



OBSERVATORIO DE DERECHOS HUMANOS DE LOS PUEBLOS INDIGENAS Y NEGROS DE HONDURAS, ODHPINH

United Nations Universal Periodic Review (UPR)
**Observations on the State of Indigenous Human Rights in Honduras Light
of the United Nations Declaration on the Rights of Indigenous Peoples**

Twentieth Session of the Working Group on the UPR Human Rights Council
27 October- 7 November 2014
September 15, 2014

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org. In preparing this report, Cultural Survival consulted with a broad range of Indigenous and human rights organizations, advocates, and other sources of verifiable information on Honduras.

Grassroots International has worked for 25 years partnership with social movements to create a just and sustainable world by advancing the human rights to land, water, and food through global grant-making, building solidarity across organizations and movements, and advocacy in the US. Grassroots International is located in Boston, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States.

**OBSERVATORIO DE DERECHOS HUMANOS DE LOS PUEBLOS INDIGENAS Y
NEGROS DE HONDURAS, ODHPINH**

*Pueblo Lenca: Consejo Civico de Organizaciones Populares e Indigenas de Honduras,
COPINH*

Pueblo Garifuna: Organizacion Fraternal Negra Hondureña, OFRANEH

Organización la Esperanza de las Mujeres Garifunas, OLAMUGAH

Organización Nacional de los Jóvenes Garifunas de Honduras, NANIGU

Pueblo Miskito: Organización de Mujeres Miskitas, MIMAT,

Pueblo Pech: Federación de Tribus Pech de Honduras, FETRIPH

Pueblo Maya-Chorti: Consejo Indígena Maya Chorti de Honduras, CONIMCH

*Pueblo Tolupan: Asociación de Tribus Indígenas Topulanas de la Montaña de la Flor
Tribu San Francisco de Locomapa*

I. Executive Summary

Indigenous Peoples and Afro-Indigenous Peoples in Honduras are being challenged by the state of Honduras as an “obstacle to development” and their ancestral right to autonomy and sovereignty over their lands and territories is being threatened by government-backed development projects. Despite opposition from civil society, the government is determined to proceed with agro-industrial, mining, tourism, and hydroelectric mega-projects which will have deeply negative environmental and social consequences for Indigenous groups. To date, the major threats that Garifuna communities are facing include the planned building of “charter cities”, the expansion of agro-fuels plantations, and the exploration and exploitation of oil. Non-compliance to these projects is met with state-sponsored violence.

II. Introduction and Background

According to the national census of 2001 and the census conducted by the peoples themselves in 2007, it is estimated that the nine Indigenous and Afro-Indigenous peoples living in Honduras number 1.27 million inhabitants, making up 20 percent of the general population, divided among the following groups: Lenca, 720,000; Garífuna, 380,000; Miskito, 87,000; Tolupan, 47,500; Nahua, 20,000; Chortí, 10,500; Pech, 3,800 and Tawahka, 1,500. The territory claimed by Indigenous Peoples accounts for approximately 2 million hectares out of a total national land mass of 11.2 million. Only 10% of these claimed lands have a guaranteed property title. (IWGIA, 2014). Although Honduras ratified International Labor Organization (ILO) Convention 169 in 1994 and signed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), aside from an unregulated requirement to consult in a 2013 domestic mining law, there is no domestic law to protect the rights of Indigenous Peoples.

III. Review of Key Recommendations Still Needing Implementation

Cultural Survival submitted a UPR to Honduras’s first review, as well as mid-term assessment in 2012. The following areas continue to be neglected by the Honduran government.

A. Changes in Legislation

Recommendation n°1 from Midterm Assessment. *Review its national law in order to ensure full and unhampered enjoyment of human rights by all members of society, including those belonging to the most vulnerable groups, such as women, lesbian, gay, bisexual and transgender persons and indigenous peoples (Recommended by Czech Republic).* This recommendation has only been partially implemented.

Indigenous and Afro-Indigenous Peoples throughout Honduras continue to be discriminated against, especially regarding rights to their traditional lands and in lack of participation in decision-making on issues that affect them. The government has begun construction of dams, in particular the Rio Blanco, without the consent of the local Indigenous Peoples. The Garifuna have been threatened by agribusiness using their ancestral lands without consent or just compensation. These situations drastically impact the livelihoods of the people affected.

Unfortunately, ethnic discrimination towards indigenous groups is also supplemented by racial discrimination towards certain indigenous groups that identify themselves as Afro-Indigenous, particularly the Garifuna. The domestic legislation that exists does not adequately protect these Indigenous and Afro-Indigenous groups from ethnic and racial discrimination. The inability to implement certain international conventions such as ILO Convention 169 or applying the Convention for the Elimination of Racial Discrimination (CERD) to combat both ethnic and racial discrimination for all Honduran Indigenous groups perpetuates the injustice faced by nearly one fifth of the general population.

B. Rights to Land and Resources

Recommendation n°133 from Honduras' Midterm Assessment: Enact legislation to protect the land rights of indigenous persons and to ensure that their interests are safeguarded in the context of the exploitation of natural resources (Recommended by Austria). This recommendation has only been implemented implemented.

Since 2011, conflicts have become more prevalent and have been particularly detrimental to Indigenous and Afro-Indigenous Peoples. Their ancestral right to autonomy and sovereignty over lands and territories and to use of the soil, subsoil and rivers is being clearly threatened and, in many cases, processes of territorial dispossession are already in progress. This has been the consequence of stronger policies aimed at liberalizing the land and natural resources in general. The “transitional government” of Roberto Micheletti, and Porfirio Lobo Sosa’s government, through the National Congress, approved dozens of mining, hydro-electric, oil (in the Honduran Moskitia) and river concessions. Indigenous Peoples’ organizations, including the Lenca peoples through COPINH (the Civic Council of Popular and Indigenous Organizations of Honduras), Garifuna peoples through OFRANEH (Fraternal Organization of Black Peoples of Honduras) and the Miskitu peoples through MASTA (Miskitu Asia Takanka) have organized open struggles against river concessions, the construction of hydro-electric power stations, mining projects, mono-cropped agro industrial plantations, and oil concessions that have been granted to companies without the free, prior, informed consent of the Indigenous communities that they affect. The special prosecutor for Indigenous Peoples reported receiving 16 reports of violations of the right to consultation and usurpation of land.

A law passed in January 2013 suspended a moratorium on new mining concessions that had been in effect since 2005. The new law allows for a widely-protested open-pit mines and the use of cyanide. The end of the moratorium has meant a flurry of new mining concessions granted across Honduras, but it also requires that local communities be consulted and give their approval before mining operations begin. While this reflects at least a token acknowledgment that Honduras is a signatory to the United Nations Declaration on the Rights of Indigenous People and International Labor Organization Convention 169 on Indigenous rights, reports from communities in different areas of Honduras indicate that the legal requirement of local consultation is routinely violated and that threats and violence are used to force communities to accept mining and dam operations.

On April 17, 2012, thousands of landless farmers occupied 12,140 hectares of land in a culmination of efforts to force a review of land title claims promised to them under ousted President Manuel Zelaya and reclaim state lands held for agrarian reform but expropriated by

large sugar plantations. Four confrontations between private guards and military officials against organized farmers in the Bajo Aguán region of Honduras resulted in the deaths of at least 65 farmers between 2009 and 2012.

On July 27, 2011, the Law on Special Development Regions (RED) was adopted. The law allowed the creation of privately run municipalities with their own police, tax structures, and judicial systems. The first RED “model” or “charter” city would stretch across 24 Garifuna communities, evicting the Garifuna from their traditional lands, despite the Honduran government’s insistence that these lands are “unoccupied.” The law was ruled unconstitutional by the Constitutional Court of the Supreme Court on October 18, 2012. On December 12, 2012, four of the five judges of the Constitutional Court who opposed the RED Act were dismissed. In January 2013 the Act was reintroduced under the name of Zones for Employment and Economic Development (Law ZEDE) with a few changes in wording.

In January 2011, the Honduran congress approved a contract with the Chinese company SinoHydo to build the first of three dams on the Patuca River, a project that threatens the livelihood of four Indigenous populations- the Tawahka, Pech, Miskitu, and Garifuna. The Indigenous Peoples of the Moskitia region declared that the concession of the project, Patuca III, without consultation was a violation of their right to free, prior, and informed consent, which should be guaranteed by Honduras’s ratification of ILO 169 and signing of the UNDRIP. The concession was thus granted illegally without the consent of the Indigenous people who live in the area and who depend on the river to grow beans, corn, yucca, plantains, and other crops to survive. In October 26, 2011, at a construction site for the Patuca III Dam, police and military forcibly evicted residents of Olancho, the department where the project was taking place, to prepare for the dam construction. The residents whose lands will be flooded by the dam have not been reimbursed for their land nor provided reparations.

International financial organizations such as the World Bank have funded an initiative known as the Program for the Administration of Lands in Honduras (PATH). Indigenous organizations argue that the program is encouraging individual ownership of land at the expense of the communal land ownership traditionally practiced by Indigenous Peoples.

Those who stand up in defense of their lands have been targets of trumped up criminal charges by a corrupt legal system. T. Massive militarization around the country and increased political pressure are serving to increase the criminalization of social movements (*campesino*, Indigenous and afro-Indigenous) and jeopardize the lives of those defending resources, territory and human rights. Berta Cáceres, General Coordinator the Civic Council of Grassroots and Indigenous Organizations of Honduras (COPINH), has been facing serious charges as a result of her organizing with Indigenous Lenca communities in resistance to dams that threaten their territories and way of life. On September 12, 2013 Cáceres, along with human rights defenders Tomás Gomez and Aureliano Molina were forced to appear in court charged with usurpation of land, coercion, and causing more than \$3 million in damages to DESA, a hydroelectric dam company. Although Berta and COPINH have been engaged in nonviolent resistance, elements of the army allegedly claimed to have found a gun in the car that she was driving in May 2013. Berta was charged with “Illegal Possession of Firearms in Prejudice of Homeland Security of the State Honduras.” The First Court of Letters of Santa Barbara, Honduras eventually dismissed this case on February 11, 2014. The ruling terminated the criminal proceeding against

Berta, as well as the precautionary restrictions which prevented her from leaving the country and required her to report to the court every week. Such charges are part of the overall trend of criminalization of social movement leaders in Honduras.

C. Threats to Physical Security and Violence

There has been an increase in the targeting of Indigenous human rights defenders and land rights activists in Honduras. The failure of authorities to properly pursue justice over past assassinations and the continuing threats and harassment directed at Indigenous land rights activists is a cause for concern and demands immediate action. “Defending human rights in Honduras has become a life-threatening activity with Indigenous leaders protecting their peoples’ rights being particularly vulnerable to attack,” said Nancy Tapias Torrado, Researcher on Human Rights Defenders in the Americas at Amnesty International.

State authorities have been accused of participating in a large number of human rights violations. The National Human Rights Commission (CONADEH) compiled a report finding that of 10,449 complaints it received of human rights violations in 2011, almost half (4,904) were against state authorities, and of that number 2,837 were against police. Investigations into violations are rare and the Honduran government has met the rising tide of violence with the appointment of a national police chief accused of operating death squads and participating in myriad human rights abuses.

An absence in separation of powers has allowed for increased impunity in these violent crimes. In December 2012, the Honduran congress removed four out of the five judges that comprise the Constitutional Court of the Honduran Supreme Court. Honduran legal experts call this a technical coup, a violation by the National Congress of the constitutional order. They explain that the Congress has no legal authority to summarily dismiss judges. The court and congress immediately went into recess, and upon return on January 3, 2013, the replacement Supreme Court Justices were sworn into office. Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers stated that “the National Congress of Honduras exerts considerable control over the judiciary, which is incompatible with the principle of separation of powers and independence of the judiciary, fundamental elements of any democracy and any rule of law.” This makes the prosecution of crimes, especially when committed by actors of the state and their allies, extremely difficult to process and leads to impunity.

The list of threats to physical security and murder of Indigenous persons who speak out for human rights and the environment is lengthy and growing:

- May 18, 2010 - Olayo Hernandez Sorto, leader of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), was killed by unidentified persons. He was found in the village of Los Quebrachitos of the western department of Intibucá.
- April 24, 2012 - The Committee of Relatives of the Disappeared in Honduras (COFADEH), reported intensified threats, surveillance, harassment and even physical attacks toward COFADEH staff and members.

- May 1, 2012 - In the Indigenous Lenca community of San Bartolo, Intibucá police entered Maria de Los Santos Dominguez Benitez's home without permission, searching for her son. When police couldn't find him or her other son, an active COPINH member and anti-hydroelectric dam activist, Santos Alberto Rodriguez, protested. Police shot him in the head, killing him instantly. One month after the killing, Benedicto Galo Pena, the policeman responsible for the killing, has yet to be arrested and there is no report of an investigation.
- May 11, 2012 - Four Indigenous Miskito people, including two pregnant women, a 14-year old boy and a 21-year old man, were killed and four more were injured when a joint DEA-Honduran anti-narcotics unit launched an early morning operation against alleged drug smugglers in the Miskito Coast region. Four US state Department helicopters opened fire on a dugout canoe carrying fishermen, women and children on the Patuca River in Ahuas. Villagers report that security forces appearing to be the US military personnel landed after the massacre, detained villagers, made death threats and prevented medical assistance to victims of the massacre. Neither the State of Honduras nor the DEA assumed any responsibility.
- May 15, 2012 - Police and lumber workers attacked Tolupan Indigenous people of the Lavanderos community in the Montana de la Flor.
- May 19, 2012 - Julio Lino of the Garifuna Cristales community in Trujillo was shot in the chest by Julio Crespo - member of the Crespo family who claims vast tracts of land under dispute - who shot wildly into a crowd during an occupation to reclaim Garifuna ancestral community titles dating to 1901. Julio Crespo was freed by authorities without investigation.
- July 15, 2013 - Unarmed activist and Lenca community leader Tomás García was killed by Honduran armed forces in front of a crowd of witnesses while peacefully protesting the construction of the Agua Zarca hydroelectric dam being constructed in his Indigenous Lenca community's territory against their will, in violation of ILO Convention 169 and the Honduran government's promises to consult Indigenous communities about projects in their territory. Garcia's 17-year old son was seriously injured along with two others.
- August 25, 2013 - Three Indigenous Tolupan activists were murdered: Maria Enriqueta Matute, who was approximately 60 years old from the Community of San Francisco Campo; Armando Medina of the Las Brisas tribe; and Rigo Medina of the Cabeza de Vaca 1 tribe. They were murdered by miners extracting antimony from the lands of the Indigenous Tolupan tribes of Yoro.
- September 5, 2013 - At 3 am, Desiderio Mendez, a witness to the Tomás García murder, was abducted by police officers under threat of torture. Mendez was presented the following day after the circulation of an international petition.
- November 1, 2013 - Police cars arrived to La Tejera looking for Francisco Javier Sanchez, president of the Indigenous Council of the community. They forced their way into the home of his 73-year-old-mother, intimidated her at gunpoint, and beat Sanchez's teenage son.
- March 5, 2014 - There was an attempted murder of Indigenous rights leader and COPINH member María Santos Domínguez. She is the Coordinator of the Indigenous Advisory Organization of Río Blanco and of the Northern Sector of Intibucá, an emblematic leader of the fight for the defense of Río Gualcarque and of the Lenca

Territory in Honduras. She was attacked with machetes. Her husband and 12-year-old son were also seriously injured.

- June 5, 2014 - A member of COFADEH (Committee of Families of Disappeared-Detainees in Honduras) was abducted in a taxi and physically assaulted before being released. COFADEH (Committee of Families of Disappeared-Detainees in Honduras) and its members have been subjected to increased surveillance.
- July 17, 2014- Members of a Garífuna community in north-eastern Honduras, including human rights defender Miriam Miranda, were temporarily abducted by armed men after discovering an illegal runway used by drug traffickers on the Garífuna community's territory. The group had been visiting a remote area in the Garífuna territory in Vallecito, Colón Department, when they were captured by four heavily-armed men. During a previous visit to the area, community members discovered that an illegal runway used by drug traffickers that had been destroyed by the army in January 2014 was being rebuilt. Miriam told Amnesty International that the attackers searched them, took away their mobile phones and said that they were going to kill them. When the attackers learned that more members of the Garífuna community were still in the area and could be aware of the abduction and call for help, they phoned their chief. A vehicle with reinforcements arrived and following negotiations, all those who were abducted were freed four hours later. Miriam Miranda is the general coordinator of the Organización Fraternal Negra de Honduras (OFRANEH), an organization that works to promote and defend the rights of the Afro-Indigenous Garífuna community. In 2011 she was granted precautionary measures by the Inter-American Commission on Human Rights because of the threats and harassment she faces due to her human rights work. These measures have not been properly implemented. In the hours following the abduction, numerous national and international organizations launched calls for action. As a result an army contingent was sent to the area where the incident occurred to ensure the protection of those who were abducted. However, this was a provisional and partial measure that will not ensure the security of Miriam Miranda, other Garífuna members and their families when they return to their homes. Moreover, no measures are in place to secure the Garífuna territories where drug traffickers are reportedly operating, putting the entire community at risk.

D. Violations to Cultural Rights

Under their first review, Honduras accepted the recommendation *nº111: Take urgent action to develop a specific policy to protect the rights of minorities and indigenous peoples and address the key question of racism (Recommended by Nigeria)*. But this recommendation has not been implemented fully.

No legislation has been established to protect the rights of Indigenous Peoples from racism. Congress still has not passed an Amendment to Article 6 of the Constitution that will further establish Honduras as a multicultural and multilingual state. If passed, this would be a step towards protecting the land rights of Indigenous Peoples. In fact, the state of Honduras has argued in front of the Inter-American Court that the Garífuna people do not qualify as Indigenous Peoples, denying their heritage as both Native Carib and African, which is recognized as Intangible Cultural Heritage by UNESCO. The state has tried to define the Garífuna first as Black, prioritizing their race over their Indigenous Arawar Carib culture and

language as an excuse to deny them the right to free, prior, and informed consent over development projects and all other rights that they are due under the UNDRIP.

In response to a similar question arising at the CERD review of Honduras in 2014, during which Honduras had to discuss its combined initial to fifth periodic report on the implementation of the Convention for the Elimination of Racial Discrimination, the delegation of Honduras responded that any victim of racial discrimination could address the public prosecutor from the special office of ethnic groups and cultural heritage, who would in turn investigate the charges of racial discrimination. When further questioned on the effectiveness of this position on combating racial discrimination, the delegation answered that out of the 55 complaints that had been processed, four of the perpetrators had been brought before a court, whereas 17 had been dismissed and 31 are still currently processing. This questions the legitimacy of the investigations which only selected four cases to be processed in a legal context from fifty-five complaints.

The question also challenges the validity of those numbers after the National Human Rights Commission disclosed that there have been 32,000 general human rights complaints since 2010, of which only 10,000 have been investigated between. This is staggering not only because less than a third of human rights complaints have been investigated, but that only 55 of the 10,000 complaints were regarding racial discrimination. The report from the National Human Rights Commission also states during the report that over 2,500 of the violations happened against vulnerable groups of people such as women, children, indigenous groups, or the elderly. This detail makes it even less likely that only 55 complaints were considered racial discrimination and also throw into question how cases are chosen to be investigated and if many more racial discrimination complaints or complaints of ethnic discrimination against Indigenous groups are hiding in the uninvestigated 22,000 complaints. Regardless of the numbers of racially discriminated complaints, be it 55 racial discrimination complaints or larger, this is a marginalized effort for a country whose own delegation labeled the elimination of racial discrimination as a main goal for the country, that both the previous and current administration were committed to.

The state has not established effective safeguards to ensure that Indigenous communities can exercise their right to practice and revitalize their cultural traditions and customs and to preserve and practice their language as detailed in the UNDRIP, nor has it developed legislation to respect Indigenous Peoples' right to their own forms of media. To the contrary, both Lenca and Garifuna community radio stations, which exist to promote the Indigenous language and culture of small communities, have been harassed.

In September of 2012, Radio Warugumaen Trujillo, a station run by Garifuna youth, was robbed and its transmitter stolen. In January of 2010, community radio Faluma Bimetu, in the community of Triunfo de la Cruz, was burned by unknown persons. The radio station's mission is to defend Garifuna culture and territory, and it had played a key role in defending the community's territory against a number of tourism projects. Despite being reported to the police, the crimes were never formally investigated and the authorities did not produce any report.

On April 12, 2014 COPINH reported that two unknown individuals entered their offices saying, 'enough criticism by these radios', and proceeded to cut the electricity to the Indigenous

community radios La Voz Lenca and Radio Guarajambala. The radios have been an important part of the local communities' struggle, especially in campaigning against the building of a dam to produce privatized electricity.

IV. Recommendations

We respectfully request that the UPR Working Group and the Human Rights Council pressure the Government of Honduras to comply with the following actions:

1. Respect Indigenous Peoples' right to self-determination and recognize peoples of Honduras who self-identify as Indigenous Peoples as such under the national constitution, particularly the Garifuna people, not just as "afro-decedents" but as Indigenous Peoples, applying to them all the rights they are due.
2. Investigate and bring to justice the perpetrators of murders and assaults on Indigenous persons and their property.
3. Follow up with Special Rapporteur Sekaggya regarding her 2013 recommendations to implement the UN Declaration on Human Rights Defenders.
4. Having endorsed the UN Declaration on the Rights of Indigenous Peoples and ratified the ILO's Convention 169, which recognize Indigenous Peoples' right to free, prior, and informed consent, we urge the state of Honduras to fully implement this convention and to ensure its respect and fulfilment in every development project that affects Indigenous and Afro-Indigenous Peoples. This means an end to forced displacement and land-grabs of territories that have been ancestrally occupied or used by Indigenous and Afro-Indigenous communities.
5. Respect the right of protesters demanding land rights to voice dissent; and monitor protests in a peaceful, nonviolent way that does not include sending in armed forces.
6. Stop state-sponsored violence, in particular taking *effective measures* by ensuring comprehensive investigations and the prosecution of alleged offenders within the police and security forces.