

SECTOR-WIDE IMPACT  
ASSESSMENT OF THE  
DIVING FISHING  
INDUSTRY ON THE  
HUMAN RIGHTS OF  
INDIGENOUS MISKITU  
DIVERS, FROM A  
BUSINESS AND HUMAN  
RIGHTS APPROACH



Comisionado Nacional de los  
Derechos Humanos  
(Honduras)



With the cooperation of:

INSTITUTO DANÉS  
DE DERECHOS  
HUMANOS

With the support of:



**National Commission for Human Rights (CONADEH), May, 2023**

**Sector-wide impact assessment of the diving fishing industry on the human rights of indigenous Miskitu divers, from a business and human rights approach**

**Office of the Ombudsman for Indigenous and Afro-Honduran Peoples**

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**Acknowledgments**

The collaboration and contributions of Jeffrey Geovany Cacho Martínez, María Jessica Greham Bermúdez and Alexis Irías are gratefully acknowledged, as well as the review and comments of the following persons: Ricardo López (Director of the Office, CONADEH), María José Gálvez, (Manager of Ombudsman's Offices, CONADEH); Tulika Bansal, Advisor to the DIHR.

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This study was co-funded by the Swedish International Development Cooperation Agency (SIDA) and supported by the Danish Institute for Human Rights through the Sustainable Oceans project. Its contents are the sole responsibility of the National Commission for Human Rights (CONADEH)

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ON THE HUMAN RIGHTS OF INDIGENOUS MISKITU DIVERS, FROM A  
BUSINESS AND HUMAN RIGHTS APPROACHS**

*May, 2023 Tegucigalpa, MDC*

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## INTRODUCTION

The National Commission for Human Rights (CONADEH or the Commission) is the National Human Rights Institution (NHRI) of Honduras that enjoys functional, administrative, technical and criteria independence. CONADEH has the mandate to ensure the prevention, promotion, protection and defense of human rights and fundamental freedoms of the inhabitants, and especially those of persons in vulnerable situations, by supervising the actions or omissions of State institutions as a whole and private entities that provide public services, so that they comply with their human rights obligations to achieve respect for the dignity of people, the strengthening of the rule of law and democratic governance.

The research on industrial diving fishing initiated with the purpose of evaluating the situation of human rights in the fishing sector in Honduras, more specifically the situation of the lobster underwater fishing sector in Gracias a Dios, and from there formulate recommendations for the empowerment of human rights to this population group. In this context, in July 2020, CONADEH, with the support of the Danish Institute for Human Rights (DIHR), initiated the research.

The DIHR is the Danish National Human Rights Institution and has an international mandate for the promotion of human rights and implements the project "Sustainable Oceans: a human rights-based approach to fishing and aquaculture", which aims to identify actual or potential human rights impacts related to fishing and aquaculture, to document and address impacts through studies and then through dialogue focused on sustainable development and responsible business conduct. The study in Honduras was considered as part of this broader initiative, funded by the Swedish International Development Cooperation Agency (SIDA), to promote human rights in the context of global processes to implement SDG 14<sup>1</sup> on the sustainable use of the oceans<sup>2</sup>.

- 1 The Sustainable Development Goals (SDGs) were adopted by the United Nations in 2015 as a universal call to end poverty, protect the planet and ensure that by 2030 all people enjoy peace and prosperity. For more information visit the official UN website: <https://www.undp.org/es/sustainable-development-goals>.
- 2 Goal 14 refers to: Conserve and sustainably use the oceans, seas and marine resources for sustainable development. For Honduras, this Goal envisages the achievement of 14 targets and 3 sub-targets. Taken from the site: <https://honduras.un.org/es/sdgs/14>

It is relevant to point out that CONADEH, in exercise of its constitutional and legal mandate and in its capacity as a National Human Rights Institution, has addressed the human rights situation of the Miskitu people and especially of the divers in different ways:

- Institutional diagnosis about the Miskitus divers, Honduras, C.A. Honduras, C.A. (2001).<sup>3</sup>
- Special Section about Miskitus Divers with final recommendations of the Annual Report <sup>4</sup>.
- Opening and creation of the Departmental Office in Gracias a Dios, based in Puerto Lempira with the initial purpose of attending to complaints related to Miskitus divers (2004).
- Permanent bilingual attention to complaints, legal guidance, and accompaniment of the divers Miskitus, including investigative procedures such as: interviews with denounced authorities, inspections of judicial and administrative files, visits to victims and their families, referral notes, requests for collaboration with CONADEH offices at national level, etc<sup>5</sup>.
- Actividades permanentes de promoción y educación en derechos humanos en todo el territorio indígena del Departamento de Gracias a Dios (Ombudsmovil).
- Ongoing human rights promotion and education activities throughout the indigenous territory of the Department of Gracias a Dios (Ombudsmovil),.

This circumstance led the institution to decide to address this issue beyond individual claims, to activate concrete responses to ensure the enjoyment of human rights in the context of diving fishing industry.

Thus, CONADEH, with the support of the Danish Institute for Human Rights, undertook the task of conducting a Sector Wide Impact Assessment (SWIA) to streamline the response to the human rights impacts associated with the industrial economic activity of diving fishing in Honduras. This is a problem that has continued for several decades and has been the subject of various diagnoses and studies, including decisions by national and international bodies. However, these diagnoses have had a limited effect in terms of making progress in the prevention, mitigation and, if necessary, reparation of the human rights that can or have been effectively affected by the practice of diving fishing in Honduras.

The purpose of this study is, on the first-hand basis and through secondary sources of the human rights problems associated with the diving fishing sector, to promote the adoption of concrete actions by the actors in the sector (especially the State and the companies in the value chain) to advance the enjoyment of human rights in the context of the industrial activity of diving fishing in Honduras, and thus avoid or mitigate the risks (potential or actual) on human rights in relation to this economic activity.

3 National Commission for Human Rights (CONADEH). Final Report in the framework of the Project "Fortalecimiento Organizativo de los Grupos Étnicos y Buzos del Departamento de Gracias a Dios", Honduras. 2001.

4 See pg.94-102. Available at: [https://www.conadeh.hn/wpcontent/uploads/2021/06/CONADEH\\_2002.pdf](https://www.conadeh.hn/wpcontent/uploads/2021/06/CONADEH_2002.pdf)

5 For more information see: <https://www.conadeh.hn/en-el-departamento-de-gracias-a-dios-6/>

## CHAPTER I. OVERVIEW

### A. CONCEPTUAL FRAMEWORK

This report is developed in accordance with two complementary conceptual approaches. On the one hand, the human rights approach, and on the other, the business and human rights approach.

#### HUMAN RIGHTS APPROACH

The human rights approach involves incorporating several elements into the framework of actions carried out by public or private actors. It involves<sup>6</sup>:

- Actively engage stakeholders, especially rights holders, to contribute to the results.
- As will be described in the methodology, stakeholders in the context of diving fisheries in Honduras were involved, including public authorities, entrepreneurs, and right holders (especially Miskito divers and their families, workers of the processing plants), among others.
- Linking international human rights obligations in the objectives and promotion of the process and outcomes.
- For the purposes of the analysis of human rights impacts in the context of diving fishing, Honduras' international obligations in this area and the reports or decisions of international human rights bodies of both the Universal System and the Inter-American Human Rights System were considered.
- Identify those responsible for respecting and guaranteeing rights and their capacities for accountability, as well as the mechanisms for access to remedy and their effectiveness.
- The main people responsible for the protection and respect of the human rights of Miskito divers and their families, in the context of industrial fishing by diving, were identified and involved. The mechanisms for judicial and administrative remedy were also addressed, and operational mechanisms were also investigated.
- Identify and consider right holders and the root causes of the failure to realize their human rights, in particular those most subject to discrimination and marginalization.
- Right holders were identified and involved, especially Miskitus divers and their families as workers in the diving fishing industry. Different population-based

<sup>6</sup> Swedish International Development Cooperation Agency. Human Rights Based Approach. Human Rights Based Approach | Sida

approaches applicable to the context were also considered, therefore, the rights of indigenous peoples, women, children and persons with disabilities were included. It is important to highlight that intersectionality is present in this context.

- Identify how the intervention or action contributes to the empowerment of rights holders to claim their rights, as well as to the capacity building of duty bearers to fulfill their responsibilities and of other relevant stakeholders to contribute to positive outcomes.

The purpose of this study, within the framework of CONADEH's mandate, is to contribute with practical solutions to the human rights problems in the context of the diving fishing industry in Honduras. For this reason, it carries out spaces for dissemination and dialogue on human rights issues with the various stakeholders and promotes the implementation and continuity of additional actions in this regard

- Take measures to ensure that all stakeholders have access to relevant information and knowledge about the intervention.

The general conceptual framework for this study was human rights, considering the constitutional, legal and international commitment of Honduras to respect and guarantee these rights, as well as the legal nature of CONADEH's mandate as a National Human Rights Institution.

#### BUSINESS AND HUMAN RIGHTS APPROACH

In addition, the United Nations Guiding Principles on Human Rights and Business (hereinafter Guiding Principles) were selected as a concrete conceptual framework to clarify the obligations and responsibilities of the State and companies in relation to human rights in the context of the diving fishing industry. For the development of this report, the CONADEH team was trained in international standards on human rights and business, especially the United Nations Guiding Principles on Business and Human Rights.

The Guiding Principles are applicable to all States and all businesses, both transnational and otherwise, regardless of their size, sector, location, ownership, and structure, and are based on the general international obligation of the State to protect human rights in the context of private-to-private relations, including economic relations. In this context, the Guiding Principles are applicable to the diving fishing industry in Honduras. The Guiding Principles are structured in three pillars, as follows:

##### a. Pillar 1: the State's obligation to protect human rights.

It is the State's obligation to protect the human rights and fundamental freedoms of its inhabitants, as well as their environment.

However, in Honduras there is no action plan for business and human rights, much less in the context of diving fishing sector.

##### b. Pillar 2: The responsibility of businesses to respect HRRR

Companies (national or multinational), whether private or state-owned, produce positive and negative impacts, and these have the responsibility to consider the impacts on human rights and not to worsen the environment in which they operate, in this context they are obliged to take the corresponding measures to avoid such impacts. This extends to ensuring that the companies that provide them with services and raw materials also comply.

##### c. Pillar 3: Access to remedy.

The State has the obligation to ensure access to judicial and non-judicial mechanisms of reparation in cases of human rights impacts or breaches in the context of business activities. Companies should adopt operational mechanisms so that affected persons can file complaints directly to the company. All such mechanisms should be accessible, guarantee due process and be consistent with human rights.

This document does not carry out an assessment on concrete businesses in relation to their risks or impacts on human beings. On the contrary, based on the conceptual framework described above, it implements a Sector Wide Impact Assessment about human rights, seeking to activate measures or responses from actors (public and private) that participate or are related to said industry, in favor of the protection, respect and, if applicable, access to remedy mechanisms for human rights in this economic context. Consequently, this report does not validate or endorse the actions of concrete business actors and, on the contrary, it analyzes the sector overall.

## B. METHODOLOGY: SECTOR WIDE IMPACT ASSESSMENT (SWIA)

Within the framework of CONADEH's mandate and considering that the human rights issues to be addressed include both state actors and private companies, the human rights Sector Wide Impact Assessment (SWIA) methodology was applied.

A Sector Wide Impact Assessment (SWIA)<sup>7</sup> is an analysis of the risks of actual and potential human rights impacts generated by industries in an economic sector. Thus, this analysis focuses on the diving fishing sub-sector in Honduras. The SWIA aims to provide a comprehensive overview of the risks of human rights impacts of this sub-sector.

The SWIA methodology has been applied, among others, by the Danish Institute for Human Rights, the Institute for Human Rights and Business and the National Human Rights Institute of Chile<sup>8</sup>, using the United Nations' 31 Guiding Principles on Business and Human Rights (UNGP), the FAO Voluntary Guidelines for Achieving Sustainability in Small-scale Fisheries.<sup>9</sup>

Es importante resaltar los siguientes aspectos en la aplicación de la EIS en el sector de la pesca por buceo en Honduras:

- The SWIA and its results are aimed at a broad, multi-stakeholder audience;
- The SWIA does not evaluate a particular business. Its approach is sectoral and multi-stakeholder;
- The SWIA takes into account the national context, the legal environment, business practices and identifies actions that can contribute to the effective enjoyment of human rights in the diving fishing sector;
- The results are public;
- The SWIA addresses two levels of analysis: by area o sector and cumulative;
- The SWIA does not replace the due diligence actions that businesses must take in order to prevent or mitigate potential or actual impacts that the diving fishing industry may have; and;
- The SWIA considers a broad view of human rights impacts.

The research focused on diving fishing of lobster in the department of Gracias a Dios<sup>10</sup>, Honduras, and analyzed direct and indirect factors that have had an effect in the situation of fishing as relevant and decisive means of living for the communities in the Miskita region in Honduras, and in the physical effects that the divers have been suffering in La Moskitia.

<sup>7</sup> Danish Institute for Human Rights. Sector Wide Impact Assessment. Available at: [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Sector-wide%20impact%20assessments%20%28SP%29\\_0.PDF](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Sector-wide%20impact%20assessments%20%28SP%29_0.PDF)

<sup>8</sup> Regarding the fishing and aquaculture sector, the Chilean National Human Rights Institute addressed the salmon industry in Chile. The report can be consulted online at Informe Industria Salmonera en Chile y Derechos Humanos (<https://bibliotecadigital.indh.cl/handle/123456789/1739>).

<sup>9</sup> FAO. Voluntary guidelines for achieving sustainability of small-scale fisheries in the context of food security and poverty eradication. 2015. Available at: : <https://www.fao.org/policy-support/tools-and-publications/resources-details/es/c/449060/>

<sup>10</sup> In the Department of Gracias a Dios, in addition to the Miskitu people, there are people who belong to other Indigenous and Afro-Honduran Peoples, such as the Garifuna

The analysis was structured and based on historical information and data on the key variables of the management model of diving fishing as a livelihood and the risks or impacts on human rights in the community of divers in the Honduran Moskitia (secondary sources). It is also based on field visits, inspections, interviews and/or information provided by:

- Affected divers belonging to the Asociación de Miskitus Hondureños Buzos Lisiados (AMHBLI) and active divers members of the Asociación Protectora de Buzos Activos de Gracias a Dios (APBGADH).
- Secretary of State in the Office of Labor and Social Security (STSS) - Regional Office of Puerto Lempira
- Secretary of State in the Office of Health (SS)- Health Statistics Area at central level-Sanitary Region N°8 /Puerto Lempira
- Secretary of State in the Offices of Development and Social Inclusion (SEDIS)- National Directorate for Indigenous and Afro-Honduran Peoples (DINAFROH)
- Secretary of State in the Offices of Agriculture and Livestock (SAG) - Directorate General of Fisheries and Aquaculture (DIGEPESCA)
- General Directorate of Merchant Marine (DGMM)
- Office of the Attorney General of the Republic (PGR)- Directorate of Human Rights and International Litigation (DDHLI)
- Interinstitutional Commission for the Attention and Problems of Diving Fishing (CIAPEB)
- Public Prosecutor's Office - Special Prosecutor's Office for the Protection of Ethnic Groups and Cultural Heritage (FEP-ETNIAS/PC)
- Department Court of the First Instance of Gracias a Dios
- Armed Forces of Honduras-Naval Force-Puerto Lempira Headquarters
- Puerto Lempira Municipal Mayor's Office
- Juan Francisco Bulnes Municipal Mayor's Office
- GOAL International - Headquarters Puerto Lempira, Honduras, C.A.
- Ethnic Community Development Organization (ODECO)
- Wives of injured divers
- Workers of Seafood Processing Plants in the city of La Ceiba, Atlántida, C.A.
- Association for the Strengthening of Technical, Scientific and



Commercialization of the Sea Cucumber Fishery in Honduras (AFOTECCPH)

- Goff Family Boat, Brus Laguna, Gracias a Dios Dept.

**Figure 2.** List of interviewees by category and sector.

The information and data obtained were processed in accordance with time management guidelines in terms of robustness and certainty<sup>11</sup>, and in compliance with the principles of confidentiality and objectivity.

N°	Category	Sectors				Total
		Brus Laguna	Puerto Lempira	La Ceiba	Tegucigalpa	
1	Active Divers	58	111			169
2	Divers involved in accidents	164	120			284
3	Wives of divers involved in accidents	2	9			11
4	Hyperbaric Chamber		1			1
5	Processing plant workers			2		2
6	Seafood Processing Plants			2		2
7	Industrial fishermen	1		2		3
8	Judiciary and Public Prosecutor's Office		2			2
9	Community organizations		4			4
10	Executive Branch	4	5	1	2	12
11	Non-governmental organizations	1			1	2
12	International cooperation		1		1	2
13	Sacabuzos	1	1			2
	<b>Total</b>	<b>231</b>	<b>254</b>	<b>7</b>	<b>4</b>	<b>496</b>

<sup>11</sup> Applying the sample size based on the population under study.

## C. OVERALL DESCRIPTION OF THE FISHING SECTOR IN HONDURAS AND THE IMPACTS ON THE HUMAN RIGHTS OF VULNERABLE POPULATIONS IN RELATION TO THE DIVING FISHING SECTOR

Fishing represents one of the socioeconomic activities of the primary sector in Honduras and has effects in terms of alleviation of poverty as well as in the production of foreign currency, due to the high volume of fishing product exports. This activity is especially important in the Caribbean and Pacific coastal areas, boosting the local economy. This report approaches a specific industrial fishing activity: diving fishing, and not the fishing sector overall.

Honduras has a territorial area of 112,492 square km, with a length of 680 km on the Caribbean coast and 162 km on the Pacific coast. It occupies the second place in territorial extension of the region, in addition it has a continental platform in the Caribbean of 53,500 square kilometers (EEZ). Honduras and Nicaragua are the main producers of common lobster (*Panulirus argus*), surpassed only by Cuba and the Bahamas.<sup>12</sup>

Honduras initially created 7 departments: Comayagua, Tegucigalpa, Santa Barbara, Yoro, Gracias, Olancho, and Choluteca. The area known as the "Mosquitia" was included into the national sovereignty after the signing of the "Cruz - Wyke Treaty" in 1859<sup>13</sup> the Department of Gracias a Dios was created by Decree N°52 of the Military Government Junta on February 21, 1957; it currently has a territorial extension of 16,999 km and six municipalities: Ahuas, Puerto Lempira, Juan Francisco Bulnes, Brus Laguna, Villeda Morales and Wampusirpe.

According to FAO, lobster and snail fishing focuses on the banks of Rosalinda, Cayo Gorda, Thunder Knoll, Media Luna and Arrecife Lagarto, north of the 14°59'08" parallel. It is also carried out in the Serranía bank, the banks of Misteriosa and El Rosario north of the Swan Islands (Islas del Cisne). According to the Central Bank of Honduras, the FOB export of lobster registered 4.4 and 2.8 million dollars in Honduras in the years 2020 and 2021 respectively<sup>14</sup>.

Industrial lobster fishing is carried out using pots or wooden traps, and by diving. In the first case, between 2,500 and 3,000 pots are used, fishing an

<sup>12</sup> Secretary of State in the Offices of Agriculture and Livestock (SAG). General Directorate of Fisheries and Aquaculture (DIGIPESCA). "Diagnostico Pesquero y acuicola" (Fishes and Aquaculture Diagnosis). 2007

<sup>13</sup> MASTA (2018). Moskitia Asla Takanka / Unit of the Moskitia MASTA-COSTAL TERRITORIAL COUNCILS. "Protocol for the Management of Natural Resources of Coastal Territorial Councils". Pag.3

<sup>14</sup> Central Bank of Honduras. Foreign Trade and General Merchandise Report, 2021. Table 3. Available at: [https://www.bch.hn/estadisticos/EME/Informe%20de%20Mercancias%20Generales/Informe%20de%20Comercio%20Exterior%20de%20Mercancias%20Generales%20a%20enero\\_2021.pdf](https://www.bch.hn/estadisticos/EME/Informe%20de%20Mercancias%20Generales/Informe%20de%20Comercio%20Exterior%20de%20Mercancias%20Generales%20a%20enero_2021.pdf)

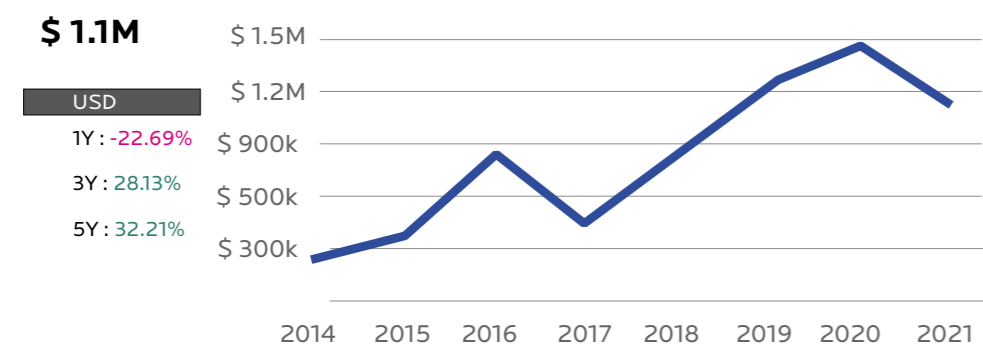
average of 1,000 pots daily in areas with depths of 90 to 250 feet (27-75 m) with reef substrates<sup>15</sup>. According to DIGIPESCA, more than two million pounds of lobster are caught annually in Honduras<sup>16</sup>. The two lobster fishing modalities are carried out simultaneously during a period of eight months a year, normally between August and March; 68.8% of the industrial lobster fleet is made up of vessels that use pots and 31.2% work with divers. According to information from DIGEPESCA, it is estimated that close to 4,000 people are dedicated to autonomous diving in the industrial and artisanal fleets<sup>17</sup>.

According to the TRIDGE web portal, during the last 8 years, until 2021, exports of Honduran Lobster have been growing and reached a net value of 1.11 million dollars in 2021, year in which it began with a decrease compared to 2020<sup>18</sup>. This can be explained by the world economic contraction due to the consequences of COVID 19.

### General information on exports

In one year, Honduras' exports amounted to US\$1.11 million, and the volume of exports was of

#### Value of exports



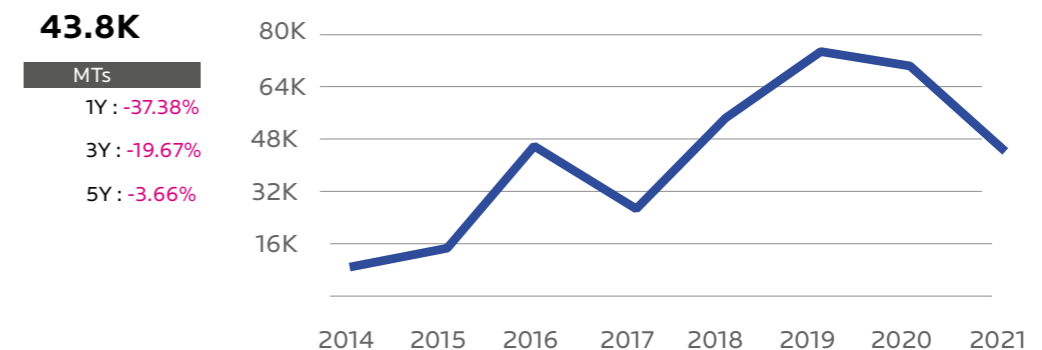
15 FAO. Food and Agriculture Organization of the United Nations." Country profiles on fisheries and aquaculture. The Republic of Honduras." 2015. Available at: <https://www.fao.org/figis/pdf/fishery/facp/ARG/es?title=FAO%20Pesca%20y%20Acuicultura%20-%20Perfil%20del%20pa%EDs>

16 FAO. Food and Agriculture Organization of the United Nations." Country profiles on fisheries and aquaculture. The Republic of Honduras." 2015. Available at: <https://www.fao.org/figis/pdf/fishery/facp/ARG/es?title=FAO%20Pesca%20y%20Acuicultura%20-%20Perfil%20del%20pa%EDs>

17 Secretariat of Agriculture and Livestock of Honduras. General Directorate of Fisheries and Aquaculture. Lobster Statistical Bulletin - DIGEPESCA | SAG HONDURAS

18 FAO. Organización de las Naciones Unidas para la Alimentación y la Agricultura." Perfiles sobre la pesca y la acuicultura por países. La República de Honduras". 2015. Disponible en: <https://www.fao.org/figis/pdf/fishery/facp/ARG/es?title=FAO%20Pesca%20y%20Acuicultura%20-%20Perfil%20del%20pa%EDs>

#### Volume of exports



Source: TRIDGE web portal for companies

According to the analysis of the aquaculture and fisheries situation for the fourth quarter of 2020, lobster exports represented a contribution of 14.3% to the GDP<sup>19</sup>.

Diving fishing activity is carried out especially on the Caribbean coast of Honduras, a region populated by ethnic communities, which in recent decades have obtained their income from fishing<sup>20</sup>, including spiny lobster diving fishing. According to PAHO, lobster exports are one of Honduras' main economic revenues. On the other hand, the Inter-American Commission on Human Rights has stated that: "Lobster [historically was] obtained by artisanal methods, but [...] due to its rapid and prized commercialization, it began to be fished by diving, an activity that is mainly carried out by Miskitus, who have a great diving capacity and are known as the best freedivers in the world; [...] lobster fishing constitutes the main source of work in the area, "particularly Miskito males, who start these activities from the age of 14"<sup>21</sup>.

The chain of value of Industrial lobster fishing is complex and involves several companies operating locally, nationally, and globally. See Figure 1.

19 Secretary of State in the Offices of Agriculture and Livestock (SAG). IICA. USDA. Government of the Republic of Honduras. "Análisis de Coyuntura Acuícola y Pesquero". 2020

20 According to DIGIPESCA, in 2012 about 60% of the income in the Gracias a Dios region came from fishing. National Action Plan for the Closure of the Lobster (Panulirus argus) Tank Diving Fishery (SCUBA) ([https://www.digepesca.sag.gob.hn/wp-content/uploads/2022/09/PlanAccionLangosta-Honduras\\_SAG\\_v.SEPTIEMBRE\\_2012anex.pdf](https://www.digepesca.sag.gob.hn/wp-content/uploads/2022/09/PlanAccionLangosta-Honduras_SAG_v.SEPTIEMBRE_2012anex.pdf)) Pg. 16.

21 Inter-American Commission on Human Rights (2018). Merits Report No. 64/18 CASE 12.738, "Opario Lemoth Morris and Others (Buzos Miskitus) v. Honduras. Para34, Pp.6-7. available here: <http://www.oas.org/es/cidh/decisiones/corte/2019/1..ho12738-fondo%20esp.pdf>

Figure 1. Chain of value of industrial lobster fishing



**Industrial Lobster Fishing Companies.** The role of the Fishing Companies is key in the generation of raw material, they are strategically distributed in the northern coast of Honduras (Bay Islands, La Ceiba and La Moskitia), they have managed to associate and are involved in the construction of public policies on fishing. These companies own at least one vessel per company. To operate, the activities of different people or actors are intertwined, as follows:

- a) The captain, who is the highest authority on the vessel;
- b) The crew, who are responsible for operation, cleaning, equipment and machinery maintenance, and cooking during fishing operations;
- c) “Sacabuzos”, they are the connecting people, and their function is to act as intermediaries between the fishing entrepreneur and the divers, in terms of contracting and payment for the work carried out;

d) Comanches, they are the informants of the divers, they act as captains of small teams of divers, in a vessel there can be more than two comanches, this is a function of the divers that the vessel carries, this informs how many pounds each diver of their assigned team takes out per day;

e) Divers, are in charge of diving fishing the lobster in the areas allocated by the captain of the vessel and;

f) Cayuquero, is the person who accompanies the diver with a small vessel containing the diving tanks and the product collected by the diver.

For these fishing vessels to leave, they must have a sailing permit (which they obtain only once for the entire fishing period, even though they unload and stock up in other areas that are normally different from their base point). This sailing permit is granted after officials from various institutions check that the vessel complies with basic hygiene and environmental standards, which is difficult to determine without the presence of the occupants, DIGEPESCA checks that the fishing permits are in order, STSS checks that the contracts are signed by the parties who are not present. This is used as a requirement so that finally the Merchant Marine with a simple inspection and a check of a list allows the vessel to leave and go to the Moskitia to board any diver that the “sacabuzos” has available, action in which there is no longer any inspection by the State. It is for this reason that divers usually do not know the name of the vessel on which they will work or who is its owner.

After passing through the Moskitia, the vessels continue offshore for two to three weeks to dive fishing. The product they catch is kept frozen and finally transported and sold at the Seafood Plants.

**Processing plants.** These companies play an important role as intermediaries, they are the buyers, processors and sellers of lobster, snail, and sea-cucumber in the national and international markets. Most of these businesses follow similar patterns, the structure is the following: a) General Management, b) manager and accountant, c) supervisors and d) maquila workers (most of which are women) who are hired on a seasonal basis. The lobster processing plants (in year 2022) in Honduras are:

Place	Business
Roatán	Caribeña, SA
	Hynds Seafood
	Islander Fisheries
Guanaja	Islander Fisheries
	INDUPESCA

Place	Business
La Ceiba	Pesca del Atlántico
	COMEXPROM
	Inversiones Cangrejal
	Azul InterExport
	Inversiones Ikigai

**Importers.** These businesses that operate globally are the ones that regulate how the product is wanted in terms of hygiene, packaging, some provide financing and buy from the processing plants, transport, receive and regularize the product outside the country and sell it to retailers.

**Merchandisers** These are the supermarkets and are responsible for supplying the product to the final consumer both nationally and internationally.

**Final consumer** The final consumer is the one who finally buys and consumes the final product.

A relevant finding is that most of the companies that participate in the chain of value of submarine industrial fishing, even though they move large amounts of capital, are not affiliated with COHEP. But they do have their own association.

As we can see, the lobster diving fishing chain of value involves various actors ranging from artisanal fishermen, industries, processing plants, importers, processing companies and/or traders and end consumers.

Diving fishing activities and their impacts on human rights have been extensively documented by multiple state and international actors, which have shown adverse effects on the rights to work, health, or life of divers, who are also part of the Miskitu people, which implies taking into account the ethnic perspective in the understanding and enjoyment of human rights. Some of the reports, documents or texts that have documented these impacts are the following:

- **Special Prosecutor's Office for Ethnic Groups and Cultural Heritage** Inter-American Development Bank. Study on the Problems of the Divers of the Honduran Moskitia. Honduras. 2001
- **World Bank** Conceptual framework for intervention in indigenous and black communities with the project "trade facilitation and increased competitiveness". 2003.
- **United Nations Development Programo.** Human Development Report Honduras, 2003.
- **Pan American Health Organization** Human Rights and Disability among

Indigenous Peoples. Integral Attention of the Miskitu Divers in Honduras. 2004<sup>22</sup>.

- **International Labor Organization.** Child Labor and Indigenous Peoples. The case of Honduras. 2007<sup>23</sup>
- **UN, Committee on the Elimination of Racial Discrimination.** Concluding observations on the first to fifth periodic reports of Honduras, March 13, 2014.
- **Inter-American Commission on Human Rights.** Report about the Human Rights Situation in Honduras (2015)<sup>24</sup>.
- **ILO-Committee of Experts on the Application of Conventions and Recommendations- CEACR** Observation-Adoption:2015, Publication: 105th session of ILC (2016)<sup>25</sup>
- **ILO-Committee of Experts on the Application of Conventions and Recommendations- CEACR** Observation-Adoption:2021, Publication: 110th session of ILC <sup>26</sup>
- **Inter-American Commission on Human Rightss.** Situation of human rights in Honduras, 2019<sup>27</sup>
- **Inter-American Court of Human Rights.** Case of the Miskitus Divers . 2022<sup>28</sup> Lemoth Morris et al.) v. Honduras. 2022

Por lo tanto, el presente informe no profundiza en el diagnóstico de la situación de derechos humanos alrededor de la pesca por buceo, dado que este diagnóstico ya se ha realizado detalladamente por otras instancias. Su propósito es hacer una lectura de esta situación desde la perspectiva de empresas y derechos humanos, en especial a la luz de los Principios Rectores sobre Derechos Humanos y Empresas de Naciones Unidas. No obstante, para

- 22 Pan American Health Organization. Human rights and disability among indigenous peoples, comprehensive care of the Miskito divers of Honduras- 2004. Available at: [http://cidbimena.desastres.hn/filemgmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filemgmt/files/MISKITO_Derechos.pdf)
- 23 ILO. Child labor and indigenous peoples. The case of Honduras. Available at: <https://www.ilo.org/ipeinfo/product/download.do?type=document&id=10432>
- 24 IACHR. Situation of human rights in Honduras. Adopted on August 27, 2019. (OAS. Official documents; OEA/Ser.L/V/II).
- 25 ILO. Observation (CEACR) - Adoption: 2015, Publication: 105th ILC session (2016). Indigenous and Tribal Peoples Convention, 1989 (No. 169) - Honduras. Available here: [https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LANG\\_CODE:3255666,es](https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3255666,es)
- 26 Commentaries (Ilo.org) [https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:4120356](https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4120356)
- 27 IACHR. Situation of human rights in Honduras. Adopted August 27, 2019. (OEA OEA/Ser.L/V/II.Doc. 146) Available at: <https://www.oas.org/es/cidh/informes/pdfs/Honduras2019.pdf>.
- 28 Inter-American Court of Human Rights. Case of the Miskito Divers (Lemoth Morris et al.). Series C No. 432. Judgment of August 31, 2021. [seriec\\_432\\_esp. pdf https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_432\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_esp.pdf)

este propósito se requiere precisar algunos de los derechos humanos en riesgo. Therefore, this study does not elaborate on the diagnosis of the human rights situation surrounding diving fisheries, since this diagnosis has already been carried out in detail by other entities. Its purpose is to analyze this situation from the perspective of business and human rights, especially considering the United Nations Guiding Principles on Business and Human Rights. However, for this purpose it is necessary to specify some of the human rights at risk or effectively impacted in the context of industrial lobster exploitation in Honduras, which is presented below considering different populations or population perspectives from a human rights approach.

### IMPOTENTIAL AND ACTUAL IMPACTS ON WORKERS' RIGHTS IN THE DIVING FISHING SECTOR IN HONDURAS

Industrial lobster fishing is the main employer in the department of Gracias a Dios or the Honduran Moskitia. This activity provides work for thousands of workers per fishing season, which runs from July to March each year. It also includes work in the processing plants, which are mostly located in the Bay Islands, La Ceiba and the Moskitia. In the processing plants, a high percentage of the positions are occupied by women. It is important to note the large number of indirect jobs that are generated in the region and that produce significant economic activity.<sup>29</sup>

In this context, multiple discussions have been held about the elements of the right to work in the diving fishing activities, as well as in the assurance of the rights related thereto, such as the right to social security.

The following is an overview of the regulatory framework in Honduras where the main potential and actual impacts on the rights of workers associated with the diving fishing sector in Honduras are identified, considering national and international human rights standards.

#### Honduran Regulatory Framework

The Honduran regulatory framework is robust, including relevant public policies on the right to work, which is set forth in the 1982 Political Constitution and its protection is developed through the Labor Code and other regulations that complement it. Furthermore, the Political Constitution<sup>30</sup> also recognizes the right to social security<sup>31</sup>. Thus, these rights must be respected in the diving fishing sector. In this regard, the following are the main Honduran norms adopted to protect the rights of workers involved in the chain of value of industrial lobster fishing

<sup>29</sup> Espinoza Turcios, Eloísa. "INFORME ECONOMICO SOBRE LAS PESQUERÍAS DE LANGOSTA Y CAMARÓN EN HONDURAS". Tegucigalpa, Honduras, 2008

<sup>30</sup> Constitution of the Republic of Honduras, Chapter V Labor, article 127-141, Tegucigalpa, 1982.

<sup>31</sup> Constitution of the Republic of Honduras, Chapter V Labor, Article 142-144, Tegucigalpa, 1982

- a. Political Constitution of 1982;
- b. Labor Code;
- c. Occupational Safety and Health Regulations for Diving Fishing<sup>32</sup>;
- d. Merchant Marine Law
- e. General Law of Fisheries and Aquaculture<sup>33</sup>
- f. The Equal Opportunities for Women Act<sup>34</sup>
- g. Law on Equality and Integral Development for Persons with Disabilities<sup>35</sup>

#### International Standards<sup>36</sup>

In addition to the national norms that protect the rights of workers in Honduras, including the Constitution of the Republic of Honduras in the chapters mentioned above, several international treaties ratified by the State of Honduras also recognize them, which makes them domestic legislation and of mandatory application<sup>37</sup>. The main international instruments that recognize them are: Los principales instrumentos internacionales que lo consagran son:

- a. Universal Declaration of Human Rights (UDHR)<sup>38</sup>
- b. United Nations Declaration on the Rights of Indigenous Peoples
- c. American Declaration on the Rights and Duties of Man
- d. American Declaration on the Rights of Indigenous Peoples
- e. Charter of the Organization of American States

<sup>32</sup> Secretary of Labor and Social Security. EXECUTIVE AGREEMENT STSS-577-2020. "REGULATION OF OCCUPATIONAL SAFETY AND HEALTH OF UNDERWATER DIVING FISHING, Published in the Official Gazette Number 35,459, December 14, 2020. Tegucigalpa Honduras. Available in: [https://www.tsc.gob.hn/web/leyes/Acuerdo\\_Ejecutivo-STSS-577-2020.pdf](https://www.tsc.gob.hn/web/leyes/Acuerdo_Ejecutivo-STSS-577-2020.pdf)

<sup>33</sup> Ibid.

<sup>34</sup> They are intended to remove all obstacles to the full participation of women in all spheres of society, on equal terms, to ensure the different activities (including economic and commercial activities)

<sup>35</sup> Its purpose is to fully guarantee to the person with disabilities the enjoyment of their rights, to promote and provide with equity their integral development within society. Of vital importance for the situation of Miskitus divers with disabilities.

<sup>36</sup> A better and more extensive understanding of the obligations undertaken by the State of Honduras in relation to human rights in general, including the right to work, can be found in the "Compendium of Ratified and Adopted International Instruments on Human Rights, Humanitarian Law and Honduran Normative Framework on Human Rights, prepared by the Secretariat of Human Rights of Honduras and available at: <https://www.sedh.gob.hn/documentos-reci-entes/275-compendio-2019/file>

<sup>37</sup> Constitution of the Republic of Honduras of 1982 and its Reforms, article 16. Digital version available at: [https://www.oas.org/dil/esp/onstitución\\_de\\_honduras.pdf](https://www.oas.org/dil/esp/onstitución_de_honduras.pdf)

<sup>38</sup> Ratified on December 17, 1945. And Adopted on December 10, 1948. available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

- f. Interamerican Convention on Human Rights (ACHR)<sup>39</sup>.
- g. Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights, or "Protocol of San Salvador"<sup>40</sup>
- h. International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>41</sup> and its Optional Protocol<sup>42</sup>
- i. International Convention on the Elimination of All Forms of Racial Discrimination
- j. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>43</sup>
- k. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
- l. Forced Labor Convention (C029)
- m. Discrimination Convention - Employment and Occupation (C111)
- n. Minimum Age Convention (C138)
- o. Convention 144-ILO on Tripartite Consultation (International Labor Standards)<sup>44</sup>
- p. ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor <sup>45</sup>
- q. Maritime Labor Convention/MLC-2006

#### Impacts on the rights of diving fishing workers in Honduras

In the value chain of industrial diving fishing, there are multiple companies

39 Signed on November 22, 1969 and ratified on September 5, 1977 and available at: <https://www.corteidh.or.cr/tablas/17229a.pdf>. This convention indicates in Article 6 that no one shall be required to perform forced or compulsory labor and its exclusionary considerations, as well as Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women, which states that no one shall be required to perform forced or compulsory labor.

40 Firmada el 22 de noviembre de 1969 y ratificado el 5 de septiembre de 1977 y disponible en: <https://www.corteidh.or.cr/tablas/17229a.pdf>. Esta convención indica en el artículo 6 que nadie debe ser constreñido a ejecutar un trabajo forzoso u obligatorio y sus consideraciones excluyentes, así como el artículo

41 Firmado el 19 de diciembre de 1966 y ratificado por Honduras el 17 de febrero de 1981 y disponible en: <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

42 Ratified by Honduras on January 16, 2018

43 Ratificada el 9 de agosto de 2005. Disponible en: <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

44 Ratificado por Honduras el 12 de junio de 2012. y disponible en: [https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C144](https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C144).

45 Ratified by Honduras on October 25, 2001 [https://www.oas.org/dil/esp/Convenio\\_182\\_oit.pdf](https://www.oas.org/dil/esp/Convenio_182_oit.pdf)

that operate nationally and globally, and depending on their role, some are of high risk and others of lower risk of affecting the human rights of workers, constitutional guarantees, and international obligations on the matter. CONADEH had the opportunity to interact with some of the business actors in the value chain (vessel owners and processing plants), which recognize the importance of complying with workers' rights. However, the approach of these companies to human rights is focused on labor rights, thus identifying a limited vision of human rights and the need to expand their knowledge, and understanding beyond labor rights, including the UN Guiding Principles on Business and Human Rights. However, both state actors and employers in the sector recognize the importance of workers' rights (including divers' labor rights) in the industrial fishing and diving sector. Thus, they stated that they have developed, for example, a model written work contract to be signed between the owners of the fishing vessels and the divers (See Annex 1)<sup>46</sup>. Likewise, the different actors agree that issues related to labor rights are a central part of the human rights problems in the diving fishing sector.

The Inter-American Commission on Human Rights (2015) after its on-site visit to Honduras, highlighted specially the situation of Miskitus divers, and determined the following:

(...) the work of the divers is informal, with no contracts, lack of safety, deficient equipment, and labor exploitation (...) the equipment used for diving is old and not properly serviced, and there is no adequate training, only on the part of the divers' partners, who are not trained either. The divers spend 12 to 17 days working and in order to catch larger quantities of product, they are forced to remain at great depths for long periods of time and surface very quickly in contravention of diving safety regulations. All of this occurs without proper state supervision. As a result, divers run the risk of suffering preventable accidents such as drowning or decompression sickness. (...) as a consequence of these conditions, several Miskito divers have lost their lives or have suffered permanent physical and mental illnesses. (...)

The main guarantees associated, on the one hand, with the right to work of divers and, on the other, with the right to work of processing plant workers are detailed below<sup>47</sup>.

#### Main human rights impact on divers in the dive fishing sector in Honduras

##### a. Right to a freely chosen and accepted work

The right to freely chosen and accepted work is set forth in various human rights instruments. Article 6 ICESCR "1. The States Parties to the present

46 A version of this contract can be found in Annex 1 of this report.

47 IACHR. Inter-American Commission on Human Rights (2015). Report on the human rights situation in Honduras. Available here: <https://www.oas.org/es/cidh/informes/pdfs/Honduras-es-2015.pdf>

Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right". Similarly, the Protocol of San Salvador (Art. 6) recognizes this right.

In the General Comment 18 the Committee on the ESCR developed the scope of the right to freely chosen work<sup>48</sup> and how it can be impacted because of the State's failure to comply with its responsibility to ensure that companies and State institutions comply with their obligations are more clearly defined, with particular emphasis on the rights of women, children, and migrant workers. In this regard, it points out the following as State obligations in relation to the right to work:

"23. States parties are under the obligation to respect the right to work by, inter alia, prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including prisoners or detainees, members of minorities and migrant workers. In particular, States parties are bound by the obligation to respect the right of women and young persons to have access to decent work and thus to take measures to combat discrimination and to promote equal access and opportunities.

[...]

25. Obligations to protect the right to work include, inter alia, the duties of States parties to adopt legislation or to take other measures ensuring equal access to work and training and to ensure that privatization measures do not undermine workers' rights. Specific measures to increase the flexibility of labour markets must not render work less stable or reduce the social protection of the worker. The obligation to protect the right to work includes the responsibility of States parties to prohibit forced or compulsory labour by non-State actors".

In addition, the Committee indicates that non-State actors are also subject to obligations in relation to the right to work, and pointed out that:

"52. [...] Private enterprises - national and multinational - while not bound by the Covenant, have a particular role to play in work creation, hiring policies and non-discriminatory access to work. They should conduct their activities based on legislation, administrative measures, codes of conduct and other appropriate measures promoting respect for the right to work, agreed between the government and civil society. Such measures should recognize the labour standards elaborated by the ILO and aim at increasing the awareness and responsibility of enterprises in the realization of the right to work".

48 Committee on Economic, Social and Cultural Rights. Thirty-fifth session, Geneva, 7-25 November 2005 Item 3 of the provisional agenda. THE RIGHT TO WORK. General Comment No. 18

From the above, it can be concluded that, in terms of Miskitus divers, given the weak economic and social situation of the Moskitia, there may be a limitation to freely choose and accept a work, due to the lack of different work opportunities in the Moskitia. Thus, this lack of opportunities may lead the Miskito population to find in diving their main or only form of work or income, which may question their freedom to choose work. Additionally, the precarious situation of accelerated impoverishment of the families of the Miskito divers prevents their work from becoming a factor of personal, economic, and social development, which is evident in the growing impoverishment of the region and the search for other illicit alternatives to produce an income<sup>49</sup>

#### b. Fair and satisfactory work conditions

Having fair and satisfactory work conditions implies several guarantees, among others:

- **Remuneration which provides all workers, as a minimum, with:**

- **Dignified living conditions. Art 7.a.ii. ICESCR.** A decent living for themselves and their families according to the provisions of the Covenant

- **Safe and healthy working conditions:**

- Regarding equal pay, General Comment 23 of the Committee on ESCR states that:

- "All workers have the right to a fair wage. The notion of a fair wage is not static since it depends on a range of non-exhaustive objective criteria, reflecting not only the output of the work but also responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on health and safety of the worker, specific hardships related to the work and impact on the worker's personal and family life"<sup>50</sup>.

For its part, in relation to remuneration that provides all workers with decent living conditions for themselves and their families, the ICESCR Committee points out that it must provide for:

- "a decent living must be determined by reference to outside factors such as the cost of living and other prevailing economic and social conditions. Thus, remuneration must be sufficient to enable the

49 According to research by the International Union for Conservation of Nature in 2020, "The cost of living in the Honduran Moskitia is high. The remoteness and difficulties of access make its development slower compared to the rest of the country, which is reflected in health, education, employment and productivity indicators. The Human Development Index (HDI) of the department of Gracias a Dios is 0.635, for medium human development, the Human Poverty Index (HPI) is 53%." Available at: <https://www.iucn.org/es/news/mexico-america-central-y-el-caribe/202006/la-moskitia-hondurena-biodiversa-costera-y-entre-espejos-de-agua>

50 Committee on Economic, Social and Cultural Rights, General Comment 23, on equal and satisfactory working conditions. 2016, para. 10

worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education, and an adequate standard of living, including food, water and sanitation, housing, clothing, and additional expenses such as commuting costs<sup>51</sup>

Regarding occupational health and safety, the ESCR Committee has developed, based on the Covenant, that:

“States parties should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment[20] and ensuring broad participation in its formulation, implementation, and review, in particular of workers and employers and their representative organization. [...] This policy] should cover all branches of economic activity including the formal and informal sectors and all categories of workers,[23] including non-standard workers [...] as well as], indicate specific actions required of employers in areas such as prevention and response to accidents and disease as well as recording and notifying relevant data, given the fundamental responsibility of the employer to protect the health and safety of workers”<sup>52</sup>.

Finally, the ICESCR Committee states in its General Comment that, with respect to fair and satisfactory working conditions, enterprises, trade unions and all members of society have responsibilities for their effective enjoyment, especially with respect to "occupational safety and health given that the employer's responsibility for the safety and health of workers is a basic principle of labour law, intrinsically related to the employment contract"<sup>53</sup>.

In relation to these components, and based on the OAS Charter and Article 26 of the ACHR, the IA-Court on its ruling with respect to the Miskitus divers concluded from the facts acknowledged by the State of Honduras in the case that:

“all the victims worked in precarious, unhealthy, unsafe and overcrowded conditions, on board vessels that did not meet the safety standards required for a hazardous activity, or the conditions that would help avoid or prevent occupational accidents. The Court also notes that the divers did not receive training from their employers on safety measures for underwater fishing, that the equipment they used was substandard, that they did not receive adequate food on board the fishing vessels, and that they were threatened by the vessel captains”<sup>54</sup>.

51 Committee on Economic, Social and Cultural Rights, General Comment 23, on just and favorable conditions of work. 2016, para. 18.

52 Committee on Economic, Social and Cultural Rights, General Comment 23, on just and favourable working conditions. 2016, paras 25-28.

53 Committee on Economic, Social and Cultural Rights, General Comment 23, on equal and satisfactory working conditions. 2016, para. 74

54 Inter-American Court of Human Rights. Case of the Miskitus divers (Lemoth Harris et al.) v. Honduras. Judgment of August 31, 2021. Para 76

This was due to the absence of State supervision of compliance with national and international regulations on the subject, and the consequent absence of measures to ensure the enjoyment of these rights<sup>55</sup>. This is without prejudice to the responsibility of companies to “adopt, at their own expense, preventive measures to protect the human rights of their workers, as well as measures aimed at preventing their activities from having a negative impact on the communities in which they operate or on the environment.”<sup>56</sup>

The data collected by CONADEH in its field visits and interviews with actors in the diving fishing sector show that, in diving fishing in the Moskitia, challenges persist to ensure the protection and respect for the right to equitable and satisfactory working conditions, especially the elements of fair wages, remuneration that provides a dignified existence and, especially, occupational health and safety. This in a broader context of abandonment and historical vulnerability of the Miskitu people, which conditions the possibility of securing rights and imposes barriers to their enforceability. CONADEH especially highlights the weak and limited institutional presence of the State in the Moskitia of Honduras. This is related to the few institutions operating in the region (local office of the Ministry of Labor, Public Health, Merchant Marine, DIGEPESCA), which lack personnel, logistics, infrastructure, and budget to provide at least the basic services of State oversight to fulfill their role of protecting people.

#### • Right to social security

General Comment 19 of the Committee on ESCR specifies the scope of the right to social security by stating that its essential elements are as follows<sup>57</sup>: (i) the existence and operation of a system that ensures benefits for social risks and contingencies, covering the nine dimensions of social security, namely: health care; workers' illness; old age; unemployment; occupational accidents; family benefits; maternity; disability; and survivors' benefits in the event of death of the insured person; (ii) the adequacy of benefits, which "must be sufficient in amount and duration to enable everyone to enjoy their rights to family protection and assistance, adequate living conditions, and sufficient access to health care"<sup>58</sup>; (iii) accessibility in terms of coverage, reasonable and transparent conditions, affordability and participation of the beneficiaries in the management of the system.

The breach of this right with respect to the Miskitus divers who suffered

55 Inter-American Court of Human Rights. Case of the Miskitus divers (Lemoth Harris and Others) v. Honduras. Judgment of August 31, 2021. Para 77

56 Inter-American Court of Human Rights. Case of the Miskitus divers (Lemoth Harris and Others) v. Honduras. Judgment of August 31, 2021. Para 51

57 Committee on Economic, Social and Cultural Rights Thirty-ninth session. Geneva, 5-23 November 2007 General Comment No. 19. The right to social security (article 9). OHCHR. “The Human Right to Social Security” 2022. Paras. 10 - 27

58 Committee on Economic, Social and Cultural Rights Thirty-ninth session. Geneva, 5-23 November 2007 General Comment No. 19. The right to social security (article 9) OHCHR. “The Human Right to Social Security” 2022. Para. 22



accidents in the course of their work was expressly recognized by the State of Honduras in the contentious case before the Inter-American Court of Human Rights, which stated in this regard that:

“None of the 34 victims who suffered diving accidents were taken immediately to receive medical treatment by the captains of the vessels on which they worked. This, despite the fact that they presented symptoms such as dizziness or loss of mobility in their extremities after deep dives. Such situations occurred without the State conducting inspections to verify that the vessels had the necessary means to provide immediate medical attention on board, despite the fact that the Fishing Regulations established this obligation. The Court further notes that the State failed to take action to ensure that divers would receive such treatment when they had diving accidents, such as the installation of an ambulance vessel or a health center to attend to the consequences of these accidents, even though it was aware of the problems faced by divers and the need to take steps to provide medical treatment for those who suffered accidents”<sup>59</sup>.

In addition to this, from the visits and interviews with actors carried out by CONADEH, it is clear that divers are not usually affiliated to the social security systems, nor have they created their own alternative systems to provide social security and timely, relevant and adequate medical and hospital care for diving fishing, and much less the recognition of the obligations for employers in cases of occupational accidents or temporary or permanent disability established in the Honduran Labor and Social Security Code<sup>60</sup>. Divers usually have access to public health centers, but they lack personnel and resources, equipment, medicines, and recovery systems for divers.

CONADEH found that a high percentage of the injured divers are present in the community of Uhi, known as the capital of active and sick divers. Thus, the absence of State oversight capacity, due to the lack of a budget and presence in the Moskitia region, means that the oversight of the companies is scarce, and it seems that this facilitates the lack of recognition of the rights of divers as workers<sup>61</sup>. This is interconnected with impacts or breaches of other rights, such as the right to life and personal integrity, especially with respect to the divers who are injured, many of whom are left with permanent sequelae that open the dimension of the rights of persons with disabilities with respect to these divers. This dimension will be addressed in a later chapter.

59 Inter-American Court of Human Rights. Case of the Miskitus divers (Lemoth Harris and Others) v. Honduras. Judgment of August 31, 2021. Para 92

60 CONADEH. informe de trabajo de campo- Entrevistas adicionales a trabajadores (a) de plantas de Mariscos de La Ceiba y Puerto Lempira. Agosto 2022. Página 3

61 LABOR CODE: Secretariat of Labor and Social Security: Title IV: Workdays, Rest and Wages (articles 318 to 390); TITLE V: Protection of workers during the exercise of their work (articles 391 to 459). Digital version, available at: <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/29076/64849/S59HND01.htm>

#### Summary of the main labor rights impacted or at risk in relation to divers.

Various dimensions, rights and guarantees in relation to the right to work of Miskitus divers are linked to their involvement in industrial fishing. Specifically, the following rights are or may be at stake for divers working in diving fishing in Honduras:

- The right to a freely chosen and accepted work
- The right to just and favorable conditions of work, in particular:
  - Compensation that provides decent living conditions.
  - Occupational health and safety
- Right to social security

#### Main impacts on the human rights of workers in processing plants in the Honduran diving fishing sector

The formally incorporated lobster processing plants are in La Ceiba, Roatán and Guanaja. They receive the product from industrial vessels, process it, pack it, store it and export it under national standards and regulations and in accordance with international safety and hygiene standards required by the importing countries, in this case, the United States of America, the main importer of Honduran seafood<sup>62</sup>.

Most of the processing plants are in Las Islas de la Bahía and La Ceiba and employ mainly women, who make up an estimated 80% of the total staff. CONADEH visited some of the lobster and sea cucumber processing plants in La Ceiba and interviewed their managers, coordinators, and staff. During these visits, CONADEH staff was able to observe that in general the facilities and physical working conditions are in accordance with human rights. In the interviews, employers recognized the importance of workers' rights and occupational health and safety in the plants, and emphasized how this is also a requirement of international buyers, especially North American companies.

However, CONADEH also found that the processing companies focus their understanding of human rights on the labor rights of their workers, which shows a limited vision of the wide range of human rights. Likewise, it seems that this view focuses on the direct workers in the plants rather than on the value or supply chain. Thus, CONADEH lacks evidence that processing companies have strategies, measures, or tools to verify respect for human rights in lobster, sea cucumber or sea snail fishing.

Overall, the processing plants comply with the standards required for their product to be accepted in the international market and are supervised by the Servicio de Sanidad Agropecuaria (Agricultural Health Service).

The following are some observations on the labor rights of processing plant workers.

62 Information provided by the processing plants during visits made by CONADEH

**a. The right to work, working conditions and social security.**

According to the Labor Code, the Dive Fishing Occupational Health, and Safety Regulations<sup>63</sup> require that contracts be entered into between employers and diving fishing workers at all stages of the value chain, including the conclusion of contracts or specification of the work relationship, with all the general obligations established in the Labor Code and the special obligations specified in the regulations for the activity in question.

Based on the responses provided by workers from 3 processing plants, there are work contracts that provide them with an acceptable work and salary and vacation rights. However, given the characteristics of the sector, many of these contracts tend to be temporary.

The working conditions of workers in most processing plants are acceptable. However, social security may be subject to risks, given that the temporary nature of the contract may have consequences in terms of insurance or create obstacles to affiliation.

The monthly salary earned by processing plant personnel is between L. 10,000.00 (US\$ 407.83) and L. 15,000.00 (US\$ 611.74). In principle, this is higher than the minimum wage for an 8-hour workday, which for this sector is L. 8,540.70 (US\$ 348.28) per month; however, the different economic fluctuations in Honduras show that this salary range would be barely fair to ensure a basic existence. This assessment is made because according to Adalid Irias, President of the Association for the Defense of the Basic Consumer Basket<sup>64</sup>, by the beginning of 2023, the basic consumer basket had exceeded 12,300 Lempiras, at the time of writing this report, with weekly price increases, because of the rising price of fuels that impacts the entire basic consumer basket<sup>65</sup>.

Thus, in relation to the rights of processing plant workers, there are potential risks regarding (i) the right to work (especially the obligation to adopt measures that guarantee access to work for processing plant workers during the closed fishing season); (ii) the right to social security (in those cases in which there are limitations to access to social security due to the temporary nature of the work relationship), and; (iii) the right to compensation that provides decent living conditions.

63 Secretary of Labor and Social Security. Executive Agreement STSS-577-2020, "Reglamento de seguridad y salud ocupacional de la pesca por buceo" (Regulation of occupational safety and health for diving fishing), Published in the official journal La Gaceta # 35,459, December 14, 2020.

64 Unlike the basic food basket, the term basic consumer basket refers to the minimum necessary for an average family (5 persons) to satisfy basic needs such as food, housing and education, but does not consider other needs such as health, clothing, rest, etc.

65 <https://contracorriente.red/2023/02/06/precio-de-la-canasta-basica-reduce-las-es-peranzas-puestas-en-el-gobierno-de-xiomara-castro/#:~:text=Seg%C3%BAn%20>

**b. Non-discrimination**

In Honduras, some fish processing companies request pregnancy tests from job applicants. According to one company visited by CONADEH, this request is explained by the need to know if the woman is pregnant to place her in positions that do not put the health of the mother and/or fetus at risk. Although there are no known complaints about the discriminatory use of this measure in relation to pregnant women for the purpose of access to work, the request for a pregnancy test for female workers can be considered as a potential risk of gender-based discrimination that should be addressed by companies

**Limitation of daily working hours**

The Labor Code<sup>66</sup> provides in detail various aspects regarding the workday in Article 272, which stipulates the duration of the workday as follows:

"a) Forty-four (44) hours in the daytime week, thirty-six (36) hours in the nighttime week; b) One hundred ninety-two (192) hours in the daytime month, one hundred fifty-six (156) hours in the nighttime month; and, c) One hundred seventy-six (176) hours in a period of four consecutive weeks, daytime, one hundred forty-four (144) hours in a period of four consecutive weeks, nighttime".

In relation to women and minors, Article 130 of the Code states that they shall enjoy an intermediate break of two (2) hours.

In relation to breastfeeding women, Article 140 stipulates that "The employer is obliged to grant the worker two (2) breaks, of thirty (30) minutes each, within the workday to feed her child, one in the morning and the other in the afternoon, without any deduction in the salary for said concept, during the first six (6) months of age, during the first six (6) months of the child's life. without any deduction in the salary for such concept, during the first six (6) months of age. This right shall be exercised by the mothers, when they deem it convenient, without any other formality than informing the director of the work of the time they have chosen".

Without prejudice to the above, since lobster production is a seasonal activity marked by periods of production (harvest) and closed season, Article 202 of the Honduran Labor Code is applicable, which establishes that: "During the harvesting period, when there is a threat of danger or serious damage, workers shall work even on rest days and overtime, and shall work supplementary hours, receiving their salary with the surcharges provided by law".

In this regard, the Committee on ESCR has pointed out that:

"Working days in all activities, including unpaid work, should be limited to a specified number of hours. While the general daily limit (without overtime) should be eight hours, the rule should take into account the complexities

66 National Congress. Decree 189-59. "Labor Code." 1959 and its reforms

of the workplace and allow for flexibilities, responding, for example, to different types of work arrangements such as shift work, consecutive works shifts, work during emergencies, and flexible working arrangements. Exceptions should be strictly limited and subject to consultation with workers and their representative organizations. Where legislation permits longer working days, employers should compensate longer days with shorter working days so that the average number of working hours over a period of weeks does not exceed the general principle of eight hours per day. Requirements for workers to be on-call or stand-by need to be taken into account in the calculation of hours of work." (GC No 23, Para. 35)."

As processing plants operate based on demand and product availability, this can put pressure on the process they are carrying out and poses a potential risk of long working hours to reach the goal of producing the containers requested by buyers.

#### Summary of the main rights affected or at risk in relation to workers in processing plants:

In summary, the main rights at risk or impacted with respect to processing company workers are as follows:

- Right to work.
- Right to social security.
- Right to compensation that provides decent conditions of existence.
- Right to limitation of daily working hours.
- Principle of non-discrimination based on gender

### IMPACTS ON THE RIGHTS OF THE INDIGENOUS MISKITU PEOPLE

Honduras is a multicultural, multilingual State that currently has self-identification and recognition of more than nine (9) ethnic peoples.

EnIn this sense, it has acquired a wide range of legally binding international commitments in the protection of fundamental rights for this sector of the population<sup>67</sup>. Among these rights are the following: self-determination, self-government, cultural identity, participation, consultation to obtain free, prior, and informed consent, indigenous jurisdiction, and collective territorial property. For the purposes of this report, the relationship between the fishing and the collective property and cultural identity of the Miskitu indigenous territory will be particularly highlighted.

<sup>67</sup> ILO Convention No. 169 Indigenous and Tribal Peoples Convention (C.169), adopted by the ILC at its 76th session on June 27, 1989, entered into force on September 5, 1991, ratified by the State of Honduras on March 28, 1995 and entered into force on March 28, 1996; United Nations Declaration on the Rights of Indigenous Peoples. Approved on September 13, 2007; and, American Declaration on the Rights of Indigenous Peoples. Adopted on June 14, 2016.

In this sense, it should be emphasized that, for the indigenous peoples and seen from the collective dimension, the relationship with their territory represents the fundamental basis of their culture, their spirituality, their integrity, and their survival. In this regard, ILO Convention No. 169 highlights the dual dimension of this right, on the one hand, it recognizes the individual right of the indigenous peoples to their land, and on the other, it recognizes the people, as a collective entity, the right of ownership over the entire habitat that they occupy and use, naming this right <<right to territory>><sup>68</sup>.

The Inter-American Court of Human Rights (IACHR)<sup>69</sup> as reaffirmed that a broad concept of indigenous land and territory is not limited to the physical core of dwellings they occupy, but extends to those spaces necessary for their cultural, spiritual or subsistence activities, natural resources, crops, plantations and their traditional environment; "territorial use and occupation by indigenous and tribal peoples "extend beyond the settlement of specific villages to include lands that are used for agriculture, hunting, fishing, gathering, transportation, cultural and other purposes"; therefore, indigenous and tribal peoples' rights encompass the territory as a whole."<sup>70</sup>.

The indigenous communal nexus with their territory should never be interpreted as a mere question of possession and production, but rather as a material and spiritual element that guarantees their existence as such. In this sense, States must consider that the collective right to survival as an organized People is related to the control of their habitat as a necessary condition for the reproduction of their culture, for their own development and for carrying out their life plans<sup>71</sup>.

The department of Gracias a Dios or the Moskitia, is inhabited mostly by Indigenous Peoples (Miskitus, Garífunas, Tawacas and Pech). The main livelihood of the Miskitu people is fishing. Diving fishing<sup>72</sup> is one of their skills, which was taken advantage of by some entrepreneurs from the Bay Islands, La Ceiba and Moskitia, to industrialize diving fishing and which has been modernized in equipment, but the divers (mostly Miskitus) do it in an artisanal and empirical way.

<sup>68</sup> ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries [ILO C169]. Article 13.2: "[t]he use of the term lands [includes] the concept of territories, [...] which covers the total environment of the areas which the peoples concerned occupy or otherwise use. [...]"

<sup>69</sup> I/A Court H.R., Case of the Saramaka People. v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, footnote 63.

<sup>70</sup> Inter-American Commission on Human Rights (2009). Thematic report "INDIGENOUS AND TRIBAL PEOPLES' RIGHTS OVER THEIR ANCESTRAL LANDS AND NATURAL RESOURCES. Norms and Jurisprudence of the Inter American Human Rights System." Para. 40

<sup>71</sup> I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Para. 146.

<sup>72</sup> USAID. Socioeconomic Evaluation of Lobster Fishing Communities in the Mosquitia of Honduras and Nicaragua. Chapter 2. The Honduran Moskitia. Tegucigalpa Honduras, August 2010. Prepared by Vilma Patricia Zúñiga, WWF Consultant.

### Honduran Regulatory Framework

Even though Honduras has ratified international treaties and conventions and its Political Constitution mandates the recognition of the rights of Indigenous and Afro-Honduran Peoples, enormous challenges persist for the enjoyment, exercise, and enforceability of these rights. In relation to the Miskitu people, there is little institutional presence in the Moskitia and the few authorities are located in Puerto Lempira. In addition, they operate partially because they lack the budget, personnel, and logistics to carry out oversight actions. On the other hand, the lack of national regulation of the rights of ethnic peoples, especially ILO Convention 169,<sup>73</sup> imposes barriers to their implementation and enforceability before the State.

### International standards.

In general, the United Nations Declaration on the Rights of Indigenous Peoples (Indigenous Peoples Declaration) and ILO Convention 169 internationally recognize the rights of Indigenous Peoples and Afro-Hondurans.

These measures were welcomed by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz in her visit to Honduras in 2015.<sup>74</sup> In addition, the State of Honduras has ratified most of these treaties and conventions, which are related to the rights of these peoples and specifically<sup>75</sup> (Convention 169, which was ratified on March 28, 1995). On the other hand, at the regional level, there is the American Declaration on the Rights of Indigenous Peoples.

### Impacts on the rights on indigenous peoples in the context of the diving fishing industry in Honduras

The Miskitu people have been present for centuries on the Caribbean coast of Honduras and Nicaragua, and are currently a transnational people, settled in Honduras in the Department of Gracias A Dios, where they are more than 90 percent of the population<sup>76</sup>. This department and its population are in a

73 In the last decade, at least two attempts were made to regulate ILO Convention 169 in Honduras; however, the indigenous peoples themselves opposed it, since they were not adequately incorporated into the process of creating the Regulations, which did not recognize the binding nature of the Consultations indicated in the Convention as fundamental for a true, authentic and inclusive participation process. see: <https://criterio.hn/oit-exige-honduras-implementar-consulta-los-pueblos-indigenas/>

74 Final mission statement Honduras by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz. November 10, 2015. Available at: <https://www.ohchr.org/es/statements/2015/11/end-mission-state-ment-honduras-special-rapporteur-rights-indigenous-peoples#:~:text=Me%20alegra%20saber%20que%20Honduras,derechos%20de%20los%20pueblos%20in-d%C3%ADgenas>

75 Secretary of Human Rights of Honduras. Compendium of national instruments ratified and adopted by Honduras on human rights and humanitarian law and regulations of the Honduran normative framework on human rights. <https://www.sedh.gob.hn/documentos-recientes/275-compendio-2019/file>

76 International Organization for Migration (2021). Analysis of the Miskito context regarding living conditions, discrimination, stigma and xenophobia from the migratory

precarious situation, with very low and sometimes non-existent access to public or social services. Thus, for example, education is only accessible at the primary level, housing is mainly independent, made of wood and zinc roofs, only about 10 percent of these have access to piped water and most households use alternative lighting such as candles or gas lamps, and the percentage of poverty is around 90 percent in the entire department<sup>77</sup>.

Based on the foregoing, the extreme vulnerability of the Miskitu people in Gracias A Dios is evident, which implies a greater urgency in the adoption of measures for the fulfillment of their human rights in general and their rights as indigenous peoples in particular. The following are some of the rights of indigenous peoples that may impact the Miskitu people in the context of the economic activity of diving fishing, based on the 169 ILO Convention and the United Nations Declaration on the Rights of Indigenous Peoples.

#### a. The right to participate in the use, management, and conservation of natural resources and to free, prior and informed consultation.

Article 15 of 169 ILO Convention on Indigenous and Tribal Peoples provides that:

“1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management, and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities and shall receive fair compensation for any damages which they may sustain as a result of such activities”.

Furthermore, the Declaration on the Rights of Indigenous Peoples states that:

“Article 25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard”.

The Constitution of Honduras and the General Law of Fisheries and Aquaculture declare as national patrimony and public domain “the hydrobiological fishery

dynamics and social practices of their community. Available in: Analysis of the Miskito context EU-IOM\_LQ (iom.int)

77 Ibid. Pg. 12 a 19.

resources contained in the bodies of water, located in the territory of the State of Honduras and in other areas where it exercises sovereignty or holds rights" (Art. 2).

The General Law of Fisheries and Aquaculture also provides "the preferential right of indigenous and Afro-Honduran peoples in the use of hydrobiological resources found in the artisanal, traditional and ancestral fishing zones of these peoples" (Art. 29), as well as the obligation of the State to carry out prior consultation processes in relation to the formulation and promulgation of regulations related to fishing or aquaculture that may affect the interests or rights of indigenous peoples, as well as for "the development of scientific and technical studies of the hydrobiological resources in their areas, the activities for sport and tourist fishing, aquaculture concessions and the establishment of management measures, are subject to the prior consultation procedure" (Art. 30).

In this manner, Honduran legislation overall incorporates an ethnic approach and recognizes the rights of indigenous peoples to preferential use of fishing resources and to be consulted on regulations and activities that may affect these rights. However, there is little evidence of compliance with these provisions in the case of the Miskitu people, especially with respect to participation in the use, management, and conservation of fishing resources and/or prior consultation

Additionally, there are economic activities -of other types, such as oil exploration or exploitation- in La Moskitia that may affect, in general, the Miskitu people and fishing in particular. These activities should be subject to free, prior, and informed consultation with the indigenous peoples<sup>78</sup>.

As has been reiterated throughout this report, the scarce presence of State institutions has meant that the Moskitia region and, therefore, its population, have historically been excluded from the development policies and plans of the different governments, which implies a continuous process of discrimination and abandonment, leaving them with migration or involvement in illicit activities such as providing services to drug trafficking networks as the only alternatives..

### b. Cultural Rights<sup>79</sup>

Article 31 of the Declaration on the Rights of Indigenous Peoples provides that:

"1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and

<sup>78</sup> ILO- Committee of Experts on the Application of Conventions and Recommendations- CEACR Observation-Adoption:2015, Publication: 105th Session of ILC (2016). Available in Comments (ilo.org)

<sup>79</sup> ILO Convention 169. Article 4, paragraph 1; Article 5, Article 7, paragraph 3.

develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. .

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights."

Thus, measures or actions adopted with respect to diving fishing should avoid impacting the cultural rights of the Miskitu people, given the relevance of this activity in their customs and culture. This includes both State and business actors in the context of the chain of value of the diving fishing industry.

### c. Right to access to justice<sup>80</sup>

Article 40 of the Declaration on the Rights of Indigenous Peoples states that Indigenous Peoples "have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules, and legal systems of the indigenous peoples concerned and international human rights." This provision is in line with international human rights obligations regarding access to justice in general (e.g. Articles 8 and 25 of the American Convention or Article 14 of the International Covenant on Civil and Political Rights).

The General Law of Fisheries and Aquaculture provides that:

"ARTICLE 31. Social Protection of Divers and the Community.

The creation of mutual funds or trusts with public or private resources is authorized for the attention of the needs of the population affected by the risks of autonomous diving and their families, which shall guarantee a minimum medical attention and other subsidies or social benefits that may be necessary for fishermen who are retired, sick or disabled because of this high-risk practice before this Law comes into force. The State shall allocate resources coming from the collection of the regional fishing contribution fee to fund the mutual funds or trusts referred to in this article.

As of the date of entry into force of this Law, all social security coverage shall be provided by the current Social Security system as determined by the Labor Code and this Law.

The State shall implement programs for productive restructuring, specialized training, and comprehensive support, aimed at facilitating social and family welfare because of the restructuring of diving fishing. The State shall allocate resources from the fishing fee in the region for the implementation of these programs.

<sup>80</sup> Convenio 169 de la OIT. Artículo 8 al 12.

The State shall promote the development of projects related to fishing activities in their different forms, which offer dignified employment to disabled diver fishermen in accordance with their capabilities and state of health. The Fisheries and Aquaculture Management Plan shall strategically consider the development of these projects”.

However, to date, these funds or trusts have not been implemented, therefore the remedy in terms of medical care and social solutions for the injured Miskitus divers is limited.

In addition, indigenous divers who may be affected by diving fishing could activate administrative (e.g., before the Ministry of Labor or CONADEH) or judicial mechanisms. However, given the precarious presence of State authorities, the limitations for them to carry out their work efficiently (for example, the lack of sufficient labor attorneys or the absence of an office of the Department of Occupational Health of the General Directorate of Social Welfare in Gracias A Dios) and sometimes the absence of procedural guarantees (for example, the lack of translators for the Miskito language in the offices of the Department of Occupational Health of the General Directorate of Social Welfare, make access to complaint mechanisms illusory).

#### Summary of the main affected or at-risk rights

Based on what has been established in this section, it can be concluded that the main affected or at-risk rights are as follows:

- Right to participate in the use, management, and conservation of natural resources.
- Right to free, prior, and informed consultation.
- The right to maintain, control, protect and develop their cultural heritage.
- Right of access to justice mechanisms.

#### IMPACTS ON THE RIGHTS OF WOMEN OF THE MISKITU PEOPLE

In the industrial diving fishing chain of value, women's participation is limited to the seafood processing plants (most of which are strategically located in the Bay Islands and La Ceiba) and, furthermore, as partners of active, injured or deceased divers. To a lesser extent, they participate in diving, as well as in the processing of jellyfish and sea cucumbers. It is estimated that 8 of the 10 employees of the processing plants are women.

#### Honduran Regulatory Framework

The Honduran regulatory framework is robust in terms of the protection of women's human rights, the State even has a Secretariat for Women of

Honduras (SEMUJERHN), and a special prosecutor's office for the protection of women (FEP-MUJER) because of women's conquest of their rights. In this context, the Law on Equal Opportunities for Women and its Regulations<sup>81</sup> y su Reglamento<sup>82</sup>, recognize women in Honduras the right to life and health, the right to work, the right to equality and non-discrimination, the right to a life free of violence, the right to a healthy environment, the right to non-discrimination, the right to inclusive political participation, and the right to property. However, their fulfillment is still a challenge in most of the country and, therefore, in the Moskitia region, with little presence of State institutions, the enjoyment and rights of women is a distant dream, which makes it difficult to oversee and monitor the implementation and full respect for these rights.

#### International standards

Overall, international treaties and conventions that protect women's rights are acknowledged and ratified by most States. The most important are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (A-61) (Convention of Belém do Pará).

#### Impacts on the rights of women of the Miskitu people in the context of the diving fishing industry in Honduras

This section will not address the impacts related to female workers in the processing plants, which were analyzed in the corresponding section. Instead, it focuses on the impacts of Miskito women, who are disproportionately impacted since they are usually the caretakers of injured divers, especially those with disabilities.

According to ECLAC:

“Gender inequality has historically been a structural feature of Latin America and the Caribbean, which is at the root of the unsustainability of the prevailing development model. In addition to exacerbating the structural challenges of gender inequality, the coronavirus disease (COVID-19) pandemic has highlighted the unfair organization of care within society and the need to put care and sustainability at the centre of the development model”<sup>83</sup>.

81 Law on Equal Opportunities for Women, Decree No 34-2000. Available at: <https://pdba.georgetown.edu/Parties/Honduras/Leyes/LeyMujer.pdf>

82 Executive Branch, Executive Decree # 058-2008. Published in the Official Gazette La Gaceta, # 31,777 of December 3, 2008.

83 Economic Commission for Latin America and the Caribbean (ECLAC), Towards a care society: the contributions of the Regional Gender Agenda within the framework of sustainable development (LC/MDM.61/3), Santiago, 2021. Pg 3. Available at Towards a care society. The contributions of the Regional Gender Agenda to sustainable development ([https://repositorio.cepal.org/bitstream/handle/11362/47264/3/S2100564\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/47264/3/S2100564_es.pdf)).

Injustice in the social structure of care has as its background the economic and social injustice that disproportionately affects women in the region. This context can be seen in Honduras, where according to UN Women for Indigenous and Afro-Honduran women, the historical social exclusion of indigenous peoples in Honduras is suffered "more intensely, having to face, in addition, sexist discrimination within their homes, organizations and communities; which added to situations of extreme poverty further limit the right to their economic and social development and that of future generations; perpetuating the exclusion and breach of their rights"<sup>84</sup>. This context derives in the case of the Miskitu people and diving fishing where the Miskitu women who are usually in charge of the care of divers who are injured and/or disabled due to their diving economic activity. This imposes a disproportionate burden which per se has an impact in terms of gender equality and, additionally, creates barriers to women's enjoyment of other rights (for example, work or education) and even - given that it is an unpaid activity - can create vulnerabilities for women who are victims of gender-based violence.

In this regard, the CEDAW Committee, in its General Recommendation No. 39 of 2022, 39 (2022) on the rights of indigenous women and girls, recommends to States the creation of:

"interdisciplinary support systems for Indigenous women and girls to reduce their unequal share of unpaid care work and combat child marriage and to assist victims in reporting acts of gender-based violence and labour exploitation. Social support systems should be operationally effective, accessible, and culturally responsive"<sup>85</sup>

This context to which Miskito women are subjected in the context of diving fishing and its impact on human rights, implies in turn an exclusion or restriction based on gender that results in at least a risk of impairment in the enjoyment of their human rights.

#### Summary of the main rights affected or at risk.

The main human right that may be affected for women related to industrial diving fishing is the right to equality and non-discrimination, due to the disproportionate burden in terms of care for injured divers.

### IMPACTS ON THE RIGHTS OF CHILDREN OF THE MISKITU PEOPLE

Child labor in rural Honduras is very common, minors are incorporated into economic activities at an early age, and in the department of Gracias a Dios it is very similar. According to data obtained by CONADEH from interviews in the

<sup>84</sup> UN Women. Political agenda of indigenous and Afro-Honduran women. Walking together, from dialogue to proposal. Honduras 2012-2013. Pg. 11. Available at cg00698.pdf (<https://biblioteca.olade.org/opac-tmpl/Documentos/cg00698.pdf>)

<sup>85</sup> CEDAW Committee. General Recommendation No. 39 of 2022, 39 (2022) on the rights of indigenous women and girls

communities, several young divers and relatives of injured divers indicated that the activity of the "cayuquero" activity is practiced by children, given the need to generate income for the family. This increases when the head of the family, who is a diver, suffers an accident with permanent sequelae or dies.

#### Honduran Regulatory Framework

The Honduran regulatory framework for the protection of the human rights of minors is robust. The Constitution provides that "the State has the obligation to protect children. Children shall enjoy the protection provided for in international agreements that safeguard their rights. The laws for the protection of children are of public order and the official facilities destined to this end have the character of social assistance centers". (Art 119).

Additionally, norms have been adopted such as the Code of Childhood and Adolescence (Decree No 73-96, modified by Decree 35-2013), which regulates -among other issues- the issues related to work and children. In this regard, it provides that child labor must be abolished gradually (art 114) and that in the case of children, work:

"shall be appropriate to their age, physical conditions, and intellectual and moral development.

The Secretariat of State in the Offices of Labor and Social Welfare shall avoid the economic exploitation of children and shall ensure that they do not perform dangerous work or work that hinders their education or affects their health or their physical or mental development.

Children who enter the labor force shall have the right to the salary, social benefits, and other guarantees that the law and individual or collective contracts grant to workers over eighteen (18) years of age and to the special benefits that by reason of their age and development are recognized by the Labor Code and herein" (Art. 115)."

Finally, the Secretary of Labor adopted in 2019 the AGREEMENT No. STSS-389-2019<sup>86</sup>, with the "purpose of establishing prevention, care, protection, coordination and referral of children in child labor and its worst forms to public and private institutions that serve this population, thus contributing to the prevention and eradication of child labor in Honduras".

#### International Standards.

In addition to national norms, Honduras has ratified several international treaties on children's rights, among which the following stand out:

- The Convention on the Rights of the Child.

<sup>86</sup> ACUERDO-STSS-389-2019.pdf (<https://www.tsc.gob.hn/web/leyes/ACUERDO-STSS-389-2019.pdf>)

- ILO Convention 138 on Minimum Age for Admission to Employment, which aims to advance international instruments to abolish child labor.
- The ILO Convention 182 on the Worst Forms of Child Labor.

#### Impacts on the rights of women of the Miskitu people in the context of the diving fishing industry in Honduras.

According to the interviews and conversations held by CONADEH throughout this study, it has been pointed out that sometimes the cayuqueros in the diving activity are minors. It was also noted that the Miskitu people start diving at an early age. Although the captains and owners of the lobster, sea cucumber and snail fishing vessels state that their vessels are not crewed by underage divers (even the contract template requires the diver to represent that he/she is of legal age and to indicate his/her ID card number), the statements about child cayuco divers were recurrent during field visits.

Although there is no concrete evidence on child cayuqueros or divers in the context of industrial diving fishing, it is presented as a potential risk, and therefore the possible impact of the rights of children to be protected from work that may be harmful to their health (Art. 32 Convention on the Rights of the Child); to the minimum age for work in positions that may be hazardous to health or safety (Art. 3 ILO Convention 138 and Art 3.d ILO Convention 182).

The tension in the enjoyment of these rights is accentuated when the heads of families engaged in diving fishing suffer accidents and these minors are forced to work. Given the contextual circumstances in Gracias a Dios, minors may be forced to seek their livelihood in activities that put them at risk (such as diving fishing or cayuco fishing or other activities) or even in illegal activities such as organized crime or drug trafficking.

#### Summary of the main rights at risk.

Consequently, the main right at risk for children in Gracias a Dios and in relation to industrial diving fishing, is that of performing work that could be harmful to their health (either because they could be involved in fishing activities as cayuqueros or divers, or because of the need to be employed in harmful activities due to the lack of income in the family as a result of their parent's diving accident).

### IMPACTS IN RELATION TO THE RIGHTS OF MISKITU DIVERS WITH DISABILITIES

Diving fishing has caused disability and death in Miskitus divers in the context of industrial fishing. Diving fishing injuries can be permanent and result in various disabilities. Dozens of Miskitus divers have suffered from accidents and many have become disabled as a result and one of the concerns is the lack of consolidated and official information on the number and specifications of the injuries in each case.

The injured divers have rallied around the Association of Miskitus Hondurans Handicapped Divers (AMHBLI), which reported to CONADEH that about 400 divers have died from work-related illnesses.

The lack of precise information in this regard was recognized by the State in the framework of the case before the Inter-American Court of Human Rights, where the Stated committed "to continue the consolidation of the census with detailed information about the Miskitus divers and diving fishing. The census should provide the State with accurate information for monitoring compliance with regulations, including labor regulations, and for the design of public policies related to the fisheries sector."<sup>87</sup>

#### Honduran regulatory framework

In addition to the guarantees established in the Constitution of the Republic for all citizens, Article 169 mentions the obligation of the State to pay special attention to the education of the handicapped (a term used at the time of the adoption of the constitutional text).

In view of the scarce regulatory development, the National Congress approved in 2005, Decree 160.2005, which contains the "Law of Equity and Comprehensive Development for Persons with Disabilities"<sup>88</sup>, whose purpose is to fully guarantee to persons with disabilities, all rights inherent to human dignity, established in the Constitution of the Republic, laws, and international conventions on human rights ratified by Honduras (Art. 3).

In order to reduce the occurrence of accidents and the consequent increase of people with disabilities and aligned with the United Nations Convention on the Rights of Persons with Disabilities<sup>89</sup>, especially in the aspects of health and timely care, habilitation and rehabilitation, the Occupational Safety and Health Regulations for Diving Fishing were approved in 2020, which establishes that the purpose thereof is the prevention of occupational accidents and occupational diseases in fishing vessels and work derived from the activity of diving fishing and to establish the rules that shall govern the application of the provisions of Title V contained in the Labor Code, in harmony with the national legislation in force regarding the protection of the health of workers against the risks arising from the working conditions of the activity of diving fishing. Thus, it creates special obligations for employers in Article 5, being the main ones:

- To guarantee the safety and health of the workers in all activities related to diving fishing of its company, including the payment of the entirety of the

<sup>87</sup> CortelDH. Caso de los Buzos Miskitus (Lemoth Morris y Otros) vs Honduras. Sentencia de 31 de agosto de 2021. Párr 153.

<sup>88</sup> Republic of Honduras. Decree No. 160 of 2005. Law on Equity and Integral Development for Persons with Disabilities. Available at: [https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/11/Honduras\\_Law-of-equality-and-comprehensive-development-for-persons-with-disabilities.pdf](https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/11/Honduras_Law-of-equality-and-comprehensive-development-for-persons-with-disabilities.pdf)

<sup>89</sup> Convention on the Rights of Persons with Disabilities. Available at: <https://www.un.org/esa/socdev/enable/documents/tccconvs.pdf>



indemnities resulting from accidents or death of the worker, without any deduction of such amount, in accordance with the provisions of the current Labor Code.

- Provide free of charge to its workers the necessary and adequate diving equipment and personal protective equipment in accordance with the risks to which they are exposed; adhering to the guidelines or protocols issued for this purpose.
- Immediately and adequately transfer the workers of the fishing vessel to the nearest hospital medical center in case of professional risk or other situation affecting the health of the workers, undertaking the entirety of the incurred costs.
- Install first aid equipment on fishing vessels and always have available the necessary medicines and healing materials.
- Keep an adequate record of occupational accidents and diseases occurring in the workplace, notifying the Secretary of Labor, either directly or through the nearest Port Captaincy of accidents occurring during the work activity, within the term and under the conditions set forth in the law.

Article 95 of the Labor Code provides in relation to occupational accidents and the safety of workers the obligation of employers to:

- Adopt adequate measures to create and maintain in their businesses the best conditions of hygiene and safety at work.
- Allow and enable the inspection and oversight that the labor, sanitary and administrative authorities must carry out in its business,
- Implement the indispensable measures and those provided by law to prevent accidents in the use of machinery, instruments or work material, and to maintain a supply of medicines and indispensable tools for the immediate attention of accidents that occur;
- Cover indemnities for accidents suffered by workers in connection with or as a consequence of their work, and for occupational diseases acquired by them in the course of their work or in the exercise of the profession they perform.

In relation to occupational accidents, the Labor Code has the following provisions relevant to diving fishing:

“Article 403. An occupational accident is understood to be any unforeseen and sudden event that occurs due to or in connection with the work and that produces an organic injury or permanent or temporary functional disturbance to the worker. Occupational disease

Article 404. Occupational disease is defined as any pathological condition that occurs as a result of the type of work performed by the worker or of

the environment in which he/she has been forced to work, whether it is determined by physical, chemical, or biological agents.

Article 405. Occupational risk shall also be understood as any injury, illness or aggravation subsequently suffered by the worker as a direct, immediate, and unquestionable consequence of an occupational accident or occupational disease of which the worker has been the victim pursuant to the provisions of the preceding articles. When the consequences of an occupational hazard are aggravated by an illness or injury suffered by the victim prior to the event or events causing it, such aggravation shall be considered, for the purposes of reparation, as a direct result of the occupational hazard and indirect result of the illness or injury.

Article 413. The employer is responsible for the reparation of occupational hazards occurring to its workers, pursuant to the terms of Articles 403 and 404. The bodily injuries that the worker suffers while rendering his/her services are presumed work accidents, and occupational disease, is the disease that occurs to a worker because of the type of work he/she performs”.

#### International Standards.

Honduras is a State Party to the Convention on the Rights of Persons with Disabilities, which aims to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (Art 1).

#### The impacts on the rights of injured divers with disabilities in the context of the diving fishing industry in Honduras

Diving fishing involves a high risk to the physical integrity of those who fish, in this case mostly the Miskitus diving community. Although currently the injured divers can access - not without difficulties - some emergency services, the communities have told CONADEH that afterwards this there is no accessibility to rehabilitation services (Art. 25, CRPD). Additionally, in the framework of the visits to Gracias a Dios, CONADEH was able to evidence the difficult circumstances for divers with disabilities and their families, given the weaknesses or lack of infrastructure, plans and programs for the effective enjoyment of rights for this population. Thus, divers with disabilities face obstacles with respect to their right to live independently (Art 19, CRPD), personal mobility (Art 20, CRPD), rehabilitation habilitation (Art 26, CRPD) and adequate standard of living and social protection (Art 28, CRPD).

This reality was acknowledged in the judgment of the Inter-American Court in the case of the Miskitus Divers (Lemoth Morris et al.) vs. Honduras.

#### Summary of the main affected rights or at risk.

From what has been established in this section it can be concluded that the main rights affected or at risk in relation to Miskitus divers with disabilities are as follows:

- Right to health

- Right to live independently
- Personal mobility
- Rights to habilitation rehabilitation
- Right to an adequate standard of living and social protection

Photographs taken by CONADEH during visits to the Miskitus diving communities, 2022









## CHAPTER II. THE THREE PILLARS OF THE GUIDING PRINCIPLES ON HUMAN RIGHTS AND BUSINESS AND THE INDUSTRIAL DIVING SECTOR IN HONDURAS.

This chapter analyzes the three pillars of the United Nations Guiding Principles on Business and Human Rights: protect, respect and access to remedy in relation to human rights, with respect to the diving fishing sector in Honduras. Some specific principles have been selected considering the characteristics of the sector in Honduras and the problems and dynamics of the sector. This does not mean that the other principles are not applicable in the Honduran context or in the diving fishing sector.

### A. PILLAR I: THE OBLIGATION OF THE HONDURAN STATE TO PROTECT HUMAN RIGHTS IN CORPORATE DIVING FISHING ACTIVITIES

In the chain of value of industrial diving fishing, the work with the highest risk is diving fishing and in the Moskitia or the department of Gracias a Dios, it has become the main livelihood for this region.

The State has a general obligation to protect human rights in activities between private parties, including relations between economic and other social actors. This chapter is based on principles of the Guiding Principles on Business and Human Rights, which can guide the State of Honduras in fulfilling its obligation to protect human rights in the context of the diving fishing sector.

### THE REGULATION OF DIVING FISHING IN HONDURAS AND ITS EFFECTIVENESS (GUIDING PRINCIPLE 3)

There has been progress in the regulation and norms of diving fishing in Honduras, considering international standards and in an effort to protect the human rights of the people who participate in the chain of value of industrial diving fishing. However, there are important gaps in the effective application of these regulations.

#### 3.1.1. Background Guiding Principle No. 3.

Guiding Principle 3 develops, in general, the regulatory power of the State to ensure that companies comply with applicable human rights regulations in the context of their activities. Thus, the principle states that:

“In meeting their duty to protect, States should:

- a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”

In the regulatory and normative framework, industrial diving fishing has evolved significantly in terms of protecting human rights. The following are the main regulations that apply to the corporate sector of diving fishing in Honduras in relation to human rights.

#### Enforce, evaluate, and remedy laws and regulations to ensure respect for human rights

The Honduran Constitution in relation to the rights of persons engaged in diving fishing indicates among others the following obligations for the State. First, it provides that the purpose of the State is to ensure its inhabitants the enjoyment of justice, freedom, culture, and economic and social welfare (Art. 1) and places the human person as "the supreme purpose of society and the State. Everyone has the obligation to respect and protect it. The dignity of the human being is inviolable" (Art. 59). Thus, the Honduran Constitution itself imposes an obligation on the State to protect human rights, one of the main tools being the regulatory power of the State, which is exercised through the National Congress (Art. 205) and the executive branch (Art. 45, num 1 and 11).

In addition, the economic system of Honduras "is based on principles of efficiency in production and social justice in the distribution of national wealth and income, as well as in the harmonious coexistence of the production factors that make possible the dignity of work as the main source of wealth and as a means of realization of the human person" (Art. 328). Thus, the economic freedom of individuals in Honduras is limited by the rights and freedoms acknowledged in the Constitution and the intervention of the State in the economy shall be based on public and social interest (Art. 333). Finally, Article 340 of the Constitution "declares of public utility and necessity, the technical and rational exploitation of the natural resources of the Nation", which includes maritime resources.

These general constitutional powers and obligations are applicable to the diving fishing industry, for which the State has the obligation to ensure the protection of human rights within the framework of the economic freedom of individuals involved in this productive activity.

At the legal level, the General Law of Fisheries and Aquaculture (Approved and in force since 2015 through Legislative Decree No. 106-2015<sup>90</sup>), regulates fishing activities. This provision develops different rights related to the diving fishing communities and indigenous peoples, characteristics that converge in industrial diving fishing in Gracias a Dios. Some of these provisions are:

- The obligation to apply ILO Convention 169 to fishing and aquaculture activities in indigenous and Afro-Honduran communities (Art. 26);

<sup>90</sup> At the legal level, the General Law of Fisheries and Aquaculture (Approved and in force since 2015 through Legislative Decree No. 106-2015

- The obligation to preserve the culture of indigenous peoples, within the framework of their autonomy, when developing and implementing fishing and aquaculture policies and regulations (Art. 28);
- The right to preferential access for indigenous peoples in the use of water resources (Art. 29);
- The requirement to carry out prior consultation with indigenous peoples in relation to fishing and aquaculture regulations or policies that relate to their interests, as well as with respect to certain economic activities in their territories that are related to fishing and aquaculture (Art. 30).
- The creation of mutual funds or trusts with public or private resources to attend to "the needs of the population affected by the risks of diving and their families, which should guarantee a minimum medical attention and other subsidies or social benefits that are necessary for those fishermen who are retired, sick or incapacitated due to this high-risk practice" (Art 31).

In addition, in terms of social security, the General Law provides that "The labor relations of workers engaged in commercial fishing are governed by the provisions of the Labor Code, social security services are the responsibility of the Honduran Institute of Social Security" (Art 102) and obliges the Secretary of State to regulate occupational health and safety issues in the fishing activity -especially diving fishing- which shall be enforced by a Labor Inspector Office (Art 123). Likewise, the Honduran Institute of Social Security (IHSS by its initials in Spanish) is mandated to define the policies and implement the pertinent actions, to include the working population engaged in diving fishing to the social security benefits provided by the Law.

A noteworthy fact is that Article 123 of the Law also states: "With respect to the occupational safety of divers, the provisions of the Labor Code shall apply, without prejudice to the issuance of specific legislation in this regard".

Finally, the General Law establishes the National Directorate of Fisheries and Aquaculture (DIGIPESCA by its initials in Spanish) as "the enforcing entity of the policies, strategies and plans on management, control, protection, promotion and planning applicable to fishing and aquaculture activities" (Art. 10), in natural coordination and concurrence with other related authorities, among others, the National Merchant Marine, the Secretary of Security, the Secretary of Labor, the Honduran Institute of Social Security (Art. 13).

On the other hand, the regulation of the General Directorate of the Merchant Marine provides that it is the State entity responsible for the registration of vessels carrying the flag of Honduras; likewise, it is responsible by express delegation, to ensure that the vessels comply with the state of the vessel and its equipment, a mandate that is implemented through the inspection activities of vessels as a prerequisite to the granting of the departure authorization ("zarpe"). The reference mandates are set forth in the Organic Law of the Merchant Marine established by Legislative Decree 167-94 and in the two amendments approved by Decrees No.

200-1997, and No. 120-2016, both for the modification of the original Decree-Law No. 167-1994. Likewise, through the Regulations for the Inspection, Recognition, and Issuance of Maritime Safety Certificates to Honduran Registry Vessels, which was approved by Agreement No. 836-1995.

According to the aforementioned legal instruments, the General Directorate of the Merchant Marine has the obligation and attribution to carry out inspections to guarantee the optimum conditions of the vessels and their equipment; likewise, it carries out a satellite monitoring program of the fishing vessels regardless of the fishing activity to which they are dedicated; The monitoring is carried out through an onboard beacon system, which is permanently activated and guarantees the location of the vessel at all times during fishing operations, a mechanism that, if altered or turned off by the crew, will result in the application of sanctions established in the corresponding regulatory framework.

Finally, in January 2012, the Presidency of the Republic, through Executive Decree number PCM-003-2012, created the Inter-Institutional Commission for Attention and Prevention of the Diving Fishing Problem (CIAPEB by its initials in Spanish), chaired by the Secretary of State in the Offices of Indigenous and Afro-Honduran Peoples (SEDINAFROH by its initials in Spanish).

CIAPEB is integrated by government agencies that, from different perspectives and mandates, are linked to fishing activities, namely: SEDINAFROH, DIGEPESCA, Secretariat of Health, Secretariat of Labor, and the General Directorate of the Merchant Marine.

Through CIAPEB, the institutions have been able to develop a Diagnosis of the Diving Fishing Problem and the formulation of the Multi-Year Plan; subsequently, they have been able to formulate and have officially approved the Occupational Safety and Health Regulations for Diving Fishing.

According to Article 1 of the Regulations,

“its purpose is to establish, develop and apply the legal, technical and administrative mechanisms for the prevention of occupational accidents and occupational diseases in fishing vessels and the work derived from the activity of diving fishing and to provide the rules that shall govern the application of the provisions of Title V contained in the Labor Code, in harmony with the national legislation in force regarding the protection of the health of workers against the risks derived from the working conditions of the activity of diving fishing; without prejudice to other regulations, norms, decrees or other provisions issued by the Executive Branch”.

The Labor Code provides, among other things, measures relating to equipment layout, risk prevention, hazardous work, health and safety, occupational risks, occupational accidents, permanent and general disability, remedies, and indemnities.

In addition to the Code, Article 5 of the Regulations defines obligations of employers, stating that all employers are obliged to: "(a) Guarantee the safety and health of workers in all activities related to diving fishing of their business, including the payment of the total indemnities resulting from accidents or death of the worker, without any deduction of such amount, in accordance with the provisions of the Labor Code in force", as well as to:

- Provide maintenance to diving equipment, replacing it in case of damage or breakdown and when it has reached the end of its useful life (Art 5.d);
- Adequately train workers before and during the performance of any work activity (Art 5.h);
- Guarantee the participation and facilitate the development of permanent occupational risk prevention programs (Art 5.i);
- Requiring the medical certificate of fitness for work in force for diving fishing workers prior to the opening of the fishing season (Art. 5.j; among others).

The Regulations also set forth the responsibilities of the workers, the obligations of the “sacabuzos” and the provisions related to working hours.

*Ensure that other laws, including commercial laws, do not restrict, but rather encourage compliance with human rights by companies.*

As mentioned, the Constitution of Honduras regulates the economic regime and provides that it is limited by human rights and it is based on social welfare. Thus, the business regulations should ensure respect for human rights in economic activities in Honduras.

*Advising companies to respect human rights.*

There is little evidence of experiences in which the Honduran State advises or provides pedagogical tools to companies to ensure that they respect human rights. While it is the responsibility of companies to identify the human rights issues related to their activities, the State can promote this knowledge in matters such as “how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families”<sup>91</sup>.

*Effectiveness of regulation and norms to protect human rights in the context of the dive fishing industry in Honduras.*

It is a challenge to achieve the effectiveness of the legal framework that mandates the State of Honduras to protect workers involved in the chain of value

91 Guiding Principles on Business and Human Rights. Pg. 6. Available at: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_sp.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_sp.pdf)

of industrial diving fishing. This is evident in the recent ruling of the IACHR Court against Honduras. For its part, the Sanitary Region No. 9 of the Puerto Lempira Hospital reported that approximately <sup>92</sup> health care services are provided to divers injured during the fishing season.



Injured diver transferred to Puerto Lempira 27.07.2022

Article 61 of the Fishing Law provides that to grant a “zarpe<sup>93</sup> for fishing (except for basic artisanal fishing), the vessels must be inspected by the competent authorities to verify the type of fishing gear, the devices that are permitted and required by the regulatory measures, as well as the total number of fishermen on board and their respective qualifications. The captain of the corresponding vessel must request the inspection from the moment he/she has the totality of his/her crew; the enrollment of new fishermen or crew members is not allowed without a new inspection.

Most of the diving fishing vessels leave La Ceiba and Islas de la Bahía only with the crew, and afterwards pass through La Moskitia where they embark the divers that the Sacabuzos selects for the vessel assigned to him/her. Nowadays, the logistical and/or financial mechanisms for the authorities to verify the embarking conditions of the divers is very weak, since, for instance, the authenticity of the medical report or the optimal embarking conditions are not verified.

The Puerto Lempira office of the STSS, the only one in the entire Moskitia, which used to be Regional, was downgraded and now depends on the Regional Office

<sup>92</sup> Figure reported by the management of the Puerto Lempira Hospital.

<sup>93</sup> Complaint file under registration number 09- 01- 2019- 7- 5- 3 (taken ex officio).

in La Ceiba. Most of the injured divers or their families interviewed by CONADEH indicated that the divers do not usually know who the employer is (since they deal directly with the “sacabuzos”) or the name of the owner of the vessel, which makes it difficult to file a claim in the event of an accident. Several also pointed out that they embark to work without a contract.

From the provisions of the General Law of Fishing and Aquaculture regarding social security for divers (Art 123), it is important to highlight the absence of concrete initiatives to achieve compliance on the provision of social security services, even though the guidelines of the Honduran Institute of Social Security, IHSS, consider and favor it.

Undoubtedly, having the affiliation of fishery workers to the social security system would be a substantive advance that would allow them to be beneficiaries of this service. To advance in this, it is necessary to enable the appropriate conditions to implement the IHSS service in the Miskita region, an important challenge considering the precariousness of the public health services system in that region.

The Safety and Occupational Health and Safety Regulation for Diving Fishing, created by CIAPEB, is a step forward for the prevention of the damages caused to diving fishing workers. However, the institution that presides over it, formerly SEDINAFROH, today DINAFROH, lacks presence in the department of Gracias a Dios and other members such as the Ministry of Health, DGMM, DIGEPESCA, STSS, only have an office in Puerto Lempira. The work of this organization at the central level is highlighted, but most of the representatives of these institutions present in the Moskitia said they were unaware of the regulation.

Several actors pointed out the situation of diving fishing under the influence of alcohol or drugs, and even that some divers demand to have drugs in the vessel as a requirement to embark and do the work of diving fishing. On the other hand, the regulations prohibit the use of these substances in diving fishing, and in the labor contract, the divers commit themselves not to use these substances. Although CONADEH was not able to verify this situation, it is important that the authorities and the companies verify compliance with the regulations and, if necessary, adopt additional measures to prevent the use of these substances in industrial diving fishing. In addition, health authorities should evaluate the overall situation of alcohol and psychoactive substance use in the Moskitia and adopt appropriate measures to address this problem from a public health perspective.

In addition, an injured diver -sometimes with a disability- must travel from his/her community to Puerto Lempira and from there to Tegucigalpa so that he/she can be evaluated, and the employer can indemnify or remedy the accident.

The General Fisheries Law refers to the creation of a mutual fund to support, through a reparation mechanism, the construction of spaces that allow the insertion into society of the injured divers found in each of the visited



communities, this is not yet operational and has not yet represented a solution to ensure the rights of divers with disabilities.

Barriers also persist for divers with disabilities and active divers in general to have social security coverage.

The challenges in the effectiveness in the implementation of fishing regulations, was seriously materialized in July 2019 with the death of 27 Miskitus and the disappearance of 9 more (sailors, Divers and Cayuqueros), after the shipwreck of a lobster fishing vessel. As stated by CONADEH, one of the causes exposed at the time was the overloading of the shipwrecked vessel, which had a permit to operate with 31 people and when the tragedy occurred it was carrying 91, of which 55 were rescued alive<sup>94</sup>.

AAs a result of this tragedy, the coordinator of the Miskita organization MOPAWI, made a statement to a national radio station, stating that *«at least 8,000 divers are disabled by the inappropriate fishing conditions in the Moskitia... many of these fishermen eat poorly and have an unfair pay, we can say so, because of the degree of work and fatigue produced by the work at sea.... many of these fishermen eat poorly and have an unfair pay, we can say so, because of the degree of work and fatigue that work at sea produces, as well as the obsolete diving equipment, and unfortunately, some vessel owners promote that they dive to great depths, more than 70 feet, which is what is provided in the law. There are single mothers because the divers are left in bed, unable to move; if we go to the recent tragedy, this could have been avoided with protection and prevention measures, but also with precise monitoring to prevent vessels from being overloaded with crew, this is a factor in this and all the tragedies that have happened in the department»*<sup>95</sup>

Thus, although there has been progress in regulation, there are important challenges in terms of enforcement by the State to protect the rights of Miskitus divers in Honduras.

#### THE POLITICAL COHERENCE OF THE STATE IN RELATION TO THE MANDATE AND ACTIONS OF THE VARIOUS PUBLIC AUTHORITIES RELATED TO THE BUSINESS ACTIVITY OF DIVING FISHING (GUIDING PRINCIPLE 8)

Principle No. 8 of the Guiding Principles states that:

“States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support”.

<sup>94</sup> Complaint file under registration number 09- 01- 2019- 7- 5- 3 (taken ex officio).

<sup>95</sup> Radio América. “Al menos unos 8,000 mil buzos están lisiados por las «condiciones inapropiadas» de pesca en La Mosquitia: Mopawi” 4 de julio de 2019. Accesible en <https://www.radioamerica.hn/al-menos-unos-8000-mil-buzos-estan-licidos-por-las-condiciones-inapropiadas-de-pesca-en-la-mosquitia-mopawi/>

The authorities that directly or indirectly intervene in the economic sector of diving fishing (both at a national and regional level and legally) should be actively trained - within the framework of their legal mandate - on human rights and how they are integrated into this economic activity. The above to be able to modulate their actions and strategies in the light of human rights and thus be able to advance towards their effective protection in the framework of industrial diving fishing.

Thus, officials of the National Directorate of Fisheries and Aquaculture (DIGIPESCA), as well as the National Merchant Marine, the Ministry of Security, the Ministry of Labor, the Honduran Institute of Social Security and especially CIAPEB and its members should have specialized training in human rights in general and on the relationship between human rights and business activity. In interviews with officials of some of these entities, CONADEH identified that, although basic knowledge of human rights exists, the complexities of the economic activity of diving fishing in Honduras imply that this knowledge should be further specialized.

In this regard, it is important to recall the process of discussion on the formulation of a National Action Plan on Business and Human Rights (NAP) in Honduras, a process articulated by the Secretariat for Human Rights. The adoption of a NAP with concrete training actions on business and human rights for public authorities could enhance the exercise of their mandate with a better and deeper integration of the rights perspective in the framework of their actions related to monitoring or intervention in the economic sector of diving fishing.

#### POLITICAL COHERENCE OF THE STATE IN RELATION TO THE CONTENT AND SCOPE OF INTERNATIONAL TRADE OBLIGATIONS (GUIDING PRINCIPLE NO. 9)

Guiding Principle No. 9 provides that:

“States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts”.

Honduras has signed several international treaties on trade matters, which may be in contradiction with its international human rights obligations. The following are the free trade agreements signed between Honduras, Canada and the United States of America, the latter being the most relevant for the diving fishing sector since most of the spiny lobster is exported to that country.

Regarding the Honduras-Canada Free Trade Agreement, according to its preamble, it is based on the protection and improvement of workers' rights and the recognition of "the importance of the standards and principles of corporate social responsibility and the pursuit of voluntary best practices with companies". It also reaffirms the commitment of the parties "to respect the values and principles of democracy and to promote and protect the human rights and

fundamental freedoms set forth in the Universal Declaration of Human Rights". In addition, it contains a labor chapter, which recognizes the right of the parties "to establish their own level of labor protection in accordance with their domestic legislation in a manner consistent with their obligations as members of the International Labor Organization (ILO) and the commitments undertaken in the ILO Declaration on Fundamental Principles and Rights at Work (1998)" (Art. 19.1) and undertake to:

- “(a) improving working conditions and living standards in the territory of each Party;
- (b) promote its commitments to internationally recognized principles and labor rights;
- (c) promote compliance with and effective enforcement by each Party of its domestic labor laws and regulations” (Art 19.2)

Thus, the Honduras-Canada FTA focuses in general in the human rights of workers. Moreover, it contains clauses that, in their application, may imply contradictions with the protection and respect for human rights. For instance, Article 1.3 states that “In the event of any inconsistency between this Agreement and the agreements referred to in paragraph 1, this Treaty shall prevail, except as otherwise provided in this Treaty”<sup>96</sup>. Paragraph 1 refers to the validity of the obligations of the WTO Agreement “and other agreements to which they are parties”. This open-ended clause allows for the possibility that the trade obligations of the FTA with Canada prevail over human rights obligations undertaken by Honduras in international human rights treaties.

Finally, Annex 9.4 of the Treaty sets out the measures for petitions or claims. These measures allow claims to be made in respect of measures directly affecting the parties in the industrial sector, limited to the trade rights set out in the Treaty and make no mention of other possible international obligations of the parties that may be relevant in a particular case<sup>97</sup>. Thus, if in a particular case breaches of trade obligations are alleged and human rights are simultaneously impacted or affected, the dispute settlement body may base its decision only on trade protection, regardless of human rights impacts.

On the other hand, the Free Trade Agreement between the Dominican Republic - Central America and the United States<sup>98</sup> indicates in its preamble that the

<sup>96</sup> Free Trade Agreement between Canada and the Republic of Honduras. Accessible at: [http://www.sice.oas.org/TPD/CAN\\_HND/Texts\\_FTA\\_05.11.2013/ESP/Text\\_s.asp](http://www.sice.oas.org/TPD/CAN_HND/Texts_FTA_05.11.2013/ESP/Text_s.asp)

<sup>97</sup> Free Trade Agreement between the Dominican Republic - Central America and the United States. Accessible at: [http://www.sice.oas.org/TPD/CAN\\_HND/Texts\\_FTA\\_05.11.2013/ESP/Text\\_s.asp](http://www.sice.oas.org/TPD/CAN_HND/Texts_FTA_05.11.2013/ESP/Text_s.asp)

<sup>98</sup> Free Trade Agreement between the Dominican Republic - Central America and the United States. United States. Accessible at: [http://www.sice.oas.org/trade/cafta/caftadr/chapter1\\_5s.asp](http://www.sice.oas.org/trade/cafta/caftadr/chapter1_5s.asp)

agreement is based on the protection, strengthening and effectiveness of the "fundamental rights of its workers and to strengthen cooperation in labor matters" and to develop the commitments of the parties in labor matters. As can be seen, the focus is on labor issues and not on the broad range of human rights. In addition, by not referring to human rights expressly, the treaty may be interpreted and applied in purely commercial terms and the settlement of disputes that may arise may not consider the relevant human rights issues.

Notwithstanding the above and given that labor issues are particularly relevant to the situation of the diving industry in Honduras, the labor references or clauses in these FTAs may be useful to ensure the enjoyment of workers' rights throughout the value chain of this industry. With this in mind, future trade agreements negotiated and ratified by Honduras should deepen their human rights commitments and include express human rights clauses. For example, interest has recently been expressed in advancing trade relations with China -including the adoption of a bilateral trade agreement-, a market to which most of the sea cucumber production and part of the lobster production is exported<sup>99</sup>.

Finally, the Inter-American Development Bank (IDB) has an Independent Consultation and Investigation Mechanism (ICIM) that deals with environmental and social claims from communities potentially affected by the operations of the Group. It seeks to reach amicable solutions between the parties involved through two mechanisms: a) dispute resolution, in which the ICIM acts as mediator, and b) investigation, which is aimed at verifying whether a member of the IDB Group has breached a clause or generated an adverse social or environmental impact to repair and improve it<sup>100</sup>. It is important to consider the existence of these complaint and grievance mechanisms since some investments or productive activities or the improvement of fishing and agricultural trade activities in the Moskitia are supported by the IDB, such as the "Mi Pesca" program which was implemented through the Multilateral Investment Fund (MIF) or the "IDB-Manglares" program<sup>101</sup>.

## B. PILLAR II. THE RESPONSIBILITY OF COMPANIES INVOLVED IN THE DIVING FISHING INDUSTRY TO RESPECT HUMAN RIGHTS (GUIDING PRINCIPLE NO. 16)

According to the Guiding Principles on Business and Human Rights, all companies (national and global) have a responsibility to respect the human rights of people involved in the chain of value of industrial diving fishing. This means that they must refrain from infringing on the human rights of others

<sup>99</sup> China, Honduras Borrador de Acuerdos Económicos. 11 de abril de 2023. <https://www.barrons.com/news/china-honduras-draft-economic-agreements-ceaf395>

<sup>100</sup> More information on the MICI can be found at <https://www.iadb.org/es/mici/mici-mecanismo-independiente-de-consulta-e-investigacion>

<sup>101</sup> BID. “Of Mangroves, Villages and Fishing in the Moskitia.” September 27, 2018. <https://blogs.iadb.org/sostenibilidad/es/de-manglares-pueblos-y-pesca-en-la-moskitia/>

and address any adverse human rights impacts in which they are involved. They must also take care of the environment in which they operate. The following is an analysis of the Principles applicable to this corporate responsibility in the context of the diving fishing industry in Honduras.

### BOOSTING POLITICAL COMMITMENT TO HUMAN RIGHTS IN COMPANIES THAT ARE PART OF THE VALUE CHAIN OF THE DIVING FISHING IN HONDURAS

According to Guiding Principle No 16:

"As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- a) Is approved at the most senior level of the business enterprise;
- b) Is informed by relevant internal and/or external expertise;
- c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise."

As part of this study, a general search was conducted for online information on at least a dozen companies in the chain of value of the diving fishing sector in Honduras, especially processing companies. This sampling shows that there is little public information about the companies in the sector (beyond contact information) or the type of services they offer. The main information can be found on the IFM InterFishMarket portal<sup>102</sup>.

One company that has made progress in this area is "Marinos Pescadera", since it exports part of its production to the European market, after complying with an extensive certification process.<sup>103</sup> Which includes as a requirement the adoption of "Good Manufacturing Practices"<sup>104</sup> and the OIRSSA Hazard Analysis and Critical Control Point Manual<sup>105</sup>.

<sup>102</sup> InterFish Market. Website: <https://interfishmarket.com/es/company.aspx?id=83420>

<sup>103</sup> Central American Integration System. "Honduras sends first lobster shipment to Europe". May 24, 2019. Available at: [https://www.sica.int/noticias/honduras-envia-primera-embarcacion-de-langosta-a-europa\\_1\\_118225.html](https://www.sica.int/noticias/honduras-envia-primera-embarcacion-de-langosta-a-europa_1_118225.html)

<sup>104</sup> Intedya, "Good Manufacturing Practices (GMP)" Available at: <https://www.intedya.com/internacional/103/consultoria-buenas-practicas-de-manufactura-bpm.html>

<sup>105</sup> Hazard Analysis and Critical Control Point Manual - HACCP. Available at: <https://www.oirsa.org/contenido/biblioteca/Manual%20de%20an%C3%A1lisis%20de%20peligros%20y%20puntos%20cr%C3%ADticos%20de%20control%20-%20HACCP.pdf>

These certifications oblige the company to guarantee the best practices on hygiene and biosafety of its products. However, there is no explicit reference to their commitment to human rights. Certification is generally applied as a market access tool, and it is not necessarily a tool to assess and address human rights. However, a company that is certified is generally more advanced in sustainability and environmental issues. Certification could be an indicator that labor and human rights issues are at least considered within the company.

In addition, CONADEH visited some of the processing plants in La Ceiba and the organizations that bring together the vessel owners in the diving fishing sector. In these conversations, the business actors recognized the importance of the rights of the sector's workers, including Miskitus divers. They also expressed the importance of human rights for the sector. However, when asked about the adoption of a specific human rights policy or the involvement of human rights in another policy, the businessmen expressed that they had their labor and occupational health and safety policies, but not a human rights policy as such.

Similarly, in the event for the presentation of this project held on October 20, 2022, in the city of La Ceiba, the business actors present insisted on advancing in ensuring the enjoyment of human rights in the sector and working together with State and other actors for this purpose

The above is a step forward that denotes a beginning of awareness of human rights in the diving fishing business sector in Honduras. However, following Principle 16, this should be reflected in the adoption by each company or vessel owners association of a human rights policy in the terms of this guiding principle. This policy should be publicly accessible to both workers and all stakeholders. Fishing guilds or fishing industry associations can play an important role in promoting the adoption of human rights policies; they could organize awareness-raising sessions, hold workshops, and support the development of such policies with member companies.

The following is an analysis according to the business actor that is part of the chain of value of the diving fishing sector.

#### Political commitment to the human rights of vessel owner-businesses

In addition to the above, most of the fishing vessel owners reported little specific knowledge of the Guiding Principles on Business and Human Rights. They also stated that they do not participate in certification programs that address good practices issues, they recognize the high-risk of diving work, in that sense as an association of industrial fishermen, they have been meeting with CIAPEB, seeking to adopt measures to prevent further accidents with divers, improve the working conditions of these workers. They also expressed that the work relationship with the divers is mediated by the sacabuzos, who select, review health records, engage, and pay the divers. For this task, the employers pay a commission to this person who normally lives in the community and the city. They continued to indicate that they do not have corporate human rights policies.

In this context, the businesses expressed the need to strengthen the staff and the capabilities of the authorities in charge of controlling or inspecting the vessels, to be able to effectively monitor fishing activities.

They also recognized the importance of diligently respecting the human rights of workers and their obligation and political will to adopt measures to avoid more accidents, in coordination with the State.

#### Political commitment to the human rights of processing plants businesses

From the processing plant entrepreneurs consulted by CONADEH, the majority reported a very basic and general knowledge of the Guiding Principles on Business and Human Rights, stating that the regulations that are applied in the plant respond - among others - to the demands of buyers operating at a global level, mostly in the United States of America.

In their own opinion, the State's inspection work can be described as routine and more focused on aspects of traceability and health of the fishery product. Labor conditions in terms of occupational health and safety, work environment, diving equipment, shifts and contractual aspects are not often evaluated in depth, much less differentiated approaches to labor standards, bodies, and procedures for workers (e.g., a written labor contract in Spanish)<sup>106</sup>.

#### Political commitment to the human rights of purchasing companies.

Most of the companies purchasing the product operate abroad and are not subject to State regulation. However, this does not exempt them from verifying that suppliers respect the human rights of people. In addition, for perception reasons, there is a willingness to cooperate.

For this study, we sampled some of the companies that buy diving fishing products (especially lobster and from the United States<sup>107</sup>), which tend to have sustainability policies and actions in place, as well as traceability strategies for the products they purchase and then trade. This study does not evaluate the effectiveness of these policies, actions, or strategies. However, it is evident from the sampling and from the conversation with the processing companies that international buyers from the United States tend to make demands on suppliers in terms of sanitary and phytosanitary, labor, and industrial safety, but not specifically in terms of human rights.

<sup>106</sup> CONADEH. "Presentation and Dialogue on the Research Project, Evaluation and Prevention of the Impact of the Underwater Fishing Industry on the Human Rights of Miskito Divers, with a focus on Business and Human Rights". Place: Hotel La Quinta, La Ceiba, Atlántida. Date: October 20, 2022

<sup>107</sup> We reviewed the online public information of several companies that commercialize langosta in the United States, including: Habor Seafood - <https://harborseafood.com/>; Netuno USA - <https://netunousa.com/>; MiCal Seafood - <http://micalseafood.com/index.html>; Day Boat Seafood,- LLC <http://dayboatseafood.net/>; Rainforest Seafood - <https://rainforestcaribbean.com/>; Darik Enterprises Inc. <http://www.shrimp-people.com/index.html>; Tequesta Bay Foods – <http://www.tequestabay.com/>; Casile Inc – <https://www.casileinc.com/>.

In addition to North American buyers, it was reported that there are European and Asian buyers (especially from China, who buy sea cucumber). There is no information regarding these buyers or their corporate policies or strategies in relation to diving fishing products in Honduras.

#### HUMAN RIGHTS DUE DILIGENCE IN COMPANIES THAT ARE PART OF THE CHAIN OF VALUE OF DIVING FISHING IN HONDURAS (GUIDING PRINCIPLES NO. 17, 17.B, 19.B AND 23)

To identify, prevent, mitigate, and respond to adverse human rights impacts of their activities, companies must conduct human rights due diligence. This process should include several steps:

- a. an assessment of the actual and potential human rights impact of activities;
- b. the integration of the findings, and the action thereon;
- c. follow-up of responses, and;
- d. communication of the way negative consequences are addressed.

Human rights due diligence shall vary in complexity depending on the size of the business, the risk of adverse human rights impacts, and the nature and context of its operations.

In any context, businesses should: a) Comply with all applicable laws and respect internationally recognized human rights wherever they operate; b) Seek ways to respect internationally recognized human rights principles when faced with conflicting demands; c) Consider the risk of causing or contributing to serious human rights breaches as a matter of compliance with the law wherever they operate.

#### The human rights due diligence of vessel owner businesses

While most of the vessel owners have expressed that they are committed to the rights of divers and some actions have been taken to prevent human rights impacts, there is a lack of evidence of human rights due diligence on their part. Unfortunately, and historically, it is plausible to point out the lack of due diligence regarding the rights of divers, given the conditions under which they work, including social security issues.

The commitment to human rights expressed by the vessel owners in the framework of this study and their willingness to move forward in avoiding impacts on the human rights of divers is an important start. However, this must be materialized in concrete actions, such as conducting human rights due diligence considering Guiding Principles 17, 17.b, 19.b and 23 and the international human rights treaties ratified by Honduras. This is especially true considering the impacts that may result from this activity -some of them described above in this report-. Regarding the responsibility of companies with respect to human rights, the Inter-American Court of Human

Rights stated in its judgment on the Miskito divers that due diligence "should aim to ensure that they carry out continuous assessments of the risks to human rights and respond through effective and proportional measures to mitigate the risks caused by their activities, considering their resources and possibilities, and with accountability mechanisms to remedy any damage caused"<sup>108</sup>

Human rights due diligence should aim to prevent or mitigate impacts and would facilitate the identification and development of concrete measures for the respect of human rights in relation to divers in the context of industrial fishing. Within this framework, the Honduran State and/or international buyers could provide training to vessel owners on human rights and business, without prejudice to the autonomous responsibility of the business actors to conduct a due diligence. In this context, international buyers, especially those from the USA and Europe, generally have more funding and expertise in human rights and could share this expertise and good practices with their suppliers, especially when they are small and medium scale businesses.

#### The human rights due diligence of processing plant businesses

Most of the business owners of the processing plants show a willingness to act diligently. The actions they have taken so far are focused on labor issues, which also allow them to join global lobster, sea cucumber and snail buyers' chains. In this regard, they usually have policies or certifications on occupational health and safety matters, but not on human rights. This approach denotes a narrow view of human rights - focused on labor issues - which prevents considering other types of rights that may be associated with economic activity. Likewise, processing plants focus on the labor rights of their direct workers and do not extend their exercise to other actors in the chain of value. In this way, processing plants could not only set regular and systematic actions regarding the rights of their workers, but also broaden their general focus to human rights and the actors in the chain of value (including the businesses that own the vessels). In this purpose, as will be seen below, the purchasing companies, as well as the State, can contribute to provide human rights and due diligence capacities to the processing plants. This is without prejudice to the fact that it is the autonomous responsibility of the business actors to carry out a due diligence.

Finally, this process should be accessible and communicated to stakeholders.

However, this should be materialized in the development of human rights due diligence processes.

#### The human rights due diligence of purchasing businesses.

As mentioned in the previous section, the sample carried out with the public information on the websites of some of the purchasing businesses (especially North American), shows the existence of sustainability or corporate social

responsibility actions or programs in these companies, which focus on environmental and labor issues. However, there is no evidence of formal human rights due diligence processes or results thereof.

The implementation and communication of the corporate due diligence process on human rights by purchasing companies, in addition to aiming at the prevention of impacts in their direct activities, should include all actors in the chain of value (e.g. processing plants and vessel owners), and thus in light of Guiding Principle 19 seek to "prevent or mitigate adverse human rights impacts directly related to operations, products or services provided by their business relationships, even when they have not contributed to generating them". This involves not only enforcement actions for suppliers but may also include awareness-raising or training actions for them.

### C. PILLAR III: ACCESS TO MECHANISMS OF REMEDY FOR HUMAN RIGHTS BREACHES IN THE CONTEXT OF DIVING FISHING IN HONDURAS

Pillar III of the Guiding Principles develops the right of access to remedy mechanisms to address human rights impacts or breaches that occur in the context of business activities. Thus, it provides that the State must "take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy" (Principle 25) and companies "to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted" (Principle 29).

#### ACCESS TO JUDICIAL MECHANISMS IN CASES OF HUMAN RIGHTS BREACHES IN THE CONTEXT OF DIVING FISHING IN HONDURAS (PRINCIPLE NO 26)

The national remedy mechanisms for industrial diving fishing workers have low effectiveness and are difficult to access.

The Constitution of the Republic defines in Chapter XII, referring to the judicial branch, the general structure of the Supreme Court of Justice and the functioning of the different levels: courts, tribunals, single judge tribunals, including their creation, functions, powers, operation, independence, territorial and functional division, scope in civil, criminal, administrative matters, etc. Article 307 states that: "The Law, without detriment to the independence of judges and magistrates, shall provide for the necessary to ensure the correct and normal functioning of the jurisdictional bodies, providing the effective means to meet their functional and administrative needs, as well as the organization of auxiliary services". However, Article 318 provides that without detriment to its independence and autonomy, a budget

<sup>108</sup> IACourtHR. Case of the Miskitus Divers (Lemoth Morris et al.) v. Honduras. Judgment of August 31, 2021. Para. 51

of no less than three percent (3.0%) of the current income shall be granted for the operation of the Judicial Branch. All these precepts, functions and powers are made explicit in the Law of Organization and Powers of the Courts.<sup>109</sup> All these precepts, functions and powers are made explicit in the Law of Organization and Powers of the Courts<sup>110</sup>

However, all this structure to impart justice in Honduras is restricted by the limited economic resources that set a threshold of less than 5% of the national budget, which translates into insufficient scenarios and conditions for the fulfillment of its functions and even more so in historically excluded regions such as La Moskitia.

In addition to this precariousness, there is a perception of lack of impartiality of judicial authorities. According to a survey of Public Perception of ERIC 2022, it is stated that "...82.5% of the people surveyed, magistrates, judges and prosecutors defend the interests of the rich and powerful, the interests of the corrupt and drug traffickers. Only 10% believe that they defend the interests of society, 6% did not answer and 1.5% indicated that they understand another type of interest"<sup>111</sup>. It is relevant to remember, in the words of the Inter-American Court, that "the judge must appear as acting without being subject to any influence, inducement, pressure, threat or interference, direct or indirect, and only and exclusively in accordance with—and on the basis of—the Law"<sup>112</sup>. Thus, the perception of partiality with respect to the judiciary represents an obstacle to access to remedy mechanisms. In the case of the divers in La Moskitia and their families, additional barriers are raised.

On the other hand, there is also a conceptual and economic asymmetry between the divers and their families and the companies before justice since the latter have the resources to engage teams of lawyers or experts.

Guiding Principle No. 26 states that:

*"States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."*<sup>113</sup>

The situation of the general difficulties of the judiciary in Honduras is reflected in the ineffectiveness of the reparation mechanisms of the injured Miskitus divers which were brought before the Inter-American Court of Human Rights. Although the Inter-American Court did not rule on the breach of judicial guarantees and judicial protection, the proven facts of the case

109 Political Constitution of Honduras. Op. Cit.

110 National Congress of the Republic. Decree # 76

111 Public Opinion Survey 2022. <https://eric-sj.org/sondeo-de-opinion-publica-2022/> page 13

112 IACHRCourt. Case of Apitz Barbera et al. v. Venezuela. Judgment of August 5, 2008. Series C, No 182. para. 56.

113 UN Guiding Principles Op. Cit. Principle 26

show that only 3 of the 42 victims obtained a judicial response from the Labor Court (Para 40).

In this regard, for example, CONADEH has learned of cases in which medical evaluations in claims processes by Miskitu divers have not been carried out because the medical personnel do not speak the Miskitu language and lack interpreters. A similar situation apparently occurred in the case of the Miskitu diver Elwin Haylock Beltrán, who in a conciliation before the labor inspectorate accepted a lower amount of compensation as reparation for the accident that occurred in the context of diving fishing, due to his lack of understanding of Spanish and the absence of an interpreter<sup>114</sup>. Because of this situation, legal proceedings are underway against the labor inspector.

In this sense, the recent judgment of the Inter-American Court of Human Rights on the Miskitus Divers, which has been mentioned repeatedly, acquires a fundamental value, since "With regard to the human rights obligations of States, the Court affirms that States must prevent human rights violations by private companies, including transnational companies with supply/production chains in their territory, through effective legislative and other measures. They must also adopt and regularly evaluate the effectiveness of legislative and other measures to prevent abuses through effective human rights and due diligence policies and remedy processes. Finally, States must allow access to judicial or extrajudicial mechanisms for affected rights holders, diligent investigation, punishment of those responsible, and remedy for abuses"<sup>115</sup>.

#### ACCESS TO NON-JUDICIAL STATE MECHANISMS IN CASES OF HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF THE DIVING FISHING IN HONDURAS (PRINCIPLE NO. 27)

Guiding Principle No. 27 states that:

*"States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse."*<sup>116</sup>

Las principales autoridades estatales con funciones sancionatorias no judiciales a las que se puede acudir en el marco de sus competencias y en relación con las vulneraciones de derechos humanos en el contexto de la pesca por Buceo son:

114 <https://www.mp.hn/publicaciones/en-audiencia-de-juicio-oral-y-publico-inspector-de-la-secretaria-del-trabajo-por-supuesto-delito-contr-un-Miskitu/>

115 Business and Human Rights Information Center. "Justice for the Miskito Divers: A Turning Point for Business and the Human Rights Standards of the Inter-American Court of Human Rights. <https://www.business-humanrights.org/es/blog/justicia-para-los-buzos-miskitos-un-punto-de-inflexi%C3%B3n-para-las-empresas-y-los-est%C3%A1ndares-de-derechos-humanos-de-la-corte-interamericana-de-derechos-humanos/>

116 UN. Guiding Principles... Op. Cit. Principle 27

Institution	Scope of action on diving fishing	Mechanisms
<b>DIGEPESCA</b>	To prepare, propose and implement the appropriate measures for the management and promotion of the exploitation and use of fishing resources and to elaborate and propose the necessary norms to regulate the exercise of fishing activities, including sport fishing	<p>DIGEPESCA, through its inspectorate, is in charge of "performing fishing and aquaculture control and oversight actions" (General Fisheries Law, Art. 93), in the following terms:</p> <p>"The compliance obligations of this law, regulations and other applicable norms, shall be verified by the inspectors of DIGEPESCA, by any legal means, at any time and at the national level. Licensees of the fishing or aquaculture activity must allow the presence and free action of inspectors in their facilities, vehicles, or vessels, at any time of the day and during all days of the year. The refusal to allow the inspection must be communicated to DIGEPESCA and by immediate subsequent action to the Public Prosecutor's Office and the Attorney General's Office of the Republic to exercise the corresponding administrative and/or legal action.</p> <p>The inspectors of the DIGEPESCA shall have the character of authority, with powers in any part of the national territory and in the jurisdictional waters, as well as in international waters when it refers to situations related to vessels with national flag. The Coast Guard Service has special powers to inspect vessels in jurisdictional waters including the entire Exclusive Economic Zone in both oceans.</p> <p>DIGEPESCA may establish with the fishing and aquaculture organizations registered in the RNPA, cooperation agreements for the monitoring and control of the fishing or aquaculture activity, in support of the work of the inspectors, without detriment to the responsibilities and powers of DIGEPESCA.</p> <p>During the closed period in the jurisdictional waters, including the exclusive economic zone, the oversight shall be in charge of the coast guard service with the participation of the fishing inspectors, and depending of the case with the national or municipal police authorities.</p> <p>Observer programs may be established on board or in the scientific site designated by DIGEPESCA to the corresponding productive unit, according to the protocol to be defined by regulation, the cost of which shall be borne by the license holder."(Art 94) Additionally, DIGEPESCA is the entity responsible for the application of the sanctioning procedure in relation to the General Fisheries Law (Art 108).</p>

Institution	Scope of action on diving fishing	Mechanisms
<b>Merchant Marine</b>	<p>According to its mission statement:</p> <ul style="list-style-type: none"> <li>Flagging of vessels.</li> <li>Training and certification of sea people.</li> <li>Maritime safety.</li> <li>Protection of the marine environment</li> <li>Compliance with laws and international conventions that contribute to the development of the country.</li> </ul>	<ul style="list-style-type: none"> <li>The Merchant Marine is the authority in matters of marine traffic and transportation in Honduras.</li> <li>Within the framework of its powers, it has sanctioning powers for "any contravention or attempted contravention of the current legal system, of the maritime conventions to which Honduras is a party and of the regulations issued based on [the Organic Law of the Merchant Marine]"</li> </ul>
<b>Labor and Social Security Secretariat and Inspectorate</b>	<p>It is the authority in charge, among others, of:</p> <p>"1°- authorizing, complying with and enforcing the laws and regulations relating to the branch;</p> <p>2°- drawing up its internal regulations;</p> <p>3°- direct, study and dispatch all matters related to labor and social welfare;</p> <p>4°- the improvement of the living and working conditions of the workers;</p> <p>5°- the oversight and inspection with respect to the due compliance with the legal provisions related to labor-management relations;</p> <p>6°- the review and approval of the work regulations submitted for its examination by the State and private companies;</p> <p>7°- harmonizing relations between employers and workers;</p> <p>8- fixing of minimum wages, based on the opinions presented by the National Minimum Wage Commission". (Honduran Labor Code, Art 591)</p>	<p>In relation to the situation of diving fishermen and at a general level, it promotes as one of its values "To promote social protection in terms of social welfare and social security, for the achievement of human development"<sup>117</sup> It is therefore one of the institutions with close responsibility for protection, prevention and safety in the performance of labor relations and their possible breaches, being one of the instances of judicial mechanism to ensure the respect and protection of workers and the responsibilities of their employers, a situation that requires urgent attention in the employer-employee relations and the responsibilities that arise from it based on the provisions of the labor code, including written or verbal contracts that regulate the contractual relationship between the parties.</p> <p>For its part, the Labor Inspectorate, was incorporated through Legislative Decree No. 178-2016 to promote, monitor and ensure that employers and workers comply with and respect all legal provisions relating to labor, social welfare, labor standards, occupational safety and health and those relating to social security; and deduct the corresponding responsibilities in case of infringement, breach or violation of constitutional, conventional rights and guarantees and rules related to the aforementioned matters in workplaces. Its enforcement corresponds to the Secretary of State <sup>118</sup></p>

117 Website of the Secretariat of Labor and Social Security of Honduras. <http://www.trabajo.gob.hn/inicio/organizacion/mision-y-vision-institucional>

118 Diario Oficial La Gaceta, N0. 34,290 Published on March 15, 2017 and containing the "Ley de inspección del trabajo". Available at: [http://www.ccichonduras.org/web/site/Descargas/LEYES/LEYES\\_LABORALES/LEY%20DE%20INSPECCION%20LABORAL/Ley\\_de\\_Inspeccion\\_de\\_Trabajo.pdf](http://www.ccichonduras.org/web/site/Descargas/LEYES/LEYES_LABORALES/LEY%20DE%20INSPECCION%20LABORAL/Ley_de_Inspeccion_de_Trabajo.pdf)

It is evident that State institutions such as the Secretariat of Health, DIGEPESCA, the General Directorate of the Merchant Marine and the Secretariat of Labor and Social Security have a presence in the department of Gracias a Dios. In addition, they have complementary competencies and powers applicable to the diving fishing activity, including the possibility of initiating administrative sanctioning processes within the framework of their powers. However, there is a big gap between the norm, the spirit of the legislator and the real and effective implementation of their powers as a non-judicial complaint mechanism within the framework of diving fishing, given the lack of sufficient personnel and budget, as well as specialized knowledge in human rights. Consequently, the effectiveness of these mechanisms tends to be very low.

In this context, CONADEH suggests the urgent creation of a robust Department or Specialized Attention Unit for Miskitus Divers in the Regional Labor Office, with a technical and multidisciplinary team, to comprehensively address the labor protection of this working sector. This could constitute an agile and urgent mechanism of attention to the situation, creating greater efficiency and diligence since many cases would be resolved at the local level without reaching national or judicial instances where cases can be complicated and take a long time to be resolved. Similarly, conditions would be created so that people who have suffered violations of their rights can find a prompt, timely, relevant and effective response at the local/national level, without having to reach international levels, which unfortunately has been the route that has generated response to the claims, after long processes of evasion of cases and with expensive burdens for the State and the re-victimization that could involve the delay of State and business response.

#### Access to non-State reparation mechanisms



#### ACCESS TO OPERATIONAL MECHANISMS IN CASES OF HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF DIVING FISHING IN HONDURAS (PRINCIPLES 28 THROUGH 31)

Guiding Principles 28 through 31 indicate how companies can have their own mechanisms before which people who consider their rights have been affected can submit their claims. It also points out the characteristics that these non-judicial mechanisms should have to be consistent with human rights.

To guarantee their effectiveness, these non-judicial grievance mechanisms must be:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; Operational-level mechanisms should also be:
- h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances.<sup>119</sup>

In this research, CONADEH interviewed several business actors in the diving fishing chain of value (especially vessel owners and processing plants). Companies in the sector do not usually have specific grievance mechanisms that include human rights issues as such. It is therefore important that businesses in the sector, as part of their commitment to human rights, make progress in

<sup>119</sup> Guiding Principle #31 on: Criteria for effectiveness of out-of-court grievance mechanisms.



the creation and implementation of this type of mechanism considering the principles 28 through 31.

Based on the above, it is evident the weakness of the mechanisms of access to remedy, both state and operational, in relation to the problems of fishing by diving.

#### ACCESS TO INTERNATIONAL REPARATION MECHANISMS

In addition to the national reparation mechanisms, several international mechanisms have been activated in relation to the problem of diving fishing in Honduras. In this context, the actions of the Inter-American System of Rights stand out, which through the Inter-American Commission on Human Rights and its Special Rapporteur on Economic, Social and Cultural Rights heard the petition regarding the situation of the injured divers and their families, as well as the Inter-American Court of Human Rights in the contentious case which was filed based on the aforementioned petition.

In this case, known as Lemoth Morris and Others, the Court addressed the situation of 42 Miskitus divers who suffered different violations of their rights to life, personal integrity, and children's rights, as well as their rights to work, fair and equitable working conditions, social security, and equality and non-discrimination. In response to these allegations, the State of Honduras "State expressly acknowledged its responsibility for the violation of the rights to life, to life with dignity, to personal integrity, to judicial guarantees, to children's rights, to equal protection of the law, to judicial protection, health, work, social security, and to nondiscrimination (Articles 4(1), 5(1), 8(1), 19, 24, 25(1) and 26, in relation to Articles 1(1) and 2 of the same instrument) against the alleged victims and their next of kin."<sup>120</sup>. The above within the framework of a friendly settlement agreement in which the State undertakes to carry out reparation measures in terms of restitution, satisfaction, compensation and guarantees of non-repetition<sup>121</sup>. From a business and human rights perspective, the following reparation measures issued by the Inter-American Court based on the friendly settlement are highlighted:

- A.1. Comprehensive and specialized medical and psychological care for victims and their families, including rehabilitation treatment.
- A.2. Educational scholarships for the victims, their children and/or their grandchildren.
- A.3. Program of productive projects.

<sup>120</sup> Párr. 13

<sup>121</sup> Párr 116 a 157.

- C.2. Measures to ensure the adequate regulation, control and supervision of the activities of industrial fishing companies in Miskito territory.
- C.2.1. Analysis of the legal, administrative and other barriers that generate problems related to underwater dive fishing and adoption of measures based on this.
  - C.2.2. Preparation of a census on the situation of active divers and those who have suffered accidents.
  - C.2.3. Permanent program for the supervision and oversight of fishing companies on land and on the high seas.
  - C.2.4. Safe Fishing Certification Program.
- C.5. Exhaustive investigation of the facts, identification, prosecution, and punishment of all those responsible.
- C.7. Adoption of structural measures to ensure access to justice.

These measures aim to advance in the solution of several of the issues developed in turn in this report. From the perspective of companies and human rights, measure C2 stands out, since it involves, through State measures, the regulation and oversight of companies in the diving fishing sector. However, CONADEH urges the fulfillment of the entirety of the reparation measures ordered by the Court and previously accepted by the Honduran State, which would allow progress in solving the problems of the divers and the diving fishing sector.



## CHAPTER III. CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSIONS

1. The lobster, sea cucumber and snail diving fishing industry in Honduras is a significant source of economic income for the Miskitu Indigenous People in Honduras, and for most of them the only means of subsistence. At the same time, it generates risks to human rights which in many cases have materialized in human rights impacts or violations. The main human rights at risk of being impacted in the context of this economic activity are as follows:

#### **In relation to the Workers (Miskito Divers):**

- The right to a freely chosen and accepted work.
- The right to just and favorable conditions of work, in particular.
- Compensation that provides decent living conditions.
- Occupational health and safety.
- Right to social security.

#### **In relation to Workers (Processing Plants):**

- Right to work.
- Right to social security.
- Right to a compensation that provides decent conditions of existence.
- Right to limitation of daily working hours.
- Principle of non-discrimination based on gender.

#### **Regarding the Miskitu Indigenous Peoples:**

- Right to participate in the use, management, and preservation of natural resources.
- Right to free, prior, and informed consultation.
- The right to maintain, control, protect and develop their cultural heritage.
- Right of access to justice mechanisms.

#### **In relation to the rights of Miskitu women:**

- Right to equality and non-discrimination.

**In relation to children:**

- Right not to perform work that may be harmful to their health.

**In relation to divers with disabilities:**

- Right to health.
- Right to live independently.
- Personal mobility.
- Right to habilitation and rehabilitation.
- Right to an adequate standard of living and social protection.

2. In relation to **Pillar I** of the Guiding Principles on Business and Human Rights, Honduras has made progress in improving the regulation of diving fishing in Honduras. Without prejudice to possible regulatory improvements in this area, there are significant challenges for State authorities in monitoring compliance with existing standards and respect for human rights in the context of industrial diving fishing. As a result, there is evidence of the absence or weaknesses in mechanisms for issues such as the number of daily dives or the verification of divers' experience. In addition, there are secondary factors that may exacerbate the risk of accidents in this activity, such as the context of lack of work opportunities or income generation in the Moskitia, the economic model of compensation proportional to the number of pounds caught, or diving under the influence of alcohol or drugs.

Thus, State authorities have a pending debt in terms of protecting the human rights of Miskito divers and their families who are involved in industrial diving fishing, particularly in terms of enforcing the law and regulations on the subject and, consequently, enforcing the rights of the companies.

On the other hand, there are still barriers for the injured divers to receive health care, both in the emergency on the vessels and once they are transferred to land, as well as afterwards for their rehabilitation when necessary. This may be due to the occasional lack of adequate equipment on the vessels, weaknesses in inspection by the authorities, the absence or inadequate functioning of hyperbaric chambers in the Moskitia, the lack of access to health services in the Moskitia, or the lack of interest of the employer with respect to the injured diver.

3. E3. Regarding **Pillar II** of the Guiding Principles, the businesses that are part of the diving fishing chain of value (vessel owners, processing plants and international buyers) tend to have an approach to human rights focused on labor rights or sustainability. This is a narrow view considering the broad spectrum of human rights and their focus. However, vessel owners and processing companies (no interviews or meetings were conducted with buyers) generally express their willingness to integrate human rights. To date they have some practices or policies related to workers' rights, but no human rights policies as

such. Similarly, the responsibility of companies regarding human rights does not yet tend to materialize in the performance of human rights due diligence in terms of the Guiding Principles on Business and Human Rights. It is important to point out that access to public information regarding companies in the chain of value of the diving fishing industry is sometimes difficult, given that some businesses do not have channels for disseminating information and on other occasions -despite having a web page- do not include specific information on human rights.

4. Finally, in relation to **Pillar III** of the Guiding Principles, there are several barriers that prevent access to remedy mechanisms for Miskitus divers, among others:

- The economic factor for mobilization inside and outside the Moskitia;
- The failure of vessel owners and captains to provide financial assistance for the treatment of diving illness.
- Weak presence of institutions responsible for case documentation;
- In some cases, the lack of cultural appropriateness of the remedy mechanisms (in particular, language barrier for divers)
- The absence of operational grievance mechanisms in the companies (both vessel owners and processing plants) to file claims for human rights violations.

## RECOMMENDATIONS

Based on the analysis of this study and its conclusions, the National Commission for Human Rights (CONADEH), exercising its constitutional and legal mandate, issues the following recommendations:

### A. EXECUTIVE BRANCH:

#### To the Secretary of State in the Offices of Labor and Social Security:

1. To urgently implement in full the provisions contained in Executive Agreement STSS-577-2020 (OCCUPATIONAL SAFETY AND HEALTH REGULATIONS FOR DIVING FISHING) by adopting administrative and financial measures to ensure effective compliance with the institutional obligations set forth in the OCCUPATIONAL SAFETY AND HEALTH REGULATIONS FOR UNDERWATER DIVING FISHING (Executive Agreement STSS-577-2020).
2. Strengthen the regional office in the Department of Gracias a Dios, through the creation of a Special Unit for the exclusive attention of labor claims of Miskitus divers' workers, including, among others, the hiring of bilingual medical personnel, social work technicians and labor attorneys to facilitate and expedite access to labor justice for this sector of workers.
3. To carry out, within the framework of its powers and in a coordinated manner, inspections of fishing vessels by diving, in port, at sea and to advance the sanctioning processes that may be required.
4. Ensure that each vessel has an oxygen cylinder for emergencies and/or accident response and that at least two crew members on each vessel are trained and equipped to administer oxygen and provide first aid to the injured;
5. To carry out the revision every two years of the binding regulations for companies and the integration of their obligations, including the revision and adaptation of practices and the generation of funds for the assistance, care and repair of injured divers and their families. If deemed necessary to coordinate with the national Congress for the specification of binding regulations.
6. To create, as a matter of urgency, a culturally appropriate dissemination campaign to explain, in a popular and artistic manner, the nationally and internationally recognized labor rights of diving fishing workers and their families.

#### To the Secretary of State in the Office of Human Rights,

7. Develop training and capacity building processes on the United Nations Guiding Principles on Business and Human Rights in coordination with business associations or companies dedicated to diving fishing and accompany the processes of their adoption in their business practices.

#### To the National Vocational Training Institute (INFOP):

8. Train and certify personnel involved in diving work (Captains, crew, divers, Cayuqueros, Comanches, sacabuzos) on an ongoing basis.

#### To the Secretary of State in the Health Department:

9. Establish an action plan, including means of agile radiocommunication that works adequately and with a basic budget to support the Hyperbaric Chamber and the Therapy Center at the Puerto Lempira Hospital.

#### To the Secretariat of State in the Office of National Defense, especially to the Naval Force:

10. To arrange a mechanism for the operation of an ambulance vessel under the custody and operation of the Kahukira Naval Base;

#### To the National Statistics Institute (INE):

11. Include in future censuses questions that generate reliable statistical information on the socioeconomic condition of active disabled people and their families.
12. Collect relevant socio-economic information from the people engaged in this activity, which can be monitored and evaluated by the Human Rights Observatory of the National Human Rights Commissioner on the effectiveness of the present rules for the diving fishing subsector, as any new tool to be adopted, based on the recommendations presented in this report.

### B. LEGISLATIVE BRANCH:

#### To the National Congress,

13. Review regulations related to the legal responsibility of vessel owners and captains in relation to insurance costs and protection of their employees, and thus comply with their responsibilities to ensure the protection of any marine workers affected by their diving and diver support related works.

### C. JUDICIAL BRANCH:

- 14 To the Judicial School of Honduras, *Francisco Salomón Jiménez*, to advance a training strategy for labor and criminal judges (especially those with jurisdiction in the Moskitia) on business and human rights.

### D. BUSINESS SECTOR:

Vessels and Processing Plants in the industrial sector of the diving fishing industry

15. Advance the adoption of a corporate human rights policy, approved by the company's senior management, that outlines the human rights expectations of the company, its personnel, partners, or other stakeholders.

16. Conduct human rights due diligence, considering the directions of the Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and remedy adverse human rights impacts of their activities.
17. Have mechanisms in place (e.g., website or report) to communicate the commitment to human rights and the results of corporate human rights due diligence.
18. Establish alliances with national and local business organizations, such as chambers of commerce and industry where companies involved in industrial lobster fishing operate and exist, including, in particular, continuous training processes on international human rights and business standards, the United Nations Guiding Principles on Business and Human Rights and the implications of not applying them. Promote the creation and implementation of sectoral and business plans for the adoption of these standards.
19. Adopt operational grievance mechanisms within the company that are accessible to divers and their families, considering their ethnic dimension (language) and social context.
20. Develop alliances within the framework of business associations in Honduras or with international buyers of lobster, sea cucumbers and/or snails, to receive technical assistance, training or training on Human Rights and Business and/or support in conducting due diligence on human rights.

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## ANNEX 1

Sample work contract for the provision of diving fishing services.

**CONTRATO INDIVIDUAL DE TRABAJO PARA LA PRESTACION DE SERVICIOS DE FORMA EVENTUAL O TEMPORAL**

Nosotros, \_\_\_\_\_, mayor de edad, hondureño, comerciante, con Tarjeta de Identidad No. \_\_\_\_\_, con domicilio en \_\_\_\_\_, y que en lo sucesivo se denominará el empleador. Por la otra parte \_\_\_\_\_, buzo, Estado Civil \_\_\_\_\_ de Nacionalidad \_\_\_\_\_, Tarjeta de Identidad No. \_\_\_\_\_, con domicilio en \_\_\_\_\_, quien en adelante se llamará el TRABAJADOR, hemos convenido en celebrar el presente **CONTRATO INDIVIDUAL DE TRABAJO PARA LA PRESTACION DE SERVICIOS EN FORMA EVENTUAL O TEMPORAL** que se registrá por las cláusulas y estipulaciones siguientes:

**PRIMERA: Ocupación y Labores**  
El TRABAJADOR se compromete a desempeñar labores de buzo para realizar la actividad de pesca submarina de Langosta.

**SEGUNDA: Duración del Contrato**  
La duración del Contrato de Trabajo será el convenido por las partes en el periodo de pesca. El presente Contrato iniciará el día 01 de Julio del 2018 y terminará el día 31 de Agosto del 2018.

**TERCERA: Jornada Laboral**  
La jornada ordinaria de trabajo será de ocho (8) horas, de 06:00 am a 12:00 pm. En el desarrollo de la jornada se respetarán los tiempos de inmersión establecidos en las tablas de buceo del artículo 50 del Reglamento de Seguridad y Salud Ocupacional de la Pesca Submarina. No se permitirá las labores de pesca submarina durante la noche, en un horario comprendido entre las 6pm a las 5am. El Trabajador que infrinja por su propia voluntad sin autorización del PATRONO, la presente disposición será su responsabilidad y correrá por su cuenta y riesgo.

**CUARTA: Del Lugar de Prestación de Servicio**  
El trabajador prestará sus servicios en la M/N \_\_\_\_\_ pudiendo ser desplazado por el territorio nacional en cumplimiento de sus obligaciones, previo consentimiento de las partes.

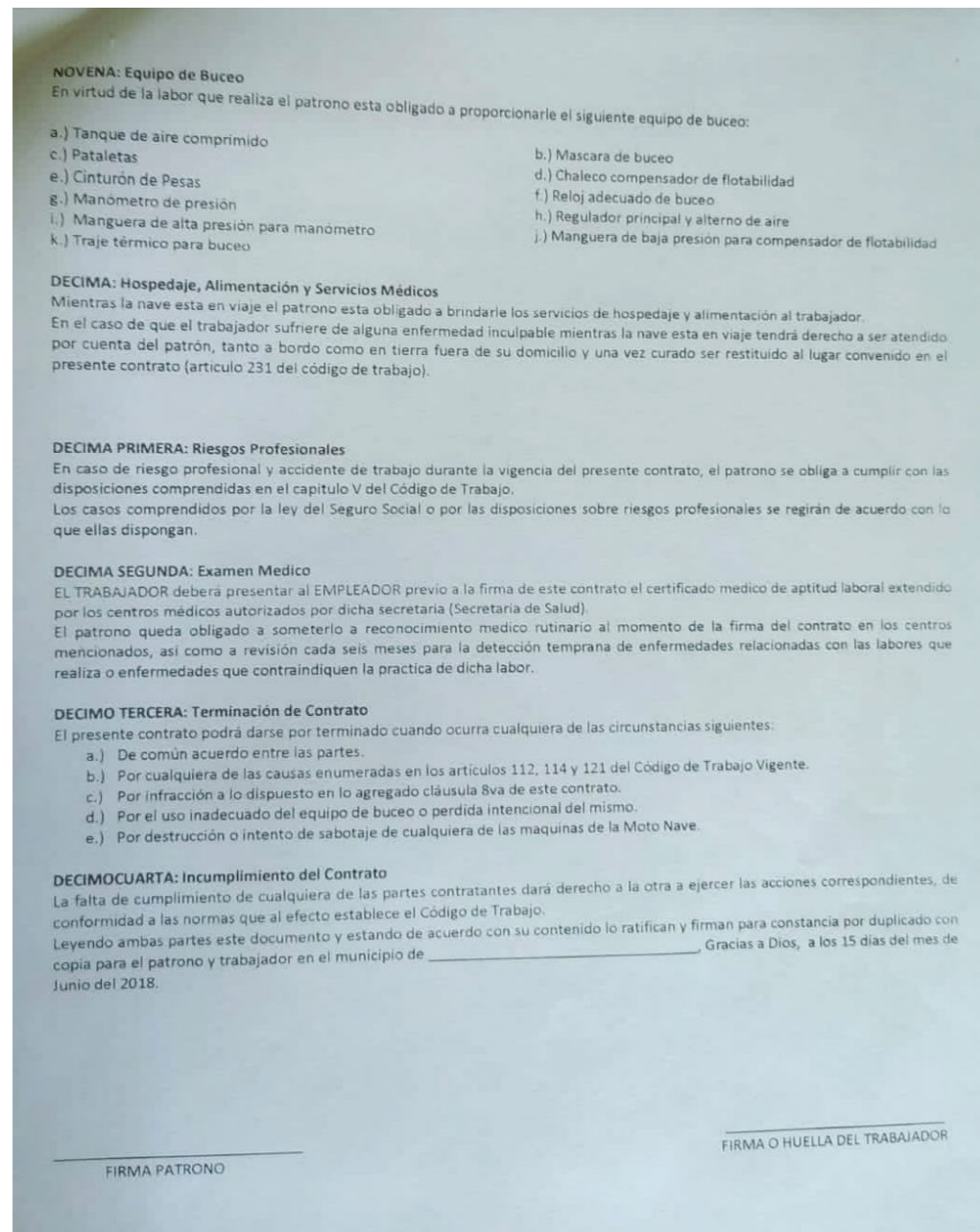
**QUINTO: Lugar de Embarque y Desembarque**  
El lugar de embarque será la \_\_\_\_\_ y el de desembarque en el mismo lugar. Solamente en casos calificados el patrono podrá desembarcarlo en un lugar distinto, pero esto no lo excluye de la obligación económica de retornarlo al sitio de desembarque convenido. Cuando el trabajador, solicite ser dejado en un lugar distinto al pactado como desembarque su retorno correrá por su cuenta y riesgo.

**SEXTA: Salario**  
El trabajador recibirá en concepto de salario la cantidad correspondiente a lo acordado en la forma siguiente:  
  
Por libra de langosta: SETENTA Lempiras (Lps. 70.00)  
  
El salario se entregará mediante un recibo en que conste en forma desglosada la cantidad del salario a pagar en números y letras y se pagará en el bote pesquero que labore. Salvo convenio el pago debe efectuarse en el lugar donde el trabajador presta sus servicios, durante el trabajo o inmediatamente después que este cese.  
EL TRABAJADOR no podrá bajar del bote cualquier producto de la pesca realizada durante el viaje sin autorización del PATRONO

**SEPTIMA: Obligaciones del Trabajador**  
En virtud de la labor del riesgo que realiza el trabajador, este está obligado a:  
a.) Previo a su primera inmersión deberá revisar que su equipo de buceo este en buen estado  
b.) Reportar defectos en el equipo de buceo  
c.) Cumplir con lo establecido en las tablas de buceo del Reglamento de Seguridad y Salud Ocupacional de la Pesca Submarina.  
d.) El trabajador no podrá laborar bajo los efectos de drogas, alcohol o demás estupefacientes prohibidos por la ley, el trabajador que viole la presente disposición incurrirá en falta grave y dará por terminado el contrato de trabajo sin responsabilidad para el patrono en aplicación al artículo 439 inciso uno (1) del Código de Trabajo Vigente.

**OCTAVA: Obligaciones del Patrono**  
El Patrono está obligado al estricto cumplimiento de lo establecido en el capítulo V del Código de trabajo y el Reglamento de Seguridad y Salud Ocupacional de la pesca Submarina.  
Cuando se trate de la primera Inmersión el empleador deberá asegurarse que todo el equipo haya sido revisado por los trabajadores.







**Comisionado Nacional de los  
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