assist victims of violence at risk of displacement; and support returned migrants' access to social and employment programmes.