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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras. The report is based on information received by the Special Rapporteur during her visit to the country from 2 to 10 November 2015 and on independent research.

The situation of the indigenous peoples of Honduras is critical, since their rights over their lands, territories and natural resources are not protected, they face acts of violence when claiming their rights, in a general context of violence and impunity, and they lack access to justice. In addition, they suffer from inequality, poverty and a lack of basic social services, such as education and health.

They call for immediate and decisive protection measures, including the prevention, investigation and punishment of persons responsible for murdering, threatening and harassing members of indigenous peoples and also of those responsible for actions that infringe their rights over their lands, natural resources and other human rights. The legal, political and institutional framework must be overhauled and strengthened in order to deal with the situation properly and effectively, with reforms including coordination between government agencies to ensure the cross-cutting implementation of the Government's international commitments on the rights of indigenous peoples. All this requires more public resources and greater political will. Serious and committed participation by the international community and the international human rights bodies is essential in order to ensure international oversight of such efforts and to provide the necessary technical and financial assistance.

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Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras*

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* The report is circulated in the language of submission and English only.

** Circulated as received, in the language of submission only.

I. Introduction

1. This report examines the situation of indigenous peoples in Honduras and makes recommendations in that regard. It is based on information received by the Special Rapporteur on the rights of indigenous peoples during her visit to the country from 2 to 10 November 2015 and on independent research.

2. During her visit, the Special Rapporteur held meetings in Tegucigalpa with representatives of the Government of Honduras, including the Ministry of Foreign Affairs, the Directorate of Indigenous and Afro-Honduran Peoples, the Ministry of Human Rights, Justice, the Interior and Decentralization, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, the National Agrarian Institute, the Property Institute, the National Institute for Conservation and Forestry Development, Protected Areas and Wildlife, the Ministry of Energy, Natural Resources, the Environment and Mining, the Honduran Institute of Geology and Mines, the Office of the National Commissioner for Human Rights, the Honduran Social Investment Fund, the General Subdirectorates of Education for Indigenous and Afro-Honduran Peoples, the Ministry of Labour and Social Security, the Committee on Indigenous Peoples of the National Congress and representatives of civil society organizations and the private sector. In Puerto Lempira, she held meetings with municipal and departmental authorities and representatives of the Attorney General's Office and the Office of the National Commissioner for Human Rights. She also met representatives of the Lenca, Maya Chortí, Nahua, Tolupán, Garífuna, Pech, Tawahka and Miskito indigenous peoples in Tegucigalpa, Puerto Lempira, Auka, Río Blanco, La Esperanza and La Ceiba.

3. The Special Rapporteur wishes to thank the Government of Honduras for its cooperation and for permitting her to conduct her visit freely and independently. She would also like to express her deepest gratitude to the indigenous peoples for the invitation to visit their territories, for the hospitality that they showed her and for the information that they provided. She also thanks the indigenous persons and organizations that helped arrange her programme and also those persons who travelled long distances from their communities of origin to attend meetings. Lastly, she wishes to thank the United Nations Country Team in Honduras and the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their assistance in ensuring the success of her visit.

II. Indigenous peoples in Honduras

4. There is no precise or up-to-date information on the indigenous population of Honduras. According to the 2001 national census, 7 per cent out of the total population of about 6 million were indigenous or of African descent. According to a census conducted by indigenous organizations in 2007, the indigenous population or people of African descent amounted to 20 per cent, or some 1.5 million out of a total population of 7.6 million. Of the indigenous population, 80 per cent live on their traditional lands and 20 per cent in urban areas.

5. The extent to which the indigenous peoples of Honduras have preserved their languages and their social and cultural structures varies according to their specific experience and levels of contact with European colonization and subsequent non-indigenous governments and societies. During her visit, the Special Rapporteur noted the strong attachment that members of indigenous peoples had to their identity as distinct peoples and their desire to maintain and strengthen their culture, language, lore, territories and forms of governance.

6. The indigenous peoples of Honduras represent a rich cultural diversity throughout the country. These peoples — and their locations and numbers — are, according to the 2001 census:

- Lenca (279,507), who live mainly in the Intibucá, La Paz, Lempira and Santa Bárbara Departments in the west of the country
- Maya Chortí (34,463), in the western Copán and Ocotopeque Departments
- Tolupán (9,617), in the central Yoro and Francisco Morazán Departments
- Garífuna (46,448), on the Atlantic seaboard stretching from Cortés Department to Gracias a Dios Department
- Nahua (20,000, according to unofficial data), in the eastern Olancho Department
- Pech (3,848), in Colón, Olancho and Gracias a Dios Departments
- Tawahka (2,463), in the eastern Olancho, Colón and Gracias a Dios Departments
- Miskito (51,607) in Gracias a Dios Department

7. All the indigenous peoples have one or more organizations or federations that represent the interests of their members or specific sectors of their population. During the 1990s, the indigenous peoples and organizations went on political demonstrations or “pilgrimages” in Tegucigalpa to draw the attention of the Government and the general public to their claims for their territories, culture, languages and access to health, education and other social services. As a result of these demonstrations, some progress was made in recognizing their title to their indigenous lands and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) was ratified. The provision of education and health services for indigenous communities improved.

III. Legal, political and institutional framework

8. Honduran domestic legislation contains hardly any recognition of or protection for the rights of indigenous peoples. The country’s constitutional recognition of indigenous peoples has lagged behind that of other Latin American countries over the past decades. The only reference to indigenous peoples’ rights in the Constitution comes in article 346, which provides for the duty of the State to “adopt measures to protect the rights and interests of indigenous communities in the country, especially the lands and forests where they have settled”. Other constitutional provisions refer to the obligation of the State to foster the country’s anthropological richness, native cultures and folklore (arts. 172 and 173).

9. The Constitution provides that international treaties form part of domestic law (art. 15) and that “in the event of a conflict between the treaty or convention and the law, the former shall prevail” (art. 18). Honduras has ratified the main international and regional human rights treaties, in addition to ILO Convention No. 169 (in 1995), and voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples. However, there is no secondary legislation to ensure that the rights enshrined in these international instruments are actually implemented.

10. Under agrarian law, indigenous communities that can prove that they occupy their lands can obtain title in fee simple from the National Agrarian Institute.¹ Forestry law “recognizes the right of indigenous and Afro-Honduran peoples over forest areas in lands

¹ Agricultural Sector Modernization and Development Act, Decree No. 31-92, art. 65.

that they traditionally possess, in accordance with national legislation and International Labour Organization Convention No. 169”.²

11. One cause for concern is the Property Act (2004), which provides for the registration of indigenous lands by the Property Institute. The Act recognizes the traditional forms of tenure of indigenous lands, their inalienability and immunity from seizure and the non-applicability of statutory limitations.³ However, it permits communities to “terminate a communal regime, to authorize leases to third parties” or to authorize contracts for investment in development.⁴ The Act grants ownership rights to a third party that has obtained title within communal lands and taken possession of such lands, and also the right to compensation for any improvements made, if the title in question was voidable. If the third party had no title, “it could reach agreement on obtaining tenure, with the community paying the appropriate ground rent”.⁵ Representatives of the indigenous peoples say that these provisions infringe the guarantees of the inalienability of indigenous lands, according to international standards, and legitimize the presence of outsiders without the consent of the indigenous peoples.

12. The Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage was established in 1994 as a specialized department of the Public Prosecution Service to adjudicate on complaints of violations of indigenous peoples’ rights, to oversee the implementation of international standards and to ensure the observance of due process for indigenous persons involved in criminal trials. The Office has handled numerous complaints relating to the murder of indigenous leaders, the appropriation of lands and the approval of development projects without prior consultation.

13. The Directorate of Indigenous and Afro-Honduran Peoples attached to the Ministry of Development and Social Inclusion has the task of formulating, coordinating and implementing programmes and policies relating to indigenous peoples in the area of social and economic development. Before 2014, it was a ministry. Its change of status in 2014 was seen by representatives of the indigenous peoples as indicating a reduction in resources and political support for indigenous affairs. The Directorate informed the Special Rapporteur that its budget has not been reduced and, indeed, has increased.

14. According to the Directorate, it has promoted the following legislative and public policy initiatives, which have been agreed with representatives of the indigenous peoples and will be submitted to the executive or the legislature for approval: the Public Policy against Racism and Racial Discrimination for the Comprehensive Development of Indigenous and Afro-Honduran Peoples, which addresses social and political participation, intercultural education and health, lands and natural resources and access to justice; the draft special law on the rights of indigenous peoples and people of African descent, which includes provisions on the registration, expansion, upgrading and delimitation of indigenous lands, education, natural resources, cultural heritage, justice and a new institutional structure for indigenous affairs; and a draft framework law on engaging in consultations with indigenous and Afro-Honduran peoples and obtaining their free, prior and informed consent. The Special Rapporteur found that the representatives of indigenous peoples or the State officials whom she met had little or no knowledge of these initiatives. Moreover, it is a matter of concern that indigenous organizations have publicly rejected the draft law on consultation because there has not been full consultation with all the

² Forest, Protected Areas and Wildlife Act, Decree No. 98-2007, art. 45.

³ Property Act, Decree No. 82-2004, arts. 94, 100 and 102.

⁴ *Ibid.*, art. 100.

⁵ *Ibid.*, arts. 97-99.

indigenous organizations in the country. Various indigenous organizations have also put forward their own legislative proposals on prior consultation.

15. The Office of the National Commissioner for Human Rights informed the Special Rapporteur of its plan of action for the period 2014-2020, which sets out measures to support vulnerable groups, including indigenous peoples, providing greater access to the system of complaints and claims, reforms to that system and action to ensure coordination between State bodies and civil society to devise plans of action in support of vulnerable groups. Other objectives were to provide public officials, the private sector and civil society with human rights training and to monitor the public services and social programmes provided by central Government and municipalities. The Special Rapporteur was told that the Office had supported indigenous peoples in their complaints concerning land-related problems and indigenous individuals involved in criminal proceedings.

16. With regard to education, a presidential decision of 1994 recognized the “multicultural and multilingual nature of Honduran society” and established a national programme to promote intercultural bilingual education.⁶ The General Subdirectorato of Education for Indigenous and Afro-Honduran Peoples is responsible for implementing this programme, which includes overseeing the training of indigenous teachers, developing educational materials and ensuring that in indigenous population centres education will be conducted “in the mother tongue by indigenous and specialized teachers, with a view to helping to preserve and strengthen the language, the world view and the identity of the indigenous peoples”.⁷

17. The recent administrative reform and the establishment of various ministries do not seem to have resulted in any improvement in incorporating the rights of indigenous peoples into State activities, owing to poor coordination and institutional weakness.

IV. Principal concerns

18. Indigenous peoples face systemic problems that hinder the full enjoyment of their rights. The lack of protection for their lands, territories and natural resources, together with impunity and inadequate access to justice, are fundamental problems that leave them totally defenceless in the face of acts of violence by various parties. They also suffer from a precarious social and economic situation of multidimensional poverty as a result of extreme inequality, corruption and the lack of basic social services.

A. Violence and impunity

19. Honduras is one of the most violent countries in the world and indigenous peoples are drawn into this violence and general insecurity. According to various statistics, the homicide rate per 100,000 head of the population in Honduras was somewhere between 85.6 and 90.4 in 2012, and in 2014 it was about 68.⁸ A person who becomes a human rights defender in Honduras stands an increased risk of falling victim to violence.

20. The murder of indigenous leaders who defend their lands, including a large number of leaders of the Tolupán, Garífuna, Lenca, Chortí and Pech peoples, is among the subjects that give rise to the most complaints to the Office of the Special Prosecutor for Ethnic

⁶ Presidential Decision No. 0719-EP-94.

⁷ Executive Decision No. 1359-SE-2014, art. 49.

⁸ See Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras*, OEA/Ser.L/v/ii, Doc. 42/15 (2015), paras. 32-34.

Groups and Cultural Heritage, in addition to cases of assault, attempted homicide and violence against indigenous women. The recent murder of the Lenca leader, Ms. Berta Cáceres, who headed protests against hydroelectric projects in the Lenca region (see annex), drew the attention of the world to this problem.

21. It is a matter of enormous concern that many of the indigenous leaders that have been killed, such as Ms. Cáceres, had been granted protective measures by the Inter-American Commission on Human Rights, with a view to protecting their lives and ensuring their personal safety. The murders have occurred despite a law on the protection of human rights defenders⁹ adopted in April 2015, which establishes mechanisms to provide an institutional response to requests for protection for human rights defenders, including early warning measures at times of particular danger. Moreover, given the strong presence of the army and the military police in the country, evidence received about collusion by the police and the armed forces with private or business interests, including organized crime groups in indigenous territories, is worrying. All this exacerbates the violence and impunity suffered by the indigenous peoples.

22. The people with the largest number of murdered leaders is the Tolupán, with about 100 murders over the past decades. Members of the Tolupán tribe of San Francisco de Locomapa have reported the persecution, criminalization and murder of persons who have opposed logging, mining or hydroelectric activities on their lands, to which they have held title since 1864. During a protest against mining activities, three leaders from Locomapa in Yoro were murdered in August 2013 by employees of a private company. Various Tolupán leaders from Locomapa had to flee their communities following threats. In December 2013, the Inter-American Commission on Human Rights issued protective measures, which called on the State to protect the lives and ensure the personal safety of members of the tribe and their families.

23. Yet the threats and violence continue. Those responsible for the three killings in 2013 remain at liberty, despite the fact that warrants for their arrest were issued. In April and August 2015, two Tolupán leaders from Locomapa were murdered. In February 2016, a Tolupán leader from Locomapa and four peasant farmers were murdered, allegedly by professional killers hired by local economic interests. Those murders, too, remain unpunished.

24. Information was also received about the violence suffered by the Tolupán of the Candelaria tribe over a conflict with landowners. The Special Rapporteur heard a statement from a Tolupán woman whose children and other family members were murdered, abducted, threatened or assaulted in connection with this conflict, so that she was forced to leave her community in order to lodge a complaint.

25. Members of the Lenca people in Santa Elena in La Paz Department who oppose the Los Encinos hydroelectric project face violence, persecution, threats and murder at the hands of members of the security forces and persons connected with the project. In 2015, there were reports of a number of murders of Lenca in connection with this conflict and also attacks against women and children. In December 2015, a young Lenca man who was related to leaders opposed to the project was murdered. The previous month, the Inter-American Commission on Human Rights had issued protective measures under which it had ordered measures of protection for Lenca leaders opposed to the project and their families.

⁹ Act on the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials, Decree No. 34-2015.

26. Indigenous peoples are also vulnerable to violence due to drug trafficking, organized crime and the subsequent response by the State. In May 2012, four members of the Miskito community of Ahuas, including pregnant women, died and others were wounded in an anti-drug operation conducted by officials from Honduras and the United States of America. The survivors of the attack and the families of the victims rebutted the official version that the persons in the boat carrying them had fired at the officials. Efforts have been made, without success, to obtain appropriate compensation and justice from both Governments.

27. In December 2015, in Iriona in Colón Department, two young Garífuna men were killed by military personnel who fired without provocation at vehicles carrying unarmed persons, because they suspected them of being drug traffickers. This incident outraged the Garífuna, who demanded the withdrawal of military forces from their lands.

28. The lives of the Tawahka people are at great risk as a result of the activities of livestock farmers, loggers and drug traffickers, who buy and sell illegally on their lands. It is reported that entire Tawahka communities have fled their lands and that the physical and cultural survival of the Tawahka people is under threat.

29. Problems relating to the trafficking and prostitution of indigenous women and children, as part of organized crime activities in or around the indigenous territories, were also reported.

B. Access to justice

30. The indigenous peoples complained of the lack of access to justice to enforce their rights. One basic problem is that justice officials are ignorant of the rights, cultures and languages of the indigenous peoples, in addition to the racism and discrimination that such peoples have historically suffered. Other basic, widespread problems include the lack of institutional capacity to investigate crimes and the serious lack of independence of the judiciary. This has resulted in a structural impunity, which, according to official figures, affects 80 per cent of cases of homicide committed in Honduras, while, according to civil society organizations, the figure is as high as 98 per cent.¹⁰ The lack of confidence in the national justice system became apparent in relation to the investigations into the death of the Lenca leader, Ms. Berta Cáceres, when there were calls for the establishment of an international commission of independent experts to monitor the investigation carried out by the national authorities.

31. Mention should also be made of the abuse of the justice system by individuals and State officials who lay claim to the lands and natural resources of indigenous peoples. This has resulted in the criminalization of indigenous individuals, who, owing to the absence of effective mechanisms to obtain justice, have resorted to peaceful protests. In that context, a number of sources report that at least 27 indigenous leaders have been tried for such offences as appropriation of land and damage to private property, among others.¹¹ This situation reinforces the perception that the justice system does not benefit indigenous people.

32. Attention should be drawn to the important role that could be played by the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage as a mechanism for obtaining access to justice. However, it was clear to the Special Rapporteur that the Office lacked the financial and human resources to carry out its functions. A number of court cases

¹⁰ Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras* (see footnote 8 above), paras. 263 and 277.

¹¹ *Ibid.*, para. 78.

brought by the Office may be mentioned. In one case, a member of the armed forces was convicted in December 2015 of killing the Lenca leader Mr. Tomás García during a peaceful demonstration against the Agua Zarca project and a decision on whether others should also be prosecuted remains pending. In November 2015, a member of the armed forces was indicted for issuing threats against the Tolupán in Locomapa and causing damage. In July 2015, an application was made by the Public Prosecution Service to prosecute settlers in Auka and an arrest warrant and eviction orders were issued against them. Criminal prosecutions were also initiated against military personnel responsible for killing Garífunas in Iriona in December 2015. The effectiveness of these prosecutions depends on follow-up and implementation by the relevant judicial and police authorities. The fact is, however, that the Office and other bodies require more resources to address the large number of complaints of offences against indigenous people.

33. With regard to the local administration of justice, there have been complaints about the politicization of the appointment of judicial officials and about some cases where persons involved in drug trafficking, in La Mosquitia for example, avoid justice for offences against indigenous people by bribing judges, prosecutors or police officers. This has resulted in the deaths of indigenous people who have lodged complaints against drug traffickers with the local authorities. Representatives of the indigenous peoples said that justice officials in regions with a high indigenous population, such as La Mosquitia, should be members of an indigenous community and should be subject to oversight by their own community.

34. The indigenous peoples also call for respect and recognition for their own judicial systems and authorities. For example, the Miskito representatives expressed their wish to establish some form of coordination between the Honduran judiciary and the justice officials of Miskito territorial councils, so that the councils could decide cases at the community level, in accordance with customary law.

C. Lands, natural resources and governance

35. During the colonial era and at the beginning of the republican era, some indigenous peoples obtained communal property rights. A number of Tolupán and Pech communities obtained rights over their ancestral lands in the middle of the nineteenth century. During the course of the twentieth century, some communities obtained title or statutory usufruct and occupation under the agrarian system. Following the indigenous demonstrations of the 1990s, the number of property rights granted to collective indigenous lands increased. According to the data of the National Agrarian Institute, 505 titles were issued to indigenous communities between 1993 and 2015, covering an area of 1,322,774.50 hectares.

36. The property rights granted in the 1990s include those to the Lenca lands in the first indigenous municipality, San Francisco de Opalaca, which was established in 1994, and those to the Tawahka communities in the Tawahka Asangni Biosphere Reserve, set up in 1999 for the protection of the Tawahka people and of biodiversity, which is managed jointly by the Government, the local municipalities and the Tawahka.¹²

37. The process of granting title to the Miskito lands began in 2010 under a registration programme financed by the World Bank and implemented by the National Agrarian Institute and the Property Institute. A legislative decree was issued in 2013 to grant a number of Miskito and Garífuna communities within the Río Plátano Biosphere Reserve

¹² Decree No. 157-99, arts. 2, 5, 12 and 16.

title to their lands.¹³ In the case of the Miskito, title has been granted to a number of separate territorial councils made up of various communities in accordance with their own form of territorial organization. The National Agrarian Institute reports that 1,099,701.59 hectares have been made over to 11 of the 12 existing territorial councils.

38. Representatives of the indigenous peoples provided information on applications for title that are still pending, as in the case of the Nahua and Pech communities in Olancho, and on applications to extend the title of Garífuna, Tolupán, Tawahka and Pech communities to include their working habitats. In the case of the Maya Chortí people, the Government signed an executive agreement in 1997 undertaking to acquire 14,700 hectares to be registered in the name of the Chortí communities in Copán and Ocotepeque Departments. To date, however, only 4,995.74 hectares have been made over. The Chortí have repeatedly urged the Government to provide the necessary budget for the purchase and registration of their lands in order to meet its commitments in full. The Special Rapporteur has learned that, in some cases, the failure to meet these commitments has made it possible for private individuals to obtain judicial orders to evict Chortí communities living on their ancestral lands.

39. Representatives of the indigenous peoples claimed that, even when they have title to their lands, they face counterclaims from individuals who seek to break up the indigenous lands by launching legal and administrative procedures and by buying land illegally sold by indigenous individuals. Some municipal authorities have been involved in the illegal sale of indigenous lands and have approved or participated in logging, mining or agricultural activities on those lands. The communities with title to their land who face this kind of problem include the Lenca of Lepaterique and Llanos de la Candelaria and also Tolupán tribes in Yoro that have held title to their land since the nineteenth century. In La Mosquitia, the problem is also linked with drug trafficking and money-laundering activities.

40. An upgrade to their title to their lands is urgently required in order to deal with the presence of third parties on registered lands. Members of the Miskito community of Auka, part of the Wamaklisinasta Territorial Council, registered in 2013, have reported that settlers have been illegally granted title and other permits on their lands by municipal authorities or obtained them through illegal sales. Owing to the outsiders' ranching or drug trafficking activities, the Miskito lands have been deforested and members of the community can no longer reach traditional agricultural or hunting lands. This has given rise to food insecurity and health problems and death threats have been directed at community leaders.

41. In March 2015, following the failure to achieve the territorial upgrading that they had repeatedly sought, members of the community took 27 settlers prisoner. The Government sent a special commission to resolve the situation and an agreement was signed between representatives of the community, the Miskito people, the departmental government, the Ministry of Human Rights and the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, under which, in exchange for the release of the settlers, the Government undertook to investigate and punish those responsible for the sale of lands and the environmental destruction, to finalize the upgrading process and to return the settlers to their places of origin. Another component of the agreement was the Government's invitation to the Special Rapporteur to pay her visit to Honduras.

42. Once the agreement had been signed, some settlers left the territory and the National Agrarian Institute and other institutions carried out preliminary investigations on the ground. However, apart from the visit of the Special Rapporteur, the members of the community reported that they had been given no details of the implementation of the other

¹³ Decree No. 61-2013.

provisions of the agreement nor of a decision on the criminal charges of abduction against the members of the community that had taken the settlers prisoner. They also said that the number of settlers in the area had increased in recent months. For its part, the Government said that it had decided to compensate the settlers so that they would leave the occupied lands and was awaiting approval for the necessary budget from the relevant authorities.

43. In addition to seeking the registration and upgrading of their lands, the indigenous peoples demanded recognition and reinforcement of their own systems of governance, which means recognition of their institutions and their management of their natural resources, the exercise of their traditional systems of justice and the resources needed to perform those functions. Representatives of the indigenous peoples said that receiving title to their lands did not lead to a recognition of their right to manage their natural resources.

44. Government representatives stated that various international donors had expressed interest in supporting programmes to strengthen indigenous governments and their management of their lands and natural resources. Representatives of indigenous peoples, meanwhile, have tried to incorporate guarantees on territorial rights and governance into the negotiations between Honduras and the European Union on Voluntary Partnership Agreements under a European Union initiative on Forest Law Enforcement, Governance and Trade. The aim of the initiative is to stop illegal logging and improve forest governance at the global level.

D. Investment projects

45. The indigenous peoples stated that various energy projects, and also extractive, agro-industrial, tourism and infrastructure projects, had infringed their rights. They maintained that these activities had been conducted without due observance of international standards on prior consultation. In many cases, there had been disclosure or consultation only once a licence had been granted.

1. Energy projects

46. In recent years, the Government of Honduras has promoted an energy policy relying on renewable energy sources in the form of hydroelectric and wind projects, among others, with a view to reducing the use of fossil fuels. In 2010, 40 contracts were approved under a legislative decree on hydroelectric projects. Of these, 21 would affect Lenca, Garífuna, Pech, Tawahka, Miskito and Tolupán communities, which had not been consulted.

47. One of these projects was the Agua Zarca dam in the Río Blanco region in Intibucá, which led to an extremely divisive situation involving threats, harassment, criminalization and the murder of indigenous Lenca leaders opposed to the project. The Special Rapporteur has included some comments on the situation in Río Blanco in the annex to this report.

48. The Special Rapporteur was informed about other dams on which there had been no consultation and which would affect Lenca communities, including those of San Rafael, Chinacla, Gualcarque and Los Encinos. Some four dams that would affect various Tolupán tribes in Yoro are set to be built without prior information or consultation. According to the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, proceedings have been initiated for the offence of abuse of authority against officials who issued environmental licences for various hydroelectric projects without having undertaken previous consultation, including the Agua Zarca project, the La Aurora project, which would affect sources of water serving Lenca communities in La Paz, and a dam on the river Wampu, which would affect the Pech people.

49. Another controversial project is the Patuca I, II, and III series of dams in La Mosquitia. The construction of the Patuca III dam has started in Olancho Department and

its reservoir has affected non-indigenous populations. This has resulted in the illegal settlement of Tawahka lands because there is no proper plan for resettling these populations. It is a matter of serious concern that the network of dams is affecting the water level of the rivers used by the Tawahka and Miskito communities for their livelihood and as a means of transport and that it is flooding their ancestral forests. The Special Rapporteur was informed that no appropriate consultations with these indigenous peoples had been held and that there had been no proper studies to assess the impact on their territorial rights.

50. She also received information about the construction of the Cerro de Hula wind-farm project in Santa Ana, Francisco Morazán Department, where it is claimed that the municipal authorities and the environmental authority did not consult the local Lenca communities. According to this information, the development company persuaded indigenous individuals to sign agreements leasing their lands, warning them that, if they did not, their plots of land would be expropriated. The indigenous communities have claimed various forms of compensation from the company for environmental damage caused by the project. Their claims have not been addressed and it is feared that further environmental damage could be caused if the project is extended to neighbouring municipalities inhabited by indigenous communities.

2. Extractive, agro-industrial, tourism and infrastructure projects

51. Complaints were also made about the increase in the number of mining concessions in Honduras, including those for opencast mining. According to the information provided, about 97 licences have been granted for the extraction of metals and 193 for the extraction of non-metal products, while over 500 mining projects are awaiting approval or are at the application stage.

52. Government representatives stated that the granting of concessions or licences for mining projects was dependent on consultations with and support from local communities. The General Mining Act of 2013, however, provides that public consultations must be conducted before mining permits are granted, which may take place after the granting of prospecting and exploration rights, when there already exists a contractual relationship between the Government and a company.

53. Representatives of indigenous peoples said that mining projects had been carried out without prior consultation, including the Cuaca I, II and III projects in Olancho, which would affect the Nahua people, and the antimony mining operations in Locamapa, in Yoro, which would affect the Tolupán people. They also mentioned the mining operations in the basin of the Patuca river conducted by foreigners without government authorization or the consent of the Tawahka people.

54. Another concern is the contract signed in 2013 between the Government and British Gas to explore and mine hydrocarbons in an area of more than 35,000 square kilometres on the coast of La Mosquitia without consultation with the indigenous peoples of the region. Following protests by the Miskito people, the Government and British Gas initiated a consultation process with representatives of the Miskito people, who had drawn up a “biocultural protocol” as a basis for the consultations. The focus of the consultations was the conditions and guarantees demanded by the Miskito for the protection of their rights, including impact studies, financial contributions during the exploration stage and another round of consultations before any drilling work or mining operations started. The Special Rapporteur was told that there had been no similar consultation procedures with other indigenous peoples potentially affected by hydrocarbon operations. Government representatives said that the experience acquired during the negotiations with the Miskito people regarding oil production, which had not yet resulted in an agreement, would serve as a basis for future consultations with indigenous peoples on mining projects.

55. The indigenous peoples of the Atlantic seaboard and La Mosquitia have been affected by agro-industrial projects, principally the cultivation of the African oil palm, which have been promoted by powerful economic sectors. It is reported that the Garífuna community of Nueva Armenia in Atlántida has been subjected to threats and assaults and its houses and crops destroyed by private individuals who wish to plant oil palms on lands claimed by the community. There have also been reports of conflicts relating to tourism projects in lands to which the Garífuna communities hold title or that they claim as ancestral lands, such as the Barra Vieja community in Atlántida, which has been affected by the Indura Beach Resort tourist complex and the Río Negro community, which has been affected by the construction of cruise ports on the Banana Coast in Trujillo Bay.

56. Another major concern is the proposed construction of model cities under the Organic Act on Employment and Economic Development Areas,¹⁴ which would involve building infrastructure for areas having their own legal and economic system and their own security forces. The model cities would affect 24 Garífuna communities between the Sico river and Trujillo Bay and would involve forced displacement. The Special Rapporteur was informed of plans to relocate 3,500 members of the Garífuna community of Puerto Castilla to facilitate the construction and enlargement of infrastructure for a model city in Trujillo. Members of the community stated that they had not been consulted about the project and that they were opposed to their relocation, having been through two resettlement processes in the preceding decades.

E. Protected areas

57. There are also concerns about the creation of protected areas that overlap with indigenous territories and the resulting restriction of access to their lands and natural resources. In the case of the Garífuna people, 26 out of 47 communities are located within or on the borders of protected areas. The creation of the Punta Izopo and Cuero y Salado national parks, among others, without prior consultation with the affected Garífuna communities, has placed serious restrictions on their fishing, hunting and gathering activities in these areas and, in some cases, has led to their eviction.

58. Representatives of the indigenous peoples stated that the joint management plans of the protected areas promoted by the Government did not recognize or protect the territorial rights of the indigenous peoples affected or their own ways of using and managing their natural resources. They report that, because they have no rights over the forests and other resources in the areas designated as protected within their territories, indigenous people have to pay the municipal and forestry authorities for permission to take wood to build their houses and engage in other traditional activities. In La Mosquitia and other regions, they complain that the police confiscate wood obtained by indigenous families and, in some cases, demand bribes. It is reported that members of Miskito communities have been imprisoned by the police after their wood has been confiscated or because they hunt animals for food.

59. Representatives of the indigenous peoples report that the establishment of protected areas has not prevented illegal logging, mining or drug trafficking on indigenous lands. That, they say, is the situation in the Río Plátano Biosphere Reserve, where the ancestral lands of the Miskito are affected by logging and drug trafficking. The Tawahka people are in the same situation, following the creation of the Tawahka Asangni Biosphere Reserve.

¹⁴ Decree No. 120-2013.

F. Economic, social and organizational development

60. Honduras is considered a middle- to low-income country, with a high level of economic inequality and poverty. Although measures are in place to improve human development levels in the country, there remain problems to be overcome in such areas as access to health, education, gender equality and the environment. Such problems particularly affect the indigenous peoples. One problem that was raised was the lack of up-to-date official disaggregated data on indigenous peoples and their social and economic situation and on the effectiveness and cultural suitability of the social programmes implemented in indigenous regions.

1. Economic and employment situation and situation of women, young people and children

61. Seventy-two per cent of indigenous households, as against 41.6 per cent of households nationally, cannot afford a basic food basket, which puts them on the extreme poverty line. The worst percentages are found among the Tolupán (93.9 per cent), the Chortí (87.4 per cent) and the Pech (84.4 per cent). Of the indigenous child population, 88.7 per cent live in poverty, while more than 88 per cent of Tolupán, Lenca and Pech children live in extreme poverty. The unemployment rate among indigenous persons over the age of 18 years is 44.7 per cent. Women make up 83.6 per cent of unemployed persons. The average monthly income of indigenous people amounts to 36.8 per cent of the national average, and much less in the case of the Tolupán, Chortí, Pech and Lenca.¹⁵ They also face discrimination, which makes them vulnerable to unfair and precarious working conditions.

62. Information was received about the Miskito divers who have died or been severely injured while lobster fishing. The Government has been urged for many years to pay compensation to victims and their families, to provide health services, grants and housing and to strengthen labour regulations, and a claim against it was lodged with the inter-American system. The Government provided information on its inspections of the ships that hire the divers, the installation of hyperbaric chambers in some areas, initiatives to regulate underwater fishing and the provision of social services for the divers and their families. It seems, however, that the available grants, housing and medical services are inadequate to meet the real needs of disabled divers and their families. The lack of economic opportunities and proper regulation has meant that the number of deaths or injuries to divers has risen.

63. One problem that came up again and again was the lack of services to provide indigenous persons with identity documents, without which they cannot obtain access to social services or exercise their civic rights. The families of Miskito divers who died without holding such documents did not receive the social benefits to which they would have been entitled.

64. Government representatives provided information on such social programmes as Better Life, which issues food, housing, environmentally friendly stoves and medicines, on the various benefits available for poor indigenous families and on the Indigenous and Afro-Honduran Peoples and Climate Change Programme, in addition to the assistance, school equipment and food that the Government provides for indigenous children. There have, however, been complaints that these programmes are totally inadequate, that political

¹⁵ See United Nations Children's Fund (UNICEF), *Niñez indígena y afrohondureña en la República de Honduras* (Indigenous and Afro-Honduran children in the Republic of Honduras), Tegucigalpa, Dec. 2012, pp. 37-42.

favouritism has been shown in social programmes aimed at particular communities or families and that in some cases such programmes do not reach the indigenous communities.

65. The indigenous peoples also want backing for their own economic models and ideas and they wish to be the direct beneficiaries of a rational and sustainable use of the natural resources in their territories. A number of people said that the communities' loss of their lands and resources had resulted in a lack of opportunity for the younger generation, which meant that they became easy prey for organized crime groups or found themselves forced to emigrate.

2. Education

66. Illiteracy levels among the indigenous population are the same as those among the rest of the population (14.9 per cent) but much higher among Tolupán, Pech and Chortí women (29.5 per cent, 36.3 per cent and 39.6 per cent, respectively). The average number of years of schooling among the indigenous peoples is 5.7 years, as against a national average of 7.5 years, and, in the case of the Chortí, Pech, Tolupán and Lenca, under 5 years.¹⁶ This is due to such factors as a lack of educational opportunities and social and economic pressures that lead indigenous boys and young men to abandon their studies so as to contribute economically to their families.

67. According to official data, there are 919 educational centres in indigenous and Afro-Honduran communities — 183 at pre-primary and 736 at primary level — catering for a total of 92,962 children. The centres are staffed by 4,019 teachers, who are trained in bilingual intercultural education. The aim is to develop the bilingual component in 424 of these educational centres, catering for 41,649 children in indigenous communities that have retained their language, while, in other centres, there will be an intercultural focus and indigenous words will be taught.

68. The General Subdirectorate of Education for Indigenous and Afro-Honduran Peoples is developing systems of indicators and evaluation of bilingual education, including tests of competence in the mother tongue. Over the past decade, educational materials have been written in the Miskito, Garífuna, Pech, Tawahka, Tol, Lenca and Chortí languages. A teacher training programme between 2007 and 2012 led to the training of 2,578 teachers in bilingual intercultural education. There are also plans for bilingual intercultural education to be taught at university level.

69. Representatives of the indigenous peoples stated that there remained problems in the education provided in their communities, owing to a shortage of materials, staff and infrastructure. In La Mosquitia, they emphasized the state of disrepair of the schools and the lack of secondary and higher education centres. They said that the neglect of many indigenous regions meant that the quality of education was very poor and that, owing to the lack of resources in schools, parents were asked to pay for equipment and other materials. Another repeated concern was the lack of employment opportunities for trained indigenous teachers, in view of the fact that appointment to such posts seemed to be politically motivated.

70. Representatives of the indigenous peoples also spoke about the challenges involved in putting bilingual intercultural education into practice. They said that in La Mosquitia, where most students spoke their indigenous language, education was in Spanish. They also called for greater support for communities that had lost their indigenous language and wished to regain it. Moreover, they said that national educational textbooks did not contain

¹⁶ Ibid., pp. 43 and 44.

information on the indigenous peoples, their languages, their cultures or their contributions to the country.

3. Health

71. The health situation of the indigenous peoples of Honduras is precarious, owing to such factors as poverty, discrimination, geographical isolation and the lack of proper health services in the indigenous communities.

72. According to the available figures, neonatal mortality — that is, of children under 12 months old — is 43.5 per 1,000 live births among indigenous children, which is higher than the national average of 35.1 per 1,000, while infant mortality — of children under 5 years of age — is 62.9 per 1,000, higher than the national average of 49.7 per 1,000. The main causes of death include preventable diseases such as pneumonia, parasitic diseases and malnutrition. Chronic malnutrition affects 38 per cent of the indigenous child population under the age of 5 years, as against the national average of 30 per cent. The level is over 55 per cent among Lenca, Tolupán and Chortí children. Among the adult population, life expectancy varies from people to people. For example, it is 52 and 57 years, respectively, for Tolupán men and women and 38 and 43 years, respectively, for Tawahka men and women. The national average is 65 and 70 years, respectively, for men and women. Indigenous children and adults suffer from a high rate of respiratory infections, malnutrition, diarrhoea, malaria, dengue fever, tuberculosis and Chagas' disease. There are high levels of HIV/AIDS among the Garífuna, Miskito and Tawahka populations.¹⁷

73. The Special Rapporteur was informed that indigenous people used State services such as rural health centres and dental centres in or near their communities and also public and private clinics and hospitals outside their communities. A significant number of people decided not to seek medical care (13 per cent, according to one survey) or preferred to obtain it in their own homes or communities (5 per cent). It has been reported that an average of 96 per cent of indigenous communities have access to practitioners of various kinds of traditional medicine.¹⁸

74. The Special Rapporteur heard numerous statements on the lack of facilities, staff and medicines at health centres in indigenous territories and on the social and economic factors that hinder access to health. In La Mosquitia, the representatives of the indigenous people called for more health centres in their communities and a regional hospital. They said that the shortage of staff and proper medical care in the region had led to an increase in maternal mortality and in the number of people who had resigned themselves to dying because they could not meet the costs of transport and medical treatment in distant population centres. They reiterated the need for the State to build roads in a number of areas in order to improve access to health services and other necessities. The Special Rapporteur was told that, in the Lenca region, lack of access to medical services forced some people to go to health centres in El Salvador.

75. Another problem that was reported was the lack of respect for ancestral health practices and the lack of coordination with health officials in accommodating such practices and indigenous world views on health.

¹⁷ Ibid., pp. 51-57. See also OHCHR, Regional Office for Central America, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas de América Central* (Nov. 2011), pp. 303-305.

¹⁸ Alejandra Faúndez Meléndez and Marcos Valdés Castillo, *Caracterización de la población indígena y afrodescendiente de Honduras*, report by the Programme for the Comprehensive Development of Indigenous Peoples/Honduran Social Investment Fund (2011), pp. 30-37.

4. Organizational capacity, communication media and cultural heritage

76. The Special Rapporteur observed serious divisions among the organizations representing indigenous peoples. Indigenous leaders repeatedly claimed that the State authorities and other parties had promoted divisions among the indigenous peoples by setting up parallel indigenous organizations or by exercising undue influence over indigenous leaders, thereby causing mistrust in the communities and weakening the defence of their rights and interests.

77. The indigenous peoples also protested at the lack of support for their own communication media, in particular their community radios. They criticized harassment by the State authorities of the Lenca and Garífuna community radio stations, presumably on account of the role that these stations played in promoting the rights of indigenous peoples. It is a matter of concern that regulations on telecommunications place an undue burden on community radio stations, so that they are forced to close.

78. Another topic that arose was the right of indigenous peoples to participate in the management of ancestral heritage sites run by the Government or international institutions and to enjoy the related benefits. The Special Rapporteur was told of the work done in this regard by the Chortí people at the Maya archaeological park in Copán and the work of the Pech, Tawahka and Miskito peoples in Ciudad Blanca.

V. Conclusions and recommendations

79. **The situation of the indigenous peoples of Honduras is critical, since their rights over their lands, territories and natural resources are not protected and they face acts of violence when claiming their rights.**

80. **They call for immediate and decisive protection measures, including the prevention, investigation and punishment of persons responsible for murdering, threatening and harassing members of indigenous peoples and of those responsible for actions that infringe their rights over their lands, natural resources and other human rights. The legal, political and institutional framework must be overhauled and strengthened in order to deal with the situation properly and effectively, with reforms including coordination between government agencies to ensure the cross-cutting implementation of the Government's international commitments on the rights of indigenous peoples.**

81. **All this requires more public resources and greater political will. Serious and committed participation by the international community and the international human rights bodies is also essential in order to ensure international oversight of such efforts and provide the necessary technical and financial assistance.**

Legal, political and institutional framework

82. **All the State agencies dealing with the indigenous peoples, in particular the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage and the Directorate of Indigenous and Afro-Honduran Peoples, should be significantly strengthened and provided with the resources required to meet the needs of the indigenous peoples as regards access to justice, protection of their lands and natural resources and other rights. Another key institution requiring more resources is the Office of the National Commissioner for Human Rights, if the important aims set out in paragraph 15 of its Plan of Action are to be achieved.**

83. **Public officials and the private sector should be given education and training in the international standards on the rights of indigenous peoples, with a particular focus**

on mayors, local and national justice officials and members of the police, the armed forces and private security forces. This should be accompanied by effective procedures for monitoring, supervising and assessing public and private officials on their respect for and implementation of these international standards.

84. It is recommended that consultations be held with the widest possible range of representative bodies of the country's indigenous peoples on the various legislative and public policy initiatives relating to indigenous peoples (paras. 12 to 17) and that their own legislative and policy proposals should be considered. Under article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, consultations must be held on such legislative or other measures in order that the free, prior and informed consent of indigenous peoples is obtained before their adoption.

85. Honduras must examine the compatibility of current legislation and policies in the areas of property, natural resources, mining, hydrocarbons, energy projects, model cities, tourism, protected areas, forest issues and agro-industry with the country's international obligations on indigenous peoples, taking into account the constitutional status of international human rights instruments. The implementation of the law should not be to the detriment of the rights contained in the international instruments on indigenous peoples. Reforms or amendments to the law should be made in consultation with the indigenous peoples, in accordance with international standards.

Violence, impunity and access to justice

86. More resources are needed to strengthen the justice system for the investigation, prosecution and punishment of State officials or individuals responsible for the murder of members of the indigenous peoples and other forms of violence, including violence against indigenous women and children. This should include the investigation and punishment of members of the police, the armed forces and private security forces who commit such acts of violence.

87. It is recommended that Honduras engage in special investigations and impose criminal sanctions in particularly serious cases, such as the situation of Tolupeán in Locomapa (para. 22), targeting not only those responsible for the killings but also the land issues that lie behind the violence against the Tolupeán. With regard to the murder of Ms. Berta Cáceres, it is recommended that the Government request and accept technical assistance from international bodies and independent experts, as Ms. Cáceres' family and representatives of indigenous organizations and civil society have asked.

88. Criminal policy should take account of the causes underlying the protests over land and the other claims by indigenous peoples, with a view to promoting solutions to these causes and not imposing unnecessary or excessive punishments on indigenous demonstrators.

89. Mechanisms for the protection of human rights defenders, including those granted protective measures by the Inter-American Commission on Human Rights, should be extended, strengthened and given the necessary resources to cover indigenous leaders and their families who are dedicated to the defence of their peoples' rights. Protective measures should be developed in consultation with the indigenous persons concerned. Effective early warning systems should be established and urgent action taken jointly with indigenous peoples to prevent attacks against members and leaders of the indigenous peoples.

90. With regard to the drug trafficking and organized crime found on indigenous lands, security measures must be developed in consultation with the peoples

concerned to protect their lives, personal safety, lands and cultures. Particular attention should be paid to the situation of indigenous women, children and young people.

91. Indigenous peoples that might be affected should be consulted on anti-drug policies and operations that involve the presence of national or foreign police or armed forces and guarantees should be given that the lives, cultures, lands and natural resources of the indigenous peoples are not violated as a result of such operations. Abuses committed by drugs squad officials must be investigated and punished. In the case of the massacre in Ahuas (para. 26), the necessary measures should be taken at the national and international level to ensure that the victims and their families obtain justice and fair and appropriate compensation.

92. The Special Rapporteur recommends that, in regions with large indigenous populations, justice officials should be given more training in the rights of indigenous peoples and in the local indigenous languages and cultures. Measures must be developed, in cooperation with the indigenous peoples of those areas, to facilitate the appointment of justice officials, preferably from indigenous communities, and the activities of such officials should be subject to oversight by the indigenous peoples themselves.

93. She also recommends legislative or other measures to recognize indigenous systems of justice and courts and to develop mechanisms for coordination between indigenous and ordinary courts.

Land, natural resources and governance

94. Honduras should redouble its efforts to respond to existing requests by the indigenous peoples with regard to the delimitation, demarcation, registration, expansion and upgrading of their lands. It should comply with the commitments agreed with the Chortí people with regard to the acquisition and registration of lands and meet the requests of the Garífuna, Tawahka and Tolupán peoples, among others, for the expansion of their registered lands (paras. 35-44). As stated in ILO Convention No. 169, article 13 (2), recognition of their lands should include not only the areas in which they are settled but also the “total environment of the areas which the peoples concerned occupy or otherwise use”. Moreover, the indigenous peoples have the right to participate in the use, management and conservation of the natural resources pertaining to their lands (art. 15 (1)).

95. Judicial and agrarian institutions and the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage should take coordinated action to develop and strengthen specialized permanent mechanisms to enable the indigenous peoples to lodge their claims and obtain compensation for violations of their rights over their lands and natural resources, in accordance with articles 12 and 14 of ILO Convention No. 169 and articles 27, 28 and 40 of the United Nations Declaration on the Rights of Indigenous Peoples. This should include measures for the prompt settlement of cases in which third parties have been granted title to indigenous lands and for the prevention and punishment of the break-up and illegal sale of indigenous lands.

96. Prompt and effective measures should be taken to upgrade registered indigenous lands and to investigate and punish persons responsible for the occupation and environmental degradation of indigenous territories. In addition, the agreement signed with the Auka community should be implemented immediately and in full in order to avoid a deterioration in this divisive situation.

Investment projects

97. The indigenous peoples must be included in national development planning and energy policy, taking into account international standards on the protection of their cultures, lands and traditional resources. Prior consultation and free, prior and informed consent are essential in this regard. Social, cultural, environmental and human rights impact studies must be carried out and an agreed definition of mitigation, compensation and benefit measures must be reached. International standards apply in the case of energy projects, and also extractive, agro-industrial, tourism and infrastructure projects, model cities and other projects that affect or may affect indigenous peoples.

98. With regard to the Patuca III project and other energy and investment projects (paras. 46 to 50), the Special Rapporteur considers that there must be appropriate prior consultation to provide the indigenous peoples with accessible information on the social, environmental and cultural impact of those projects and possible measures of mitigation, compensation and benefits. No project should proceed until guarantees have been honoured and the free, prior and informed consent of all the indigenous peoples affected has been obtained. Indigenous peoples whose lands, natural resources or other rights have been violated by the implementation of such projects should obtain justice and compensation.

99. The private sector, meanwhile, has the obligation to exercise due diligence and assess the real and potential impact of its activities on human rights before undertaking operations. The corporate responsibility to respect human rights exists independently of a State's ability or willingness to fulfil its own human rights obligations and it exists over and above compliance with national laws and regulations protecting human rights.¹⁹ Before applying for permission or signing contracts relating to investment projects, companies should carry out studies on the presence of indigenous peoples in or around sites proposed for such projects and on the rights to lands, natural resources and prior consultation that indigenous peoples have under international standards.

Protected areas

100. The creation of protected areas also requires prior consultation, the consent of the indigenous peoples directly or indirectly affected and due regard for their rights under national and international law. The management of existing or proposed protected areas should be conducted with the full and effective participation of the indigenous peoples affected, respecting their own forms of use and management of natural resources in their ancestral territories. The Special Rapporteur urges that the necessary measures be taken to facilitate access to and use of their lands and natural resources by the indigenous peoples in areas that are currently protected, free of charge and without penalty.

Economic, social and organizational development

101. Census information on the indigenous population and its social and economic situation must be updated and systematized and methods to evaluate the scope and effectiveness of social policies and programmes targeting indigenous peoples must be developed, taking into account also the situation of indigenous women and children.

¹⁹ See the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex).

Programmes to provide indigenous people with identity documents should also be extended.

102. In consultation and coordination with indigenous authorities and organizations, appropriate measures should be taken to improve the development and implementation of education, health and economic development programmes and policies in indigenous territories and to allocate more resources for this purpose. This includes measures to extend educational and health coverage, with the necessary infrastructure, equipment and staff. The effective implementation of bilingual intercultural education must be assured in order to strengthen and, where necessary, recover indigenous languages. National textbooks should include specific information on indigenous peoples, their rights, cultures, languages and contributions to society. Measures should be developed to recognize ancestral health practices and incorporate them into health services in indigenous regions.

103. The Government should provide resources to enable the indigenous peoples to develop and implement their own economic models and initiatives. It is also recommended that measures be taken to support and promote communication media for the indigenous peoples. Moreover, it is essential that the indigenous peoples should participate fully and effectively in the management and spin-off benefits of their ancestral heritage sites.

104. The Special Rapporteur urges the Government to adopt the necessary measures to regulate and monitor effectively underwater fishing and to address the demands of Miskito divers and their families for health services, other necessary social services and compensation.

105. The necessary resources should be allocated to enable the indigenous peoples to develop their organizational capacities with regard to their own structures, cultures and autonomy. Activities that divide indigenous peoples and organizations must be avoided. Moreover, the existence of internal divisions should not be a pretext for not adopting measures to resolve the human rights problems affecting the indigenous peoples.

Other recommendations

106. The Special Rapporteur recommends that the Government, donor countries and business partners promote and implement initiatives in support of the rights of the indigenous peoples of Honduras, in consultation with them, in particular with regard to their lands, natural resources, governance, social and economic development and organizational capacities. To that effect, they should ensure that the Voluntary Partnership Agreement under the Forest Law Enforcement, Governance and Trade initiative (para. 44) and the private initiatives that they promote in Honduras guarantee the rights of the indigenous peoples and their participation.

107. It is also recommended that the United Nations agencies in Honduras, including the OHCHR representation in Honduras, should, in cooperation with the Government and the indigenous peoples, provide the State with technical assistance to implement the recommendations made in this report. The United Nations agencies should also ensure that they consult the indigenous peoples when planning and implementing programmes and activities in Honduras, in cases where such activities may have some impact on the indigenous peoples' rights and interests.

Annex

Observations on the situation in Rio Blanco

I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, presents her observations and a series of recommendations about the situation in the region of Rio Blanco, Intibucá in Honduras following the approval and initiation of the Agua Zarca hydroelectric project and its impacts on the human rights of members and communities of the Lenca indigenous people. The observations are based on the information gathered by the Special Rapporteur during and after her visit to Honduras from 2 to 10 November 2015. The present document complements the report on the situation of indigenous peoples in Honduras (“country report”) which will be presented by the Special Rapporteur to the Human Rights Council on September 2016.

2. The situation in Rio Blanco has drawn international attention due to the murder, that occurred on 3 March 2016, of the renowned Lenca leader Berta Caceres, who led protests against the Agua Zarca project. From the beginning, it has been a concern that her work in defense of the rights of the Lenca people, particularly with respect to this project, was the cause of her death. The ongoing investigations thus far have resulted in the arrest of five individuals that have been accused of the crime, some with direct links to the company developing the project.

3. The Rio Blanco case is emblematic of the situation violence, impunity and lack of access to justice threatening indigenous peoples in Honduras, particularly with respect to investment projects. The present report analyzes the information received about the Agua Zarca project during the visit to Honduras,^a the numerous complaints received concerning the actions of local and national officials, military and police agents, company employees and people supporting the project, as well as the investigation of Ms. Caceres’s murder. In addition, it analyzes the applicable standards on the rights of indigenous peoples and corporate responsibility, and concludes with a series of recommendations to the State, companies and financial institutions.

4. The primary objective of the report is to call the attention of the Government of Honduras, the business sector of the country, donor countries, and international financial institutions about the impacts brought by investment projects on the lands, natural resources, cultures, spirituality and social coexistence of indigenous peoples in Honduras. Therefore, it is hoped that decided and effective measures are adopted in order to prevent the recurrence of similar events in Honduras, and to ensure there is justice and reparations in cases of violations committed against leaders and members of indigenous peoples in the context of investment projects.

^a The situation of the Agua Zarca dam was also the subject of a communication addressed to the Government of Honduras by the previous Special Rapporteur. *See*, Report on the observations to communications sent and replies received by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya – Observations on communications, A/HRC/27/52/Add.4, (3 September 2014), paras. 106-108. Available on: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.52.Add.4.doc

II. Background

Approval and first phase of the project

5. The Agua Zarca project is part of approximately 40 hydroelectric projects (21 of which would affect Lenca, Garifuna, Pech, Tawahka, Mikito and Tolupan communities) whose contracts were approved through a legislative decree in September 2010 that was not previously consulted with the indigenous peoples concerned. The approval of the contracts was preceded by legislative reforms in 2009 and 2010 that allowed water concessions for third parties and the repeal of national regulations that previously prohibited hydroelectric projects in protected areas. The above took place in the context of a State policy favoring renewable energy sources through hydroelectric, wind energy projects, and other projects.

6. The Agua Zarca hydroelectric project consists of a 20-year concession to the Honduran company Desarrollo Energéticos S.A. (DESA). The public information at the initial stage of the project stated it would be developed in the municipality of San Francisco de Ojuera, department of Santa Barbara. The project would have a capacity of 14.46 to 21.3 megawatts, according to different sources, and would use water from the Gualcarque river. The company hired the Chinese company SINOHYDRO to build the dam. In 2012, the Central American Bank for Economic Integration (CABEI) contributed US\$ 24.4 million to the project through an investment co-structured with the Netherlands Development Finance Company (FMO) and the Central American Mezzanine Infrastructure Fund (CAMIF).^b CAMIF is a private capital fund that invests in medium-sized companies and projects in Central America and other countries. Among CAMIF's main contributors is the International Finance Corporation (IFC) of the World Bank Group.

7. In 2011, DESA began acquiring lands in the Rio Blanco region in the municipality of Intibucá, department of Intibucá, that were supposedly private and municipal property, for the construction of the dam. However, the lands were part of the ancestral territory of Lenca communities in Rio Blanco, including the communities of La Tejera, El Barreal, Valle de Angeles, La Union, San Bartolome, El Naranjo, San Pedro and San Antonio. In the early 20th century, the lands were recognized as collective communal lands titled on behalf of the municipality of Intibucá, which historically has had a predominantly indigenous population. This designation was due to the efforts by the family of President Luis Bogran to help Lenca communities in Rio Blanco which historically have faced the ambitions of non-indigenous families in the neighboring municipality of San Francisco de Ojuera, Santa Barbara, that wanted to appropriate their lands. Information has also been received about the existence of long-standing titles for Lenca communities in Rio Blanco.

8. During the first decade of this century, the municipal government of Intibucá began granting freehold titles to non-indigenous individuals that claimed possession of lands in Rio Blanco. According to the information, lands were bought without authorization of the communal assemblies, which represent the Lenca communities' own authorities. According to the information received, these sales seemingly occurred in various cases through coercion and intimidation of indigenous residents. In most cases, the indigenous communities had no knowledge of the land sales to individuals.

9. In 2011, DESA employees and the municipal mayor of Intibucá carried out information sessions in Rio Blanco about the projects and its benefits, such as the building of roads and schools. Most of the members of the Rio Blanco communities voiced their rejection of the project during these meetings and in over 150 indigenous assemblies. The communities opposed the project because it would affect their communal lands, crops, water sources, and environment. There were reported impacts on the lands used for agricultural activities on the banks of the Gualcarque river by the

^b CABEI, *Annual Report 2012*, pp. 37, 63.

community of La Tejera. In the Lenca worldview, the Gualcarque river is sacred since it is the home of female spiritual beings. Therefore, the concession of the river's waters for the benefit of the dam represented a serious desecration of Lenca culture.

10. In 2012 and 2013, Rio Blanco residents reported the presence of DESA and SINOHYDRO employees on communal lands who began construction of the dam. The employees destroyed traditional crops and fenced off community water sources in order to divert water to the company. In addition, security guards prevented community members from accessing the river to carry out traditional irrigation, fishing and household activities.

11. Rio Blanco community members began protest actions, including the blocking of the road built by DESA to access the construction site. They were assisted by the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), a Lenca organization founded by Berta Caceres. In response to this, elements of the army were sent to permanently guard the project facilities and there were various attempts at evicting the protesters. In July 2012, during a peaceful protest in front of the project facilities, a soldier fired at the Lenca leader Tomas Garcia and his son, killing Mr. Garcia and seriously injuring his son.

12. The project caused division in the Rio Blanco communities and affected their social coexistence with neighboring communities. In September 2013, an agreement was signed between the Government, company and Rio Blanco communities in which in exchange for their project approval they would receive compensation and social programs from the company. However, according to the information received, some of the persons who signed the agreement came from non-indigenous communities in Santa Barbara, and those representing Rio Blanco community were not authorized by their respective communal assemblies. Therefore, Rio Blanco community members have continued their opposition to the project and have rejected the agreements purportedly showing the acceptance of the project by all indigenous communities in Rio Blanco.

Legal actions and criminalization

13. Following the approval of the contracts for the Agua Zarca project and the other dams affecting indigenous peoples, COPINH filed complaints before different national authorities, including the Special Prosecutor for Ethnic Groups of the Attorney General's office, alleging violations of the duty to consult indigenous peoples in accordance with ILO Convention 169, ratified by Honduras in 1994. This included a criminal complaint against the then Minister of Natural Resources and Environment who granted the environmental permits for those projects. Additionally, complaints were filed before the Attorney General against DESA for usurpation of lands, as well as against the municipal mayor of Intibucá for permitting the project in Rio Blanco.

14. In 2015, a motion for indictment was filed against the mayor of Intibucá for the crime of abuse of authority and a formal indictment against the former Minister of Natural Resources and Environment was issued for having granted the environmental license for the project without previously consulting indigenous communities. The information received by the Special Rapporteur regarding these legal actions brought by the Special Prosecutor for Ethnic Groups confirms that the Agua Zarca project was approved before the information sessions and signing of the aforementioned agreement with local communities. The Special Prosecutor for Ethnic Groups also filed criminal actions for murder and attempted murder against the member of the army who caused the death of Tomas Garcia and wounded his son. In December 2015, the soldier was convicted of homicide and his sentence is still pending.

15. On the other hand, members of COPINH faced various judicial charges and criminalization due to their protest actions. Berta Caceres faced criminal charges for illegal possession

of a firearm supposedly found in her vehicle by the police. In addition, Berta Caceres along with COPINH leaders Tomas Gomez Membreño and Aureliano Molina were accused of criminal incitement to cause damage to DESA's property. In 2014, a court dismissed the charges of illegal firearm possession resulting in the revocation of all criminal proceedings against Ms. Caceres. That same year, an appeals court upheld the provisional dismissal of Berta Caceres, Tomas Gomez and Aureliano Molina with regard the charges for incitement and property damage.

The second phase of the Agua Zarca project

16. According to the information, the protests against the dam in 2013 were one of the factors behind SINOHYDRO's withdrawal from the project. In December 2013, CAMIF decided not to proceed with its investment in Agua Zarca, thus the IFC and World Bank no longer actively participated in the project. In October 2015, DESA moved the construction of the dam to the other side of the Gualcarque river in San Francisco de Ojuera. This phase of the project obtained financing from the the Netherlands Development Finance Company (FMO) for US\$ 15 million, the Finnish Fund for Industrial Cooperation (Finnfund) for US\$ 5 million, and the Central American Bank for Economic Integration (CABEI) for US\$ 9 million.

17. According to the information received, the company moved the location of the project because the population of San Francisco de Ojuera is not indigenous and the municipal government had authorized the project. However, members of Rio Blanco and COPINH stated that the relocation of the project did not take into account the presence of the Lenca indigenous people in Santa Barbara and that there was no true consultation process with those communities. It has been pointed out that the project operates with the same environmental license whose issuance is the subject of the aforementioned criminal actions by the Special Prosecutor for Ethnic Groups. Similarly, they consider that the activities in the new project continue to affect the rights of Lenca communities with respect to the Gualcarque river.

18. After the beginning of this new phase, members of Rio Blanco and COPINH set up camps in front of the current project facilities as a form of protest. Consequently, this again brought about the presence of military, police and private security units to guard the project facilities.

III. Violent incidents related to the Agua Zarca project

19. The Agua Zarca project, in both of its phases, generated a highly conflictive situation in the Rio Blanco region. According to the office of the Special Prosecutor on Ethnic Groups, before 2013, when construction work on the dam advanced considerably, no serious incidents of violence or murders were reported from Rio Blanco. It is very concerning that the response by the company and local authorities has been the heavy militarization of the zone. Also of concern are acts of violence perpetrated by individuals who support the project which have acted with the tolerance of local and police authorities.

20. Members of Rio Blanco communities and COPINH alleged that since the 2013 protests, they have endured threats, intimidations, violence and murders, including the previously mentioned murder of Tomas Garcia. It has been alleged that hooded individuals hired by the company's private security terrified Rio Blanco inhabitants by firing weapons at night and by standing outside community members' homes and outside the place where protesters blocked the road. In November 2013, thirty hooded police officers reportedly entered the homes of Rio Blanco leaders to threaten them and their relatives, and they also hit one of the leader's son.

21. In March 2014, the coordinator of the Rio Blanco Indigenous Council María Santos Domínguez, who was known for her opposition to the project, survived an attempt against her life

when seven individuals attacked her with machetes, sticks and stones while she walked home. The attackers seriously injured her husband and 12-year old son when they tried to assist her. It was alleged that the assailants were project supporters and that they had threatened Ms. Domínguez and her family on previous occasions.

22. During her 2015 visit, the Special Rapporteur was informed that aside from Tomas Garcia, another three Lenca indigenous persons from Rio Blanco were killed due to their opposition to the project. Among those others, were the brothers William and Maycol Rodriguez who were killed in May and October 2014, respectively, under circumstances indicating the involvement of persons affiliated with the company or supportive of the project. The two brothers had previously participated in protest actions in Rio Blanco. It was alleged that after William Rodriguez's murder, police forcibly entered the homes of two COPINH members to arrest them and they threatened another indigenous leader and children who were present. The two COPINH members, Lindolfo Benitez and Salvador Sanchez, were allegedly tortured by the police and subsequently freed.

23. Since the beginning of the second phase of the project, there have been new incidents of threats and aggression against indigenous protesters. Abuses committed by security guards and military personnel have been denounced, including: threats of forced eviction of protesters set up in front of the project, the throwing of large sized rocks over the protesters' campsite, bursts of gunfire coming from project facilities towards the campsite in the early morning and high night, and constant photographing and recording of the protesters. Also reported were sexual threats and physical assaults by security guards and hooded individuals against Lenca women that use the Gualcarque river near the project.

24. Various Lenca leaders were threatened and shot at by individuals connected to the company. In the case of Berta Caceres, information was received that in the months before and after the resumption of the project, she had again received numerous threats. It was informed that in January and February 2015, she had received numerous anonymous phone calls and text messages warning her about the risk of being kidnapped or disappeared due to her work in Rio Blanco. In March 2015, the president of the Rio Blanco Indigenous Council reportedly informed Ms. Caceres that powerful families in the region that were connected to DESA had planned to end her life. In November 2015, COPINH leader Tomas Gómez reportedly received a call from a member of that same family saying that he and Berta Caceres were the ones responsible for inciting people in Rio Blanco and therefore they were the ones responsible for "anything that happens to them" and therefore they had to face the consequences.

25. On 30 November 2015, Ms. Caceres and other members of COPINH were riding in two buses headed to San Francisco de Ojuera to carry out a peaceful protest and meet with the local mayor when they were stopped and registered by the police. When they reached their destination, they were intercepted by several municipal workers armed with machetes and handguns who started throwing rocks at them. In reference to Ms. Caceres, they said "this is the old bitch that must be killed". One of the armed men was close to stabbing Ms. Caceres in the chest. These events occurred in the presence of police and military agents.

26. In February 2016, Ms. Caceres was threatened and harassed by a police agent during a forcible eviction of 50 families that were affiliated with COPINH. The eviction was carried out by police and military in Jarcia, Guinse, Intibucá. The agent stated that security forces would not be responsible if anything was to happen to her. In the morning of 2 March 2016, hours before the murder of Berta Caceres, DESA's chief of security along with other persons were seen in a vehicle in Siguatepeque, and after speaking ill of her, they headed to La Esperanza, where Berta Caceres

lived.^c In the early morning of 3 March 2016, Berta Cáceres was murdered by armed individuals who entered her home and shot her to death.

27. According to information received, after Berta Cáceres's murder, members of COPINH and Rio Blanco have continued to be victims of threats, harassment and attacks by persons affiliated with the project and members of DESA's private security. In April 2016, during an international conference in honor of Berta Cáceres, members of COPINH and national and international organizations had finished participating in a cultural ceremony at the edge of Gualcarque river and were headed to to their vehicles in San Francisco de Ojuera, when they were ambushed by project employees and supporters who, in an apparent state of intoxication, attacked them with sticks and stones. Ten people were injured including children and foreign citizens. According to the information, the assailants mentioned having killed Ms. Cáceres and when referring to the current coordinator of COPINH, Tomas Gomez, they yelled "let's attack him, he is the one that is left". In addition, they threatened other COPINH leaders. All these events took place with the tolerance of police and military that were present. It was informed that among the assailants was a hired assassin with a criminal record for murder who had previously threatened Ms. Cáceres and other members of COPINH with death.^d

28. Twelve days after Berta Cáceres's murder, another member of COPINH was killed. On 15 March 2016, Nelson Noe Garcia was murdered by two unknown individuals after participating in activities in support of the Lenca community of Rio Chiquito, department of Cortes. That same day, the community in question was forcibly evicted by public security forces. This event is especially concerning because after the murder of Berta Cáceres, members of COPINH, along with Ms. Cáceres's relatives and the only witness of the crime, Gustavo Castro, were beneficiaries of precautionary measures issued by the Inter-American Commission on Human Rights (IACHR) which ordered the Honduran State to guarantee the life and personal integrity of those persons. In the case of COPINH, the precautionary measures were granted due to the grave risk they face because of their work in defense of the rights of the Lenca people, particularly with respect to Agua Zarca.^e After the murder of Nelson Garcia, FMO and Finnfund decided to suspend their activities related to Agua Zarca, specifically citing the situation of violence in the country.

IV. The investigations on the murder of Berta Cáceres

29. As indicated in the country report, the lack of access to justice and the high levels of impunity constitute grave problems afflicting indigenous peoples in Honduras. Due to the threats and assaults against Ms. Cáceres in the last months before her death, it has been suspected that her death was related to her protest actions against Agua Zarca. The situation of impunity in the country and the distrust of the national justice system motivated the calls at the national and international levels for the formation of an international commission of independent experts in order to supervise the investigations undertaken by national authorities.

30. In the case of Berta Cáceres, there were various factors that generated distrust and fears that the crime would remain unpunished. Irregularities were denounced with respect to the investigation, such as the lack of control of the crime scene by police authorities that were present in Ms. Cáceres's home after her murder, which could have led to its contamination. Initially, the theories held by the authorities focused on supposed internal conflicts between members of COPINH, or on a crime of passion. Consequently, the authorities at first mostly interrogated other COPINH members which

^c Informe de la Misión Internacional "Justicia para Berta Cáceres Flores", (March 2016), Annex 2.

^d These events were the subject of a joint communication by the special procedures dated 27/05/2016.

^e See, CIDH, Medida Cautelar No. 112-16, *Asunto miembros de COPINH y familiares de Berta Cáceres respecto de Honduras* (5 March 2016).

raised concerns that they would be considered suspects and possibly be charged.^f Similarly, the only witness to the crime, Gustavo Castro, a Mexican national, was subject to a judicial order forbidding him to leave the country. According to the information, the judge that issued the order admitted there was no legal basis to prohibit him from leaving the country, and to cooperate with the investigation from Mexico. The prohibition to leave country for several weeks posed a grave risk to Mr. Castro's life because those responsible for Ms. Cáceres's murder were still unpunished.

31. In April 2016, the Attorney General's Office informed that the person suspected of the murder of Nelson Noe Garcia was criminally prosecuted and that in the case of Berta Cáceres, weapons and documents were confiscated and statements were obtained from DESA employees. It also informed that it had ordered the cessation of the restriction order issued against Gustavo Castro, thus allowing him to leave the country.^g On 2 May 2016, the Attorney General's Office informed that through a joint operation of the Special Prosecutor of Crimes Against Life, the Criminal Investigative Technical Agency and the military police, four individuals suspected of the crime were arrested. The four accused included a DESA environmental technician, the deputy chief of security for DESA, an active military member, and a retired military member. Ms. Cáceres had denounced that the technician and security officer had continually threatened her. On 6 May, it was announced that a fifth person was charged for participating in the crime.

32. On the other hand, Berta Cáceres's relatives have reported that they have been unable to get access to the investigation files nor have they been able to take part in the investigations as active participants. Regarding the arrest of the five suspects, they have stated that although this is an important development, it is necessary to investigate the intellectual authors of the crime which could include additional company representatives and State agents. In this regard, they had stressed the importance of the Government accepting the participation of the aforementioned international commission of independent experts.

V. Statements by the company and investors

33. The Special Rapporteur received information released by DESA which maintains that the Agua Zarca project has complied with all national energy-related legislation, that the lands where the project would be developed were sold by private owners or are municipal lands, and that the project will comply with the highest environmental standards. Likewise, it asserted that the consent for the project was obtained through the signing of the 2013 agreement between the Government, company and local community representatives. Therefore, according to the company, only the community of La Tejera, which was instigated by COPINH, is opposed to the project. In public statements sent to national and international human rights organizations in the last few months, the company accused COPINH of vandalism and of manipulating public opinion about the project.

34. The Special Rapporteur considers that though different opinions could exist among local communities regarding the Agua Zarca project, the level of violence, murders, threats and intimidation that has occurred against project opponents is very concerning. In addition, she observes that the public statements by the company have had the clear intention of delegitimizing COPINH's work in support of the Rio Blanco communities.

35. The Special Rapporteur witnessed the highly conflictive situation during her visit to Rio Blanco. On two occasions, before and after visiting the project site, a group of about 20 people made up of company employees and inhabitants from other communities who supported the project, blocked passage of the road traveled by the Special Rapporteur's delegation. Amidst the climate of tension

^f Informe de la Misión Internacional "Justicia para Berta Cáceres Flores", (March 2016), sec. 4.2.

^g Comunicado del Ministerio Público, (1 April 2016).

caused by this action, members of the Special Rapporteur's delegation mediated in order to let the delegation through on both occasions. The group accused Berta Caceres and COPINH of instigating violence and conflict in the region. Members of COPINH and Rio Blanco informed that the night before, as they were helping in the preparations for the Special Rapporteur's visit, they suffered attacks and assaults by armed men who fired weapons and threw rocks.

36. After the murder of Berta Caceres, the Agua Zarca project investors issued statements condemning the crime and published information about the development of the project. The FMO bank stated that it would carry out a high-level visit to Honduras along with independent consultants and representatives of the other financial institutions in order to do an exhaustive investigation of the situation including interviews with local communities.

37. The information published to this date by FMO asserts that the nature and foreseen impacts of the project have changed considerably after being moved to the other side of the Gualcarque river.^h According to the information, the project would no longer be a dam that requires water storage but would use a "run-of-the-river" system whereby the running water from the river would be diverted and go directly to the generating station. This type of project, it informs, would not result in the displacement of communities nor would it affect forest resources or agricultural production, and access to the river would only be temporarily restricted. It stated that the project would encompass a total of 35 hectares acquired through agreements with private property owners. This includes 1.09 hectares acquired from the indigenous community of Valle de Angeles and the rest is located in non-indigenous areas. With respect to the Gualcarque river, it states that only the community of La Tejera considers it to be sacred and not the rest of the local communities.

38. FMO asserted that the consent of affected communities was obtained through agreements signed between 2011 and in 2014 with the communities on the other side of the river. At the same time, it stated that free, prior and informed consent is not required because the current project would not cause the resettlement of communities nor affect communal lands. In this regard, the Special Rapporteur would like to highlight the allegations received about the Rio Blanco communities' expressed rejection of the project during the information sessions held in 2011 and the allegations about the forgery of signatures of Lenca community members which were used as part of supposed agreements in favor of the dam.

39. FMO also informed that it had undertaken due diligence by taking into account the impacts on vulnerable groups and has "provided capacity training to the Agua Zarca project on security and coordination mechanisms with all relevant security providers in place." As stated by FMO, it "undertook two due diligence trips before contracting [with DESA] to better understand the environmental and social impacts of the project as well as support the client in devising mitigation measures; it has also undertaken annual monitoring trips and has relied on very frequent [environmental and social] advisors visits." It also added that its own "Environmental, Social and Governance Due Diligence" has been verified through the implementation of its own internal review process and the evaluations are published on the internet. It also states there is an independent complaint mechanism.ⁱ

40. The Special Rapporteur observes that although the studies or assessments referred to above constitute important tools, these seem to have been undertaken at a later stage after the local and national authorities made their decisions to authorize the project without observing international standards on indigenous peoples, consultation and consent. It must also be pointed out, that such

^h FMO, Frequently Asked Questions on the Agua Zarca Run-of-the-River Hydroelectric Generation Project, Available at: <https://www.fmo.nl/k/n1771/news/view/27260/538/faq-agua-zarca-project-honduras.html>

ⁱ Ibid.

measures do not seem to have had the objective of investigating, preventing or sanctioning the series of threats, harassments and murders of indigenous leaders throughout the years since the project started.

VI. The responsibilities of the State, the companies and investors

41. The Special Rapporteur deems it necessary to highlight the human rights responsibilities of the State, the companies and investors with respect to the approval and implementation of the Agua Zarca project.

42. As mentioned in the country report, Honduras has ratified the principal universal and regional human rights instruments, and it ratified ILO Convention 169 on Indigenous and Tribal Peoples (“ILO 169”) in 1994. Honduras voted in favor of the UN Declaration on the Rights of Indigenous Peoples (“Declaration”), which represents the most authoritative expression of the international consensus with respect to the individual and collective rights of indigenous peoples.^j In addition, the State has responsibilities with respect to the activities by business enterprises. This includes the duty to protect against human rights violations committed by businesses enterprises through “appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”^k

43. Business enterprises and financial institutions must also respect human rights. According to the United Nations Guiding Principles on Business and Human Rights, which must also serve as a reference for financial institutions, the responsibility to respect human rights “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and... it exists over and above compliance with national laws and regulations protecting human rights.”^l To that end, businesses should carry out human rights due diligence, which includes assessments of the actual and potential human rights impacts caused by their activities encompassing “adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.”^m

Consultation and consent

44. As has been previously stated, DESA’s contract to develop the project, as well as the contracts for the other hydroelectric projects affecting indigenous peoples, was approved through a legislative act that was not consulted with the affected indigenous peoples. The criminal actions against the mayor of Intibuca and the Minister of Natural Resources and Environment signal that the decisions by these authorities related to their respective approval of the project violated the duty to consult the affected indigenous peoples. On the other hand, even though the company and investors mention that there were signed agreements that express the local communities’ consent, it must be emphasized that these agreements were strongly questioned and they were signed after formal approval of the project by the State through the aforementioned legislative act. This means that commitments between the company and the Government already existed independently of these agreements.

45. The above indicates deficiencies in the fulfillment of the principles and objectives of prior consultation. With respect to legislative or administrative measures that affect indigenous peoples, the Declaration provides that indigenous peoples must be consulted through their own representative institutions before the adoption and implementation of such measures in order to obtain their free, prior

^j A/HRC/9/9, para. 34-43.

^k Guiding Principles on Business and Human Rights, [“Guiding Principles”], HR/PUB/11/04, Principle 1.

^l Ibid., Principle 11 (Commentary).

^m Ibid., Principle 17.

and informed consent (article 19). This includes administrative or legislative measures that may have broad application but have a differentiated effect on indigenous peoples given their particular conditions and rights.ⁿ

46. In recent decisions concerning the Garifuna people of Honduras, the Inter-American Court of Human Rights reaffirmed its jurisprudence which clearly establishes that the right to consultation is a treaty-based provision and a general principle of international law which “entails the duty of the State to organize appropriately the entire government apparatus and to structure their laws and institutions so that consultation [with indigenous peoples] can be carried out effectively, in accordance with international standards...”^o

47. The Court specified that “the State must guarantee the right to consultation and participation at all stages of the planning and implementation of a project or measure that may affect the territory [of an indigenous people], or other rights essential to their survival as a people. The above, must be conducted in the first stages of the planning or preparation of the project or proposed measure, so that the indigenous peoples can truly participate in and influence the decision-making process, in accordance with the relevant international standards. In this regard, the State must ensure that the rights of indigenous peoples are not ignored in any other activity or agreement reached with private individuals, or in the context of decisions of the public authorities that would affect their rights and interests.”^p

48. As the Inter-American Court has determined and the Special Rapporteur has emphasized, consultation and consent constitute safeguards to the substantive rights of indigenous peoples, including inter alia, “the rights of participation and self-determination, rights to property, culture, religion and non-discrimination in relation to lands, territories and natural resources, including sacred places and objects.”^q As a general rule, free, prior and informed consent is required when there is a significant impact on these fundamental rights. Therefore, the duty to obtain consent applies not only in those cases where there is displacement, as was stressed by the investors (see para. 38), but also in cases where there would be significant impacts on the substantive rights of indigenous peoples. In the case of Rio Blanco, these would include the rights to ancestral lands, culture and sacred sites.

Impact studies

49. Another important safeguard that compliments prior consultation is, as stated by article 7(3) of ILO 169, the carrying out of studies, in cooperation with indigenous peoples “to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.” These studies, according to the Inter-American Court, would help ensure indigenous peoples “are aware of the possible risks, including environmental and health risks”, in order for them to make a decision about the project knowingly and voluntarily, as part of a consultation process.^r The studies “must conform to the relevant international standards and best practices, respect the indigenous and tribal peoples’ traditions and culture, and must be completed prior to the granting of the concession or license, as one of the objectives for requiring such studies is for the State to guarantee the rights of the Community to be informed about all the proposed projects in its territory and to guarantee its effective participation in the process of granting concession or licenses.”^s

ⁿ A/HRC/12/34, para. 43.

^o See, I/A Court HR, *Case of the Garifuna Community of Triunfo de la Cruz v. Honduras*, (Judgment of 8 October 2015), [“Triunfo de la Cruz Case”], para. 159.

^p *Ibid.*, para. 160.

^q A/HRC/24/41, para. 28.

^r *Triunfo de la Cruz Case*, para. 180.

^s *Ibid.*, para. 180.

50. In the case of Agua Zarca, there are no indications that social, cultural and environmental studies were carried out before the project's approval, and through which the indigenous communities could have made an informed decision about its approval. Any deficiencies in the consultation processes or impact studies undertaken should have been researched as part of the due diligence that companies and financial institutions must carry out in order to assess the actual or potential impacts of their activities or business relationships. The fundamental steps that are necessary in that respect include: "assessing the human rights context prior to a proposed business activity [...]; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In this process, business enterprises should pay special attention to any particular human rights impacts on [vulnerable groups such as indigenous peoples]."^t

51. As part of a true due diligence process, business enterprises and financial institutions should firstly determine if there are indigenous peoples on or near the places where an activity is proposed and there should be an examination of the land, natural resource and prior consultation rights that could correspond to the indigenous peoples under international standards. Said examination should not be limited to land tenure rights that are officially recognized by the State, since the duty to consult arises not only in cases where a measure or activity affects lands recognized as indigenous lands but whenever their particular interests are at stake, even when the interests do not correspond to a recognized right to land.^u In this regard, it must be noted that the jurisprudence of the Inter-American Court affirms the duty of States to recognize that the traditional possession of lands has the equivalent effect of full title granted by the State and the corresponding right to demand the official recognition of their land. They also have the right to recover lands that have been involuntarily lost or transferred to third parties.^v

Land tenure situation

52. The Special Rapporteur notes that there are divergent views between the allegations received and statements by the company and investors with respect to the tenure of the land used for the project. Regarding the first phase of Agua Zarca, it was alleged that the ancestral lands of Lenca communities were subject of unauthorized sales to individuals and afterwards were acquired by the company. With respect to the second phase of the project, supposedly in a non-indigenous area, nonetheless there have been alleged impacts on ancestral lands and natural resources, in addition to ongoing impacts on the sacred Gualcarque river.

53. The land tenure situation in the project area, the rights that could correspond to the Lenca communities of Rio Blanco based on their ancestral use and possession under international standards, and the possible impacts on the Gualcarque river, among other matters, are issues that should have been resolved by the Government before the signing of contracts and the granting of permits for the project. The company and the financial institutions should have ensured the fulfillment of these international obligations as part of their due diligence, and should have not taken actions that would create distrust and be detrimental to the rights of indigenous peoples. These are measures that the Government, company and financial institutions could have adopted to ensure good relations with the affected indigenous communities; and through adequate consultation processes and social, cultural and environmental impact assessments, they could have identified possible mitigation, compensation and benefit-sharing measures that would have respected their rights and priorities for development. In the case of Agua Zarca, however, there have been serious human rights violations due to the acts of

^t Guiding Principles, Principle 18 (Commentary).

^u A/HRC/12/34, para. 44.

^v Triunfo de la Cruz Case, para. 105.

violence, intimidation, harassment and murders of indigenous peoples opposed to the project which makes it difficult to justify the continuation of the project even if it was possible to offset the problems related to the lack of prior consultation and adequate impact assessments.

Responsibilities with respect to the violence associated with the Agua Zarca project

54. The violent acts associated with the implementation of the project including the murders of Berta Caceres, Tomas Garcia and other Lenca leaders, also constitute crimes. In that regard, the State, the company and financial institutions have responsibilities under international standards.

55. States have the duty to take additional steps to protect against human rights violations by business enterprises that are under their control “or that receive substantial support and services by the State.”^w These services could include those provided by credit agencies, official investment insurance or guarantee agencies, development finance agencies, and additionally, in the case of Agua Zarca, the security services provided to DESA by police and military agents must also be highlighted. The fact that military agents have been implicated in the murders of Tomas Garcia and Berta Caceres evidences the State’s responsibility for these violations and its corresponding obligation to provide justice and reparations. It must also be noted that the State had the responsibility to provide effective protective measures for Berta Caceres because in 2009 she was granted precautionary measures by the IACHR due to the risk she faced for her work in defense of indigenous peoples’ rights.

56. The State has the obligation to guarantee access to justice for persons affected by abuses committed by the company and State agents through judicial, administrative or judicial measures that include criminal or administrative punitive sanctions, as well as measures for restitution or financial or non-financial compensation, among others. The State must ensure there are no barriers to access to justice, and “that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.”^x

57. With respect to business enterprises, if they have caused or contributed to adverse impacts, they should provide remedies. In cases where crimes are involved, cooperation with judicial mechanisms would be required.^y As was discussed in section III, individuals connected to the DESA company, including security personnel, have been implicated in a series of threats, harassments and violence, aside from the fact that two people with connection to the company have been charged for the murder of Berta Caceres. Therefore, DESA must cooperate with the investigations as to all possible material and intellectual authors of the crime that could be connected to the company.

58. On the other hand, the investment banks in this case must be aware of their responsibilities, having been in a business relationship with a company implicated in acts constituting crimes and serious human rights violations. Even before the murder of Berta Caceres, grave human rights violations have occurred including threats, assaults and deaths caused by military agents, individuals connected to the company or supporters of the project. However, it is concerning that notwithstanding this situation, the investment banks never saw reason to question their support of the project, even though, according to FMO (para. 39) due diligence visits and assessments were continuously undertaken and consultants were hired to assess the project’s impacts.

59. The above raises the question, what value was given to the series of complaints about the acts of violence over the years against members of COPINH and Rio Blanco communities that were

^w Guiding Principles., Principle 4.

^x Ibid., Principles 25, 26, and Commentary.

^y Ibid., Principle 22 and Commentary.

opposed to the project? Another issue that should have been addressed is the series of criminal actions against the officials who approved the project. The Special Rapporteur notes that the statements by DESA and the financial institutions never mentioned these criminal actions, the different acts of violence faced by project opponents since the beginning, or the measures to be adopted to ensure such acts would not be repeated and be sanctioned. She considers that these are matters that should be addressed in any due diligence assessment carried out by companies as well as financial institutions with respect to these kinds of projects.

60. By having provided the company with capacity training about security and mitigation measures (para. 39), FMO has exerted an influence over DESA that should have prevented human rights violations. In their business relationships with other entities, business enterprises and financial institutions must use their leverage to mitigate any adverse impacts caused by the other entities, especially where they have “the ability to effect change in the wrongful practices of an entity that causes a harm.” On the other hand, if an enterprise or institution lacks the leverage to prevent or mitigate the adverse impacts caused by the other entity, it should consider ending the relationship. The severity of the adverse human rights impact would need to be taken into account; “the more severe the abuse, the more quickly the [institution] will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the [institution] remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.”^z

61. Due to the seriousness of the human rights violations and crimes linked to the project, questions could arise about the shared responsibility of FMO, Finnfund and CABEI regarding these actions. According to the Guiding Principles, “[q]uestions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties [...] The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.”^{aa} The simple fact of being associated with a company involved in criminal actions and human rights violations, even if it does not meet the technical requirements of criminal complicity, should be regarded by any company or financial institution as an unacceptable condition which puts into question its reputation and its credibility in making decisions.

62. It must be noted that all these financial institutions have suspended their financing of the project weeks after the murder of Berta Caceres. After the arrest of the individuals associated with the company, FMO and Finnfund have stated their intention to withdraw from the project if a connection between the company and the murder was established.^{bb}

VII. Final considerations and recommendations

63. The Special Rapporteur observes with concern that various justifications have been presented to give priority to hydroelectric and other similar projects above any consideration regarding the negative impacts they may have on the lives, cultures, lands and traditional ways of life of indigenous peoples. In previous statements, FMO maintained that even if it decided to withdraw its financing of the Agua Zarca project, it would not stop the project since that would deprive local communities that support the project of employment and clean energy.^{cc} Similarly, during a seminar where he was asked about the impacts of hydroelectric dams and the murder of Berta Caceres, the

^z Ibid., Principle 22 and Commentary.

^{aa} Ibid., Principle 22 and Commentary.

^{bb} *FMO seeks to exit from Agua Zarca*, (9 May 2016).

^{cc} FMO, *Response FMO on advertisement in De Volkskrant*, (21 April 2016).

president of the World Bank responded that “you cannot do the kind of work we are trying to do and not have some of these incidents happen.”^{dd} He added that because people need renewable energy sources, hydroelectric projects in countries like Honduras will take place anyway. He asserted that despite the criticism and discussions that could arise about the property rights of affected communities, without those projects, those same communities would suffer violations of human rights to employment and sources of energy.

64. The Special Rapporteur considers that the premise that development and access to electric energy justify serious violations to the rights to life and personal integrity and the rights of indigenous peoples, like those that have occurred in Rio Blanco, should be questioned. It bears repeating that none of the local indigenous communities, even those that supposedly have been in favor of the project, had the power to influence the decision-making by the State before it approved the contract with DESA for the Agua Zarca project. This type of exclusion and lack of participation of indigenous peoples has led to serious conflicts worldwide. As pointed out by the previous Special Rapporteur, “without the buy-in of indigenous peoples, through consultation, at the earliest stages of the development of Government initiatives, the effectiveness of Government programmes, even those that are intended to specifically benefit indigenous peoples, can be crippled at the outset. Invariably, it appears that a lack of adequate consultation leads to conflictive situations, with indigenous expressions of anger and mistrust, which, in some cases, have spiralled into violence.”^{ee}

65. The Special Rapporteur considers that although the promotion of renewable energy resources is an important goal given the impact of climate change, especially in countries like Honduras, indigenous peoples should not be excluded from the processes for the planning of national development and energy policy, since many of those projects would affect ancestral indigenous territories. Processes related to competitive bidding, distribution of licenses and other methods used in State planning for natural resource development must take into account the duty of prior consultation with affected indigenous peoples. Otherwise they “set in motion decisions that prejudice indigenous peoples’ ability to set their own priorities for the development of their lands and territories.”^{ff} It bears remembering that ILO 169 establishes the right of indigenous peoples to “decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use... [and additionally that] they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly” (art. 7(1)).

66. Indigenous peoples have much to contribute with regards to the planning of local and national development thanks to their millenary knowledge and their special relationship with their ancestral lands. Through real consultation and participation processes, indigenous peoples must be provided a space to contribute to development planning, including through their own proposals and alternatives to the types of projects commonly promoted by the State, companies and financial institutions. Nonetheless, in the specific case of Agua Zarca and other projects where similar human rights violations have occurred, a valuable opportunity to incorporate all indigenous peoples of the region in development planning has been lost. Therefore, other alternatives that are respectful of the rights of indigenous peoples must be considered.

^{dd} *The Principle of Mercy: Word Bank President Jim Yong Kim*, Available in: <https://www.youtube.com/watch?v=tJWZ102R4LA>

^{ee} A/HRC/12/34, para. 36.

^{ff} A/HRC/24/41, párr. 50.

VIII. Recommendations

The Agua Zarca Project

67. Taking into account the threats, harassments and acts of violence perpetrated throughout the years against members of COPINH and Rio Blanco opposed to the Agua Zarca project (paras. 19-28), in addition to the charges against at least two people connected to DESA for the murder of Berta Caceres, and the violations related to the lack of prior consultation, serious consideration must be given to the revocation of the contract with the DESA company, as well as the licenses and other permits for the Agua Zarca project.

68. Additionally, the demilitarization of the Rio Blanco should be undertaken through the withdrawal of military, police and private security forces used by the company.

The investigations related to the Berta Caceres case and other acts of violence

69. The lines of investigation of the murder of Berta Caceres should be expanded with respect to the possible participation of additional persons including company employees and agents and State, police, military and private security employees. In order to generate more trust, it is recommended that the Government request and accept the technical assistance of international organizations, including the Office of the High Commissioner for Human Rights recently established in the country, and of independent experts, as has been requested by her relatives, members of indigenous organizations and civil society.

70. In addition, investigations must be undertaken with respect to the different acts of violence, murders and threats against members of COPINH and Rio Blanco since the beginning of the Agua Zarca project. For its part, the DESA company and financial institutions should cooperate with the investigations. Any person, either connected to the company or any State agent, that may have committed these crimes or been complicit in these violent acts should be brought to justice.

Protective measures against violence

71. Measures should be taken to prevent the recurrence of the acts of violence that have taken place in Rio Blanco and other parts of Honduras. Therefore, protection mechanisms for members and leaders of indigenous peoples, and their relatives, who defend the rights of their peoples, should be expanded, strengthened and be provided with the necessary resources. This would include effective systems of early warning and urgent action, and other measures (See, Country report, para. 89).

72. The Honduran State should adopt legislative, administrative and other measures necessary to provide indigenous peoples with protection against human rights violations caused by private companies including effective systems of investigation and criminal sanction. This would include effective measures to regulate and oversee private security agents hired by private companies, and to sanction human rights violations that they commit. In areas where there are social conflicts due to investment and natural resource development projects, priority should be given to peaceful dialogue and to prevent police and military intervention.

Development planning and indigenous peoples

73. As recommended in the country report (paras. 97-98) and the present report (65-66), indigenous peoples must participate in the planning of national development and energy policy in

accordance with international standards related to their lands, cultural, natural resources, as well as related to consultation and consent and the undertaking of prior social, cultural and environmental impact studies, among other rights. Indigenous peoples should have a real ability to influence decision-making with respect to the approval and implementation of measures or activities that affect their rights and interests.

74. As part of the State duty to protect human rights and the due diligence that should be exercised by companies and investors, there should be prior studies on the presence of indigenous peoples on or around proposed project areas, and of the rights to lands, natural resources and prior consultation that could correspond to indigenous peoples under international standards. If significant impacts on the lands, natural resources, cultures, sacred sites and other substantive rights are foreseen, parties should not proceed without the free, prior and informed consent of the affected indigenous peoples. Before proceeding with the signing of contracts and requesting permits, companies should make sure that the State has fulfilled with the aforementioned international standards.

75. International financial institutions, donor countries and the financial and business sectors of the country should make sure that in their business or other relationships with companies that carry out development or investment projects on or around indigenous territories, the rights of indigenous peoples and their participation and consultation is guaranteed, in accordance with international human rights standards. Special attention should be given to the presence of indigenous peoples, the rights that could correspond to them under international standards, and other relevant factors such as local power dynamics that affect how a project is executed and how it could impact indigenous peoples' human rights. These are factors that must be taken into account with regards to development projects or other activities or measures, including those that promote renewable energy or other benefits to indigenous peoples.