

Information supplied by governments on the application of ratified Conventions

Honduras

Convention No. 169

Honduras

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Honduras (ratification: 1995). The Government has provided the following written information.

The Government of Honduras hereby informs the Committee on the Application of Standards of the action taken in compliance with Convention No. 169, based on the observations made by the Honduran National Business Council (COHEP) received on 28 August 2015 and supported by the International Organisation of Employers (IOE).

I. Existing initiatives for the establishment of appropriate procedures for the consultation and participation required by the Convention

1. **Articles 6 and 7 of the Convention:** Work is under way with the Inter-Institutional Technical Group on Convention No. 169, which brings together 19 Government institutions, to prepare, implement and monitor a legal instrument on consultation. An initial **draft framework Bill on prior, free and informed consultation** of indigenous and Afro-Honduran peoples has been prepared, and since 27 May the process has entered the phase of dialogue with indigenous peoples, so that it can then be the subject of dialogue with private enterprise and workers' associations.

II. Progress made in the process of regularizing and issuing land title and the surface covered by the land titles issued

2. Article 14. Lands:

2.1. Process of regularization in two cases:

- (a) in the case of Auka, an Intersectoral Committee was established. It has requested the National Agrarian Institute (INA) to conduct an evaluation of the useful improvements made by non-Misquito peoples for an amount of 1,251,357.00

lempiras (one million, two hundred and fifty-one thousand, three hundred and fifty-seven lempiras); and

- (b) in the case of Triunfo de la Cruz, the ruling is final. The INA must demarcate the title areas, and there must be a process of integration between the Garífunas and the peoples within the area. A time frame of two years is set for this work.

2.2. Summary of land titles granted during 2015–2016:

- (a) areas for which title has been granted in one indigenous community in Guachipilin, with a total of 1,445.74 hectares covered by land title;
- (b) areas bought for three communities – Chortí, Plan de Perico, Carrizalon and Chonco: total of 123.55 hectares bought; and
- (c) areas for which titles are being processed in 2016 in three indigenous communities: total of 93,852.12 hectares to be covered by titles.

III. *Manner in which consultations have been held with the peoples concerned prior to undertaking or authorizing any programme for the exploration or exploitation of the resources pertaining to their lands*

2.3. Article 15. Natural resources:

- 2.3.1 In the Mosquitia maritime area, with a view to undertaking hydrocarbon exploration, a consultation process was initiated during the period from September to November 2013; ten (10) consultation assemblies were held with the Mosquitia territorial councils.
- 2.3.2 The practice of prior, free and informed consultation has been in place since 2011. Initially it applied to hydroelectric projects located in the Lenca indigenous area (Intibucá and La Paz), covering the Gracias a Dios department and the Awuas, Tikiuraya, Mocorón, Auka, Tipi Lalma, Kukuta, Yahurabila, Raya, Wampusirpe, Barra Patuca, Belén, Brus Laguna and Puerto Lempira communities.

IV. *Application of the General Mining Act and procedures established to ensure the right to consultation where the interests of indigenous peoples are likely to be prejudiced*

- 2.3.3 **Mining:** With respect to mining, the **General Mining Act** entered into force on 23 April 2013, and concessions granted since that date are still in the exploration phase. None of them is in areas where indigenous peoples or Afro-descendants would be affected. The Act sets out, in Chapter II, Exclusion Zones for Mining Rights, section 48(d), those zones declared to be national heritage sites and zones that UNESCO has declared to be world heritage sites, and in section 50 it establishes the tenure system for land ownership, where it provides that property pertaining to or covered by an international convention or treaty on the rights of indigenous peoples and Afro-descendants must not be affected.

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- 2.3.4 Section 67 of the General Mining Act provides that, prior to any decision to grant a concession for exploitation, the mining authority shall make a request to the relevant municipal corporation and the population and must hold a public consultation within no more than six days. The decision taken in the consultation is binding for the granting of an exploitation concession.

V. Protection in relation to conditions of employment and contracts, and adequate labour inspection of dive-fishing

2.4. Articles 20, 24 and 25. Protecting the rights of the Misquito people: Vulnerable groups of disabled Misquito divers who have suffered decompression accidents are dealt with by the Inter-institutional Commission to Address and Prevent the Problems relating to Dive-fishing. Work is under way on the following activities, among others:

- 2.4.1 Preparing the document “Care protocol for decompression patients”, which is at the stage of being signed.
- 2.4.2 On labour matters, dialogue has been held on reforms to the health and occupational regulations on underwater fishing, which is at the stage of the implementation of the Ministerial Order issued by the Department of Labour.
- 2.4.3 A programme of grants for the children of divers with disabilities, covering 33 beneficiaries, is currently being implemented.
- 2.4.4 A project to build 98 homes for divers with disabilities is under way: the overall investment is currently being approved through Convivienda.
- 2.4.5 Establishing a trust and identifying productive projects that are generating moderate levels of employment: the Kaukira and Kauma fishers’ union multiple services enterprise, which directly benefits 53 families.

Report in response to the observations of the Single Confederation of Workers of Honduras (CUTH): “The case of the Tolupan people”

1. Special report by the inter-institutional technical group on Convention No. 169 and free, prior and informed consultation

- 1.1. There is a Government version of the initial draft Bill on prior, free and informed consultation, which has been revised and approved by the Ministry of Labour. It will be submitted for consultation to all indigenous and Afro-Honduran peoples and their organizations, with support from the ILO as an observer, and technical and financial assistance from the UNDP ProDerecho project. The first part of the timetable is:

Date	Place	Indigenous or Afro-Honduran people
27 and 28 May	Catacamas	Pech
30 and 31 May	Juticalpa	Nahua
6 and 7 June	Santa Rosa de Copan	Maya, Chortí

2. Urgent review of concessions granted without free, prior and informed consultation

- 2.1. In March 1994, the First Regulations of the National System of Environmental Impact Assessment (SINEIA) were issued. These have been supplemented several times. SINEIA 2009 (Decision No.189-2009) officially establishes the consultation mechanism for environmental licensing processes, in which there was no opposition to the establishment of the requirement from the beginning of publication, both in writing and over the radio, with a view to making the development of a project public knowledge.
- 2.2. In summary, consultations have been held in accordance with environmental law and the specifics of each project that may be granted a concession as part of these processes.

3. Urgent revision of concessions granted following free informed prior consultation which are causing damage

- 3.1. In this regard, every registered project file concludes with a decision of acceptance or rejection. If it is viable, the environmental control measures are determined, which have to be implemented by the project proposers or concession holders. In the event of non-compliance, financial administrative penalties exist, ranging from loss of the concession to temporary or permanent closure, depending on the degree of non-compliance.

4. Compensation for environmental damage, and investigation and penalization of those responsible

- 4.1. MIAMBIENTE has various mechanisms, such as the environmental complaint procedure, the “secure complaints mailbox”, the Line 130 “Your voice counts”, the Inter-institutional Environmental Task Force (FTIA), the Transparency Office, the Complaints System of the Prosecutor’s Office, and the online file consultation procedure (SICU), through which any individuals who feel that they have been affected can have access to the institution to assert their constitutional right of petition and report the relevant facts.

5. Information on the 18 Tolupan members of San Francisco de Locomapa and their families

- 5.1. On 19 December 2013, by Decision No. 12/2013, the Inter-American Court of Human Rights (IACHR) ordered precautionary measures MC 416-13 for 18 members of the “Dignity and Justice” Movement of the Locomapa Indigenous Community and their families, a total of 38 persons, who were victims of threats to their lives in relation to the murder of Ricardo Soto Medina, Armando Funes Medina and María Enriqueta Medina, members of the Tolupan indigenous community on 25 August 2013 in San Francisco de Locomapa.
- 5.2. On 30 August 2013, the court of the city of Yoro, in case 90-2013-7D, issued a warrant for the arrest of Selin Eliazar Fúnez Bonilla and Carlos Roberto Varela Luque for the murder of these indigenous persons.

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- 5.3. On 22 February 2014, the precautionary measures ordered by the IACHR were implemented with a view to ensuring the return to their communities of the persons who had left their homes on account of the alleged threats. In this connection, a committee was formed composed of a number of state bodies, including the Office of the Attorney General of the Republic, the Office of the Public Prosecutor and of the Special Prosecutor for Ethnic Issues, the Secretariat of Human Rights, Justice, Internal Affairs and Decentralization, and the Secretariat of Security through the Department of Human Rights.

General report on the death of environmental leader Berta Cáceres

1. Background

- 1.1. Prior to this deplorable act, in February 2014, a request was submitted to open a Permanent Office of the United Nations High Commissioner of Human Rights in Honduras, with a view to contributing to improving the human rights situation in the country. The agreement regarding the opening was formalized on 4 May 2015, as a result of which the appointment of the country representative is now pending.
- 1.2. Berta Cáceres Flores was a leader of the Lenca indigenous community, one of the largest ethnic groups in the country. In 1993, she co-founded the Civic Council of Peoples' and Indigenous Organizations of Honduras (COPINH) to combat the privatization of rivers and the hydro-electric dam projects with foreign investment. In 2015, she was the winner of the prestigious Goldman Environmental Prize. On 3 March, she was murdered in her home, having previously received various threats.

2. Murder of the environmental leader

- 2.1. This appalling murder was committed at the leader's home in the El Líbano residential area, which has its own security system. However, according to the Secretariat of Security, this was a different address from that agreed as the location for Cáceres to receive protection, which was originally in the El Calvario district. The investigation found that in the early hours of the morning a vehicle had parked opposite the residence where the crime was committed and sped away several minutes later.

3. Investigation

- 3.1. The President of the Republic, Juan Orlando Hernández, has stated emphatically that the murder of Berta Cáceres, a leader who had distinguished herself at the national and international levels and had fought courageously for Honduras, constituted a direct crime against Honduras and a major blow to the Honduran people.
- 3.2. All of the Honduran security forces took action as soon as the murder became known. The national police, the teams of the Director of Intelligence and Investigations, the Public Prosecutor's Office, the Technical Agency for Criminal Investigation and the Director of Police Investigations are all engaged in identifying the perpetrators and bringing them to justice.

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- 3.3. The investigation is under way and will be reinforced as much as necessary. The President of the Republic has instructed the Secretariat for Security to put the Violent Crimes Unit onto the case and to work in coordination with it, possibly with the support of other countries that wish to help it identify the perpetrators and bring them to justice.
 - 3.4. The Special Investigator for Ethnic Affairs is leading the process of taking statements and conducting its own investigation. A team of experts from the United States has joined the investigation.
 - 3.5. On 6 March, on behalf of the State of Honduras, the President of the Republic requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the entire investigation into Berta Cáceres death. An affirmative reply was received from the OHCHR on 11 March, with an undertaking to provide technical advice in accordance with its methodology and mandate.

4. Results

- 4.1. On 2 May, the Public Prosecutor's Office apprehended five suspects in this abominable crime, including its intellectual and material instigators, who by court ruling have been placed in preventive custody in the National Penitentiary.
- 4.2. Judging from the scientific evidence compiled so far, it is likely that the remaining suspects and instigators will be definitively identified and detained and that the circumstances surrounding this horrendous crime will be clarified.

5. Conclusions

- 5.1. In addition to opening a Permanent Office of the OHCHR in Honduras, the Government has demonstrated its commitment to human rights through its promotion of the National Human Rights Policy and Plan of Action, which in recent years it has pursued with dedication as a matter of priority. In addition, it has opened its doors to systematic monitoring of human rights in the country by inter-American and universal bodies.
- 5.2. The Universal Periodic Review (UPR) second cycle in 2015 and the adoption of its recommendations is further evidence of the commitment of Honduras in this area.
- 5.3. The ILO and both national and international public opinion are being kept informed of developments in the investigation, which the competent courts have declared to be of a confidential nature.