

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COMMITTEE 88<sup>TH</sup> SESSION HONDURAS, INITIAL REPORT

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### Information Submitted to the Committee

Honduras submitted its initial report on the implementation of the *International Covenant on Civil and Political Rights* (ICCPR or the Covenant) as well as written replies to the Human Rights Committee's (the Committee) list of issues.<sup>1</sup> Honduras ratified the ICCPR in August 1997 but unable to submit its initial report earlier due to political upheavals in the country. The Committee highlighted in the Concluding Observations that the initial report was submitted six years late.

Parallel reports were submitted to the Committee by several NGOs.<sup>2</sup> They highlighted problems with the lack of dissemination and implementation of the ICCPR, such as the denial of *habeas corpus*<sup>3</sup> rights to youth

<sup>1</sup> The State report, list of issues, replies to the list of issues (available only in Spanish), NGO parallel reports and the Concluding Observations (available only in Spanish) of the Committee are available at <http://www.ohchr.org/english/bodies/hrc/hrcs88.htm>.

<sup>2</sup> Centro de Investigacion y de Promocion de los Derechos Humanos (CIPRODEH), Conscience and Peace Tax International Submission, Human Rights First, Comité Latinoamericano y de el Caribe para la Defensa de los Derechos Humanos de las Mujeres, and El Centro para la Prevencion, la Rehabilitacion y el Tratamiento de las Victimas de la Tortura (CPTRT).

<sup>3</sup> *Habeas corpus* is the name of a writ or legal instrument through which petitioners seek a legal order from a court asking for a detainee to be presented before a court generally to determine the legality of their detention or imprisonment.

gangs (*maras*<sup>4</sup>), gender discrimination, extrajudicial executions and arbitrary detention, and abusive use of preventive detention. They highlighted the need to prevent threatening or intimidating behaviour towards human rights defenders by State agents. Despite the fact that the independence of the judiciary is recognised, they pointed out the violations of the right to a fair trial such as denial of access to lawyers and relatives or the absence of judicial authorisation before searching an individual's house. Some stressed the need for legislative guarantees of the right of conscientious objection to military service. Others urged the de-penalisation of abortion, and the establishment of a new family code to ensure equality between women.

Honduras is now a party to a number of international instruments, including the *Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities*, the *Inter-American Convention on the Forced Disappearance of Persons* and the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (which was ratified on 23 May 2006<sup>5</sup>).

## Themes and Issues<sup>6</sup>

### Status of the Covenant in Domestic Law

The Committee enquired about the position the ICCPR occupies in the country's domestic law and whether it may be invoked directly before a court. The delegation answered that the Covenant is part of the domestic law and can be invoked in court, but it is ranked under the Constitution. It stressed the point that Honduras is still in the process of building a Constitutional rule of law and recognised the need to better disseminate the Covenant.

### General Measures of Implementation

The Committee inquired about the possible overlapping of functions between the two Honduran National Human Rights Institutions.<sup>7</sup> Honduras replied that this issue arose when one of the institutions passed a decree illegally expanding its powers. The Supreme Court has since declared this decree null and void.

The Committee asked the delegation to clarify its interpretation of Articles 1 and 27 of the Covenant, which provide for the right to self-determination and the rights of minority groups, respectively. The delegation was non-committal in its response, stating that self-determination was an ideal for which to strive, whereby many nations within the nation-state will be recognised.

The Committee also requested information about the invocation of the state of emergency during Hurricane Mitch (1998). The Committee questioned the link between the hurricane and the state of emergency and asked the State to provide the criteria used for declaring a state of emergency.

### Prosecution of Enforced Disappearances

The Committee inquired extensively into ending impunity for those responsible for enforced disappearances of persons during the military dictatorship in Honduras. The delegation responded that Honduras has so far prosecuted seven of 183 recorded cases, with no subsequent convictions. It argued that difficulty in

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<sup>4</sup> *Mara* means gang in slang Central American Spanish. There are currently about 25,000 gang members in Honduras, who suffer from discrimination, extrajudicial executions and arbitrary detentions.

<sup>5</sup> [http://www.ohchr.org/english/countries/ratification/9\\_b.htm](http://www.ohchr.org/english/countries/ratification/9_b.htm).

<sup>6</sup> For more detail description of the dialogue between the Committee and the State, please see the press release of the proceedings, available at

[http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/DF87FEA01C737E4FC125720A0053DC74?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/DF87FEA01C737E4FC125720A0053DC74?OpenDocument).

<sup>7</sup> The National Office of the Human Rights Commissioner and the Inter-Agency Commission on Human Rights.

identifying the remains of persons made it extremely complicated to establish a legal case: since “enforced disappearance” is not yet a distinct criminal offence it is necessary to try individuals for homicide, abduction, illegal detention, etc. However this will hopefully be remedied following the recent ratification of the *Inter-American Convention on Enforced Disappearances*. In its Concluding Observations, the Committee expressed concern about judicial loopholes for enforced disappearances in the penal code, which contributed to the impunity with respect to perpetrators of the 183 cases recorded by the National Commission on Human Rights. Therefore, it recommended to the State Party to criminalise enforced disappearances in its penal code, investigate the 183 cases and grant compensation to the families of the victims.

### **Police Abuses, Detention and Prison Conditions**

The Committee noted with grave concern the reports it had received from NGOs detailing the use of preventative detention and arrests on grounds of suspicion, particularly targeting members of inner-city youth gangs (*maras*). The Committee also inquired about the prevalence of torture. The delegation remarked that the use of extensive preventative detention was a feature of the previous legal system: since the reform of the Code of Criminal Procedure (2002), 95% of detained persons have been released or have begun to undergo criminal proceedings. Although the delegation admitted that preventative detention and torture by police was still a very common practice, it was no longer the accepted norm at the governmental level.<sup>8</sup> The Office of the Public Prosecutor has the responsibility of reviewing each case and determining if there are legal grounds for detention. In its Concluding Observations, the Committee urged the State Party to comply with Article 9 of the Covenant, which stipulates judicial guarantees for a person under arrest before being detained. It advised Honduras to clarify Article 332 of its penal code, which sets out definition of the crime of criminal association, because the article is also used to arrest people on grounds of suspicion as well as human rights/gay activists. It also recommended to Honduras to take measures to reduce time and number of persons in detention centre.

The Committee raised the following issues in relation to prison conditions: administration of prisons by the police, prison overcrowding,<sup>9</sup> the treatment of homosexuals, mentally-handicapped persons, and HIV/AIDS positive inmates and the recent deaths of persons held in El Porvenir (April 2003) and San Pedro Sula (May 2004) prisons. Honduras recognised there are still many complaints against the police regarding prison conditions and treatment of prisoners and that this situation was not aided by the fact that the police run the prison complaints system. The delegation however enumerated measures being taken to train prison guards, move prisoners to less crowded facilities, improve conditions<sup>10</sup> and institute a system of random periodic visits to penitentiaries. In some cases this has resulted in *habeas corpus* remedies, whereby detainees have been brought before a judge. Additionally prison wardens have been given until the end of 2006 to implement the UN Standard Minimum Rules for the Treatment of Prisoners. Honduras responded that prisoners needing special care are kept in separate sections of the prison but that it is hard to train custodians to ignore their cultural biases against so-called “deviants”.<sup>11</sup> The delegation also admitted that they currently do not use separate detention centres for pre-trial detention and convicted felons. With respect to deaths of prisoners, the delegation stated that the El Porvenir case has proved to have been an accident and that an investigation into the San Pedro Sula case is still ongoing.<sup>12</sup> In its Concluding Observations, the Committee expressed concern that the perpetrators of deaths of prisoners in San Pedro Sula and in El Porvenir detention centres have not yet been punished. More broadly, it raised the issue of excess use of force by prison personnel and security agents. Therefore, it emphasised the need for human rights education as well as the indoctrination of the UN

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<sup>8</sup> This does not apply to the crimes of drug smuggling and money laundering.

<sup>9</sup> All 23 Honduran detention centres are beyond their maximum capacities, in particular the National Penitentiary, and no new prison has been built for 20 years.

<sup>10</sup> Potable water and electrical supply remained salient problems in many detention facilities.

<sup>11</sup> The Honduran Ambassador apologised to the Committee for using terms perceived to be “pejorative” but insisted that they contained no element of discrimination.

<sup>12</sup> Four senior administrative officers are in remand, and one is in jail.

Standard Minimum Rules for the Treatment of Prisoners. The families of victims of the excess use of force by security forces should receive adequate and fair compensation.

### **Freedom of Expression and Association**

The Committee questioned the delegation on reported attacks against journalists and human rights defenders. According to information received from NGOs, there have been several cases of attacks on and assassinations of human rights defenders working on the environment and indigenous land rights. In particular, the Committee focused on the death of Germán Rivas, a journalist critical of the poor environmental practices of certain mining companies. Honduras stated that the investigation has revealed no link between these companies and Mr Rivas' death. In another notable case, the death of environmental activist Ms Janet Kawas is still being investigated and according to the Inter-American Commission on Human Rights there has been undue delay in the investigations. The delegation announced that a Law on Transparency is in the process of being introduced, which will serve to reduce corruption. In its Concluding Observations, the Committee recommended to Honduras to take all appropriate measures to sanction responsible of journalists and human rights activists deaths and grant to family of victims with compensation.

The delegation assured the Committee that freedom of association was sufficiently protected in the country, as evidenced by the existence of 496 trade unions. It also confirmed that non-unionised workers enjoyed the same protection as others.

### **Gender Discrimination and Violence Against Women**

The Committee repeatedly raised the issue of the 30% quota for women in the National Congress. The delegation announced that the 2005 *Law of Political Organisations*<sup>13</sup> obliged political parties to internally implement the 30% quota in drawing up its lists for elections.<sup>14</sup> Although this has resulted in an increased number of female deputies, the Committee noted that many of these are alternate members. The delegation asserted that it would be undemocratic to reserve a substantive quota of parliamentary seats for women. Honduras also revealed that a member of National Congress has suggested raising the quota to 50% in the near future. The delegation did not deal with the issue of existing sanctions for political parties who did not meet the 30% quota.

The Committee noted with concern that domestic violence against women was still widespread, and that perpetrators, if they are caught in the act, only receive community service and 24 hours preventative detention. The delegation announced new reforms to the *Domestic Violence Act*, which sets up special courts to deal with this issue. Although these courts are currently only available in the capital, the aim is to have them operating throughout the country by January 2007. In addition, the reforms created a battered women's helpline, which allows police to intervene even with out judicial warrants. There are also efforts underway to train police to deal with these complaints. In its Concluding Observations, the Committee recommended to Honduras to take measures to combat domestic violence and ensure that perpetrators are sanctioned. Furthermore, it urged the State Party to carry out studies on the use of the battered women's helpline.

The Committee also inquired about the equality of women in the case of divorce or inheritance. The delegation replied that the default procedure is to divide the common property according to each spouse's pre-marital assets; the wife is also guaranteed one quarter of the inheritance in case of death of the spouse. Honduras also related that it had eliminated the distinction between 'legitimate' and 'illegitimate' children in terms of right to succession, and that male and female children were granted an equal share of the inheritance. In response to the Committee's inquiry, the delegation answered that women were allowed to transmit their nationality to their children.

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<sup>13</sup> In compliance with the *Convention on the Elimination of All Forms of Discrimination Against Women*.

<sup>14</sup> Honduras employs a proportional representation (PR) electoral system.

The Committee expressed great concern about extrajudicial executions, especially of violent deaths of approximately 400 women over the last three years.<sup>15</sup> Honduras stated that three inspectors have been appointed to investigate recorded cases and to report violations to the two National Human Rights Institutions and the Supreme Court. Additionally a woman heads the police forces and awareness has been raised among them to prevent the violations to the right to life by providing sensitivity training.

### **Children's Issues**

The Committee inquired about steps taken to ensure registration of children nationwide, as well as about the connection between non-registered children and street children. The delegation assured the Committee that rural areas and indigenous people have not been forgotten in the creation of bodies to register children. The delegation recognised the lack of statistics available for a comprehensive approach concerning non-registered street children. They emphasised the importance of coordination with NGOs working with street children with a view to develop policy to address that matter. In its Concluding Observations, the Committee recommended to Honduras to take measures to identify the causes of increase of street children, and then to develop programmes to struggle against this phenomenon as well as provide them with shelter and appropriate care. It also urged the State Party to ensure registration of all children, including grown-up.

The delegation announced steps to combat child trafficking, through the creation of migrant shelters, reform of the criminal code, reducing child labour, training of the police and judiciary, support to victims,<sup>16</sup> and increased funding to the children's police unit.<sup>17</sup> However, in its Concluding Observations, the Committee recommended Honduras to investigate all cases of extrajudicial killings of children and ensure that the families of the victims are granted appropriate and fair compensation. It also urged Honduras to create an independent body such as an ombudsman for children, as well as to raise awareness of this specific issue. It further urged the State Party to identify and sanction perpetrators of sexual exploitation of children.

With respect to minors deprived of their liberty, steps have been taken to allow their relatives to visit them provided the visit is "educational." In addition, if the minors themselves have children, they are also given the right to see them.

Honduras also announced that it had eliminated registration fees for public schools, resulting in a 20% increase in enrolment.

### **Independence of the Judiciary**

In response to questioning, Honduras revealed that a recent report had been quite critical of the lack of independence of the judiciary. The delegation highlighted a new mechanism for selecting Supreme Court Justices, employing a panel composed of a wide range of stakeholders. Although the magistrates and criminal court justices are selected publicly, the same is not true for justices of the peace, civil and family court judges. Honduras also acknowledged that the absence of a judicial oversight board constituted a significant legislative gap. In its Concluding Observations, the Committee recommended to Honduras to establish an independent body to ensure the independence of the justice by overseeing the appointment of judges.

### **Indigenous and Afro-descendant Rights**

The Committee asked for more information on problems affecting the indigenous and Afro-descendant communities. The answers provided by the delegations covered a wide range of issues. There are no specific

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<sup>15</sup> Comité Latinoamericano y de el Caribe para la Defensa de los Derechos Humanos de las Mujeres.

<sup>16</sup> However, there are no specific laws related to the protection of witnesses.

<sup>17</sup> Honduras is conducting these efforts in conjunction with the International Labour Organization (ILO), the International Organization for Migration (IOM) and the United Nations Children's Fund (UNICEF).

articles regarding the rights to ancestral land in the law. Nevertheless, the delegation affirmed that access to land was a basic right for people of indigenous origin and for the Garifuna people.<sup>18</sup> To further that right, the National Agrarian Institute has developed a mechanism to handle complaints by individuals of indigenous or Afro-descendant origin. The delegation underscored that the right to ancestral deeds<sup>19</sup> had largely been recognised. Only the deed of the Suyapa Indians has not been recognised. Honduras highlighted that there are one Afro-descendant and four indigenous deputies in the National Congress. It also discussed a national programme to promote the cultural rights of minorities. The Committee also inquired about the constitutionality of possible affirmative action measures targeted at the Garifuna. In its Concluding Observations, the Committee expressed concern regarding discrimination affecting indigenous people with respect to access of health care, employment opportunities and education. It also raised the issue of the lack of recognition of indigenous rights in the agrarian law reform.

With regard to bilingual education, the delegation observed that Honduras had set up a national education programme for indigenous peoples, which includes seven basic indigenous languages and Spanish. The Government has been training teachers to provide for the various communities in minority areas and for Garifuna communities. Some 16 community centres for primary and pre-school programmes have been opened. Workshops and seminars have been launched as well, to provide follow up to the programme.

## Conclusions and Next Steps

The Committee praised the State party's report on multiple occasions for its honesty, candidness and thoroughness. However it also criticised the delegation for its inconsistent methodology and called for improvement in the next periodic report. It stressed that it preferred responses in more legalistic terms. For example, there was a contradiction in its comments about the implementation of a state of emergency in 1998. The Committee was unclear as to who had actually drafted the report. Honduras acknowledged some discrepancies and insinuated they were in part due to the influence of previous administrations. However it stated that the current Government must be held accountable for the actions of previous administrations and would attempt to improve the quality of the report in future submissions. Throughout the proceedings the Honduran delegation emphasised the importance the country placed on the indivisibility of civil and political and economic, social and cultural rights.

In her concluding remarks, Ms Chanet, the Chairperson of the Committee, highlighted the lack of a legal structure to prosecute enforced disappearances. She also stated that the legal hierarchy seemed to be difficult to grasp. She stressed that the Covenant was not simply a framework, but specified legal obligations that the State party must fulfil. The Committee's Concluding observations are currently pending and are expected to be made publicly available towards the end of the current Committee session, which ends on 3 November 2006. This report will be updated when the Concluding observations have been released.

In its Concluding Observations, the Committee reminded the State Party to provide it with information regarding the implementation of the Committee's recommendations within a year, as set out in Article 71 of the Covenant. Honduras' next report is due by 31 October 2010.

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<sup>18</sup> For further explanations about the Garifuna people, see: <http://www.mnsu.edu/emuseum/cultural/mesoamerica/garifuna.html>

<sup>19</sup> Deeds are legal instruments generally used to transfer title of property or other rights.

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