



# General Assembly

Distr.: General  
3 March 2010

Original: English

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## Human Rights Council

### Thirteenth session

Agenda item 4

### Human rights situations that require the Council's attention

## Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009\*

### *Summary*

Following Human Rights Council resolution 12/14, entitled "Situation of human rights in Honduras since the coup d'état on 28 June 2009", which requested the United Nations High Commissioner for Human Rights to submit to its thirteenth session a "comprehensive report on the violations of human rights in Honduras since the coup d'état", the Office of the United Nations High Commissioner for Human Rights (OHCHR) sent a mission to the country from 18 October to 7 November 2009.

The present report analyses the provisions and measures taken during the state of emergency, raising concerns about the procedures used to impose them, their legality and proportionality, and their impact on the human rights situation. It also presents an analysis of the impact of the coup d'état on the human rights of particular groups and assesses some specific human rights situations with a particular focus on economic and social rights. In this context, the situation of women and human rights defenders was considered in greater detail. The positions and actions taken by key institutions in the context of the crisis, in particular the judiciary, the Office of the Attorney General (Fiscalía) and the Ombudsman, are evaluated in light of their mandate and accountability obligations. The role of the media during the crisis is also briefly analysed.

The mission concluded that the main human rights violations related to the excessive use of force by the security forces and massive numbers of arrests, disrespect for the principles of legality, necessity and proportionality through the imposition of restrictions on fundamental rights, and selective and discriminatory application of Honduran legislation. Some violations were based on pre-existing legal provisions that were considered by OHCHR to be incompatible with international human rights instruments or were not interpreted and implemented in accordance with international human rights law. In this regard the report provides information about the relevant legal

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\* Late submission.

framework in Honduras, including legislation relating to a state of emergency, assessing its compliance with international human rights standards.

Based on the analysis of the human rights situation during the period under review, the High Commissioner has formulated recommendations in order to contribute to improving the human rights situation, including concrete measures to address urgent issues, as well as structural problems.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–2	4
II. Methodology.....	3–7	4
III. Background.....	8–11	5
IV. State of emergency.....	12–19	5
V. Human rights situation.....	20–77	7
A. Main human rights violations.....	20–63	7
B. Human rights defenders.....	64–66	15
C. Accountability institutions and mechanisms.....	67–76	15
VI. Observations and conclusions.....	77–83	17
VII. Recommendations.....	84–86	18

## I. Introduction

1. On 1 October 2009, the Human Rights Council adopted resolution 12/14 entitled “Situation of human rights in Honduras since the coup d’état on 28 June 2009”, in which the Council, *inter alia*, requested “the United Nations High Commissioner for Human Rights to present a comprehensive report on the violations of human rights in Honduras since the coup d’état, and to submit a preliminary report to the General Assembly at the main part of its sixty-fourth session and to the Council at its thirteenth session”.<sup>1</sup>

2. Based on this request, the Office of the High Commissioner (OHCHR) deployed a three-person mission to Honduras, from 18 October to 7 November 2009, to compile the necessary information and prepare the report. To the extent possible, information concerning relevant incidents which occurred after this period was added to the present report.

## II. Methodology

3. The mission sought the views of all authorities and other stakeholders in a manner consistent with General Assembly resolution 63/301.<sup>2</sup> It met with representatives of the Fiscalía (Office of the Attorney General), including its units for human rights, children and forensic medicine; the Supreme Court of Justice; the Human Rights Commissioner (CONADEH), chiefs of police and the armed forces, and a representative from the National Criminal Investigations Bureau (DNIC). The mission also met with civil society, women’s organizations, lawyers, media, human rights defenders, and victims and witnesses of human rights violations, as well as with representatives from the international community, including the United Nations system.

4. The mission visited Tegucigalpa as well as two localities in the north, San Pedro Sula (department of Cortés) and El Progreso (department of Yoro), where most of the human rights violations have been reported since the coup.

5. The mission examined the human rights situation between the date of the coup d’état (28 June) and the date the mission left the country (7 November 2009). In this context, several types of human rights violations were documented, particularly against people who took part in various peaceful actions to protest against the coup. Numerous people, including women and children, denounced violations of their rights to liberty and security of person, integrity, freedom of expression and peaceful assembly. Some cases of violations of the right to life were also reported.

6. The mission received documents from various interlocutors, including official data, videos and reports, and allegations of human rights violations. A systematic approach was adopted to contrast information received from victims and non-governmental organizations (NGOs) with relevant available documents, including medical information and official data. In many cases, the authorities confirmed the information or did not present contradictory information. In most cases, NGOs were the only actor documenting cases, providing unique

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<sup>1</sup> At the sixty-fourth session of the General Assembly, the High Commissioner provided an oral statement on the mission of her Office to Honduras.

<sup>2</sup> General Assembly resolution 63/301, operative para. 3: “The General Assembly, decides to call firmly and unequivocally upon States to recognize no Government other than that of the Constitutional President, Mr. José Manuel Zelaya Rosales.”

data about alleged human rights violations. On many occasions, the authorities used NGO information to prepare their own reports and follow-up.

7. The mission also took into account reports and recommendations of international human rights bodies and procedures, both from the United Nations and the Organization of American States (OAS), and relevant documents from international and national NGOs. However, due to space constraints, this report only includes the most representative cases.

### **III. Background**

8. Manuel Zelaya was elected President of Honduras on 28 November 2005 and took office on 27 January 2006 in accordance with the Constitution. On 28 June 2009, Honduran troops captured him and forced him out of the country, reportedly over his plans to hold a public consultation on whether to hold a referendum, simultaneously with the November 2009 election, with a view to making constitutional changes, *inter alia*, to allow for his re-election for an additional term. The Speaker of Congress, Roberto Micheletti, was subsequently sworn in as interim leader. Violence against supporters of President Zelaya occurred from the first day of the coup, including through the repression of demonstrations in his support and the forceful occupation by military agents of some media outlets.

9. The *de facto* Government declared a state of emergency under which it imposed curfews and other measures, and decided to pursue the general elections scheduled for 29 November 2009. At the same time, opponents of the coup organized the National Resistance Front against the Coup (FNRC).

10. The coup was in general strongly condemned by the international community. Several major international counterparts decided to interrupt their cooperation programmes with the *de facto* authorities, as well as with other institutions seen as supporting the coup. Several States and international organizations also suspended trade and aid, as well as their support to the electoral process.

11. President Zelaya returned to Honduras on 21 September, and received diplomatic protection as a “guest” of the embassy of Brazil in Tegucigalpa. The embassy was then surrounded by the police and armed forces. Those inside the embassy complained of harassment from loud noises and the release of harmful chemicals, which they attributed to police and army officers surrounding the building. On 29 October, negotiations initiated in early July by the OAS with the mediation of the President of Costa Rica, Oscar Arias, resulted in the “San Jose – Tegucigalpa Agreement”, which provided for a unity government, requesting Congress and the Supreme Court to decide on whether to reinstate President Zelaya and requiring both sides (Zelaya and Micheletti) to recognize the result of the presidential election. The agreement broke down in early November and elections were consequently carried out without OAS and United Nations observers. The National Party candidate, Porfirio Lobo Sosa, won the poll and took office on 27 January 2010. The international community remained divided over the recognition of the election results. On 2 December, Congress decided against the restitution of President Zelaya.

### **IV. State of emergency**

12. Honduras has ratified the main inter-American and United Nations human rights treaties. According to articles 15 and 18 of its Constitution, international treaties are part of the legal framework of the country and take precedence over national legislation. However,

several provisions of the criminal legislation of Honduras, which remain in force, are considered incompatible with international standards. For instance, the need to reformulate the definition of torture was underlined by the Committee against Torture in June 2009.<sup>3</sup> In December 2006, the Working Group on Arbitrary Detention recommended that serious thought be given to providing the Office of the Attorney General with its own investigative police body<sup>4</sup> and the Human Rights Committee highlighted the need for an independent body to supervise the selection, promotion and discipline of members of the judiciary in order to guarantee their independence.<sup>5</sup>

13. Other norms were identified by the mission as incompatible with international standards, presenting in many cases an ambiguous or imprecise formulation, and inconsistent with the principle of legality and the necessity to guarantee legal certainty. This has allowed for arbitrary application, particularly of criminal legislation, of the Police and Social Coexistence Law, the Telecommunications Law and the Emergency Law, as well as of provisions criminalizing sedition and illegal demonstrations. In short, this inadequate legal framework has allowed for abuses during the period under review, as described below.

14. The de facto authorities declared a state of emergency through successive decrees. These decrees did not comply with international standards, essentially those of article 4 of the International Covenant on Civil and Political Rights and article 27 of the American Convention on Human Rights. In particular, they did not meet requirements regarding the gravity of the emergency, the principle of necessity, and the proportionality of the measures adopted.<sup>6</sup> The authorities also failed to notify the United Nations and OAS, as required by the relevant international instruments. The legality principle was also violated as the decrees were not published in a timely manner and the formulation of the restrictions was not sufficiently precise, particularly regarding the framework and applicable time of curfews.

15. Decree 011-2009 declared the state of emergency and established a curfew and the suspension of guarantees of personal liberty, freedom of association, assembly, and movement. While the decree was adopted on 30 June, it was only published on 27 July. Although it was supposed to be in force for only 72 hours, its provisions and the curfew continued to be applied well beyond this period.

16. Decree 016-2009 was announced on 21 September and published on 26 September. It restricted freedom of movement and prohibited demonstrations not authorized by the police and military authorities, and publications that could be considered “offensive to dignity” or to public servants, in violation of the law or governmental resolutions. The decree also authorized the National Commission of Telecommunications (CONATEL), through the police and the army, to suspend radio, television or cable broadcasts. While the authorities announced the abrogation of this decree on 6 October, this decision was only published on 17 October.

17. Decree 016-2009 made reference to the 1921 Emergency Law, which provides for the application of military jurisdiction for crimes such as sedition, the suspension of habeas corpus associated with military jurisdiction, and the possibility, under some circumstances, of suspending the judiciary. References to this law, and its mere existence, were of particular concern as it does not comply with relevant international human rights norms, in

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<sup>3</sup> CAT/C/HND/CO/1, para. 7.

<sup>4</sup> A/HRC/4/40/Add.4, para. 104.

<sup>5</sup> CCPR/C/HND/CO/1, para. 16.

<sup>6</sup> See paragraph 5 of the Committee on Human Rights general comment No. 29 (2001) on article 4: Derogations during a state of emergency.

particular with the above-mentioned United Nations and inter-American instruments which prohibit derogation of some fundamental rights, such as judicial protection and habeas corpus under states of emergency. This law and the decrees also contravene the Constitution of Honduras, which, in the event of an emergency decree, foresees a Congress session to take cognizance of the decree and ratify, modify or reject it within a period of 30 days, or immediately in the event that Congress is in session. However, the Supreme Court and Congress did not review the legality of the state of emergency decrees. Even though the Supreme Court is competent to decide on the legality of state of emergency decrees, it failed to rule on several *amparo*<sup>7</sup> writs presented for its consideration in these matters.

18. “Executive agreement” 124-2009 (similar to a decree) was adopted on 5 October and officially published on 7 October. According to article 28 of the Telecommunications Law, CONATEL and other competent state bodies were granted legal powers to revoke or cancel broadcasting licenses based on national security grounds.<sup>8</sup> The agreement included elements beyond those stipulated by article 28.<sup>9</sup> Measures taken under emergency powers thus continued to be applied in practice, outside the context of a formal state of emergency.

19. In addition, within the framework of the emergency provisions, several measures limiting fundamental rights were adopted, including curfews, repression of demonstrations and closure of media. These provisions were applied in an arbitrary and discriminatory manner, particularly against members of the FNRG, and served to cover up or justify excessive use of force, illegal and arbitrary detention, torture, sexual abuse and political persecution. On the basis of these measures, fundamental freedoms, including those of expression, movement and assembly, as well as the principles of proportionality and legality, were violated. The following analysis of the human rights situation provides several illustrations of the implementation of these provisions resulting in violations of fundamental rights.

## V. Human rights situation

### A. Main human rights violations

#### 1. Right to life

20. Both the military and the police systematically used excessive force in breaking up demonstrations against the coup. In this context, credible information was gathered to the effect that four people died due to the use of live ammunition against protesters (including a young man who was shot and killed while security forces tried to disperse President Zelaya’s supporters outside Tegucigalpa airport on 5 July). Most of these cases are under investigation by the Fiscalía but without substantive progress to date. In addition, on 27 November a man was shot and killed by military agents at a checkpoint in Comayagüela. According to prosecutors, the crime scene appeared to have been tampered with by military personnel.

<sup>7</sup> *Amparo* is a legal remedy available to any person whose right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

<sup>8</sup> Article 28 stipulates that, based on national security reasons, the State is able to cancel, after compensation according to the law, concessions and exploitation of licenses or permission regarding telecommunication services.

<sup>9</sup> This allows for new restrictions on messages containing incitement to national hatred, which could affect legally protected assets, or provoke “a regime of social anarchy against the democratic State, including possible harm to social peace and human rights”.

21. Another case under investigation by the Fiscalía, occurred on 2 August, in the Jamastrán Valley (department of Paraíso), in which troops killed one of the occupants of a vehicle.

22. The human rights unit of the Fiscalía has also been investigating two alleged extrajudicial executions which seem to be linked to the repression of social protest. On 22 September, during the curfew in San Pedro Sula, a police officer in a patrol car allegedly fatally shot a young man who was riding a bicycle. On 25 July, while the curfew was in force, a dead body with signs of torture was found close to a military checkpoint in Alauca. According to witnesses, the victim had been detained by members of the armed forces a few hours beforehand.

23. Furthermore, an NGO report mentioned 12 other killings of members of the FNRG, including a 16-year-old boy.<sup>10</sup> According to this report, most of these killings were carried out in a similar way, by men shooting from a short distance away. The human rights special prosecutors launched investigations, although with delays.<sup>11</sup> However, their efforts were undermined by the lack of cooperation from the military and civilian authorities, and the lack of independence of the National Bureau of Criminal Investigation when it comes to investigating members of the police or armed forces, due to its direct link to the Police Department.

## 2. Right to personal integrity

24. The mission gathered consistent information from several sources showing that the security forces carried out serious assaults on persons in the aftermath of the coup d'état, including acts of torture, ill-treatment of detainees and the systematic use of excessive force against people participating in demonstrations.

25. At least five people accused of being supporters of President Zelaya were tortured by agents of the national police and many people were arrested and beaten during demonstrations in Tegucigalpa and San Pedro Sula. These people were subjected to threats, verbal abuse and/or severe beatings with various instruments. So far, the authorities have not offered satisfactory explanations concerning cases of torture reported to the mission, nor have investigations progressed.

26. Some NGOs reported acts of collective abuse against detainees, such as the release of tear gas in a cell in Comayagua police station on 30 July.

27. Victims, witnesses and even some authorities confirmed that the security forces had not respected the principles of necessity and proportionality in the use of force. Peaceful demonstrations were repeatedly dissolved by violent means, including tear gas, water cannons, truncheons and instruments such as iron pipes. Despite denials from senior officers in the security forces, police and army elements have, at least occasionally, used live ammunition against demonstrators. This was the case in the demonstrations in El Progreso, on 30 June, where one person was wounded, and near Tegucigalpa airport on 5 July, where a young man was wounded and died.

28. The security forces repeatedly used force and ill-treatment during the arrest or detention of individuals who had participated in demonstrations. In some cases, the victims suffered from serious injuries, as in the case of two women in Tegucigalpa.

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<sup>10</sup> See Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH), *Statistics and Faces of the Repression – Violations of Human Rights in the Framework of the Coup d'État in Honduras*, 22 October 2009.

<sup>11</sup> The special prosecutors for human rights stated that 13 investigations had been initiated and formal charges in relation to two killings had been filed against two members of the security forces.

29. Several sources indicated that hundreds of people were injured by security agents during demonstrations. An NGO report registered 288 people injured between the coup and the beginning of November. The human rights unit of the Fiscalía and the regional ombudsman were able to confirm some of these cases. At least three of the victims suffered gunshot wounds, while some had fractures, cuts and bruises that affected their mobility. None could access rehabilitation programmes provided by the public health system, as part of reparation measures. Acts of sexual violence against female detainees were also documented.<sup>12</sup>

30. The authorities justified the use of force against demonstrators by invoking the violent nature of the protests. However, the mission noted that although some demonstrations did turn violent, the majority were peaceful and the demonstrators were unarmed. On the basis of the evidence gathered, the mission was able to confirm that the response to demonstrations, including the presence of numerous armed soldiers, was disproportionate.

31. According to NGOs and victims, a large number of complaints were presented to the Fiscalía and the national ombudsman. However, the human rights unit of the Fiscalía stated that legal proceedings against public officers had been initiated in only two cases and one of these cases was dismissed by the court of first instance. The mission noted that prosecutors, judges and ombudspersons have often failed to respond promptly to allegations of torture and ill-treatment.

### 3. Right to liberty and security of persons

32. The mission was able to confirm numerous claims that the police and the army arbitrarily or illegally arrested thousands of people, including women and children, mostly during protests against the coup. The national authorities could not provide information on the number of people arrested or in detention. The only available information has been provided by non-governmental sources, which estimate that more than 3,000 people, including 600 children and adolescents have been detained since the coup.<sup>13</sup>

33. Most of the victims were released after a few hours or a night spent in illegal or arbitrary detention, where torture or other forms of ill-treatment often occurred. The illegality of most of the detentions was mainly due to the absence of a judicial warrant or legal basis for the arrest and/or because of the lack of authority of military officers to carry out arrests. Many of the detentions were also arbitrary due to non-compliance with the principles of necessity and proportionality. Nonetheless, the sheer number of arrests suggests a pattern of repression of expressions of support for the deposed president.

34. Various sources confirmed that most mass arrests were carried out without the guarantees enshrined in international human rights instruments. The police generally kept a poor record of detentions and did not provide information about the reasons for detention and charges. This, however, was a frequent practice in Honduras even before the coup, as noted previously by international bodies.<sup>14</sup>

35. Mass arrests were carried out either under article 175 of the Criminal Procedure Code, or under emergency decrees 011-2009 and 016-2009. Article 175, which allows the

<sup>12</sup> These cases are referred to in more detail in paragraphs 60–61 below.

<sup>13</sup> Figures provided by El Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH), Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH) and Comité para la Defensa de Derechos Humanos de Honduras (CODEH).

<sup>14</sup> See recommendations of the Working Group on Arbitrary Detention in 2006 (A/HRC/4/40/Add.4) and the Committee against Torture in 2009 (CAT/C/HND/CO/1).

police to arrest a person without a warrant if caught in the act or immediately after committing an offence, was generally used for detaining people who participated in demonstrations, without any evidence of being associated with the commission of a crime. In addition, on the basis of decree 011-2009 hundreds of people were arrested for breaking curfew provisions. The curfew schedule was frequently modified and changes were announced only in the media; under these circumstances, it was often difficult to know whether and when the curfew was in force. The questionable legality of the emergency provisions and non-compliance with the principles of necessity and legitimacy rendered those arrests illegal and/or arbitrary. In addition, the number of arrests showed a deliberate attempt to intimidate and suppress expressions of support for President Zelaya.

36. Some individuals were held in unofficial detention sites, with no separation of women and children from men. On 22 September, a day after President Zelaya returned to the country, 129 people, including 8 women and 8 children, were arrested for participating in demonstrations in his support, and taken to the Chochi Sosa baseball stadium, where they were kept for periods of between four and six hours.

37. Forensic doctors visited people who had been severely beaten hours after their detention. On several occasions, it was the medical personnel accompanying the FNRG, or NGOs, rather than the competent authorities, who provided care to injured detainees.

38. The common crimes unit of the Fiscalía initiated proceedings against 89 people arrested by the police and/or the army.<sup>15</sup> About two-thirds of them were charged with the crime of sedition and a few others with “illicit assembly”. Other charges were dismissed due to lack of evidence. Nevertheless, these charges appear either groundless, or at best inconsistent or disproportionate, considering that protest rallies were generally non-violent and no information seems to have emerged about — nor have there been any proceedings against — demonstrators carrying weapons or explosives, with the sole exception of a person accused of possessing a “Molotov cocktail bomb”. On 30 September, 52 peasants, including 8 women, who had peacefully occupied the National Agrarian Institute building in Tegucigalpa, were arrested and indicted for sedition, after they had peacefully left the premises.

39. The police and military forces arrested a large number of foreigners, mostly nationals of countries who supported the reinstatement of President Zelaya, such as Nicaragua and the Bolivarian Republic of Venezuela, reportedly on national security grounds.<sup>16</sup> Many of them were expelled from the country and others were subject to fines and/or were victims of ill-treatment, such as insults and deprivation of basic necessities, including food and water.

40. Despite what appears to be a systematic violation of the right to liberty, the institutional response has been insufficient. The special prosecutor for human rights stated that only 13 investigations had been initiated and that only four police agents had been formally charged in connection with arbitrary deprivation of liberty. In addition, the Fiscalía initiated proceedings against two local police commanders for the illegal detention of seven men and four women on 31 July in Santa Rosa of Copán. Charges were later dismissed.

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<sup>15</sup> However, the mission collected other official documents which confirm that these figures are incomplete while NGOs reported that proceedings had been initiated against 100 individuals (COFADEH report, see footnote 10 above).

<sup>16</sup> The National Migration Department stated that between 28 June and 30 July, 124 foreigners were arrested, 76 of whom were Nicaraguan.

#### 4. Right to freedom of expression

41. Freedom of expression was one of the most restricted rights under the emergency measures. Most media sided with one or the other side of the political spectrum, and their reporting was therefore usually partial. Few media tried to contribute to an independent, comprehensive picture of the crisis that included views from all parties. Some private media decided to cut programmes considered by the de facto authorities as critical. Many journalists admitted resorting to self-censorship to avoid restrictions or sanctions.

42. The right to inform and disseminate different opinions was severely restricted, which hindered access to credible information about the situation. Several media premises were occupied by the military and frequencies were frequently jammed or interrupted to prevent reporting on the crisis. These actions particularly damaged opposition media, such as Radio Globo, TV Channel 36, Radio Progreso and some international news channels.

43. Within the framework of controversial norms or illegal procedures under the emergency law and decrees, the authorities imposed other selective restrictions, such as limiting communication and the confiscation of equipment from TV Channel 36, Radio Globo and Radio La Catracha. This was based on decree 016-2009, and part of a CONATEL order to suspend operations, including the unplugging of systems and confiscation of equipment by the national police and armed forces, although the constitution prohibits the confiscation of media equipment and the interruption or closing down of media activities even during a state of emergency.<sup>17</sup> During the period preceding the presidential election, interruptions by the authorities of TV Channel 36 broadcasts were also registered.

44. Journalists and people in the media business considered to be opponents of the de facto authorities were subjected to restrictions and harassment. The mission was informed that a member of the C-Libre NGO was fired from the HRN radio network, allegedly because he was against the coup. Some journalists complained that they were unable to express opinions opposed to the electoral process and of the existence of “prohibited” expressions such as “coup d’état”. They also feared being subject to repressive measures or judicial proceedings after the announcement of limitations to freedom of expression in the framework of the electoral process. In addition, some civil society organizations which had broadcasting contracts with media supporting the de facto Government stated that their programmes were cancelled or they were informed that their contracts were not being renewed. This was the case of three programmes by women’s organizations on Radio Cadena Voces, and of human rights NGOs on HRN. In addition, private companies and the State withdrew their advertising from those media supporting the FNRG, which seriously affected the availability of resources to ensure the continuation of programmes. However, long-standing problems such as the lack of transparency in the Government’s use of media space to broadcast official publicity were considered one of the main obstacles to freedom of expression in the country well before the coup.

45. Some journalists were ill-treated or arbitrarily or illegally detained by police agents while covering demonstrations. Their detention was not based on evidence of commission of a crime, or other legal grounds, and the purpose therefore appeared to be to prevent them from reporting on the protests. Such was the case of journalists from El Tiempo newspaper in Tegucigalpa on 5 August, and journalists from Tela and Radio Progreso in El Progreso on 14 August. According to the information provided to the mission, cellphones, and photo and video cameras were confiscated. The human rights unit of the Fiscalía informed the mission of the filing of formal charges against the military occupation of Radio Progreso

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<sup>17</sup> Articles 73 and 187.

and proceedings regarding other cases of restriction of freedom of expression of the media were apparently to be filed shortly, according to this source. Several witnesses of acts targeting the media reported having been victims of intimidation by military and police officers to prevent them from testifying. The Journalists' Association provided information on attacks and threats against journalists and media outlets, irrespective of their political stance, including a bomb explosion at the HRN radio station on 4 November. While most of the attacks targeted media known to be opposed to the coup, media considered as supportive of the de facto Government were also victims of unknown attackers.

## **5. Right to peaceful assembly**

46. Excessive use of force, arbitrary detentions and the imposition of curfews weakened the exercise of the right to peaceful assembly. Several demonstrators, especially women, told the mission that they no longer participated in rallies after having been victims of abuse.

47. Although some demonstrations turned violent, the vast majority of protesters, including activists who joined the FNRRG, were peaceful and unarmed.<sup>18</sup> In this respect, the excessive presence of military personnel to monitor the marches may constitute intimidation or harassment.

48. Additionally, several protesters have faced criminal proceedings under charges which may clearly infringe human rights standards. Article 337 of the Criminal Code, which contains a broad definition of the crime of sedition, was often used to prosecute people who peacefully took part in demonstrations.<sup>19</sup> Similarly, article 331, by introducing the crime of "illicit meeting or demonstration", allowed the prosecution of those participating in demonstrations where someone else is carrying weapons, or explosives of any nature, regardless of the fact that the accused may not have been aware of, or able to do anything to alter the conduct of other demonstrators. According to the Fiscalía, at least six people were being investigated on such charges.

49. From 20 October, all public gatherings required prior authorization by the police. This provision entered into force after the Police Commissioner released a public statement laying out the requirements for such authorization without issuing an official written text. Although this statement referenced other existing legal norms, it introduced restrictions to a fundamental freedom without respecting the rule of law and the principle of legal certainty.<sup>20</sup> These provisions were particularly applied during the period close to the elections.

## **6. Economic, social and cultural rights**

50. The poverty and inequity index in Honduras is among the most severe in Latin America. Close to 60 per cent of the population live in poverty and about 36 per cent are extremely poor. Despite economic growth rates of about 4 per cent per annum between

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<sup>18</sup> According to the police, during the reporting period almost 300 demonstrations took place in Tegucigalpa. One restaurant and some vehicles, including a bus, were set on fire on one occasion. In addition, the Honduran National Business Council (COHEP) reported that 40 commercial properties suffered some kind of damage and 2 supermarkets were looted. Official sources indicated that 16 police officers and 21 members of the military were injured. None of them suffered bone fractures or other serious injuries and only one member of the military was reportedly wounded by gunfire.

<sup>19</sup> This was also the case of the peaceful occupation of the National Agrarian Institute. See paragraph 38 above.

<sup>20</sup> Such as article 62 of the Constitution, articles 22 and 23 of the Police Organic Law, and articles 1, 52 and 54 of the Police and Social Coexistence Law.

2004 and 2008, progress in the implementation of a poverty reduction strategy launched by the Zelaya Government has been limited. The situation deteriorated during 2009 due to the impact of the economic crisis, which is expected to continue in 2010.

51. In addition, while there was already a serious lack of financial resources before the coup and public services were thus affected, the de facto Government has also been responsible for a high degree of turnover among senior officials of public entities, particularly affecting social services.

52. The political turmoil and the harmful effects of curfews and other restrictions of fundamental freedoms have had a serious impact, particularly on the enjoyment of the rights to education and health. Several hospitals and health-care centres have suffered from a severe shortage of medications and other necessities, due to the curfew and the lack of resources or delays in delivering medication. In addition, doctors and medical personnel have frequently been on strike demanding payment of their salaries. This situation has compromised access to health for the most vulnerable, particularly HIV/AIDS patients who have suffered serious consequences due to discontinuity in antiretroviral therapy.

53. The right to education has been affected by repeated strikes resulting in the cancellation of a large number of classes.<sup>21</sup> The Teachers' Union played a leading role in the protests against the coup and due to their active participation in demonstrations, schools operated only intermittently. Some school principals faced legal proceedings initiated by the Fiscalía special prosecutor for children, on the grounds that the strikes violated children's right to education. This initiative was reportedly aimed at putting pressure on school principals to resume classes.

54. These problems impacted mostly on public rather than private schools, deepening the gap in the quality of education between affluent and poor students. In addition, the de facto Government ordered schools to end the school year four weeks before the scheduled time, in order to prepare for the elections.

55. The curfews and other restrictive measures also affected the right to food for the most vulnerable segments of the population, who faced additional problems due to the unexpected suspension of freedom of movement, at times for more than three consecutive days. During the failed attempt by President Zelaya to return in late July, curfews were applied at the border with Nicaragua in Paraiso (Yoro department). Hundreds of people were thus prevented by the security forces from reaching the border, or returning to their homes and thus accessing food, water and basic goods for at least two days.

56. In these circumstances, the precarious state of social services deteriorated further, affecting the most vulnerable segments of the population, who are very dependent on such services. Given that disaggregated information is not available and considering the short time that has elapsed since the coup, the impact is difficult to measure, but it is probably greatest on vulnerable populations such as indigenous people, Afro-descendants, female-headed households and children.

## **7. Women's rights and discrimination issues**

57. Women's movements complained about an increase in violence against women during the crisis, together with a decrease in complaints to the authorities, due to lack of confidence in them. Hundreds of women have been victims of abuse, including some cases of rape, ill-treatment and torture committed by police and army officials, particularly in the context of demonstrations. The mission met with some of these victims and witnesses and

<sup>21</sup> More than 100 days of class were lost according to the special prosecutor for children.

had access to relevant documents, including medical reports, which are evidence of the seriousness of the complaints.

58. Some women's organizations complained that they had been victims of harassment and threats via e-mails and phone calls from police and military officers, and acts of intimidation by the police, including monitoring and surveillance.

59. Ill-treatment of women by police and military officials was described by victims and witnesses as a common practice during demonstrations. In particular, many complaints referred to blows to the buttocks and chest areas, as well as of serious beatings resulting in broken bones in the leg or hand. The mission met with a physically disabled woman who was seriously injured in Tegucigalpa by police officers on 12 August, when she was on her way to get medication prescribed by a doctor. She had several bones broken and lost the sight in one eye. Another woman suffered from injuries inflicted by female police officers in Tegucigalpa. She was arrested in an area near the demonstrations, detained for four weeks, and later released on bail. She was accused of damaging property and sedition. The first charge was dismissed; however, sedition charges were not. Her complaints of injury and torture were reportedly not acted upon by the judge. A teacher and human rights defender, who had been provided with protection measures by the Inter-American Commission on Human Rights, was beaten by police agents during a demonstration in Tegucigalpa. She complained that she was subsequently the victim of harassment and other forms of intimidating behaviour by military officers, including through surveillance around her home and workplace.

60. Some female detainees reported that they were raped with truncheons, or subjected to multiple rapes by police agents. Others reported sexual harassment, particularly in Choloma and Tegucigalpa, and other forms of ill-treatment.<sup>22</sup> In San Pedro Sula, the regional ombudsman's office received a complaint from a pregnant woman who had been kicked and hit in the abdomen by police officers. The mission also received repeated information about women and children affected by the use of tear gas, which resulted in skin infections and other health problems. The mission did not receive any indication from the authorities regarding any follow-up to these particular complaints.

61. Victims of ill-treatment, torture and sexual abuse who decided to file official complaints reportedly received death threats and were intimidated by police and military officials. Although the Fiscalía granted them protected witness status, this only entails the confidentiality of their names and some precautionary measures, such as orders requesting defendants not to approach victims, but falls short of offering any other form of protection. Many victims decided not to take their complaints to the authorities out of fear or for lack of confidence in them. As a result, official records do not reflect the magnitude of the instances of violence against women.

62. Nineteen officials (12 women and 7 men) of the National Women's Institute reportedly lost their jobs because of their position against the de facto Government and did not receive adequate compensation. The Technical Director herself was a victim of harassment and threats and also lost her job.

63. Many of the women interviewed referred to a step backwards in terms of public policies regarding gender equality and sexual and reproductive health. For instance, before the coup President Zelaya had imposed a veto on a bill prohibiting the use of the morning-after pill, authorized since 1992. At the time of the coup the bill was under examination by

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<sup>22</sup> A report prepared by women's organizations for the Inter-American Commission on Human Rights in November 2009, referred to 23 cases of different forms of sexual harassment and at least 7 cases of rape.

the Supreme Court. The de facto Minister of Health however, issued a decree prohibiting this method of contraception.

## **B. Human rights defenders**

64. Human rights defenders have played a critical role in the protection of human rights during this period, helping to alleviate institutional failings. Their constant presence inside detention centres provided some external control, and helped to reduce the vulnerability of detainees and to prevent further torture and ill-treatment.

65. In the absence of comprehensive official records, the efforts of human rights NGOs enabled the gathering of more complete records of abuses and violations. The mission observed that in many instances the national authorities undertook investigations based on information provided by NGOs. NGO reports also led to an increase in the visibility of human rights violations among the international community.

66. In addition, human rights defenders themselves faced intimidation and attacks, as well as other obstacles while conducting their activities. For instance, two human rights defenders, an NGO activist and an officer of the regional ombudsman's office, were arrested while attempting to stop members of the security forces from committing abuses against protesters. However, no charges were brought against them and they were later released. On 3 August, a public defender was verbally abused and threatened by police agents while trying to access a detention centre in San Pedro Sula to execute a writ of habeas corpus. Other human rights defenders, including a woman, complained of having been beaten and insulted by the security forces, particularly while visiting and defending detainees. Two other women human rights defenders were wounded by police officers on election day. According to allegations heard by the mission, threats and harassment against human rights defenders, particularly by members of the security forces, have progressively increased since the coup, apparently because actions to protect human rights have sometimes been equated by the de facto authorities with support for the FNRG.

## **C. Accountability institutions and mechanisms**

67. The institutions responsible for protecting human rights and guaranteeing the rule of law failed in many instances to accomplish their mandate, mainly due to a lack of independence.

68. During the period covered by this report, the lack of independence of the judiciary and the unequal and discriminatory application and interpretation of the law have been evident. The Attorney General's Office, judges and the Supreme Court of Justice have, in general, supported the de facto authorities by defending restrictive measures at the expense of protection of human rights and respect for the rule of law. Despite actions adopted by some committed judges, public defenders and prosecutors, particularly in San Pedro Sula, the judiciary as a whole has been unable to guarantee fundamental rights in a proper and timely manner.

69. While the work of the Fiscalía was assessed negatively overall by victims and witnesses, action by individual human rights prosecutors was considered as more positive. However, the absence of an autonomous body of investigators, and insufficient will and initiative to investigate violations, were perceived as the main obstacle to moving ahead on individual cases, protecting victims and combating impunity. Likewise, in several cases, judges reportedly refused during court hearings to take action to follow up on complaints of torture and ill-treatment filed by demonstrators and others who had been arrested.

70. Some victims and witnesses accused the Fiscalía unit of forensic medicine of deliberately not keeping adequate records and of failing to take appropriate action in cases of human rights violations. Some victims alleged that visits for follow-up examinations by forensic doctors in cases of human rights violations were not recorded, resulting in loss of evidence of torture and ill-treatment. Lack of knowledge or will to implement the Istanbul Protocol,<sup>23</sup> were also denounced in such cases. The mission observed the lack of institutional strategies for documenting and investigating human rights violations. Information provided by the Fiscalía, including by the department of forensic medicine, was based on NGO reports.

71. The fact that the National Bureau of Criminal Investigations is not independent from the Police Bureau — both are part of the Ministry of Security — has hampered its ability to intervene in cases of violations allegedly committed by police agents. Human rights prosecutors considered this an obstacle to their investigations, due to the fact that it has no investigative police of its own.

72. The Supreme Court stated that all the *amparo* writs filed to protect rights violated in the context of the coup or against the emergency decrees were dismissed or suffered delays. Judges in the Supreme Court did not take action regarding *amparo* writs presented against the emergency decrees until after they had expired, thus avoiding having to rule on their legality, or systematically requested additional information, which delayed the process. Furthermore, writs of habeas corpus filed with the Supreme Court took many days (the average was more than one week) to be decided upon, in contravention of the provisions of international and regional instruments. San Pedro Sula was an exception. The Supreme Court stated that all habeas corpus writs received were dismissed since most detainees were released. These decisions have impacted on the possibility of initiating criminal proceedings against those responsible for arbitrary or illegal detention. Delays in executing habeas corpus writs cannot be an excuse for not deciding on the legality of detention. The closure of the tribunals on election day prevented the exercise of habeas corpus, particularly in Tegucigalpa.

73. The public stance of the Supreme Court, defining the coup as a “constitutional succession” and declaring its legality, cast doubt on its impartiality and commitment to the rule of law. Subsequent interventions by the Court seem to have confirmed this. The mission received information about disciplinary procedures undertaken against judges and public defenders for executing habeas corpus writs and for their participation in other measures such as the filing of *amparo* actions against emergency decrees.

74. Disciplinary measures were also taken against members of the judiciary who signed an editorial disagreeing with the “constitutional succession”, took part in demonstrations or made statements considered to affect the “dignity of the Administration”. Members of the judiciary who were victims of such procedures complained that the authorities did not provide information about the charges against them and they were thus unable to properly ensure their defence. The Association of Judges for Democracy denounced these measures in a press release on 3 November 2009.

75. With regard to the right to defence, according to testimonies received, especially from demonstrators accused of sedition, defendants and their lawyers were allowed to exchange information only a few minutes before the hearings, thus limiting the preparation of their defence.

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<sup>23</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

76. The Ombudsman failed to fulfil his mandate to protect human rights, refusing to investigate the allegations brought to his office. Even though some regional ombudspersons, and in particular the San Pedro Sula office, did intervene to obtain the release of people arbitrarily deprived of their liberty and to ensure that complaints were filed with the Fiscalía, in most cases the action of the national Ombudsman himself and his office was seen as inefficient, negligent or directly inconsistent with his mandate.

## VI. Observations and conclusions

77. The coup d'état gave rise to a number of human rights violations, most of which remain unpunished. In addition, it revealed and exacerbated existing structural problems affecting human rights, intensified a difficult and tense political and social climate, and deepened the polarization within most State institutions and society at large. Measures imposed under the state of emergency facilitated the repression of those opposed to the coup and allowed the arbitrary restriction of fundamental rights.

78. Of particular concern was the disrespect for the principle of legality, such as the use of illegal procedures, irregularities in adopting legislation (in some cases without written texts or publication), the lack of competence of the military authorities to exercise law enforcement functions, and the absence of independent judicial control mechanisms. By abiding by the legality principle, by publishing all norms in a timely manner and assuring their application by competent authorities in compliance with the principles of necessity and proportionality, the authorities could have prevented a number of human rights abuses.

79. The derogation of guarantees was incompatible with the international obligations of Honduras. In particular, the State did not respect the legality principle, proportionality in adopting emergency measures, and authorization only for exceptional situations. Considering that only a few cases of violence by demonstrators were registered, the nature of the potential danger does not appear to have been sufficiently serious to call a state of emergency. Actions by the security forces, in particular police officers, were characterized by the disproportionate use of force, torture and ill-treatment, and arbitrary and illegal detentions. The State also failed to notify the United Nations and the OAS, as required by the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

80. The preparations for the electoral process took place in a context of limitations to and suspension of guarantees such as freedom of expression and the right to peaceful assembly.

81. The impunity for most human rights violations committed during the crisis increased the vulnerability of victims. The absence of independent, timely and effective judicial investigations left most of those responsible unpunished and the victims without adequate judicial protection and redress.

82. The fragile social situation, challenges in fighting poverty and inequality, and institutional weaknesses were further exposed as a result of the coup. Some governmental measures resulted in additional difficulties for the population in accessing the most basic rights, particularly to health care, education and food. Some institutional programmes associated with these rights collapsed.

83. The lack of independence of control institutions, such as the Fiscalía, the Supreme Court and the Ombudsman, with some notable exceptions, resulted in their unavailability or inability to protect human rights and the rule of law. Re-establishing the credibility and legitimacy of these institutions constitutes a serious challenge.

## VII. Recommendations

84. In order to improve the human rights situation, the following recommendations are made to the competent authorities:

(a) Conduct independent investigations on the human rights violations committed after the coup, particularly regarding cases of violations of the right to life, torture, ill-treatment, arbitrary detentions and rape, and initiate legal proceedings against those found responsible;

(b) Ensure respect for the due process of law and judicial guarantees in all investigations initiated against people who participated in demonstrations against the coup. In addition, promote a review of decisions taken during the period covered by this report regarding judges and public defenders under investigation, or disciplinary proceedings in relation to the political crisis and human rights protection activities;

(c) Ensure reparation, support and assistance to the victims of human rights violations.

85. In addition, the following actions are strongly recommended to deal adequately with structural problems:

(a) Revise or abrogate national legislation incompatible with international standards, in particular provisions on crimes of sedition, illicit demonstrations, freedom of expression, political and electoral rights, torture, independence of the judiciary, the Police and Social Coexistence Law, and the State of Emergency Law;

(b) Develop a national human rights plan of action in close cooperation with the United Nations system and with the active participation of civil society, which will identify and address structural problems as a priority;

(c) Avoid the use of the military in law enforcement functions, unless in extreme and exceptional cases, and always ensure it is subject to independent judicial control mechanisms;

(d) Establish an independent national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

86. Finally, the High Commissioner recommends that the international community support human rights programmes implemented by civil society organizations, as well as by the United Nations system, particularly in the follow-up to these recommendations.