



## THE SITUATION OF HUMAN RIGHTS DEFENDERS

# HONDURAS

Briefing Paper for the Committee on Economic, Social and Cultural Rights - September 2015

This is a joint submission made by the International Service for Human Rights (ISHR), the International Platform against Impunity based in Central America (Pi) and the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). This submission is made on the occasion of the consideration of the List of Issues for Honduras at the 56th Pre-Sessional Working Group of the UN Committee on Economic, Social and Cultural Rights (the Committee) and it addresses the issue of human rights defenders (HRDs) working on economic, social and cultural (ESC) rights in Honduras.

We contend that the issue of HRDs should be prominent on the List of Issues and that the undue suppression of NGOs, HRDs and civil society who work to prevent the violation of, and seek to advance ESC rights enshrined in the International Covenant on Economic, Social and Cultural Rights, is a corollary violation of those rights.

Our submission will illustrate the risks and obstacles facing HRDs in Honduras and will show that defenders working on ESC rights face particularly high levels of risk and obstacles to their human rights work. We will highlight defenders working on environmental and land rights as a particularly at-risk group. We conclude that the government of Honduras must do more to guarantee a safe and enabling environment for HRDs if it is to guarantee the respect, protection and fulfilment of ESC rights.

## THE DEFINITION OF HUMAN RIGHTS DEFENDERS

The United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, (Declaration on Human Rights Defenders), defines a human rights defender as anyone working for the promotion and protection of human rights.<sup>1</sup> This broad definition encompasses professional as well as non-professional human rights workers, volunteers, journalists, lawyers and anyone else carrying out, even on an occasional basis, a human rights activity.

- The UN Special Rapporteur on the situation of human rights defenders (Special Rapporteur on HRDs) last year stated that ‘those who promote and defend human rights are ipso facto defenders, even if they are not members of an organisation’.<sup>2</sup>
- OHCHR Fact Sheet 29 on HRDs states that ‘To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. HRDs seek the promotion

and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights’.<sup>3</sup>

- It illustrates by saying that ‘Human rights defenders address any human rights concerns [including]... discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment... the rights to life, to food and water, to the highest attainable standard of health, to adequate housing, to a name and a nationality, to education, to freedom of movement and to non-discrimination...’.<sup>4</sup> For example, lawyers seeking accountability for ESC rights violations, journalists exposing violations, community housing associations campaigning for better housing conditions or protesting development or beautification projects that involve evictions or resettlement or violate other ESC rights.
- It argues that defenders working on housing, health care and sustainable income projects merit ‘particular attention as its members are not always

described as HRDs and they themselves may not use the term “human rights” in a description of their work, focusing instead on terms such as “health”, “housing” or “development” which reflect their area of activity’. However, their work ‘is central to respect for and protection and achievement of human rights standards, and they need and deserve the protection given to their activities by the Declaration on human rights defenders’.<sup>5</sup>

## THE IMPORTANCE OF HUMAN RIGHTS DEFENDERS IN THE PROTECTION AND REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Declaration on Human Rights Defenders and numerous Human Rights Council resolutions and reports by Special Procedures have underlined the importance of HRDs in contributing to the implementation of human rights law.

- The UN Human Rights Council has stressed that respect and support for the activities of HRDs, including women HRDs, is essential to the overall enjoyment of human rights.<sup>6</sup>
- The Declaration on Human Rights Defenders states that defenders have an important role to play and an essential responsibility in safeguarding democracy, ensuring that it remains open and pluralistic, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.<sup>7</sup>
- The previous Special Rapporteur on HRDs stated that ‘the defence and promotion of human rights is a legitimate and courageous activity which is necessary to ensure that communities can fully enjoy their entitlements and realize their potential. Defenders can play a key role in safeguarding democracy and ensuring that it remains open, pluralistic and participatory and in line with the principles of rule of law and good governance. Defenders should be able to carry out their activities in an environment that empowers them to defend all human rights for all’.<sup>8</sup>

The effective protection and realisation of ESC rights relies upon the valuable contribution of civil society and HRDs. Civil society and HRDs play a vital role by monitoring and evaluating State compliance with the Covenant, providing input into policy formulation and program and service design, raising the alarm on rights violations and holding decision-makers accountable for the consequences of their actions. Without civil society and HRDs the effective protection and realisation of ESC rights protected by the Covenant would seriously be undermined.

Therefore, for ESC rights to have meaning in practice, States must ensure that HRDs can play this vital role, by providing an enabling environment and respecting and protecting the rights of HRDs, so that

defenders can voice their concerns and critiques of government action without fear of reprisals. This obligation is implicit in the normative content of ESC rights, such as the right to adequate housing, to health and to education.

## THE COMMITTEE’S PRONOUNCEMENTS ON HUMAN RIGHTS DEFENDERS

The Committee has confirmed the importance of the State obligations to respect and protect HRDs on numerous occasions.

CESCR Concluding Observations:

### Angola (2009):

- The Committee is concerned that NGOs involved in the realization of economic, social and cultural rights are allegedly still under strict oversight, subject to coordination, evaluation and inspections carried out by the Technical Unit for the Coordination of Humanitarian Assistance, and that HRDs are still subjected to many legal and de facto restrictions, which constitutes a serious obstacle to the promotion and protection of economic, social and cultural rights.
- The Committee urges the State party to establish legal guarantees to enable NGOs to carry out their activities for the promotion and protection of economic, social and cultural rights without arbitrary interferences. The Committee further urges the State party to ensure that perpetrators of attacks against HRDs are brought to justice.

### Equatorial Guinea (2012):

- The Committee is concerned by reports that indicate that human rights activists are subjected to intimidation and harassment.
- The Committee urges the State party to adopt all measures necessary to protect HRDs and activists — particularly those working in the area of economic, social and cultural rights — from any and all acts of intimidation and harassment and to ensure that perpetrators of such acts are brought to justice.<sup>9</sup>

### Argentina (2011):

- The Committee is concerned about instances in which security forces and agents, both public and private, resorted to reprisals and disproportionate use of force against persons participating in activities in defence of economic, social and cultural rights, in particular in the context of land disputes.
- The Committee urges the State party to protect social activists and HRDs against any form of intimidation, threat and, especially, disproportionate use of force perpetrated by security forces and agents, both public and private. It also calls on the State party to ensure that all allegations of

reprisals and abuse are promptly and thoroughly investigated, and that the perpetrators are brought to justice.<sup>10</sup>

#### **Cambodia (2009):**

- The Committee expresses its deep concern about the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimize forced evictions and falsely prosecute housing rights defenders. (art. 11)
- The Committee urges the State party to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of HRDs, including indigenous leaders, peasant activists engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of repression and abuse are promptly and thoroughly investigated...<sup>11</sup>

Other examples can be found in the Concluding Observations on: Brazil,<sup>12</sup> Viet Nam,<sup>13</sup> India,<sup>14</sup> DRC,<sup>15</sup> Philippines<sup>16</sup> and Sri Lanka.<sup>17</sup>

In addition the Committee has addressed the issue of HRDs and the role of civil society in protecting and realising ESC rights in its **General Comments** as follows:

#### **General Comment 15 - Right to Water:**

- The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water...<sup>18</sup>
- States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to water.<sup>19</sup>

#### **General Comment 19 - Right to Social Security:**

- Beneficiaries of social security schemes must be able to participate in the administration of the social security system...<sup>20</sup>
- The formulation and implementation of national social security strategies and plans of action should respect, inter alia, the principles of non-discrimination, gender equality and people's participation. The right of individuals and groups to

participate in decision-making processes that may affect their exercise of the right to social security should be an integral part of any policy, programme or strategy concerning social security.<sup>21</sup>

- States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society, with a view to assisting disadvantaged and marginalized individuals and groups in the realization of their right to social security.<sup>22</sup>

#### **General Comment 12 - Right to Food:**

- The formulation and implementation of national strategies for the right to food requires full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. ....<sup>23</sup>
- States parties should respect and protect the work of human rights advocates and other members of civil society who assist vulnerable groups in the realization of their right to adequate food.<sup>24</sup>

#### **General Comment 18 - Right to Work:**

- The formulation and implementation of a national employment strategy should involve full respect for the principles of accountability, transparency, and participation by interested groups. The right of individuals and groups to participate in decision-making should be an integral part of all policies, programmes and strategies intended to implement the obligations of States parties under article 6. The promotion of employment also requires effective involvement of the community and, more specifically, of associations for the protection and promotion of the rights of workers and trade unions in the definition of priorities, decision-making, planning, implementation and evaluation of the strategy to promote employment.<sup>25</sup>
- States parties should respect and protect the work of HRDs and other members of civil society, in particular the trade unions.
- Trade unions play a fundamental role in ensuring respect for the right to work at the local and national levels and in assisting States parties to comply with their obligations under article 6.<sup>26</sup>

#### **DEFENDERS WORKING ON ESC RIGHTS FACE HEIGHTENED RISKS AND SPECIFIC THREATS AND OBSTACLES**

Unfortunately the situation of HRDs working on ESC rights issues is deteriorating worldwide as is evidenced by the proliferation of reports of alarming increases in threats, harassment, arbitrary detention, murder and enforced disappearances of defenders working on ESC rights.<sup>27 28</sup> A more recent trend has been the proliferation of domestic laws that restrict and seek to silence NGOs working on rights issues.

Unfortunately both these trends are particularly severe in Honduras.

These attacks and restrictions on defenders of ESC rights obviously have serious consequences for individuals and their families, but also for their communities and their campaign about the underlying rights violations. Such attacks have a devastatingly chilling effect on all voices of dissent.

This trend is also well documented by UN human rights experts. The former Special Rapporteur on HRDs, Ms Hina Jilani, in a 2007 report found that labour rights activists suffered the highest number of attacks, harassment, arbitrary detention and disappearances and those working on land and natural resources issues or campaigning against forced evictions were the second most harassed group seen by her mandate.<sup>29</sup> She noted that there was a global trend towards targeting of ESC rights advocates, particularly in the Asian and Latin American regions. In August 2013, the former Special Rapporteur on HRDs, Margaret Sekaggya, considered the relationship between large scale development projects and HRDs.<sup>30</sup> She found that the situation of HRDs working on land rights, natural resources and environmental issues had worsened since 2007.<sup>31</sup>

Last year, the current Special Rapporteur on HRDs identified HRDs working on ESC rights and minority rights, environmental defenders, and defenders who work in the area of business and human rights as three of the five most vulnerable groups of defenders, recommending that States pay particular attention to them.<sup>32</sup>

Similar trends have been noted by the Special Rapporteur on Extreme Poverty and Human Rights and the UN Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises, which in March 2013 noted the very high number of cases brought to their attention relating to conflict over land and natural resources and the harassment and attacks on persons protesting against the impact of business activities.<sup>33</sup>

Most recently the UN Working Group on Enforced Disappearances published a 'Study on enforced or involuntary disappearances and economic, social and cultural rights.'<sup>34</sup> One focus of the Study was 'enforced disappearances against those working on the promotion and protection of economic, social and cultural rights' where the Working Group noted that 'persons who live in poverty and lack the enjoyment of a number of economic, social and cultural rights are more vulnerable to becoming victims of enforced disappearance.'<sup>35</sup> Further, the Study confirmed the greater risk of enforced disappearance of people actively defending ESC rights and stated that 'enforced disappearance is used as a repressive measure and a tool to deter the

legitimate exercise, defence, or promotion of the enjoyment of economic, social and cultural rights.'<sup>36</sup>

The Study explains:

When an individual becomes a victim of enforced disappearance as a result of exercising or promoting economic, social and cultural rights, the enjoyment of those rights is also violated. For instance, the disappearance of a teacher who promoted cultural rights also interferes with the right to cultural life as well as the exercise of students' right to education (A/HRC/22/45, para. 69).<sup>37</sup>

Further, because enforced disappearances are a tool to intimidate and prevent others from claiming their ESC rights, they have a collective impact on the ESC rights of others working in the field: 'this deterrence leads to violations of the rights of the disappeared, others engaged in related activities and the larger community, because of the chilling effect of enforced disappearances.'<sup>38</sup>

The Inter-American Commission for Human Rights has identified trade unionists, *campesino* and community leaders, indigenous and afrodescendent leaders, environmental rights defenders and migrant workers' rights defenders as five of the seven groups of defenders facing a special situation of risk.<sup>39</sup>

The Commentary on the Declaration on Human Rights Defenders says that 'States should make more efforts to recognize and protect [*inter alia*]... defenders working to promote economic, social and cultural rights.... Those defenders need specific and enhanced protection, as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and more accepting one', because they represent some of the defenders most exposed to attacks and violations.

## **THREATS AND OBSTACLES FACING HUMAN RIGHTS DEFENDERS IN HONDURAS IN GENERAL**

The former Special Rapporteur on HRDs, Margaret Sekaggya, on her visit to Honduras in February 2012 found that the defenders and their families are subjected to extrajudicial killings, kidnapping, torture, arbitrary arrest, and various other forms of harassment.<sup>40</sup> Defenders, journalists and justice operators in Honduras continue to face these aggressions, as well as threats, stigmatisation, restrictions on the freedoms of assembly, association and expression, and governmental interference in their activities.

- HRDs face **violence, threats and abductions.**<sup>41</sup> Threatening e-mails and phone-calls are common, and can be followed by kidnappings, assaults, torture or other cruel treatment, and even murder.<sup>42</sup>

- Defenders are subject to **stigmatisation** both in the media and by public officials, accused of conducting disinformation campaigns,<sup>43</sup> or branded as traitors to the country, members of radical groups, or even terrorists.<sup>44</sup>
- The Honduran authorities often resort disproportionately to military or police force, leading to **arbitrary arrests** of activists and excessive use of force during demonstrations.<sup>45</sup>
- Honduras ranks 101 out of 109 States assessed in the 2013 CIVICUS Enabling Environment index, a study of how open and safe a country is for civil society activism.<sup>46</sup>
- A series of **laws restrict the rights to freedoms of assembly and association**. Law No. 252-2010 on the Financing of Terrorism places arbitrary restrictions on the freedoms of assembly and association and makes it increasingly difficult for NGOs to associate and register.<sup>47</sup> The Law on NGOs (Decree 32/2011) obliges registered NGOs to submit their accounts and funding sources to a governmental registry, provoking fears that the State might be able to arbitrarily cancel the legal status of organisations registered as NGOs.<sup>48</sup>
- The Law for intervention in private communications (Decree 243/2011) allows authorities to wiretap HRDs if they are considered as ‘persons under investigation’.<sup>49</sup>
- Honduras is one of the most dangerous countries in Latin America for **journalists and media workers**, especially when they report on human rights. Since the coup d’état in 2009, at least 34 journalists have been **killed**. Community radio stations have been burnt, journalists receive threatening phone calls, and offices and equipment are subjected to **raids** and sabotage, leading to **self-censorship** of journalists.<sup>50</sup> Radio Globo and Globo TV, media outlets which have exposed high-level corruption around the health system, have seen five of their journalists killed since 2011.<sup>51</sup>
- Honduras ranks 132 of 180 in the Reporters Without Borders (RWB) freedom of press index. RWB notes that since 2003 only 2 of 51 cases of murdered journalists have seen justice.<sup>52</sup> Journalists continue to be harassed. In July 2015 Honduras recorded 3 more killings of journalists in a period of 10 days.<sup>53</sup>
- Concerned with the huge number of murders committed against journalists, the Inter-American Special Rapporteur for Freedom of Expression urges Honduras to investigate these killings, which are apparently related to journalistic activities.<sup>54</sup>
- In Honduras, **legislation restricts media freedom and independence**. CONATEL Resolution NR003/2011 allows for the suspension of permits and licenses for radio frequencies, while Law 185-95 on the Framework of the Telecommunications Sector restricts access to frequencies, hindering the freedom of expression of HRDs.<sup>55</sup>
- **Lawyers and judges working on human rights and against impunity face harassment, threats and even assassination**,<sup>56</sup> such as the murder of Judge Mendoza Peña who was a member of an NGO defending legal professionals.<sup>57</sup> The lack of judicial independence and abuses against this group threaten the protection of all rights.
- The government often **interferes in the judicial system**, when it does not act in conformity with the Congress. For example in 2012, Congress removed four Supreme Court judges who had declared elements of a law related to police administration, unconstitutional.<sup>58</sup> Meanwhile in 2013, the Attorney General stated that Public Prosecution is only able to investigate 20% of killings due to insufficient resources.<sup>59</sup> Following this statement, the Congress removed the Attorney General and his Deputy from their positions.<sup>60</sup>
- In January 2015, the Inter-American Court of Human Rights began hearings on the case of López Lone *et al.* v. Honduras,<sup>61</sup> the case of three judges and a magistrate reprimanded and removed from office on the basis of exercising their civil rights in a non-judicial capacity to denounce the coup d’état of 28 June 2009 in Honduras.<sup>62</sup>

## HEIGHTENED AND SPECIFIC THREATS AND OBSTACLES FACING DEFENDERS WORKING ON ESC RIGHTS

### GENERAL TRENDS

Many activists demanding basic ESC rights find their spaces for human rights work closed by the Honduran authorities. **Murders** are not uncommon, whilst **death threats** are often used to intimidate defenders and journalists working on these rights. **Administrative restrictions** are used by the State to hinder work on ESC rights, whilst obstacles are put in place to limit access to information.

- In April 2015 Elvin Antonio López (20 years old), Darwin Josué Martínez (22) and Diana Yareli Montoya (21), student activists protesting for the **right to education**, were murdered.<sup>63</sup>
- Héctor Orlando Martínez, President of the **labor union** Sindicato de Trabajadores de la Universidad Nacional Autónoma de Honduras (SITRAUNAH) was murdered in June 2015.<sup>64</sup>
- Despite an order to Honduras from the Inter-American Commission for Human Rights to protect the life of Carlos Mejía Orellana’s, a journalist from Radio Progreso who denounced several corruption cases and human rights violations, he was murdered in April 2014.<sup>65</sup>

- Juan Medina, a journalist from GloboTV - who was regularly denouncing corruption in the government - was murdered in December 2013, apparently in retaliation for uncovering corruption in the national health system.<sup>66</sup> The Director of Radio Globo, José David Ellner Romero, also denounced corruption in the health insurance system and has suffered death threats.<sup>67</sup> The International Federation of Human Rights (FIDH) says that corruption in Honduras is threatening the right to health and urges the protection of HRDs fighting for this right.<sup>68</sup>
  - Defenders working on ESC rights are frequently **criminalised**. For example, **women's rights** defender Gladys Lanza was recently sentenced to one and a half years in prison for making public statements about a case of alleged sexual harassment at the workplace.<sup>69</sup>
  - In May 2015, José Guadalupe Ruelas - director of international children's charity Casa Alianza, which fights for **children rights** - was arbitrarily detained and harassed by police.<sup>70</sup>
  - Organisations often face **administrative restrictions** to the right to assembly, hindering their ability to acquire and maintain legal personality. In 2014, through decree N° 2196-A-2013, the State cancelled the registration of 5,429 national and international associations, including religious groups and associations working with education, health and human rights in general.<sup>71</sup>
  - According to the 'Corruption perception index 2014', which analyses **transparency and accountability** around the world, Honduras has worsened in this respect and now ranks 126 out of 175 states.<sup>72</sup> It is particularly difficult for activists working on economic rights, and on the **impact of economic projects** upon the protection of all rights, to uncover violations and denounce their cause, when their access to information is hindered by such a lack of transparency.
  - **Abortion** remains illegal under all circumstances in Honduras. In June 2009 the government banned entirely the use and distribution of emergency contraceptive pills (Executive Agreement Ministerial Agreement 36-2009 and 2744-2009). This action runs contrary to the Committee's 2001 recommendation [par. 48] to continue its previous reproductive health policies<sup>73</sup> and represents a serious risk for **women HRDs** providing support for women victims of sexual violence, given that part of their work is criminalised.
- issues face some of the gravest risks in the world.
- According to Global Witness, *per capita* Honduras ranks number one in the 'Global **killings** of land and **environmental defenders** 2002-2014' index with a total number of 111 victims.<sup>74</sup>
  - According to the former Special Rapporteur on HRDs, defenders working on extractive, construction and development projects in the Americas were the subject of most communications to her and faced the highest risk of death as a result of their human rights activities.<sup>75</sup>
  - In 2014, Global Witness documented 12 murders of **environment defenders**, of which 4 were indigenous victims: Lenin Castaneda, Pedro Perez, Alma Yamileth Diaz, Uva Erlina Castellanos, Rigoberto Lopez Hernandez, William Jacobo Rodriguez, Orlando Orellana, Francisco Arabella Bricno Rivera, Margarita Murilo, Juan Lopez, Maycol Rodriguez, Justo Sorto.<sup>76</sup>
  - **Land rights defenders** face threats and harassment, forced evictions, and attacks (often carried out by private security guards) because of their work to defend their ESC rights, their ancestral lands and the environment, in the face of megaprojects such as hydroelectric dam constructions, mining and tourism. Some activists have been killed during protests, such as Tomas Garcia in July 2013.<sup>77</sup>
  - Berta Carceres, who was protesting against the Agua Zarca hydro-dam which will cut off a vital water source for the Lenca indigenous community, was threatened several times and had fraudulent **criminal charges** filed against her.<sup>78</sup>
  - Prosecuted HRDs are often given disproportionate sentences, and cases of unfounded charges have been reported, such as that of Magdalena Morales – a member of the National Centre of Agricultural Workers – accused of 'land invasion'.<sup>79</sup> Due process guarantees are often not applied to HRDs.
  - Indigenous leaders face additional risks. One reason for this is the **lack of recognition of the indigenous peoples** as such. The National Constitution of Honduras has only one mention of "indigenous communities" and the duty of the State to protect their rights and interests, particularly the protection of the lands and forests where they are established (Article 346). As a result, the State does not recognise their right of self-determination and their rights over their territories.
  - Activists denounce a lack of transparency and access to information around natural resource exploitation, making the work of HRDs working on the issue more difficult. This runs contrary to previous recommendations by the Committee.<sup>80</sup>

## PARTICULAR RISKS AND OBSTACLES FOR LAND AND ENVIRONMENTAL RIGHTS DEFENDERS

Honduran activists exposing violations to the rights to **housing, health, development and public participation** around land and environmental

## REPRISALS AGAINST ESC RIGHTS DEFENDERS FOR INTERACTING WITH INTERNATIONAL MECHANISMS

In Honduras, HRDs seeking to interact with international human rights mechanisms have been the targets of public de-legitimisation campaigns in an attempt to dissuade other activists from engaging.

- Internationally respected HRDs Bertha Oliva of Committee of Relatives of the Disappeared in Honduras (COFADEH) and Victor Fernández of Movimiento Amplio Por La Dignidad y La Justicia (MADJ) have been the targets of stigmatisation by authorities and the media, following their attendance at a hearing at the Inter-American Commission on Human Rights. They are accused of conspiracy against the electoral process in their country.<sup>81</sup> COFADEH<sup>82</sup> and MADJ<sup>83</sup> are two of the most established organisations fighting against all forms of impunity in Honduras. Both often provide education on human rights to civil society and constantly denounce intimidation against defenders.
- Furthermore, Honduras unleashed a wave of stigmatisation and reprisals against HRDs, including defenders working on ESC rights, who exercised their right to interact with the UN Human Rights Council's Universal Periodic Review (UPR) process recently. This was immediately condemned by ISHR and many national and international human rights organisations.<sup>84</sup>

## THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

Whilst Honduras has developed some positive laws policies and actions towards the protection of HRDs, much more must be done to ensure their full implementation.

- There is almost complete impunity for attacks against HRDs, and perpetrators are rarely brought to justice. More than 90% of murders of journalists are perpetuated with impunity. To date, neither the granting of precautionary measures by the Inter-American Commission for Human Rights, nor UN expert recommendations, have resulted in the Honduran State implementing effective measures to protect HRDs and journalists.<sup>85</sup>
- Following civil society pressure, on 4 June 2014, a draft 'Law to protect human rights defenders, journalists and justice operators' (Ley de Protección para las y los defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia en Honduras) was introduced into the National Congress of Honduras and its text was enacted on 15 April, 2015 and published on the official diary on 14 May 2015, creating a 'National Council of Protection'.<sup>86</sup>
- This development is to be celebrated, given that

the law seeks to give effect to the UN Declaration on Human Rights Defenders at the national level and provides legal recognition of the legitimate and important work of defenders, as well as of the vulnerability and risk they face. The law creates a **National Protection System for Human Rights Defenders**.

- Nonetheless, the law passed did not take into account key civil society input. These gaps could be rectified to some extent by the inclusion of the following elements in the forthcoming regulations for the law, which the State should develop swiftly, and in consultation with HRDs:<sup>87</sup>
  - » Define exactly how the Protection System will work in practice, including its early-warning mechanism.
  - » Reform Article 21 of the law to ensure greater balance in the composition of the National Council for the Protection of Human Rights Defenders, guaranteeing full civil society representation.
  - » Define a public, open and transparent process for the selection of members of the National Council, specifying the terms under which the requirement of "recognised integrity" [*reconocida honorabilidad*] will be assessed.
  - » Set out the manner in which the General Office for the Protection System will be formed, guaranteeing that appointments be made on the basis of the candidates' knowledge and professional experience in human rights defence, through a public, open and transparent selection processes, with the oversight of human rights organisations.
  - » Establish the necessary profile which members of the Technical Committee of the Protection Mechanism and their expert advisers must have, as well as the procedure for their appointment, guaranteeing that they are trained sufficiently to perform risk analysis.
  - » Provide mechanisms for civil society monitoring of the decisions of the Technical Committee, or of appeals filed against their decisions.
  - » Include additional administrative, civil and/or criminal liability in case members of the Technical Committee do not respect the confidentiality of any information related to the protection of defenders.
  - » Detail the risk analysis methodology which will be used in defining protective measures for defenders, ensuring that the beneficiary can contribute to the risk analysis and holds the right and the means to challenge its outcomes.
  - » Put in place procedures which guarantee access to the Protection System for all defenders,

including those in rural areas, with a limited level of Spanish language, or who reside where there is no office of the General Office for the Protection System.

- » Specify regulations for the administration of the protection fund, clarifying the institutions responsible for overseeing its budget.
- The recent establishment of the OHCHR in Honduras is a big step forward; the government must now cooperate and coordinate with the office, in particular, regarding the protection of HRDs.
- According to information provided to the UN Special Rapporteur on HRDs, the National Human

Rights Commission (CONADEH) is unable to exercise its mandate effectively and some HRDs have expressed their distrust towards its leadership. This in spite of the State's commitment, made during its last UPR, to strengthen the CONADEH.<sup>88</sup>

The lack of knowledge within, and training of, State security forces regarding the role and contribution of HRDs, hinders efforts to protect activists effectively.<sup>89</sup>

## QUESTIONS TO THE HONDURAN STATE

- What steps will the Honduran State take to guarantee the effective implementation of the Law to protect HRDs, journalists and justice operators, guaranteeing that this is done in full consultation with civil society, that the regulations established respond to the gaps in the law itself, and ensuring the law's effectiveness for defenders and communities working on economic, social and cultural rights?
- What steps is the Honduran State taking to prevent attacks against land and environmental rights defenders, including through ensuring that non-State actors such as businesses make contributions to a safe and enabling environment for local activists, guaranteeing the free prior and informed consent of affected communities and through the implementation of the UN Guiding Principles on Business and Human Rights?
- How and when will the Honduran State make the legislative amendments required to guarantee a safe and enabling legal environment for human rights defence, for example through the repeal or amendment of legislation including Law No. 252-2010, Decree 32/2011, Decree 243/2011, CONATEL Resolution NR003/2011, Law 185-95 and Decree 2196-A-2013.
- How will the Honduran State end impunity for crimes against HRDs and journalists?
- What steps will the Honduran State take to guarantee due process to HRDs and end the criminalisation of their work?
- What concrete measures have been taken by the Honduran State to guarantee the protection of women HRDs, land and environmental rights defenders, and indigenous defenders, given their specific situations of risk?
- In follow up to the 2001 recommendation (paragraph 53) how will the State guarantee the full independence of, and cooperation with, the new OHCHR country office so that it be most effective and work with all relevant State and non-State entities, including civil society, to promote dialogue and strengthen the State's commitment and capacity to protect human rights?

1. The Declaration on human rights defenders refers to “individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (fourth preambular paragraph), General Assembly Resolution A/RES/53/144.
2. Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst – Twenty-eighth, A/HRC/28/63, para. 103, December 2014.
3. Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29, United Nations.
4. *Ibid.*
5. *Ibid.*
6. Human Rights Council Resolution 22/6, A/HRC/22/6, April 2013.
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