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Visite au Honduras

Rapport du Groupe de travail sur la question des droits de l'homme et des sociétés transnationales et autres entreprises*, **

Résumé

Le Groupe de travail sur la question des droits de l'homme et des sociétés transnationales et autres entreprises a effectué une visite au Honduras du 19 au 28 août 2019.

Le Groupe de travail s'est félicité de l'engagement pris par le Gouvernement du Honduras d'appliquer les Principes directeurs relatifs aux entreprises et aux droits de l'homme, dont le respect est fondamental si on veut protéger les droits de l'homme et parvenir à un développement durable qui profite à tous, et a trouvé encourageants les efforts déployés à cet égard. Il s'est néanmoins déclaré préoccupé par le degré d'application et l'efficacité des mesures prises pour lutter contre les causes profondes des conflits sociaux, et a engagé le Gouvernement à agir d'urgence et à adopter des réformes législatives et institutionnelles propices à l'instauration d'un environnement incitant les entreprises à se comporter de manière responsable.

Le Groupe de travail a constaté qu'il n'existait pas de cadre institutionnel et réglementaire solide offrant une protection contre les violations des droits de l'homme liées aux activités des entreprises et garantissant l'accès à des recours utiles, alors même que l'exécution de projets de développement et l'investissement semblent avoir pris le pas sur la protection de la population et de l'environnement. Il a également constaté que, outre que les entreprises ne sont pas amenées à rendre compte des dommages qu'elles occasionnent, ceux qui dénoncent les abus et réclament justice pour les victimes sont souvent la cible d'agressions, de harcèlement et de manœuvres d'intimidation, ce qui alimente les conflits sociaux et le manque de confiance à l'égard des institutions de l'État et a des effets négatifs à long terme sur les populations locales, les entreprises et les investisseurs.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original et en espagnol seulement.

** Il a été convenu que le présent rapport serait publié après la date normale de publication en raison de circonstances indépendantes de la volonté du soumetteur.

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La plupart des conflits sociaux sont dus en partie à l'absence systématique de transparence et au fait que les populations touchées ne participent pas véritablement aux décisions relatives aux projets de développement et à l'exploitation des ressources naturelles, ni à celles prises dans les secteurs de l'énergie et de l'agrobusiness.

Le Groupe de travail a recommandé aux entreprises de ne pas se contenter de suivre des règlements lacunaires ou inefficaces en ce qui concerne le respect de l'environnement et l'organisation de consultations et d'adopter une démarche axée sur la communication avec les populations locales. Il les a engagées à faire preuve de diligence raisonnable en matière de droits de l'homme et à mettre en œuvre les Principes directeurs, ainsi qu'à veiller à ce que les titulaires de droits aient véritablement voix au chapitre, autant de démarches qui sont indispensables si on veut rendre l'activité économique viable à long terme et prévenir les conflits sociaux.

Le Groupe de travail a appelé l'attention sur le fait que l'impunité et la corruption avaient érodé la confiance à l'égard des pouvoirs publics et de leur capacité à protéger les groupes de population touchés, en particulier les plus vulnérables, comme les autochtones et les travailleuses, contre les violations des droits de l'homme liées aux entreprises. Il s'est associé à d'autres parties prenantes, y compris certaines associations professionnelles, pour exprimer sa préoccupation face au récent recul de la lutte contre la corruption, qui a des répercussions négatives sur tous les acteurs de la société et entrave les efforts déployés par l'État pour mettre en œuvre les Principes directeurs.

Annex

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Honduras

I. Introduction

1. Pursuant to Human Rights Council resolution 35/7, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by two of its members, Anita Ramasastry and Dante Pesce, visited Honduras from 19 to 28 August 2019. During the visit, they aimed to assess the efforts made by the Government of Honduras and business enterprises to prevent, mitigate and address the adverse impact of business-related activities on human rights, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

2. The experts held meetings in the departments of Colon, Cortes, Intibucá and Francisco Morazán. They met with the Secretaries of Human Rights, Foreign Affairs, Energy, Natural Resources and Environment, and Agriculture and Livestock; the Deputy Secretaries of Labour and Social Security, and of International Trade and Economic Development, and with representatives of the Secretaries of Government General Coordination, and Infrastructure and Public Services, the Revenue Management Service, the Institute for Forest Conservation, the National Institute of Geology and Mines, the National Institute on Women, the National Agrarian Institute, the Property Institute, the National Directorate of Indigenous and Afro-Honduran Peoples, the National Directorate for Children and Adolescents, the Commission for the Promotion of Private-Public Partnerships, the National Commission of Banks and Insurance, the Superintendence of Public Private Partnership the National Investment Council and Investment-Honduras (Inversión Estratégica de Honduras).

3. The Working Group met with the governors of the Departments of Colón, Francisco Morazán and Cortes, the mayors of Intibucá and Reitoca, members of Congress chairing different commissions, the National Commissioner for Human Rights and his team, magistrates of the Supreme Court of Justice, officials of the Office of the Attorney General and its deputy General Director, and representatives of the offices of the Special Prosecutor for Ethnic Groups and Cultural Heritage, for the Protection of Human Rights Defenders, Journalists, Media Workers and Justice System Actors, the Environment, for Human Rights, and against Trafficking in Persons, Sexual Exploitation and Illicit Trafficking in Persons.

4. The Working Group also met with representatives of civil society organizations, trade unions, indigenous peoples' communities, human rights defenders and affected individuals and communities in Intibucá, Reitoca, San Pedro Sula, Tegucigalpa and Tocoa, and with representatives of companies and business associations covering a wide range of sectors. They included board members of the Honduran National Business Council (Consejo Hondureño de la Empresa Privada), the National Association of Industries, and the Executive Director of the Cortés Chamber of Commerce and Industry.

5. The Working Group thanks the Government of Honduras for its support and assistance during the visit, and its willingness to engage in a constructive discussion on challenges faced and lessons learned in promoting corporate respect for human rights. It also thanks the United Nations Resident Coordinator and United Nations country teams for their support, and the organizations, businesses, communities and individuals with whom it met for their openness and willingness to engage in a frank and solution-oriented dialogue.

II. General context

6. Honduras is a lower-middle-income country that faces major social and economic challenges. Official data for 2019 show that more than 61 per cent of the population lives in poverty, and approximately 58.9 per cent of people in rural areas live in extreme poverty (living on less than $1.90 a day).[1]

7. Since the global economic crisis of 2008, Honduras has benefited from a moderate recovery, driven by public investments, exports and higher remittance levels.[2] Nonetheless, it faces among highest level of economic inequality in Latin America.[3]

8. Another major challenge facing Honduras are the high rates of crime and violence. Although in recent years the number of homicides has declined, it still has one of the highest rates in the world (40.72 murders per 100,000 inhabitants in 2018) (A/HRC/40/3/Add.2, para. 20).

9. The economy of Honduras is mainly based on agriculture and has the third-largest *maquiladora* (garment) sector in the world. The Government has focused on export-driven growth and foreign direct investment as a way of accelerating economic growth. Economic development and investments have, however, grown without appropriate regulations and incentives for companies to respect human rights, a situation that has led to significant human rights challenges linked to development projects, particularly in the energy and mining sectors. The Working Group witnessed how these projects are often accompanied by social conflicts with long-lasting negative repercussions for local communities, businesses and investors.

10. Corruption and weak public institutions are among the factors exacerbating social conflict affecting all stakeholders – from civil society and indigenous communities to business and the Government – and fuelling lack of trust in the Government.

11. A consensus exists among certain civil society and private sector actors that the key ingredients to promoting trust in State institutions are strengthening the independence of the judiciary, guaranteeing the separation of powers, ensuring participation in and transparency and accountability of decision-making processes, and preventing corruption. These constitute the foundation for responsible business conduct and stable investment that benefits all.

12. In the light of the commitment declared by the Government of Honduras to implement the Guiding Principles, the Working Group focused its attention on supporting the identification of key issues and areas for advancing business respect for human rights. In this respect, it commends the Secretary of Human Rights for making the business and human rights agenda a priority and for acknowledging that ensuring business respect for human rights is a key part of inclusive sustainable development for the people.

13. In their capacity as independent experts exercising a professional and impartial judgment, the members of the Working Group assessed how the Government of Honduras and the business sector discharged their respective duties and responsibilities under the Guiding Principles to prevent, mitigate and remedy human rights abuses and any negative impact linked to business activity.

[1] www.ine.gob.hn/V3/ephpm/.

[2] World Bank Group, *Honduras Economic DNA, June 2015 : Maintaining Commitment – With a Special Focus on Poverty and Shared Prosperity*, 2015.

[3] www.worldbank.org/en/country/honduras/overview.

III. Human rights risks and impact in specific sectors

A. Right of affected rights-holders to participate

14. The absence of a comprehensive institutional and regulatory framework to ensure participation rights in processes led by public authorities or businesses has contributed to the creation of a range of modalities of participation, in which companies and public entities have wide margins of discretion on how to consult affected communities. Such a situation can contribute to the triggering of social conflict between businesses and communities, between communities and local authorities, and turn community members against each other. From meetings held by the Working Group with different stakeholders, it was clear that the root causes of many social conflicts and their escalation in the context of development projects, the exploitation of natural resources, and in the energy and agribusiness sectors, were closely linked to the lack of meaningful participation in decision-making processes affecting local communities.

15. As an illustration, in the mining sector, the current mining law requires companies to conduct consultations only after the exploration phase and before operations start. To provide opportunities for participation in decision-making processes, municipalities are required to "socialize" projects through open town halls and municipal "plebiscites".[4] Information on approval of concessions is disseminated through national media, such as newspapers and radio.

16. The Working Group heard numerous concerns about the above requirement being implemented in a discretionary manner. In particular, it received information regarding the systematic failure by municipal authorities to ensure meaningful participation from an early stage, when no irreversible decision has been made prior to the commencement of a project. The Working Group was informed, for example, about open town hall meetings being held when environmental licenses had already been granted. It was also unclear to what extent the relevant national ministries exercise oversight over the quality and effectiveness of municipal consultations.

17. In conversations with representatives of the business sector, the Working Group was informed that, in many instances, companies have obtained licences and concessions to operate in conformity with national legal standards, including the requirement to "socialize" projects and the outcome of environmental impact assessments. It nonetheless expresses its concern at the reported practice of certain companies sharing only partial information, focusing on the potential benefits that would arise from a project, such as creation of jobs, health benefits and education support for employees and their families, while failing to provide accurate information on the negative impact or on mitigation measures. In a context in which the State struggles to discharge its human rights obligations, including economic and social rights, the Working Group witnessed first-hand how such practices help to turn community members against each other and fuel mistrust and violence among communities, businesses and the Government.

18. The Working Group stresses not only that "socialization" does not correspond to meaningful participation, and is therefore inconsistent with international standards, but also that such practices greatly undermine trust in the State authorities, which are seen as acting exclusively in the interests of companies.

19. Access to information is an enabler of participation and a prerequisite for openness, transparency and accountability for decisions made. Announcement in national newspapers and radio of the approval of a concession may not be sufficient to inform fully rights-holders who might be affected by a project.

20. Both local communities (including indigenous communities) and businesses have signalled an urgent need for a clear institutional and regulatory framework on participation as a key element to address the root causes of social conflict. The current gaps have also negative consequences for business and investors, such as the costs of stalled operations,

[4] *Ley de Municipalidades*, Legislative Decree No. 134-90.

damage to a company's reputation and investors withdrawing financing, like in the Agua Zarca dam case.[5]

21. The Working Group reminds all businesses that the meaningful participation of communities is a central aspect of human rights due diligence, as set forth in the Guiding Principles: it allows business to identify early on, and to better understand, the potential impact on human rights and risks of a project for the environment and people, particularly of those at greater risk of abuse, such as women, indigenous and afro-Honduran peoples, and persons with disabilities, and the associated concerns and grievances.

22. Engagement should take place at the earliest stage of a project and provide an explanation of the negative and positive impact on social, economic, cultural activities and the environment. This means, for example, presenting findings from environmental studies in a manner that is understandable to those lacking technical expertise. For businesses it means engaging in comprehensive (human rights) impact assessments, together with an analysis of potential environmental harm. In all cases, plans for mitigating impact should be developed and shared with all stakeholders.

23. The issue of legal standards for consultations with indigenous peoples was a matter of concern for many stakeholders. The Working Group observed the lack of a proper regulatory and institutional framework to ensure the rights of indigenous peoples to free, prior and informed consultation and consent in line with international standards, such as the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples. The inadequacy of the "socialization" process in projects affecting indigenous communities was particularly evident in cases of the Reitoca and Tornillito hydroelectric projects.

24. A legislative initiative was developed on free, prior and informed consultation with indigenous and Afro-Honduran peoples and presented to Congress in May 2018. The initiative was prompted also by efforts to ensure legal certainty for investors in development projects, given the potential for conflict surrounding them, including in the hydroelectric, energy and mining sectors. In this context, concern was expressed about the draft law and the lack of alignment of provisions on free, prior and informed consultation and consent with international standards. In 2015, 2016 and 2017 the Special Rapporteur on the rights of indigenous peoples called, among others, for more inclusive processes with broader and diverse indigenous representation in the consultation, drafting and approving stages of the law (see A/HRC/33/42/Add.2).[6] Similar concerns were also raised by the Committee on the Elimination of Racial Discrimination in 2018 (see CERD/C/HND/6-8). In October 2019, following additional information received indicating the continued opposition from significant sectors of indigenous peoples to the draft law, the Special Rapporteur reiterated her view that the current draft still had not addressed the problems of process and substance previously identified.[7]

25. The Working Group reiterates its concern at the prospect of the passage of the draft law as currently presented and stresses the need, as a precondition for any law, to ensure a broader and inclusive consultation process.

26. The Government informed the Working Group that Congress was analysing a technical proposal and schedule of activities submitted by OHCHR Honduras in November 2019, and that the commission in charge of drafting the law announced that it would allow further comments by indigenous communities. On 23 January 2020, representatives from indigenous and Afro-Honduran communities protested in front of Congress, opposing the process and the content of the draft law.

[5] See www.finnfund.fi/en/news/fmo-jand-finnfund-finalize-exit-agua_carca/.

[6] See http://unsr.vtaulicorpuz.org/site/images/docs/special/2016-honduras-unsr-comentarios-anteproyecto-ley-consulta-sp.pdf and http://unsr.vtaulicorpuz.org/site/images/docs/special/2017-06-09-honduras-unsr-additional-observations.pdf.

[7] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24921.

27. The Working Group noted with interest the information received from the Government regarding some initiatives, including by the Secretariat of Energy, to prepare a protocol for engaging indigenous communities at the earliest stage of projects in the energy sector, looking at similar experiences of other countries in the region. It also noted that some companies, after experiencing social conflict and consequent project delays or blockages, had reviewed their processes to ensure better consultation as part of a human rights due diligence process.

28. The Working Group welcomes the above initiatives, but is still concerned that the approval of the draft law in its current form could aggravate the existing social conflict and unrest surrounding development projects. It urges the Government and Congress to properly take into account the observations and recommendations made by relevant human rights bodies and mechanisms, and to implement them in full. The adoption of a regulatory and institutional framework on the right to free, prior and informed consultation and consent for indigenous peoples in line with international standards would constitute a significant step towards rebuilding trust between State authorities and indigenous communities.

29. The Working Group reiterates the observations made by the Special Rapporteur on the rights of indigenous peoples that any initiative with regard to participation and consultation rights should be accompanied by strengthened protections for other substantive areas, including indigenous lands, the environment and human rights defenders.

B. Social and environmental impact assessments and licencing

30. In recent years, the State has favoured more flexible regulation of extractive and energy sectors, mainly to facilitate licensing and concessions procedures.[8] According to non-official figures, as at September 2019, 471 metallic and non-metallic mining concessions had been registered, of which 211 for metal industrial mining and 260 for non-metallic industrial mining.[9] Likewise, in the energy sector, a total of 307 concessions had been granted, of which 112 were operating (25 thermal, 48 hydroelectric, 15 biomass, 6 wind, 17 photovoltaic and one geothermal).[10]

31. The general law on the environment (law No. 104/93) mandates the Ministry of Natural Resources and the Environment to coordinate and regulate the national environmental impact assessment system (SINEIA). An official classification of projects issued by the Ministry[11] requires an environmental impact study for category 4 projects, regarded as the projects with the highest potential environmental risk or impact.

32. Pursuant to Decree No. 181-2007, the concession and licensing process was decentralized to simplify and accelerate it and thereby attract investments. A digital platform was created to streamline the environmental license procedure and to facilitate access to information for companies. Under this regime, the main responsibility for granting environmental licences rests with the Ministry of the Environment, and Congress signs the final contract with the company.

33. One of the most serious concerns raised by civil society organizations and affected communities was the lack of a comprehensive and transparent environmental regulatory framework, including with regard to the qualifications required to conduct environmental and social studies, and the consequent repeated failure to prevent and mitigate adverse social, human rights and environmental impact.

[8] See for example Decrees Nos. 238-2012, 138-2013 and 404-2014.

[9] Observatorio de Bienes Naturales y Derechos Humanos, Centro Hondureño de Promoción para el Desarrollo Comunitario, “El estado de la minería en Honduras: Investigación exploratoria”, p. 17.

[10] Benjamin Fash et al., *Territorios en Riesgo II: Minería, hidrocarburos y generación de energía eléctrica en Honduras* (Foro Social de la Deuda externa y Desarrollo de Honduras, April 2019), p. 22.

[11] Ministerial decree No. 016-2015.

34. Concerns were also raised regarding the ability of the Government, in particular of the Ministry of the Environment, to exercise proper oversight and conduct environmental inspections. It was unclear to what extent national ministries engage with local stakeholders to assess any social impact as part of an assessment of a project's feasibility. This contributes to a systematic lack of accountability for the harm caused by business operations and of access to effective remedy for victims, which in turn has fuelled mistrust in the State's ability to protect people and the environment. The adoption of a regulatory and institutional framework firmly grounded in international human rights law and standards, including the Guiding Principles, should be a priority for the Government.

35. The Working Group also learned that the registration of protected areas in the Catalogue of Inalienable Public Forestry Heritage (Catálogo del Patrimonio Público Forestal Inalienable) by the Institute for the Conservation of Forests, Protected Areas and Wildlife (Instituto de Conservación Forestal Áreas Protegidas y Vida Silvestre) was not automatic. Rather, the registration process imposes technical and administrative requirements that may make registration of natural reserves challenging, which may in turn expose these areas to potentially irreversible consequences from business operations in areas that the State itself recognizes in law as national parks. The social conflict around the exploitation of natural resources in the Montaña de Botaderos National Park is a case in point (see paras. 41–42 below).

36. The Working Group received alarming information regarding the systematic lack of access to information by all stakeholders in environmental decision-making, including the status of licencing and concession processes, and companies and investors involved.

37. The transparency of granting licences processes and concessions may be further compromised by the adoption of Legislative Decree No. 418-2013 (Ley para la Clasificación de Documentos Públicos relacionados con la Defensa y Seguridad Nacional) and subsequent Ministerial Decree No. 1402-2018. It was reported that critical elements of the licence and concession processes, including information on environmental impact studies, and location of exploratory permits may be classified as "secret information".

38. On 9 February 2020, the Working Group was informed by OHCHR Honduras that the Constitutional Chamber had ruled (by three in favour and two against) that the parts of the law placing restrictions on access to information pertaining to environmental impact studies were unconstitutional.The Supreme Court is expected to make a final decision thereon.

39. The Working Group urges governmental agencies, particularly the Ministry of the Environment to remove all legislative and administrative obstacles to the exercise of right of access to information at all stages of environmental licences and the issuing of concessions, in accordance with relevant international human rights standards. It also urges Honduras to sign the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

40. The Working Group is alarmed to note that Congress does not exercise oversight over decisions regarding protected areas to ensure that the impact on people and the environment is transparently assessed and mitigated, with the inclusive participation of affected communities. For example, the Working Group expresses its concern at the case of the Montaña de Botaderos National Park, on the border between the Departments of Yoro, Colón and Olancho, which was declared a national park by legislative decree No. 127-2012 but not registered in the Catalogue of Inalienable Public Forestry Heritage by the Institute for the Conservation of Forests, Protected Areas and Wildlife in contravention of article 8 of the same decree.

41. Noting that article 48 of the mining law prohibits the granting of mining licences in areas inscribed in the catalogue of protected areas, the Working Group was troubled by the decision of Congress to pass a legislative decree to reduce the core zone of the Montaña de Botaderos National Park from 24,224 hectares to 23,900. Of the area removed from the core zone, concessions were issued for extractive activities on 200 hectares. Such a change in zoning coincided with the territory for which two applications for mining concessions

had been submitted, raising the question of whether the purpose of the decree was to accommodate these concessions so that they would no longer be located in the core zone.

C. Land rights

42. Agriculture continues to be a driving force behind economic growth. Many small farmers engage in small-scale and subsistence farming. Indigenous communities often hold collective ancestral titles on land. Approximately 80 per cent of privately held land is, however, either untitled or improperly titled.[12]

43. Access to, use of and control over land are issues at the root of many social conflicts, where business enterprises are – either directly or indirectly – involved.

44. The Government informed the Working Group about several measures taken to register and adjudicate land, including for the benefit of small-scale farmers and indigenous and Afro-Honduran peoples. This includes the titling of some 1,114,976 hectares benefiting around 25,000 families from 12 Miskito territorial councils, and the plan for the Alliance for the Development of the Moskitia, in which priority is given to land titling and regulation in the region.

45. Challenges nonetheless remain to ensure appropriate processes of territorial regularization, legal recognition and legal protection of land, in accordance with international standards. Local communities and farmers explained the negative effects that they continue to endure in relation to access and the use of land and natural resources, especially in the context of development projects. The Working Group identified some recurring patterns.

46. Firstly, the Working Group was informed about cases of small-scale farmers, including indigenous communities, who claim farmland as their own. Companies dispute those claims and routinely file lawsuits against them with the aim of taking possession of the land in question. In Bajo Aguan, for example, this pattern of behaviour fuelled violence, with dozens of people reportedly killed and hundreds more injured and arrested.

47. Secondly, the Working Group learned that the Government had granted licences for businesses to operate in non-core protected areas, affecting communities and the cultural heritage and livelihoods of indigenous peoples, such as the Tolupan indigenous peoples in San Francisco Locomapa (A/HRC/33/42/Add.2, para. 22).

48. Thirdly, the Working Group was informed that the numerous cases of eviction of small farmers to allow business enterprises to occupy land had been conducted with excessive use of force by police and military, and in some cases with the involvement of private security companies, resulting in injury and loss of life. It recalls that businesses should exercise due diligence before initiating operations on land that is inhabited or used by communities for their livelihoods, and proactively engage with those communities. The Government should take effective measures against forced evictions in accordance with international human rights standards, and ensure that victims have access to effective recourse that allows restitution of their possessions, return to their homes or land, and appropriate compensation.

D. Labour rights

49. Many Hondurans are leaving the country not only for reasons of insecurity and violence but also because of a lack of viable economic opportunity. Protecting labour rights is an important part of ensuring workers' security and stability and of addressing the critical underlying factor of economic inequality. According to official data, 68.5 per cent of the population is either unemployed or underemployed; of them, 48.8 per cent work full time

[12] www.land-links.org/country-profile/honduras/#1528466934567-fd17cef6-5782.

and earn less than the minimum wage, with women disproportionately enduring substandard conditions of work.[13]

50. The Working Group noted the measures taken to improve access to the labour market and working conditions, to eradicate child labour and to regularize informal labour. It welcomes the adoption of the new Labour Inspection Act (decree No. 178-2016) in 2017, which addressed some of the weaknesses identified in the former regime, such as the possibility for the employer to refuse a labour inspection. The new regime also imposes higher financial penalties for violations of workers' rights.

51. The labour inspection system is now concentrated in a general directorate for labour inspections under the Ministry of Labour and Social Security. To strengthen its capacity, the number of inspectors has increased from 98 to 180, and will progressively reach 300. A unit for the promotion of work inclusion was created to strengthen measures to prevent accidents and abuse in the workplace, while the Social Security Law adopted in 2001 provides for, inter alia, a framework for pensions and health-care coverage. These are important steps to uphold labour rights and to sanction companies that do not comply with the law.

52. Serious concerns nonetheless remain regarding the protection of the full spectrum of internationally recognized labour rights and in all sectors, given the a weak regulatory framework and insufficient levels of implementation and oversight.

53. The Working Group was informed of serious violations of the rights to freedom of association and to collective bargaining, including the right to create and join trade unions freely and without fear of reprisals. It heard about cases of harassment and violence against union members and leaders, of anti-union retaliation, union dissolution, and undue employer interference with the right to associate and bargain collectively. In January and February 2018 alone, trade unions registered acts of violence against 13 trade unionists, including six women, in the education, agroindustry and public sectors (A/HRC/40/3/Add.2, para. 16).

54. The minimum age of 14 years for the employment of children (with parental consent) and the pervasiveness of child labour practices, with more than 400,000 children forced to work to survive,[14] is also a matter of urgent concern. Since 2018, the State made significant efforts to eliminate the worst forms of child labour and trafficking in persons for labour exploitation, including through the introduction of more severe penalties for human trafficking; the reactivation, in 2019, of the National Commission for the Gradual Elimination of Child Labour in Honduras; and the establishment of the Interagency Commission to Combat Commercial Sexual Exploitation and Human Trafficking, both tasked to monitor and implement the related Strategic Plans.

55. The regulatory and oversight framework remains inadequate to eliminate child labour in all economic sectors, particularly in the fishing, mining and domestic work sectors.

56. With regard to the minimum wage, some progress has been achieved through social dialogue, which led to, in 1 January 2019, an increase in the minimum wage for 2019 and 2020.[15] Concerns persist, however, that such increases will be insufficient to ensure a decent standard of living for workers and their families. The Working Group is also concerned about information regarding a significant number of workers in Honduras earning less than the minimum wage.

57. On a cautiously positive note, the Working Group learned that the increase in the number of trade unions and in meaningful dialogue between employers and unions in the *maquila* sector have led to some improvements. The sector employs approximately 200,000 people (mostly women), and has more than 300 registered *maquilas*. Working conditions in *maquilas* remain hazardous and precarious, in particular for women, with extensive

[13] National Statistics Institute, Household Survey, 2018.

[14] Ibid.

[15] www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3297680.

working hours and repetitive physical movements that have a significant impact on their physical and mental health. A number of representatives of different economic sectors informed the Working Group of their satisfaction with the work of the multi-stakeholder Economic and Social Council, a mechanism designed to assist the Government in promoting social dialogue.

58. In meetings with civil society organizations, the Working Group learned that workers who had been diagnosed with serious occupational diseases (such as irreversible musculoskeletal disorders) had been dismissed, without consideration of other possible measures, such as reassignment. Women worker organizations had called urgently for the reassignment of workers suffering from disabilities caused by repetitive movement. They also reported long working shifts, averaging 12 hours, for four consecutive days, followed by a rest period of four days (called the "4X4" system). During the post-electoral crisis, several companies imposed double shifts on their workers, exposing them to hazardous situations, such gender-based violence when commuting to and from work. The minimum wage in the *maquila* sector is the second lowest in the country.

59. The labour conditions in the underwater fishing industry in La Mosquitia is a particularly grave example of labour rights abuses, which include exploitative working conditions of indigenous Miskito peoples and lack of proper oversight (CERC/C/HND/CO/6-8, paras. 26–27). The Working Group was shocked to learn that, on 3 July 2019, only a few weeks before its visit, at least 27 fishermen had died, nine had disappeared and 55 had to be rescued when two lobster fishing boats sank off the Mosquitia coast, most probably because of excessive weight and overcrowding. According to the information received, none of the families received any form of compensation for their loss.

60. The Working Group was encouraged by some measures taken to address the deplorable working conditions of fishing divers in La Mosquitia, including by the Interinstitutional Commission to Address and Prevent the Problem of Dive-fishing (Comisión Interinstitucional para la Atención y Prevención de la Pesca por Buceo) under the Ministry of Labour. The measures included awareness-raising initiatives on relevant occupational safety and health regulations for Miskito divers and more inspections of diving fishing vessels. More needs to be done, however, including to strengthen the Commission and occupational health and safety regulations and oversight in the sector, with the meaningful participation of stakeholders, including the private sector and workers.

IV. Gender aspects of business and human rights

61. The Working Group noted that, despite the existence of a solid institutional and normative framework to address different forms of discrimination against women, women from ethnic minorities and indigenous women, lesbian, bisexual, trans and intersex women, rural women, women living in poverty and indigenous women are particularly disadvantaged,[16] and therefore disproportionally affected by business-related human rights abuses.

62. Women are forced to endure precarious and abusive workplace conditions, lower wages, job insecurity and the risk of exploitation and violence.[17] Informal employment and unemployment affect women disproportionately, and persistent horizontal and vertical occupational segregation still exists.[18]

63. Women represent only 34.7 per cent of the labour force,[19] earn less than men while being exposed to extremely poor working conditions, including in the garment and domestic work sectors. With regard to the principle of equal pay for work of equal value,

[16] OHCHR, Working Group on the issue of discrimination against women in law and in practice, press statement, 14 November 2018.

[17] www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3297680.

[18] https://estadisticas.cepal.org/cepalstat/Perfil_Nacional_Social.html?pais=HND&idioma=spanish.

[19] National Statistics Institute, Household Survey, 2018.

current data show a gender pay gap of approximately 43 per cent.[20] Other United Nations mechanisms have noted that the current legal framework, including the Labour Code and the Equal Opportunities for Women Act, do not ensure the application of the principle of equal remuneration for work of equal value (E/C.12/HND/CO/2, paras. 33–34).[21] The Working Group recommends that the State take the measures necessary to ensure equal pay for men and women.

64. Women are particular disadvantaged in terms of access to land, financial credit and farming assets,[22] which places them in a vulnerable position in the labour market. In a country where violence against women is rampant, women reported the extent to which gender-based harassment, including sexual violence, also permeates the work place.

65. The Government informed the Working Group about initiatives, such as the "Ciudad Mujer" national programme, designed to promote women's economic empowerment and access to the labour market, and ultimately to improve the living conditions of women, including in the *maquila* sector. In the Department of Cortés, "Ciudad Mujer Móvil" were created to provide women with basic health care and a procedure to submit complaints for work-related abuses.

V. Human rights defenders and criminalization

66. The Working Group met with numerous human rights defenders engaging in work to defend the rights of communities and individuals – including land rights, rights to environment and natural resources, and indigenous and women rights – affected by various types of development and investment projects. A significant number of defenders are women, who face additional risks because of their gender. The Working Group was impressed by the active and engaged civil society actors operating throughout the country in the face of systematic violations and abuses, most often committed with total impunity, which in turn fuels more attacks against them.

67. The Working Group did not see these people as criminals or anti-development agitators but as peaceful and humble farmers, indigenous peoples and community members who are genuinely worried about their natural resources and livelihood, and are demanding a path towards development that benefits all. In this context, the Working Group reiterates the call of the Special Rapporteur on the situation of human rights defenders for strong and urgent action to ensure protection for those who defend the rights of others, including in the context of business activities (see A/HRC/40/60/Add.2).

68. The Working Group heard a significant number of stories and credible testimonies of defenders who are at serious risk of attacks, including killings, criminalization, harassment and smear campaigns because of their work to promote and protect human rights.

69. The Working Group also received information of individuals associated with counter-project movements or perceived as such who had been depicted as criminals. Some had been subjected to intimidation and arbitrary arrest, while others had been killed. Defamation campaigns, including some spearheaded by high-ranking officials, in the media and social media have accused defenders of receiving high salaries from civil society organizations to conduct work that runs counter to the best interests of the community. This has contributed to the stigmatization of defenders and their families, and exposed to a

[20] ILO, Understanding the gender pay gap (www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---act_emp/documents/publication/wcms_735949.pdf).

[21] Other United Nations mechanisms, such as the Committee on Economic, Social and Cultural Rights (E/C.12/HND/CO/2, paras. 33–34) and the Committee of Experts on the Application of Conventions and Recommendations (referring to the Equal Remuneration Convention, 1951 (No. 100)), have noted that the current legal framework, including section 367 of the Labour Code and section 44 of the Equal Opportunities for Women Act, do not ensure the application of the principle of equal remuneration for work of equal value.

[22] www.fao.org/docrep/v9650s/v9650s06.htm.

heightened risk of violence and socioeconomic marginalization, including discrimination in their access to the labour market and public services.

70. According to information received, human rights defenders and community leaders identified as having the power to mobilize are also systematically prosecuted through the filing of allegedly ill-founded or improperly motivated criminal charges, such as for the crime of land encroachment. Having to face criminal prosecution and lengthy legal proceedings takes a significant toll on the financial and psychological resources of defenders, especially women, and it is a tool used to intimidate and deter them from pursuing their legitimate work.

71. The National Centre of Peasant Workers reported to OHCHR Honduras that, in 2018 alone, about 400 of their members had been prosecuted for land trespassing. Civil society organizations also reported that the widespread use of criminalization tactics had been draining their financial resources. It is troubling that the response of the State to the already generalized use of the criminal offence of land encroachment was to increase its punishment. In fact, through legislative decree No. 102-2017, the crime of land encroachment, when committed by three or more people, automatically constitutes an organized crime offence, with jurisdiction therefore transferred to national tribunals. This is an example of how defenders are forced to travel long distances and leave their work and livelihood for extended periods of time. Such hardships may well deter them from engaging in legitimate activities.

72. Relevant authorities should establish effective mechanisms for close cooperation with the Office of the Special Prosecutor for Human Rights and the Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Media Workers and Justice System Actors in order to end the pervasive nature of attacks and threats. The Office of the Attorney General should strengthen its capacity to investigate cases relating to corporate crimes with a human rights dimension and develop a protocol for the investigation of crimes against human rights defenders that take into account the risks inherent to the work of defending human rights and the environment, in compliance with the decision of the Inter-American Court of Human Rights in the case *Escaleras Mejía y otros vs. Honduras*. Such an instrument would be useful to enable a context, gender and pattern analysis in the investigation of such cases (A/HRC/40/3/Add.2, para. 52).

73. The Working Group expresses its concern at some of the criminal offences described in the new Criminal Code, such as "usurpation", "meetings and illegal demonstrations" and "association to commit crimes", which could lead to the imposition of undue restrictions on the freedoms of assembly and expression and participation. Another matter of concern is the amendment on terrorism, which defines "terrorist associations" as any group of two or more people who commit a crime with the intention of "gravely subverting the constitutional order or provoking a state of terror in the population or part of it."[23] Such vague and broad terminology may criminalize individuals exercising their rights to the freedoms of expression, assembly and association.

74. In addition, the offence of unlawful occupation of a premises, as defined in the new Criminal Code, may result in the criminalization of individuals who are exercising their right to peaceful demonstrations in the context of, for example, evictions, even when the persons concerned have no intention of taking possession of the premises in question.

75. The Working Group called upon Congress to delay implementation of the new Criminal Code, and to consider reviewing it in the light of regional and international human rights standards, as demanded by many stakeholders and regional and international human rights mechanisms, including OHCHR and the Inter-American Commission on Human Rights. The Working Group is alarmed to note, however, that, despite these calls, the new Criminal Code is due to enter into force in May 2020.

[23] https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HND/INT_CCPR_FCO_HND_32137_S.pdf.

VI. Access to remedy and accountability

76. While the justice system seems to be frequently used to prosecute human rights defenders, the same does not appear to be the case for investigations into crimes committed against defenders. According to the Special Rapporteur on the situation of human rights defenders, between 2015 and October 2018 at least 43 human rights defenders were killed, 76 journalists were murdered between 2001 and 2017 and more than 120 land rights defenders were killed between 2010 and 2017 (A/HRC/40/60/Add.2, para. 23). Impunity and lack of investigation into attacks in the context of development projects remain the rule rather than the exception.

77. Over the past six years, Honduras has undertaken various initiatives to improve access to justice and to ensure accountability, including for abuses relating to business activities; for example, in 2018, the Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Media Workers and Justice System Actors was opened. The Office, staffed by five prosecutors, has been tasked to investigate serious threats to human rights defenders. It remains unclear at this early stage what impact the mechanism will have on strengthening protection of defenders. At the time of the visit by the Working Group, many defenders still had not filed complaints with the mechanism because of their lack of trust in it.

78. The law on the protection of human rights defenders, journalists, media workers and justice system actors, adopted in 2015, led, with the support of human rights defenders and civil society, to the establishment of the national protection mechanism. In the period from 2015 to 2019, the mechanism had its budget increased by 142 per cent and processed 521 requests for protection measures, of which 384 were admitted and 137 dismissed for not meeting the requirements set out in the law. As at 30 December 2019, 204 people benefited from protection measures. The establishment of the mechanism represents a landmark development for the protection of human rights defenders, union leaders, journalists and lawyers. The Working Group commends the Government for this initiative and welcomes the development of a manual for risk assessments that take into account gender and indigenous peoples at heightened exposure to abuses, and hopes that it will be approved promptly by the mechanism.

79. While the offices of special prosecutors and specialized units have been established to investigate environmental crimes or certain crimes affecting indigenous peoples, serious crimes, such as murder, are prosecuted by regular prosecutors. In this context, civil society organizations and lawyers working with communities and human rights defenders noted that many cases were often not investigated or had stalled at the investigation stage, or delayed when transferred to the court. On the other hand, they pointed out that the large volume of criminal complaints against them were processed and brought to court promptly. The Working Group notes that there are no procedural safeguards to ensure that the criminal justice system is not misused to intimidate defenders and foreclose their access to an effective remedy.

80. An independent judiciary provides a means to strengthen accountability for business-related human rights abuses. The Working Group was, however, informed by numerous stakeholders about the widespread lack of confidence in the judiciary, which relates partially to the selection process of high court judges and the perception of their lack of understanding of human rights challenges. In this regard, the business community and civil society have voiced support for the recommendations of the Special Rapporteur on the independence of judges and lawyers on a review of the procedure for selecting and appointing judges to the Supreme Court.[24]

[24] OHCHR, “Honduras needs urgent action to end corruption and guarantee independent judiciary, says UN rights expert”, 22 August 2019**Erreur ! Référence de lien hypertexte non valide.**.

VII. Impact of corruption on business and human rights

81. The Working Group found broad agreement among civil society organizations and some representatives of the private sector that impunity and widespread corruption had eroded confidence in public institutions and impeded sound and sustainable economic growth. Their grievances relating to companies colluding with corrupt officials were compounded by the lack of legal provisions addressing conflicts of interest of public officials with respect to their business associations and investments, and those of their family members. Given such a context, the Working Group recommends that the State focus on introducing measures to ensure the transparency of business activities, which would engender greater confidence in Congress and various government departments concerning their decision-making processes.

82. Similarly, the Working Group noted that, while public officials are required to disclose their assets and income for the purposes of preventing corruption, the Higher Court of Audit (Tribunal Superior de Cuentas) lacks the capacity to apply or enforce either the law or its regulations.

83. In its meetings with the Government, the Working Group welcomed the institutional efforts that had been made to strengthen national capacities to deal with corruption, including the creation of the Special Prosecution Unit to Fight Corruption-related Impunity (UFECIC), which on 23 January 2020 was replaced by the Specialized Fiscal against Corruption (UFERCO) under the Office of the Attorney General.[25] These steps were taken with the valuable support of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH): its work was critical to support and strengthen institutions to prevent, investigate and punish acts of corruption as a fundamental part of larger efforts to combat impunity, including for acts committed by private sector actors. The Working Group echoed previous calls, including those made by the Special Rapporteur on the independence of judges and lawyers, urging the renewal of the Mission's mandate expiring in January 2020, and the consolidation and strengthening of its functions.

84. It is therefore appalling that the negotiations between the Government of Honduras and the General Secretariat of the Organization of American States on the renewal of the Mission to Support the Fight against Corruption and Impunity in Honduras failed and that its mandate has not been renewed. The conclusion of the Mission's work adds to the concerns already expressed by the Working Group regarding the amendments to the new Criminal Code, which will reportedly reduce criminal penalties for embezzlement, fraud, illicit enrichment and drug trafficking, potentially allowing corrupt officials to avoid serving any time in prison.

85. Moreover, through legislative decrees Nos. 116-2019 and 117-2019, Congress has imposed measures that make it very difficult to investigate crimes of corruption in the country. Decree No. 116-2019 includes the reactivation of the departmental social fund that allows members of Congress and public officials to receive and execute public funds for social works. Among its provisions, it grants the Higher Court of Audit – the entity responsible for ensuring proper use of State assets and resources – three years to audit funds, during which time public officials may not be investigated nor charged by the Public Prosecutor's Office for improper use of resources. If the Court determines that the funds have been used improperly, those responsible have a period of four years to return the funds before they may be criminally charged. At the same time, decree No. 117-2019 has restored parliamentary immunity for matters relating to its legislative functions. These developments are a cause for great concern, since the misappropriation of public resources through the Fund has been the focus of several investigations by the Mission to Support the Fight against Corruption and Impunity in Honduras and the Special Prosecution Unit to Fight Corruption-related Impunity.

[25] See www.mp.hn/index.php/author-login/150-enero2020/5345-comunicado-ministerio-publico-crea-unidad-fiscal-especializada-contra-redes-de-corrupcion.

86. These developments represent a serious setback in the fight against corruption and impunity, and call into question the political will and determination of institutions that should address these endemic problems.

A. National human rights institution

87. The Working Group met with the National Commission on Human Rights (CONADEH), a constitutional body with a strong mandate to protect and promote human rights. The Commission expressed its commitment to advancing implementation of the Guiding Principles. Article 16 of the organic law on the National Commissioner for Human Rights (decree No. 153-95) gives the Commission the mandate to investigate complaints of alleged human rights violations committed by the public administration or private entities when they undertake public functions. The Commission has, however, interpreted its mandate broadly, and also addresses human rights abuses committed in the private sector.[26] The Working Group encourages the Commission to advocate for amending the law to explicitly extend its mandate to address all acts and omissions by the private sector when they have an impact on the whole spectrum of human rights.[27]

88. In the meetings that the Working Group held with representatives of civil society, many expressed a lack of confidence in the Commission and its ability to deliver on its mandate effectively, especially in the context of business-related human rights abuses and the protection of human rights defenders. The accreditation of the Commission in November 2019 of A status is a welcome development that should prompt it to strengthen its mandate and to develop a more proactive strategy to prevent and address cases relating to harm to people and the environment by businesses, including by facilitating access to effective remedy. The Commission should be provided with adequate funding and capacity in order to discharge its mandate effectively.

89. The Working Group is concerned that the Commission was considering the creation of a certification mechanism for companies with respect to human rights and responsible business conduct. This should not be the role of a national human rights institution, which should not give the impression that it is providing public assurances or its seal of approval about whether a business does in fact respect human rights.

B. Company grievance mechanisms

90. The Working Group found little evidence of businesses, in line with the Guiding Principles, establishing or operating effective operational-level grievance mechanisms for affected individuals and communities.

91. Companies have a responsibility to provide a trustworthy and effective mechanism for registering and addressing complaints, grievances and concerns of any adverse impact on human rights at an early stage. In other contexts, businesses have had to turn to independent institutions and third parties to provide such mechanisms, given the lack of trust that individuals have in company-driven mechanisms.

VIII. Role of the private sector in ensuring respect for human rights

92. In meetings with companies and major business associations, such as the Honduran National Business Council, the National Manufacturers' Association (ANDI) and the Cortés Chamber of Commerce and Industry, the Working Group noted that each had taken steps to disseminate the Guiding Principles among their members, larger and small- and medium-sized enterprises alike, in the form of training and the publication of guide books.

[26] See www.ohchr.org/Documents/Issues/Business/Remedy/CONADEH_Honduras.pdf.

[27] See https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf?Mobile=1.

The Working Group also positively noted that the business community recognizes that human rights due diligence – to identify negative impacts of their business operations, whether in mining or other projects, or in value/supply chains – allows them to prevent, account and mitigate any harm caused more effectively.

93. At the same time, the Working Group noted with concern how many businesses relied on compliance with national legal requirements (such as for obtaining permits or concessions) as the key factor driving their right to operate in a given community or area. Given that the regulatory and institutional framework to protect against business-related human rights abuses is weak, adherence to the law does not necessarily earn a company the consent and trust of the local community, which is as important as obtaining a licence. Aligning business operations with international practices of human rights due diligence and meaningful consultation under the Guiding Principles is a necessary and good practice, which in turn builds the confidence of civil society in business activities, and avoids the significant social and economic costs of prolonged social conflict.

94. The Working Group commends the Honduran National Business Council for announcing on 20 January 2020 its policy on business and human rights,[28] which was developed with the technical assistance of the Ministry of Human Rights. The policy was adopted at the highest level of the Council's leadership, as required by Guiding Principle16, in the presence of high-level representatives of State institutions, the diplomatic community and international human rights bodies. The commitments undertaken include promotion of respect for human rights, responsible business conduct and anti-corruption practices among its members and the business community; raising awareness through the training of member organizations on the integration of due diligence processes into business practices, and on access to remedy measures. The policy also includes a commitment to report and communicate on progress made. The Working Group also took note the national action plan on business and human rights launched by the National Manufacturers' Association (ANDI) on 5 March 2020.

95. In the light of the general nature and broad scope of these policies, the Working Group recommends that the Honduran National Business Council and the National Manufacturers' Association take appropriate measures to translate their commitments into effective mechanisms at the company level to identify, prevent, mitigate and account for the negative impact on human rights that businesses may cause. For these mechanisms to be effective, they should benefit from the inputs of the communities concerned.

96. The Working Group was pleased to learn that, on 11 February 2020, the Honduran National Business Council and the Honduras Foundation for Social Corporate Responsibility (FUNDHARSE) signed a memorandum of understanding to establish a technical committee on the creation of a local Global Compact network.

97. The Working Group hopes that the above initiatives will encourage other business associations and businesses to take their responsibility under the Guiding Principles seriously and to contribute to the State's efforts to ensure that business and investment do not come at the cost of human rights and the environment. In achieving that goal, the Working Group urges businesses to see human rights defenders not as enemies but as constructive, valuable partners who have knowledge of local conditions, can provide information on the potential impact of projects, and help foreign companies and investors to understand the local context.

98. The Working Group notes that other stakeholders, including international and regional development finance institutions and commercial banks, play an important role. They can exercise leverage by requiring that the companies in which they invest uphold human rights standards in their business practices; this includes, for example, ensuring that environmental and social impact studies of projects they finance are firmly grounded in international human rights standards.

99. The Working Group also emphasizes the role of third States when their companies invest in Honduras. Guiding principle 4 requires States to impose human rights due

[28] http://cohep.com/?smd_process_download=1&download_id=8388.

diligence as a precondition for providing their support, where the nature of business operations or operating context pose significant risk to human rights.[29]

IX. Development of a national action plan on business and human rights

100. At its review during the second cycle of the universal periodic review, in July 2015, Honduras accepted a recommendation on developing a national action plan on business and human rights (A/HRC/30/11). The Working Group welcomes this commitment and commends the leadership of the Ministry of Human Rights in this context.

101. The Working Group also positively notes that the Government of Honduras shares its views regarding the need to proceed cautiously and slowly in the process of developing a national action plan. Before developing it, the Government has to begin by ensuring an enabling environment for multi-stakeholder engagement. This includes the recognition that building trust among all stakeholders represents a precondition for such engagement, and will take time. The political will for ensuring meaningful step-by-step engagement in the process should be demonstrated by concrete actions. The approval of a consultation law in accordance with international standards for building trust with indigenous communities and other civil society actors is a case in point.

102. Transparency and inclusiveness at every step of the national action plan process is essential. Also, the Government should fully acknowledge that some of the key actors in this process continue to be systematically criminalized and face violence in social conflicts where businesses are involved, and should take concrete measures to address these issues to rebuild trust.

X. Conclusions and recommendations

A. Conclusions

103. **A central issue observed by the Working Group was the lack of a robust legal and policy framework to protect against business-related human rights abuses, in a context in which development projects and investments appear to have outpaced protection of people and the environment. The lack of accountability and access to effective remedy for harm caused by business operations is often compounded by attacks, harassment and intimidation against those who speak out against abuses in the context of development projects and demand accountability for victims. This, in turn, has fuelled social conflicts, with long-lasting negative repercussions for local communities, businesses and investors.**

104. **The root causes of most social conflicts is the systematic lack of transparency and meaningful participation of affected communities in decisions regarding business activity. The State and companies should realize that their right to participate meaningfully from an early stage is a basic requirement for creating an enabling environment for responsible business conduct.**

105. **The Working Group saw the extent to which impunity and widespread corruption have eroded confidence in public authorities and their ability to protect individuals and communities against business-related human rights abuses, particularly those in most vulnerable situations, such as indigenous peoples. The current amendments to the Criminal Code, which criminalize the legitimate work of those defending their rights, lands and the environment, and the parallel step-back in the fight against corruption, have deepened distrust in State institutions.**

106. **The Working Group welcomes the commitment by the Government to implement the Guiding Principles as a critical element for sustainable development**

[29] See A/HRC/17/31, p. 9, commentary to guiding principle 4. See also A/HRC/38/48.

that benefits all, and was encouraged by some efforts in this regard, including to develop a national action plan. The precondition for a successful action plan development process requires, however, addressing the root causes of social conflict and rebuilding trust in State institutions. This commitment should be manifested in more decisive and profound legislative and institutional reforms that are firmly grounded in international human rights law and standards, including the Guiding Principles.

107. **The Working Group was encouraged to hear some business associations express a genuine will to improve due diligence to ensure that they do not cause, contribute to or become linked to human rights abuse, understanding that respect for human rights is also good for sustainable business. The Working Group supports such an approach and hopes it can inspire others to follow suit.**

108. **The Working Group was impressed to see that, despite the challenges to the rule of law and the shrinking space for civil society to operate in a safe and enabling environment, there was a vibrant civil society. It was moved by the testimonies of individuals from affected communities whose unyielding efforts to promote social and economic justice, to defend their lands and the environment, and to seek accountability for harm caused by businesses operations continued despite the challenges they faced.**

B. Recommendations

109. **The Working Group recommends that the Government of Honduras:**

(a) **Adopt a regulatory and institutional framework to ensure the equal and meaningful participation in decisions regarding business projects from an early stage; this includes access to information and transparency at all phases of projects that have an impact on the rights of people and the environment;**

(b) **Ensure that government entities and the private sector respect the rights to free, prior and informed consultation and consent of communities of indigenous peoples, in accordance with such international standards as the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples; any consultation protocols/process or legal framework must ensure the full participation of indigenous peoples in its development and implementation;**

(c) **Adopt a comprehensive and transparent regulatory framework on social and environmental impact assessments that take into account sector-specific risks, and differentiated impact on groups at heightened risk of business-related human rights abuses; and ensure effective oversight by means of institution strengthening and capacity-building for relevant State actors;**

(d) **Repeal the relevant parts of the law on the classification of public documents relating to national security and defence and subsequent relevant decrees that classify information on technical studies, environmental licences and the locations of concessions as secret;**

(e) **Ensure effective implementation and oversight of the regulation prohibiting mining activities in protected areas, and remove any legal and administrative barriers to the prompt registration of protected areas in the Catalogue of Inalienable Public Forestry Heritage;**

(f) **Ensure protection of the right of people living in rural areas, including indigenous peoples, to possess, use, develop and control their lands, and resources with full security of their land rights; this includes the establishment of an appropriate and effective permanent mechanism to enable indigenous peoples to submit claims and obtain compensation for abuses of rights over their lands and natural resources; the mechanism should coordinate with the judiciary, agricultural**

authorities and the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, and be provided with the technical and budgetary capacity necessary;

(g) **Take immediate measures to protect the life and integrity of people at risk because of their work defending the rights of communities, their land or the environment in the context of development projects, and ensure prompt and impartial investigation into cases involving threats and violence against them; this requires strengthening existing mechanisms (for example, the national protection mechanism for human rights defenders) and developing new initiatives with the systematic integration of a gender perspective, such as:**

(i) **The establishment, within the Office of the Attorney General, of integrated teams with attorneys from relevant units of special offices to strengthen its capacity to investigate all dimensions of crimes against defenders and indigenous peoples, including when perpetrated by private entities;**

(ii) **Preventing further misuse of the judicial system to criminalize human rights defenders, including by developing safeguards and procedures to assess whether criminal complaints are used as a pretext to prevent them from exercising their rights to seek effective legal remedies for the communities and individuals they represent;**

(iii) **Immediately repealing the provisions in the new Criminal Code and legislative decree No. 102-2017 criminalizing dissent and silencing individuals who stand up for victims of business-related human rights abuse;**

(h) **Adopt the legal reforms necessary to promote greater transparency relating to business activity, including with regard to conflicts of interest among public officials with respect to their business associations and investments, and those of their close family members; the regulatory framework should comply with standards under the United Nations Convention against Corruption;**

(i) **Amend relevant provisions in the new Criminal Code that reduce criminal penalties for crimes, such as corruption and fraud, and repeal the Departmental Social Fund Law as part of the efforts to combat corruption and impunity;**

(j) **Reform the labour rights regime, including occupation health and safety regulations, to bring it into line with international labour standards, including by:**

(i) **Establishing an independent and adequately staffed, trained and resourced Labour Inspectorate with a broad mandate to inspect, enforce and impose penalties in cases of non-compliance with all human rights pertaining to workplace in all sectors, including in the fishing industry affecting Miskito indigenous peoples, with an emphasis on prevention;**

(ii) **Establishing adequate and effective mechanisms to report, investigate and prosecute cases of abuse and labour exploitation, particularly of domestic workers and women in the *maquila* industry;**

(iii) **Taking effective measures to close the gender wage gap and to consistently review the wages of men and women in all sectors;**

(k) **Create an enabling environment for meaningful multi-stakeholder dialogue before embarking on the development of a national action plan. This process should generate a shared understanding across State institutions and businesses regarding their respective duties and responsibilities under the Guiding Principles, and trust among all stakeholders, and be seen as a first step towards a coherent regulatory and institutional approach to preventing and addressing business-related human rights abuse.**

110. **The Working Group recommends that the National Commission on Human Rights:**

(a) **Strengthen its mandate and capacity to prevent and address cases relating to harm caused by businesses, including by facilitating access to effective**

remedy; this should be accompanied by adequate funding and capacity-building so that the Commission can discharge its mandate effectively;

(b) **Be more vocal and publicly call for action when human rights defenders are at risk or subjected to attacks;**

(c) **Be more proactive in raising awareness of the Guiding Principles, including among businesses with regard to their independent responsibility to respect human rights.**

111. **The Working Group recommends that businesses and industrial associations:**

(a) **Raise awareness among businesses of their independent responsibility to respect human rights under the Guiding Principles, over and above their compliance with national laws and regulations protecting human rights;**

(b) **Stop any form of stigmatization, harassment and intimidation, including through the misuse of legal proceedings, of human rights defenders;**

(c) **Establish effective human rights due diligence processes to identify, prevent, mitigate and account for any adverse impact on people and the environment; meaningful participation of rights-holders should be seen as a critical component of these processes, and a key element of sustainable business and the prevention of social conflict;**

(d) **Create operational-level grievance mechanisms to address concerns and any adverse impact on human rights from an early stage, and ensure that such mechanisms meet the effectiveness criteria under guiding principle 31.**