



SHADOW REPORT FROM HONDURAN CIVIL SOCIETY TO THE
UN COMMITTEE AGAINST TORTURE (CAT),
PRESENTED IN 2016

CONTENTS

I. INTRODUCTION	4
II. NORMATIVE AND INSTITUTIONAL CONTEXT.....	6
1. Legal framework (List of Issues, question I, 1st and 2nd paragraph)	6
2. Institutional weakness.....	7
a. Independence of the judiciary (List of Issues, question VII)	7
b. National Commissioner for Human Rights (CONADEH) (List of issues, question VI)	8
c. Militarisation and the privatisation of security	9
III. TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN HONDURAS AS A GENERALISED PRACTICE.....	11
1. Torture and ill-treatment of persons deprived of liberty (List of Issues, questions related to article 11 of the Convention)	12
a. Overcrowding	12
b. Militarisation of the prison system	13
c. Criminal legislation impacting prison conditions	13
d. Budget	14
e. Juvenile Detention Centres	15
1. Torture against Women (List of Issues, Question IX)	15
a. Increase in attacks against the life and personal integrity of women	15
b. Investigation and sanction of cases of violence against women taking place during the repression of protests during the coup d'état (List of Issues, Question XXV)	17
c. Institutional weakness in the investigation of violence against women and re-victimizing patterns	18
d. The violation of sexual and reproductive rights	18
3. Torture against LGBTI persons (List of Issues, questions X and other aspects related to Articles 1, 2, 12 and 13 of the Convention).....	19
a. The situation of LGBTI persons.....	19
b. Intensification of attacks against life and aggression against trans people	20
c. Assaults by police.....	20
d. Abuses in prisons.....	21
e. Discriminatory attitudes and hate speech	21
4. Torture against human rights defenders (List of issues, question XXXVI)	22
a. General context.....	22

b. Attacks against the right to life and personal integrity	23
c. Criminalisation and its effects	23
d. Torture against indigenous and small-scale farming human rights defenders	24
5. Torture used as a way to repress social protest and mobilisation	24
a. Excessive use of force by the police, military and private security companies	25
b. Arbitrary detentions, extrajudicial executions and enforced disappearances (List of Issues, questions II, XXX)	27
6. Status of family members of Honduran migrants who have been disappeared and executed on the migration route and the absence of mechanisms to search for them and investigate the crimes in their country of origin	27
IV. FAILURE TO INVESTIGATE CASES OF TORTURE AND ILL-TREATMENT AND TO PROVIDE REDRESS TO THE VICTIMS (List of Issues, questions related to Articles 12, 13 and 14)	28
The Special Prosecutor for Human Rights of the Public Prosecution Service (<i>Fiscalía Especial de Derechos Humanos</i> - FEDH) (List of issues, question XXVIII)	28
V. RECOMMENDATIONS.....	29
Legal and institutional context	29
Persons deprived of liberty	31
Torture against women	31
LGBTI Persons	32
Human rights defenders.....	32
Families of migrants	33
Obligation to investigate and provide redress for victims	33

I. INTRODUCTION

1. The State of Honduras presented its initial report to the Committee against Torture (hereinafter “the Committee”) on 9 September 2008 under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading (hereinafter “the Convention”). The Committee considered the report at its 42nd session held from 27 April to 15 May 2009. In its concluding observations, the Committee requested that the State of Honduras present its second periodic report by May 15 2013. This document was sent on 8 May 2015, nearly two years behind schedule.

2. In this context, a coalition of groups known as the UPR Platform ([Plataforma EPU](#)), with technical support from the World Organisation Against Torture and the International Platform Against Impunity, have prepared this shadow report for the Committee in view of its consideration of the second periodic report that will take place during the 58th session in July-August 2016.

3. In this report, the Committee will note that in spite of the list of recommendations made to the Honduran State, torture continues to be used as a tool in multiple ways and situations by public and private security forces, and encouraged by the passive attitudes of governmental and judicial authorities.

4. This situation has been aggravated by the alarming security situation in the country since the coup of 2009. In 2013, the homicide rate in Honduras was the highest in the world, with a rate of 89 per hundred thousand inhabitants according to figures released by the Observatory on Violence at the National Autonomous University of Honduras (UNAH)¹. The homicide rate remains one of the highest in the region and the world². In this context, widespread impunity hinders prospects for improving the security situation and perpetuates the existence of malpractice and abuses against personal integrity by agents of the state and non-state actors often acting with state connivance.

5. In 2013, the then Attorney General Luis Alberto Rubí, indicated during a public event that 80% of homicides committed in Honduras remained unpunished³. However, according to civil society organisations, levels of impunity stand at between 95% and 100% when it comes to the masterminds of these crimes⁴. This situation fosters distrust in the justice system among victims, already weakened due to fear of reprisals. Impunity is even higher if we consider the prosecution of human rights violations, with the situation particularly serious for vulnerable groups such as women, LGBTI persons and children.

6. The situation of insecurity continues to worsen, parallel to increased possession and carrying of firearms. The Law on the Control of Firearms, Ammunition, Explosives and Other Related Weapons (2000) allows anyone to register up to a maximum of five firearms. According to several sources, it is

¹ Inter-American Commission on Human Rights (IACHR), Situation of human rights in Honduras, 31 December 2015, para. 2.

² Ibid.

³ “En marzo hubo 124 crímenes y nadie los está investigando: Rubí”, See article in *La Prensa*, 15 August 2013, in: <http://www.laprensa.hn/honduras/tegucigalpa/332239-98/en-marzo-hubo-124-cr%C3%ADmenes-y-nadie-los-est%C3%A1-investigando-rub%C3%AD>

⁴ Centre for Freedom of Expression (*Centro por la libertad de Expresión*), *Informe sobre el estado de impunidad en agresiones contra periodistas y trabajadores/as de medios de comunicación en Honduras*, Honduras, April 2016, p. 26. In: <http://www.clibrehonduras.com/content/informe-sobre-el-estado-de-impunidad-en-agresiones-contra-periodistas-y-trabajadores-as-de>

estimated that in Honduras more than one million firearms are in circulation, of which 300,000 are registered⁵. More than 80% of homicides are caused by illegal weapons.

7. At the roots of social unrest lie extremely high levels of poverty. Honduras has the second highest rates of multidimensional poverty in Latin America, at 70.5%. Extreme poverty reached 51.8% in rural areas and 39.7% in urban areas in 2014⁶.

8. Civil society organisations and experts emphasise a significant worsening of the human rights situation in the country, which has very worrying implications for the prohibition of torture and ill-treatment, since the coup d'état in 2009. Multiple indicators show the weakening of democracy and the rule of law in Honduras since those events⁷, including the exorbitant increase in military spending in the budget⁸ at the expense of the allocation of resources for the provision of the basic needs of the population. Militarisation of the most basic functions of the state and the proliferation of private security companies under policies of "zero tolerance" against *mara* gangs and gangs linked to organised crime, have only served to aggravate the already alarming human rights crises in the country.

9. With regards to human rights violations documented during the coup, there continues to be concern about the virtually complete absence of accountability by the security agents and public authorities involved. On the other side of the coin, public officials and human rights activists have suffered and continue to suffer reprisals and persecution for having denounced the coup and the violations of human rights that it triggered, particularly during the repression of protests.

10. The situation of persons working in the defence and promotion of human rights in the country remains extremely worrying. Honduras has the highest per capita murder rate in the world of land and environmental defenders⁹. Berta Cáceres' murder on 2 March 2016 indicates that no defender is protected from intimidation and death, even when they are the beneficiaries of precautionary measures from the Inter-American Commission on Human Rights¹⁰.

11. In addition, killings of journalists and media workers are increasing. Between 2003 and the first two months of 2016, 62 murders were recorded¹¹.

12. In this report, we address the issues raised by the Committee against Torture, through the list of issues prior to the submission of the second periodic report of Honduras (CAT/C/HND/2), in order to

⁵ IACHR, Situation of Human Rights in Honduras, December 31, 2015, para. 39, citing among others, Casa Alianza, *Violencia, Niñez y Juventud en Honduras, Un acercamiento a las principales manifestaciones de la violencia contra niños, niñas y jóvenes* July 2014. See also: "Solo 300,000 armas hay registradas noticia en Honduras, un millón son ilegales", *La Prensa*, September 8, 2015, accessible at: <http://www.laprensa.hn/honduras/877476-410/solo-300000-armas-hay-registradas-en-honduras-un-mill%C3%B3n-son-ilegales>

⁶ UPR Platform-Honduras (*Plataforma EPU-Honduras*), information taken from *Shadow Report for the 2nd Report of the State of Honduras to the ESCR Committee*, Honduras, May 2016, p. 18.

⁷ See for example data available in the report on the mission to Honduras of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (18 to 22 February 2013), UN Document A / HRC / 24/45 / Add.1, para. 12.

⁸ Between 2010 and 2016, the Ministries of defence and security have increased their budget by 161% and 102% respectively (taken from the Central American Institute for Fiscal Studies. *Diagnosis Situation and Outlook for Fiscal Sustainability in Honduras*. ICEFI. 19 November 2015. Available at: http://icefi.org/sites/default/files/presentacion_presupuesto_2016hn.pdf.

⁹ See Global Witness report "How many more?", April 20, 2015, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/cuantos-mas/>

¹⁰ PBI Honduras, Economic, Social and Cultural Rights (June 2016). According meeting held by PBI Honduras in the country with members of the Team for Reflection, Research and Communication (*Equipo de Reflexión, Investigación y Comunicación* - ERIC) in March 2016. 25 precautionary measures were granted to a total of 426 beneficiaries, of which, to date, 16 have been killed (see report of Peace Brigades International, PBI, Briefing on the situation of defenders, June 2016 -report presented to the ESCR- Committee, p. 30).

¹¹ Op. Cit, Centre for Freedom of Expression (*Centro por la libertad de Expresión*). Accessible at: <http://www.clibrehonduras.com/content/informe-sobre-el-estado-de-impunidad-en-agresiones-contra-periodistas-y-trabajadores-de>

assess compliance with the recommendations made in 2009. Other issues and concerns are also incorporated when deemed relevant to the effective implementation of the Convention against Torture in Honduras.

II. NORMATIVE AND INSTITUTIONAL CONTEXT

1. Legal framework (List of Issues, question I, 1st and 2nd paragraph)

13. In 2009, the Committee against Torture recommended that Honduras modify the definition of torture in order to adjust its contents to the requirements and elements established in the definition of the Convention against Torture. In 2011, Article 209-A of the Penal Code was amended by changing the definition of the crime of torture. In its report, the State argues that the current definition includes all the elements provided for in Article 1 of the Convention against Torture. However, the definition still fails to implement the Committee's recommendations in two ways: 1) it omits the motive of intimidation or coercion; and 2) it provides for two different penalties depending on the severity of damage (ten to fifteen years for serious damage, and five to ten if not), without establishing objective criteria to assess this severity and without taking into account that the crime of torture itself implies serious and severe suffering, for which hierarchies or nuances may not be included, when the basic elements are present to determine the existence of this crime.

14. In May 2016, the National Congress began a debate on the Opinion containing the Draft Honduran Penal Code, in order to approve and sanction a new Criminal Code in the near future to replace the current one¹². The new Penal Code must update, systematise and harmonise its catalogue of crimes given that there are currently multiple laws and regulations that be contradictory.

15. The draft Penal Code establishes in Article 212 the crime of use of threats to obtain confession: "The agent of the authority, public official or employee who threatens a person with causing damage to themselves, their family, or others with whom they are closely linked, in order to obtain a confession of having participated in a particular crime or of implicating another person, shall be punished with imprisonment of three (3) to six (6) years and absolute disqualification from their post for twice the duration of the prison sentence".

16. The definition of this crime, which is included in the section on torture and inhuman or degrading treatment, contains several elements that coincide with the crime of torture. In addition to this, the draft Penal Code separates the crime of degrading treatment, for which it proposes minimum penalties¹³, and the crime of inhuman treatment, the latter with heavier penalties.

17. While the Code proposes the existence without prejudice of the commission of other crimes including those in this section, we are concerned that the plurality of criminal provisions that penalise behaviour with features that are difficult to distinguish, could be used to dilute the investigation of situations of torture and / or cruel, inhuman or degrading punishment, resulting in impunity for the crime of torture, particularly in cases where torture is psychological.

¹² Legislative decree no. 144-83, approved on 23 August, 1983

¹³ Penal Code, article 211 proposes penalties of one (1) to two (2) years for those who commit this crime.

18. In penal norms that are currently in force, the crime of torture is prescriptive¹⁴. In this regard, the draft Criminal Code currently under discussion would establish the non-applicability of the crime of torture under article 114.

19. There are other concerns about the existing legislative framework. While we note the recent removal of Articles 99, 100 and 119 of the **Law on Police and Social Coexistence** criminalising vagrancy and begging¹⁵, we are concerned about the persistence of ambiguous situations that allow the suppression of a broad type of behaviours. Contraventions such as “attacks on decency, good manners and public morals” (Article 142.3) are used recurrently to stop and punish people, particularly those belonging to groups in situations of vulnerability and discrimination such as LGBTI persons, giving rise to abuse and helplessness¹⁶.

2. Institutional weakness

a. Independence of the judiciary (List of Issues, question VII)

i. The Judicial Council

20. In Decree No. 219-2011 of 25 November 2011¹⁷, the Law on the Judicial Council and the Judicial Service (LCJCJ) was enacted, which stipulates that administrative functions will become the responsibility of the Judicial Council, with the aim of strengthening judicial independence.

21. In early September 2013, the members of the Judicial Council were elected¹⁸. Shortly after the election of councillors and the establishment of the Judicial Council, the Law was amended by Decree No. 291-2013, to include confidence tests¹⁹.

22. These confidence tests included psychometric tests, toxicological tests, polygraphs and equity research. In March 2014, the Association of Judges for Democracy (AJD) filed an appeal on the grounds that the polygraph test, due to its invasive nature and possibility of manipulation, generates a lot of uneasiness and anxiety among judges, making it an intimidating exercise constituting ill-treatment. The appeal was rejected.

23. In addition to these actions, the members of the Judicial Council were investigated for multiple illegal acts, documented by a Technical Management Committee for the Verification of Actions by Judiciary Personnel²⁰ appointed by the President of the Supreme Court. However, no councillor has been criminally or administratively sanctioned.

¹⁴ Ibid, Article 97: criminal proceedings for offences that lead to imprisonment prescribed for the course of a period equal to the maximum duration of the penalty indicated for the offence, increased by half.

¹⁵ “Mendicidad, prostitución y vagancia ya no serán criminalizadas”, *El Proceso*, 28 November 2015, in:

<http://proceso.hn/component/k2/item/114498-mendicidad-prostituci%C3%B3n-y-vagancia-ya-no-ser%C3%A1n-criminalizadas.html>

¹⁶ Op.cit. See also IACHR Report (Honduras 2015), para. 133; Inter-American Commission on Human Rights (CIDH), “Annual Report of the Inter-American Commission on Human Rights 2013”, Chapter IV, Honduras, para. 427

¹⁷ Published in the Official Gazette on December 28, 2011, entered into force on 18 January 2012

¹⁸ According to Article 4 of the Law, the Council is comprised of five regular councillors and two alternates, of which one is the President of the Supreme Court who also chairs the Council, two are elected by associations of judges; one by the Bar Association of Honduras and one more representative from the National Association of Employees and Officials of the Judiciary. Proposals for such entities are sent to the National Congress who elects the councillors by qualified majority.

¹⁹ See, in particular the reformed Article 3.

²⁰ This roundtable published three reports on 25 February, 28 March and 2 May 2016, in which many irregularities committed by the councillors are evident. The last of them: “Informe de Verificación de Actuaciones Octubre de 2013 a Diciembre de 2014 Mesa Técnica de

Repeal of the Law on the Judicial Council

24. On 15 April 2016, a judgment of the Supreme Court, dated March 14, 2016, was published in the Official Journal of Honduras “La Gaceta” in which the unconstitutionality of Articles 4, 23, 24 and 64 of the LCJCJ was declared, and consequently, due to the “extensive effect” of the declaration, the entire LCJCJ was repealed. Among the main consequences of this declaration of unconstitutionality are: a) the disappearance of the Judicial Council, b) the concentration of administrative functions in the President of the Supreme Court, and the disappearance of the separation of administrative and jurisdictional functions within the judicial branch²¹ and c) the application of the Judicial Career Law of 1980, which has serious shortcomings, especially in terms of disciplinary proceedings.

ii. Process for the election of judges to the Supreme Court of Justice

25. The election of Magistrates to the Supreme Court, in the month of February this year, was marked by a lack of transparency and accountability within the Nominating Board, which was called upon twice by the Institute of Access to Public information to publicise the information concerning the process²². Finally, a list of 45 candidates was sent to the National Congress, with strong criticism from different sectors of Honduran society. During the election in the Congress, influence peddling, manipulation and lack of regulation of the process were evident.

iii. Unjustified dismissal of judges and a Court of Appeals Judge in the context of the coup d'état of 2009

26. In the case known as “López Lone and others vs. Honduras”, on October 5, 2015, the Inter-American Court of Human Rights (IACtHR) ordered the State of Honduras to set high standards for the political rights of judges, and to guarantee tenure and due process in disciplinary proceedings. This is the first case heard by the IACtHR related to incidents following the coup of June 2009.

27. The IACtHR ordered the restitution of office to Judge Flores Lanza and Judges López Lone and Chévez de la Rocha, as well as payment of compensation for material and moral damages. More than seven months have elapsed and the Honduran State has not complied with the judgment nor have the victims have been summoned to office, showing lack of compliance with the obligation to implement judgments issued by international bodies²³.

b. National Commissioner for Human Rights (CONADEH) (List of issues, question VI)

28. There are strong limitations and deficiencies that prevent the National Commissioner for Human Rights (CONADEH) from fulfilling its role in strict compliance with the Paris Principles. Proof of this is that since October 2011 Honduras has been downgraded to category B by the Subcommittee on Accreditation of the International Coordinating Committee of National Human Rights Institutions²⁴.

Verificación de Actuaciones de Administración de Personal”, May 2, 2016, is available at:

<http://www.poderjudicial.gob.hn/Documents/InformelIII-MTV-Mayo2016.pdf>

²¹ This gives effect to a transitory article that had already been repealed contained in Decree 282-2010 of January 19, 2010: “ARTICLE 3. TRANSITORY. Until the Judicial Council and the Judicial Service is installed, the Honourable President of the Supreme Court is empowered to retain the power to select, appoint and dismiss judges, magistrates and administrative staff according to the provisions of the Act; also the power to organise and administratively direct the judiciary”.

²² IAIP. Resolution No. SE-002-2015, Press Release Verification Management IAIP dated 18 September 2015. Available at: <http://portalunico.iaip.gob.hn/assets/docs/junta%20nominadora/Comunicado%20de%20PRENSA%2018-09-2015.pdf>

²³ Constitution of the Republic of Honduras, Article 15, second paragraph: “Honduras proclaims the validity and mandatory inescapable enforcement of arbitral and judicial rulings of an international character”

²⁴ CONADEH, Annual Report 2015, p. 38. Accessible at: <http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart.pdf>

29. Although the CONADEH receives complaints of human rights violations, whose statistics are published in their annual reports, many testimonies complain about the lack of action to help clarify the facts and follow up with the relevant authorities. The Sub-Committee on Accreditation has stressed that the CONADEH reports “offer no detailed and substantial information on alleged violations of human rights and how the CONADEH responded to these violations. Nor does the report give information on the monitoring activities, recommendations or advice provided to the Government”. Thus, the statistical information provided is of significant interest and is useful, but no concrete actions are included to address complaints, push for the results of criminal or disciplinary investigations and formulate specific recommendations.

30. For illustrative purposes, the CONADEH records their periodic visit and monthly inspections of places of detention, but there is no public information on their findings, treatment of complaints and recommendations to the prison authorities.

31. There is also concern about certain approaches that indicate insufficient sensitivity and commitment to human rights. In terms of public safety, for example, CONADEH noted in its latest report that from 2014, efforts are being made, at the legislative level, “to monitor the purification of the National Police files and foster the cooperation of military forces in public safety, acting in conjunction with prosecutors and judges in order to influence the reduction of the crime rate in the country”²⁵.

32. In this context, human rights organisations have denounced the lack of due diligence by the CONADEH regarding the fulfilment of its mandate. One example of this is the absence of actions for constitutional protection or the protection of collective rights (as one of the few institutions recognised by the jurisprudence of the Constitutional Chamber²⁶ to operate in favour of collective rights) promoted by the CONADEH. It has also been criticised for its passivity in ensuring the restoration of rights recognised by court orders and corrective *habeas corpus*²⁷, omitting its duty to promote effective compliance.

c. Militarisation and the privatisation of security

i. Militarisation

33. Since 2009, three decrees have been passed that illustrate the process of reform that the country has experienced in the fields of security and defence. In November 2011, Congress adopted Decree-

²⁵ Ibid. CONADEH, Annual Report 2015, page 38. Accessible at: <http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart.pdf>

²⁶ Constitutional Chamber. Unconstitutional Sentences numbers 273-13, 303-1, 888-13, 916-13.

These actions are part of its mandate. In different corrective habeas corpus, the Constitutional Court has ordered the restitution of different social and cultural rights of the prison population. Corrective exhibitions 210-2006 and 174-2008 have been related to food, decent living conditions, and health, among others, in favour of the population deprived of freedom in the Criminal Centre of Santa Barbara and the National Penitentiary of Támara and the *Renacer* Detention Centre for Abused Children. Such measures have not been implemented and most CONADEH omitted its duty to promote effective compliance

²⁷ These actions are part of its mandate. In different corrective habeas corpus, the Constitutional Court has ordered the restitution of different social and cultural rights of the prison population. Corrective habeas corpus 210-2006 and 174-2008 related to food, decent living conditions, and health, among others, in favour of the population deprived of freedom in the Criminal Centre of Santa Barbara and the National Penitentiary of Támara and the *Renacer* Detention Centre for Abusive Childhood. Most measures have not been implemented and CONADEH has omitted its duty to promote effective compliance

Law “with the aim of restoring public order and achieving social peace”²⁸ which authorises the armed forces to “exercise police duties temporarily in emergency situations affecting people and property; participate permanently in the fight against drug trafficking and further cooperate in combating terrorism, arms trafficking and organized crime, at the request of the Secretary of State in the Office of Security”²⁹. The decree has been extended and has served as a basis for expanding the powers of the military through further reforms to the Organic Law on the National Police³⁰.

34. In 2013, the process of militarisation was reinforced in the most affected areas of the country with the adoption of the Decree-Law on the creation of the Institute of Armed Intelligence Troops and Special Security Response Groups (TIGRES), a new specialised police division, independent of the National Police and in charge of carrying out special security missions.

35. On August 24, 2013, a decree was published creating the Law of the Military Public Order Police in the Armed Forces (PMOP), with the aim of creating a strike force known as the PMOP, empowered to enter and take control of neighbourhoods under the rule of gangs and organised crime³¹. PMOP began operating in January 2014 with about 5,000 specially trained troops. The law also establishes that 30 thousand soldiers will be held in reserve to collaborate with the PMOP in cases of war or emergency³².

36. It should be noted that Article 274 of the Constitution rules out the permanent execution of police work by the armed forces. A proposal issued by the National Party contemplated reforming this article **to attribute constitutional status to the PMOP**³³. The proposal was rejected by Congress in January 2015, but President Juan Orlando Hernández has proposed a referendum by a fourth ballot in the 2017 election.

37. Both the TIGRES police and the PMOP have been assigned judges and prosecutors who, in principle, must ensure that their actions are framed within the law. However, these officials are selected by officials from the National Security and Defence Council (*Consejo Nacional de Seguridad y Defensa* - CNSD), putting their independence into question³⁴.

Consequences: human rights violations perpetrated by the military

38. The IACHR has repeatedly expressed concern about the involvement of the Armed Forces in ordinary tasks of public safety, organised crime investigations, civic education of children through the “Guardians of the Nation” program, presence in the prison system (see below) and in forced evictions, considering that this poses a risk to the rule of law³⁵.

²⁸ Decree No. 198-2011 dated November 11, 2011. Decree Law interprets Article 274 of the Constitution. Available at: <http://www.congresonacional.hn/phocadownload/Proyectos/LeyAsuntosinvestigativos/interpretacion%20constitucional%20art.274.pdf>.

²⁹ Ibid, art. 1.

³⁰ Amendments to the Organic Law on the National Police (Decree No. 198-2011 dated November 11, 2011, Decree No. 5-2012 dated February 21, 2012, Decree No.25-2013 dated March 23, 2013).

³¹ Decree No. 168-2013 dated August 22, 2013 published in the Official Journal "La Gaceta" on 24 August 2013.

³² Joint report submitted for the 2nd round of the Universal Periodic Review of Honduras, September 2014, para 19.d), available at: http://www.derechosdelamujer.org/tl_files/documentos/derechos_humanos/EPU-Plataforma-Honduras-2014.pdf

³³ PBI, Honduras UPR 2015, p.10.

³⁴ IACHR, Situation of Human Rights in Honduras, December 31, 2015, para. 230; joint report for the second round of the UPR of Honduras (see note 45), para. 19 (f).

³⁵ See IACHR, Report on the visit to Honduras, 2015, paras. 36, 86, 160, 163; UN Document A / HRC / 32/35 / Add.4; see also, US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2015, Honduras; Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Honduras, April 5, 2016, A / HRC / 32/35 / Add.4, para. 42.

39. The CONADEH annual report, referring to Bulletin 240-112015 of December 2015, described “Dozens of complaints against members of the military police”, highlighting the following:

“Members of the Military Police and the Army have been reported for committing human rights violations against various people. Abuse of authority, unlawful arrests, killings, abductions, torture, rapes and burglaries, are part of the crimes allegedly committed by members of the State security forces of”.

ii. Growth of private security companies and privatisation of public security tasks

40. There is a strong trend towards the privatisation of public security³⁶. According to the UNDP 2013-2014 Regional Human Development Report in Honduras there is a “hypertrophy” of private security, as the country has a majority of private security companies compared to the number of State security forces³⁷.

41. Although the Regulation of the Organic Law on the National Police refers specifically to “private security services”³⁸, private guards also work on public security tasks, including crime investigation and eviction enforcement orders³⁹. While the Regulation includes a range of measures for the granting of a (mandatory) license for the provision of services and the control of private security companies, this framework would not be applied effectively in practice, given the lack of legal consequences for violations of the Regulation. There is also information available to indicate that private security companies use weapons reserved for the army.

42. There is also serious concern about the lack of accountability when there are indications or evidence that private security agents are involved in human rights violations. In this regard, the conclusion of the Working Group on the use of mercenaries points to the “absolute impunity” for human rights violations committed by private security companies⁴⁰.

43. In Bajo Aguán and other regions, an increasing number of human rights violations are reported as being committed by private security company employees, macro-crop businessmen, and extractive projects to preserve their economic interests and properties, often acquired by illegal means or regardless of the collective rights of small-scale farming communities and indigenous peoples (see Section on human rights defenders, Bajo Aguán, violent evictions and intimidation).

III. TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN HONDURAS AS A GENERALISED PRACTICE

³⁶ Ob. Cit. note 7, para. 14, states that “According to the Ministry of Security, in Honduras there are 706 registered EPS, with 14,787 private security guards. This figure is already higher than the estimated number of police officers in the country, which is at most 14,000. In addition to the EPS and their registered guards, apparently there are tens of thousands of illegal and unregistered security guards. According to the National Police, the number of these private security guards is estimated at 60,000”.

³⁷ UNDP Regional Human Development Report 2013-2014. Citizen security with a human face: diagnosis and proposals for Latin America. Panama, 2014, p. 168.

³⁸ Organic Law on the National Police, arts. 136 and 139.

³⁹ Ob. Cit. Nota 7, para. 22.

⁴⁰ During the visit, the Working Group expressed concern to the Government of Honduras and representatives of the judiciary at the lack of investigations and prosecutions of cases involving several allegations of serious violations of human rights committed by the EPS, which resulted in **absolute impunity**. Ibid, para. 45

1. Torture and ill-treatment of persons deprived of liberty (List of Issues, questions related to article 11 of the Convention)

44. The high level of overcrowding in which prisoners live in prisons in Honduras, the lack of health coverage and the weak infrastructure in prisons prevents persons deprived of liberty from living with dignity in these establishments. Added to this are the physical and psychological abuses to which they are subjected by some prison guards and even other persons deprived of liberty with the acquiescence of prison authorities.

45. Such is the case of Mr. Carlos Lenín Meza, who is detained at the Danlí prison. On February 6, 2016, Mr. Lenín Meza was beaten unconscious by nine prison guards, who used firearms to attack him⁴¹.

46. The IACHR report, published following an *on site* visit conducted in 2015, describes the most serious problems facing the Honduran prison system. These include: a) the dramatic increase in the prison population; b) the progressive use of the Armed Forces in prison work; the high rate of prisoners who have not faced trial; c) the situation of children and adolescents deprived of liberty; and d) the lack of speed and efficiency in investigations into the Comayagua fire⁴².

47. Below, we provide information on persistent structural deficiencies, despite the adoption of a new Law on the Prison System and the creation of the National Penitentiary Institute:

a. Overcrowding

48. Prison overcrowding is the result of accelerated growth in the use of preventive detention, even though the current legal framework provides for alternative measures of various kinds. According to CONAPREV data, in 2014 there were an estimated 14,803 persons deprived of liberty, of which 8,047 (54.11%) were still undergoing trial and 6,824 (45.88%) had been convicted.

49. The judgment of the Inter-American Court in the case *Pacheco Teruel et al vs Honduras*, urged the State to “adopt (...) legislative, administrative and any other measures necessary to substantially improve the conditions of prisons (...) mainly to prevent fires and other critical situations and avoid overpopulation and overcrowding”.

50. However, it is not only non-repetition measures ordered by the Court that have not been implemented, as since 2012 (year of the *Pacheco Teruel* judgment) an exorbitant increase can be seen in overcrowding in prisons and detention passing from 44% to 82% overcrowding in 2014. At December 14, 2015, according to data from the Ministry of Human Rights, Justice, the Interior and Decentralisation, the population reached 16,100 inmates, compared to the 10,502 capacity, which represents 65% overcrowding⁴³. Overcrowding reaches levels that threaten personal integrity and inmates in prisons with the highest concentration of prison population such as the National Penitentiary in San Pedro Sula (PN-SPS), where a fire occurred which resulted in the Pacheco Teruel

⁴¹ Centre for prevention, treatment and rehabilitation of victims of torture and their families (CPTRT) 0703-2016-00064 case. See also article in *La Prensa*, April 12, 2016, available at: <http://www.laprensa.hn/sucesos/949217-410/capturan-a-nueve-polic%C3%ADas-penitenciarios-por-tortura>

⁴² Ibid

⁴³ IACHR, Report on the Situation of Human Rights in Honduras, 31 December 2015, para. 511.

case, is more than 300% overcrowded⁴⁴. Some smaller prisons also have very worrying levels, with up to 494% overcrowding (Santa Bárbara prison)⁴⁵.

b. Militarisation of the prison system

51. From February 2014, a triumvirate of colonels was appointed to be responsible for prisons, in clear violation of the provisions of Article 8 paragraphs 3, 12 and 13 of the Law on the National Penitentiary System⁴⁶. Since that year, the leadership of the National Penitentiary Institute main prisons are under the authority of the Armed Forces of Honduras.

52. Added to this, on April 9, 2014, the State published a resolution in the “La Gaceta” Official Journal from the Board of the National Penitentiary Institute authorising the establishment of preventive prisons in military installations⁴⁷. Although in the same resolution it is stated that such centres will be guarded by guards or prison staff, CONAPREV and the Centre for prevention, treatment and rehabilitation of victims of torture and their families (CPTRT)⁴⁸ have found that in practice the custody of detainees falls to the military⁴⁹.

53. The events of 9 and 10 March 2015, related to the transfer of eleven persons deprived of liberty to the Second Infantry Battalion located in the town of Támara, Francisco Morazán Department, show that the armed forces are unfit for the responsibility of persons deprived of their liberty. According to an interview with CPTRT staff, who monitor this issue, they were found in a deplorable situation⁵⁰. Transfers of these and other persons produced a new prison crisis, which resulted in 13 deaths and 56 injuries⁵¹. In addition to the militarisation of the three largest centres in the country⁵².

c. Criminal legislation impacting prison conditions

54. In 2013, an amendment was adopted to Article 184 of the Criminal Procedure Code, under which the alternative measures to preventive detention were removed for 21 offences⁵³, which means that all persons indicted for such crimes⁵⁴ are deprived freedom automatically, in violation of the right to personal liberty and the presumption of innocence⁵⁵. This has a severe impact on increasing overcrowding and deteriorating conditions of detention⁵⁶.

⁴⁴ Ibid, para. 513.

⁴⁵ Ibid, para. 515.

⁴⁶ The National Defence and Security Council appointed Colonel Francisco Gálvez Granado as director of prisons, Kennet Obdulio Sabillón, as deputy director and Colonel Francisco Orlando García Maradiaga as inspector of prisons.

⁴⁷ The centres created are: the Cobras Preventive Centre, the First Infantry Battalion in Comayagüela, the Second Special Tactical Infantry Battalion in Támara and the Third Infantry Battalion in Naco, Cortés. According to a CONAPREV press release, in April 2015, there were a total of 102 persons deprived of liberty in the four abovementioned preventive centres, but today it is estimated that this number is much higher.

⁴⁸ Centre for the Prevention, Treatment and Rehabilitation of Victims of Torture and their Families

⁴⁹ National Committee for the Prevention of Torture, Cruel, Inhuman or Degrading. Report on preventive monitoring visit conducted in the First Infantry Battalion of the Armed Forces of Honduras. National Prevention Mechanism-CONAPREV. Las Tapias, Comayagüela. 2014. Comité Nacional de Prevención contra la Tortura, Tratos Crueles, Inhumanos o Degradantes. *Informe sobre visita de monitoreo preventivo realizada en el Primer Batallón de Infantería de las Fuerzas Armadas de Honduras*. Mecanismo Nacional de Prevención-CONAPREV. Las Tapias, Comayagüela. 2014.

⁵⁰ Centre for the Prevention, Treatment and Rehabilitation of Victims of Torture and their Families CPTRT, “prisoners held in the tactical battalion” case.

⁵¹ Six (6) died in San Pedro Sula, Five (5) in Támara and two (2) in Comayagua.

⁵² Marco Aurelio Soto National Penitentiary, National Penitentiary in San Pedro Sula and Comayagua Prison Farm.

⁵³ Legislative Decree 56-2013 of 17 May 2013

⁵⁴ Homicide, murder, parricide, rape, trafficking, child pornography, kidnapping, counterfeiting of currency bank notes, theft in all its forms, assassination of heads of state or national government, genocide, conspiracy, extortion related crimes with weapons of war, terrorism, smuggling, tax evasion, crimes related to drug trafficking and narcotics, money laundering, prevarication and feticide.

⁵⁵ CONADEH, 2013 Annual Report. General State of Human Rights. Situation in prisons.

⁵⁶ Coalition against Impunity, Joint report presented to the second round of Universal Periodic Review of Honduras, September 2014, p. 7.

55. Added to this, the State of Honduras has not complied with the amendment or repeal of Article 332⁵⁷ of the Criminal Code, which has been requested by many international bodies, including the Inter-American Court in the *Pacheco Teruel* case⁵⁸, given the wide discretion allowed for the crime of conspiracy⁵⁹. Contrary to this, in 2015 the National Congress increased the penalties for this crime significantly⁶⁰, even though the Supreme Court ruled that it had to consider the *Pacheco Teruel* case and others, particularly regarding the principle of legality⁶¹.

56. Another issue that raises concern is the approval of the Labour Law for Persons Deprived of Liberty and Residence for Highly Dangerous Prisoners. The Law includes compulsory labour for persons deprived of their liberty⁶². It also includes specific provisions banning circulation within the prison; reading only what authorities permit; not receiving conjugal visits; and authorisation only to do physical exercise and sunbathe for one hour a day inside metal cages⁶³ for those considered dangerous and aggressive⁶⁴.

d. Budget

57. The budgetary expenditure of the National Penitentiary Institute in 2015 contemplates the contribution of the staff of the Institute of Military Social Security⁶⁵. In September 2014 the State also initiated a “Training Course for Prison Guards” aimed at 2000 reservists in the Armed Forces of Honduras⁶⁶.

58. We also note with concern the limited budget allocated for prison management. In 2012, the budget for the prison system was USD 19,189.373 for a population of 11,709 people. In 2015, the budget was USD 21,103.187 for a population of nearly 16,000 people. While a slight increase in the total budget is observed, investment in persons deprived of liberty has been reduced as the prison population has increased. One example is the budget for each person per meal, which stands at USD 0.45⁶⁷.

59. The improvements made by the state have been isolated and do not meet international standards. For example, in the prison of Puerto Cortés the kitchen was improved, and in Trujillo prison the improvements to the facilities respond more to the personal will of the director and contributions from the community. Even so, in this prison there are 7 toilets and 7 bedrooms with 120 beds for a population ranging between 250-300 persons deprived of their liberty⁶⁸.

⁵⁷ The State undertook to adapt Article 332 of the Penal Code to international standards of Articles 7, 9 and 24 of the American Convention. *Pacheco Teruel* judgment, *Op.Cit.*, paragraphs 98 and 103.

⁵⁸ IACtHR, *Pacheco Teruel vs. Honduras*, para. 98.

⁵⁹ This norm has allowed for the arbitrary detention of thousands of people, particularly young people, including minors, on the basis of suspicion or the belief that they belong to a “mara”.

⁶⁰ See analysis of the reform carried out by the Latin American and Caribbean Network for the defence of the rights of children and adolescents, accessible at: <http://www.redlamyc.info/Documentos/Correos%20enviados/Pandillas%20Analisis%20de%20la%20reforma%20aprobada%20al%20Art%20332.doc>

⁶¹ Opinion adopted at No. 12 of Act No. 33 of the meeting held by the full Supreme Court on Wednesday, April 29, 2015.

⁶² Legislative Branch, Decree 101-2015 of 14 January 2016.

⁶³ Interview with Melissa Escoto from the legal office of CPTRT. For further information, see: <http://www.laprensa.hn/honduras/868507-410/en-jaulas-reciben-sol-reos-peligrosos-en-honduras>

⁶⁴ Decree 101-2015, *Op.Cit.* article 9.

⁶⁵ National Penitentiary Institute. Detail of Spending by Object. Year 2015.

⁶⁶ For further information, see: <http://www.sdhjgd.gob.hn/noticias/89-reservistas-de-las-fuerzas-armadas-son-capacitados-para-fortalecer-seguridad-de-sistema-penitenciario>.

⁶⁷ *Ibid.*

⁶⁸ Interview with Gustavo Peña, psychologist from CPTRT, held on 16 June, 2016.

60. Finally, in relation to the right to health, scheduled appointments for the most vulnerable persons deprived of liberty such as older adults, people with HIV, tuberculosis and diabetes and mentally ill persons, are conditioned by the willingness of custodial staff, fuel and the good condition of vehicles. Those responsible for the provision of medicines in some cases are persons deprived of liberty themselves⁶⁹.

e. Juvenile Detention Centres

61. In her 2015 report on Honduras, the Special Rapporteur on violence against women, Rashida Manjoo, noted the precarious conditions of girls and boys in conflict with the law⁷⁰.

62. In fulfilment of the Precautionary Measure granted by the IACHR to the young inmates at the *Renaciendo* Centre for the Rehabilitation of Children⁷¹, the State closed two detention centres for juvenile offenders including *Renaciendo*. The transfer of children to other centres for children at social risk did not result in an improvement in their situation, but, on the contrary, exposed the children affected to revictimisation without their security situation being improved.

63. This is the case of 22 girls detained at the *October 21 Casitas* Centre, in the city of Tegucigalpa, where “The Special Rapporteur spoke to the girls and also witnessed injuries that some of them had suffered due to excessive use of force to make them cooperate and comply with the rules set by centre administrators”⁷².

1. Torture against Women (List of Issues, Question IX)

64. During her visit to Honduras, the Special Rapporteur on violence against women concluded that violence against women is systematic and its impact is manifested in many ways for women and girls, preventing the exercise of their civil, economic, political, social and cultural rights⁷³.

a. Increase in attacks against the life and personal integrity of women

65. In the period from 2003 to 2015 5,411 women have been violently killed in Honduras⁷⁴. 80% of these crimes are committed with firearms.

66. In 2013, every 13 hours a woman was murdered. In total 636 women were killed, representing an increase of 263.4% in femicides compared to 2005, when the rate per 100 thousand inhabitants was 2.7. Most victims are women between 16-30 years of age (55.6%)⁷⁵.

67. According to the National Survey of Health and Population for the period 2011- 2012, 27% of women aged 15 to 49, and 37% of women between 45 and 49 years old have experienced physical

⁶⁹ Ibid.

⁷⁰ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo”, Visit to Honduras, 31 March 2015, UN Document. A/HRC/29/27/Add.1, paras. 24 and 25.

⁷¹ Precautionary Measure: Honduras 2004 - Renaciendo Juvenile Centre -. See: <http://www.cidh.org/ninez/medcaute2sp.htm>

⁷² Op. Cit. note 72, para. 25.

⁷³ PNUD-Honduras, “Consejo de Derechos Humanos. Informe Preliminar de la Visita a Honduras realizada por la Relatora Especial de la ONU sobre la Violencia contra las Mujeres”, 7 July 2014. Accessible at: <http://www.hn.undp.org/content/honduras/es/home/presscenter/articles/2014/07/07/informe-preliminar-de-la-visita-a-honduras-realizada-por-la-relatora-especial-de-la-onu-sobre-la-violencia-contra-las-mujeres.html>

⁷⁴ Women’s Forum for Life. (*Foro de Mujeres por la Vida*). Observatory of Safety and Violence against Women, with sources University Institute in Democracy, Peace and Security (IUDPAS) and CONADEH.

⁷⁵ Women’s Law Centre (*Centro de Derecho de las Mujeres*). Access to Justice in cases of violent deaths and femicide. December 2014, p.5

violence at some point in their lives. The report further notes that in some cases, such as those related to *maras* and gangs, the bodies show that the women were victims of brutality, including appalling levels of mutilation and torture. These acts, which occur more frequently in urban areas, are also often associated with kidnappings and cases of sexual violence⁷⁶.

68. A pattern has been identified indicating that many women, before being killed, disappear from the streets or are violently removed from their homes⁷⁷. They are intercepted in public or when alone by heavily armed individuals who identify themselves as authorities or members of the police and force them to board vehicles, take them away and days later their bodies appear with signs of torture⁷⁸. In just six years, reports of missing women rose from 91 in 2008 to 347 in 2013⁷⁹. Between January and September 2014, the Public Ministry received 276 reports of missing women, of which 47% are girls between 14 and 18 years. In 36 of the 298 municipalities there are reports of missing girls and women.

69. This data is consistent with the constant appearances of clandestine cemeteries that have occurred in recent years. In northern Honduras alone at least 43 bodies have been found of people who were missing⁸⁰. In two of these cemeteries military fatigues were also found and initial investigations reveal the involvement of police⁸¹. Many of these clandestine cemeteries are linked to the so-called “mad houses”⁸². The gangs use these homes as places where victims of abduction are taken to be tortured and then killed. They even dismember the bodies, which are then buried in the backyards of these properties⁸³.

70. Rape⁸⁴ is the third highest reported crime nationwide. According to estimates of the prevalence of sexual violence, this crime rose from 4.6% in 2008 to 8.6% in 2010⁸⁵. From 2010 to 2014, there were 15,833 allegations of sexual violence⁸⁶, of which only 888 led to a conviction⁸⁷, leaving 94% of cases in impunity.

71. With regards to domestic violence, from 2009 to 2012, 82,547 complaints of domestic violence were filed, representing an average of 20,637 complaints per year, of which 92% were filed by

⁷⁶ Human Rights Council. Preliminary report of the visit to Honduras by the UN Special Rapporteur on Violence against Women. 7 July 2014. accessible at: <http://www.hn.undp.org/content/honduras/es/home/presscenter/articles/2014/07/07/informe-preliminar-de-la-visita-a-honduras-realizada-por-la-relatora-especial-de-la-onu-sobre-la-violencia-contra-las-mujeres-.html>

⁷⁷ Women's Forum for Life. (*Foro de Mujeres por la Vida*). Observatory on violence and women's safety.

⁷⁸ See for example the case of the young woman Sindy Yadira García Matamoros (20), who disappeared on the night of January 10, 2013, after being captured by a commando of hooded men in Colonia San José de los Llanos in Comayagüela. According to witnesses, the men identified themselves as members of the National Police and allegedly had a search warrant of her home, from where all her utensils were taken, causing damage to the infrastructure of the house. After the kidnapping of the girl, the family contacted different police stations, hospitals and the capital's morgue, but have not found any clue to her whereabouts. More information at: <http://tiempo.hn/sucesos/item/5973-encapuchados-capturan-y-desaparecen-iovencita->

⁷⁹ Situation of Violence in Honduras. Report submitted by feminist organisations to the UN Special Rapporteur on Violence against Women, its causes and consequences on her visit to Honduras from 1 to 8 July 2014. This report can be consulted at Centro de Derechos de Mujeres, Foro de Mujeres por la Vida, Centro de Estudios de la Mujer, Asociadas por lo Justo, Red Nacional de Defensoras de Derechos Humanos de Honduras and CLADEM-Honduras.

⁸⁰ Women's Forum for Life. (*Foro de Mujeres por la Vida*). Standard protocol. Not to forget it is the way to find them.

⁸¹ *Diario la Prensa*, Thursday 29 March, 2012.

⁸² Houses violently expropriated by gangs from their owners, who have been forced out and forcibly displaced from the area.

⁸³ Women's Forum for Life. (*Foro de Mujeres por la Vida*). Standard protocol. Not to forget it is the way to find them

⁸⁴ Decree 144-83, Honduras Penal Code, Article 140.

⁸⁵ System of Regional Standardised Indicators on Citizen Security.

⁸⁶ Calculations made by the Centre for Women's Rights (*Centro de Derechos de Mujeres*) based on complaints filed nationwide. Statistical Observatory of the Public Ministry

⁸⁷ Calculations made by the Centre for Women's Rights (*Centro de Derechos de Mujeres*) based on the Electronic Centre for Legal Documentation and Information (Centro Electrónico de Documentación e Información Judicial - CEDIJ).

women⁸⁸. There is a lack of follow up on reported cases and implementation of effective protection measures for women and prevention programs in communities, deficiencies that lead to rising rates of femicide.

72. In August 2014, Brus Laguna, in the department of Gracias a Dios, a group of “soldiers” raided a farm and allegedly tortured several people and left them for dead due to the alleged beating and threatened to sexually abuse the women should they report this to anybody. The victims were finally found by neighbours, according to a report from the CONADEH⁸⁹.

73. On 30 October 2015, three members of the Military Police were accused of raping a woman, the three military policemen appeared days later in court and were taken into custody⁹⁰.

74. On 2 March 2016, Berta Cáceres Flores, Coordinator of the Civic Council of Popular and Indigenous Organisations of Honduras (*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras* - COPINH), was murdered in her house, located in La Esperanza, Intibucá despite having repeatedly denounced threats to her life and being a beneficiary of precautionary measures from the IACHR.

75. The latest investigations indicate that among the 5 people charged with her murder are Mariano Díaz Chávez (instructor of the Public Order Military Police and member of the Special Armed Forces) and Douglas Geovanny Bustillo (retired lieutenant from the Armed Forces of Honduras and deputy chief of security of the company *Desarrollos Energéticos SA*, DESA)

b. Investigation and sanction of cases of violence against women taking place during the repression of protests during the coup d'état (List of Issues, Question XXV)

76. Numerous testimonies reveal that after the coup, both during the repression of demonstrations and during illegal detentions, women were subjected to verbal abuse and sexual violence⁹¹. 217 women reported serious physical abuse to human rights organisations such as bone injuries, stab wounds, bruises from beatings, inflicted by police using truncheons. 23 women reported being victims of groping and beatings to the breasts and vagina and sexual innuendo and 10 women reported suffering rape⁹².

77. With regard to cases of violence against women occurring in this context, it is known that the case of the protected witness *Leone* was brought to trial, and seven policemen were charged for crimes of torture, abuse of authority and illegal detention, which was definitively dismissed by the Court of Appeals of the Department of Francisco Morazán, in the second instance. The lack of due diligence is of serious concern in the investigation and prosecution of these violations occurring in the context of repression triggered by the coup.

⁸⁸ Human Rights Council. Preliminary report of the visit to Honduras by the UN Special Rapporteur on Violence against Women. 7 July 2014. accessible at: <http://www.hn.undp.org/content/honduras/es/home/presscenter/articles/2014/07/07/informe-preliminar-de-la-visita-a-honduras-realizada-por-la-relatora-especial-de-la-onu-sobre-la-violencia-contra-las-mujeres-.html>

⁸⁹ Ibid

⁹⁰ Accessible at: <http://www.latribuna.hn/2016/05/10/decenas-denuncias-policias-militares/>

⁹¹ IACHR, *Honduras: Human Rights and Coup D'état*, 30 December 2009.

⁹² Feminists in Resistance. (*Feministas en Resistencia*). Public policies and human rights of women after the coup.

c. Institutional weakness in the investigation of violence against women and re-victimizing patterns

78. Although the State reports the operation of 298 Municipal Women's Offices (*Oficinas Municipales de la Mujer* - OMM), which depend on the National Institute for Women⁹³, in 2010 Article 59-E of the Municipalities Law was amended, converting the OMM into offices required to meet a variety of populations, failing to recognise the specific problems of women. Added to this, in most municipalities these offices do not receive the compulsory 2% of the municipal transfer.

79. Research and experiences of organisations defending the human rights of women in litigation cases of male violence, find that the application of Honduran legislation has serious problems and challenges: a) lack of knowledge in justice officials on national and international legislation ; b) predominance of discriminatory social and cultural patterns in the investigation of the alleged facts affecting the justice system in its aim to prosecute and punish cases of violence against women; c) structural problems within the justice systems that affect the processing of cases of violence against women such as the absence of police stations, courts and forensic medicine units in the interior of the country where there are high levels of violence; d) Inadequate coordination among the institutions responsible for responding to women; e) Lack of protection and legal guarantees to protect the dignity and safety of women and witnesses during judicial proceedings; f) Lack of legal norms to deduct administrative, labour, criminal or civil liability for justice operators acting negligently in cases of violence against women; g) Lack of autonomy of prosecutors or lack of independence of judges when administering justice; h) Normalisation of violence against women by justice officials; i) Corruption in justice institutions; j) complicated and tedious legal procedures; k) Replacing the civil investigative police with a military investigative police whose officers have not been trained to investigate.

80. Despite the fact that the Penal Code was reformed to incorporate the crime of femicide⁹⁴, it has been little used; only five (5) fiscal requirements and one (1) conviction are known to have been made⁹⁵.

d. The violation of sexual and reproductive rights

81. In Honduras, one in four women aged 15 to 19 years has had at least one child⁹⁶. This Latin American country is the second highest in numbers of teenage pregnancies, with a rate of 108 births per 1,000 women aged 15 to 19 years⁹⁷, with early motherhood more acute in rural areas. Of all births reported in the University Teaching Hospital, approximately 34% are adolescents aged 12-18 years. It is estimated that in Honduras 26.1% of women between 20 and 24 years old report having

⁹³ Created in 1999 under Decree No. 232-98, this is the mechanism to ensure the exercise and protection of women's rights. Several agencies have expressed concern about the lack of resources allocated to the National Women's Institute and its assignment to the Department of Development and Social Inclusion, among other issues.

⁹⁴ On March 15, 2013, the reform of the Penal Code was published in the Official Gazette, to include the crime of femicide, as a special offence. For this, Legislative Decree 144-83 was modified, which indicates the reform of the Penal Code and the inclusion of Article 118-A.

⁹⁵ Femicide of Maria Antonia Perez Castellanos, member of the Network of Women in Santa Barbara and the Women's Forum for Life. Judgment in the First Court of Letras against Gerardo Barahona.

⁹⁶ UNFPA, Report on experiences and stories about teenage pregnancy An approach to cultural, social and emotional factors, 2015

⁹⁷ United Nations Fund for Children (UNICEF).

given birth as minors and 75% comes from rural areas⁹⁸. According to the Special Prosecutor for Children, 24% of these pregnancies result from rape.

82. In this regard, it is serious that the use, promotion, sale and marketing of emergency contraception has been prohibited since October 2009⁹⁹. It is almost one year since the National Congress was presented with a new initiative aimed at legalising emergency contraceptive pills (ECPs)¹⁰⁰. This situation is even more worrying given the high instance of rape; according to preliminary records for 2015 from the office of Doctors Without Borders in Tegucigalpa, 14% of women treated for rape resulted positive in pregnancy tests.

83. The risk to the physical and mental integrity of women is compounded by the absolute prohibition that exists in Honduras on abortion, which is illegal in all forms¹⁰¹. The link between unsafe abortions, maternal mortality and morbidity is solidly proven¹⁰². Records of maternal deaths in Honduras indicate that at least 5% of these deaths are associated with the practice of unsafe abortions¹⁰³. Between 2012 and 2013 fifteen (15) women died from this cause; 11 of them came from rural villages and 10 had little formal education, which seems to indicate that unsafe abortion disproportionately affects the poorest women.

84. 47.4% of expenditures in public hospitals for abortion occur in women aged 15 to 24 years and the Department of Francisco Morazán, serves 17% of all cases¹⁰⁴. There is concern that 102 girls under 15 were discharged for abortion in 2013, which may indicate sexual violence¹⁰⁵. It is important to note that the draft version of the new Penal Code still criminalises abortion in all its forms. During the legislative debate there have been worrying statements from Deputies of Congress who say that this “is an issue that should not be decided by Congress”¹⁰⁶.

3. Torture against LGBTI persons (List of Issues, questions X and other aspects related to Articles 1, 2, 12, 13 and 16 of the Convention)

a. The situation of LGBTI persons

85. Information recorded by civil society organisations shows that from the years 2009 to date 224 violent deaths have been recorded in the LGBTI community of which 129 were gay men, 18 lesbians

⁹⁸ 2014 Masters degree in Demography and Development from the National Autonomous University of Honduras (UNAH). 2014

⁹⁹ AGREEMENT No. 2744, issued on October 21, 2009, by the Ministry of Health

¹⁰⁰ MERCADO, Julisa. “Rechazan píldora del día después en Honduras”. El Heraldo. 7 April, 2014. Accessible at: <http://www.elheraldo.hn/pais/574508-214/rechazan-pildora-del-dia-despues-en-honduras>

¹⁰¹ Honduran Penal Code, articles 126, 127, 128.

¹⁰² See WHO, Abortion without risks: Technical guide and policies for health systems, Geneva, 2003, p. 12, available at: http://www.who.int/reproductive-health/publications/es/safe_abortion/text_es.pdf; and OMS, Global and Regional estimates of the incidence of unsafe abortion and associated mortality in 2003, 5th edition, available at: http://who.int/reproductivehealth/publications/unsafeabortion_2003/ua_estimates03.pdf.

¹⁰³ Hospital records of maternal deaths. Ministry of Health, 2012-2013.

¹⁰⁴ Centre for Women’s Rights (*Centro de Derechos de Mujeres*). Observatory of Human Rights of Women. Secret voices, a review of Abortion in Honduras. September 2015. Available at: http://www.derechosdelamujer.org/tl_files/documentos/aborto/Aborto-Honduras-2015.pdf

¹⁰⁵ Ibid

¹⁰⁶ See notes at: <http://www.elheraldo.hn/pais/961690-466/piden-al-congreso-despenalizar-el-aborto-la-calumnia-e-injuria-en-honduras> and <http://televiscentro.hn/nota/2016/6/9/iglesia-cat%C3%B3lica-en-contra-de-la-despenalizaci%C3%B3n-del-aborto-en-honduras>

and 77 transsexuals. 2012 and 2015 were the years with the highest number of lethal attacks, focused mainly in the cities of San Pedro Sula and Tegucigalpa¹⁰⁷.

86. According to information gathered by organisations, of the violent deaths recorded in 2010-2014, amounting to more than 141 cases, only 30 cases have brought to justice¹⁰⁸. Of these cases, nine have reached convictions; in ten, the suspects have been arrested and six of these are awaiting public trial; and in four cases, there have been acquittals including two where the writ for constitutional protection filed by the Public Ministry had not yet been resolved. In this context, the IACHR has urged the State of Honduras to carry out thorough due diligence and to prosecute and punish those responsible for killings and other acts of violence against LGBTI persons¹⁰⁹.

b. Intensification of attacks against life and aggression against trans people

87. It is of serious concern that in the last two years, assaults and murders of trans people have increased. Marlon Arnulfo Serrano Tejeda was assassinated on February 22, 2015, in San Pedro Sula; the young trans man Christian de Jesús García Hernández, was killed on July 4, 2015 in Potrerillos, Department of Cortes; Alejandra Padilla, a member of the Coalition against Impunity, was killed on April 15, 2016 in San Pedro Sula. In addition, assaults committed by police are directed more frequently against trans people, mainly due to their work as sex workers, where they are the victims of constant harassment, verbal abuse, arbitrary detentions, and different forms of cruel treatment by civilian and municipal police¹¹⁰.

c. Assaults by police

88. Some fifty complaints have been registered in which LGBTI people were deprived of their freedom or physically and sexually abused by police officers because of their sexual orientation or gender identity¹¹¹. In most cases the people being detained are assaulted and released to the patrols, in one of the cases reported, the victim smashed his head against a glass door, another was raped by his cellmates, on police orders during his arrest¹¹². The organisations have identified the existence of the aforementioned Law on Police and Coexistence as a factor facilitating the commission of hate crimes by state agents, as in Articles 101, 131 and 142 this law allows police to “temporarily retain”¹¹³ people, mostly affecting women and transgender sex workers.

89. There is also concern about the practices of the Municipal Police in the city of San Pedro Sula where the existence of detention cells at its old headquarters has been documented - in fact in the bathrooms, as the main building has been demolished - where LGBTI persons they are taken and imprisoned, often with use of violence. A municipal police officer interviewed in the place of the clandestine cells admitted that when they bring in transvestites “I ride them with a lasso”¹¹⁴. The Municipal Police of San Pedro have internal rules within the Municipal Police, which prohibit prostitution in certain central areas of the city. According to the Organisation *Arcoiris*, this regulation is used by agents to carry out arbitrary arrests, transferring people to the detention cells mentioned above and subjecting them to different types of cruel, inhuman and degrading treatment.

¹⁰⁷ Observatory on Violence, Catrachas Lesbian Network (*Red Lésbica Catrachas*).

¹⁰⁸ Report for the Rapporteur on Extrajudicial Killings by CEPRES organisations (Centro de Educación y Prevención en Salud Sexualidad y SIDA), Crisálidas Trans de Villanueva, Colectivo Unidad Color Rosa, Asociación Feministas Trans

¹⁰⁹ IACHR, Report on the Human Rights Situation in Honduras, December 31, 2015, paras. 137-13.

¹¹⁰ Arcoiris organisation. Report on torture and forced disappearances in the Honduran LGBTI community, pages 5 and 6.

¹¹¹ Arcoiris organisation. Report on torture and forced disappearances in the Honduran LGBTI community, pages 5 and 6.

¹¹² *Ibid*, pages 6-7.

¹¹³ Imprisonment for up to 24 hours for violating modesty, morality and decency, protagonising scandals, for causing annoyance, or those who by their immoral behaviour disturb the tranquillity of their neighbours.

¹¹⁴ Arcoiris organisation. Report on torture and forced disappearances in the Honduran LGBTI community, page 10.

d. Abuses in prisons

90. The regulations governing prisons lack differentiated measures for LGBTI persons guaranteeing equal treatment to heterosexual persons deprived of liberty. Various violations of the rights of LGBTI people have been documented that constitute practices of torture and cruel, inhuman and degrading treatment, including: 1) Repression of gay sexual orientation under threat by prison officer of making this known to the other prisoners; 2) inhuman and degrading treatment with sexual abuse and exposure to nakedness while detained in prison as a social punishment for gay sexual orientation.

91. Also of concern are restrictions on conjugal visits for members of the LGBTI community, based on the provisions of the Regulations of the Prison System Act, which specifically stipulates that such conjugal rights may only be exercised “between people of different sexes (...)”¹¹⁵. The practice of isolation in maximum-security cells has also been documented, where LGBTI prisoners are deprived of contact with the rest of the prison population under the justification of providing them with security because of ill-treatment previously suffered at the hands of their cellmates.

92. The following discriminatory acts have been documented against women deprived of their liberty because of their sexual orientation¹¹⁶: a) isolation for three days in a punishment cell because of sexual orientation for simply entering into sexual relations between women; b) Denial of the right to conjugal visits for lesbian women; c) Sexual harassment by the prison coordinators towards women with greater emphasis on lesbians; d) torture, cruel, inhuman and degrading treatment, against homosexuals and transsexuals; e) Use by men deprived of freedom of lesbian and heterosexual women as shields in conflict situations in prisons; f) lesbian and heterosexual women also suffer from restrictions on satisfying their physiological needs, which threatens their health.

e. Discriminatory attitudes and hate speech

93. There is deep concern about public statements made by ministers of faith that promote discrimination against LGBTI people and establish hate speech. Such is the case of the religious leader Evelio Reyes, pastor of the “Abundant Life” church who sent a message through various media channels calling people “a threat to society and future generations” due to their sexual orientation and gender identity¹¹⁷.

94. In addition, publications have been identified on two digital media stations, namely latribuna.hn and elheraldo.hn that have contributed to a context of hostility towards LGBTI people due to their massive transmission of hate messages¹¹⁸. Messages like “women dream of being male and men dream of being ladies”¹¹⁹ demonstrate a hetero-patriarchal pattern encouraging the social rejection of women and men with a non-dominant gender identity.

¹¹⁵ Article 269, paragraph 1 of the General Reglamentation of the Law on the National Penitentiary System by Executive Agreement No. 322-2014; See also Chapter XVII, 2nd Section on conjugal visits, Articles 272, first paragraph and Article 273 of the Applicable Limits on Conjugal Visits, page 189 MNP Laws and Regulations - CONAPREV AND NATIONAL PRISON SYSTEM. In addition, Article 274 of the same section on Requirements for conjugal visits.

¹¹⁶ These discriminatory acts against women based on gender and the sexual orientation of lesbian women are documented in the recording of testimony from a former prisoner and in the “ANALYSIS OF VIOLATIONS OF HUMAN RIGHTS ON PRISONERS WITH LESBIAN SEXUAL ORIENTATION IN HONDURAS”. Information sources by Cattrachas to: Judicial Officers, SDHJGD and the Human Rights Department of the Penitentiary Institute.

¹¹⁷ CATTRACHAS. “Language not protected by freedom of expression”, research available at: www.cattrachas.org

¹¹⁸ Ibid.

¹¹⁹ Ibid.

4. Torture against human rights defenders (List of issues, question XXXVI)

a. General context

95. In its report, the State lists a number of programs and plans aimed at the “Protection of Human Rights Defenders, Justice Operators, Journalists and Social Communicators”; however, it does not refer to the evaluation of the effectiveness of these measures. According to ERIC¹²⁰, Honduras is the country with the largest number of precautionary measures granted by the IACHR: with 426 beneficiaries, including 16 human rights defenders who were subsequently killed between 2001 and 2016¹²¹.

96. On 15 May 2015, the *Law on the Protection of human rights defenders, journalists, social communicators and justice operators* was approved by the National Congress of Honduras. However, this law has shortcomings and weaknesses that limit its implementation and impact¹²².

97. After months of waiting, on June 3 the Government presented the draft Regulation of the *Law*, which is still pending ratification by Congress. The process of formulating the regulation did not take into account previous recommendations and did not gain a broad and representative participation of defenders¹²³.

98. Moreover, the formulation process for the regulations occurred in a political context in which statements made by the President of the Republic¹²⁴ and senior government officials work against those who defend human rights and work before international human rights bodies¹²⁵. Such public stigmatisation has put human rights defenders at even more risk.

99. In May 2015, in light of the first series of these governmental pronouncements, the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on the situation of human rights defenders sent a letter to the government of Honduras in which they expressed their concern about these stigmatising statements.

¹²⁰ Team for reflection, research and communication in the Society of Jesus.

¹²¹ Op. Cit. PBI (2016), p.30. PBI, Honduras, Economic, Social and Cultural Rights (June 2016). According to the Team for Reflection, Research and Communication (*Equipo de Reflexión, Investigación y Comunicación* - ERIC) PBI meeting held with members of ERIC, March 25, 2016.

¹²² For example, the weak coordination between government bodies applying protective measures and the four weeks that are set to perform a risk review, do not allow for the protection of defenders who are in danger.

¹²³ In August 2015, in a public letter to the Government of Honduras, a group of national and international organisations called for the adoption of the regulations and implementation protocols to be postponed, requesting a widely consulted, inclusive and open process with all stakeholders in its implementation and with civil society. See:

<https://honduprensa.wordpress.com/tag/ley-para-la-proteccion-de-los-Personas-Defensoras-de-derechos>

¹²⁴ International Service for Human Rights, *Honduras: End defamation of human rights defenders, guarantee their security and legislate for their effective protection*, ISHR, April 2015.

“Presidente Hernández lamenta que hondureños vayan a EEUU y Europa a querer poner en mal al país”, see <http://www.presidencia.gob.hn/?p=7126>

“Presidente Hernández lamenta que hondureños vayan a EEUU y Europa a poner en mal al país”, *La Tribuna*, 22 August 2015, see: <http://www.latribuna.hn/2015/08/22/presidente-hernandez-lamenta-que-hondurenos-vayan-a-eeuu-y-europa-a-poner-en-mal-al-pais/>

“Presidente de Honduras: FF AA seguirá en tareas de seguridad”, *El Heraldo*, 22 August 2015, at: <http://www.elheraldo.hn/pais/871640-214/presidente-de-honduras-ff-aa-seguir%C3%A1-en-tareas-de-seguridad>

¹²⁵ “Gobierno investigará a extranjeros infiltrados en protesta de Copinh”, *La Tribuna*, Honduras. See: <http://www.latribuna.hn/2016/05/09/gobierno-investigara-extranjeros-infiltrados-protesta-copinh/> (Consulted on 9 May 2016)

“Honduras: gobierno castigará extranjeros que apoyan movilización social”, *El Libertador*, Honduras. See:

<http://www.web.elibertador.hn/index.php/noticias/nacionales/1334-gobierno-hondureno-estigmatiza-movilizaciones-populares>

b. Attacks against the right to life and personal integrity

i. Violations of the right to life

100. Honduras is the most dangerous country ‘per capita’ for human rights defenders. Between 2002 and 2014, 111 environmental defenders were killed. In 2015, seven human rights defenders were killed¹²⁶. According to the latest report of the IACHR from 2010, the Commission has information on 22 cases of defenders killed¹²⁷. These include: René Martínez of the LGBTI community in the city of San Pedro Sula, killed on June 3, 2016; Noah Nelson García COPINH leader, assassinated March 15, 2016 in Rio Chiquito, Cortés; Berta Cáceres (already mentioned above)¹²⁸; Margarita Murillo¹²⁹, founder of the Front of Small Producers’ National Unity in Honduras (*Frente de Unidad Nacional Campesina de Honduras - FENACAMH*) and the National Confederation of Rural Workers (*Central Nacional de Trabajadores del Campo - CNTC*), murdered on 27 August 2014¹³⁰; and Nahún Eli Palacios Arteaga, news director for Television Channel 5 in Aguán, who had precautionary measures granted by the IACHR¹³¹, killed on March 14, 2010.

101. According to the 2015 Report of the IACHR on Honduras there have been 2 disappearances; 15 kidnappings; 88 cases of theft of information and 53 acts of sabotage to vehicles used by human rights defenders. These figures include the following cases:

- a) On May 2, 2016, independent journalist Félix Antonio Molina, director of *Alternativas en Comunicación ALTER-ECO*, was attacked by unknown assailants on two different occasions in Tegucigalpa. On the first occasion, he was assaulted and shot at from a motorcycle, and just a couple of hours later, Molina was the victim of a new attack by two men, who stole his cell phone and he received four gunshot wounds, two on each leg.
- b) On 1 September 2015, journalist Dunia Montoya¹³², while covering a violent eviction in El Progreso, Yoro, was surrounded by a group of police officers who destroyed her video camera and she was also thrown to the ground and constantly hit in various parts of her body, including her face¹³³.

c. Criminalisation and its effects

102. According to information received by the IACHR in Honduras from 2010 to 2015 “there are 3,064 cases of criminalisation, as a result of misuse of criminal law to intimidate human rights defenders”¹³⁴. In the context of discussions around a new Penal Code, various crimes against honour,

¹²⁶ “Honduras trampa mortal para defensores del medio ambiente”. *El mundo*, 17 March 2016, see <http://www.elmundo.es/internacional/2016/03/17/56eae460ca4741180a8b4664.html>

¹²⁷ IACHR, Report on the Human Rights Situation in Honduras, 2015, para. 43. IACHR, Report 2015, Situation of Human Rights in Honduras, para. 43, p. 28.: CIDH, available at: <http://www.oas.org/es/cidh/informes/pdfs/Honduras-es-2015.pdf>

¹²⁸ Inter-American Human Rights Commission, Precautionary Measure 196/09. PM 196/09 of June 29, 2009

¹²⁹ PBI Honduras. Bulletin, January 2015. Available at:

http://www.pbi-honduras.org/fileadmin/user_files/projects/honduras/Publications/B02-13-ENG-rev.pdf

¹³⁰ Op. Cit. UPR-Honduras Platform (2016). Taken from the Alternative Report to the second report of the State of Honduras for consideration by the DESC Committee during the 58th session in May 2015.

¹³¹ IACHR, Precautionary Measure 196/09.

¹³² Montoya is the coordinator of the organisation Community Communication (*Comunicación Comunitaria - COMM*), part of the board of the Community Media Association of Honduras (FMFH).

¹³³ <http://www.pasosdeanimalgrande.com/index.php/en/amenazas-a-la-libertad-de-expresion/item/994-periodista-dunia-montoya-en-la-mirada-de-los-policias-se-notaba-la-sana-y-el-odio>

¹³⁴ Op. Cit. IACHR, Report 2015, Situation of Human Rights in Honduras, para. 43, p. 28. At: <http://www.oas.org/es/cidh/informes/pdfs/Honduras-es-2015.pdf>

including slander, libel and defamation, have been used by judges and authorities to restrict the right to freedom of expression.

103. One example of this is the case of women's rights defender Gladys Lanza, coordinator of the Visitación Padilla organisation, who was sentenced to 1 year and 6 months' imprisonment in 2015 for the crime of defamation.

d. Torture against indigenous and small-scale farming human rights defenders

104. The collective defence of land rights and the environment has been most frequently subjected to violence and intimidation, including killings, threats and criminalization, with the misuse of criminal law. Such is the case of the offence "land usurpation", whose penalties increase in the draft Penal Code being discussed currently. This criminal offence is used against small-scale producers and farmers fighting for their rights to food and to the earth.

105. One illustrative example is the case of Irma Lemus, land rights defender from Bajo Aguán, and subcoordinator of the Permanent Human Rights Observatory of Bajo Aguán (OPDHA), who was accused of usurpation of land, cattle theft, damages against the Livestock Fund, charges that were dismissed on 10 December 2014. On 29 November 2015, Irma Lemus was, along with her husband, victim of an attack, both were hit by a white vehicle with unknown persons on board, in the city of Tocoa, Colón department.

106. Criminalisation is also observed against indigenous communities, such as in the case of the Tolupán people, a community that has also been the victim of killings of members of the community who were previously prosecuted for protesting and denouncing the plundering of their territory.

107. On August 25, 2013, three Tolupán indigenous defenders from the Locomapa community: María Enriqueta Matute, Armando Fúnez Medina and Ricardo Soto Fúnez belonging to the Broad Movement for Dignity and Justice (*Movimiento Amplio por la Dignidad y la Justicia* - MADJ)¹³⁵, were killed in an armed attack after a peaceful protest in the village of San Francisco Campo.

108. On April 5, 2015, Luis de Reyes Marcia was killed shortly before he had filed a police report after receiving death threats. He and his family were beneficiaries of precautionary measures from the IACHR¹³⁶.

109. On July 18, 2015, indigenous defender Erasio Vieda Ponce was assassinated, in the community of Las Brisas de Locomapa, Yoro.

5. Torture used as a way to repress social protest and mobilisation

110. In recent years, various sectors of the Honduran population have actively participated in demonstrations and social protests, both locally and nationally. In this context indigenous people, small-scale producers, social and community leaders and students have been victims of violations of the right to publicly and openly demonstrate their views and discontent with government policies,

¹³⁵ Honduras: Murder of indigenous defenders of environmental rights Maria Enriqueta Matute, Armando Fúnez Medina and Ricardo Soto Fúnez, August 8, 2013. See: <http://protectionline.org/2013/08/30/killing-of-indigenous-environmental-rights-defenders-ms-maria-enriqueta-matute-mr-armando-funez-medina-and-mr-ricardo-soto-funez/>

¹³⁶ Op. Cit. *How Many More?* Global Witness, April 2015

when violent acts, theft, assault of a sexual nature and acts of intimidation have been used against them.

a. Excessive use of force by the police, military and private security companies

111. In the concluding observations of the Committee against Torture to the State of Honduras in 2009, the Committee against Torture expressed concern about the frequency of complaints about excessive use of force during arrests by the public security forces¹³⁷.

112. In its second periodic report to the Committee, the State of Honduras indicates the existence of a Manual on Use of Force (which determines in which cases it is necessary and when to avoid excesses by law enforcement officials¹³⁸), Article 31 of the Organic Law on the National Police¹³⁹ and the draft law that will regulate the use of force by the Police¹⁴⁰.

113. Excessive use of force is used as a method to control and detain those exercising their right to peaceful freedom of assembly and social protest, and during evictions.

Peaceful demonstrations

114. During the months of April to June this year, the Coalition against Impunity (*Coalición Contra la Impunidad*) observed that during grassroots demonstrations at least seven episodes of repression had been recorded, which can be divided into three groups:

a) Against grassroots and indigenous organisations

115. On April 15, 2016, during the International “Berta Cáceres” Meeting, individuals assaulted participants and international delegations attending the Rio Blanco district, department of Santa Bárbara¹⁴¹. On May 9, 2016, members of COPINH demonstrated in front of the Presidential House in Tegucigalpa to demand a government response to the proposed installation of an international commission to investigate as part of the right to truth the murder of defender Berta Cáceres. The demonstration was violently repressed by members of the Presidential Guard and the Special Cobra elite unit of the Honduran police. As a result of repression six COPINH members (four adults and two children) were injured¹⁴². It is important to note that the COPINH has been granted precautionary measures by the IACHR.

b) Against secondary school and university students

¹³⁷ Op. Cit. CAT / C / HND / CO / 1, Consideration of reports submitted by states parties under article 19 of the convention. Concluding Observations of the Committee against Torture. Recommendation 14: Remand, p. 5. “adopt effective measures to send a clear and unambiguous message to all levels of the hierarchical structure of the security forces that torture, ill-treatment, and excessive use of force are **unacceptable** (...) and ensure that law enforcement officials use force only when strictly necessary and to if indispensable to fulfil their duties”

¹³⁸ UN document CAT / C / HND / 2, “Consideration of reports submitted by States parties under Article 19 of the Convention under the optional reporting procedure. Second periodic reports of States parties due in 2013, Honduras”, para. 238.

¹³⁹ Ibid, para. 239.

¹⁴⁰ Ibid, para. 240.

¹⁴¹ See joint statement of the Observatory for the Protection of Human Rights Defenders, a joint OMCT and FIDH program and the International Platform against Impunity April 18, 2016 at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/honduras/2016/04/d23718/>

¹⁴² See COPINH statement of 9 May 2016, Accessible at: <https://www.copin.hk.org/article/copinh-comunicado-frente-la-represion-violenta-el-/>

116. On 6 May 2016, secondary school students from San Pedro Sula demonstrated against the literacy program. The National Police together with the armed forces broke up the demonstration violently. As a result, three adult students and two minors under a special procedure, were prosecuted for the crime of conspiracy with intent to harm public goods¹⁴³.

117. On 26 May and 1 June 2016, the police and military tried to evict a takeover of the facilities of the National Autonomous University of Honduras (UNAH) in Tegucigalpa, leaving as a result several students beaten and wounded, including Misael Lobo, an anthropology student at the university¹⁴⁴.

118. On July 1, 2016 police officers finally evicted the students from UNAH. It has been reported that excessive use of force was used, with several students injured. Twenty-four students were arrested, two of them minors. The 22 adult students are accused of various crimes including sedition. The newly established Office of the United Nations High Commissioner for Human Rights issued a statement on July 4, 2016 expressing “concern about the prosecution of students in relation to the student protests and the eviction of the premises of the UNAH in Tegucigalpa and other university centres in the country”¹⁴⁵.

c) Against people in rural areas of the country

119. On 8 and 11 June, 2016, residents of the municipalities of El Progreso, Yoro and San Manuel in the Cortés department, demonstrated against the installation of a toll booth being built on the road between the two municipalities, which led to the dismantling of the demonstration by tear gas and shots fired into the air by state security forces¹⁴⁶ and the use of a pressurised water cannon against one person¹⁴⁷. As a result of this repression five people, two of them women, suffered serious injuries. One of the victims, Inmer Gerardo Chevez, is a beneficiary of precautionary measures from the IACHR.

Eviction of civilian populations

120. Cruel, inhuman and degrading treatment that occurs during forced evictions of civilian populations is particularly worrying, where a generalised pattern has been seen, including: the burning of houses; the destruction of health centres and schools; verbal abuse and use of weapons in an intimidating way by security agencies with the aim of terrorising people living in these areas. The Judges who consider these acts, who usually belong to the judiciary, do not take them seriously

121. Evictions can be divided according to the population group they affect: a) against small-scale producers, indigenous and Afro-descendant populations due to land concessions granted by the State of Honduras to extractive industries; b) those which occur in major cities in the country: in

¹⁴³ Interview with Merary Avila, legal representative of the five high school students who were prosecuted

¹⁴⁴ Interview with Kenia Oliva, legal representative of the student movement (MEU)

¹⁴⁵ More information on news of El Heraldo, accessible at <http://www.elheraldo.hn/pais/976746-466/preocupa-procesos-contra-estudiantes-de-la-unah-al-alto-comisionado-de-la>

¹⁴⁶ “Protest toll escalates, state responds with repression”, Press release, Radio Progreso, June 8, 2016. accessible at: <http://radioprogreso.hn.net/index.php/comunicaciones/noticias/item/2944-protesta-contra-peaje-se-intensifica-estado-responde-con-represi%C3%B3n>

¹⁴⁷ See video of COPINH repression involving around 50 people. Available at: <http://www.reluita.org/index.php/es/honduras/item/7593-violenta-represion-contra-el-copin>

marginalised neighbourhood areas known as “invasions”¹⁴⁸. It is worrying that it is the military that usually intervenes to evict the population, contrary to what is stipulated in the Constitution.¹⁴⁹

b. Arbitrary detentions, extrajudicial executions and enforced disappearances (List of Issues, questions II, XXX)

122. The State of Honduras has a historical debt to the victims, the survivors and the families that have been suffering the consequences of enforced disappearance. Emblematic cases like those of Velázquez Rodríguez and Godínez Cruz¹⁵⁰ remain unpunished, and the State has not complied with guarantees of non-repetition, including the implementation of a register of detainees¹⁵¹ and research and truly effective justice as restorative and preventive measures¹⁵².

123. Although the State incorporated the crime of enforced disappearance into the Penal Code in March 2012, had failed to establish that this is a crime of a continuous nature that only ceases when the whereabouts or fate of the disappeared person is discovered¹⁵³.

124. Between 2010 and 2015, the Committee of Relatives of the Detained and Disappeared in Honduras (*Comité de Familiares Detenidos y Desaparecidos de Honduras*) has filed 17 complaints of enforced disappearance before the Public Ministry without any being resolved. Such is the case of **Donatilo Jiménez**, a member of the Union of Workers of the UNAH¹⁵⁴, who disappeared on April 8, 2015 within the premises of the Atlantic Regional University Centre in the city of La Ceiba. According to the information received, Donatilo Jiménez had had altercations with security guards in the university and had received death threats since 2011.

6. Status of family members of Honduran migrants who have been disappeared and executed on the migration route and the absence of mechanisms to search for them and investigate the crimes in their country of origin

125. Honduras has the highest rates of migration in Central America¹⁵⁵. In recent years, the migration route has become particularly dangerous, especially in Mexico, where migrants have been victims of extrajudicial executions and torture, as evidenced in several massacres in Mexico that included Honduran migrants¹⁵⁶.

126. Despite this serious situation, there are no mechanisms to search and / or investigate these situations that can be used by the families of migrants in Honduras. Relatives of missing people have no mechanisms available to activate search processes and request investigations in Honduras

¹⁴⁸ Pejorative regionalism used to name people who recover land in order to make a living in urban areas.

¹⁴⁹ Constitution of the Republic of Honduras, art. 274.

¹⁵⁰ Inter-American Court of Human Rights, *Velásquez Rodríguez vs Honduras* and *Godínez Cruz vs Honduras*.

¹⁵¹ Juan Humberto Sánchez, Op.Cit, para. 189.

¹⁵² Velásquez Rodríguez, Op. Cit. para. 177.

¹⁵³ Decree 49-2012 of 16 July 2012. Accessible at: <https://cambiogeneracional.files.wordpress.com/2012/08/decreto-49-2012-reforma-por-adicic3b3n-cc3b3digo-penal-art-333a-desapareicic3b3n-forzada.pdf>

¹⁵⁴ IACHR, PM147-15.

¹⁵⁵ According to former Honduran Foreign Minister Alden Rivera, “no country in the region has the levels of migration that Honduras has” http://www.ei-ie-al.org/index.php?option=com_content&view=article&id=305:honduras-la-nacion-centroamericana-con-mas-emigracion&catid=91:articulos&Itemid=46

¹⁵⁶ That of 72 migrants in San Fernando Tamaulipas, Mexico, on August 25, 2010; 47 clandestine graves with 193 remains in San Fernando, Tamaulipas, Mexico, in April 2011; 49 torsos found in Cadereyta, Nuevo Leon, Mexico, in May 2012.

through intergovernmental coordination. The Directorate of Consulate Affairs in the Ministry of Foreign Affairs and the Public Ministry act with either complete indifference or use degrading and revictimising treatment to people searching for their loved ones, accentuating the grief of relatives.

127. Consequently, the relatives of migrants who are missing, executed or detained on the migratory route live in a situation of continuing uncertainty and helplessness. In addition to their inability to search for their missing relatives, relatives of missing migrants also face the problem of delays and inaccuracies in the repatriation of their loved ones' remains when they are found.

IV. FAILURE TO INVESTIGATE CASES OF TORTURE AND ILL-TREATMENT AND TO PROVIDE REDRESS TO THE VICTIMS (List of Issues, questions related to Articles 12, 13 and 14)

130. The data submitted by the State on the prosecution and punishment of torture and ill-treatment in Honduras during the 2009-2013 period indicates a total of 65 fiscal requirements and 4 convictions for torture and ill-treatment noted by the State in its report (and Annex X). Unfortunately, the absence of a public register for complaints of torture only enables a limited analysis of these figures, since it is not possible to track the number of cases that have lead to criminal investigations and convictions. However, other sources of information can be used.

131. In 2015, CONADEH registered 118¹⁵⁷ complaints of torture and cruel, inhuman or degrading treatment. Meanwhile, according to a study conducted between December 2013 and October 2014 by the CPTRT in the cities of Tegucigalpa and San Pedro Sula, six out of ten detainees have been subjected to torture or cruel, inhuman or degrading treatment, either during the arrest, the transfer or at the police station.

132. There are many obstacles to the reporting and investigation process into these events, which discourages complainants and generates impunity. These obstacles include inadequate physical spaces to assist victims, lack of knowledge of the Istanbul Protocol, misplaced records, reversal of the burden of proof, and threats to those who report these crimes.

The Special Prosecutor for Human Rights of the Public Prosecution Service (*Fiscalía Especial de Derechos Humanos - FEDH*) (List of issues, question XXVIII)

133. The FEDH has neither the necessary resources nor the autonomy to promptly and effectively investigate allegations of torture and ill-treatment, or other human rights violations.

¹⁵⁷ Sum of complaints recorded as 1) torture, 2) torture in prisons, 3) torture by owners 4) torture, inhuman treatment 5) cruel, inhuman or degrading treatment 6) inhuman or degrading treatment in prisons. Cases amount to more than 150 if allegations of disproportionate use of force are included. See CONADEH, 2015 Annual Report, p. 34 and 35

134. The FEDH shortcomings include the following: a) it does not meet the minimum requirements to allow some privacy between the prosecutor and the complainants, the witnesses or the victims, and does not provide an appropriate space for interviews with vulnerable people such as children or women victims of sexual violence; b) it does not have either an electronic database for the proper management and monitoring of the cases or a safe space to store the most sensitive information; c) it does not have a budget for capacity-building or a capacity-building plan specialised in human rights in its policy; d) there is no criminal prosecution policy to guide investigations into human rights violations. The former United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, commented on these facts in her observations subsequent to her official visit to Honduras in 2012¹⁵⁸.

135. The use of the legal and jurisprudential tools offered by the Inter-American and the Universal Human Rights System also remains a pending challenge for the institutions of the justice sector.

136. With regards to redress provided to victims of torture, it is important to point out the total lack of programs or measures taken by the State beyond civil action for the compensation of victims, for which there is no data explaining the results. It is noteworthy that the State recognises the neglect of victims for financial reasons, which cannot be used to justify, in any case whatsoever, the breach of the obligation under Article 14 of the Convention.

V. RECOMMENDATIONS

137. In light of the facts and concerns raised, the organisations that send this report to the Committee against Torture submit for its consideration the following recommendations:

Legal and institutional context

137.1. Amend the Criminal Code to ensure that the definition of torture and the penalty provided meet the requirements of the Convention against Torture.

137.2. Establish the non-applicability of statutory limitations for crimes of torture.

137.3. Repeal the provisions of the Law on Police and Social Coexistence that allow for a high scope of discretion for arrests in the scope of actions that contravene public morality.

¹⁵⁸ The FEDH is being affected by political interference, lack of efficiency and lack of resources, and personnel working in the office have been threatened. For this reason, the Rapporteur recommended seeking protection mechanisms “in order to protect the Special Prosecutor for Human Rights from any political interference and to ensure the physical safety of prosecutors, particularly when they investigate cases of alleged police responsibility”

137.4. Provide adequate resources and training to the National Police to enable it to ensure the public safety of the Honduran population, its inherent and essential function.

137.5. Gradually withdraw the armed forces from public security tasks. In the meantime, the Military Police must follow a strict policy for transparency in information for citizens.

137.6. Ensure independent and effective supervision of the judicial and institutional legality of the actions of Military Police and of all security forces involving military personnel.

137.7. Investigate independently, impartially, promptly and effectively any human rights violation committed by the Military Police.

137.8. Amend the Law on the Control of Firearms, Ammunition, Explosives, and other Similar Weapons, to reduce the number of firearms that civilians can legally own and limit the number of weapons that private security companies can own and use.

137.9. Ensure proper control and supervision of private security companies in Honduras.

137.10. Enforce in practice the ban on active members of the police and the military from participating in private security companies, and punish those who violate this prohibition.

137.11. Ensure judicial independence in the process of appointment and promotion of judges according to international standards.

137.12. Proceed, as soon as possible, with the adoption of a new Law on the Judicial Council and the Judicial Service that will allow for the creation of an independent and impartial body.

137.13. Ensure that the new Judicial Council makes the appointment and selection of judges through a transparent and fair recruitment process that allows access to the judiciary based on merit and suitability.

137.14. Promote performance assessment and administrative penalty proceedings for judges in accordance with due process and respect for fundamental rights, especially the right to dignity and non-discrimination.

137.15. Comply fully with the reparations provided in the judgment in the case of *López Lone and others vs. Honduras*, especially the provisions related to the reinstatement of judges Adán Guillermo López Lone, Luís Alonso Chévez de la Rocha and Judge Tirza Flores Lanza, as a commitment to strengthen judicial independence and respect for the rights of judges.

137.16. Ensure that CONADEH assumes its role to promote and protect human rights by investigating with due diligence complaints received, handling them until the issuing of the corresponding recommendations, and following-up on these complaints until the relevant authorities fully complied with them.

137.17. Provide CONADEH with the resources and conditions that will enable them to work independently and effectively.

137.18. Ensure transparency and public access to all reports and recommendations by CONADEH.

137.19. Implement article 22 of the Convention against Torture.

137.20. Ratify the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

137.21. Ratify the Inter-American Convention to Prevent and Punish Torture.

Persons deprived of liberty

137.22. Increase through the judiciary the use of alternative measures to pre-trial detention and in case this is needed, ensure that the Minimum Standard Rules for the Treatment of Prisoners are met.

137.23. Fully apply the judgment of the Inter-American Court in the case of *Pacheco Teruel and others vs. Honduras*, successfully implementing the general measures aimed at the prison system, which are essential to guarantee the life and physical integrity of prisoners.

137.24. Revoke the resolutions of the Board of the National Penitentiary Institute, which authorises the creation of preventive prisons in military facilities.

137.25. Amend article 184 of the Criminal Procedure Code back to its previous state in order to provide alternative measures.

137.26. Amend or repeal the Labour Law for Persons Deprived of Liberty and Residence for Highly Dangerous Prisoners in order to adapt it to international standards and include a formal education program at all levels from primary to university.

Torture against women

137.27. Review the current ban on abortion in order to make it compatible with other fundamental rights such as women's health, life and dignity, especially in the context of the reform of the Penal Code currently under discussion.

137.28. Repeal the executive order that penalises the sale, distribution and purchase of emergency contraceptive pills (ECPs) and take the necessary steps to ensure their accessibility, availability and affordability for all women and adolescents.

137.29. Adopt the necessary measures to strengthen interagency coordination between the different justice operators that contribute to the investigation and punishment of the different forms of violence against women, so that this coordination is efficient and effective and avoids re-victimising women.

137.30. Take the necessary measures to establish an effective protection mechanism for women victims of violence.

137.31. Redouble efforts to reduce the high rate of teenage pregnancies, especially among those belonging to low-income families, and ensure the accessibility and availability of sexual and reproductive health services, especially in rural areas

LGBTI Persons

137.32. Remove from the legal system all rules, guidelines or regulations that discriminate on grounds of sexual orientation or gender identity and allow unequal treatment against lesbian, gay, bisexual and transgender, by any state authority.

137.33. Take all necessary measures to prevent homophobic, lesbophobic, biphobic and transphobic practices by public officials.

137.34. Adopt and reform the regulation of the prison system from the perspective of protecting the rights of LGBTI people who are deprived of their liberty.

137.35. Strengthen units for the investigation and prosecution of violent killings and torture against LGBTI people, leading to investigation, punishment and conviction of the perpetrators of these crimes and violations.

137.36. Develop protocols governing the actions of the municipal police and prevent abuse of authority and arbitrary actions, particularly in relation to LGBTI people.

137.37. Investigate and diligently and effectively punish violent killings, torture and cruel, human or degrading punishment or treatment against LGBTI people committed by police and military forces.

137.38. Adopt a differentiated approach to guarantee the rights to life and integrity of LGBTI people and LGBTI rights defenders, who are particularly vulnerable to violence by both state agents and private individuals.

137.39. Promote through a special prosecutor's office the investigation and punishment of hate speech against the LGBTI population, which is increasingly used by public and religious authorities and the media.

Human rights defenders

137.40. Adopt effective legislative and administrative measures to ensure the protection of human rights defenders, journalists, trade unionists, small-scale producers and indigenous people against acts of intimidation, harassment, criminalisation and violence to which they are exposed due to their work defending human rights.

137.41. Investigate, prosecute and punish in an effective, impartial and independent manner, non-state actors (including members of private security companies, staff and managers of companies) involved in violations of defenders' human rights, ensuring access to justice and reparation for victims.

137.42. Clarify the definition of criminal conduct, as broad or vague definitions are being used to prosecute people who are exercising their right to freedom of expression in defence of human rights.

137.43. Ensure the proper and effective implementation of the Law for the Protection of Human Rights Defenders, allocating adequate human, technical and financial resources, and ensure the effective participation of civil society in its implementation.

137.44. Publicly support the essential work done by human rights defenders, with the aim of fostering an environment of respect in which they can perform their work free of any risks to their physical and psychological integrity.

137.45. Urgently develop the necessary measures so that no public official is a party to or allows retaliation against human rights defenders who cooperate with the IACHR and the UN mechanisms.

Social protest

153.46. Cease repression against social protests, seeking solutions through interactive dialogue and the creation of public policies that are appropriate to the reality in the country. This requires that the State listen to the needs of the Honduran people, leaving aside longstanding partisan and transnational interests that have led to irreparable damage to natural resources, indigenous people and Afro-descendants and young people.

153.47. Develop a protocol for action and relocation so that justice operators can ensure the welfare and rights of people being evicted, including the right to decent housing.

Families of migrants

137.48. Fulfil the obligation of due diligence and attention and offer timely support to families of migrants and the Committees of Migrant Families in the various regions of the country, including the relatives of those who have gone missing along the migration route.

137.49. With regard to missing migrants and unidentified remains, the Honduran government should implement a national mechanism to facilitate the exchange of forensic information on the unidentified remains of Honduran persons missing in Mexico or the United States with other existing similar mechanisms in countries like Mexico or the United States, as well as others that may arise. Civil society organisations must participate in the management of this mechanism.

137.50. Cooperate and support the implementation and operation of the Foreign Support Mechanism for research and investigation, within the Criminal Investigations Unit for migrant persons, recently created by the Attorney General of Mexico, and which will operate as a channel for complaints and information through the Attorney General's Attaché in Mexican embassies.

137.51. Ensure that Hondurans can access the necessary resources, technical assistance and capacity-building activities to be able to use the search mechanisms established.

Obligation to investigate and provide redress for victims

137.52. Take all necessary steps to investigate, prosecute and punish those responsible for acts of torture and ill-treatment.

137.53. Adopt all appropriate measures to prevent torture and cruel, inhuman or degrading treatment being used as a method of criminal investigation and the lack of punishment for these acts.

137.54. Establish a centralised register for allegations of torture and cruel, inhuman or degrading treatment.

137.55. Conduct training on using the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Punishment (Istanbul Protocol) and incorporate its mandatory use in investigations into cases of torture and ill-treatment.

137.56. Ensure the functional and financial autonomy of the Special Prosecutor for Human Rights.

137.57. Establish a mechanism for the protection of persons reporting torture and other human rights violations, which can effectively prevent acts of intimidation and threats against victims and their families (in compliance with the judgment of the case of *Kawas Fernández v Honduras*).

137.58. Adopt the legal, administrative and judicial measures necessary to provide full reparation to victims of torture and ill-treatment, according to the parameters established by the Committee against Torture in General Comment No. 3 on article 14.