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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* **

Резюме

В настоящем докладе Верховный комиссар Организации Объединенных Наций по правам человека описывает положение в области прав человека и деятельность ее Управления в Гондурасе в период с 1 января по 31 декабря 2020 года. Она выделяет ключевые области, в которых был достигнут прогресс, и проблемы в области поощрения и защиты прав человека, уделяя особое внимание группам населения, находящимся в уязвимом положении, и последствиям пандемии коронавирусного заболевания (COVID-19) и ураганов «Эта» и «Йота» для прав человека. Доклад завершается рекомендациями различным государственным учреждениям.

* 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.

** Настоящий доклад был представлен после истечения установленного срока в связи с необходимостью включения в него самой последней информации.



Annex

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

I. Introduction

1. The present report is submitted pursuant to article V (4) of the agreement signed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Honduras on 4 May 2015. The report is based on information collected and analysed by OHCHR through on-site and remote human rights monitoring activities, information provided by State authorities and information provided by civil society, victims and other stakeholders. OHCHR thanks the State for its responses to requests for information.

2. Despite the restrictions imposed as a result of the coronavirus disease (COVID-19) pandemic, OHCHR remained fully operational throughout the reporting period, continued to monitor the human rights situation in the country and provided technical assistance for the promotion and protection of human rights. OHCHR conducted 29 field missions and 17 visits to detention centres to monitor the human rights situation in the country, in addition to conducting ongoing remote monitoring activities. At least 105 cases of alleged violations against human rights defenders, including environmental and land rights defenders, were followed up and 10 trials held in the context of emblematic human rights cases were monitored. OHCHR developed advocacy strategies, established 25 technical assistance and institutional strengthening processes addressed to State institutions and organized 16 capacity-building workshops and training sessions with the participation of different stakeholders. It provided support to more than 350 civil society organizations. It launched 8 public media and advocacy campaigns and issued 1 thematic report, 15 press releases and 59 messages on social media. Furthermore, OHCHR developed strategic partnerships and strengthened its collaboration with civil society organizations, the United Nations system, the national human rights institution and other State authorities, including in the judicial, legislative and executive branches. The Office's priorities included promoting the rule of law, accountability, citizen security and human rights, enhancing the civic space, strengthening respect for economic, social and cultural rights and promoting equality and non-discrimination. Given the impacts of the COVID-19 pandemic and other humanitarian emergencies, OHCHR advocated for placing human rights at the heart of the Government's response.

II. Context

3. In 2020, Honduras continued to face important human rights challenges, including high levels of poverty, violence, impunity, discrimination and lack of respect for economic, social and cultural rights. The COVID-19 pandemic and Hurricanes Eta and Iota exacerbated the situation.

4. On 15 March 2020, in response to the first confirmed cases of COVID-19, the Government adopted Executive Decree No. PCM-21-2020 declaring a state of emergency. The Decree imposed disproportionate restrictions on the right to freedom of expression and allowed for detention without judicial review for a period of more than 24 hours. On 22 March 2020, the Government modified the Decree upon the recommendation of OHCHR, which emphasized that emergency measures needed to be based on the principles of necessity, legality, proportionality and non-discrimination.

5. The state of emergency was regularly renewed and endorsed by the National Congress and remained in force as of 31 December 2020. Measures adopted by the Government in response to the pandemic included an absolute curfew allowing only essential movements and the closing of schools, universities, public offices and most private businesses. The police reported that, as of 1 June 2020, 30,000 people had been detained for non-compliance with the curfew. The lack of clear legal requirements for carrying out an administrative arrest, as

well as the widespread use of that measure, have raised concerns about the arbitrary nature of some of those detentions.

6. The National Anti-Corruption Council and other civil society organizations documented alleged irregularities in government procurement processes during the COVID-19 pandemic allegedly facilitated by emergency regulations.¹ According to a survey conducted in September 2020, 94 per cent of the population believed that acts of corruption had occurred in the management of the pandemic.² The Office of the Attorney General is investigating³ alleged irregularities and acts of corruption related to the establishment of seven mobile field hospitals. Carrying out exhaustive, impartial and independent investigations in these cases will be fundamental to ensuring transparency and reducing public distrust related to the Government's response to the pandemic.

7. Ahead of the 2021 general elections, OHCHR welcomes the adoption in 2020 of a legal framework aimed at increasing women's political representation and participation in public affairs. OHCHR is concerned, however, that delays in the approval of the new electoral law, which would regulate the details of the electoral processes to be held in March and November 2021, and that the lack of a dedicated budget for its implementation may affect the legitimacy and public acceptance of the results and could lead to unrest. OHCHR emphasizes that the prompt adoption of an electoral law and the necessary protocols for its implementation ensuring the rights to vote and to stand for elections is needed to guarantee a transparent electoral process.

8. On 5 November 2020, the Human Rights Council examined Honduras during the third cycle of the universal periodic review.

III. Rule of law and accountability

A. Impunity and access to justice

9. High levels of impunity for past and present human rights violations remained a major challenge. To date, no significant progress has been made in the investigation of and punishment for crimes documented by the national human rights institution regarding the arrest, torture and forced disappearance of at least 179 individuals between 1980 and 1993 by the 3-16 battalion of the armed forces.⁴

10. OHCHR monitored the implementation of the rights to justice, truth, reparation and non-recurrence of victims of human rights violations committed by the State in the context of the 2009 coup d'état⁵ and during the post-electoral crisis of 2017,⁶ paying particular attention to cases of excessive use of force by security forces and arbitrary detention.⁷ OHCHR is concerned about impunity for these crimes and calls upon the State to take all measures necessary to ensure accountability.

11. During 2020, the COVID-19 pandemic negatively affected the functioning of an already ineffective justice system. OHCHR observed that reduced court operations caused delays in judicial proceedings and contributed to an increase in the backlog. The absence of

¹ See www.cna.hn/category/la-corrupcion-en-tiempos-de-covid-19/.

² See <https://cespad.org.hn/2020/10/07/encuesta-del-cespad-hondurenos-con-temor-y-prudencia-por-la-pandemia-pero-descontentos-con-la-corrupcion-en-su-manejo/>.

³ According to the information provided by the State, the Office of the Attorney General has processed 27 complaints regarding these allegations. In two cases, the suspects have been formally accused and are awaiting trial, without being held in pretrial detention.

⁴ Comisionado Nacional de los Derechos Humanos, *Los Hechos Hablan por sí Mismos: Informe Preliminar Sobre los Desaparecidos en Honduras 1980–1993*, 2nd ed. (Tegucigalpa, Guaymuras, 2002).

⁵ A/HRC/13/66.

⁶ See www.ohchr.org/Documents/Countries/HN/2017ReportElectionsHRViolations_Honduras_EN.pdf.

⁷ See www.ohchr.org/Documents/Countries/HN/HondurasFollowupreportaccountabilityforHRviolations_FINAL_EN.pdf.

clear protocols related to the modalities of case hearings through videoconferencing affected the transparency of and public access to trials, raising concerns about violations of the right to a fair trial. OHCHR called for hearings to be accessible and broadcast to the public, including those related to the case of David Castillo, the president of the company allegedly involved in the planning and execution of the murder of environmental rights defender Berta Cáceres in 2016. The judicial process to assess the criminal responsibility of Mr. Castillo started in August 2020 but has been repeatedly delayed. OHCHR calls upon the authorities to ensure the investigation, trial and due punishment of the material and intellectual authors of the assassination.

12. As pointed out by the Special Rapporteur on the independence of judges and lawyers, corruption remained a major threat to the stability and appropriate functioning of institutions in Honduras.⁸ OHCHR is concerned about influence-peddling and pressure being placed on the judiciary, including from non-State actors, which continue to seriously affect judicial independence. The absence of clear and appropriate criteria and transparent procedures for the selection of candidates to judicial office adds to low levels of public trust in the justice system.

13. OHCHR recognizes the efforts of the Special Prosecution Unit to Fight Corruption-related Impunity and the anti-corruption judicial circuit to make progress in the Gualcarque fraud case, which deals with irregularities denounced by Ms. Cáceres over the construction of a dam threatening the territory of the Lenca indigenous communities.

14. OHCHR takes note of the commitment by the Office of the Attorney General to strengthen its capacities to investigate and prosecute human rights violations.

15. OHCHR regrets the Government's decision not to renew the agreement on the Mission to Support the Fight against Impunity and Corruption in Honduras. Since it was established in 2016, the Mission has strengthened the capacity of State institutions to independently investigate cases of corruption, which has resulted in 14 cases being filed by the Special Prosecution Unit to Fight Corruption-related Impunity.

16. Despite some efforts by the Office of the Attorney General, OHCHR is concerned about the lack of accountability for cases related to corruption and calls upon the State to ensure the independence and adequate funding of the Special Prosecution Unit against Corruption Networks, which has succeeded the Special Prosecution Unit to Fight Corruption-related Impunity. OHCHR is equally concerned about legislative initiatives presented to the National Congress, such as the new Criminal Code and the reform of the High Court of Auditors, which could undermine the legal framework to investigate acts of corruption and prosecute those responsible. During the universal periodic review of Honduras in 2020, many delegations echoed these concerns and made recommendations calling upon the State to address human rights violations resulting from the high levels of corruption in the country.

B. Persons deprived of their liberty

17. According to the National Penitentiary Institute, as of 30 November 2020, 21,416 adults were deprived of their liberty, including 1,167 women. Of that total, 55.4 per cent were in pretrial detention.⁹ OHCHR remains concerned about the excessive use of pretrial detention, which should remain an exceptional measure.

18. By Executive Decree No. PCM-051-2020, of 16 June 2020, the military administration of the penitentiary system was extended until 31 December 2020. In a joint press release issued on 16 September 2020,¹⁰ the OHCHR country office in Honduras and the Inter-American Commission on Human Rights called upon the Government to adopt a plan for the progressive handover of security responsibilities to civilian authorities and to ensure that military staff who commit human rights violations in places of detention are held

⁸ A/HRC/44/47/Add.2, para. 18.

⁹ See https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=ODY5OTgzODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==.

¹⁰ See <https://oacnudh.hn/oacnudh-y-cidh-manifiestan-su-preocupacion-por-la-situacion-de-las-personas-privadas-de-libertad-en-honduras/>.

accountable. During its 17 visits to penitentiary centres in 2020, OHCHR documented overcrowding, lack of access to health care and absence of communication with relatives or legal counsel. OHCHR is concerned that the infrastructure of several penitentiary centres is inadequate for receiving new detainees and complying with COVID-19 prevention, control and mitigation measures. OHCHR has monitored with great concern repeated violent incidents in detention centres during the COVID-19 emergency. On 7 October 2020, the health authorities of the Central District reported that the National Penitentiary Centre, which hosted around 30 per cent of the overall penitentiary population, was not complying with basic biosecurity and preventive measures.

19. OHCHR documented the conditions of women detained in the National Women's Social Adaptation Penitentiary, which raise specific concerns regarding female inmates' enjoyment of their rights to health, water and sanitation. In addition, a riot on 23 May 2020 in that penitentiary resulted in the violent deaths of six women. Other incidents took place in the same penitentiary in May, June and July 2020 and resulted in at least three additional violent deaths.

20. OHCHR is concerned about the fact that the National Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment continued to face obstacles in implementing its mandate independently. OHCHR witnessed instances in which the authorities hampered the work of the Committee, especially during unannounced visits to penitentiaries, by sometimes unnecessarily delaying unfettered access to the premises and detainees. In 2020, the budget allocated to the Committee decreased, affecting staffing. OHCHR is also concerned that the position of one Commissioner remained vacant during the reporting period, in violation of Decree No. 136-2008 establishing the Committee.

21. OHCHR welcomes the efforts made by the judiciary to address the situation of persons deprived of their liberty in the context of COVID-19. OHCHR provided technical assistance to the Supreme Court on the adoption of measures to reduce the prison population, placing special emphasis on those in pretrial detention. During 2020, the judiciary granted benefits such as early release, including to those diagnosed with a terminal illness, and parole to 2,773 persons.

C. New Criminal Code

22. A new Criminal Code, adopted by the National Congress in May 2019, entered into force on 25 June 2020. OHCHR provided technical assistance to the National Congress and proposed reforms to provisions relating to violence against women, freedom of opinion and expression, peaceful assembly and corruption-related crimes, to ensure compliance with international human rights standards. Nonetheless, civil society organizations, academic bodies and private entities have alleged that the new Criminal Code was developed without consultation and that it included provisions promoting impunity for serious offences. Since its entry into force, several draft laws proposing amendments to the Criminal Code have been presented and the Supreme Court has received a series of requests for appeals based on alleged violations of procedural rules, on the way in which the articles were drafted and on the alleged unconstitutionality of life imprisonment.

23. On 24 December 2020, three United Nations special rapporteurs called upon the State to review the new Criminal Code and expressed their concern about the content of several articles, including those dealing with the alleged offences of terrorism, public disorder, illegal assembly and protest.¹¹ OHCHR calls upon the State to engage in an inclusive public debate with a view to reforming the Criminal Code and ensuring its compliance with international human rights standards.

¹¹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25791>.

IV. Citizen security and human rights

24. The Government has reported a decline in the homicide rate over the past nine years.¹² Although it has also taken measures to strengthen and restructure the National Police, during the reporting period the military continued to exercise law enforcement and security functions. OHCHR is concerned that this situation poses serious risks to the rights to life and security and recalls that the involvement of the military in citizen security should be restricted to the maximum extent possible. OHCHR has observed that, during 2020, the military police regularly participated in security and law enforcement operations, including in response to demonstrations held in the context of the COVID-19 pandemic. The Ministry of Defence received 47 per cent of the budget assigned to prevention, security and defence, while the Ministry of Security, which administers the National Police, received 34 per cent.¹³ OHCHR is also concerned about the fact that the military continues to be involved in other public functions, thereby hampering the development and funding of civilian public institutions and initiatives. For example, since 2019, the Ministry of Defence has been in charge of the programme of agricultural development to increase agricultural productivity and profitability.¹⁴ Similarly, it is of concern that the National Interinstitutional Security Force appointed a military official as Director of the National Penitentiary Institute.¹⁵

25. OHCHR reiterates its call for the demilitarization of public functions, in particular citizen security and law enforcement, and urges the Government to strengthen the National Police and other specialized civilian institutions.¹⁶

26. OHCHR documented two cases of arbitrary killing by security forces during operations related to the state of emergency. On 24 April 2020, military police officers reportedly beat and shot two men at a checkpoint in the community of El Paraíso in Omoa, Cortés Department. The officers allegedly did not allow the two men to pass the checkpoint because they were not wearing the mandatory facemasks. One of victims died in hospital as a result of his injuries. On 16 September 2020, in relation to this case, the Office of the Attorney General charged a military police officer with homicide.¹⁷ On 21 June 2020, during the night-time curfew, National Police officers opened fire on a vehicle that did not stop at a checkpoint in San Esteban, Olancho Department, resulting in the death of one individual. Four officers were charged with homicide.¹⁸ OHCHR takes note of the steps taken by the authorities to ensure accountability in these cases and calls upon the State to ensure reparation to the victims, including guarantees of non-recurrence.

27. OHCHR has received allegations of arbitrary detention, ill-treatment and torture, enforced disappearance and one extrajudicial killing allegedly committed in the context of a series of law enforcement operations by police and military officers on 31 July 2020 in Chamelecón, a suburb of San Pedro Sula, Cortés Department. The operations followed the killing of an officer of the National Police. According to the National Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment, the main suspect in the killing of the police officer sustained severe injuries while in the custody of the authorities. OHCHR has consistently highlighted the risks linked to joint operations by military and police forces and calls upon the authorities to conduct a prompt, effective, independent and impartial investigation in accordance with the guidelines of the Minnesota Protocol and to ensure the safety of witnesses, victims and their relatives.

¹² According to the Government, the rate in 2020 was of 37.57 homicides per 100,000 residents.

¹³ Decree No.171-2019.

¹⁴ Executive Decree No. PCM-052-2019.

¹⁵ Executive Decree No. PCM-068-2019.

¹⁶ See, in this regard, also A/HRC/43/3/Add.2.

¹⁷ See www.mp.hn/index.php/author-login/161-septiembre2020/6312-requerimiento-fiscal-para-militar-por-homicidio-de-poblador-de-omoa.

¹⁸ See www.defensoresenlinea.com/mp-y-cofadeh-formalizan-acusacion-contra-cuatro-policias-responsables-de-dar-muerte-a-una-persona-en-san-esteban-olancho/.

28. OHCHR has received reports alleging the enforced disappearance of eight individuals in Tegucigalpa, San Pedro Sula and Tela.¹⁹ In all those cases, OHCHR received information about the alleged acquiescence or involvement of the authorities in the disappearances. On 22 June 2020, a 19-year-old man with a physical disability disappeared in Tegucigalpa. His car was found abandoned, its windows broken. OHCHR noted that police investigators did not take the actions necessary to search for the victim and to investigate the disappearance. Following a law enforcement operation on 31 July 2020, two young men disappeared in Chamelecón. On 18 July 2020, a group of over 30 heavily armed men reportedly entered the Garífuna community of Triunfo de la Cruz. The group broke into at least seven houses and abducted five members of the community, including four community leaders. Eyewitness reports received by OHCHR, which described the *modus operandi* adopted and the use of vests of the Police Directorate of Investigations, point to the potential involvement of State security forces in the incident. As of 31 December 2020, and despite the provisional measures issued by the Inter-American Court of Human Rights after the events,²⁰ the whereabouts of the disappeared remained unknown and no significant progress in the investigation was reported. OHCHR is concerned about the situation of extreme vulnerability of the victims' relatives, the witnesses and the members of the Garífuna community of Triunfo de la Cruz and calls upon the authorities to develop and implement specialized protocols to ensure the implementation of coordinated and effective search-and-investigation processes for cases of enforced disappearance and to guarantee victims' participation and access to information.

V. Civic space

29. Following the 2017 electoral crisis and subsequent social unrest, OHCHR observed an increasingly shrinking civic space in Honduras. This trend continued in 2020 and was exacerbated by the COVID-19 pandemic and its impact on the realization of several rights, especially the freedom of movement.

30. Since the declaration of the first state of emergency on 16 March 2020, OHCHR has recorded 665 demonstrations in 89 cities.²¹ The number of protests increased significantly in May and June 2020 and was particularly high in Francisco Morazán and Cortés Departments. Demonstrators called mainly for access to food, State subsidies and a return to work, amid restrictions imposed in response to the COVID-19 pandemic. OHCHR is concerned about the excessive use of force by the security forces against demonstrators, including the disproportionate use of tear gas and water tanks to disperse protesters and ill-treatment during detention. In one case, two demonstrators were injured by live ammunition on 23 April 2020 in the community of Las Metalías, Atlántida Department.

31. OHCHR has observed that, in 2020, human rights defenders continued to be victims of harassment, surveillance, smear campaigns, threats, arbitrary detention, criminalization, physical assault, disappearance and killing. Indigenous and Afro-Honduran human rights defenders protecting their territories and natural resources from the activities of companies operating in the extractive sector, tourism projects and extensive monocultures were at particular risk of being targeted, as evidenced by the high number of cases affecting the Garífuna communities and other human and environmental rights defenders. OHCHR is concerned that most of those responsible in these cases benefit from impunity, which contributes to the vulnerability of human rights defenders in the country and hampers guarantees of non-recurrence. The Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials informed OHCHR that, despite having received 199 complaints between March 2018 and October

¹⁹ The list of registered urgent actions of the Committee on Enforced Disappearances currently includes 22 victims from Honduras since 2018. The Committee of Relatives of the Disappeared in Honduras, a non-governmental organization, recorded at least 18 cases of disappearance between January and November 2020.

²⁰ Resolution of the President of the Inter-American Court of Human Rights, *Case of the Garífunas communities of Triunfo de la Cruz and Punta Piedra v. Honduras*, adoption of urgent measures, 6 August 2020 (see www.corteidh.or.cr/docs/medidas/garifuna_se_03.pdf).

²¹ OHCHR records demonstrations through media monitoring. See <https://datastudio.google.com/reporting/dc0665e9-8cc8-4c34-abdc-b294713d999e/page/PEdPB>.

2020, most of them referring to threats and abuse of authority, in none of them was a judicial prosecution started.

32. OHCHR has documented the killing of at least eight human rights defenders in 2020, including three members of the Garífuna community. Antonio Bernárdez Suazo, who had represented his community of Punta Piedra before the Inter-American Court of Human Rights in 2015, disappeared on 15 June 2020 and his body was located four days later. Two members of the Fraternal Black Organization of Honduras, which defends the rights of the Garífuna people were killed: Karla Ignacia Piota Martínez, who died on 11 January 2020 following an attack carried out on 28 December 2019 against the community of Masca, and Edwin Fernández, who was killed on 20 May 2020 in the community of Río Tinto. On 2 April 2020, private security agents reportedly killed human rights defender Iris Álvarez during a forced eviction in the municipality of Marcovia, Choluteca Department. Two men were charged with homicide in that case and are awaiting trial. Additionally, OHCHR has documented the killings of the following human rights defenders: Scarleth Campbell on 10 July 2020, in Tegucigalpa, Francisco Morazán Department; Marvin Damián Castro on 13 July 2020, in Pespire, Choluteca Department; Arnold Morazán on 13 October 2020, in Guapinol, Colón Department; and Félix Vásquez López on 26 December 2020, in Santiago de Puringla, La Paz Department.

33. Throughout 2020, journalists in Honduras faced increased risks and obstacles to performing their work independently. OHCHR has documented the killings of at least three journalists: German Vallecillo and Jorge Posas on 1 July 2020, in La Ceiba, Atlántida Department, and Luis Almendares on 28 September 2020, in Comayagua, Comayagua Department. Those killings are only the most visible face of the widespread violence faced by journalists. By the end of November 2020, the non-governmental organization C-Libre had documented 130 attacks against journalists.²² OHCHR followed up on several of those cases, including the cases involving the destruction of equipment and the arbitrary detention of journalists Roger David Iraeta, Onán Zaldivar and Edward Azael Fernández while they were covering an of law enforcement operation aimed at dispersing demonstrators on 1 April 2020 in Santa Bárbara, Santa Bárbara Department.

34. OHCHR is concerned about the misuse of criminal law, including the excessive use of a number of criminal provisions that do not comply with the principle of legality, disproportionately affecting human rights defenders and generating a chilling effect within their communities.²³ A case of particular concern relates to the 12 defenders from the community of Guapinol, 7 of which are awaiting trial in preventive detention since September 2019 and 1 since November 2018. OHCHR visited the detainees, monitored the judicial hearings and shared international human rights standards with the Judiciary, calling for an immediate review of their pretrial detention and compliance with due process guarantees.

35. The journalist David Romero Ellner, who had been sentenced to 10 years in prison for the crimes of defamation and slander, died in prison on 18 July 2020. The authorities have failed to provide information on the cause of death to his family and legal representatives. OHCHR recalls that, according to international standards, the death of a person in State custody should be investigated ex officio by the authorities and the cause of death, as well as the results of the investigation, should be communicated to the relatives of the deceased.

36. By the end of October 2020, the national mechanism for the protection of human rights defenders processed 33 requests for protection, a number significantly lower than in 2019. Throughout 2020, OHCHR continued to participate regularly in the meetings of the national protection council and the technical committee, both part of the national mechanism, during which protection plans are defined. OHCHR is concerned that many of the structural weaknesses previously identified, including those related to decision-making, remained and worsened. OHCHR is also concerned that, according to a large number of beneficiaries of the national mechanism, measures granted were not implemented. OHCHR recalls that

²² See www.clibrehonduras.com/index.php/alertas/detencion-arbitraria/1275-periodistas-de-c-libre-detenido-ilegalmente-y-torturados-por-la-policia-nacional.

²³ See <https://oacnudh.hn/wp-content/uploads/2019/07/Observaciones-Co%CC%81digo-Penal-Nuevo-OACNUDH-ok.pdf>.

comprehensive efforts to strengthen the national mechanism are needed so as to ensure its effectiveness and reaffirms its willingness to support the different stakeholders in such a process.

37. While the COVID-19 pandemic posed important challenges for the functioning of the national mechanism, OHCHR acknowledges that efforts have been made to ensure its operation and to adapt its procedures to the context. With technical assistance from OHCHR, the Ministry of Human Rights and the national mechanism developed a protocol to facilitate access to special permits allowing human rights defenders to continue operating during the curfew. OHCHR has received complaints, however, that during the pandemic various protection measures were suspended and several risk assessment studies delayed.

38. OHCHR welcomes the adoption by the national mechanism of a manual on the application by its staff of gender-sensitive and intersectional approaches and calls for its systematic and comprehensive implementation.

39. According to information received by OHCHR, spaces for dialogue that could allow for effective public participation in decision-making processes were scarce, despite the fact that different sectors showed willingness to cooperate with the authorities.

40. OHCHR remains concerned about the lack of a strong legal and institutional framework to ensure the right to access to information and promote transparency. The so-called “secrecy law”,²⁴ in force since March 2014 despite requests for constitutional review²⁵ and concerns voiced by international human rights mechanisms,²⁶ continues to restrict individuals’ access to comprehensive and reliable information about State affairs.

VI. Economic, social and cultural rights

41. In 2020, Honduras continued to be affected by widespread poverty and structural socioeconomic inequalities. According to the National Institute of Statistics, in 2019, 64.7 per cent of the population lived in poverty, 72.2 per cent of which in rural areas.²⁷ OHCHR is concerned that most of the measures taken by the Government to control the spread of COVID-19 disproportionality affected people working in the informal economy and other people in vulnerable situations, including indigenous and Afro-Honduran peoples, people on the move, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons. Food insecurity increased both in rural and urban areas, as a considerable part of the population lost all income and became destitute. The COVID-19 crisis also highlighted the deficiencies of the social protection system of Honduras. Estimates indicate that, in 2019, 58 per cent of the economically active population worked in the informal sector,²⁸ without access to formal health care, a pension, unemployment benefits and other instruments of social protection. The impact of the pandemic and of Hurricanes Eta and Iota, which struck the country in November 2020, seriously aggravated that situation. Under the leadership of the Ministry of Human Rights, and with the technical assistance of OHCHR, an intergovernmental coordination mechanism was established to promote the social and economic rights of people in situation of vulnerability.

42. The pandemic has had a severe impact on the human rights situation in the country, pushing the health-care system and other State structures to their limits. The first two cases of COVID-19 in Honduras were confirmed on 11 March 2020 and the epidemiological situation remained critical throughout the year. OHCHR is concerned that, as in other countries, the serious structural limitations that existed prior to the outbreak of the crisis

²⁴ Decree No. 418-2013.

²⁵ The non-governmental organization C-Libre presented an appeal that was not admitted; a second appeal is pending resolution (see www.clibrehonduras.com/images/Doc/Litigio_Constitucional_contra_Ley_Secretos.pdf).

²⁶ See A/HRC/40/60/Add.2, para. 77 (e), and OEA/Ser.L/V/II.Doc146.

²⁷ See www.ine.gob.hn/V3/ephpm/.

²⁸ See <https://openknowledge.worldbank.org/bitstream/handle/10986/33304/Jobs-Diagnostic-HondurasSP.pdf?sequence=4&isAllowed=y>.

meant that the health-care system was not prepared to respond effectively to the COVID-19 pandemic.

43. OHCHR calls upon the Government to strengthen existing health-care structures and ensure the necessary conditions for medical personnel to perform their work safely. During 2020, health-care personnel faced logistical constraints that hampered their ability to perform essential activities, including the limited availability of polymerase chain reaction test kits to allow the effective detection and monitoring of suspected cases of COVID-19. According to the information provided by the State, 65 health workers have died from COVID-19 since the beginning of the pandemic until 31 December 2020. OHCHR has registered multiple complaints and protests from medical staff about the lack of protective equipment, medical supplies, personnel and medicines across the country. OHCHR has also monitored the precarious labour conditions of front-line health personnel. Access to non-COVID-19-related health care was also seriously affected. The country's public health-care network stopped providing outpatient care in order to focus on patients with COVID-19. Prenatal services were also severely limited.

44. In spite of some mitigating measures adopted by the Government, the suspension of classes due to COVID-19 affected the education of children and adolescents. According to Francisco Morazán National Pedagogical University, about 48 per cent of students (those with fewer resources) – 1.4 million of the 2.9 million students enrolled for the 2020 school year – were left out of online schooling because their families could not afford the high cost of Internet access.²⁹ That situation hampered the enjoyment of the right to education, especially by children in the most vulnerable situations, and could have long-lasting repercussions, including a significant increase in school dropouts.

45. In 2020, OHCHR continued to engage with State institutions, trade unions, civil society organizations and the private sector on the implementation of the Guiding Principles on Business and Human Rights through capacity-building and the establishment of channels for technical cooperation and advocacy. On 20 January 2020, the Honduran Council of Private Enterprise launched its policy on business and human rights.

46. OHCHR acknowledges the Government's commitment to implementing the Guiding Principles, but notes that important challenges remain, including the absence of a robust legal and policy framework to protect against business-related human rights violations.³⁰ As pointed out by the Working Group on the issue of human rights and transnational corporations and other business enterprises, impunity for human rights abuses and corruption have eroded confidence in public authorities and their ability to protect individuals and communities against business-related human rights abuses.³¹ OHCHR is concerned about the lack of transparency, consultation and meaningful participation of communities affected by development and investment projects in decisions concerning business activities.

47. In 2013, the National Congress passed constitutional reforms and an organic law allowing for the creation of employment and economic development zones.³² In accordance with the organic law, the zones are administrative entities that can autonomously implement their own administrative, judicial, security and tax systems. In 2014, the Committee on the Elimination of Racial Discrimination recommended that Honduras review the compatibility of that law with its international human rights obligations, especially in respect of the rights of indigenous and Afro-Honduran peoples.³³ The first employment and economic development zone was established in May 2020, in Roatán, Islas de la Bahía Department. Local Afro-Honduran communities expressed their opposition to the project and denounced the absence of a consultation process aimed at ensuring the free, prior and informed consent of affected communities.

²⁹ See [https://postgrado.upnfm.edu.hn/files/VRIP/Publicaciones/2020/Presentaci_n_%20estudio%20padres%20y%20madres_UPNFM%20\(1\).pdf](https://postgrado.upnfm.edu.hn/files/VRIP/Publicaciones/2020/Presentaci_n_%20estudio%20padres%20y%20madres_UPNFM%20(1).pdf); and www.efe.com/efe/america/sociedad/la-mitad-de-los-alumnos-en-honduras-sin-clases-por-covid-19-estan-rezagados/20000013-4236192.

³⁰ In this regard, see also A/HRC/44/43/Add.2.

³¹ Ibid.

³² Decrees No. 236-2012 of 24 January 2013 and No. 120-2013 of 6 September 2013.

³³ CERD/C/HND/CO/1-5, para. 17.

48. OHCHR is concerned that the employment and economic development zones could result in the excessive privatization of public services and in the delegation of administrative competencies to private companies, which could facilitate expropriations and undermine the rights of affected communities.

49. OHCHR is concerned that the closing of the General Directorate of Labour Inspection from March to August 2020 seriously affected the enforcement of labour rights. OHCHR followed up on several complaints about violations of labour rights, including the complaint of 800 miners of the El Mochito mine in Santa Bárbara, Santa Bárbara Department. OHCHR also monitored multiple cases of mass suspension of labour contracts and dismissals without payment of benefits to workers in maquiladoras and in the fast food industry. Following advocacy from OHCHR, an inter-union human rights network was established to monitor, report and follow-up on labour rights violations during the COVID-19 crisis.

VII. Equality and non-discrimination

50. The consequences of the COVID-19 pandemic and Hurricanes Eta and Iota have increased pre-existing socioeconomic and structural inequalities, particularly affecting people in vulnerable situations, including women, indigenous and Afro-Honduran peoples, lesbian, gay, bisexual, transgender and intersex persons, people with disabilities and persons on the move.

A. Women's rights

51. OHCHR remains extremely concerned about de jure and de facto discrimination against women. During the reporting period, women living in poverty, in rural areas, indigenous and Afro-Honduran women, transgender and lesbian women, and women human rights defenders continued to experience multiple forms of discrimination.

52. By 10 November 2020, the emergency system registered 90,547 reports of harassment, sexual abuse and domestic, intrafamily and gender-based violence. Records show that the number of cases increased in April and May 2020, the first two months after a general lockdown was imposed. The National Observatory of Violence of the National Autonomous University of Honduras recorded 217 violent deaths of women nationwide between January and August 2020.³⁴

53. OHCHR is concerned that the capacity of State institutions to address violence against women remained limited, especially regarding investigations of femicide. OHCHR echoes the recommendations made in the framework of the universal periodic review calling upon the State to take prompt action to end all forms of violence against women, including femicides, to ensure accountability, to improve the legislative framework to protect women and to strengthen the State's investigation and prevention capacity.³⁵

54. OHCHR remains extremely concerned about institutional and legislative obstacles to the fulfilment of the sexual and reproductive rights of women, including the criminalization of abortion in all its forms and the prohibition of emergency contraception pills.

B. Rights of indigenous and Afro-Honduran peoples

55. In 2020, indigenous and Afro-Honduran peoples continued to face discrimination, exclusion and high rates of poverty and violence. The COVID-19 pandemic further exacerbated their vulnerability, as restrictions on movement and other emergency measures affected their rights to food, health care and land. In many cases, strict police and military controls at the entrance of indigenous communities prevented indigenous peoples from accessing food supplies.

³⁴ See <https://iudpas.unah.edu.hn>.

³⁵ A/HRC/46/12.

56. In early 2020, the National Congress took steps to approve a bill on free, prior and informed consultation. OHCHR notes that the bill did not meet international human rights standards, nor did it take into account the recommendations of the Special Rapporteur on the rights of indigenous peoples.³⁶ Major concerns include: the inadequate representation of indigenous peoples in the Government's socialization process, which did not constitute a consultation process in accordance with international standards; the lack of training and technical knowledge of government representatives who led the socialization workshops; and the lack of meaningful participation of indigenous peoples during the drafting process. OHCHR discussed the implication of the draft law with a large number of indigenous peoples' organizations and provided technical assistance to the National Congress. As of 31 December 2020, the approval process remains suspended.

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

57. OHCHR is concerned about the human rights situation of lesbian, gay, bisexual, transgender and intersex persons, who continued to face widespread discrimination and violence for reasons related to their sexual orientation and/or gender identity or expression. The observatory for violent deaths of the non-governmental organization Cattrachas reported that three lesbians, nine gay men and eight transgender persons, including one human rights defender, were killed.

58. OHCHR followed up on several cases, including that of a transgender woman human rights defender who was shot and injured on 20 January in Tegucigalpa, despite being a beneficiary of the national mechanism for the protection of human rights defenders.

59. In the context of the public hearing of the Inter-American Court of Human Rights on the case *Vicky Hernandez and others v. Honduras* on 11 and 12 November 2020, OHCHR presented an amicus curiae, as it was the first time that the Court examined the killing of a transgender woman in the broader context of violence against transgender people in Honduras.³⁷ Vicky Hernández was a transgender woman human rights defender who was killed during a curfew imposed after the coup d'état in June 2009.

D. Rights of persons with disabilities

60. OHCHR is concerned that there was no progress on legislative reform to enshrine the State's obligations under the Convention on the Rights of Persons with Disabilities, despite the recommendations made in 2017 by the Committee on the Rights of Persons with Disabilities,³⁸ the recommendations made in the context of the universal periodic review and continued advocacy from civil society.

61. As of 31 December 2020, adoption of two draft laws on the rights of persons with disabilities presented to the National Congress in 2019 was still pending. OHCHR continued to support the State and civil society organizations working on the reform of national legislation and calls upon all actors to ensure that all initiatives taken in this regard comply with the applicable international standards.

E. Rights of people on the move

62. Large movements of migrants, returnees, internally displaced persons and other persons with international protection needs continued in 2020, despite restrictions on freedom of movement, including the closing of all international borders to contain the spread of COVID-19. Restrictions to the freedom of movement disproportionately affected the human rights of migrants in transit, who found themselves unable to cross borders to continue their journey for months. The authorities developed a humanitarian response plan to address their needs, but the temporary closure of centres for irregular migrants created precarious

³⁶ A/HRC/33/42/Add.2.

³⁷ See www.oas.org/en/iachr/media_center/PReleases/2019/112.asp.

³⁸ CRPD/C/HND/CO/1.

conditions and made it difficult for migrants to enjoy their basic rights and gain access to basic necessities such as water, shelter and food. Mixed migration movements increased after international borders reopened on 19 October 2020, despite the ongoing lockdown and curfew measures. Hurricanes Eta and Iota further exacerbated the vulnerability of people on the move and generated an important increase in internal displacement.

63. On the basis of its remote and on-site monitoring activities, OHCHR remains concerned about the situation of people on the move, including their ability to enjoy basic rights and gain access to basic necessities such as food, shelter and water. OHCHR has noted a worrying increase in discriminatory and xenophobic behaviour against migrants, returnees and internally displaced persons, fostered by prejudices and narratives associating them with the spread of COVID-19.

64. In 2020, at least 7,500 people left the country as part of so-called “caravans” of migrants, generally in an attempt to reach Mexico and the United States of America. The largest caravan consisted of about 3,500 people and left San Pedro Sula on 30 September 2020. According to official information, in 93.13 per cent of the cases migrants were motivated by economic reasons.³⁹ OHCHR notes that violence, insecurity, poverty and limited access to economic and social rights remained the main structural causes of forced human mobility.

65. Deportations from Mexico and the United States continued despite the international travel ban. According to official sources, 31,321 people were returned in 2020,⁴⁰ But it is not clear what percentage of that total consists of voluntary returns. OHCHR is concerned that many individuals were returned in a manner that did not comply with the criteria of voluntariness, safety, dignity, humanity and respect for human rights. Furthermore, OHCHR has documented cases of collective expulsion and forced returns from Guatemala that could amount to a violation of the principle of non-refoulement.

66. OHCHR monitored the conditions in different migrant reception centres around the country and identified, in particular, challenges related to the right to health. OHCHR is also concerned about the lack of measures to guarantee returnees’ sustainable reintegration and risks of discrimination and stigmatization upon return. The centre providing support to returned migrants in Omoa, Cortés Department, had to close down temporarily because of protests by the local population against the arrival of returnees.

67. The committees of relatives of missing migrants in Honduras continued to face important challenges in gaining access to justice for complaints about the disappearance of migrants. OHCHR received information about the lack of search protocols and challenges in coordination between judicial and consular authorities in Central America and Mexico as key factors impeding investigation and repatriation efforts.

68. The COVID-19 crisis and Hurricanes Eta and Iota increased the vulnerability of internally displaced persons. According to a recent study, between 2004 and 2018 violence led to the forced displacement of 247,090 persons.⁴¹ That figure does not include internal displacement caused by natural disasters. OHCHR regrets the absence of a comprehensive legal framework and strategy to address the root causes of internal displacement and find durable solutions.

69. OHCHR cooperated with State institutions, the national human rights institution, the United Nations system, the International Committee of the Red Cross, the Honduran Red Cross and civil society organizations to promote articulated and complementary initiatives to put the human rights of persons on the move at the centre of the response. OHCHR recognizes the steps taken by the authorities to address the issue, including by adding the act of forcing people to move as a criminal offence in the new Criminal Code, in line with international recommendations. OHCHR also welcomes the submission to the National Congress, on 14 October 2020, of a draft law for the prevention, care and protection of forcibly displaced persons.

³⁹ See <http://ceniss.gob.hn/migrantes>.

⁴⁰ See <https://conmigho.hn/direccion-general-de-proteccion-al-hondureno-migrante/>.

⁴¹ See www.refworld.org/es/docid/5df3b7674.html.

VIII. Recommendations

70. The United Nations High Commissioner for Human Rights reiterates her commitment to supporting Honduras in enhancing the protection of all human rights for all people. OHCHR calls upon the authorities to implement the recommendations contained in its previous reports and in those of other human rights mechanisms. In particular, the High Commissioner calls upon State authorities:

- (a) To implement urgent and effective measures to prevent human rights violations and create transparent accountability mechanisms to ensure victims' enjoyment of their rights to justice, truth, reparation and guarantees of non-recurrence;
- (b) To adopt a law on the Council of the Judiciary and the judicial career that strengthens the independence of the judiciary and ensure the transparent selection of the members of the council, in line with international standards;
- (c) To adopt an effective public policy against corruption, with a human rights-based approach, that includes increased support to the Special Prosecution Unit against Corruption Networks and the anti-corruption judicial circuit and the removal of legislative obstacles that impede the fulfilment of their mandates;
- (d) To launch an inclusive public debate to reform the new Criminal Code so that it complies with international human rights standards and to ensure that all adopted legislation respects the rights to freedom of association, expression and peaceful assembly, while reviewing existing laws to ensure that they are in line with applicable international human rights standards;
- (e) To ensure that law enforcement officials, including armed forces personnel participating in law enforcement operations, adhere to international norms and standards on the use of force and human rights, particularly when managing protests;
- (f) To implement a gradual process of demilitarization of public functions, especially with regard to citizen security, and ensure civilian management, including by strengthening and restructuring the National Police;
- (g) To address urgently structural deficiencies in the penitentiary system, promote the work of the National Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment and make progress ensuring that the penitentiary system comes under civilian management;
- (h) To ensure that the new electoral law is in compliance with international human rights obligations, in particular the right to vote and stand for elections;
- (i) To publicly recognize, at all levels of government, the pivotal role played by human rights defenders, social leaders and journalists in a democratic society and condemn human rights violations and abuses committed against them;
- (j) To strengthen the investigation of and prosecution for crimes against human rights defenders and prevent the misuse of criminal laws against them, including by reviewing existing legislation, as well as criminal cases, with a view to dismissing those that do not meet due process requirements;
- (k) To ensure that the national mechanism for the protection of human rights defenders has the required capacities, including in terms of budget and human resources, to effectively protect its beneficiaries;
- (l) To increase efforts towards the full realization of social and economic rights without discrimination, including the rights to food, health, education, labour, water and sanitation, with a special focus on people in vulnerable situations;
- (m) To place human rights at the centre of the national reconstruction plan in order to recover better from the impacts of the COVID-19 pandemic and the

humanitarian emergency caused by Hurricanes Eta and Iota, and to ensure that no one is left behind;

(n) To adopt a regulatory and institutional framework aimed at ensuring the equal and meaningful participation of civil society and affected communities in decisions regarding business projects from an early stage and ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement);

(o) To review the compatibility of the legal framework of employment and economic development zones with international human rights obligations, including by ensuring the free, prior and informed consent of affected indigenous and Afro-Honduran peoples;

(p) To adopt urgent measures to protect women and girls from gender-based violence, including femicide, gender discrimination and gender stereotyping, ensuring accountability and the implementation of preventive actions. Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(q) To adopt urgent measures to protect lesbian, gay, bisexual, transgender and intersex persons from violence and all forms of discrimination, ensuring accountability and the implementation of preventive actions;

(r) To adopt a strong legal framework that guarantees the rights of persons with disabilities, in line with the Convention on the Rights of Persons with Disabilities;

(s) To guarantee the rights of people on the move, including by ensuring the sustainable reintegration of returnees, and adopt measures to guarantee effective access to justice for the relatives of missing migrants;

(t) To approve the draft law for the prevention, care and protection of forcibly displaced persons and create a comprehensive strategy to find durable solutions for internally displaced persons.
