

HONDURAS

HUMAN RIGHTS DEFENDERS BETWEEN A ROCK AND A HARD PLACE

Fact-Finding Mission Report



December 2016



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Cover photo: © ORLANDO SIERRA / AFP. Hondurans demonstrating on May 1, 2016, against violence and claiming justice for the assassination of several social leaders.

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I. INTRODUCTION

The difficult situation that human rights defenders face in Honduras has been in the international spotlight throughout 2016 following the assassination of **Berta Cáceres**, a defender who had been granted precautionary measures by the Inter-American Commission on Human Rights (IACHR).

This crime, however, is only the tip of the iceberg in a context dominated by very high levels of violence against defenders in this Central American country, as presented herein. This report includes a long list of assassinations, threats and other kinds of attack against human rights defenders in Honduras.

The inefficiency of the Public Prosecutor's Office and of the judiciary in Honduras, as well as a failure to carry out effective investigations have meant that attacks against defenders go unpunished. In contrast, there are numerous criminalisation procedures against defenders in which the diligence of the judiciary to push the procedure forward is much higher.

In this context of severe crisis for human rights defenders in Honduras, in August 2016, the United Nations (UN) Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, and the IACHR Rapporteur on Human Rights Defenders, José de Jesús Orozco, stated that Honduras had turned into one of the most dangerous countries in the world for human rights defenders¹.

According to the data provided by the IACHR in their report on the situation of human rights in Honduras published in December 2015², since 2010 there have been in Honduras 3064 criminalisation cases to intimidate human rights defenders, resulting from inappropriate use of criminal law, 22 assassinations, 2 disappearances, 15 kidnappings, 88 cases of information theft, and 53 cases of vehicles used by defenders being tampered with. Honduras is the country with the highest number of beneficiaries of precautionary measures granted by the IACHR: 426, including 16 human rights defenders killed between 2001 and 2016. This results in an average of one human rights defender that has been granted precautionary measures being assassinated each year³. The Observatory for the Protection of Human Rights Defenders has documented 16 killings of human rights defenders since May 2015 (see section "Attacks against the right to life and personal integrity").

The IACHR has stated that this situation is the result of a combination of factors, among which we can highlight the increased rate of organised crime and drug trafficking; inadequate judicial response that leads to impunity; corruption; recruitment of children and teenagers; and high levels of poverty and inequality⁴.

In this context, in Honduras it is not safe to belong to a human rights, peasant, indigenous, community or social organisation with political and economic goals which go against or call into question the interests of the government and of the different power groups. Not only do public discredit, stigmatisation, physical attacks, threats and even assassination of defenders have a physical and psychological impact on the affected defenders, but also they further damage the Honduran social fabric and seem to have the clear objective of discouraging the legitimate claims and complaints of individuals and social groups in Honduras.

International standards regarding the protection of human rights defenders are applicable in Honduras, since Article 16 of the Constitution states that "international treaties entered into by Honduras with other States shall be part of the domestic law once they enter into force".

1 See Press Release of August 19, 2016:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20397&LangID=E>

2 Inter-American Commission on Human Rights (IACHR), *Situation of Human Rights in Honduras*, 2015.

3 PBI, *Honduras Economic, Social and Cultural Rights*, June 2016.

4 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 3.

These international obligations undertaken by Honduras are reinforced by the commitments made by the national authorities with regard to the international community in several multilateral forums. On March 23, 2016, during the 31st session of the UN Human Rights Council, Honduras voted in favour of Resolution A/HRC/31/L.28 on the protection of human rights defenders, whether individuals, groups or bodies of society, working in the field of economic, social and cultural rights, and some of the most vulnerable groups in Honduras. Moreover, during the 2015 Universal Periodic Review, the Honduran State accepted more than 20 recommendations linked to the protection of human rights defenders⁵.

This report also pays tribute to all those who have gone so far as to give their lives to defend everyone's human rights, and to all those human rights defenders in Honduras who are the embodiment of courage and determination and continue their work day in, day out despite the fear of being attacked because of the work they do, especially considering the lack of political will of the Honduran State to guarantee their protection.

With the aim of developing an agenda for the protection of human rights defenders in Honduras in mind, this report analyses, on the one hand, the situation of human rights defenders in Honduras (Section II), including a short list of the main types of attack against defenders, and, on the other, the legal and institutional framework in which they work and how factors such as militarisation, the lack of independence of the judiciary and the deficiencies of the State institutions regarding human rights contribute to making them more vulnerable.

Section III includes an analysis of the most vulnerable categories of defenders: land rights defenders and defenders of the rights of lesbian, gay, transgender and intersex (LGBTI) people. A clearer and more protective national framework that tackles the obstacles faced by peasants, indigenous peoples and LGBTI individuals for the full enjoyment of their rights would improve the working environment of defenders working for their rights and would increase their legitimacy and visibility, especially in contexts with prevailing land conflicts and heteropatriarchal stereotypes respectively.

This is why, before presenting an analysis of the situation faced by defenders and before presenting concrete representative cases of the situations that defenders are faced with in this Central American country, for each of the categories of defenders analysed, we have examined the legal framework and have carried out a case study of the human rights for which those defending human rights fight in the Honduran context.

Lastly, Sections IV and V present the conclusions of this report and make specific recommendations on structural reforms identified by the Observatory in its analysis.

Context of the fact-finding missions carried out by the Observatory

Concerned about the situation of human rights defenders in Honduras, particularly due to the high levels of violence against them, the Observatory for the Protection of Human Rights Defenders, a partnership of the World Organisation Against Torture (OMCT) and FIDH, decided to carry out several international fact-finding missions.

The first fact-finding mission to Honduras was carried out jointly with the Platform Against Impunity between April 11 and 15, 2016. The aim was to analyse the situation of human rights defenders in Honduras, with particular focus on the two most vulnerable groups: land rights defenders and LGBTI rights defenders. The mission was led by Anabella Sibrián (Central America Representative within the International Platform Against Impunity), Helena Solà Martín (Coordinator of OMCT's Latin America Program) and Miguel Martín Zumalacárregui (Head of OMCT Brussels Office).

5 See Global Study on Homicide 2013, p.26, on: <https://www.unodc.org/gsh/> and the reaction of the Government of Honduras on: <http://www.elheraldo.hn/pais/703449-214/honduras-reclama-a-onu-por-cifra-de-homicidios>

Considering how serious and systematic the attacks against human rights defenders are in this country, the Observatory conducted a second international mission to Honduras jointly with FIDH member organisations COFADEH and CIPRODEH, as well as with CEHPRODEC. As part of this mission, they visited Tegucigalpa, La Esperanza and Bajo Aguán between May 4 and 13, 2016, in order to show their solidarity on the ground with defenders who fight for the rights of their communities against large industrial projects in Honduras, and to express their concern in this regard before the local authorities. The mission was led by Luis Guillermo Pérez Casas (FIDH Delegate before the OAS), Magdalena Garcés (Chilean lawyer) and Natalia Yaya (Head of Program of FIDH Office for the Americas).

We would like to thank the authorities of various public institutions who met with the members of the Observatory's missions:

- Supreme Court of Justice;
- National Human Rights Commissioner;
- Attorney General;
- Public Prosecutor's Office;
- Secretariat for Human Rights and Justice;
- National Agrarian Institute;
- Special Prosecutor's Office for Human Rights;
- Local and departmental authorities from Bajo Aguán.

The missions also met with the following:

- Office of the United Nations High Commissioner for Human Rights in Honduras;
- Embassies of the European Union, of the Kingdom of Spain and of the Republic of Germany.

Moreover, the mission listened to the testimonies of human rights defenders and representatives of civil society organisations in different meetings in San Pedro Sula, Tegucigalpa, the Zacate Grande peninsula, the Department of Santa Bárbara, La Esperanza and Bajo Aguán.

OMCT and FIDH would like to thank the representatives of the different institutions, members of the diplomatic corps, human rights defenders, civil society representatives and victims for welcoming the mission members and for the information provided. Moreover, the Observatory would like to acknowledge that this report would not have been possible without the valuable support and work of the International Platform Against Impunity during the first mission, and of COFADEH, CIPRODEH and CEHPRODEC during the second mission.

II. ANALYSIS OF THE SITUATION OF HUMAN RIGHTS DEFENDERS

1. Institutional and legal framework in which defenders work

1.1 Violence, insecurity and militarisation

In 2014, Honduras had a Human Development Index of 0.606, which meant it was ranked 131st out of 188 countries and territories, and had mid-level human development. With a Gini coefficient of 57.4 over the 2005-2013 period, wealth distribution inequality is higher than average in Latin America and the Caribbean.

There is a strong link between high levels of poverty and inequality and the country's high rates of violence and insecurity, which are still among the highest in the world. With a rate of 90.4 homicides per hundred thousand inhabitants according to the figures published by UNODC⁶, in 2012, the homicide rate in Honduras was the highest in the world. According to the report published by the National Human Rights Commissioner, 92 people were killed in the context of land disputes in Bajo Aguán between 2009 and 2012⁷; and in 2011, FIDH and other organisations confirmed that 23 homicides committed between January 2010 and March 2011⁸ were linked to the land conflict.

Moreover, according to the information obtained during the fact-finding mission, and as stated in the IACHR in its report⁹, the low levels of safety would somehow have stemmed from the actions of the police force, military police and army through unlawful use of force, at times with the connivance of organised crime. These increasingly low levels of safety went up in parallel to possession and bearing of firearms. The Law for the Control of Firearms, Ammunition, Explosives, and Other Related Materials (2000) allows anyone to register a maximum of five firearms. Around one million firearms are estimated to be in circulation in Honduras, but only 282,000 of them are thought to be registered¹⁰.

Official figures published in 2013 indicated that 80% of the homicides committed in Honduras had gone unpunished due to a lack of capacity on the part of the investigating bodies¹¹. However, according to reports published by civil society organisations, impunity levels may be as high as 95%, potentially reaching 100% for the persons ordering the killings or attacks¹². The high levels of persistent violence in the country alongside a very high impunity rate and a poor judicial response have led to what the IACHR has described as "structural impunity"¹³.

Impunity rates are even higher in the case of criminal prosecution of human rights violations, with an especially serious situation for vulnerable groups such as women, LGBTI individuals and children¹⁴.

6 See Global Study on Homicide 2013, p.26 on: <https://www.unodc.org/gsh/> and the reaction of the Honduran Government on: <http://www.elheraldo.hn/pais/703449-214/honduras-reclama-a-onu-por-cifra-de-homicidios>

7 HRW, "Honduras: acusaciones del ejercito ponen en riesgo a activistas", December 19, 2013, <https://www.hrw.org/es/news/2013/12/19/honduras-acusaciones-del-ejercito-ponen-en-riesgo-activista>

8 FIDH, "Honduras: Violaciones de Derechos Humanos en el Bajo Aguán", September 2011, page 13.

9 Inter-American Commission on Human Rights (IACHR), *Situation of Human Rights in Honduras*, 2015 Report, paragraph 3.

10 Inter-American Commission on Human Rights (IACHR), *Situation of Human Rights in Honduras*, 2015 Report, paragraph 39, quoting, 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.

11 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 8.

12 Comité por la Libre Expresión (C-Libre), *Informe sobre el estado de impunidad en agresiones contra periodistas y trabajadores/as de medios de comunicación en Honduras*, page 26.

13 IACHR, *Situation of Human Rights in Honduras*, paragraph 8, page 12.

14 Plataforma EPU Honduras, World Organisation Against Torture (OMCT) and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, page 7.

Civil society organisations and experts agree that there has been a significant worsening of the situation of human rights in the country since the 2009 coup, as well as a harsh blow to Honduran institutions.

After the coup, for example, Honduras started a militarisation process which has led to an exorbitant increase in the Armed Forces budget¹⁵ and increased involvement in functions which fall outside their initial scope, such as regular public safety operations.

Therefore, in 2013, the Armed Forces known as the "Intelligence Troops and Special Security Response Groups" (*Tropas de Inteligencia y Grupos de Respuesta Especial de Seguridad - TIGRES*) were created as a specialised police division independent from the National Police and in charge of carrying out special security missions. In January 2014, the Military Police of the Public Order of the Armed Forces (*Policía Militar del Orden Público de las Fuerzas Armadas - PMOP*) began operating as a riot police authorised to conduct raids in neighbourhoods ruled by gangs and organised crime in order to regain control. The PMOP Law, published on August 24, 2013 also contemplates the fact that 30,000 reserve soldiers can be made available to the PMOP in the event of war or emergency.

Article 274 of the Constitution rules out the permanent performance of police tasks by the armed forces, but President Juan Orlando Hernández has suggested that a public consultation be held during the 2017 election by adding a fourth ballot box in order to ask about the possibility of attributing a constitutional rank to the PMOP

According to the information received, militarisation of the most basic State tasks and proliferation of private security companies in the "zero tolerance" policy framework against *maras* and gangs linked to organised crime have contributed to perpetuating the existence of malpractices and abuses against personal integrity by State agents and by non-State actors often acting in collusion with the State, which has only aggravated an already alarming human rights crisis in the country¹⁶.

As an example, the annual report of the National Human Rights Commissioner (*Comisionado Nacional de los Derechos Humanos - CONADEH*), corresponding to the 2015 administration, states that "There have been lawsuits against members of the Military Police and the Armed Forces for human rights violations allegedly committed against several individuals. Abuse of authority, illegal detentions, homicide, kidnappings, torture, rape and breaking and entering are some of the crimes allegedly committed by members of the State security forces."¹⁷

Not only does institutional and territorial militarisation fail to observe international standards, but has also proven to be linked to more violence and attacks against human rights defenders in similar situations in other countries of the region. In this respect, the IACHR has repeatedly expressed its concerns regarding involvement of the Armed Forces and of the PMOP, in a wide range of State duties, including regular public safety operations, organised crime investigation, forcible eviction, their presence in the penitentiary system as well as in the civic education of children and young people between 5 and 23 years old at "social risk" through the "Guardianes de la Patria"¹⁸ program.

15 Between 2010 and 2016 the Secretariat of Defence and Security have increased their budget in 161% and 102%, respectively, according to the information provided by the Instituto Centroamericano de Estudios Fiscales in its report *Diagnóstico de Situación y Perspectivas para la Sostenibilidad Fiscal en Honduras*, which can be accessed on: http://icefi.org/sites/default/files/presentacion_presupuesto_2016hn_.pdf.

16 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 7-9.

17 National Human Rights Commissioner – CONADEH (2015) *Informe anual 2015*, page 39 <http://conadeh.hn/wp-content/uploads/2016/04/Informe-Anual-2015-FINAL-VERSI%C3%93N-PDF.pdf>

18 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, pages 110-112.

Regarding privatisation of public safety operations, the report published by the UN Working Group on the Use of Mercenaries on August 5, 2013¹⁹ stated that, according to the Secretariat for Security, there were 706 private security companies registered in Honduras employing 14,787 private security guards. The report highlighted the fact that this figure was higher than the number of police officers in the country, estimated at a maximum of 14,000. The report also noted that, apart from the private security companies and their registered security guards, there were tens of thousands of non-registered illegal security guards (around 60,000, according to the National Police).

The Working Group on the Use of Mercenaries was able to confirm that private guards are also hired to assist in public safety operations that are the exclusive responsibility of the police force, such as crime investigation, control of demonstrations and execution of eviction orders. An example of this was the involvement of private security companies in joint operations with the police and Armed Forces in Bajo Aguán, which had serious consequences for the enjoyment of human rights, as stated by the Working Group²⁰.

The Plataforma EPU has expressed its concerns regarding the lack of accountability when there are signs or evidence that private security agents are involved in serious human rights violations due to factors such as "the precariousness of investigations; the power held by security companies in a context in which they represent a clear majority over public police forces; and the links between senior government officials, the police and the military power, and this type of companies."²¹

1.2 The judiciary

Despite the creation of the Judiciary Council in 2013, there are still worrying obstacles and setbacks affecting the institution, access to justice and protection of human rights.

Decree 219-2011 of November 25, 2011 passed the Judiciary Council and Judicial System Law (known as LCJCJ), seeking to promote the independence of the judiciary, conferring administrative duties to the Judiciary Council, including the screening and appointment of judges and the exercise of disciplinary authority for members of the judiciary, which, until then, was only exercised by the Supreme Court of Justice.

However, the appointment of Judiciary Council members by the National Congress in September 2013 was seen by civil society organisations such as the Association of Judges for Democracy (*Asociación de Jueces por la Democracia - AJD*), one of the two judges associations in Honduras, as not being inclusive or transparent and as being clearly politically biased against the candidates suggested by the AJD, which ended up unrepresented.

Also the IACHR expressed its concerns about how the members of the Judiciary Council were elected which could have a negative impact on the independence of the judiciary, including the fact that "the law does not set the legal requisites or procedures to be followed by the entities in charge of choosing the possible Council members. These members could therefore be chosen based on criteria not linked to their merits, which is not what the candidates would expect²²". Moreover, the IACHR has expressed its concern about the fact that the President of the Supreme Court of Justice is also the President of the Judiciary Council.

19 Report of the Working Group on the Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. Mission to Honduras (February 18-22, 2013), paragraph 14.

20 Report of the Working Group on the Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. Mission to Honduras (February 18-22, 2013), paragraph 14.

21 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, page 18-20.

22 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 283.

Shortly after electing the members and setting up the Judiciary Council in 2013, Articles 3 and 4 of the Law were amended by means of Decree 291- 2013 to accommodate trust tests. Alongside the trust tests, the Judiciary Council implemented from November 2013 what is referred to as “judicial purging”, which resulted in the suspension and summary dismissal of dozens of judges and civil servants, denying them the right to a defence. Many of them lodged an action for infringement of rights before the Constitutional Chamber of the Supreme Court of Justice, which recognised their right, but the Council did not change its decisions. Among the methods used in the investigation of judges, there are trust tests, such as psychometric examinations, performance assessments, toxicological tests, polygraph tests and asset investigations. Several of these methods were denounced by civil society organisations, including the AJD, who opposed polygraph tests arguing that they are a violation of the judges’ privacy, as they cause anxiety and concern, and it opens the door to the authorities using their discretion²³.

In March 2016, considering the possibility of their imminent dismissal, the members of the Judiciary Council submitted their resignation jointly to the National Congress.

On April 15, 2016, the judgment of the Supreme Court of Justice dated March 14, 2016, was published. It ruled on the constitutional challenge to several articles of the Judiciary Council and Judicial System Law. The Supreme Court of Justice declared four articles unconstitutional and, consequently, repealed the entire law. The Judiciary Council disappeared and the administrative duties thus fell to the President of the Supreme Court of Justice. There was, therefore, no longer a separation between administrative and jurisdictional duties within the judicial branch. The discretion in the disciplinary regime thus increased while the judicial independence safeguards decreased.

a. Unjustified dismissal of judges and of one magistrate of the Court of Appeals in the context of the 2009 coup

The case known as “López Lone et al. v. Honduras” is an iconic case on judicial independence safeguards that sets a major precedent in terms of the political rights of judges, the principle of irremovability and the due process for disciplinary proceedings. In this case, a ruling was issued by the Inter-American Court of Human Rights on October 5, 2015, against the State of Honduras.

The Inter-American Court of Human Rights concluded that the State of Honduras was responsible for the violation of the right to freedom of expression, the right to freedom of assembly, political rights, the right of association, judicial guarantees, judicial protection, the right to remain in office under conditions of equality, and the principle of legality in the framework of the disciplinary proceedings against the magistrate **Tirza del Carmen Flores Lanza** and judges **Adán Guillermo López Lone**, **Luis Alonso Chévez de la Rocha** and **Ramón Enrique Barrios Maldonado**, all of them members of the Association of Judges for Democracy. As a result of the disciplinary proceedings initiated based on their activities defending democracy and the rule of law in the aftermath of the coup, all four judges were removed and the first three were removed from the judiciary altogether as well.

The Inter-American Court of Human Rights ordered their reinstatement as well as payment of compensation for material and immaterial damage. On November 10, the period for compliance with the judgment expired, and a few days before the expiration date, the State approached the affected parties to confirm the official position that they would not be reinstated to the judiciary.

23 Public Press Release of the Association of Judges for Democracy published on February 23, 2015.

1.3 The national human rights institution: CONADEH

The National Human Rights Commissioner (CONADEH) can intervene at its own initiative or at the request of the parties involved in cases of abuse of power, arbitrariness, error of law, negligence or omission, and noncompliance with judicial orders by any national authority representing the State.

The fundamental job of the Commissioner is receiving and investigating claims, promoting human rights and providing human rights training. In order to handle the claims and complaints, the National Commissioner is authorised to conduct investigations, inspections, verifications and any other actions that can lead to the clarification of the claim or complaint. Moreover, the Commissioner has access to all Public Administration documents considered necessary for the clarification. CONADEH has developed an ambitious action plan for 2014-2020 which focuses mainly on the country's human rights challenges.

Through its offices across the country, CONADEH plays an important role in promoting human rights, and victims of human rights violations often report abuses to this institution. CONADEH representatives, however, explained to the fact-finding mission officers that the current budget hardly covers 50% of the resources that would be necessary for the effective implementation of its duties.

Furthermore, CONADEH is authorised to adopt protection measures for defenders through police escorts or relocation of protected persons. CONADEH still holds these powers despite the implementation of the Law for the Protection of Human rights Defenders, Journalists, Social Communicators and Justice Practitioners.

Nevertheless, several limitations and deficiencies prevent the national human rights institution from carrying out its duties in strict compliance with the Paris Principles regarding the rules and functioning of national institutions for the protection and promotion of human rights. This is evidenced by the fact that the Subcommittee on Accreditation of the International Coordinating Committee of National Human Rights Institutions (ICC) has had B status awarded by CONADEH from October 2011 due to its failure to fully comply with the Paris Principles, which means that it can participate in ICC meetings but does not have the right to vote or hold officer positions.

CONADEH has been the subject of much criticism, including numerous accounts claiming that beyond the statistical data collected on human rights violations, there is a lack of action and effective monitoring of the cases received once they have been communicated to the Public Prosecutor's Office or to the relevant authorities. In this respect, the United Nations Sub-Committee on Accreditation has highlighted in its most recent reports the fact that the statistical information included in the annual reports prepared by CONADEH is very interesting and useful, but that there is a lack of information on the concrete actions taken in order to examine specific cases or to increase results in criminal or disciplinary investigations. The Sub-Committee has also stated that there is a lack of specific recommendations for the authorities even in landmark cases.

Therefore, CONADEH records, for instance, periodic visits to and monthly inspections of detention facilities, but there is no public information on findings, management of lawsuits or recommendations submitted to penitentiary authorities²⁴.

Also noteworthy is the fact that despite the serious crisis regarding the situation of human rights defenders in the country, CONADEH has not submitted recommendations or thematic reports that could contribute to an improvement in this regard.

²⁴ Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, page 16-17.

Certain approaches suggesting a lack of commitment to a human rights approach are deeply concerning too. Regarding public safety, for example, CONADEH has validated the militarisation process in spite of the fact that it contravenes international human rights regulations. Its last report states that since 2014 legislative efforts have been made “to monitor the purging of National Police and promote the cooperation of the military forces in public safety matters, operating jointly with public prosecutors and judges towards a lower national crime rate”²⁵.

Moreover, human rights coalitions such as the Plataforma EPU have denounced the lack of actions for the enforcement of rights and judicial protection regarding collective rights despite CONADEH being one of the few institutions recognised in the Constitutional Chamber’s case law to act in favour of human rights²⁶.

1.4 Precautionary measures of the IACHR

According to the report prepared by the Association for Participatory Citizenship (*Asociación para una Ciudadanía Participativa - ACI-Participa*)²⁷, between 2009 and 2015 the IACHR issued 41 precautionary measures in favour of 426 people in 13 of the 18 departments of the country, which proved they are a relevant tool at the national level and not focused on specific regions. The two regions with the highest number of beneficiaries are Colón with 150 (98% of them are peasants fighting for land rights), and Francisco Morazán with 138 (most of them covered by Precautionary Measure 196-09 and its extensions due to the coup). When comparing categories of beneficiaries, 34% are peasants, 17% are journalists and communicators, 14% are indigenous defenders, 7% are environmentalists and 6% are LGBTI individuals.

According to the information provided by ACI-Participa, 99% of the beneficiaries of precautionary measures issued by the IACHR believe that these measures do not guarantee their safety because the protection mechanisms put in place by the government are either not appropriate or not appropriately implemented. Moreover, numerous beneficiaries have informed ACI-Participa that the precautionary measures issued by the IACHR had been used by the State security forces to survey their work as human rights defenders²⁸. Lastly, different beneficiaries informed ACI-Participa that the fact that the State security forces that are often involved in human rights violations are the ones in charge of implementing the precautionary measures makes the beneficiaries mistrust the State’s true interest in protecting them²⁹.

In the framework of the monitoring of the precautionary measures granted, the IACHR has confirmed that there are “serious deficiencies in the State’s response, and the level of efficient implementation of the measures is low and sometimes even non-existent”³⁰.

By way of example, in spite of the precautionary measures issued, Berta Cáceres, co-founder of the COPINH, was assassinated by unknown individuals on March 2, 2016. Currently, the members of the COPINH are having to endure a campaign of systematic attacks even though they were issued precautionary measures by the IACHR on March 5, 2016³¹. Likewise, José Ángel Flores, President of the Unified Peasant Movement of the Aguán (*Movimiento Unificado Campesino del Aguán - MUCA*), was

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

26 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 16-17.

27 ACI-Participa, *Medidas Cautelares en Honduras: Sueño y Realidad*: https://issuu.com/danacruz/docs/libro_medidas_cautelares_

28 ACI Participa, *Medidas Cautelares en Honduras: Sueño y Realidad*: https://issuu.com/danacruz/docs/libro_medidas_cautelares_

29 ACI Participa, *Medidas Cautelares en Honduras: Sueño y Realidad*: https://issuu.com/danacruz/docs/libro_medidas_cautelares_, pages 60-61

30 IACHR, *Preliminary Observations concerning the Human Rights Situation in Honduras*, December 5, 2014.

31 IACHR, Precautionary Measure 112-16. Asunto miembros de COPINH y familiares de Berta Cáceres. Available on: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

assassinated on October 18, 2016. He had been issued precautionary measures that had been in force since May 2014³².

However, it is important to highlight the fact that this phenomenon extends beyond these events, since the organisations that have prepared this report recorded at least 17 assassinations of human rights defenders between 2001 and 2016 who were beneficiaries of precautionary measures granted by the IACHR:

Name	Killed on	Precautionary measure number
Paulino Henríquez	March 17, 2004	MC-935/04
Johnny Orlando Aceituno Varela	June 18, 2004	MC-935/04
Héctor José Ulloa	March 27, 2004	MC-935/04
Gilmar Santiago Mejía	January 26, 2006	MC-935/04
Eligio Mejía	February 5, 2006	MC-935/04
Nahúm Palacios	March 14, 2010	MC-196/09
Orfilia Amparo Mejía Figueroa	March 26, 2012	MC-935/04
Silvia Aguiriano de Sarmiento	August 14, 2013	MC-196/09
Manuel Murillo	October 23, 2013	MC-196/09
Carlos Mejía Orellana	April 11, 2014	MC 399/09
Orlando Orellana	May 4, 2014	MC-935/04
Luis de Reyes Marcía	April 6, 2015	MC 416/13
Héctor Orlando Martínez Motino.	June 17, 2015	MC-253-14
Erasio Vieda Ponce	June 26, 2015	MC 416/13
Bertha Isabel Cáceres Flores	March 3, 2016	MC-405/09
José Ángel Flores Menjivar	October 18, 2016	MC-50/14
Silmer Dionisio George	October 18, 2016	MC-50/14

Lastly, the Observatory would like to highlight the fact that the precautionary measures are mitigating measures and cannot be effective unless backed by concerted efforts to investigate the facts that prompted the IACHR to grant the measures in the first place and unless backed by a comprehensive policy for the protection of defenders and for the prevention of attacks against them.

1.5 Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Practitioners

In April 2015, the National Congress of Honduras passed the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Practitioners.

This Law provides for the creation of the National Council for the Protection of Human Rights Defenders (*Consejo Nacional de Protección para las y los Defensores de Derechos Humanos - CNPDDH*), an advisory and deliberative body whose powers are outlined in Article 24 of the law.

Likewise, this law provides for the creation of a Directorate General for the Protection System, which is the executive body of the National System for the Protection of Human Rights Defenders. Among other responsibilities, it receives and processes all protection requests, prepares the operational protocols needed for the effective implementation of the law, requests and monitors provisional measures granted by the Inter-American Court of Human Rights,

³² IACHR, Precautionary Measure 50-14 of May 8, 2014.

precautionary measures granted by the Inter-American Commission on Human Rights and any safety measures that could be issued by the jurisdictional bodies of the State.

The law also provides for the creation of a Technical Committee for the Protection Mechanism, in charge of issuing orders for risk analyses and of deliberating and making decisions on the protection requests received by the Directorate General. Some civil society organisations have highlighted that there may be a conflict of interest, taking into consideration the fact that “this Committee is made up of the Office of the Attorney General of the Republic (PGR), whose job is to defend the State of Honduras and by the National Police which is accused of being one of the main attackers of human rights defenders in the country.”³³ In response to this, the Council informed the mission officers that several individuals under protection had required that the protection be provided by members of the army.

In addition, the passing of this law is considered positive due to the fact that it recognises the vulnerability and risks faced by the groups that are subject to protection, including human rights defenders. Moreover, the Law for Defenders plays a major symbolic role, since it means that there is a public acknowledgement of the importance of the work carried out by human rights defenders for the promotion and protection of the rule of law and democracy. Lastly, human rights organisations have recognised that many of civil society's remarks regarding the bill were finally taken into consideration, even though some of them, considered of utmost importance, were finally not included in the law³⁴.

In turn, the IACHR points out the following concerns of civil society in its report: “(i) the National System for the Protection of Human Rights Defenders would not have the features required for functional autonomy; (ii) the inclusion of the Secretariat of Defense in the National Council for the Protection of Human Rights Defenders would not be appropriate for securing the safety of beneficiary groups and could jeopardise the users' confidence in the mechanism; and (iii) reducing the number of civil society representatives in the National Council for the Protection of Human Rights Defenders would affect participation of beneficiary groups in the mechanism”³⁵.

The regulations were finally approved on August 20, 2016, with a delay of several months, since the law set a three-month period for the preparation of the regulations. The mission met members of the Council who confirmed that the implementation delay was due to delays in the preparation of the regulations. By May 2016, only four monthly sessions had been held.

Coalición contra la Impunidad has admitted that the regulations fill certain loopholes in the law and in the structure of the Directorate of the Protection Mechanism, but it believes this is not enough and that no real measures have been implemented to date so as to protect the life and safeguard the physical and psychological integrity of the beneficiaries of the law³⁶. Furthermore, the Plataforma EPU has denounced that the process of the preparation of the regulations did not take into consideration previous recommendations and did not achieve a wide and representative participation among defenders. Therefore, many of them did not become involved in approval of the regulations³⁷. In an action that proves the Government's lack of will to include civil society in the preparation of the regulations, during May's mission several organisations complained that the Council had initially granted them only one day to submit their comments on the regulations.

33 Coalición Contra la Impunidad, *Falta de presupuesto y malas prácticas marcan el primer año de funcionamiento el mecanismo de protección a periodistas, defensores de derechos humanos y operadores de justicia*, Press Release of October 17, 2016.

34 Protection International and Centre for Justice and International Law (CEJIL), “Observations to the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners”, July 2015.

35 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 381.

36 Coalición Contra la Impunidad, *Falta de presupuesto y malas prácticas marcan el primer año de funcionamiento el mecanismo de protección a periodistas, defensores de derechos humanos y operadores de justicia*, Press Release of October 17, 2016.

37 Plataforma EPU Honduras, OMCT, International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 37-41.

Coalición Contra la Impunidad has highlighted that despite the fact that Honduras has been considered one of the most dangerous countries for human rights defenders, the budget only amounts to HNL 11.7 million (around EUR 450,000). Therefore, "protection measures always consist in allocating police agents as 'bodyguards' or daily perimeter patrols, since funding is insufficient to grant any other type of measures".

Coalición Contra la Impunidad has argued that human rights organisations have made an effort to make compliance with the law effective through their joining CNPDDH, by submitting cases to the National Council and providing constructive criticism in denouncing an unwillingness on the part of the Honduran authorities to achieve the effective implementation of the mechanism.

In most of the 25 cases presented so far, the Technical Committee of the Mechanism has decided to take action only by granting police escorts, that is, urgent action, yet not protection. Moreover, it has not carried out a true risk assessment. There is also uncertainty for the beneficiaries as to what protocols are being used when applying these measures.

In this context, Coalición contra la Impunidad has denounced the lack of political will to guarantee the effective implementation of the mechanism and has requested that the sessions of the National Council for the Protection for Human Rights Defenders offer a wider space for the participation of human rights organisations representatives, who are the beneficiaries that constantly require protection against the risks they face on a daily basis³⁸.

2. Types of attacks against defenders in Honduras

2.1 Attacks against the right to life and personal integrity

Human rights defenders in Honduras are the target of different types of attacks due to their human rights work, from homicides and threats to criminalisation and defamation. Defenders are targets for individuals who have been blamed for human rights violations, such as sectors and groups whose interests are contrary to the defenders' causes, often including the involvement of State agents, security guards from private companies or even individuals linked to organised crime.

In this context of severe crisis for human rights defenders in Honduras, in August 2016, the UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, and the IACHR Rapporteur on Human Rights Defenders, José de Jesús Orozco, stated that Honduras has turned into one of the most dangerous countries in the world for human rights defenders³⁹.

The Observatory has, through its Urgent Appeals and Press Releases, repeatedly denounced over the last few months the deterioration of the situation and the increasing number of defenders assassinations. In 2015, Global Witness stated that Honduras was the most dangerous country for human rights defenders in proportion to its population, with 111 land and environmental rights defenders killed between 2002 and 2014⁴⁰. For its part, Front Line Defenders documented seven assassinations of defenders in 2015 alone. According to the IACHR report, 22 cases of defenders being assassinated were recorded in 2010 alone⁴¹.

The Observatory has documented 16 assassinations of human rights defenders since May 2015, at a rate of almost one per month. This would need to be added to the attempts on human rights defenders' lives that followed: the assassination of Fernando Alemán Banegas, the son

38 Coalición Contra la Impunidad, *Falta de presupuesto y malas prácticas marcan el primer año de funcionamiento el mecanismo de protección a periodistas, defensores de derechos humanos y operadores de justicia*, Press Release of October 17, 2016.

39 See Press Release from August 19, 2016:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20397&LangID=E>

40 Global Witness, *How many more? 2014's deadly environment: the killing and intimidation of environmental and land activists, with a spotlight on Honduras*, April 2015.

41 IACHR, *Situation of Human Rights in Honduras, 2015 Report*, paragraph 43.

of Bajo Aguán defender **Esly Emperatriz Banegas**, which took place on October 30, 2016; the double attempted assassination of Félix Molina on May 2, 2016; the attempted assassinations of the members of COPINH Alexander García Sorto (on May 6 and October 9) and Tomás Gómez Membreño, COPINH Coordinator (also on October 9).

Name	Killed on	Category of the defender
Silvestre Manueles Gómez	May 2015	Land and environment (MILPAH)
Angie Ferreira	June 2015	LGBTI (Asociación Arcoíris)
Juan Carlos Cruz Andara	June 24, 2015	LGBTI
Violeta Rivas	August 16, 2015	LGBTI (Asociación Arcoíris)
Jorge Alberto Castillo	September 6, 2015	LGBTI (Asociación por una Vida Mejor – APUVIMEH)
Gloria Carolina Hernández Vásquez, a.k.a. Génesis Hernández	September 18, 2015	LGBTI (Asociación por una Vida Mejor – APUVIMEH)
Josselin Janet Aceituno Suazo	October 5, 2015	LGBTI (Asociación Arcoíris)
Henry Matamoros	November 14, 2015	LGBTI (Asociación Arcoíris)
Javier Vásquez Benítez	December 2015	Land and environment
Estefanía Zúñiga	January 20, 2016	LGBTI (Asociación Arcoíris)
Paola Barraza	January 24, 2016	LGBTI (Asociación Arcoíris)
Berta Cáceres	March 2, 2016	Land and environment (COPINH)
René Martínez	June 3, 2016	LGBTI
Lesbia Yaneth Urquía	July 6, 2016	Land and environment (COPINH)
José Ángel Flores	October 18, 2016	Land and environment (MUCA)
Silmer Dionisio George	October 18, 2016	Land and environment (MUCA)

In addition to attempts on defenders' lives, we would like to highlight the fact that according to the information provided by the IACHR, there have been other attempts against the physical integrity of defenders recorded in Honduras since 2010, including two disappearances, 15 kidnappings and 53 cases of vehicles used by defenders being tampered with.

Official figures published in 2013 indicated that 80% of the homicides committed in Honduras went unpunished due to a lack of capacity on the part of the investigating bodies⁴². However, new data provided to the fact-finding mission by civil society organisations indicates that impunity levels are as high as 95%, potentially reaching 100% for the persons ordering the killings⁴³.

The inefficiency of the Public Prosecutor's Office and of the judiciary in Honduras, and a failure to carry out effective investigations have meant that attacks against defenders go unpunished. In contrast, there are numerous criminalisation procedures against defenders in which the diligence of the judiciary to push the procedure forward is much higher.

⁴² IACHR, *Situation of Human Rights in Honduras*, 2016 Report, paragraph 8.

⁴³ Comité por la Libre Expresión (C-Libre), *Informe sobre el estado de impunidad en agresiones contra periodistas y trabajadores/as de medios de comunicación en Honduras*, page 26.

a. Cases of violence against defenders analysed in this report

The aim of this section is not to examine the numerous cases of physical attacks studied by the Observatory, but to describe and examine the existing serious violent patterns against defenders in Honduras. This report includes an analysis of the following cases of violence against defenders:

- Assassination of Berta Cáceres and campaign against the COPINH*.
- The case of Zacate Grande*.
- The case of Locomapa*.
- Murders in Bajo Aguán*.
- Attacks against Asociación Arcoíris*.
- Attacks against Asociación AJEM/Somos CDC*.
- The assassination of René Martínez*.

(*See table of contents)

2.2 Misuse of criminal law

According to the information provided by the IACHR, there may have been “3064 instances of criminalisation intended to intimidate human rights defenders as a result of misuse of criminal law” since 2010⁴⁴.

Criminalisation, described by the IACHR as “opening groundless criminal investigations or judicial actions with the aim of intimidating defenders and halting their efforts to defend human rights, since their time, resources and energy must be dedicated to their own defence”⁴⁵, has been analysed and denounced by the FIDH and the Observatory for a number of years⁴⁶.

In a landmark judgement issued by the Inter-American Court of Human Rights (hereinafter Inter-American Court or Court) in the case of Norín Catrimán et al. (leaders, members and activists of the Mapuche indigenous people) v. Chile⁴⁷, the Court set a precedent in the region when it recognised the criminalisation of social protest in democratic regimes in Latin America, thus opening the door to prosecution of such practices, which are sadly widespread in the continent⁴⁸.

Among the various analyses carried out by the Observatory over the last few years⁴⁹, the most recent was published in September 2016: *Criminalización en el Bajo Agúan: Justicia a Medias*. It complements this report in the matters regarding the analysis of the rights that are violated when criminalising human rights defenders, including surveillance and judicial observation of the trial of 25 defenders and peasants from Aguán.

State actors, including government civil servants, local authorities, public security forces such as the police or the army, and members of the judiciary can be responsible for criminalisation when, due to self-censorship or, even worse, due to collusion, frequently based on corruption, they fail to fulfil their obligation to be neutral towards citizens and they legitimise, promote or institute misuse of criminal law in order to criminalise human rights defenders.

44 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 43.

45 IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, of December 31, 2011, paragraph 76.

46 See FIDH Report, *Criminalización de la protesta social en las Américas, 2006; Ecuador: Increase of the criminalisation of social protest in the context of extraction plans, 2015*; and Observatory Reports, *Criminalisation of human rights defenders: an alarming phenomenon in Latin America, 2016*; and *Criminalización en el Bajo Agúan: Justicia a Medias, 2016*.

47 IACHR, Norín Catrimán et al. (leaders, members and activists of the Mapuche indigenous people) v. Chile, judgement issued on May 29, 2014 (merits, reparations and costs), Series C No. 279.

48 FIDH, “The Inter-American Court of Human Rights condemns the State of Chile for having used its antiterrorist legislation against members of the Mapuche people”, July 29, 2014.

49 See Observatory Report, *Criminalisation of human rights defenders: an alarming phenomenon in Latin America, 2016*; and *Criminalización en el Bajo Agúan: Justicia a Medias, 2016*. See also FIDH reports *Criminalización de la protesta social en las Américas, 2006*; and *Ecuador: Increase of the criminalisation of social protest in the context of extraction plans, 2015*.

It is important to highlight the central role played by the judiciary. The lack of independence and impartiality of the judiciary, particularly the activities of the Public Prosecutor's Office, has a decisive impact on the criminalisation of defenders. In addition to unduly criminalising a defender, in most cases the Public Prosecutor's Office requires pre-trial detention and often insists on criminally prosecuting the defenders repeatedly, which was the case of Berta Cáceres.

This is serious, since the minimum guarantees to ensure a due process and the right to personal freedom are being violated. Moreover, this criminal action violating rights has a stigmatising effect that often prevents actions of solidarity and support with the defenders from taking place, including even the international community which tries to observe the independence of the judiciary. Judicial harassment thus isolates defenders. Moreover, even though the judges do not always convict the defenders, they accept requests for precautionary measures such as pre-trial detention almost systematically.

Procedures leading to the detention of defenders are surprisingly and paradoxically speedy, considering how lengthy the procedures to investigate harassment or assassination of defenders are, exceeding any reasonable time frames.

In the criminalisation cases analysed not only has the principle of legality been violated, but also the rights to personal freedom, to a due process, to freedom of expression and peaceful protest and to honour and good reputation. Furthermore, there is still a dangerous pattern of impunity for human rights violations against defenders, which fosters repeat violations.

Some of the most severe effects of criminalisation on the lives of defenders include the disproportionate burdens placed on them, such as deprivation of freedom, the time and money spent to face the proceedings against them, the psychosocial impact on their families, the tendency to socially discredit them and to stigmatisation of the group to which the defender belongs or whose cause the defender works for, and the criminalisation of the cause for which the defenders work.

a. Concerns regarding the Criminal Code reform

In the context of the process of Criminal Code reform, numerous civil society organisations have expressed concern due to the fact that several honour-related offenses are being maintained in the code even though they should be decriminalised. Some of them are **libel, slander and defamation**, which have been used by judges and authorities to restrict the right to freedom of expression, against international regulations, particularly with reference to journalists and social communicators who actively denounce human rights violations, and human rights defenders⁵⁰.

A landmark case is that of the women's rights defender **Gladys Lanza**, Coordinator of the organisation Visitación Padilla, who was handed a prison sentence of one year and six months in 2015 due to defamation.

The main concerns of Articulación 611, a coalition of civil society organisations including COFADEH, are summarised below.

A similar case is that of **unlawful appropriation of land**, which is made worse in the draft Criminal Code in question. This criminal definition is used against peasants and defenders fighting for their right to land, such as indigenous and peasant communities, including the case of the 20 members of the the Indigenous Council Santiago Apóstol and the Aguán cases. In a meeting with the mission officers, the recently assassinated President of the MUCA José

50 Plataforma EPU Honduras, World Organisation Against Torture (OMCT) and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 41-42.

Ángel Ramírez had denounced that 365 peasants had been undergoing legal proceedings due to unlawful appropriation of land, and Via Campesina raised this figure to 5000 peasants⁵¹.

The current wording has a wider scope regarding the configuration of its typical elements, since it includes the notion of a “third-party facility that does not constitute a home”. Occupying a third-party facility is considered vague and open-ended, and could lead to an increased criminalisation of protesters.

Moreover, the reform of the Criminal Code includes a new offense called **unlawful appropriation of water**, which was created to be applied to those protesting against the installation of extractive projects in the country, such as hydroelectric and mining companies:

“Article 426. Unlawful appropriation of water. Imprisonment from two (2) to five (5) years will be imposed:

1. To those who divert in their favour public or private water resources not belonging to them or take an amount of water larger than that they are entitled to; and
2. To those who disturb or prevent in any way the exercise of rights that a third party has over said water resources.”

The intention to criminalise protesters seems plain and clear to see, considering the fact that concessions of land in indigenous and non-indigenous communities have been made without the mandatory consultations that governments must conduct in accordance with treaties and conventions such as the ILO Convention, and in a context of community protests against exploitation of their resources.

With the aim of avoiding abuse of Criminal Law against human rights defenders regarding freedom of expression, association and assembly, a summary of the concerns on certain criminal definitions is included below:

Sedition is a broad criminal definition and is far from a strictly political classification of this offense, especially since its aim to alter or overthrow the constitutionally established order. With the current wording of the Criminal Code, this offense was applied to the student protests in Universidad Nacional for which the Office of the High Commissioner of the United Nations in Honduras expressed concern. Likewise, the Office of the High Commissioner mentioned the following in one of the recommendations of its report on Honduras published in 2010:

“In addition, the following actions are strongly recommended in order to deal with structural problems properly:

- a) Revise or abrogate national legislation incompatible with international regulations, in particular provisions on offenses of sedition, illicit demonstrations, freedom of expression, political and electoral rights, torture, independence of the judiciary, the Police and Social Coexistence Law, and the State of Emergency Law.”

The Honduran draft Criminal Code includes a series of criminal definitions in the final chapters that can be considered serious forms of criminalisation of social protest. Among them, we can find the offense of **illicit assembly and demonstration** (Article 555).

This wording is very similar to that of the offense included in Article 331 of the Criminal Code currently in force. This article was strongly condemned by the IACHR due to concerns that the offense of “illicit demonstration” could be applied to many individuals arrested during demonstrations. Specifically, in its report *Honduras: Human Rights and the Coup d’État*, the IACHR stated that the description of the offense in Honduran Criminal Law lacks specificity, which allows the competent authorities to make a broad interpretation of the legal precept and, consequently, to consider its classification subject to the authorities’ discretion. Regarding this offense, the United Nations High Commissioner also recommended “revising or abrogating

⁵¹ *El Heraldo*, May 11, 2016, “Denuncian procesos legales contra campesinos por exigir derecho a la tierra”, on <http://www.elheraldo.hn/pais/958830-466/denuncia-procesos-legales-contra-campesinos-por-exigir-derecho-a-la-tierra>

any national legislation that is incompatible with international regulations, in particular provisions on offenses of sedition and illicit demonstrations". A specific case of criminalisation of defenders under this offense is described in the Observatory Report *Bajo Aguán: Justicia a Medias*.

The draft Criminal Code includes a very broad definition of **criminal association**, especially in the second part of section 1: "Associations which, despite having a lawful purpose, use violence, intimidation or other illicit means to fulfil said purpose shall also be considered illicit associations".

This wording is deemed to enable the criminal prosecution of associations, social movements or groups, particularly NGOs seeking social change and enjoying their right of assembly and their right to demonstrate as means of social protest. This situation is more serious when taking into consideration the fact that Section 3 punishes managers, promoters and financial backers of the illicit association. Additionally, if association has been created abroad, this has to be taken into consideration.

The lack of a definition of the offense of illicit association, especially in the second paragraph of Article 1, makes it incompatible with inter-American standards, and particularly the right to freedom of association and to individually or collectively defend the protection and fulfilment of human rights and fundamental freedoms. The exercise of these rights includes the free and effective promotion and defence of any right.

Regarding the offenses against public order, the definitions of the offenses of **attack** and **disobedience** are worrying.

Attack is an offense defined by four actions carried out by an individual against a civil servant: "1. the individual charges against the authority or civil servant; 2. the individual SERIOUSLY intimidates the authority or civil servant; 3. he or she actively and seriously resists; or 4. uses force against the authority or civil servant". This offense entails a prison sentence of three to six years, which is completely disproportionate and severe, and a fine of 100 to 300 days".

This offense can be seen as criminalisation of social protest, since it can be used to criminalise actions such as peaceful demonstrations or assemblies, which can be broken up illegally or forcibly. The lack of compliance with administrative provisions, often approved in violation of legislation or with the aim of preventing the exercise of legitimate constitutional rights, can lead to the criminalisation of passive resistance, which would be a form of criminalisation of social protest. This is how the IACHR sees it, considering that the implementation of criminal bans on mere acts of disobedience is a serious violation of the rights enshrined in the Convention.

In this sense, we could understand that the offense of attacks opens the door to the criminalisation of the defence against violent actions carried out by the authorities against those protesting or defending their legitimate rights, especially when dealing with violent evictions.

Likewise, disobedience, which is an offense punishing actions which "are not included in the previous article" (preparatory acts leading up to attack) yet which seriously disobey the authority or civil servant in the exercise of their duties.

Even though State authorities can and should give orders within the scope of their duties, it is also clear that noncompliance with such orders must be punished, but in Administrative, Fiscal or Civil Law; the fact that noncompliance with an order given by a State authority leads to a criminal sanction is unacceptable.

Regarding the offense of **public disorder**, there is no doubt that such an offense could easily be used to criminalise social protest, especially demonstrations or any other expression of

the struggle of social movements, likeminded groups or NGOs. This is the reason why the recommendation is to repeal Section 1 of this article.

Section 2 of Article 575 describes the offense of **public dissemination of false news or rumours intimidating the population or a section of the population**, putting the life or health of individuals or assets at risk. The corresponding prison sentence is one to three years.

In this regard, the Commission has stated that “the sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of and even offensive to those who hold public office or are intimately involved in the drafting of public policy”. This is why punishing speeches or comments that “intimidate the population or a section of the population” is not acceptable, since it would be a form of criminalisation of political speech or freedom of expression. As stated by the IACHR: “It is necessary to take into account the fact that the right to freedom of expression is not just another right, but first and foremost one of the foundations of any democratic structure: undermining freedom of expression directly affects the very core of the democratic system”.

The Criminal Code punishes **public order disturbances** such as the obstruction of public roads causing serious danger to those circulating, or the trespassing of facilities or buildings, with a prison sentence between one and three years and a fine of 100 to 200 days.

This offense, just as the one described in Article 579 (prevention of circulation of emergency units to assistance centres), is geared toward preventing the legitimate exercise of the right to assembly and demonstration. These articles do not comply with the standards of the Inter-American Court, which establish that it is necessary to verify that said limitation (the punishment) satisfies a public interest necessary for the proper functioning of a democratic society.

As observed, the current wording of this offense does not include these elements for all cases, since the results are different: causing injuries, obstructing public roads causing serious danger to those circulating and trespassing facilities.

Danger to the life or personal integrity of persons is not required in all cases, since the serious danger to the persons included in this section is not included when referring to transit lanes.

The wording of the offense of damages turns it into what is known as an open criminal type, which includes a large number of conducts and could lead to its application to stop or criminalise social protest, especially public demonstrations by attributing damages allegedly caused by the demonstrators or leaders to movable and immovable property.

The previous comments, based on the analyses carried out by Articulación 611, of which COFADEH is a member, lead us to believe that in the framework of the debate and passing of the Criminal Code, civil society must participate in discussion and purging of the articles that, due to their broadness or vagueness, can be manipulated and lead to disregard for the judicial and due process guarantees and to a violation of the rights of freedom of expression, association and assembly. We would like to insist once again on the recommendation made by the IACHR to abrogate Article 331 of the Criminal Code of Honduras.

b. The case of the 25 defenders and peasants of Bajo Aguán and the assassination of Antonio Trejo

On August 21, 2012, 25 defenders and peasants, including leaders of the Unified Peasant Movement of the Aguán (MUCA) and passers-by, were repressed, arrested and prosecuted after participating in a peaceful demonstration before the Supreme Court of Justice. Among the arrested persons there was the lawyer **Antonio Trejo**, legal representative of the Aguán communities in their land claims. He was assassinated one month after in an offense that has gone unpunished, being one of the many examples of the difference of diligence shown

by the Honduran judiciary based on whether the defenders are prosecuted or attacked. This case is analysed in the report *Criminalización en el Bajo Aguán: justicia a medias* published by the Observatory in September 2016.

The criminalisation of these persons, who faced charges of “illicit demonstration” and “damages to property detrimental to the State of Honduras” until they were acquitted on June 6, 2016, should not have occurred. They spent more than three years of resources and energy defending themselves against charges that could have ended up with sentences of two to four years imprisonment, and during that time they were subject to measures that limited their personal freedom. Moreover, we are concerned about the serious and harmful intimidating messages sent to defenders and those using the right to peaceful protest to protect their rights.

This is a landmark case because at that time MARCA and MUCA, represented by lawyer Antonio Trejo (assassinated one month after), had achieved recognition in the first and second instances and in civil proceedings of the rights over the land contested with the companies owned by Miguel Facussé and René Morales. However, the Supreme Court of Justice revoked the decision, granting the right over that land to the business owners, which led to the peasant demonstration before the Court. They had been called to a meeting that was cancelled by the President of the Court after they had been waiting for several hours.

The Observatory could verify that the **procedure against the peasants** violated their right to due process and their judicial guarantees due to i) the open and ambiguous offense they were accused of, ii) the arrest and first proceedings during the early stages of the procedure, iii) the lengthiness of the procedure and refusal to grant measures other than imprisonment, iv) the threats and stigmatisation surrounding the criminal procedure, and v) the judiciary's opposition to holding a hearing during the trial defence statements regarding human rights.

c. Other cases of criminalisation analysed in this report

The aim of this section is not to examine the different cases of criminalisation analysed by the Observatory, but to describe and examine the pattern of abuse of Criminal Law against defenders in Honduras, in contrast with the lack of effective investigations of the numerous attacks against them. The report includes an analysis of the following criminalisation cases, considering the category of defenders they belong to and/or whether they reflect any other patterns:

- UNAH activists*.
- Case of Berta Cáceres and two leaders of the COPINH, Tomás Gómez Membreño and Aureliano Molina Villanueva*.
- Case of Zacate Grande*.
- Criminalisation of MILPAH defenders*.

(*See table of contents)

2.3 Repression of social protests and mobilisations

Over the last few years, different sections of the Honduran population have actively participated in social protests and mobilisations, both at the local and at the national level. In this context, indigenous people, peasants and students have been the victims of violations of their right to publicly and peacefully express their opinions and their dissatisfaction with State policies.

In the different social protests, violent actions, theft, sexual assault and various forms of intimidation against protesters have been recorded.

One of the most recurring events is excessive use of force by the security forces in the context of social protests. Therefore, in the concluding statements made by the UN Committee against

Torture in 2016 regarding the State of Honduras, the Committee expressed its concerns regarding the reports received noting an increase in the number of allegations due to excessive use of force by members of the Armed Forces and the National Police⁵².

The Coalition Against Impunity (*Coalición contra la Impunidad*) has been able to document a regular pattern of attacks against peaceful public demonstrations in cases of protests of grassroots and indigenous organisations, in cases of protests of secondary education and university students, and against residents of the country's rural areas, including through forcible evictions of the population⁵³.

In addition to repression through excessive use of force and attacks against peaceful demonstrations, there are many cases of criminal and administrative reprisals and use of smear campaigns against leaders of protest and social movements. The UNAH case is a perfect example of these patterns of repression of social protest.

a. The UNAH conflict

At the National Autonomous University of Honduras (*Universidad Nacional Autónoma de Honduras* - UNAH), social protest has often been subject to repression by the university authorities who have resorted to banning demonstrations, use of force at the hands of private security guards and initiating criminal proceedings with the aim of breaking up and discrediting student organisations and generally criminalising social protest, as well as closing the door to dialogue with student movements working for human rights.

In 2014, the actions against students participating in social movements worsened when six of them were expelled from the UNAH Campus and also when the Public Prosecutor's Office accused one student and human rights defender of sedition and illicit demonstration, at the dean's request. This student was **Rommel Darío Morán**, who had previously been arrested and tortured by police forces.

This was only the beginning of a series of expulsions and accusations that continues to this day. In 2015, ten students were expelled and another 26 had prosecution orders issued against them. 22 of these cases have been dismissed while four are still ongoing against **Cesario Padilla, Moisés Cáceres, Sergio Ulloa and Armando Velásquez**.

In June 2016, the Public Prosecutor's Office issued six additional arrest warrants against students, including against the four mentioned above and **Dayanara Castillo**, LGBTI defender expelled from the UNAH in 2014 a victim of persecution, illegal detention and harassment due to her sexual orientation and her participation in the student protests. She was exiled until August 11, 2016, when she returned due to the prosecution order and the arrest warrant against her. Dayanara was also the subject of an attempted assassination on November 1, 2016: an unidentified vehicle tried to run over her while on her motorcycle. It is important to highlight the fact that with this new trial, the five defendants will not be able to fight for their freedom, since there will inevitably be pre-trial detention if senior UNAH officials so wish. In addition, the Broad Movement for Dignity and Justice (*Movimiento Amplio por la Dignidad y la Justicia* - MADJ) issued a complaint in July due to the theft of relevant information regarding the criminalisation cases of these UNAH students as the assassination of Berta Cáceres (see case of Berta Cáceres in Section III).

Far from ending these attacks against the rights to freedom of expression and peaceful demonstration, which are essential rights in any democratic society for the resolution of conflicts through dialogue and participation of all parties involved, the university and government authorities seem to have reinforced the campaign to discredit, stigmatise

52 United Nations Committee against Torture, "Concluding observations on the second periodic report of Honduras", UN Document CAT/C/HND/CO/2, August 26, 2016.

53 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 44-47.

and criminalise protests. The UNAH published in June a press release accusing human rights organisations of “defending vandalism” and one month after, the Public Prosecutor’s Office requested the permanent militarisation of the university, which was later refused. According to the information received, this violent environment has resulted in persecution, harassment and death threats against many students⁵⁴.

With regard to the violation of the right to freedom of expression against the students belonging to peaceful social groups defending human rights, on June 10, 2016, 14 Honduran organisations⁵⁵ sued the prosecutors and agents of the Criminal Investigation Technical Agency (*Agencia Técnica de Investigación Criminal - ATIC*), an agency created for the investigation of serious offenses and offenses with a strong social impact. Its mandate means it has no competency to take part in this case, but it had supported and investigated the arrest warrants against the students, which was considered by the organisations as an abuse of authority and a noncompliance with the civil servants’ duties.

To summarise, in 2015 and in the first half of this year alone, 89 cases of criminal prosecution were opened against UNAH students, in addition to four detentions and 17 administrative proceedings. Additionally, we have to take into consideration the stigmatisation and discredit campaign against social protesters orchestrated by university and government authorities, and the violation of the right to freedom of expression even against civil servants in favour of the protests⁵⁶.

2.4 Defamation and stigmatisation of defenders

On April 23, 2015, the Observatory for the Protection of Human Rights Defenders sent a letter to the Honduran government expressing its concern regarding a public statement denouncing a “smear campaign” against the government by opposition political leaders and human rights NGOs⁵⁷. This statement was made a few days before several NGOs participated in the Universal Periodic Review (UPR) in Honduras on May 8, 2015, in Geneva before the United Nations Human Rights Council.

In its letters, the Observatory rejected the statement describing defenders as “bad Hondurans” who wanted to “undermine the country” or who were “perversely and quietly plotting to distort reality”. The Observatory alerted that publicly discrediting and stigmatising the work of defenders as well as violating their right to freedom of expression and to defend human rights increases the already high levels of vulnerability faced by human rights organisations and jeopardises the defenders’ lives and integrity.

The IACHR⁵⁸, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, and the UN Special Rapporteur on the Situation of Human Rights Defenders have also made statements via a letter to the Honduran Government⁵⁹.

54 See different articles published by the Comité por la Libertad de Expresión describing some of the death threats faced by the students in the last few months <http://www.clibrehonduras.com/alerta/cinco-estudiantes-amenazados-muerte-en-la-unah-denuncia-universitario>; <http://www.clibrehonduras.com/alerta/%E2%80%9Cte-voy-matar-si-segu%C3%ADs-defendiendo-estos-vagos%E2%80%9D-advierten-defensor-de-derechos-humanos-por>; <http://www.clibrehonduras.com/alerta/%E2%80%9CChoy-te-vas-morir-perro%E2%80%9D-polic%C3%ADas-y-militares-defensor-de-dd-hh>

55 See case of Margarita Pavón Mairena, a professor dismissed by the UNAH in August 2016 after her statement regarding the conflict: <http://www.clibrehonduras.com/alerta/autoridades-de-la-unah-expulsan-catedr%C3%A1tica-por-opinar-en-tv-sobre-conflicto-universitario>

56 The organisations were: Agentes de Cambio, Colectivo Josefa Lastiri, Centro de Derecho de Mujeres (CDM), Plataforma del Movimiento Social y Popular de Honduras, Comité por la Libre Expresión (C-Libre), Comité de Familiares de Detenidos Desaparecidos de Honduras (COFADEH), Centro para el Tratamiento y Rehabilitación de Víctimas de la Tortura (CPTRT), Centro de Estudios de la Mujer (CEM-H), Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH), Periodismo y Democracia, Asociación para una Ciudadanía Participativa (ACI PARTICIPA), Red Nacional de Defensoras de Derechos Humanos en Honduras, Pen Honduras, Observatorio Ecueménico de Derechos Humanos.

57 President’s Office, Republic of Honduras, April 7, 2015, “Partidos de oposición en campaña de desprestigio contra el gobierno de Honduras”, available on: <http://www.presidencia.gob.hn/?p=5321>

58 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 57.

59 Letter available on: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>

Furthermore, the IACHR regretted the fact that judge Mario Rolando Díaz, President of the Governing Board of the Association of Judges for Democracy (AJD), had not been granted leave of absence to participate in the UPR as a representative of the association and the Plataforma EPU⁶⁰.

This stigmatisation of human rights defenders in the framework of the UPR is only one of the many examples that could be provided.

In June 2016, the UNAH published a press release accusing human rights organisations of “defending vandalism”, and once month after the Public Prosecutor’s Office requested the permanent militarisation of the university, which was later refused (see the section entitled “The UNAH conflict” for more background information).

Furthermore, on November 10, a statement made by the President of the Republic, Juan Orlando Hernández, was published and, once again, he insisted on stigmatising and criminalising human rights organisations accusing them of having economic ties with Honduran gangs.

Lastly, on November 14, 2016, the website *Defensores de Honduras* published an article entitled “Quién protege a los sicarios del Bajo Aguán” (Who protects the hired killers of Bajo Aguán). This article points at **Bertha Oliva** and COFADEH as accessories to the assassination of the President of MUCA **José Ángel Florez** on October 18, 2016, among other instances of slander against them. Considering the seriousness of this, the Observatory requested the competent authorities to investigate who was behind these serious statements. This new website does not provide the name of those behind or linked to them, who are introduced only as a group of Honduran peasants “speaking up to denounce something that is unfair and shameful” who shield themselves behind the right to freedom of expression and anonymity in order to speak up.

It is therefore important to highlight the fact that the State needs to develop a coherent, comprehensive and systematic policy to communicate and raise awareness on the importance of human rights defenders for the promotion of the rule of law and democracy and to stress that their actions are not against the State but contribute to strengthening it. Until then, measures such as the Law for the Protection of Defenders will not have the desired impact, since this stigmatisation worsens conflicts and increases the defenders’ vulnerability to attacks.

60 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 57.

III. MOST VULNERABLE CATEGORIES OF DEFENDERS

1. Land rights and indigenous rights defenders

1.1 Background of land conflicts in Honduras

In 1994, the State of Honduras ratified ILO Convention 169 on indigenous and tribal peoples. However, this convention is yet to be incorporated into domestic law, and the obligation to carry out free, prior and informed consultations is not included in the most relevant legal texts such as the Forests Law (2007), the General Water Law (2009) or the current Mining Law (2013). Moreover, the very Constitution does not at any point refer to Honduran indigenous peoples or to their rights as such.

The current economic policy and the extractive development model promoted in Honduras which shows no respect for the human rights of the affected communities foster land-grabbing and misappropriation of territories belonging to peasants, indigenous peoples and *garífunas* (afro-descendant peoples), all of which has led to many cases of violence, intimidation and criminalisation of leaders due to their work in favour of their peoples' and communities' natural resources across the country.

In its concluding remarks to the State of Honduras adopted in 2001, the United Nations Committee on Economic, Social and Cultural Rights (ESCR) made several recommendations regarding the distribution of the wealth and natural resources, including the adoption of a land reform and solutions to issues regarding land tenure, considering the needs of indigenous peoples and peasants. It also mentioned mining concessions, showing concern for the forcible evictions caused in connection to them⁶¹.

The political and social instability generated by the 2009 coup and the growth of the extractive industry and other industrial projects have increased criminalisation in Honduras and the levels of violence against human rights defenders working on land issues. Civil society has reported 837 potential mining projects, which would cover almost 35% of the national territory⁶².

According to CEHPRODEC, the National Congress of the Republic used the excuse of changing the energy matrix to decrease the energy production based on fossil fuel (70%) and increase the production of hydropower (30%) to approve in 2010 more than 40 hydropower concessions. This affected use of water for human consumption and production by many communities, as well as rivers that indigenous peoples have taken care of for decades.

Moreover, civil society and the IACHR have shown their concern for government concessions in the framework of the Law on Employment and Economic Development Areas to create "model cities". These cities are randomly chosen, with no prior consultation with the rural communities that will be affected by the implementation of such project⁶³.

It would therefore be necessary to start a participative debate on the development model with the effective participation of civil society and, particularly, of indigenous peoples and *garífunas*.

61 Committee on Economic, Social and Cultural Rights. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding observations of the Committee on Economic, Social and Cultural Rights. Honduras. E/C.12/1/Add.57. May 21, 2001, paragraphs 44 and 45, page 6.

62 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 80.

63 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 424.

The Observatory considers that the country's failure to comply with its obligation to consult the communities affected by the extractive, hydropower and tourism projects⁶⁴ helps to aggravate land conflicts thus rendering land and environmental rights defenders more vulnerable. A legal framework that is clear and complies with international human rights standards regarding land would help to channel any possible conflicts through institutional dialogue instead of generating violence and social conflicts.

So far, this regulatory vacuum regarding the consultation to communities has been used by the State of Honduras to reduce the consultation to a mere socialisation a posteriori. We would like to highlight the fact that on December 18, 2015, the State of Honduras was sentenced by the Inter-American Court of Human Rights for the cases of the *garífuna* communities of Punta Piedra and Triunfo de la Cruz, in which there were repeated violations to the right to prior consultation⁶⁵.

The second report presented by the State of Honduras to be United Nations Committee on ESCR states that a working group to design the national mechanism has been created in order to guarantee free, prior, and informed consultation vis-à-vis the communities. This group is made up of government bodies and has representatives of the nine culturally differentiated peoples, of private companies, of the national working class and the assistance of the ILO. The Plataforma EPU, however, has denounced the fact that 16 organisations representing indigenous peoples and 3 representing *garífuna* population have not been taken into consideration, which is proof of the Honduran authorities' lack of willingness to reach an inclusive agreement. We would like to point out that civil society has been open to participate in debates on the implementation of Convention 169⁶⁶.

As stated by OFRANEH, the bill promoted by the State only mentions the word "consent" once (in Article 21) and refers to toxic materials. The Confederation of Indigenous Peoples of Honduras (*Confederación de Pueblos Autóctonos de Honduras - CONPAH*), the Directorate of Indigenous and Afro-Honduran Peoples (*Dirección de Pueblos Indígenas y Afrohondureños - DINAFROH*), and the Observatory for the Human Rights of Indigenous and Black Peoples of Honduras (*Observatorio de los Derechos Humanos de los Indígenas y Negros de Honduras - ODHPINH*) agree in their respective versions that the goal of the consultation is to obtain consent.

The Right to Consultation to obtain Free, Prior and Informed Consent in Honduras has been ignored and has been the cause of a series of attacks by the State of Honduras, which started to show "a certain degree of interest" in implementing ILO Convention 169 –which was ratified by the National Congress in 1995 – only a few months ago, due to the pressure applied following the assassination of Berta Cáceres.

After 21 years putting off the creation of a Consultation Law, DINAFROH and the UNDP began organising gatherings around the country (which they called "consultations") to present the Consultation Bill. Apparently, it had been prepared by foreign experts, and its wording seemed to prioritise the rights of business owners and of the State over the rights of indigenous peoples⁶⁷.

64 Tourism is also creating conflicts in this country and there are several examples of projects for the construction of hotel resorts implemented with no free, prior, and informed consultation with regard to the communities, including the projects of Bahía de Tela, on the Caribbean coast (Department of Atlántida).

65 <https://ofraneh.wordpress.com/2016/04/05/observatorio-de-los-pueblos-indigenas-de-honduras-introdujo-ante-proyecto-ley-de-consulta-previa-en-el-congreso-nacional/>

66 As an example, in April 2016, the Observatory of the Human Rights of Indigenous and Black Peoples (ODHPINH) presented a Bill on Prior Consultation to the National Congress through congressman Rafael Alegría: <https://ofraneh.wordpress.com/2016/04/05/observatorio-de-los-pueblos-indigenas-de-honduras-introdujo-ante-proyecto-ley-de-consulta-previa-en-el-congreso-nacional/>

67 <https://ofraneh.wordpress.com/2016/10/10/alerta-a-punto-de-ser-aprobado-anteproyecto-ley-de-consulta-impulsado-por-el-estado-de-honduras-y-pnud/>

In Honduras, another landmark land conflict case is that of Bajo Aguán. The situation of land rights for peasants in Bajo Aguán, the land-grabbing carried out by companies, particularly those engaged in oil palm farming, and the lack of guarantees and impartiality in procedures for the clarification of ownership have led to major social tension which has in turn led to threats, persecution and selective killings of peasant leaders, as well as to continuous demonstrations by local peasants. These demonstrations have in turn been strongly repressed by members of the government forces and in this framework several peasant land defenders have been prosecuted. According to the report prepared by the National Human Rights Commissioner, 92 people died during the land disputes of Bajo Aguán between 2009 and 2012⁶⁸. By 2011, FIDH and other organisations had confirmed 23 killings linked to the land conflict that had taken place between January 2010 and March 2011⁶⁹.

The Bajo Aguán Violent Deaths Unit (*Unidad de Muertes Violentas del Bajo Aguán - UMVIBA*) was created in March 2014 to ascertain the facts surrounding the deaths that had occurred in the land conflict area. They are dealing with a total of 127 homicides, of which 24 were referrals from the Permanent Observatory for Human Rights of Bajo Aguán. Unfortunately, so far only 21 of the 127 a cases have led to prosecution, according to data provided to the mission by the coordinator of the UMVIBA on May 10, 2016.

The peasants of Bajo Aguán were dispossessed of the land they had inhabited and worked on for decades under the land reforms promoted by the State of Honduras in the 1970s. These reforms made access to land and major socioeconomic progress possible.

However, with the Law for the Modernisation and Development of the Agricultural Sector, passed in 1992, land concentration swiftly moved into the hands of few landowners, particularly foreign palm companies. This led to the loss of ownership rights of small peasants and to the dismantling or change of ownership of peasant cooperatives⁷⁰. Through irregularities and different interpretations of said law, large producers were given the opportunity to expand their territories beyond the ownership thresholds set by the land reform⁷¹. Transfers of ownership were performed through fraudulent procedures that ignored the existing legal frameworks, which led peasants to initiate legal proceedings to recover ownership of the land where they had lived and worked for decades.

In April 2010, a period marked by the killing of defenders and journalists and for the militarisation of the area, the government signed agreements with peasant movements MUCA and MARCA, made up of peasant businesses in the area. As pointed out by the representative of the National Agrarian Institute (*Instituto Nacional Agrario - INA*) during the mission⁷², in an attempt to resolve the land conflict and given the fact that the State cannot expropriate properties that are already registered in the land registry, the general agreement stated that the government would buy for the organisations 4,000 hectares from Reynel Morales and from the business complex DINANT through Empresa Transportadora del Atlántico, which had acquired most of the land. In the agreements, the government also committed to later acquire another 7,000 hectares for the peasant organisations MARCA and MUCA. As of today, only the first part of the agreement has been fulfilled. 4,070 hectares were bought and delivered to the peasant businesses. According to the INA representative, the promise to deliver an additional 7,000 hectares was made hastily. There are not 7,000 hectares to be freely allocated in Aguán. How does the State of Honduras plan to keep its promise to the peasants then?

68 HRW, "Honduras: acusaciones del ejercito ponen en riesgo a activistas", December 19, 2013, <https://www.hrw.org/es/news/2013/12/19/honduras-acusaciones-del-ejercito-ponen-en-riesgo-activista>

69 FIDH, "Honduras: Violaciones de Derechos Humanos en el Bajo Aguán", September 2011, page 13.

70 Ibidem, Chapter 2.2 La situación agraria en Honduras and Chapter 2.3 Reforma Agraria y reconcentración de tierras en el Bajo Aguán.

71 Ibidem.

72 Interview with Roy Murillo, legal advisor for the National Agrarian Institute (INA), on May 13, 2016.

1.2 Attacks against land rights and indigenous rights defenders

The IACHR and other national and international institutions, as well as the Observatory, in its Annual Report *"We are not afraid" Land rights defenders: attacked for confronting unbridled development*, published in December 2014, and in its regular work on this issue, have pointed that human rights defenders linked to land and natural resources are one of the most vulnerable categories of defenders to be subject to violent actions, harassment and death threats due to their human rights work.

According to Global Witness⁷³, Honduras, with 111 victims, was ranked top on the list of countries with the highest number of killings of land and environmental rights defenders between 2002 and 2014. These attacks are carried out by State and non-State actors.

In Honduras, economic, social and cultural rights defenders have been branded as "terrorists", "criminals" and "*guerrilla*"⁷⁴ members. They have been victims of increasing threats, violent attacks, intimidation, illegal detentions, assassinations and criminalisation due to their work for human rights, land and territory.

In December 2014, the IACHR, in its preliminary observations concerning the visit to Honduras, referred to the fact that many of those attacks "are intended to reduce the activities they carry out to defend and protect territories and natural resources, as well as defending the right to autonomy and cultural identity"⁷⁵. Moreover, the IACHR stated that "acts of aggression, attacks and harassment on leaders, while severely altering cultural integrity, can also contribute to the breakdown of community cohesion around the defence of their rights"⁷⁶.

In addition to physical attacks and threats, judicial harassment against defenders is also commonplace. According to the IACHR, by October 2014, 27 leaders had been prosecuted for offenses such as unlawful appropriation of land, and damages to the environment and to private property⁷⁷. The Observatory has also documented several representative cases within this pattern of criminalisation of land rights defenders: the case of Berta Cáceres (see the section on the "Assassination of Berta Cáceres and campaign against the COPINH"); the case of the 25 defenders and peasants of MARCA and MUCA in Bajo Aguán who were absolved after a procedure with many violations of the right to due process (see trial observation report of the Observatory⁷⁸); the case of criminalisation in Santa Elena of 20 members of the Consejo Indígena Lenca de Santiago Apóstol accused of unlawful appropriation of land since 2014; the judicial harassment of members of the Association for the Development of the Zacate Grande Peninsula (*Asociación para el Desarrollo de la Península de Zacate Grande - ADEPZA*) accused of unlawful appropriation of land, threats and damages in the framework of ADEPZA's process for the recovery of the beaches of Zacate Grande, in the municipality of Ampala, Valle Department (see section entitled "The case of Zacate Grande").

Peasants' claims to recover their lands in Bajo Aguán have not stopped and some of them have paid the price with their lives. According to Yoni Rivas, Spokesperson for Plataforma Agraria, there have been 145 killings in Bajo Aguán since the agreements were signed in 2010⁷⁹. Another example of attacks and persecution is the case of two of the individuals who signed agreements with the government, who were assassinated: Matías Valle, and Pedro Salgado and his wife Reina Mejía. Another of the signatories, Pedro Chinchilla, was forcibly displaced, and the only ones who are still in this area despite having received a number of serious threats are Yoni Rivas and Vitalino Álvarez.

73 Global Witness, *How many more? 2014's deadly environment: the killing and intimidation of environmental and land activists*, with a spotlight on Honduras, April 2015.

74 *Plataforma EPU Honduras, Informe Alternativo al Segundo Informe del Estado de Honduras ante el Comité de Derechos Económicos, Sociales y Culturales (DESC)*, presented in May 2016, pages 40-42.

75 IACHR, *Preliminary Observations concerning the Human Rights Situation in Honduras*, December 5, 2014.

76 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 78.

77 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 78.

78 The Observatory: "*Honduras. Criminalización en el Bajo Aguán: Justicia a Medias*", Report of the trial observation mission. September 2016.

79 Meeting with organisations from Bajo Aguán on May 9, 2016.

Below are a series of documented cases that prove the seriousness of this violence, including killings, threats, attacks and intimidation against land and environmental rights defenders.

The State of Honduras needs to tackle the root of the problem and develop laws and public policy to promote respect for land-related human rights, with the participation of the communities affected by the projects and civil society at the national level for the creation of the development model. The impact of any protection measures taken will be mitigated until this happens, since the risk will be limited temporarily, but the structural causes of the violence will not be addressed.

a. Assassination of Berta Cáceres and campaign against the COPINH

Profile:

Berta Cáceres, cofounder and Coordinator of the Civic Council of Popular and Indigenous Organizations of Honduras (*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras* - COPINH), was an indigenous and environmental rights defender who in 2015 received the prestigious Goldman Environmental Prize. A member of the Lenca people, Berta Cáceres denounced the hydropower project "Agua Zarca", carried out by the company Desarrollos Energéticos S.A. (DESA) in the Gualcarque river, located in Lenca lands in the municipality of San Francisco de Ojuera, Santa Bárbara. The Lenca people have constantly struggled to defend their territories and protect the Río Blanco river.

As she was involved in this struggle, Berta Cáceres received continuous death threats against her and her family, threats of violence and sexual assault, and attacks and harassment. Because of her work she also suffered judicial harassment by judicial authorities and intimidation by the local government security forces and civil servants. In the six months prior to her assassination, which took place on the night of March 2, 2016, the threats escalated, her vehicle received gun shots and she received verbal threats and messages from members of the armed forces and the police and from local authorities and representatives of the hydroelectric company DESA. It is important to highlight the fact that after years of threats against her and against the members of the COPINH, in 2009 Berta Cáceres was granted precautionary measures by the Inter-American Commission on Human Rights (IACHR), but she never received the actual protection she needed. As described in the section below, members of the COPINH continue to be threatened, attacked and even killed to this day.

Criminalisation⁸⁰:

On May 24, 2013, Berta Cáceres Flores and two COPINH leaders, Tomás Gómez Membreño and Aureliano Molina Villanueva, were ambushed at 18:30 by a military police command. They were arrested in a joint operation of the army and members of the engineer battalion and were accused of "illegally carrying weapons" and of "attacks against national security", as provided for in the Honduran Criminal Code. 24 hours later she was released subject to appearing before a court once a week and was banned from leaving the country. In June of that year, the alternatives to imprisonment were revoked, but the Public Prosecutor's Office lodged an appeal against this decision. It was not until February 2014 the case was definitely dismissed.

Berta Cáceres, Tomás Gómez Membreño and Aureliano Molina Villanueva were later accused by the Public Prosecutor's Office of incitement to commit the offenses of "unlawful appropriation" (sentence of two to four years of imprisonment), "coercion" (sentence of six months to two years of imprisonment) and "sustained damage" (sentence of three to five years of imprisonment) to the detriment of the company DESA. These offenses had allegedly been committed between April 6 and May 15, 2013. We would like to point that among the evidence used by the Public Prosecutor's Office, there were claims lodged by the mayor of the municipality, Martiniano Domínguez, supporting the company and by the legal representative of the company DESA.

⁸⁰ See Observatory Joint Report *Criminalización de defensores de derechos humanos en el contexto de proyectos industriales: un fenómeno regional en América Latina*, February 2016.

Assassination and subsequent events:

On the night of March 2, 2016, at around 23:45, Berta Isabel Cáceres Flores was killed by unidentified individuals in her hometown of La Esperanza, in the south-western Department of Intibucá. According to local sources, the killers waited until she had fallen asleep to break into her house and kill her. The Mexican human rights defender **Gustavo Castro**⁸¹ was also hurt during the attack.

On March 3, Gustavo Castro, who was visiting Honduras for an exchange of experiences with the COPINH on alternative fuels from the indigenous point of view, testified before the Public Prosecutor's Office as a witness. However, arbitrarily, and despite having been hurt in the attack, the Honduran authorities banned him from returning to Mexico and he was forced to stay in the country until March 31.

The vulnerable position in which Gustavo Castro, Berta Cáceres' relatives and the members of the COPINH were left led the IACHR to grant them precautionary measures on March 5, 2016⁸².

On May 2, 2016, four men were arrested for the assassination of Berta Cáceres, two of whom were linked to Desarrollos Energéticos S.A. (DESA). Nevertheless, in an open letter published on May 2, after the arrests were made public, Berta Cáceres' relatives and colleagues expressed their concern for the fact that they were excluded from the investigation carried out by the Honduran authorities.

In the morning of July 13, the office of the Broad Movement for Dignity and Justice (MADJ)⁸³ in San Pedro Sula, the legal representative of victims in the proceedings for the killing of Berta Cáceres, was broken into by an unknown individual who stole hard drives, computers and cameras with key information and evidence regarding landmark cases of corruption and human rights violations, including the murder of the Lenca community defender and leader Berta Cáceres. The office surveillance cameras showed that the individual broke into the office, browsed several documents, shelves and desks and then left with two bags full of equipment and other valuables from the office. Even though the burglary was immediately reported, the police arrived hours later, in the afternoon, with no equipment to examine any possible prints.

On September 28, 2016, the file of the legal procedure for the killing of Berta Cáceres was stolen while one of the Court of Appeals judges was in her vehicle, in the city of Tegucigalpa.

Due to Honduras' refusal to initiate a completely independent, impartial and transparent investigation on the assassination of Berta Cáceres, with the participation of the IACHR, the International Advisory Group of Experts (*Grupo Asesor Internacional de Personas Expertas - GAIPE*) was created in November, at the initiative of civil society and at the request of Berta Cáceres' relatives and the COPINH. The aim is to carry out an independent, objective and impartial analysis of the facts. This initiative has been supported by many civil society organisations, including the Observatory.

The Observatory has repeatedly condemned the series of serious attacks and intimidation actions against members of the COPINH and has shown its concern for the lack of will and diligence of the State of Honduras regarding the investigation into the killing of Berta Cáceres. In this regard, we are worried about the fact that despite the many requests by national and international actors, the authorities have remained silent and continue to

81 The Mexican defender Gustavo Castro belongs to the Chiapas organisation Otros Mundos and to the Mexican Movimiento Mexicano de Afectados por las Presas y en Defensa de los Ríos (MAPDER), which are members of the Movimiento Mesoamericano contra el Modelo Minero M4 and the Red Latinoamericana contra Represas y por los Ríos, sus Comunidades y el Agua (REDLAR).

82 IACHR, Precautionary Measure 112-16. Asunto miembros de COPINH y familiares de Berta Cáceres. Available on: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

83 It is important to highlight the fact that the MADJ usually brings to justice politically sensitive cases of violations of the rights of indigenous communities in the context of megaprojects. The MADJ thus represents Berta Cáceres' relatives in the legal procedure for her murder.

block the full involvement of the families and victims. Likewise, the fact that the current investigations suggest that the person ordering the killing or the different levels of involvement of those prosecuted are yet to be ascertained is also highly concerning.

Other attacks against members of the COPINH

On Friday April 15, 2016, a group of approximately 400 members of Honduran and international human rights organisations and social movements, as well as members of the media, were attacked when passing through the San Ramón community, in the municipality of San Francisco de Ojuera. The attackers were in a group of approximately 30 people openly in favour of the Agua Zarca hydropower project carried out by the company Desarrollos Energéticos S.A. (DESA). At around 14:00, these people threatened the protesters while wielding machetes. Despite the strong presence of police officers and members of the Armed Forces throughout the route of the international protest, there were only six officers at the front of the protest. At approximately 17:00, the protest ended and the group of people attacked the protesters with sticks and stones, which ended up with ten protesters injured. Likewise, the attackers made death threats against the members of the COPINH, particularly against the new coordinator, Tomas Gómez. The National Police did not react at that point and it only intervened after the victims of the attacks strongly insisted.

On May 6, 2016, **Alexander García Sorto**, member of the COPINH and community leader of Llano Grande (Colomonguaca) was shot and wounded by a former member of the military while leaving his home. We would like to point out that the former member of the military is currently being prosecuted and that Alexander García Sorto has received threats from his relatives for refraining from withdrawing the charges.

On July 6, 2016, the lifeless body of defender **Lesbia Yaneth Urquía**, member of the COPINH, was found in the municipality of Marcala, in the Department of La Paz. She had been kidnapped and killed and two individuals were arrested as part of this case. She was a fierce opponent to the privatisation of rivers and she carried out her legitimate work in favour of natural resources and indigenous rights, and against the construction of the Aurora I hydroelectric dam in the municipality of San José, La Paz.

On October 9, two members of the COPINH suffered assassination attempts. While Alexander García Sorto was sleeping at his home with his wife and two daughters, unknown individuals opened fire against the doors and windows. The same day, the council van that the General Coordinator of the COPINH, Gómez Membreño, was driving, also received gun shots.

On October 25, there was a new case of detention and deportation of a person linked to the COPINH at the Tegucigalpa international airport. The Spanish citizen **Luis Díaz de Terán** was returning to Honduras to continue with his work of international human rights support and observation in the COPINH, which he has been doing since 2014. Upon arrival, the defender was arrested by immigration officers, handcuffed and deported back to Colombia hours later with no appropriate explanation. Moreover, he was denied the legal assistance offered by the organisations that came to his aid as soon as they learnt the news of his arrest. The defender realised that a hard drive and a digital camera had been removed from his luggage. It is not the first time that the Honduran immigration authorities detain or restrict the free movement of COPINH supporters, since this was also the case of the aforementioned Gustavo Castro Soto, who collaborates with the COPINH and was a witness in the case of Berta Cáceres' murder.

It is important to highlight that these facts are part of a campaign of systematic attacks against human rights defenders in Honduras and particularly against the COPINH, in spite of the precautionary measures the organisation is a beneficiary of⁸⁴. The apparent goal is to stop their legitimate work evidencing the megaprojects' negative effects on Lenca territories in terms of the fulfilment of the human rights of local communities.

84 IACHR, Precautionary Measure 112-16. Asunto miembros de COPINH y familiares de Berta Cáceres. Available on: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

b. The case of Zacate Grande

The State of Honduras never considered the Zacate Grande peninsula as part of the national territory, but rather as private property, so its residents were deprived of all rights over the land. This conflict originated at the beginning of the 20th Century, when in 1902 the State gave the island of Zacate Grande to the then president of the republic, General Terencio Sierra, as a gift. It was inherited by his niece Carmen Malespín, but the documents never mentioned where exactly in Zacate Grande his land was located.

In the 1970s, the construction of an artificial connection turned the former island into a peninsula, which led to new infrastructure and to economic expansion. In this context, wealthy Honduran families started taking control over the beaches of the peninsula and turning them into places of retreat, where they built their new mansions.

In 1992, 30 beaches were privatised under the land reform promoted by Callejas, and 70% of the land was offered to business owner Miguel Facussé Barjun, who in 2003 gave his daughter the beach of Las Gaviotas, forcibly evicting the Cárcamo Sánchez family.

It is therefore important to highlight the economic interest in the area. Firstly, it is a tourist area for many of Honduras' public figures⁸⁵ who built big mansions there. Secondly, the deepest port in Central America is located between Zacate Grande and Isla del Tigre⁸⁶. In this context, peasant communities are ignored and intimidated in their own land.

Attempted evictions and arrests have become commonplace for more than 800 families, descendants of fisherfolk and peasants who have lived and worked in the idyllic Pacific Zacate Grande peninsula for more than a century. 95% of the population has no title deeds of the land, so they cannot access most of the beaches and arable land in the peninsula.

This violence and uncertainty is embedded in a context of criminalisation of those defending human rights and land rights⁸⁷. The most recent example of arrests is that of **Abel Antonio Pérez** and **Santos Hernández**, members of the Association for the Development of the Zacate Grande Peninsula (ADEPZA) accused of unlawful appropriation of land, threats and damages in the framework of ADEPZA reclaiming the beaches of Zacate Grande, in the municipality of Ampala, Valle Department. They are part of the group of 44 families affected by the construction of a wall in their land. Since May 14, 2011, the police of Relleno and Nacaome have showed up regularly to try to evict those living in the area.

In addition, people have been charged with and arrested for offenses of unlawful appropriation of land and construction in private land. At midnight on April 13, 2005, the first 12 individuals prosecuted were arrested, taken out of their homes and directly to the Nacaome prison. They were charged with unlawful appropriation and damages to the environment and to Miguel Facussé's private property. The residents took to the streets in protest until those arrested were freed 24 hours later.

In 2010, a radio project was carried out in Zacate Grande with no permission from the authorities. Eight people were charged with unlawful appropriation, tax evasion and disobedience. Thanks to COFADEH's intervention, they were released without charges and in 2013 they were granted authorisation to operate a frequency for radio broadcasting. COFADEH provides not only legal support, but has also requested precautionary measures for 19 local victims of defamation, threats and arrests carried out by the authorities.

85 IACHR, Precautionary Measure 112-16. Asunto miembros de COPINH y familiares de Berta Cáceres. Available on: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

86 The USA is especially interested in this port.

87 As highlighted by the Report of the Observatory *Criminalización de defensores de derechos humanos en el contexto de proyectos industriales: un fenómeno regional en América Latina*, February 2016.

Since 2012, several arrest warrants have been issued against the residents of Playa Blanca and Puerto Sierra, including the aforementioned peasant leaders Abel Antonio Pérez and Santos Hernández, following the legal claims lodged by the owner of the Uno petrol station in San Lorenzo.

The court cases against these communities have lasted eight years in the courts of Isla del Tigre with no judgement having been issued so far. This is yet another example of the delays of the judiciary relating to procedures involving claims of lands by the indigenous or peasant communities of Honduras. The delays evidence the State's lack of willingness to find a resolution to this conflict. There are 31 persons prosecuted in the Supreme Court of Justice and measures alternative to imprisonment are still enforced, which means that these individuals have to appear before court on a monthly basis (sometimes even biweekly), which results in time wasting and economic harm for the members of the community. This measure, which was imposed in theory to ensure their presence in the country, seems to have been used as a control tool as well as a justification to arrest those who do not fully comply with it.

Arrests are usually violent and often lack a warrant, resulting in abuses and humiliation against the detainees during detention and imprisonment.

The communities of Zacate Grande are completely defenceless and do not have the infrastructure necessary to live in the area⁸⁸. There are currently 36 legal claims against the residents for unlawful appropriation of land, damages to the environment and construction in private land, and the population is constantly at risk of being arrested.

c. The case of Locomapa

The reality of the Tolupán people, mostly located in the Yoro Department, in inland Honduras along the Atlantic coast, is critical, unfair and challenging in the fields of economy, education and health. In 2001, the PAHO estimated that the average monthly income for indigenous people in Honduras was approximately HNL 1000 (around USD 45). However, it is HNL 300 (approximately USD 13) in Tolupán communities, which forces many families to depend on collecting roots and wild fruits, and on hunting and fishing during periods of shortage⁸⁹.

The Tolupán people have been massacred for decades in the name of use of the land in Locomapa. To date, approximately one hundred indigenous individuals have been killed in crimes that still remain unpunished⁹⁰. The violence against the Tolupán people continues, with a total of 17 assassinations of members of the community of San Francisco de Locomapa, of which 11 have occurred in the last five years.

The case of San Francisco de Locomapa is particularly complex due to the succession of conflicts over the last few decades⁹¹. Firstly, this community has fought against the plundering of its forest products for decades, which is why they have been persecuted and killed since 2002.

Secondly, San Francisco de Locomapa has an ongoing conflict with local mining business owners who exploit antimony deposits with questionable local licenses. Moreover, the community is fighting to defend their tribal agro-silvo-pastoral land, usurped by major landowners. The best-known landmark case is that of currently retired General Oscar

88 They have been denied light permit, they have two understaffed health care centres, one elementary school in each village (24) and a basic education centre.

89 *Plataforma EPU Honduras, Informe Alternativo al Segundo Informe del Estado de Honduras ante el Comité de Derechos Económicos, Sociales y Culturales (DESC)*, presented in May 2016, page 13.

90 The authorities recognised the Tolupán people as the most tormented native people in Honduras, a statement which was published on the website of the ministry but deleted after the current president took office.

91 Broad Movement for Dignity and Justice (MADJ), "Paz, Justicia y Solidaridad pide el pueblo Tolupán", March 7, 2016.

Filander Armijo Uclés, who has been dispossessing indigenous families of their land for 30 years⁹².

Lastly, the community of San Francisco de Locomapa faces a new migration phenomenon in which poor peasant families are forced to leave their lands and settle in new areas such as Locomapa. This can be extrapolated to what happens with the other native peoples of Honduras⁹³.

This unlawful appropriation of land is linked to the economic interests of large companies or prominent figures who decide to do business in new areas of tourism, mining, forestry or hydropower, among others⁹⁴. The Tolupán indigenous community of Locomapa has been subject to 14 years of violence in the name of forestry development and mining interests.

This is chronology timeline of some of the most significant events:

On May 1, 2002, **Luis Soto Madrid** was assassinated after having publicly denounced the deforestation carried out by local business owners.

On September 7, 2008, Faustino Córdova suffered the same fate as his colleague. Once again, the reason was the defence of the natural resources of the Tolupán people.

Since 2010, the timber businessman Kenton Landa Uclés has lodged several criminal claims against the Tolupán community, supported by the Public Prosecutor's Office and the National Police.

On December 22, 2011, **Antonio Matute** was killed. Six months later, in June 2012, **Osman Matute Soto** was shot dead.

On August 25, 2013, three indigenous individuals were murdered for opposing the mining projects in the area: **Ricardo Soto Fúnez**, **Armando Fúnez Medina** and **María Enriqueta Matute**. The three of them were indigenous leaders of the community and members of the Broad Movement for Dignity and Justice (MAJD). An arrest warrant was issued for the alleged perpetrators, but they have not been arrested yet.

The murders of **Luis Reyes Marcía** and **Erasio Vieda Ponce**, perpetrated on April 5, 2015, and on July 18, 2015, respectively were also linked to the mining problem.

However, Locomapa, far from giving up, has lodged several claims before the courts of Yoro and Tegucigalpa in collaboration with the MAJD. Moreover, the MADJ has taken action against the State of Honduras to seek justice for these crimes before the Inter-American Commission on Human Rights (IACHR).

In an attempt to stop the escalation of violence, the IACHR required the Government of Honduras to provide protection measures, with no positive response so far.

92 On September 5, 2014, the MADJ and the last Tolupán family to be dispossessed of their land and other natural resources lodged a legal claim before the court, which was registered under dossier number 82-14. However, it was not until one year later, on October 20, 2015, that the former general appeared before court to give his deposition as a defendant.

93 Tribe commissions have been appointed on numerous occasions to visit the offices of the National Agrarian Institute (INA), the Forest Conservation Institute (ICF) and the Public Prosecutor's Office to help set technical regulations on this phenomenon of migratory poverty, but no response has been obtained so far.

94 See cases of Bajo Aguán in the Report of the Observatory "Honduras. Criminalización en el Bajo Aguán: justicia a medias" (September 2016) or the case of the hydropower project of Agua Zarca, the environmental and indigenous struggle for which Berta Cáceres was murdered in March 2016. See Press Release of the Observatory "Honduras: Emblemática defensora de los derechos humanos Berta Cáceres asesinada" (March 2016).

d. Murders in Bajo Aguán: the cases of José Ángel Flores and El Tumbador

I The case of José Ángel Flores:

José Ángel Flores, former President of the Unified Peasant Movement of the Aguán (MUCA), alongside 83 peasants members of the MUCA and 32 members of the MARCA, was from 2014 a beneficiary of precautionary measures granted by the IACHR⁹⁵. Among the reasons leading to these measures, there was the fact that on October 23, the social communicator of the movement had been kidnapped and the kidnappers had stated that “the land issues in Bajo Aguán could be resolved just by killing the leaders of the MUCA”⁹⁶.

On May 15, 2016, security forces broke into the home of José Ángel Flores claiming to be looking for weapons and drugs. At 5:00 in the morning, he was taken to the police station, where they apologised, since nothing illegal had been seized at his home. The leaders pointed out that the aim of this police practice is to discredit and criminalise organisation leaders.

Finally, on Tuesday October 18, at 18:10, José Ángel Flores was shot dead by four hooded men when coming out of an organisation meeting at the MUCA headquarters, located in Comunidad de la Confianza, Tocoa, Colón. During the events the peasant leader Silmer Dionisio George was also shot and he died hours later in a hospital in the city of Tocoa, Colón.

José Ángel Flores had informed the authorities that he was vulnerable and at risk, but he had obtained no response. A few days earlier, José Ángel Flores and COFADEH formally denounced before the authorities the seriousness of the defender's situation.

Considering the recent attacks to leaders and human rights defenders in Bajo Aguán, we request that the national and international authorities protect the life and the integrity of the following human rights defenders met during the mission in Aguán: **Vitalino Álvarez**, social communicator and member of the MUCA; **Yoni Rivas**, Spokesperson of the Plataforma Agraria del Aguán; **Virgilio Domínguez**, President of the Asociación de Juntas de Agua de Tocoa and General Coordinator of the Frente por la Defensa de los Recursos Naturales de Saba; **Walter Ernesto Carcamo**, President of the Movimiento Auténtico Renovador Campesino del Aguán (MARCA) and Deputy Coordinator of the Plataforma Regional del Aguán; **Mario López**, President of Section Number 3 of the Trade Union of the National Agrarian Institute; **Carlos Leonel Choj**, representative of the Coordinación de Organizaciones Populares del Aguán (COPA); **Orbelina Flórez Hernández**, of the Permanent Observatory for Human Rights of Bajo Aguán; **Raúl Ramírez**, Secretary General of the MUCA; **Esly Banegas**, of the COPA and SINTRAINA; **Jaime Cabrera**, Spokesperson of the Movimiento Gregorio Chávez and Coordinator of the Plataforma Agraria del Aguán; **Rigoberto Duran**, spokesperson of the Permanent Observatory for Human Rights of Bajo Aguán; **Irma Lemus**, Secretary of the Permanent Observatory for Human Rights of Bajo Aguán; as well as the members of the organisations mentioned and representatives of the peasant ventures of Aguán.

II Case of El Tumbador:

The mission officers were able to visit the Guadalupe Carney community on May 9, 2016, and speak in solidarity with the peasants and victims of the El Tumbador massacre.

The 5649 hectares of the El Tumbador estate, located in the municipality of Trujillo, Colón Department, were acquired by the State of Honduras in 1972 and used for the land reform. Miguel Facussé, owner of the company DINANT, took over 565 hectares that had been allocated to the MCA.

⁹⁵ IACHR, Precautionary Measure 50-14 of May 8, 2014.

⁹⁶ *Ibidem*, number 6, paragraph xv

According to local organisations, there is no entry in the registry that proves that Facussé acquired said hectares regularly and legally. Dinant representatives state that the land has been owned by the company since 1988, since the owner acquired shares in the Midence family companies, which had been judicially allocated the lands due to a debt that the landowner, Temístocles Ramírez, had with the family at the time.

Nevertheless, said plots of land were expropriated to Temístocles Ramírez in 1983 so as to set up the Regional Centre for Military Training (CREM), which operated until 1991, so it was not possible for the Midence family to have owned the land. In 1987, the American citizen Temístocles Ramírez lodged a complaint in the USA due to the expropriation by the Honduran government. On July 5, 1990, Temístocles Ramírez signed a transfer document in favour of the State of Honduras for the thousands of hectares of land including El Tumbador for USD 7.8 million. This document was registered on March 1, 1991 under number 13, book 62 of the Registry of Real Estate and Commercial Property of the Colón Department. In this context, full control over this land cannot be established due to the lack of relevant documents and of peaceful and continuous land tenure.

In April 2010, members of the MCA reclaimed the lands, and Resolution 437-2010 of the National Agrarian Institute stated that the lands must be allocated to the peasants, who would have to pay for any improvements made.

In July 2010, Miguel Facussé instructed his private security guards to evict the peasants who had settled in El Tumbador. Since the eviction took place, a negotiation process started between leaders of the MCA, the National Agrarian Institute and Miguel Facussé, under the understanding that the land was not owned by Facussé and it was appropriate to pay for the improvements made. However, the negotiations yielded no results and only infuriated the parties.

On November 15, 2010, **Raúl Castillo**, a member of Cooperativa 14 de Mayo; **José Luis Saucedo Pastrana** and **Ciriaco de Jesús Muñoz**, of Cooperativa Nueva Esperanza; **Teodoro Acosta**, of Cooperativa Nueva Vida; and **Ignacio Reyes García**, of Cooperativa Familias Unidas 3; all of them members of the Movimiento Campesino del Aguán (MCA), were shot dead at around 5:00 in the morning by security guards working for Corporación DINANT after entering the El Tumbador estate with other peasants. According to witnesses, when the peasants refused to leave the estate, the guards fired shots using military firearms such as AK-47, M-16 and R-15 rifles, used exclusively by the armed forces. Moreover, they chased the peasants for hours, preventing them from recovering the bodies. Between 170 and 300 peasants had decided to go to the estate that morning to reclaim El Tumbador, where they peacefully demanded the guards to hand over the land. Several people resulted injured at this stage as well.

Reportedly, the events were reported to the police at 6:30, but the Public Prosecutor's Office and the Police did not turn up until six hours later, and they only did so to remove the bodies. No document proves that the authorities took control of the crime scene or that they duly secured the area. They did not arrest or disarm anyone, they left the private security guards in charge of the area and only confiscated an AK-47 weapon whose ownership was attributed to one of the murdered peasants, despite having been found on one of the private security guards. No gunpowder tests were carried out and the certificates of removal of the bodies and autopsies lack accurate and coherent information, as pointed in a report prepared by COFADEH⁹⁷.

For years, there were no arrests and neither the Public Prosecutor's Office nor the Criminal Investigation Directorate (DIC) performed any more tests, carried out any other investigations or took any additional actions before issuing the prosecution order. The Public Prosecutor's Office and the Prosecutors Coordinator could have even obstructed the

97 COFADEH, "Tumbador y Rigores en total IMPUNIDAD", 2015.

work of the Special Prosecutor's Office for Human Rights on the case⁹⁸. It was not until October 23, 2012, that the prosecution order was submitted to the Civil Court of the Judicial Section of Trujillo, Colón, against the suspects: Engineer René Alduvin Gálvez, the head of the guards José Rodrigo Reyes Molina, Juan Carlos Nolasco Argueta, Eugenio Efraín Casagleno Meza, Julio Cesar Rosales, and Osman Adolfo Rodas.

However, when the Public Prosecutor's Office presented insufficient evidence during the initial hearing, the judge decided on January 18, 2013, to dismiss without prejudice the case against the plaintiffs. If new evidence arose within 5 years, the prosecution could continue. The procedure is therefore on track to impunity, considering the negligence shown by the prosecutor and by other investigation and prevention entities when providing evidence of the case.

The serious murders in Bajo Aguán led to the creation of the Bajo Aguán Violent Deaths Unit (UMVIBA). At a meeting with the mission officers, the coordinator of the UMBIBA stated that they had been referred 127 homicide cases. Until May 2016, 21 prosecution orders had been issued and 15 cases had been found not to be linked to the conflict but to ordinary offences. Three convictions had also been handed. This means that no progress has been made on 88 cases.

e. Criminalisation of MILPAH defenders in Santa Elena

The Independent Indigenous Lenca Movement of La Paz (*Movimiento Independiente Indígena Lenca de la Paz - MILPHA*) of Honduras consists of numerous Indigenous Councils (*Consejos Indígenas*) across more than 12 municipalities in the Department of La Paz. One of them is the Consejo Indígena Santiago Apóstol, which is composed of 20 members: **Roberto Gómez Benítez, Norma Suyapa Pérez Hernández, Héctor López Mejía, Juan Benítez López, Rigoberto Vásquez Pineda, José Natividad Pérez, Lázaro Pérez, Rosalio Pérez, María Ernestina García Pérez, Leónidas Benítez, María Mercedes Pérez, Arbens Pérez Manueles, Florentino Benítez, Higinio Benítez, Rosa Benítez, Hipólito Pérez, María Teodora Benítez, Agustina Gómez Benítez, Francisco Benítez, and Jorge Alberto Benítez**. They are currently being prosecuted for unlawful appropriation of land for defending water and territory, as denounced by CEHPRODEC, the organisation that provides them with legal advice.

The indigenous communities settled in the areas surrounding the Chinacla river and whose water supply relies on this river have been persecuted and attacked due to their opposition to the concessions granted by the State of Honduras for the hydropower projects Aurora S.A. and Los Encinos. The latter is located in the municipality of Santa Elena, in the territories of the Indigenous Council Santiago Apóstol community. The General Manager of the company Inversiones La Aurora S.A. de C.V., which was granted the concession of these projects is Arnold Gustavo Castro Hernández, married to Gladis Aurora López, current Vice-President of the National Congress and President of the National Party, the party currently in office.

In 2009, the Indigenous Council Santiago Apóstol requested a free, prior, and informed consultation in the framework of the Los Encinos project. The local government organised an open town hall meeting on October 6, 2014. However, it was denounced by MILPAH due to several factors: several members of the armed forces attended and intimidated those opposing the project: the Vice-President of the MILPAH, Martín Gómez Velásquez, was prevented from speaking at the meeting after announcing that the project would directly displace 120 families; and the minutes of the meeting stated that the feasibility study had been unanimously approved by all those present at the meeting, but failed to specify the identities of the attendees. These serious irregularities show that there has been no free, prior and informed consultation for the hydropower project and therefore Honduras' international obligation to comply with ILO Convention 169 is being ignored.

98 Ibidem, page 5.

In 2013, the Indigenous Council Santiago Apóstol requested the National Agrarian Institute (INA) the allocation of approximately 280 hectares in the municipality of Santa Elena near the Chinacla river, which were used by 20 Lenca indigenous families who are members of the council, since, by law, the land had been determined as national property for the land reform. However, in January 2014, the local authorities irregularly allocated with full control of said land to Leticia Ventura Osorio, the aunt of Alexis Ventura Vásquez, the local mayor. At the end of 2014, Leticia Ventura Osorio lodged a criminal complaint against the 20 members of the Indigenous Council Santiago Apóstol and a legal procedure was opened against them, an indictment was issued and measures alternative to imprisonment were required⁹⁹.

As an alternative to imprisonment, all defendants were required to appear before a court every Friday to sign off. One of the members of the council, Roberto Gómez Benítez, had to walk for six hours just to appear before the court, which made him miss a whole day of work. For families with limited resources, this is a significant loss. It was not until one year later that the obligation was changed to appearing once a month, thanks to CEHPRODEC.

The criminal procedure has been suspended because before deciding whether or not there has been unlawful appropriation of land, the ownership of the land in question has to be ascertained through administrative and civil procedures.

On November 24, 2015, the action to render the title deeds granted to Leticia Ventura null and void was initiated before the Civil Court of Santa Elena. The administrative claim was submitted to the local authorities in November 2015 to request that Leticia Ventura's gained full control over the land. On February 2, 2016, the claim was admitted, and on April 5, 2016, it was referred to the Legal Advice Department of the Association of Municipalities of Honduras (AMHON) for their legal opinion. At the time of publication of this report, the issue was yet to be resolved, and CEHPRODEC was taking the legal action needed to resolve this stage and hold the civil trial.

Moreover, at the request of the indigenous communities, after visiting and studying the nature of the land in question, an expert from the National Agrarian Institute declared that those were national territories. This declaration means that the municipality was no longer competent to grant the full control of the land to Leticia Ventura, since the National Agrarian Institute is the only competent authority to do so. Boundaries were overstepped, since the municipality can only make decisions regarding the local urban territories (communally owned land). This information was directly confirmed to the mission by the Legal Advisor of the National Agrarian Institute.

However, the 20 criminalised defenders continue to undergo a criminal procedure that imposes disproportionate burdens on them, stigmatises them and diverts attention from the defenders, who are defending themselves from unfounded allegations and have to lay aside their work denouncing violations of the rights of the communities they belong to.

Lately, it has been discovered how other indigenous municipalities such as Santa María, Yarula, Department of La Paz, have taken the same action as Santa Elena. The local authorities illegally granted the indigenous communities' land to landowners, mostly relatives of the mayors, thus leading to prosecution and physical attacks against the indigenous leaders who chose to resist instead of handing over their territories.

As there were not enough lawyers to do the appropriate research, these landowners lodged complaints for unlawful appropriation of land before the Public Prosecutor's Office, which has issued criminal prosecution orders against members of the community without the appropriate investigations being carried out causing them serious economic losses due to the need to travel monthly for several years to appear before the court to sign off. Meanwhile, the procedures are lengthy in order to wear out the communities.

⁹⁹ Dossier number 27-15 of the Criminal Civil Court of Marcala, in the Department of La Paz.

2. LGBTI defenders

2.1 Background on LGBTI people in Honduras

Despite the fact that consensual and private same-sex relationships have been legal in Honduras for individuals over 15 since 1899, discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people continues to be a reality that is noticeable both in national regulations and in social reality, with the unsafety and violence faced by this community.

The attacks and aggressions reflect a deep social issue that fuels homophobia based on conservative ideas on sexual orientation, with the imposition of a specific way to deal with it even at the national level. This way of understanding sexuality is imposed across all social spheres, including the labour market and the education and health systems, so that inequality and homophobia are perpetuated.

In addition to gender stereotypes and conservative approaches to sexual orientation, there is a narrative of rejection in the media and in the views shared by numerous religious leaders¹⁰⁰, which is further reinforced by the State's failure to object to this. Instead, far from firmly combating these human rights violations, it adopts a biased position and defends a traditional idea of family, man and woman.

We have to remember that the Judicial System Law, which stated that homosexuality was considered an attack on dignity and that a civil servant could be dismissed due to his or her sexual orientation, was repealed only five years ago. Moreover, same-sex marriage is not permitted by the Honduran Constitution and, in fact, the last reform carried out in 2005 states that "same-sex marriage and same-sex cohabitation are banned". Furthermore, "same-sex marriage and same-sex cohabitation entered into or recognised under foreign laws shall not be valid in Honduras"¹⁰¹.

Since this is a complex issue based on social and cultural constructs, action against inequality and discrimination of this community must entail a holistic approach. This means that political and social mechanisms have to be implemented at the national and local levels to address this issue across the board.

The education system therefore plays a key role, since an education aimed toward equality and accepting different sexual orientations is paramount. Nevertheless, the Honduran education system lacks not only a basic human rights approach but also awareness regarding sexual orientation and gender identity, thus perpetuating a heteronormative, sexist and patriarchal education system¹⁰².

Moreover, the Honduran LGBTI community does not have specific regulations on health and psychological care for LGBTI individuals despite it being one of the high-risk groups vulnerable to physical, psychological and discriminatory attacks.

2.2 Attacks against LGBTI defenders in Honduras

According to the Observatory on Violence of the Cattrachas Lesbian Network¹⁰³, 224 violent deaths were registered in Honduras between 2009 and July 2016: 129 homosexual men, 18

100 A clear example is that of the religious leader Evelio Reyes, pastor of the Vida Abundante church, who gave hate speeches to the media, stating that the LGBTI community is a "current and future social threat".

101 Political Constitution de Honduras, January 11, 1982, Article 112. Reformed by means of Decree 176/2004 and ratified by means of Decree 36/2005.

102 Plataforma EPU Honduras, *Informe Alternativo al Segundo Informe del Estado de Honduras ante el Comité de Derechos Económicos, Sociales y Culturales (DESC)*, presented in May 2016, page 14.

103 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, page 33.

lesbians and 77 transgender people. The number of murders was particularly alarming in 2012 and 2015, with 40 and 37 killings respectively. According to the IACHR, there were 168 hate crimes against LGBTI individuals between 2009 and 2014. Three out of five murders of LGBTI people in Central America take place in Honduras.

Lastly, according to the information provided by PBI, more than 200 cases of violent deaths of members of organisations promoting LGBTI human rights have been registered in Honduras since 2009. Only 33 of them have been taken to court, which shows the levels of impunity in the country¹⁰⁴. Even though impunity is a reality for all cases of human rights violations in the country, the LGBTI community suffers an additional element of rejection and almost excuses for the crimes which leads to a discriminatory moral appraisal of these crimes. This impunity has led the IACHR to grant precautionary measures to several members of the LGBTI community. However, as with other vulnerable groups, the implementation of the measures has not been effective in general.

The LGBTI community has been a traditionally discriminated group in Honduran society, but violence affects particularly the transgender community, followed by the gay community¹⁰⁵. First of all, this is due to the fact that transgender people exercise their gender identity in a more visible way, for example through their clothes, which visibly puts a spotlight on them. Secondly, another relevant factor is the fact that many transgender people engage in sex work in the streets of Honduras, a place where the risk they are exposed to increases¹⁰⁶.

In light of the current violence levels, the legal mechanisms for the protection of this community are insufficient. Actually, in spite of the concern shown by some international institutions such as the IACHR, the attacks against the LGBTI community have not been thoroughly studied and there is not enough systematised information, which emphasises the defencelessness and vulnerability of this community.

A good example is the lack of an official log of attacks based on sexual orientation. This is why it is the organisations that take up the job of making these crimes visible¹⁰⁷. Moreover, we need to take into consideration the “revictimisation” of the LGBTI individuals who take legal action against these attacks. The lack of trust in the justice institutions and other bureaucratic obstacles they face when taking legal action promote the invisibilisation of these crimes¹⁰⁸.

From the perspective of the justice system, positive steps have been taken over the last few years, but there is no real will for the changes to be implemented effectively. In 2013, the National Congress decided to approve “(i) establishing the commission of aggravating crimes due to “«hatred or contempt by reason of [...] [the] sexual orientation or gender identity» of the victim; (ii) sentences of imprisonment and fine in case of the arbitrary and illegal restriction or cancellation of the exercise of individual and collective rights, or the denial of provision of professional services on the grounds of sexual orientation and gender identity, among other reasons; and (iii) sentences of imprisonment and fines in cases of public incitement to hatred or discrimination by reason of sexual orientation and gender identity, among other reasons”¹⁰⁹.

In the framework of the reform of the Honduran Criminal Code, we can expect the reform of Articles 27 and 321 regarding discrimination on grounds of sex, among others. Even though this is a positive and necessary change, it is insufficient and does not refer in any way to discrimination on the grounds of sexual orientation and/or gender identity.

104 PBI, Bulletin. December 2015. Available on: http://www.pbi-honduras.org/fileadmin/user_files/projects/honduras/Publications/BOL03-ENG-V14.pdf

105 CEJIL 117.

106 CEJIL 118.

107 Diagnóstico LGBTI CEJIL, page 9

108 CEJIL page 115

109 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 132.

The study carried out by the CEJIL¹¹⁰ confirms that there are many offenses committed by police officers¹¹¹, which goes to show the loopholes regarding this issue. The Police and Social Coexistence Law passed in 2001 allows for arrests of those who “go against modesty, good habits and public morality” or who “disturb the tranquillity of the residents due to their immoral conduct”¹¹².

Part of the unsafety that the LGBTI community experience would therefore originate in the actions of police authorities and military forces who make an unlawful use of force¹¹³. The practices of the Local Police of the city of San Pedro Sula are very much concerning, since the detention cells in the ruins of the old police station have been documented to be used to violently imprison LGBTI individuals¹¹⁴. An internal regulation of the city banning prostitution in certain urban areas is used by the local police to justify arbitrary arrests and cruel and inhuman treatment¹¹⁵.

Likewise, abuses within penitentiary facilities have been registered. In these facilities, the lack of regulations regarding targeted measures for LGBTI individuals makes it impossible to guarantee the rights and equality of detained LGBTI people¹¹⁶. The civil society has thus documented torture and cruel treatment against this community, including the so-called “sociological torture” of civil servants threatening to make public the LGBTI nature of those under detention, which would increase their vulnerability and risk in the penitentiary environment¹¹⁷.

We can therefore confirm that the national investigation system does not have the appropriate tools to investigate these types of offense, which would require a different approach, or to effectively protect witnesses in cases of violence against the LGBTI community.

a. Attacks against Asociación Arcoíris

Asociación Arcoíris was founded in 2003 to empower and inform the Honduran LGBTI community on issues regarding comprehensive health, and defence and promotion of human rights and sexual diversity. The organisation also takes part in national and international advocacy spaces such as the Platform for the Universal Periodic Review (*Plataforma para el Examen Periódico Universal Honduras - Plataforma EPU*). However, due to their actions to defend human rights, the members of the association have suffered an increasing number of attacks and some have even been killed, which shows the level of violence faced in Honduras by LGBTI defenders, one of the most vulnerable groups in the country.

Proof of this are the disturbing figures of this reality: between July 2015 and January 2016, 36 safety incidents were recorded against the members of Asociación Arcoíris, seven of which took place in January 2016 alone. Among said incidents there were murders, threats, surveillance and other types of harassment. A good example is that of January 24, 2016, when **Paola Barraza**, a member of the transgender women group of the association (*Grupo Muñecas*) and of the Board of Directors for more than eight years, was brutally murdered. During the six months prior to her murder, Paola Barraza had suffered several attacks and threats. In August 2015, for instance, she was seriously injured by unidentified men who

110 CEJIL.

111 CEJIL page 118.

112 Human Rights Watch, “Not Worth a Penny”: *Human Rights Abuses against Transgender People in Honduras*, May 2009. Available on: <https://www.hrw.org/report/2009/05/29/not-worth-penny/human-rights-abuses-against-transgender-people-honduras>

113 IACHR, *Situation of Human Rights in Honduras*, 2015 Report, paragraph 3.

114 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, page 134.

115 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, page 135.

116 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 33-35.

117 Plataforma EPU Honduras, OMCT and International Platform Against Impunity, *Shadow Report from Honduran Civil Society to the UN Committee Against Torture (CAT)*, presented in 2016, pages 33-35.

repeatedly fired shots at her office door. On January 8, she was threatened again by armed men in vehicles with no license plates, who mentioned the murder of **Angie Ferreira**, former Coordinator of the Grupo Muñecas, which took place in June 2015.

These are not isolated cases. Other sad cases of members of Asociación Arcoíris include that of **Estefanía Zúñiga**, which took place on January 20, 2016; that of **Henry Matamoros** and **Josselin Janet Aceituno Suazo**, who were kidnapped, tortured and killed on November 14 and October 5, 2015, respectively; and that of **Violeta Rivas**, who was an eyewitness in Angie Ferreira's murder case and who was killed on August 16, 2015.

Kendry Hilton, who took up the position of Coordinator of Grupo Muñecas after the assassination of Angie Ferreira, continuously receives death threats. This happens on social media, as she stated in her legal claim lodged on December 1, 2015, but also in the streets, where unknown men threatened her on August 23, 2015: while she was close to the office of the organisation with two friends, a man pointed a firearm at her from a vehicle and pretended to shoot. Furthermore, in December 2015, **Esdra Yaveth Sosa Sierra**, Coordinator of Asociación Arcoíris, was forced to leave Tegucigalpa due to safety reasons. On November 20, 2015, a vehicle with no license plate and tinted windows had her home under surveillance, and in March 2015 she had already been forced to leave Honduras temporarily due to risk of attack.

Therefore, the capacity for action and struggle for the rights of the LGBTI community of Asociación Arcoíris is decreased due to the continuous attacks against its members and the poor response on the part of the State, which, far from taking strong measures to investigate and prevent these crimes, continues to let these cases go unpunished.

b. Attacks against Asociación AJEM/Somos CDC

The Asociación AJEM/Somos CDC is an NGO developing programs and projects to improve the quality of life of the LGBTI community in Honduras through social, political and economic development. However, the Observatory has confirmed the existence of an increasing number of attacks against this association for over a year, in the context of a wave of violent attacks against the LGBTI community and LGBTI defenders which also affect Asociación Arcoíris.

The harassment and death threats against the members of the organisation do not seem to stop, including threats posted on their website and notes slipped under the door threatening to "set fire to the office with the members inside". These threats have been reported, mostly by **Alex Eduardo Sorto**, Director of AJEM/Somos CDC, but despite the legal action taken, these crimes have gone unpunished.

The latest attack took place on August 24, 2016, when the office of the LGBTI organisation AJEM/Somos CDC was attacked in the early hours of the morning. Different materials were stolen and the office and files were damaged. Even though we have reported the attacks suffered by AJEM for a year now, few of our actions have had an impact on the Honduran justice system.

A summarised timeline of the attacks allows for a better understanding of the seriousness of this situation.

On November 27, 2015, at around 17:00, the ceiling of the office of AJEM was damaged by a large stone allegedly thrown by an individual on a motorcycle who was in front of the office. The next day, when the AJEM member **Evin Omar Ponce** was leaving the office at 16:00, he was followed by the same individual, who, after catching up with him, jumped on him, grabbed him by the neck and threatened him by saying: "I know you and your colleagues, be careful what you do."

On March 4, 2016, while waiting in line at the supermarket La Colonia, in the city centre of Tegucigalpa, Evin Omar Ponce was once again threatened by an individual using the following words while making a gesture indicating that he would cut his throat: “be careful what you do because I know you work defending fags”.

A week later, on March 11, 2016, at around 20:00, Alex Eduardo Sorto was followed home by an unknown man driving a motorcycle who threw a large stone at the front door after the defender had entered.

On April 3, 2016, four police officers arrested **Alex Eduardo Sorto, Cidar Armando Arias Mendoza** and **Evin Omar Ponce García** for alleged drunkenness. Reportedly, the officers requested money in exchange for their freedom, but the three defenders rejected the false accusations made by the officers and refused to pay. After that, they were moved to the traffic police station in the neighbourhood of Kennedy, in Tegucigalpa.

Once there, Evin Omar Ponce identified himself as an openly homosexual human rights defender, after which he was handcuffed to Cidar Arias Mendoza and they were both hit and insulted by police officers. Alex Eduardo Sorto, who had been left to one side after informing them that he was a beneficiary of precautionary measures granted by the Inter-American Court of Human Rights (IACHR), called the emergency line to report the abuses. A police officer dressed in civilian clothing stopped him and hit his chest, making him fall backward and hit his head on the floor. After the call, another officer threatened: “I will have disappeared them before the DPI (Investigation Police Directorate) shows up”. After that, the vehicle they were using was lifted onto a tow truck and irregularly driven away from the station with no explanation, while the three defenders were moved to the fourth police station of the neighbourhood of Belén, in Comayagüela. This was reported to the Directorate for Investigation and Assessment of the Police System (*Dirección de Investigación y Evaluación de la Carrera Policial* - DIECP).

At his arrival at the station, Officer Galindo introduced the defenders to the rest of the inmates with loud homophobic comments, which caused similar reactions by some of the inmates. They were detained without justification from 23:00 to 16:00 of the following day. We would like to highlight that despite the various questions asked by Alex Eduardo Sorto, no information was provided regarding the reasons for the arrest and they were not allowed to receive visits or eat.

c. The assassination of René Martínez

The President of the LGBTI community of San Pedro Sula, **René Martínez** was found dead on June 3, 2016, following his disappearance on June 1, 2016. His family had reported the disappearance a few hours after he was forcibly removed from his home in Chamalecón, the neighbourhood where he lived and in which he was engaged, in a vehicle with an unidentified individual. René Martínez was also the Coordinator of the Youth Alliance Honduras Outreach Centre in Chamalecón for the prevention of violence and backed by the United States Agency for International Development.

IV. CONCLUSION

Honduras is going through a serious crisis regarding the defence of human rights and has turned into one of the most dangerous countries in the world for human rights defenders, who face all kinds of attacks. Since 2001, 17 human rights defenders beneficiaries of precautionary measures granted by the IACHR have been assassinated in Honduras.

The impunity of the 2009 coup d'état and of the crimes committed against defenders since the coup is a blank check to perpetuate these attacks. In addition, the impartiality of the judiciary can certainly be called into question, given its composition and the lack of reforms to modify it. This means that the justice system can be easily manipulated to criminalise defenders. Therefore, due to the inefficiency of the Public Prosecutor's Office and of the judiciary in Honduras, as well as the lack of effective investigations, attacks against human rights defenders have gone unpunished. In contrast, there are numerous criminalisation procedures against defenders in which the diligence of the judiciary to push the procedure forward is much higher.

This situation has been aggravated by the lack of effective measures taken by the Honduran authorities to prevent attacks against defenders and to effectively investigate these attacks, harassment and stigmatisation against them, which systematically go unpunished.

Likewise, in a context where there are 837 potential mining projects, which would cover almost 35% of the national territory, it is worrying to see how powerful families and the companies carrying out the projects often seem to respond to tensions with land rights defenders by employing unethical and sometimes criminal practices.

In this regard, we consider that the country's non-compliance with its obligation to consult the communities affected by the extractive, hydropower and tourist projects helps to aggravate land conflicts thus rendering the situation of land and environmental rights defenders more vulnerable. A legal framework that is clear and complies with international human rights standards regarding land would help to channel any possible conflicts through institutional dialogue instead of generating violence and social conflicts. It would therefore be necessary to start a participatory debate on the development model with the effective participation of the civil society and, particularly, of the indigenous and *garífuna* peoples.

The initiatives of the authorities such as the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Practitioners are positive steps, but are not enough to tackle the current situation of the country.

Faced with this situation and considering Honduras' international obligations, it is urgent for the State to show a true political will and to develop a comprehensive public policy to protect human rights defenders in the country, with enough resources and more than mere measures for prevention of and protection against attacks: real measures to address the structural causes of the attacks against defenders.

Firstly, Honduras needs to develop a coherent, comprehensive and systematic policy to disseminate and raise awareness of the importance of human rights defenders for the promotion of the rule of law and democracy and stress that their actions are not against the State but rather they contribute to strengthening it. Until then, measures such as the Law for the Protection of Defenders will not have the desired impact, since this stigmatisation aggravates conflicts and increases the defenders' vulnerability to attacks.

Secondly, this report concludes that factors such as the militarisation of the State, the lack of independence of the judiciary and the deficiencies of the institutions regarding human rights prove the State's lack of real will to protect human rights defenders and contribute to

increasing the vulnerability of defenders. This is why this report makes recommendations on how to address these structural factors.

Thirdly, this report shows, through several cases of assassinations, threats and instances of criminalisation that have taken place in the whole country, that land and LGBTI rights defenders are the most vulnerable groups in the Honduran context.

Lastly, a clearer and more protective national framework dealing with the obstacles faced by peasants, indigenous peoples and LGBTI individuals for the full enjoyment of their rights would improve the working environment of defenders working for their rights and would increase their legitimacy and visibility, especially in contexts with prevailing land conflicts and heteropatriarchal stereotypes respectively. For all these reasons, this report analyses the deficiencies regarding respect for land rights, indigenous rights and LGBTI rights in Honduras. The agenda for an effective protection promoted by the Observatory includes significant measures in these fields to tackle the root of the vulnerability of defenders in the two most vulnerable categories.

V. RECOMMENDATIONS

1. To the State of Honduras:

Faced with the real crisis regarding the situation of human rights defenders and considering Honduras' international obligations, it is urgent for the State to show a true political will to tackle this situation and develop a comprehensive public policy to protect human rights defenders in the country, with sufficient resources and more than mere measures for prevention of and protection against attacks: real measures to address the structural causes of the attacks against defenders.

Regarding the protection of human rights defenders and the fight against impunity:

- Increasing the efficiency of prevention, investigation and prosecution of any form of attack against human rights defenders and fighting impunity in these cases.
- Developing a coherent, comprehensive and systematic policy to disseminate and raise awareness of the importance of human rights defenders for the promotion of the rule of law and democracy, and stress that their actions are not against the State but rather they contribute to strengthening it. The aim is to foster a respectful environment in which defenders can work with no attacks against their physical or psychological integrity.
- Urgently implementing the necessary measures to prevent civil servants in Honduras from being part of or allowing reprisals against human rights defenders cooperating with the IACHR and UN mechanisms.
- Reinforcing the right to peaceful social protest and implementing guarantees against excessive use of force by the security forces, including fast, unbiased and efficient investigations of all legal claims linked to the excessive use of force. Likewise, implementing guarantees that the people ordering the crimes will be prosecuted and that the victims will receive appropriate compensation.
- Allocating sufficient resources for the implementation of the new Law for the Protection of Human rights Defenders, Journalists, Social Communicators and Justice Practitioners and, in general, for the implementation of protection measures for defenders.
- Guaranteeing the actual and effective participation of civil society in the implementation of the Law for the Protection of Human rights Defenders, Journalists, Social Communicators and Justice Practitioners and, particularly, in the meetings of the National Council for the Protection for Human Rights Defenders (CNPDDH), as well as guaranteeing the participation of representatives of the executive in said meetings.
- Allocating to the CONADEH the resources and conditions necessary to enable it to work independently and efficiently and guaranteeing that it works for the protection of human rights defenders in the current context of crisis by issuing recommendations and thematic reports which can help to tackle this issue.
- In the framework of the current discussion and approval of the Criminal Code, carrying out, hand in hand with civil society, a purging of the articles that, due to their broadness or vagueness, can be manipulated and result in a disregard for the judicial and due process guarantees, such as is the case of the crime of usurpation of land. Moreover, it is necessary to particularly comply with the recommendation made by the Inter-American Commission on Human Rights to abrogate Article 331 of the Criminal Code of Honduras.
- Decriminalising defamation, libel and slander in line with international standards and classing them as civil offenses, so that these are not used to criminalise legitimate actions carried out by human rights defenders.
- Drawing attention to the obligation of justice operators, prosecutors and judges to dismiss unfounded, vague or undetermined accusations and criminal complaints to prevent the State apparatus from unnecessarily initiating an investigation that will have to be dismissed due to the lack of factual and legal grounds. In any case, this would be a waste of time for the judiciary and would lead to a loss of legitimacy and an openly oppressive and unfair burden for those who have to face the severity of a criminal procedure.
- Reviewing and adapting to the principles of proportionality and necessity the issuing of precautionary measures within the criminal procedure, so that they do not turn into an

undue restriction of rights. When those prosecuted are human rights defenders, this needs to be taken into consideration and the goal of the measures has to be to affect their work as defenders as little as possible.

Factors such as militarisation, the lack of independence of the judiciary and the deficiencies of the national institutions regarding human rights contribute to increasing the vulnerability of defenders. This is why the recommendations of the Observatory to Honduras are:

Regarding the State security forces and the lack of security:

- Gradually removing the Armed Forces from public safety operations. Meanwhile, the military police must be governed by strict transparency and information to citizens.
- Guaranteeing the independent and efficient judicial and institutional supervision of the legality of actions taken by the military police and by all security forces with members of the military.
- Independently, impartially, quickly and efficiently investigating any human rights violation committed by the military police.
- Ensuring the due control and supervision of private security companies in Honduras.
- Providing adequate resources and training to the National Police so that the officers can carry out their inherent and essential task of guaranteeing public safety for all Hondurans.
- Modifying the Law for the Control of Firearms, Ammunition, Explosives, and Other Related Materials to reduce the number of firearms that can be legally owned by civilians and limiting the number that can be owned and used by private security companies.

Regarding the judiciary:

- Approving as soon as possible a new Judiciary Council and Judicial System Law that allows for the creation of an independent and impartial body.
- Guaranteeing that the new Judiciary Council appoints and selects judges by means of transparent and impartial tests which allow individuals to access the judiciary based on their achievements and aptitude.
- Promoting the assessment of the judges' performance and the administrative sanction procedures for judges based strictly on the compliance with the due process and respect for fundamental rights, particularly the rights to dignity and non-discrimination.
- Completely fulfilling all reparations included in the judgement of the case of López Lone et al. v. Honduras, especially that regarding the reinstatement in the judiciary of judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and magistrate Tirza Flores Lanza, as a commitment to reinforcing judicial independence and respect for the rights of judges.

A clearer and more protective national framework dealing with the obstacles faced by peasants, indigenous peoples and LGBTI individuals for the full enjoyment of their rights would improve the working environment of defenders working for their rights and would increase their legitimacy and visibility, especially in contexts with prevailing land conflicts and heteropatriarchal stereotypes respectively. This is why the recommendations of the Observatory to Honduras are:

Regarding land rights:

- Ratifying the Optional Protocol to the ICESCR and providing capacity development to both civil servants and rights holders on this instrument.
- Constitutionally recognising indigenous peoples and their human rights.
- Starting a participatory debate on a development model with the effective participation of civil society and particularly of the indigenous and *garífuna* peoples.
- Harmonising the national and local law and regulations with the ILO Convention 169 on indigenous and tribal peoples and guaranteeing the full implementation of the Declaration of the Rights of Indigenous Peoples, Convention 169 and the right to free, prior and informed consultation.
- Starting a land reform aimed at guaranteeing access to land for Honduran peasants.
- Adopting a relocation protocol that regulates the actions to be taken by justice operators in case of forcible evictions and that guarantees the human rights of the evicted populations, including the right to decent housing as well as the stability of their livelihoods.

Regarding the situation of the LGBTI community:

- Designing and implementing regulations and policies for the inclusion of the LGBTI community in the labour, education and health spheres in line with the rights set forth by international standards on human rights.
- Including in the Constitution sexual orientation and gender identity-based discrimination as prohibited grounds for discrimination and reviewing all Honduran laws to make this ban cross-sectional.
- Adopting a communication policy that includes the highest levels of the Honduran executive, as well as measures to educate and raise awareness among the population with the aim of promoting the legitimisation of the LGBTI community and ending its stigmatisation.
- Revoking the provisions of the Police and Social Coexistence Law that allow for a high discretion margin to make arrests due to actions against public morality.
- Reinforcing the units for the investigation of crimes against the LGBTI community, ensuring the creation of an official registry for sexual orientation and gender identity-based crimes, and developing a targeted approach to guarantee effective investigations.
- Effectively investigating and sanctioning human rights violations against LGBTI individuals committed by police or military forces.
- Promoting through a special public prosecutor the *ex officio* investigation and sanction of hate speech against the LGBTI community, which is increasingly present in speeches given by public and religious authorities and by the media.

2. To the international and regional intergovernmental bodies, including the UN, the IACHR and the European Union:

- Placing the situation of the human rights defenders at the centre of their bilateral dialogues with Honduras and, taking into consideration the current serious crisis, using all the existing diplomatic mechanisms to promote the implementation of the structural changes recommended herein.
- Ensuring the monitoring of cases of attacks and criminalisation against human rights defenders, including this dimension as a cross-sectional working area for the different bodies, committees and mandates of UN and IACHR Special Rapporteurs.
- Particularly, the UN Working Group on the Issue of Business and Human Rights should: define the role of the companies in the protection of human rights defenders and systematically integrate the defenders approach in their work, through protection actions as well; promote that the UN Guiding Principles on Business and Human Rights include and systematise the protection of human rights defenders in general and of land rights defenders in particular, especially with regards to the principles of consultation and due diligence, consulting with the Special Rapporteur on the Situation of Human Rights Defenders.
- Completely integrating a human rights approach in their policies for fund allocation for large-scale land operations, guaranteeing that the projects funded do not aggravate or contribute to the existence of abuses against land rights defenders. Guaranteeing that development cooperation grants and loans fully apply a human rights approach and ensure the protection of land rights defenders.
- Making carrying out comprehensive and independent human rights impact assessments with significant involvement of the affected populations and communities, including land rights defenders, a requirement to obtain funds, and guaranteeing the inclusion of safeguard mechanisms that effectively address, mitigate and remedy the negative impact of a project on human rights.
- Supporting the essential role of human rights organisations, community organisations and social movements that work with land rights defenders, providing them with specific technical and financial support, and publicly recognising their legitimacy.
- Coordinating with other donors through relevant forums to guarantee that urgent attention is paid to the situation of land rights defenders, and guaranteeing respect for human rights.



Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS-Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world.

Assisting and supporting victims

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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Establishing the facts

Investigative and trial observation missions. Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchanges. FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies. FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion. FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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The Observatory for the Protection of Human Rights Defenders, a partnership of OMCT and FIDH

Created in 1997, the Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on the Situation on Human Rights Defenders, and sustained lobbying with various regional and international intergovernmental institutions.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by OMCT and FIDH: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail: Appeals@fidh-omct.org

OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29

FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80



CEHPRODEC

Centro Hondureño de Promoción
para el Desarrollo Comunitario
<http://www.cehprodec.org/>



COFADEH

Comité de Familiares de Detenidos
Desaparecidos en Honduras
<http://www.cofadeh.hn/>



CIPRODEH

Centro de Investigación y Promoción
de los Derechos Humanos
<http://ciprodeh.org.hn/>



PLATAFORMA INTERNACIONAL CONTRA LA IMPUNIDAD