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LUND UNIVERSITY

Mariajosse Díaz Sosa

Dive Fishing in La Moskitia, Honduras: State
and Corporate Human Rights Obligations in
High-Risk Sectors.

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Supervisor: Daria Davitti

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Table of contents

Summary	4
Preface.....	5
Abbreviations	6
Introduction	7
Chapter 1: Historical and social context of high-risk fishing in La Moskitia, Honduras.	10
1.1 Introduction to the historical and social context of the Miskito Divers.	10
1.2 Inter-American Court of Human Rights, Case of the Miskito Divers (Lemonth Morris et al.) v. Honduras, judgment of august 31, 2021.	12
Chapter 2: Corporate obligations in la Moskitia, Honduras. Analyzing international standards and judgments.	15
2.1 Definition of Business and Human Rights. United Nations Guiding Principles.	15
2.2 Regional legal framework.	19
2.3 Corporate obligations in La Moskitia: Conditions and Risks.....	22
Chapter 3: State obligations to safeguard the Miskito Divers.....	24
3.1 Honduras’ Obligations under International Human Rights Law.	24
3.2 State Obligations in Protecting Indigenous Communities and High-Risk Workers and people with disabilities.	27
3.3 Decisions from the Inter-American Court of Human Rights regarding labor rights and indigenous protections in similar contexts.	31
3.4 Honduras’ legislative framework.	33
3.5 Business and Human Rights: State Mandate and Corporate Accountability.....	34
3.6 Judicial and Administrative Mechanisms for Miskito Communities.....	34
Chapter 4: The supply chain obligations in high-risk activities.....	38
4.1 Relevance of the supply chain in high-risk sectors.	38
4.2 Structure and functioning of the lobster supply chain in Honduras.	40

4.3 Legal obligations of companies within the supply chain.....	42
4.4 Due diligence duties in high-risk industries.	44
4.5 International precedents on corporate accountability.	47
4.6 Ethical sourcing in the supply chain.	48
Conclusions	52
Annex	56
Bibliography.....	57
1.1 Academic literature.	57
1.2 Legal instruments.	58
1.3 Case law.....	62
1.4 Reports and other documents from International and National Organizations.....	64
1.5 Reports and other documents from NGOs.	67
1.6 Other materials and resources (online).....	68

Summary

La Moskitia region, located in the department of Gracias a Dios in the northerneast Honduras, is home to dense rainforest and indigenous traditions. It is mainly inhabited by the Tawahkas, Garifuna and Miskito indigenous communities, whose economy relies on fishing, and agriculture. Despite the abundance of natural resources, Gracias a Dios presents a high poverty percentage, around 71.8% of the population lives in multidimensional poverty, facing limitations in areas as education and health.

Fishing is the most important economic activity in the region, especially the extraction of species of high commercial value such as shrimp, lobster, snail, sea cucumber. Honduras is one of the main producers of *panulirus argus* or spiny lobster, admired in international gastronomy due to its nutritional value and luxury status. Lobster fishing in the region of the Moskitia is caught using wooden traps or by diving. 97% of the Miskito divers have experienced some form of decompression syndrome, causing partial or complete disability and in many cases death.

In 2021, the situation of the Miskito Divers was exposed internationally with the ruling of the Interamerican Court of Human Rights, which addressed human rights issues related to the right to work under fair, healthy, and safe conditions. The judgement was based on the diving accidents suffered by 42 Miskito divers while working for private fishing companies.

Despite the ruling of the regional court of human rights, it still remains a significant accountability gap when it comes to enterprises obligations, particularly within the complex global supply chains. The current frameworks of the main consumers markets for Miskito lobster are evolving, such as the United States and the European Union, shifting to simplify due diligence requirements and growing backlash against sustainability, weakening a few of the existing mechanisms that could contribute accountability in high-risk sector. These evolving policies should take into account the impact they can have on communities like the Miskito, whose livelihoods depend on an activity directly shaped by international companies.

The research was conducted through legal doctrinal analysis and critical analysis, that contributed to the identification of regulatory frameworks adopted by actors participating in the supply chain can significantly influence extractive industries. The findings also highlight the importance of the delimitation of the obligations between States and companies, emphasizing that although both should cooperate in a complementary manner, the State remains the primary duty bearer. Based on this premise, the thesis also offers recommendations grounded in the right to health.

Preface

To everyone who has supported my human rights career, and to the Swedish Institute for funding my studies in Sweden.

Abbreviations

ACHR	American Convention on Human Rights
AHMBLI	Asociación Misquita Hondureña de Buzos Lisiados (Association of Disabled Honduran Miskito Divers)
CESAMO	Centro de Salud Médico Odontológico (Medical Dental Health Centers)
CESAR	Centros de Salud Rural (Rural Health Centers)
COHEP	National Business Council (Consejo Hondureño de la Empresa Privada)
CSDDD	Corporate Sustainability Due Diligence Directive
DIGEPESCA	General Directorate of Fisheries and Aquaculture (Dirección General de Pesca y Acuicultura)
ESG	Environmental, Social, and Governance
EU	European Union
HRDD	Human Rights Due Diligence
I/A Court H.R	Inter-American Court of Human Rights
IACHR	Interamerican Commission on Human Rights
IDB	Inter-American Development Bank
ILO	International Labour Organization
MNE	Multinational Enterprises
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
SETRASS	Ministry of Labor and Social Security (Secretaría de Trabajo y Seguridad Social)
SMEs	Small and Medium-Sized Enterprises
UN	United Nations
UNGP	United Nations Guiding Principles of Business and Human Rights

Introduction

As a ripple effect of transnational business operations, corporate activities have come under study for their impact in human rights. In international law, only States can be held accountable for human rights abuses. Therefore, international mechanisms have conventionally focused on States, leaving a significant accountability gap when it comes to enterprises, particularly within the complex global supply chains. This research aims to explore that gap and to identify the areas that must be strengthened by key actors in the supply chain in order to prevent human rights abuses and ensure corporate accountability.

The case of the Miskito divers in La Moskitia, Honduras, reflects the devastating consequences of the current accountability gap. Even though that the situation in La Moskitia was addressed by the Interamerican Court of Human Rights, workers continue facing life-threatening conditions as part of a high-risk activity that supplies markets worldwide. Despite of the foreseeability of harm, many companies continue to benefit from this labour without implementing due diligence and remedies. This situation highlights the need to clarify corporate obligations across global supply chain and the importance of due diligence in addressing human rights abuses.

1. Issue in Focus

This research focuses on human rights obligations of companies within the global supply chains, with a focus in high-risk deep-diving fishing in La Moskitia, Honduras.

2. Motive and Justification.

The motivation of this research emerges from the concern of the effects of human rights abuses occurring in La Moskitia, Honduras. This region has remained invisible to the State despite the devastating consequences of working conditions faced by the community that relies on a high-risk activity for their livelihood. Although the Interamerican Court of Human Rights has brought attention to the issue, a gap still remains: corporate obligations, particularly of third parties that are part of the global supply chain, are not be accountable for their activities and their labor practices remain without consequences. By focusing in this region, the research contributes to ongoing debates about corporate accountability and due diligence mechanisms.

3. Research Objectives

General Objective:

Analyze international human rights obligations applicable in high-risk activities with a focus in global supply chains.

Specific Objectives:

- Recognize corporate obligations in supply chain contexts.
- Identify human right standards applicable to relevant actors in global supply chain.
- Categorize the obligations from companies that source materials from high-risk sectors.
- Identify legal framework that address corporate obligations for human rights abuses.
- Propose practices that integrate international human rights framework and ethical sourcing.

4. Research questions:

What are the obligations of states and companies in relation to the human rights of indigenous Miskito divers performing high risk activities in Honduras?

Subquestions:

- What are the human rights risks associated with high-risk activities performed by indigenous Miskito divers in Honduras, and how do they manifest in the workplace?
- What are the state obligations of Honduras vis-à-vis indigenous Miskito divers performing high risk activities?
- What are the obligations of companies in the supply chain of lobsters relying on Miskito divers in Honduras?
- What mechanisms can be implemented to remedy the human rights harm caused in the context of lobsters' production and Miskito divers in Honduras?

5. Method / Theoretical Perspective

This research will use two methods: legal doctrinal analysis¹ and critical analysis². The doctrinal method involves the examination of legal sources, includ-

¹ Bhat, P. Ishwara (2020) , *Idea and Methods of Legal Research* (Delhi, 2020; online edn, Oxford Academic, <https://doi.org/10.1093/oso/9780199493098.001.0001>, accessed 4 May 2025.

² McInerney-Lankford, S. (2017). "Chapter 3: Legal methodologies and human rights research: challenges and opportunities". In *Research Methods in Human Rights*. Cheltenham, Edward Elgar Publishing, Retrieved May 5, 2025, from <https://doi-org.ludwig.lub.lu.se/10.4337/9781785367793.00010>, Page 41.

ing relevant case law and human rights instruments, especially related to business and human rights. The critical analysis will complement the doctrinal approach, through a critical examination of how legal decision of different cases and jurisdictions that have addressed corporate human rights obligations, impacts on the social welfare of the Miskito divers (health and labour conditions).

6. Scope and Limitations.

The study is limited to labour rights and occupational health issues caused by the conditions of deep-sea dive fishing experienced by the Miskito community in La Moskitia, Honduras. It will not cover other subjects as environmental damage and will focus primarily on the Inter-American Human Rights System, using international precedents as reference points. Additionally, it will provide a general identification of corporate obligations within the supply chain, rather than detailed mapping of actors involved.

7. Thesis Structure.

The thesis is divided into five chapters: *The first chapter* provides historical and social context of high-risk fishing in La Moskitia, Honduras. *Chapter 2* explores the corporate obligations in La Moskitia, Honduras. *Chapter 3* analyses State obligations to safeguard the Miskito Divers. *Chapter 4* The supply chain obligations in high-risk activities. Finally, the *chapter 5* offers conclusions and recommendations for strengthening corporate accountability and State duties in high-risk deep-dive fishing in la Moskitia, Honduras.

Chapter 1: Historical and social context of high-risk fishing in La Moskitia, Honduras.

1.1 Introduction to the historical and social context of the Miskito Divers.

The Department of Gracias a Dios, located on the northeast Caribbean coast of Honduras, is a multicultural region home to three indigenous communities of Honduras live: Tawahkas, Garífuna, and Miskitos. Gracias a Dios have an estimated population of 106,251 inhabitants, with 65,901 living in the rural areas and 40,350 in urban area. Over half (55%) of the population resides in the municipal capital, Puerto Lempira, which has 58,795 inhabitants³. The Miskito community depends on agriculture, livestock, forestry and subsistence fishery for their livelihood. Their territory, full of natural resources, contributes to providing its inhabitants with means of subsistence from fishing, agriculture and seasonal work linked to the land and the sea.

La Moskitia region is part of Gracias a Dios department in the northeastern Honduras⁴. The primary modes of transportation to and from La Moskitia are boats and light aircraft, both of which incur high costs. Within communities, rivers or mangroves-associated rivers are used to travel, typically by canoe, or occasionally, on foot along the shores of the beaches.

Despite the abundance of natural resources in the territory, the department of Gracias a Dios has high poverty percentages with 71.8% of the population living in multidimensional poverty. This figure exceeds the national average of 67.2%. Multidimensional poverty measures the multiple shortcomings that people living in poverty simultaneously face, in areas such as education and health, among other essential aspects to have adequate living conditions⁵.

³ Organización Internacional para las Migraciones. (2021). *Análisis del contexto miskito en torno a las condiciones de vida, la discriminación, estigma y xenofobia desde las dinámicas migratorias y las prácticas sociales de su comunidad* [Analysis of the Miskito context regarding living conditions, discrimination, stigma, and xenophobia from the perspective of migratory dynamics and social practices within their community], p.11, https://infounitnca.iom.int/wp-content/uploads/2022/05/analisis_contexto_miskitoUE_OIM.pdf

⁴ See footnote 3, page 12 “It is believed that the name Miskito is derived from the word Miskut-upla and that in abbreviated form it reads “Miskitu”, which means “the people of Miskut”. The Miskut was the tribal chief of the Tawiras ethnic group.”

⁵ World Bank Group (2023) , “Una apuesta por la sustentabilidad en la Moskitia, Honduras, para crear nuevos medios de subsistencia”, [A commitment to sustainability in Moskitia, Honduras, to create new means of subsistence], <https://www.bancomundial.org/es/news/feature/2023/04/24/betting-on-sustainability-in-the-moskitia-honduras-to-create-new-livelihoods>

Fishing is a vital economic activity in the region, characterized by the high volumes of catches of species of high commercial value (shrimp, lobster, snail, sea cucumber). Fishing activities are carried out in the artisanal and industrial context.⁶ Honduras and Nicaragua are the main producers of common lobster (*Panulirus argus*), surpassed only by Cuba and the Bahamas⁷. The Central Bank of Honduras reports that lobster exports in 2024 were valued at \$57.8 million dollars⁸.

Lobster fishing in the region is carried out through wooden pots⁹ or traps or by diving. Wooden pots, ranging from 2,500 to 3,000 pots are used, with an average of 1,000 pots being fished daily in areas with depths of 90 to 250 feet (27-75 m) with reef substrates¹⁰. Approximately nine hundred thousand kilograms (910,649.29 kg) of lobster are caught annually in Honduras¹¹, with industrial and artisanal fleets contributing to the catch. The industrial lobster fleet consists of 68.8% boats using pots and 31.2% relying on divers, with about 4,000 divers estimated to be engaged in both sectors¹².

Traditionally, the Miskito men practiced free diving¹³ to catch lobster for family consumption, not going deeper than 12 to 18 meters (12.19 - 18.28 m) in their dives. Of the approximately 9,000 divers involved in lobster fishing,

⁶ Food and Agriculture Organization of the United Nations (2018), “*Seguridad ocupacional de las personas que se dedican al buceo en la pesca y acuicultura*”, [Occupational safety of people who are dedicated to diving in fishing and aquaculture] <https://www.fao.org/honduras/noticias/detail-events/en/c/1174458/>

⁷ Secretaría de Agricultura y Ganadería de Honduras (2007). “*Diagnóstico pesquero y acuícola*” [Fisheries and Aquaculture Diagnosis]. <https://www.scribd.com/document/354893557/DIAGNOS-TICO-PESQUERO-Y-ACUICOLA-pdf>

⁸ Central Bank of Honduras (2025), “*Exportaciones FOB de Mercancías Generales*”, [Free on Board (FOB) Exports of General Goods], p.13 <https://www.bch.hn/estadisticos/EME/lay-outs/15/WopiFrame.aspx?sourcedoc=%7B2F24C6A2-2C98-445F-88F3-130417DB86EA%7D&file=Exportaciones%20FOB%20Mercanc%03%ADas%20Generales%20trimestral.xlsx&action=default>, page 13.

⁹ Lobster pots, or traps, are cages or nets used to capture lobsters. These pots are typically baited to lure the lobsters inside, and they are left on the seafloor for extended periods to catch the lobsters as they enter. Lobster Institute. (n.d.). *Lobstering basics*. University of Maine. <https://umaine.edu/lobster-institute/educational-resources/lobstering-basics/>

¹⁰ Reef substrates refer to the base materials of a coral reef, such as rocks and coral formations, which provide a habitat for various marine species, including lobsters. The Coral Reef Alliance. (2003). *Introduction to coral reef ecosystems, threats, and solutions*. Coral Parks Program Education Series. <https://www.sprep.org/att/IRC/eCOPIES/Global/264.pdf>

¹¹ Secretaría de Agricultura y Ganadería de Honduras (2022). “*Boletín Estadístico de Langosta*”, [Lobster Statistical Bulletin], <https://www.digepesca.sag.gob.hn/2022/09/09/boletin-estadistico-de-langosta/>

¹² Food and Agriculture Organization of the United Nations, (2015), “*Perfiles de países de pesca y acuicultura*”, [Country profiles on fisheries and aquaculture], <https://www.fao.org/fishery/es/facp/HND?lang=es>

¹³ Free diving, a traditional technique where divers hold their breath without the aid of diving equipment. Leisure Pro Staff. (2023). *How to freedive: The basics of freediving*. <https://www.scuba.com/blog/basics-of-freediving/>

98% are Miskitos. Worryingly, 97% have experienced some form of decompression related syndrome, and 4,200 of them are either partially or completely disabled.¹⁴

The work of Miskito divers is dangerous and bring health consequences particularly decompression sickness. This illness occurs due to the rapid ascent after deep dives, leading to nitrogen bubbles forming in the blood, causing severe pain, paralysis, and in some cases, death. Given the high frequency of these accidents, it is crucial to address the health and social security risks associated with this occupation.

According to the Association of Disabled Honduran Miskito Divers (AHMBLI) more than 1,500 fishermen have been left with disabilities over the last eight years, and more than 100 have died because they did not get an immediate medical response after accidents suffered at work in high seas.¹⁵ Long-term dives such as compressor-assisted diving¹⁶ and artisanal diving¹⁷, imply a significant risk to the health and well-being of the local indigenous populations.

In terms of healthcare, the department has a second-level Basic and Regional Reference Hospital in Puerto Lempira, along with 11 Rural Health Centers (CESAR) and eight Medical Dental Health Centers (CESAMO) distributed in the different municipalities. For specialized medical care, residents must travel to hospitals in other departments, which involves coordinating emergency transportation with the Honduran Air Force¹⁸.

1.2 Inter-American Court of Human Rights, Case of the Miskito Divers (Lemoth Morris et al.) v.

¹⁴ Inter-American Court of Human Rights. (2021). *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras* (Series C No. 432) paragraph 19, https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_ing.pdf

¹⁵ La Prensa Honduras (2024), “*En la Moskitia continúan pescando al “hilo de la muerte”* [In Moskitia they continue fishing on the edge of death] <https://www.laprensa.hn/honduras/mosquitia-continuan-pescando-peligro-crisis-muerte-olvido-gubernamental-PA17535318>

¹⁶ Compressor-assisted diving involves the use of a compressor to supply air to divers, allowing them to dive deeper and for longer periods compared to free diving. However, this method poses significant risks to divers, as the prolonged exposure to high pressures increases the likelihood of decompression sickness. Moon, R. E. (2023, April). *Decompression sickness*. Merck Manual Consumer Version. <https://www.merckmanuals.com/home/injuries-and-poisoning/diving-and-compressed-air-injuries/decompression-sickness>

¹⁷ Artisanal diving refers to the traditional, small-scale fishing practices where divers, using minimal equipment, harvest marine species such as lobster and shrimp. This method is often more hazardous due to its reliance on free diving or compressor-assisted techniques. Bañez, J. (2023). Artisanal compressor dive fishing. *SPMC Journal of Health Care Services*, 9(1), 1–5. https://spmcjournal.com/V9N1Galley/Banez/BANEZ_V9I1.pdf

¹⁸ See footnote 3.

Honduras, judgment of august 31, 2021.

After more than sixteen years since the case was initiated before the Inter-American Commission on Human Rights (IACHR), the State of Honduras accepted the facts presented in the Merits Report of the Inter-American Commission and recognized its international responsibility by signing a friendly settlement agreement, which was later approved by the Inter-American Court of Human Rights (I/A Court H.R.).

In the judgement in the case of the Miskito Divers, I/A Court H.R ruled in favor of 42 members of the Miskito community who had sued the State of Honduras for human rights violations resulting from the States failure to regulate, supervise and oversee the practice of dangerous activities by private companies in the lobster fishing industry¹⁹.

The I/A Court H.R began its analysis of corporate obligations in the context of Miskito divers by reminding that states have the obligation to ensure the free and full exercise of the rights recognized by the American Convention of Human Rights²⁰, recognizing that this obligation goes beyond the relation between States and persons, since it extends to the private sphere where the State has the obligation to prevent abuses carried out by third parties.

In the friendly settlement agreement, the Court endorsed measures of restitution and satisfaction, including access to specialized medical and psychological care for the victims and their families, educational scholarships for the victims and their descendants, housing programs, and sustainable economic development initiatives. Additionally, Honduras has to produce and broadcast a documentary highlighting the events of the case and to hold a public act of recognition of international responsibility²¹.

Financial reparations were also agreed, covering both material and non-material damages, as well as legal costs. Furthermore, it was set forth guarantees of non-repetition. Also, the ruling highlighted that there should be structural changes to the national legal and institutional framework²².

Regarding to the violation of the right to health, in the agreement it was defined that the State of Honduras has to provide comprehensive and specialized medical and psychological care to the victims and their families, including rehabilitation treatments personalized to their specific needs.

¹⁹See footnote 14.

²⁰See footnote 14, para 47.

²¹See footnote 14, pages 39-57.

²²See footnote 14, page 46.

Additionally, the agreement contemplates the strengthening of healthcare infrastructure in La Moskitia region to ensure better access to medical services for indigenous communities, particularly those engaged in high-risk occupations. The State was also required to implement long-term policies to prevent future health risks associated with deep-sea diving, including improved safety regulations and labor protections. These measures will guarantee that the Miskito community developed their work with adequate medical support.

Chapter 2: Corporate obligations in la Moskitia, Honduras. Analyzing international standards and judgments.

2.1 Definition of Business and Human Rights. United Nations Guiding Principles.

In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights (UNGPs) proposed by the United Nations Special Representative John Ruggie, these principles serve as guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations²³.

The UNGPs are built on the recognition that at global level, corporate conduct is shaped by three distinct governance systems: the first is the system of public law and governance, domestic and international; the second is a civil governance system involving stakeholders affected by business enterprises, employing social compliance mechanisms; the third is corporate governance.²⁴ Put simple, states must protect everyone within their territory and jurisdiction, companies must respect human rights wherever they operate and whatever their size or industry, and those who are harmed must have redress.

The legal framework for these obligations is provided by the Guiding Principles as the three pillars of Business and Human Rights: protect, respect and remedy. Regarding to the State's duty to protect, under international law, States have the duty to protect against human rights abuses by all actors in society, including business. This means States must prevent, investigate, punish and redress human rights abuses that take place in business operations.

Additionally, the Guiding principles classify the expectations for business concerning human rights and affirm that business enterprises must prevent, mitigate and where appropriate, remedy human rights abuses that they cause or contribute to. To fulfill their obligation to respect human rights, business enterprises must establish and implement appropriate policies and processes.

The Guiding Principles identify three components of this obligation. First, companies must institute a policy commitment to meet the responsibility to

²³United Nations Human Rights Council. (2011). Human rights and transnational corporations and other business enterprises (A/HRC/RES/17/4). <https://digitallibrary.un.org/record/706796>

²⁴ Ruggie, J. G. (2013). *Business and human rights: The next chapter*, https://scholar.harvard.edu/files/john-ruggie/files/2013_business_and_human_rights_the_next_chapter_0.pdf

respect human rights. Second, they must undertake ongoing human rights due diligence to identify, prevent, mitigate and account for their human rights impacts. Finally, they must have processes in place to enable remediation for any adverse human rights impacts they cause or contribute to.²⁵

Human rights due diligence involves identifying and addressing the human rights impacts across a company's operations and products, and throughout its supplier and business partner networks. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations.²⁶

Finally, and equally important is the pillar of remedy. As a fundamental principle of international law²⁷, victims must have access to an effective remedy and States are responsible for ensuring access to effective remedies. The State duty to provide access to effective remedy includes taking appropriate steps to ensure that state-based domestic judicial mechanisms are able to effectively address business related human rights abuses. Also, states should provide effective and appropriate non-judicial grievance mechanisms with the capacity to hear and adjudicate business-related human rights complaints.²⁸

The access to remedy principles do not only apply to States. They also stipulate that business enterprises should provide for, or participate in, effective mechanisms for fielding and addressing grievances from individuals and communities who may be adversely impacted by the company's operations.²⁹

Almost 14 years after the endorsement of the UNGP, an increasing number of companies and states incorporate them, but gaps in their application still remain. In 2014, an intergovernmental working group was mandated to draft a legally binding instrument to regulate the activities of transnational corporations and other business³⁰. In 2023, the latest draft was released and it was centered on reinforcing the three pillars, on access to remedy, governments to ensure the respect of human rights and the extension of legal liability to natural and legal persons³¹. Towards the future, if the states indicate their consent

²⁵ See footnote 23, general principles.

²⁶ See footnote 23, principle 17.

²⁷ International Law Commission. (2001). *Draft articles on responsibility of States for internationally wrongful acts, with commentaries*. In *Report of the International Law Commission on the work of its fifty-third session* (UN Doc. A/56/10). United Nations. Article 2, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

²⁸ See footnote 23, principle 25.

²⁹ See footnote 23, principle 29.

³⁰ United Nations Human Rights Council. (2014). *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights* (A/HRC/RES/26/9). <https://digitallibrary.un.org/record/775715>

³¹ Office of the High Commissioner for Human Rights. (2023). *Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational*

to be bound to a business and human rights treaty, they should enact the necessary legislation to give domestic effect to the treaty.

Equally important duty of States to protect human rights against abuse of third parties is the corporate obligation to respect human rights. This means that business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts in which they are involved³².

International human rights law does not impose direct legal obligations on business enterprises. Legal liability and enforcement for corporate human rights violations are defined by national legal frameworks. Companies can impact human rights at multiple levels, including employees, customers, workers in their supply chains and surrounding communities. Enterprises can and do infringe human rights when they are not paying attention to the risks and how to reduce it³³. Vulnerable individuals, groups and communities are those that face a particular risk of being exposed to discrimination and other adverse human rights impact.

Internationally recognized human rights instruments are relevant to business, because business can have an impact on every right, even if the right is an obligation of the State. Beyond that, enterprises can voluntarily undertake additional human rights commitments, defined by national laws or contracts with public authorities.

The UNGP require that business enterprises: avoid causing or contributing to adverse human rights impacts through their own activities, and address when they occur; seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts³⁴. Therefore, if a company is at risk of causing or contributing to an adverse human rights impact, it should cease or change the activity for which it is responsible, and if the impact nevertheless takes place, the enterprise should engage actively in its remediation either directly or in cooperation with others³⁵.

In order for companies to meet their obligation to respect human rights, business should express their commitment through: statement policy³⁶ as a high-

corporations and other business enterprises, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf>

³² See footnote 23, principle 11.

³³ Office of the High Commissioner for Human Rights. (2012). *The corporate responsibility to respect human rights: An interpretive guide*, https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf

³⁴ See footnote 23, principle 13.

³⁵ See footnote 33, page 23.

³⁶ See footnote 23, principle 16

level and public statement to respect human rights; human rights due diligence³⁷ that prevent, mitigate and account for how they address their adverse human rights impacts; human rights assessments of any actual or potential adverse human rights impacts; remediation³⁸ where business enterprises identify that they have caused or contributed to adverse impacts and obligation to respect human rights in all contexts³⁹.

It is important to highlight regarding to the business enterprise's value chain, it encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either:

- a. Supply products or services that contribute to the enterprise's own products or services.
- b. Receive products or services from the enterprise⁴⁰.

Additionally, in the Human Rights Council resolution that endorsed the Guiding Principles it was established the Working Group on the issue of human rights and transnational corporations and other business enterprises, that has a mandate to promote, disseminate and implement the Guiding Principles on Business and Human Rights⁴¹. On 2019, the Working Group visited Honduras⁴² where they highlighted working conditions in the fishing industry in La Mosquitia as particularly serious example of labour rights abuses, including exploitative working conditions of Miskito Indigenous Peoples and the lack of adequate oversight.

In relation to labour rights, the business and human rights agenda is founded on international labour standards that provide frameworks for States to respect, protect and give effect to human rights at work and set out principles that guide business respecting those rights such as: Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy⁴³ that was

³⁷ See footnote 23, principle 17.

³⁸ See footnote 23, principle 22.

³⁹ See footnote 23, principle 23.

⁴⁰ See footnote 33, page 13.

⁴¹ United Nations Human Rights Council. (2011). *Human rights and transnational corporations and other business enterprises* (A/HRC/RES/17/4). <https://digitallibrary.un.org/record/706796>; **Mandate renewed:** United Nations Human Rights Council. (2023). (A/HRC/RES/53/3). <https://docs.un.org/en/A/HRC/RES/53/3>.

⁴² United Nations Human Rights Council. (2020). *Visit to Honduras: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises* (A/HRC/44/43/Add.2). <https://www.ohchr.org/en/documents/country-reports/ahrc4443add2-visit-honduras-report-working-group-issue-human-rights-and>

⁴³ International Labour Organization. (2006). *Tripartite declaration of principles concerning multinational enterprises and social policy* (4thed.). https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_emp/%40emp_ent/%40multi/documents/publication/wcms_094386.pdf

elaborated and adopted by governments, employers and workers around the world; and the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work⁴⁴, that outlines the respective duties and obligation of States and enterprises on human rights when it comes to protecting and respecting labour rights in business operations.

2.2 Regional legal framework.

Representatives of social and environmental organizations⁴⁵, local communities, Indigenous People and Afro-descendants have expressed on several occasions the impact caused by companies on their human rights⁴⁶. In Latin-America, a region dependent on investments by large companies, several actions and initiatives have emerged to promote responsible business conduct⁴⁷. The Inter-American Human Rights System has acknowledged that in certain circumstances the State may be internationally responsible for acts committed by companies that have affected human rights⁴⁸.

In 2019, IACHR published the report *Business and Human Rights: Inter-American Standards*, in which they considered clarifying the international obligations of States in the field of human rights, analyzed from the contexts related to business activities in the light of the inter-American experience⁴⁹.

In the report, recommendations were made for states, companies, and actors within the Organization of American States (OAS). It is important to note that although the recommendations are addressed to the States Parties to the OAS in accordance with their international obligations, the Commission reiterated

⁴⁴ International Labour Organization. (1998). *Declaration on fundamental principles and rights at work and its follow-up*. https://www.ilo.org/sites/default/files/2024-04/ILO_1998_Declaration_EN.pdf

⁴⁵ Geneva Environment Network. (2024). *Business and human rights, environment, and the role of Geneva*. <https://www.genevaenvironmentnetwork.org/resources/updates/business-environmental-human-rights-and-the-role-of-geneva/>

⁴⁶ United Nations Working Group on Business and Human Rights. (2019). *Statement at the end of visit to Honduras*. Office of the United Nations High Commissioner for Human Rights. <https://www.ohchr.org/en/statements-and-speeches/2019/08/statement-end-visit-honduras-united-nations?LangID=E&NewsID=24925>

⁴⁷ The Responsible Business Conduct in Latin America and the Caribbean (RBCLAC), designed and funded by the European Union, and implemented by the Office of the High Commissioner for Human Rights (OHCHR), aims to promote responsible business conduct practices in line with international standards. Office of the United Nations High Commissioner for Human Rights. (n.d.). *Joint project on responsible business conduct in Latin America and the Caribbean*. <https://www.ohchr.org/en/special-procedures/wg-business/joint-project-responsible-business-conduct-latin-america-and-caribbean>

⁴⁸ Inter-American Court of Human Rights. (2023). *Case of the Inhabitants of La Oroya v. Peru: Preliminary objections, merits, reparations, and costs*, paragraph 155, https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_ing.pdf,

⁴⁹ Interamerican Comission of Human Rights. (2019). *Empresas y derechos humanos: Estándares interamericanos* (CIDH/REDESCA/INF.1/19), , page 13, <https://www.oas.org/es/cidh/informes/pdfs/EmpresasDDHH.pdf>.

that the effective implementation of these obligations has an impact on companies, which have a obligation to respect human rights; therefore, even in the absence of compliance or inadequate compliance with obligations by States, companies must be guided and their actions and processes by those international human rights standards applicable to the case. This means that they must refrain from infringing, contributing, facilitating, encouraging or aggravating human rights violations and addressing adverse human rights consequences in which they are involved, whether through their own activities, business relationships or corporate structure.⁵⁰

In its 2024 report on the human rights situation in Honduras, the IACHR acknowledges the efforts to improve corporate accountability. But in spite of these initiatives, the IACHR expresses concern over concessions granted without adherence to international human rights standards. Civil society organizations report a lack of effective implementation of business and human rights standards, partly due to inconsistencies between different administrations⁵¹.

Furthermore, the IACHR highlights the lack of concrete corporate initiatives to mitigate environmental and social damages, often leaving remediation efforts dependent on international cooperation and civil society. The Commission urges the Honduran government to implement legal reforms that emphasizing binding human rights norms for business and ensure judicial mechanisms that hold corporations accountable⁵².

In addition to the case of the *Miskito Divers*, the I/A Court H.R., has ruled cases such as *Case of the Hacienda Brazil Verde Workers*⁵³ with respect to Brazil, which addressed slave labor, and *Case of the Kaliña and Lokono Peoples*⁵⁴ with respect to Suriname, related to the impacts of the extractive industry on Indigenous Peoples, the *Lagos del Campo*⁵⁵ case with respect to Peru, which involved the lack of guarantees for freedom of expression, association and labor rights of a workers' leader in a private company in Peru, or the

⁵⁰ See footnote 49, page 415.

⁵¹ Interamerican Commission of Human Rights (2024). *Situación de derechos humanos en Honduras* (OEA/Ser.L/V/II. Doc. 9/24). Organización de los Estados Americanos, paragraph 261, <https://www.oas.org/es/cidh/informes/pdfs/2024/informe-honduras.pdf>

⁵² See footnote 49, paragraph 270.

⁵³ Inter-American Court of Human Rights. (2016). *Case of the Hacienda Brasil Verde Workers v. Brazil: Preliminary objections, merits, reparations and costs* (Series C No. 318). https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf

⁵⁴ Inter-American Court of Human Rights. (2015). *Case of the Kaliña and Lokono Peoples v. Suriname: Merits, reparations and costs* (Series C No. 309). https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf

⁵⁵ Inter-American Court of Human Rights. (2017). *Case of Lagos del Campo v. Peru: Preliminary objections, merits, reparations and costs* (Series C No. 340). https://www.corteidh.or.cr/docs/casos/articulos/seriec_340_ing.pdf

*Muelle Flores*⁵⁶ case, related to the violation of the right to social security of an elderly person due to the failure to comply with internal judicial decisions in the framework of a privatization process of a state-owned company in the same country.

It is important to note that according to the control of conventionality doctrine, there is an international obligation on public authorities in all state parties to the American Convention on Human Rights (ACHR) to interpret any domestic legal norm in a manner compatible with the ACHR⁵⁷.

With respect to the right of health, the Inter-American Court has reaffirmed that the right to health is a right protected by Article 26 of the American Convention on Human Rights⁵⁸. The general obligation requires the State to ensure access to essential health services, provide quality and effective medical care and promote overall improvements in public health. This right encompasses timely and appropriate health care in accordance with the principles of availability, accessibility, acceptability and quality, the implementation of which will depend on the conditions prevailing in each State⁵⁹.

With respect to the health care of people who carry out underwater fishing diving activities, it is established that the health care that Miskito divers who suffer accidents must receive requires primary prevention (which includes the protection of people); secondary prevention (which allows the care of people at risk, which includes early diagnosis and timely treatment), and tertiary prevention (which involves care for sick people: rehabilitation and reintegration into the workforce). In this way, divers suffering from decompression sickness or other diving-related illness should immediately have specific care in a hyperbaric chamber, and rehabilitation treatments that allow adequate recovery, and their social reintegration⁶⁰.

⁵⁶ Inter-American Court of Human Rights. (2019). *Case of Muelle Flores v. Peru: Preliminary objections, merits, reparations and costs* (Series C No. 375). https://www.corteidh.or.cr/docs/casos/articulos/seriec_375_ing.pdf.

⁵⁷ Inter-American Court of Human Rights. (2006). *Case of Almonacid Arellano et al. v. Chile: Preliminary objections, merits, reparations and costs* (Series C No. 154), paragraph, 124., https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_ing.pdf

⁵⁸ Inter-American Court of Human Rights. (2018). *Case of Poblete Vilches et al. v. Chile: Merits, reparations and costs* (Series C No. 349), paragraph 106, https://www.corteidh.or.cr/docs/casos/articulos/seriec_349_ing.pdf, and Inter-American Court of Human Rights. (2021). *Case of Guachalá Chimbo et al. v. Ecuador: Merits, reparations and costs* (Series C No. 423). https://www.corteidh.or.cr/docs/casos/articulos/seriec_423_ing.pdf

⁵⁹ Inter-American Court of Human Rights. (2018). *Case of Poblete Vilches et al. v. Chile: Merits, reparations and costs* (Series C No. 349), paragraph 120-121, https://www.corteidh.or.cr/docs/casos/articulos/seriec_349_ing.pdf, and *Case of Guachalá Chimbo et al. v. Ecuador: Merits, reparations and costs* (Series C No. 423), paragraph 101 https://www.corteidh.or.cr/docs/casos/articulos/seriec_423_ing.pdf

⁶⁰ See footnote 14, paragraph 84.

2.3 Corporate obligations in La Moskitia: Conditions and Risks.

Miskito divers work under conditions of contractual informality, unsafe environments, inadequate equipment, and labor exploitation. They also use outdated, poorly maintained equipment.

Lobster fishing boats are composed of captains, crew members, sacabuzos⁶¹, comanches⁶², divers⁶³ and cayuquero (canoe operator)⁶⁴. After passing through La Moskitia, the boats continue offshore for periods of two to three weeks to practice dive fishing. Divers work between 12 and 17 days and, to maximize their catch, they are forced to remain at significant depths for extended periods of time and ascend too quickly, in contravention of diving safety regulations⁶⁵.

In this way, divers are at risk of preventable accidents such as drowning or decompression sickness. Likewise, the absence of rehabilitation measures and a hyperbaric chamber that can immediately attend to divers suffering from decompression in La Moskitia persists, hundreds of divers have suffered permanent disabilities in recent years.⁶⁶

Vulnerable individuals are entitled to special protection, as the State has a duty to uphold and guarantee human rights. It is imperative to adopt specific protective measures based on individual circumstances and specific risks⁶⁷. The asymmetrical relations between the companies and the Miskito divers have deepened already existing inequalities in La Moskitia. This situation has generated the risk of sacrificing the enjoyment of human rights of the Miskito community that depends on this subsistence activity.

⁶¹ Their function is as intermediaries between the fishing entrepreneur and the divers, this, in aspects of contracting and payments for the work done. Comisionado Nacional de los Derechos Humanos (CONADEH). (2023). *Sectoral Impact Study of the Diving Fishing Industry on the Human Rights of Indigenous Miskitu Divers, from a Business and Human Rights Perspective*, page 21 https://conadeh.hn/wp-content/uploads/2024/02/Informe-EIS-Industria-de-pesca-por-buceo-en-Honduras_WEB.pdf

⁶² They serve as captains of small teams of divers, in a boat there can be more than two Comanches, this is a function of the divers that the ship carries, it reports how many pounds each diver took out per day from his assigned team. *See footnote 61, page 21.*

⁶³ They are in charge of diving for picking up the lobster in the areas assigned to him by the captain of the boat. *See footnote 61, page 21.*

⁶⁴ Is the person who accompanies the diver with a small boat that contains the diving tanks and the product collected by the diver. *See footnote 61, page 21.*

⁶⁵ See footnote 14, paragraph 35.

⁶⁶ Inter-American Commission on Human Rights. (2015). *Situation of human rights in Honduras* (OEA/Ser.L/V/II. Doc. 42/15). Organization of American States, paragraphs 427-435 <https://www.oas.org/en/iachr/reports/pdfs/honduras-en-2015.pdf>.

⁶⁷ Inter-American Court of Human Rights. (2006), *Case of Ximenes-Lopes v. Brazil*, Merits, reparations and costs (Series C No. 149), paragraph 103, https://www.corteidh.or.cr/docs/casos/articulos/seriec_149_ing.pdf

In the case of the Miskito divers, the types of care that must be given are immediate, however, neither the lobster exploitation company that employs them, nor the State, have adopted measures to prevent this situation from continuing or to attend to those who suffer from some type of disability.

Companies must take primary responsibility for their activities, as their active participation is essential for upholding human rights. Companies must adopt, on their own, preventive measures for the protection of the human rights of their workers, as well as those aimed at preventing their activities from having negative impacts on the communities in which they are carried out or on the environment⁶⁸.

⁶⁸ Inter-American Commission on Human Rights. (2019), *paragraphs 89 and 121, Business and human rights: Inter-American standards (OEA/Ser.L/V/II)*. https://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf.

Chapter 3: State obligations to safeguard the Miskito Divers.

3.1 Honduras' Obligations under International Human Rights Law.

Under international law, every internationally wrongful act of a State entails its international responsibility. Conduct is attributable to the State regardless of whether the organ exercising the action is legislative, executive, judicial or any other functions in the organization of the State. Additionally, the conduct of persons or entities exercising elements of governmental authority, as well as conduct carried out in absence or default of official authorities⁶⁹, can be attributed to the State.

In International human rights law, the State is placed as the main duty bearer and it has three core obligations which they are forced to respect: The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights, the obligation to protect requires the State to protect against human rights abuses, the obligation to fulfill, which means that the State must take progressive steps to fulfill the relevant right⁷⁰.

The treaty obligations of States do not imply an unlimited responsibility of States for any action of private individuals⁷¹, however, it has been established that a State may be internationally responsible for acts of private individuals that violate the human rights of individuals under its jurisdiction when:

- a. There is tolerance for complicity with private individuals that violate human rights, and
- b. For the lack of diligence to prevent an act by an individual that violates the human rights enshrined in applicable instruments⁷². This principle is relevant in situations where economic activities result in

⁶⁹ International Law Commission. (2001), *Draft articles on responsibility of States for internationally wrongful acts, with commentaries*. United Nations, article 4, 5, 6, 9, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

⁷⁰ United Nations Committee on Economic, Social and Cultural Rights. (1990), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)* <https://www.ref-world.org/legal/general/cescr/1990/en/5613>

⁷¹ Inter-American Court of Human Rights, (2016), *Case of the Workers of the Hacienda Brasil Verde v. Brazil*, Preliminary objections, merits, reparations and costs (Series C No. 318), paragraph 323, https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf

⁷² Inter-American Court of Human Rights. (1988), *Case of Velásquez Rodríguez v. Honduras*, Merits (Series C No. 4), para. 164, https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf; Inter-American Court of Human Rights. (1989), *Case of Godínez Cruz v. Honduras: Merits* (Series C No. 5), paras. 172 and paras. 181-182 https://www.corteidh.or.cr/docs/casos/articulos/seriec_05_ing.pdf.

human rights violations, such as labor exploitation in high-risk activities.

Beyond the State obligations, the theory of *Drittwirkung* establishes that fundamental rights must be respected by both public authorities and individuals in relation to other individuals⁷³. In this way, the obligation to respect and guarantee human rights also extends its effects to private entities requiring them to uphold these rights in their interactions with individuals.

In cases where a State permits or fails to prevent corporate actions that violate human rights, it has been established that companies have a duty to respect human rights and that they share this duty with the State in which they are located⁷⁴. This statement is relevant to the situation of Miskito divers, as their working conditions fall under state oversight obligations.

Honduras incorporates its international human rights obligations into domestic law according to the article 16 of the Constitution of the Republic which establishes that international treaties concluded by Honduras with other States, once they enter into force, form part of domestic law, thereby giving them a legally binding value. Article 18 of the Honduran Constitution also provides that in the event of a conflict between the treaty or convention and the law; the former shall prevail. Therefore, the Constitution grants international treaties a supra-legal and infra-constitutional rank⁷⁵.

Constitutionally, the right to health is addressed in Title VII, which recognizes the right to health protection, and it will be the Executive Branch that will coordinate all public activities of the centralized and decentralized agencies of the health sector, in which priority will be given to groups in vulnerable situations.

The Committee on Economic, Social and Cultural Rights interprets the right to health, an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as a healthy

⁷³Inter-American Court of Human Rights. (2003), *Advisory Opinion OC-18/03: Legal Status and Rights of Undocumented Migrants* (Series A No. 18), para. 140, https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf.

⁷⁴ See footnote 14, paragraph 147.

⁷⁵ Constitution of the Republic of Honduras. (1982), article 1, https://www.constituteproject.org/constitution/Honduras_2013.pdf.

occupational condition⁷⁶. The right to health contains the following interrelated and essential elements⁷⁷:

- (a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party.
- (b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination. Accessibility has four overlapping dimensions:
 - a. *Non-discrimination*: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population.
 - b. *Physical accessibility*: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations.
 - c. *Economic accessibility (affordability)*: health facilities, goods and services must be affordable for all.
 - d. *Information accessibility*: accessibility includes the right to seek, receive and impart information and ideas concerning health issues.
- (c) *Acceptability*: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate.
- (d) *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality.

In conclusion, while Honduran Constitution establishes the right to health and recognizes international treaties as having supra-legal status, significant gaps in enforcement remains, particularly in the context of deep-sea diving in La

⁷⁶ Elements of such a policy are the identification, determination, authorization and control of dangerous materials, equipment, substances, agents and work processes; the provision of health information to workers and the provision, if needed, of adequate protective clothing and equipment; the enforcement of laws and regulations through adequate inspection; the requirement of notification of occupational accidents and diseases, the conduct of inquiries into serious accidents and diseases, and the production of annual statistics; the protection of workers and their representatives from disciplinary measures for actions properly taken by them in conformity with such a policy; and the provision of occupational health services with essentially preventive functions. United Nations Committee on Economic, Social and Cultural Rights. (2000). *General Comment No. 14: The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)* (E/C.12/2000/4). Office of the High Commissioner for Human Rights.

⁷⁷ United Nations Committee on Economic, Social and Cultural Rights. (2000). *General Comment No. 14: The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)* (E/C.12/2000/4). Office of the High Commissioner for Human Rights. <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>

Moskitia. The limited access to healthcare facilities in indigenous communities near La Moskitia and the lack of strict labor oversight over high-risk industries indicate that Honduras has not fully complied with its international obligations. Reports from the Hospital of Puerto Lempira highlights that during the fishing season approximately 80 medical cases involving divers accidents are treated⁷⁸. Therefore, the Miskito divers continue to suffer from decompression sickness and other work-related injuries due to inadequate protections, compromises Honduras's international responsibility reflecting States inaction in fulfilling it's the duty to protect and progressively realize rights.

The State have the obligation to ensure the adequate preventive measures in respect of occupational accidents and diseases including the prevention of exposure to detrimental conditions that directly or indirectly impact upon human health. Therefore, the essential elements of the right of health are not fulfilled.

3.2 State Obligations in Protecting Indigenous Communities and High-Risk Workers and people with disabilities.

In 1957, in response to the need indigenous communities, the International Labour Organization developed and ratified the Indigenous and Tribal Peoples' Convention, an international instrument dedicated to improve the living conditions of Indigenous Peoples. The Convention recognizes Indigenous Peoples right to self-determination within a nation-state and establishes standards for national governments regarding their economic, socio-cultural and political rights, including the right to a land ownership and territorial sovereignty.

One of the principal foundations of the ILO Convention No. 169⁷⁹ is the right of Indigenous Peoples to be consulted, through appropriate procedures and in

⁷⁸ Comisionado Nacional de los Derechos Humanos (2023), "*sector-wide impact study of the fishing industry on diving on the human rights of miskitu indigenous divers, from a business and human rights perspective*", page 64, https://conadeh.hn/wp-content/uploads/2024/02/Informe-EIS-Industria-de-pesca-por-buceo-en-Honduras_WEB.pdf.

⁷⁹ Honduras ratified on march the 28,1995 the ILO (C169) Indigenous and Tribal Peoples Convention. International Labour Organization. (n.d.). *Ratifications of ILO conventions: Ratifications for Honduras*. https://normlex.ilo.org/dyn/nrmlx_en/?p=1000:11200:0::NO:11200:P11200_COUN-TRY_ID:102675

good faith with the objective of achieving agreement or consent to the proposed measures⁸⁰. This principle ensures that Indigenous communities actively participate in the development of coordinated and systematic actions to protect their rights and respect for their integrity.

Further development of the rights of Indigenous Peoples was made in the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration develops the principle of free, prior and informed consent⁸¹ prior to the approval of any project affecting their lands, territories or other resources, ensuring self-determination.

With regard to the employment conditions, governments are required, within the framework of national laws and in cooperation with Indigenous Peoples, to adopt special measures to ensure the effective protection of indigenous workers. This includes recruitment and working conditions, particularly when they are not effectively protected by laws applicable to workers in general⁸². In high-risk industries, such as diving that is a fundamental economic activity that they develop for their subsistence, the Government shall, with the participation of the Miskito Community, ensure that these activities are strengthened and promoted, while guaranteeing safety standards are met.

The Convention also guarantees the right to health care, mandating that governments ensure adequate health services are made available for Indigenous Peoples. Alternatively, States shall provide them with resources to allow them to design and implement their own health systems, ensuring access to the highest attainable standard of physical and mental health⁸³.

However, in practice, Miskito divers often lack affiliation to the social security systems and have not established alternative mechanisms to guarantee adequate medical and hospital care for diving related injuries. Employers frequently fail to meet their obligations in cases of occurrence of occupational accidents, leading to temporary or permanent disability. Public health centers, where divers seek treatment, lack personnel and the resources, equipment,

⁸⁰ International Labour Organization (ILO), C169 - Indigenous and Tribal Peoples Convention, 1989, No.169, 27 June 1989, article 6 <https://www.refworld.org/legal/agreements/ilo/1989/en/19728>.

⁸¹ United Nations. (2007). United Nations Declaration on the Rights of Indigenous Peoples. Resolution, A/RES/61/295, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

⁸² International Labour Organization. (1989), C169 - *Indigenous and Tribal Peoples Convention*, 1989 (No. 169), Article 20. <https://www.refworld.org/legal/agreements/ilo/1989/en/19728International>

⁸³ See footnote 80, article 25.

medications and recovery systems for divers⁸⁴, to treat diving related conditions effectively.

Based on the general rule of interpretation defined in Vienna Convention on Law of Treaties⁸⁵, General Comments are considered highly authoritative instrument tools. Through the ratification of an international treaty⁸⁶, States implicitly accept that the corresponding treaty bodies have the mandate to interpret and monitor the implementation of that treaty.

The Committee on Economic, Social and Cultural Rights in General Comment No. 14 identifies that health is a fundamental human right indispensable for the exercise of other human rights. Every individual is entitled to the enjoyment of the highest attainable standard of health as a prerequisite of a life of dignity.

In relation to Indigenous Peoples, the Committee highlights the need for specific measures to improve their access to health services and care. The health services should be culturally appropriate, taking into account traditional preventive care, healing practices and indigenous medicines.

The International Covenant on Economic, Social and Cultural Rights also established the principle of progressive realization to the right to health. While it acknowledges the constraints due to the limits of available resources, it imposes on States parties' various immediate obligations, such as the guarantee that the right to health will be exercised without discrimination of any kind and the obligation to take steps towards the full realization of the right to health⁸⁷.

The Inter-American Commission on Human Rights has emphasized that the Honduran government must implement public policies to address the structural inequalities affecting La Moskitia people. In particular, the IACHR

⁸⁴ Comisionado Nacional de los Derechos Humanos (2023), “sector-wide impact study of the fishing industry on diving on the human rights of miskitu indigenous divers, from a business and human rights perspective”, page 33, https://conadeh.hn/wp-content/uploads/2024/02/Informe-EIS-Industria-de-pesca-por-buceo-en-Honduras_WEB.pdf .

⁸⁵ United Nations. (1969). *Vienna Convention on the Law of Treaties*. United Nations Treaty Series, 1155, 331, Article 31, <https://www.refworld.org/legal/agreements/un/1969/en/73676>.

⁸⁶ For example, the article 40 of the *International Covenant on Civil and Political Rights* establish “It shall transmit its reports, and such *general comments* as it may consider appropriate, to the States Parties”.

⁸⁷ United Nations (2000), *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>

highlights the urgent need for measures to combat poverty and improve education, employment, and healthcare⁸⁸.

The overall health crisis among the Miskito divers is exacerbated by intersectional vulnerabilities. Many divers who suffered accidents during their activity, are not immediately taken by the captains of the vessels in which they worked, to receive medical attention, despite the fact that they presented symptoms such as dizziness or loss of mobility in the limbs after having made deep dives.⁸⁹

Diving related accidents often caused by poor safety protocols in industrial fishing, can lead to permanent disabilities and in some cases death. The State has a duty to provide the necessary health services to prevent possible disabilities, as well as to prevent and minimize the occurrence of new disabilities. The Committee on Economic, Social and Cultural Rights has established that governments must take appropriate measures to ensure rehabilitation services are available, particularly when work related disabilities arise⁹⁰.

Indigenous persons with disabilities often experience multiple discrimination and face barriers to the full enjoyment of their rights, in particular their right to health. In the case of the Miskito divers, this vulnerability is compounded by reduced access to services, combined with other factors, such as being indigenous or living in a rural area, an economic hardship, creating a direct link between poverty and disability.

Employers have a fundamental obligation to protect the health and safety of workers. The availability of comprehensive rehabilitation services programs is vital for reintegrating disabled individuals into employment. When workers acquire disabilities due to their occupation, it is essential that rehabilitation and return-to-work measures fully respect the choice and preferences of the person⁹¹.

Miskito divers belong to an indigenous community with limited sources of income, while forces them to accept dangerous working conditions that expose them to discriminatory factors and victimization. This demands an urgent need for State intervention to protect their fundamental rights, ensuring

⁸⁸ Inter-American Commission on Human Rights. (2024). *Situation of Human Rights in Honduras: Recommendations*. Organization of American States, recommendation 16. <https://www.oas.org/ext/en/human-rights/simore/Reports/Recommendations/Details/rid/336>

⁸⁹ See footnote 14, paragraph 92.

⁹⁰ Committee on Economic, Social and Cultural Rights. (1994). *General Comment No. 5: Persons with disabilities* (E/1995/22). United Nations, paragraph 5, <https://www.globalhealthrights.org/wp-content/uploads/2013/10/CESCR-General-Comment-No.-5-Persons-with-Disabilities.pdf>.

⁹¹ Committee on the Rights of Persons with Disabilities. (2022). *General comment No. 8 (2022) on the right of persons with disabilities to work and employment* (CRPD/C/GC/8). United Nations, <https://docs.un.org/en/CRPD/C/GC/8>

safe working conditions, access to healthcare, and legal protections that guarantee their dignity.

3.3 Decisions from the Inter-American Court of Human Rights regarding labor rights and indigenous protections in similar contexts.

The Inter-American Court of Human Rights has incorporated the UNGP with the ACHR, which demonstrate that when a company affects the rights of an individual, the Inter-American Court will evaluate the merits of the case in relation to the State's duty to regulate business activity⁹². The I/A Court H.R cases where extractive industries and environmental degradation have threatened indigenous rights include:

- a. U'wa Indigenous Community et al v. Colombia⁹³: the case involved extractive projects on indigenous lands, raising concerns about territorial rights and environmental protection.
- b. Tagaeri and Taromenane v. Ecuador⁹⁴: This decision focused on environmental concerns and extractive licenses in protected natural areas.
- c. Case of the Inhabitant of La Oroya v. Perú⁹⁵: the Court examined the impact of environmental pollution on public health, particularly affecting indigenous and vulnerable communities.

These decisions follow the precedent of the case of *Kaliña y Lokono v. Suriname*⁹⁶, where the Court first incorporated the UNGP into its analysis and reinforced the obligation of States to protect indigenous territories from harmful industrial activities.

The I/A Court H.R has ruled that States have a duty to regulate, supervise, and oversee high-risk business activities that pose significant dangers to life

⁹² Inter-American Court of Human Rights. (2024). *Case of the Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua* (Merits, Reparations and Costs), paragraph 418, https://www.corteidh.or.cr/docs/casos/articulos/seriec_522_esp.pdf

⁹³ Inter-American Court of Human Rights. (2024). *Case of the U'wa Indigenous People and their Members v. Colombia* (Merits, Reparations and Costs). https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf

⁹⁴ Inter-American Court of Human Rights. (2024). *Case of the Tagaeri and Taromenane Indigenous Peoples v. Ecuador* (Merits, Reparations and Costs). https://corteidh.or.cr/docs/casos/articulos/seriec_537_esp.pdf

⁹⁵ Inter-American Court of Human Rights. (2023). *Case of La Oroya Population v. Peru* (Preliminary Objections, Merits, Reparations and Costs). https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_ing.pdf

⁹⁶ Inter-American Court of Human Rights. (2015, November 25). *Case of the Kaliña and Lokono Peoples v. Suriname* (Merits, Reparations and Costs) paragraph 224, https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_esp.pdf

and personal integrity. This was emphasized in the Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil where the Court reaffirmed that States must:

- a. Enforce labor laws that uphold human rights standards.
- b. Periodically assess the adequacy of such laws and address gaps.
- c. Implement systematic workplace inspections to ensure safety and health conditions⁹⁷.

Regarding transnational business obligations, the Court noted the emerging trend of States regulating the activities of businesses registered in their territory but operating abroad. In line with this development, the Committee on Economic, Social, and Cultural Rights has also stated that States must prevent third parties from infringing economic, social, and cultural rights in foreign countries when their actions have a negative human rights impact.⁹⁸ The I/A Court H.R views this as a positive step toward extending human rights protections beyond national borders⁹⁹.

Through its jurisprudence, the Court continues to affirm the obligation of States to regulate corporate activities, particularly in labor and indigenous rights contexts, ensuring that States align their national framework with international human rights standards.

Through the monitoring compliance, the I/A Court H.R verifies the implementation of the judgments it delivers. Regarding the reparation measures in the cases before mentioned, which are under the Courts compliance monitoring mechanism¹⁰⁰, out of the 48 operative points across the three judgements studied, 3 were fully complied with, 3 were partially complied, and 45 remain under active monitoring. Among the implemented measures is the publication of the judgement, however, there is a notable gap in the implementation of

⁹⁷ Inter-American Court of Human Rights. (2020). *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil* (Preliminary Objections, Merits, Reparations and Costs) (Series C No. 407). https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_ing.pdf

⁹⁸ Committee on Economic, Social and Cultural Rights. (2000, August 11). *General Comment No. 14: The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)* (E/C.12/2000/4). United Nations., para. 39, <https://www.refworld.org/legal/general/cescr/2000/en/36991>

⁹⁹ Inter-American Court of Human Rights. (2017). *Advisory Opinion OC-23/17: Environment and Human Rights* (Series A No. 23), paragraph, 151, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

¹⁰⁰ Cases under the monitoring compliance of the I/A Court H.R: *Case of La Oroya Population v. Perú*, https://www.corteidh.or.cr/docs/supervisiones/habitantes_laoroya_03_02_25.pdf, *Lemoth Morris et al. v. Honduras* https://corteidh.or.cr/docs/supervisiones/buzos_miskitos_02_07_24.pdf, *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*. https://corteidh.or.cr/docs/supervisiones/fabrica_de_fuegos_02_09_24_spa.pdf

structural non-repetition measures, that are aimed at ensuring adequate regulation of companies.

3.4 Honduras' legislative framework.

Honduras domestic framework that protects the rights of workers who participate in industrial lobster fishing is conformed by:

- a) Regulations on Occupational Safety and Health of Underwater Fishing by Diving¹⁰¹;
- b) Law on the Merchant Navy¹⁰²;
- c) General Law on Fisheries and Aquaculture¹⁰³;
- d) The Equal Opportunities for Women Act¹⁰⁴;
- e) Law on Equity and Comprehensive Development for Persons with Disabilities¹⁰⁵;
- f) Protocol for Prevention and Care of People with Decompression Sickness¹⁰⁶.

In addition, in the diving fishing sector, the rights contemplated in the Political Constitution of 1982 and their protection developed through the Labor Code must be respected.

Given that in the case of the Miskito divers' different factors of discrimination increased the devastating effect on human dignity, the State recognized its

¹⁰¹ Executive Agreement STSS-577-2020, *Reglamento de Seguridad y Salud Ocupacional para la Pesca Submarina por Buceo* [Occupational Safety and Health Regulations for Underwater Fishing by Diving], published in the Official Gazette No. 35,459, https://www.tsc.gob.hn/web/leyes/Acuerdo_Ejecutivo-STSS-577-2020.pdf

¹⁰² Decree No. 167-1994, *Ley Orgánica de la Marina Mercante* [Organic Law of the Merchant Navy], Republic of Honduras. https://www.tsc.gob.hn/web/leyes/ley_organica_de_la_marina_mercante.pdf

¹⁰³ Decree No. 154-2013, *Ley General de Pesca y Acuicultura* [General Law on Fisheries and Aquaculture], Republic of Honduras

¹⁰⁴ It aims to remove all obstacles to women's full participation in all spheres of society, on an equal footing, in order to ensure the various activities (including economic and commercial activities). Decreto N° 34-2000, *Ley de Igualdad de Oportunidades para la Mujer* [Equal Opportunity for Women Act], República de Honduras, 2000 <https://www.acnur.org/fileadmin/Documentos/BDL/2016/10637.pdf>

¹⁰⁵ Its purpose is to fully guarantee the enjoyment of the rights of persons with disabilities, to promote and provide for their integral development within society with equity. Decreto N° 160-2005, *Ley de Equidad y Desarrollo Integral para las Personas con Discapacidad* [Law of Equality and Comprehensive Development for Persons with Disabilities], <https://www.tsc.gob.hn/web/leyes/LEY%20DE%20EQUIDAD%20Y%20DESARROLLO%20INTEGRAL%20PARA%20LAS%20PERSONAS%20CON%20DISCAPACIDAD..pdf>

¹⁰⁶ Secretaría de Salud de Honduras. (2020). *Protocolo de promoción, prevención, atención y rehabilitación a las personas con enfermedad por descompresión* [Protocol for the Promotion, Prevention, Care, and Rehabilitation of Persons with Decompression Sickness]. <https://www.scribd.com/document/685757086/SESAL-Protocolo-de-prevencion-atencion-y-rehabilitacion-a-las-personas-con-enfermedad-por-descompresion-Agosto-2020-2>

obligation to identify the structural causes of the problem of underwater fishing in La Moskitia, as well as to eradicate all legal and administrative barriers that prevent the activity from being carried out in a dignified and safe¹⁰⁷ manner. According to the I/A Court H.R judgement, the State have to perform a diagnosis of the legal, administrative and any other barriers that generate the problems related to fishing by underwater diving.

3.5 Business and Human Rights: State Mandate and Corporate Accountability.

In August 2019, the UN Working Group on Business and Human Rights visit Honduras to assess the implementation of the UNGP and the State's regulatory framework in relation to business and human rights. The report highlighted foreign investments which often displaced the implementation of safeguards for people and the environment¹⁰⁸.

Besides, the Working Group noted systemic impunity, corruption, and insufficient access to effective remedies, particularly for indigenous groups¹⁰⁹. Under the section of findings, they pointed out the urgent need for Honduras to adopt structural reforms to strengthen corporate accountability and ensure that economic development does not come at the expense of fundamental human rights¹¹⁰.

In 2018, it was reported that the State of Honduras would create a National Action Plan on Business and Human Rights¹¹¹. On 2022, a preliminary working group was set up to lay the foundations for an eventual National Plan of Action¹¹².

3.6 Judicial and Administrative Mechanisms for Miskito Communities.

¹⁰⁷ See footnote 14, paragraph 134.

¹⁰⁸ United Nations Human Rights Council. (2020), *Visit to Honduras: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises* (A/HRC/44/43/Add.2), page 19, <https://docs.un.org/en/A/HRC/44/43/Add.2>

¹⁰⁹ See footnote 108, paragraph 81.

¹¹⁰ See footnote 108, paragraph 9.

¹¹¹ La Tribuna. (2018). *Honduras: Gobierno se compromete ante la OACDH a crear un Plan nacional sobre empresas y derechos humanos* [Honduras: Government Commits to OHCHR to Create a National Plan on Business and Human Rights]. Business & Human Rights Resource Centre. Retrieved from <https://www.business-humanrights.org/en/latest-news/honduras-gobierno-se-compromete-ante-la-oacdh-a-crear-un-plan-nacional-sobre-empresas-y-derechos-humanos/>

¹¹² Inter-American Commission on Human Rights. (2015). *Situación de los derechos humanos en Honduras* [Situation of Human Rights in Honduras], OEA/Ser.L/V/II. Doc.42/15, paragraph, 256. <https://www.refworld.org/reference/countryrep/iachr/2015/en/114037>

Honduras has legal frameworks addressing labor rights, social security, and environmental protections, but there is no comprehensive mechanism for ensuring corporate accountability in the broader human rights context. Companies operating in high-risk industries, such as industrial fishing, are not effectively held accountable for the systematic labor and human rights violations affecting Miskito divers¹¹³.

National redress mechanisms for industrial diving fishing workers are ineffective and difficult to access¹¹⁴. The Judiciary receives an annual budget of (3.0%) of the national budget, which translates into insufficient scenarios and conditions for the fulfillment of its functions, and more so in historically excluded regions such as La Moskitia. In the area where the accidents occur, there are no courts and to access them people affected must go to Puerto Lempira or La Ceiba, both located at significant distance, which is especially problematic for injured divers and people with disabilities¹¹⁵.

On the other hand, divers and their families do not have the financial resources to hire teams of lawyers or experts. Likewise, divers have little understanding of Spanish and in the courts, there are reports of an absence of an interpreters to assist Miskito-speaking individuals¹¹⁶.

The most common process for work related accidents in industrial diving requires workers to first go thorough administrative procedures before filing a case in court, the worker must submit their complains to the Ministry of Labor and Social Welfare, which conduct hearing and conciliation attempts¹¹⁷. If the employer does not attend the hearings or no conciliation agreement is reached, the worker receives a certificate stating that the administrative procedure has been completed, enabling the worker to go to the labor courts and file a labor lawsuit¹¹⁸.

The limited effectiveness of the administrative and judicial procedures available to Miskito divers is evidenced in the facts established by the judgment of the Inter-American Court of Human Rights in the case of the 42 victims. Of these, only 26.2% (11 divers) received an administrative response from

¹¹³See footnote 14, paragraph 147.

¹¹⁴ Comisionado Nacional de los Derechos Humanos (2023), “*sector-wide impact study of the fishing industry on diving on the human rights of miskitu indigenous divers, from a business and human rights perspective*”, https://conadeh.hn/wp-content/uploads/2024/02/Informe-EIS-Industria-de-pescap-or-buceo-en-Honduras_WEB.pdf, page 77.

¹¹⁵ See footnote 14, paragraph 15.

¹¹⁶ See footnote 78, page 78.

¹¹⁷ Republic of Honduras. (1959). *Código de Trabajo* [Labor Code], Decree No. 189-59, Articles 639 and 640, https://www.tsc.gob.hn/web/leyes/codigo_de_trabajo.pdf

¹¹⁸ Inter-American Commission on Human Rights. (2018). *Report No. 64/18, Case 12.738 – Opario Lemoth Morris et al. (Miskito Divers) v. Honduras*, paragraph 301, <https://summa.cejil.org/es/entity/majoth5graj?file=1605291184670g1ux001n36u.pdf&page=1>

the Secretariat of Labor and Social Security, the General Directorate of Social Welfare, or the Occupational Health and Safety Office, while just 7.1% (3 divers) obtained a judicial response from the Labor Court. As a result of these proceedings, only 42.9% of the divers or their relatives received monetary compensation¹¹⁹. These figures clearly reflect a systemic failure in ensuring access to justice and effective reparations for this vulnerable population.

Regarding to Non-judicial State Mechanisms in Cases of Human Rights Violations in the Context of Diving Fishing, the main State authorities with non-judicial sanctioning within their areas of competence are:

1. General Directorate of Fisheries and Aquaculture (DIGEPESCA): Responsible for the fisheries control and inspection. Its inspectors hold official authority with competence in any part of the national territory and in jurisdictional waters, as well as in international waters when it comes to events related to vessels flying the national flag.
2. Merchant Marine Authority (Marina Mercante): is the authority responsible of marine traffic and transport in Honduras. It has the power to sanction violations of maritime laws, conventions ratified by Honduras, and regulations issued on the basis of the Organic Law of the Merchant Navy.
3. Secretariat and Inspectorate of Labor and Social Security: monitors and enforces compliance with labor laws, occupational safety regulations, social security provisions and workers' rights. It has the authority to impose and to deduce the corresponding responsibilities in the event of infringement, non-compliance or violation of the constitutional and conventional rights and guarantees and norms related to the workplace.

Despite the presence of State authorities, the informal nature of the sector¹²⁰ means there are no operational grievance mechanisms in cases of human rights violations in the context of deep-diving fishing in Honduras. Companies operating in this sector do not usually have specific complaint mechanisms that address human rights issues, leaving affected workers without effective remedy.

¹¹⁹ See footnote 118, paragraph 40.

¹²⁰ Miskito divers usually do not know who the boat's skipper is (since their treatment is directly the *sacabuzo*) or the name of the owner of the boat, which makes it difficult to file a complaint in the event of an eventual accident. Many divers also report boarding without having a contract. Comisionado Nacional de los Derechos Humanos, "*sector-wide impact study of the fishing industry on diving on the human rights of miskitu indigenous divers, from a business and human rights perspective*" page 65.

Significant barriers to justice persist¹²¹, including to the economic vulnerability of affected workers, lack of legal representation, and the absence of corporate grievance mechanisms. These structural deficiencies contribute to a state of impunity, allowing businesses engaged in high-risk labor practices to continue operating without facing consequences.

¹²¹ 82.5% of the people surveyed, the magistrates, judges and prosecutors defend the interests of the rich and the powerful, the interests of the corrupt and the narcos. 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. ERIC (2022), *Sondeo de Opinión Pública 2022*, page 13, <https://eric-sj.org/sondeo-de-opinion-publica-2022/>

Chapter 4: The supply chain obligations in high-risk activities.

4.1 Relevance of the supply chain in high-risk sectors.

A supply chain consists of all parties within each organization, and all the functions involved, directly or indirectly, in fulfilling a customer request¹²². It comprises the vendors of raw materials, production companies, storage warehouses, distribution centers, and retailers¹²³. A supply chain covers from the sourcing of raw materials from the supplier to customer support and return services.

According to the United Nations Industrial Development Organization, around 80% of world trade is now based on global supply chains, supporting the livelihoods of at least 450 million people worldwide¹²⁴. In a globalized economy, businesses across all sectors source goods and services from complex chains of suppliers with radically different legal, regulatory, and human rights practices. Individual companies' global supply chains often involve large numbers of suppliers or subcontractors, including some in the informal sector¹²⁵.

The supply chain is closely linked to human rights perspective as its organizational structures related to working conditions, labour rights, freedom of association, and collective bargaining. These aspects generate obligations for the State which can be analyzed within the framework of international human rights law.

A safe and healthy working environment is a fundamental principle and right at work¹²⁶. Despite these principles, work related accidents and diseases still

¹²² Chopra, S., & Meindl, P. (2007). Supply chain management. Strategy, planning & operation (pp. 265-275). Gabler.

¹²³ The Law Dictionary. (n.d.). *Supply chain*. In *Black's Law Dictionary* (2nd ed.). Retrieved May 15, 2025, from <https://thelawdictionary.org/supply-chain/>

¹²⁴ United Nations Industrial Development Organization (2023), UNIDO and sustainable supply chains, https://www.unido.org/sites/default/files/unido-publications/2023-11/UNIDO%20and%20Sustainable%20Supply%20Chains_0.pdf

¹²⁵ Human Rights Watch (2016), Human Rights in Supply Chains A Call for a Binding Global Standard on Due Diligence, <https://www.hrw.org/report/2016/05/30/human-rights-supply-chains/call-binding-global-standard-due-diligence>

¹²⁶ International Labour Organization (1919). *Constitution of the International Labour Organization*, https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:62:3221668491863::NO:62:P62_LIST_ENTRIE_ID:2453907:NO

occur with devastating impacts on workers and entire communities. Around 2.93 million workers die each year of work-related factors¹²⁷.

Deep-sea dive fishing in La Moskitia region can be classified as a high-risk activity due to the significant risks to life, health, and safety. According to ILO, fishing is considered high-risk work compared to other occupations¹²⁸ where there exist is a high probability of serious injury, illness, or death, when protective measures are insufficient or nonexistent. The case of Miskito divers provides guidelines that help identify a high-risk activity such as work without adequate training or equipment, long underwater shifts, exposure to decompression sickness, and drowning. Moreover, the lack of State oversight and regulation exacerbates vulnerability, as also discussed in chapter 3.

The legal framework of corporate obligations in global supply chains includes soft and hard law instruments. On the soft law side, the United Nations Guiding Principles on Business and Human Rights and the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct¹²⁹. These frameworks set the expectation that companies take a risk-based approach to addressing human rights impacts across the value chain. The OECD Due Diligence Guidance for Responsible Business Conduct recommend that enterprises conduct due diligence to identify, prevent, or mitigate and account for how actual and potential adverse impacts are addressed¹³⁰.

Soft law framework standards are reflected in binding regulations as the European Union Corporate Sustainability Due Diligence Directive¹³¹ (CSDDD) which involves mapping activities across the supply chain, identifying areas of risk, and assessing existing efforts to mitigate impacts. In CSDDD article 8.2 the first step entails an actual mapping of a company's chains of activities, which means not just Tier 1¹³² relationships, but understanding the broader context related to the supply of raw materials, products, or parts of products

¹²⁷ International Labour Organization (2023), *A call for safer and healthier working environments*, <https://www.ilo.org/publications/call-safer-and-healthier-working-environments>

¹²⁸ International Labour Organization (2007), *Work in Fishing Convention*, (No. 188), entered into force November 16, 2017. https://normlex.ilo.org/dyn/nrmlx_es/f?p=NORMLEX-PUB:12100:0::NO::P12100_INSTRUMENT_ID:312333

¹²⁹ Organisation for Economic Co-operation and Development. (2018). *OECD due diligence guidance for responsible business conduct*. https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-responsible-business-conduct_15f5f4b3-en.html

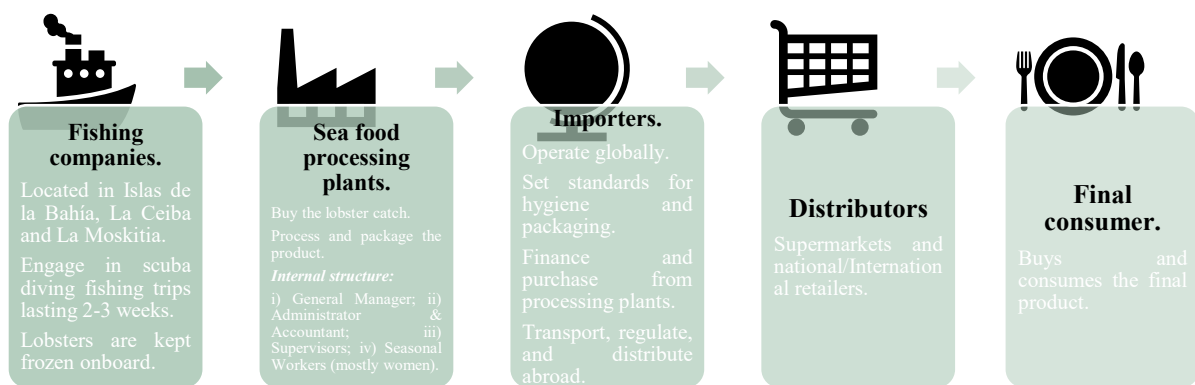
¹³⁰ See footnote 128, page 25.

¹³¹ Currently been transposed into national laws. European Commission. (n.d.). Corporate sustainability due diligence. https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en

¹³² Supplier tiers in a supply chain refer to the hierarchy or order of suppliers based on their strategic importance and proximity to an organization. Brightest. (n.d.). *What are Tier 1, 2, and 3 suppliers?* Retrieved May 15, 2025, from <https://www.brightest.io/tier-suppliers/>

that are connected to a company's Tier 1 relationships. As a response to concerns raised regarding the complexity of European sustainability legislations¹³³, European Union (EU) commission was considering consolidating the sustainability framework into one omnibus regulation¹³⁴.

4.2 Structure and functioning of the lobster supply chain in Honduras.



*Information gathered from CONADEH (2023) “*estudio de impacto sectorial de la industria de pesca por buceo en los derechos humanos de los buzos indígenas Miskitos, desde un enfoque de empresas y derechos humanos*”.

The value chain of industrial fishing of lobster is complex and for it to work it includes several companies that operate locally, nationally, and globally¹³⁵.

The Inter-American Development Bank¹³⁶ (IDB) has reported that one of the main problems faced by Miskito divers is the fact that fishing companies do not meet the minimum standards required to work in dive fishing, since they do not offer formal employment contracts or provide appropriate equipment to perform this activity, and therefore divers lack adequate safety conditions. The IDB has also noted that some divers have been offered drugs to

¹³³ *European sustainability legislations*: Corporate Sustainability Reporting Directive, Corporate Sustainability Due Diligence Directive, EU Taxonomy and Carbon Border Adjustment Mechanism.

¹³⁴ European Commission. (2025). Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760. <https://eur-lex.europa.eu/eli/dir/2025/794/oj>

¹³⁵ See index figure 1.

¹³⁶ Organization of American States (1959), Agreement Establishing the Inter-American Development Bank, C-15. https://www.oas.org/dil/treaties_C-15_Agreement_Establishing_the_Inter-American_Development_Bank_sign.htm

help them remain fishing underwater for as long as possible, and in some cases, they receive part of their wages in cash and part in drugs¹³⁷.

According to the International Covenant on Economic, Social and Cultural Rights, the State's Parties should take appropriate steps to safeguard the right to the enjoyment of just and favorable conditions of work and ensure fair wages, a decent living, safe, and healthy working conditions and rest and reasonable limitation of working hours¹³⁸.

Through General Comment number 18, the Committee on Economic, Social and Cultural Rights identifies that the violations of the right to work can occur through acts of omission when State parties do not regulate the activities of individuals or groups. Likewise, the violations of the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such as the failure to regulate the activities of individuals, groups or corporations to prevent them from violating the right to work of others¹³⁹.

The existence of a formal employment contract in the value chain of industrial fishing in La Moskitia is essential for ensuring the protection of Miskito divers' rights and the sustainability of the supply chain. A contract formalizes the working relationship and guarantees access to fair compensation and social security systems that are primordial in a high-risk activity. Furthermore, the contracts support traceability and compliance with international standards that are required by some global importers and retailers¹⁴⁰.

Regarding the processing plants, they act as intermediaries between fishing operations and the global seafood market. The processing plants purchase, process, and sell lobster, sea cucumber, and queen conch to domestic and international buyers. In 2022, the processing plants were located across Roatán,

¹³⁷ See footnote 14, paragraph 33.

¹³⁸ United Nations. *International Covenant on Economic, Social and Cultural Rights* (1966). Adopted December 16, 1966, entered into force January 3, 1976. United Nations Treaty Series, vol. 993, article 6. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹³⁹ United Nations Committee on Economic, Social and Cultural Rights (2005). *General Comment No. 18: The Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)*. E/C.12/GC/18. Adopted November 24, 2005, paragraph 35 and 32. <https://www.refworld.org/legal/general/cescr/2006/en/32433>

¹⁴⁰ Begüm Kilimcioğlu (2024), "How Can Contracts Contribute to Human Rights Protection in Global Value Chains?" *Transformative Private Law*, <https://transformativeprivatelaw.com/symposium-how-can-contracts-contribute-to-human-rights-protection-in-global-value-chains/>.

La Ceiba, and Guanaja. Most of these companies are not affiliated with the National Business Council (COHEP) but instead, operate through their specialized industry association¹⁴¹.

Miskito divers receive 45 lempiras per pound of lobster (approximately one United States dollar and eight-seven cents). With that money, the divers must also pay the cayuquero¹⁴² that is the person who accompanies the diver with a small boat that contains the diving tanks and the product collected by the diver. Moreover, divers may work for 12 or even 17 consecutive days without rest, and their work is dictated by the captain of the fishing boat. According to the Special Prosecutor's Office, divers receive their payment when the product of the catch is paid for by the packing plant and, while this happens, the boat owners give “credit” to the divers in the form of food, alcoholic beverages, and clothing, after which those amounts are deducted from their wages¹⁴³.

On the other hand, lobster is considered the gold of the sea¹⁴⁴, reflecting an inequality of profit distribution, with most economic benefits concentrated at the top, while the Miskito divers receive minimal compensation and protection. In 2022, Honduras and Nicaragua exported 228.47 tonnes of lobster to Europe, much of which went to Belgium, France, and Spain for a value of EUR 8,228,050. The main importing countries were Belgium (111.95 tonnes), Spain (73.04), and France (43.48 tonnes). These Member States of the European Union also re-export to other EU countries¹⁴⁵.

4.3 Legal obligations of companies within the supply chain.

The legal obligations of companies within the supply chain have been framed in different international hard and soft laws.

¹⁴¹ COHEP promotes compliance with the legal and regulatory framework of companies and their value chains. Consejo de la Empresa Privada (2020), *Política Institucional de Empresas y Derechos Humanos*, [Institutional Policy on Business and Human Rights] <http://cohep.org/wp-content/uploads/2020/01/Politica-Empresas-y-DDHH-Cohep.pdf>

¹⁴² See footnote 14, paragraph 35.

¹⁴³ See footnote 14, paragraph 35.

¹⁴⁴ Romero, Fátima(2023). “*El costo social de la langosta espinosa, el ‘oro del mar’ de Honduras y Nicaragua.*” [The social cost of spiny lobster, the ‘gold of the sea’ of Honduras and Nicaragua], Bloomberg Línea, <https://www.bloomberglinea.com/2023/07/22/el-costo-social-de-la-langosta-espinosa-el-oro-del-mar-de-honduras-y-nicaragua/>.

¹⁴⁵ ClientEarth (2023), *Dangerous Dives for Caribbean Spiny Lobster*, https://www.clientearth.org/media/yvmnww41/1955-seafood-industry-graphics_lobster_stage-04-4.pdf.

According to the most authoritative normative framework guiding responsible business conduct, the UN Guiding Principles on Business and Human Rights, the obligation to respect human rights requires that business enterprises:

- a. Avoid causing or contributing to adverse human rights impacts through their activities, and address such impacts when they occur;
- b. Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts¹⁴⁶.

A business enterprise's activities are understood to include both actions and omissions; and its business relationships are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services¹⁴⁷.

The OECD Guidelines for Multinational Enterprises set out the principles and standards for responsible business conduct that the governments parts of the OECD expect multinationals to observe. In 2000, a review of the OECD Guidelines resulted in a significant expansion of their applicability to the supply chain of Multinational Enterprises (MNE) in both OECD and non-adhering countries.¹⁴⁸

In June of 2022, when the International Labour Conference, at its 110th Session, adopted the Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work. The resolution also recognizes the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) as fundamental Conventions, ensuring decent work in supply chains.

On 25 July 2024, the Directive on corporate sustainability due diligence¹⁴⁹ entered into force. This Directive aims to promote sustainable and responsible

¹⁴⁶ United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Geneva: United Nations, 2011. Principle 13. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁴⁷ See footnote 146, principle 13.

¹⁴⁸ OECD Guidelines for Multinational Enterprises(n.d), *National Contact Persons*, <https://mneguidelines.oecd.org/contact-details-of-the-national-contact-points-for-responsible-business-conduct.pdf>

¹⁴⁹ European Union (2024). *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and amending Directive (EU)*

corporate behavior in companies' operations and across their global value chains. The rules will ensure that companies in scope identify and address adverse human rights and environmental impacts of their actions inside and outside Europe. Member States will have to transpose the Directive into national law by 26 July 2027.

In conclusion, companies in the global supply chains are bound by binding and non-binding international standards. As identified initially in the UN Guiding Principles and reflected in various legal instruments such as the OECD Guidelines and the EU Corporate Sustainability Due Diligence Directive, companies are expected to engage with human rights due diligence throughout their value chain. The emerging binding legal framework for business and human rights makes it clear that the duty to respect human rights extends to its subsidiaries, suppliers, and third-party partners.

4.4 Due diligence duties in high-risk industries.

To identify, prevent, mitigate, and account for how they address their adverse human rights impacts, business enterprises are expected to carry out human rights' due diligence (HRDD). This process is essential for understanding specific human rights in a given operating context, as well as informing the measures needed to prevent and mitigate risks¹⁵⁰.

According to the UN Guiding Principles (UNGPs), human rights due diligence involves five core components:

- a. Identifying and assessing actual or potential adverse human rights impacts;
- b. Integrating findings from impacts assessments across relevant company processes and taking appropriate action according to its involvements in the impact;
- c. Tracking the effectiveness of measures and processes to address adverse human rights impacts to know if they are working;
- d. Communicating on how impacts are being addressed and showing stakeholders¹⁵¹;

2019/1937. Official Journal of the European Union, L, no. 202 (July 5, 2024): 1–59. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024L1760>.

¹⁵⁰ United Nations Human Rights Council (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Geneva: United Nations, 2011. Principle 17. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁵¹ United Nations (2018). *The Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*. A/73/163. New York: United Nations, 2018. <https://undocs.org/A/73/163>

- e. Providing access to remedy, particularly when the company has caused or contributed to the harm.

In the context of supply chains, due diligence is a systematic and ongoing risk management process that enables companies to identify, prevent, mitigate, and account for actual and potential adverse impacts on human rights¹⁵² through their value chain. This process involves assessing these impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed¹⁵³. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation¹⁵⁴. Enterprises must identify and assess risks based not only on their direct activities but also considering their geographic context, sector specific vulnerabilities, business relationships and their entire value chain.

In high-risk sectors such as artisanal mining, where severe and foreseeable harms are documented, the duty of care is triggered. This duty refers to a legal obligation to take reasonable steps to prevent harm where such harm is foreseeable. The existence of a duty of care is a necessary element of the tort of negligence¹⁵⁵. In common law systems, the existence of this duty is assessed through the “*Caparo test*”, which considers foreseeability of harm¹⁵⁶, proximity¹⁵⁷ between the parties and whether it is fair, just and reasonable¹⁵⁸ to impose a duty¹⁵⁹ where negligence is alleged.

In the case of *Chandler v Cape plc*, the scope of the duty of care was expanded to include parent companies when there is evidence of control or superior

¹⁵² United Nations Human Rights Council. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Geneva: United Nations, 2011. Principle 15. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁵³ See footnote 152, principle 17.

¹⁵⁴ See footnote 152, Principle 22.

¹⁵⁵ Thomson Reuters(n.d), Practical Law Glossary, *duty of care*, Retrieved May 16, 2025: [https://uk.practicallaw.thomsonreuters.com/1-569-0129?transitionType=Default&context-Data=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-569-0129?transitionType=Default&context-Data=(sc.Default)&firstPage=true)

¹⁵⁶ The first part of the test requires that the harm or damage caused to the claimant must have been foreseeable by the defendant. In other words, the defendant must have been able to reasonably anticipate that their actions (or inactions) could have resulted in harm to the claimant. Witting, C. (2005). Duty of Care: An Analytical Approach. *Oxford Journal of Legal Studies*, 25(1), 33–63. <http://www.jstor.org/stable/3600600>

¹⁵⁷ The second part of the test considers whether there was sufficient proximity between the defendant and the claimant for a duty of care to arise. This involves a consideration of the relationship between the parties, including any legal or social ties that may exist. Witting, C. (2005). Duty of Care: An Analytical Approach. *Oxford Journal of Legal Studies*, 25(1), 33–63. <http://www.jstor.org/stable/3600600>

¹⁵⁸ The third part of the test considers whether it is fair, just, and reasonable to impose a duty of care on the defendant in the circumstances. Witting, C. (2005). Duty of Care: An Analytical Approach. *Oxford Journal of Legal Studies*, 25(1), 33–63. <http://www.jstor.org/stable/3600600>

¹⁵⁹ *Caparo Industries plc v. Dickman*, [1990] 2 A.C. 605 (H.L.).

knowledge regarding subsidiaries operations, particularly concerning workers safety. The case established four criteria for recognizing a parent company's liability:

- a. The parent and subsidiary were part of the same business;
- b. The parent had superior knowledge of the employees' health and safety in that business;
- c. The subsidiary's system of health and safety at work was deficient;
- d. And the parent could foresee that the employees would rely on its knowledge to protect them¹⁶⁰.

Therefore, when a company fails to carry out appropriate HRDD in a high-risk industry may face legal liability under soft law standards and emerging national legislation. Additionally, it can serve as a defense mechanism for companies that can prove that they made reasonable due diligence efforts under certain conditions.

The Miskito divers' case in Honduras represents the need to enhance due diligence in high-risk industries. Diving, particularly in the context of lobster fishing in the Honduran Moskitia, presents well documented and foreseeable risks to the health and safety of indigenous workers. These include decompression sickness, permanent disability, and even death due to unsafe diving practices, lack of proper training, and insufficient protective equipment.

Companies benefiting from this value chain, have failed to implement preventive mechanisms or to address adverse impacts. The negligence reflects a breach of the duty of care, particularly when considering the foreseeability of harm, the clear proximity between the actors in the supply chain, and the economic dependence of the divers on these operations.

With respect to the proximity element of the Caparo test, there is a clear and direct relationship between companies and the divers they employ. This proximity is both contractual and operational. Honduran legislation considers that fishing vessels must obtain a sailing permit before departure. Afterwards, the Ministry of Labor and Social Security (SETRASS) verifies that labour contracts have been signed by the divers, even in their absence. This verification is a requisite for the Merchant Marine to authorize the vessel's departure. Once authorized, these vessels operate offshore for periods of two to three weeks¹⁶¹, during which divers are entirely dependent on the company for

¹⁶⁰ Chandler v. Cape plc [2012] EWCA Civ 525 (C.A.), paragraph 80.

¹⁶¹ Comisionado Nacional de los Derechos Humanos (2023), "*sector-wide impact study of the fishing industry on diving on the human rights of miskitu indigenous divers, from a business and human rights perspective*", https://conadeh.hn/wp-content/uploads/2024/02/Informe-EIS-Industria-de-pesca-por-buceo-en-Honduras_WEB.pdf, page 21.

safety, logistics, and working conditions. Therefore, under the UNGP, the context in La Moskitia activates an obligation on enterprises to identify risks, act upon them, and provide remedies for affected individuals.

4.5 International precedents on corporate accountability.

The international precedents on corporate accountability described on this section, were selected based on the importance they have shaping the framework of corporate accountability in global supply chains. These landmark decisions address legal issues as: the duty of care of parent companies, the jurisdictional reach of national courts over transnational harms, and the implementation of human rights due diligence mechanisms. These cases also contribute to identify different approaches to address corporate obligations for human rights abuses, particularly in high-risk industries, such as like the deep-sea dive fishing.

In 2019 in the *Vedanta v. Lungowe* case, the Supreme Court of the United Kingdom considered the liability of an English domiciled parents' company liability for alleged environmental damage caused by one of its subsidiaries. The Court held that a parent company owes a duty of care under the degree of control it had exercised over its foreign subsidiary operations. The degree of control may be sufficient to satisfy the criteria for proximity, necessary to incur a duty of care. Also, the Court established that the parent company's home State's national courts might have jurisdiction to hear such cases when the harm occurred abroad¹⁶².

In 2021 in the *Doe v. Nestlé* case, the United States Supreme Court examined the responsibility of multinational corporations for aiding and abetting child labor in Ivory Coast. The Court dismissed the claim on the basis that corporations cannot be held liable under the Alien Tort Statute. The case highlighted the importance of corporate relationships and indirect involvement in human rights abuses¹⁶³.

The *KiK Textilien* case in Germany, although dismissed due to the expiration of the statute limitation period, emphasized the importance of implementing effective human rights due diligence mechanisms to prevent human rights abuses within the supply chain¹⁶⁴.

¹⁶²Elvis Ojeda (2021), Transnational Corporate Liability Litigation and Access to Environmental Justice: The *Vedanta v. Lungowe* Case, LSE Law Review, <https://lawreview.lse.ac.uk/articles/166/files/submission/proof/166-1-886-1-10-20210315.pdf>

¹⁶³ Supreme Court of the United States (2020), *Nestlé USA INC v. DOE Et al.*

¹⁶⁴ Regional Court Dortmund (2019), *Jabir and Others v. KiK Textilien und Non-Food GmbH*, Case No. 7 O 95/15.

In 2020 in the case *Município de Mariana v. BHP*, the High Court of Justice of Manchester accepted jurisdiction over a lawsuit filed by over 200,000 Brazilian claimants¹⁶⁵ against the mining group Broken Hill Proprietary. The case concerns the collapse of the Fundão dam, which released over 60 million cubic meters of iron ore waste and mud (called tailings), the by-products of iron ore mining operations near the city of Mariana in Southeast Brazil, causing 19 people were killed in the aftermath, and the incident has been described as the worst environmental disaster in Brazilian history¹⁶⁶. This landmark case of transnational litigation, citing cases as *Vedanta v. Lungowe*¹⁶⁷ and seeking to hold parent companies accountable in their jurisdictions for human rights abuses.

Together, these landmark cases show how national courts are applying business and human rights standards. They provide parameters for determining when the parent companies may be held liable for the actions or omissions of their subsidiaries and contractors. In each case mentioned, the work activities involved foreseeable and significant high risk, triggering an enhanced duty of care and a robust due diligence mechanism across the supply chain.

4.6 Ethical sourcing in the supply chain.

Ethical sourcing is a supply chain approach that ensures that products and services in a company are obtained in a socially responsible, environmentally sustainable, and economically fair form. It encompasses two key social dimensions, *fair trade* and *ethical trade*¹⁶⁸. *Fair trade* focuses on equity in trading relations, particularly support for small producers and farmers. *Ethical trade* covers the employment conditions of workers through the implementation of codes of labour practice in the supply chains of large food corporations and retailers¹⁶⁹.

Recent legal framework developments in supply chain regulation reinforce corporations' legal and ethical obligations. Laws such as the United Kingdom Modern Slavery Act (2015), and California Transparency in Supply Chains

¹⁶⁵Royal Courts of Justice (2023), *Município de Mariana v. BHP Group*, available at: <https://www.bailii.org/ew/cases/EWHC/TCC/2023/1134.html>

¹⁶⁶BBC (2024), 'Nothing can bring a life back': Brazil dam collapse survivors speak as UK trial begins, available at: <https://www.bbc.com/news/articles/c0r8eg7nnkwo>

¹⁶⁷Manchester Civil and Family Court Centre (2020), *Município de Mariana v. BHP Group*, available at: <https://www.bailii.org/ew/cases/EWHC/TCC/2020/2930.html> Paragraph 8

¹⁶⁸Stephanie Barrientos and Catherine Dolan (2006), *Ethical Sourcing in the Global Food System*, Taylor and Francis. Page 5.

¹⁶⁹Stephanie Barrientos and Catherine Dolan (2006), *Ethical Sourcing in the Global Food System*, Taylor and Francis. Page 5.

Act (2010) illustrate the importance of corporate responsibility in global supply chains. These laws promote that companies must actively prevent modern slavery, forced labor, and unsafe working conditions.

Fair Trade is defined as a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South. Fair trade organizations (backed by consumers) are engaged actively in supporting producers, raising awareness and campaigning for changes in the rules and practice of conventional international trade¹⁷⁰.

Fair Trade's goals are:

- a) To improve the livelihoods and well-being of producers by improving market access, strengthening producer organizations, paying a better price and providing continuity in the trading relationship.
- b) To promote development opportunities for disadvantaged producers, especially women and Indigenous People, and to protect children from exploitation in the production process.
- c) To raise awareness among consumers of the negative effects on producers of international trade so that they exercise their purchasing power positively.
- d) To set an example of partnership in trade through dialogue, transparency and respect.
- e) To campaign for changes in the rules and practice of conventional international trade.
- f) To protect human rights by promoting social justice, sound environmental practices and economic security¹⁷¹.

Another concept with growing influence that introduces a commitment to just economic growth, equitable distribution of benefits and sustainable production is the Environmental, Social, and Governance (ESG)¹⁷² that serves to amplify the fair-trade practices. Both fair trade and ESG intersect in the requirement for sustainable practices, focus on equitable wages, and transparent operations.

¹⁷⁰ Moore, G. (2004) *'The Fair-Trade movement: parameters, issues and future research.'*, Journal of business ethics., 53 (1-2). pp. 73-86

¹⁷¹ Redfern, A. & Snedker, P. (2002), „*Creating market opportunities for small enterprises: experiences of the Fair-Trade movement*“, (ILO, Geneva).

¹⁷² The Global Compact (2004), „*Who Cares Wins*“. <https://documents1.worldbank.org/curated/en/280911488968799581/pdf/113237-WP-WhoCaresWins-2004.pdf>

Three issues have emerged from the application of the fair-trade goals:

- a. Fair remuneration for producers¹⁷³.
- b. Child labour and;
- c. Deforestation.

Emerging concerns are the single ingredient labels and the European regulations on zero imported deforestation and human rights due diligence¹⁷⁴.

Adding to these issues, the primary markets for the lobster and seafood products extracted from La Moskitia¹⁷⁵, has been a growing backlash against sustainability frameworks. Recent opposition have been built over ESG initiatives, which have been scrutinized and politicized¹⁷⁶. In the United States¹⁷⁷, ESG has become a politically charged issue. China has introduced mandatory disclosures¹⁷⁸ for publicly listed companies to align with international sustainability reporting standards. By its side, Europe are strengthening ESG regulations and advancing sustainability-linked finance initiatives¹⁷⁹.

Another driving factor behind the ESG backlash is economic concern, especially among small and medium-sized enterprises (SMEs). ESG compliance can be costly, requiring businesses to invest in new technologies, systems, and processes to track and report their ESG performance¹⁸⁰.

This initiative affects the implementation ethical sourcing in the global supply chains. This becomes more complex in sector like La Moskitia that they operate informally or lack regulatory oversight¹⁸¹. The primary markets for the

¹⁷³ The issue of fair remuneration has always been a federating value within the Fair-Trade movement, particularly with regard to determining the fairness of market prices. Mantiaba Coulibaly-Ballet and Allison Loconto. *The Sustainable Cocoa Debate: Key controversies*. *Journal of Fair Trade*. 2024. Vol. 5(2):141-155. DOI: 10.13169/jfairtrade.5.2.0141

¹⁷⁴ Mantiaba Coulibaly-Ballet and Allison Loconto. *The Sustainable Cocoa Debate: Key controversies*. *Journal of Fair Trade*. 2024. Vol. 5(2):141-155. DOI: 10.13169/jfairtrade.5.2.0141

¹⁷⁵ *Primary markets*: China, the United States, and the European Union. CONADEH, *see footnote 39*, page 20.

¹⁷⁶ Sætra, H.S. (2024), "The ESG Backlash: Politics, Ideology, and the Future of Sustainable Business", Choi, J.J. and Kim, J. (Ed.) *Responsible Firms: CSR, ESG, and Global Sustainability* (International Finance Review, Vol. 23), Emerald Publishing Limited, Leeds, pp. 161-167. <https://doi.org/10.1108/S1569-376720240000023009>

¹⁷⁷ ESG Access. (n.d.). *What is ESG backlash and why is it happening?* Retrieved May 16, 2025, from <https://esgaccess.io/what-is-esg-backlash-and-why-is-it-happening/>

¹⁷⁸ United Nations Environment Programme (2025), *China embarks on a journey of ESG disclosure: 2024 progress and focus for 2025*. <https://www.unepfi.org/industries/banking/china-embarks-on-a-journey-of-esg-disclosure/>

¹⁷⁹ Council of Europe(2024), *Environmental, social and governance (ESG) ratings: Council greenlights new regulation*, <https://www.consilium.europa.eu/en/press/press-releases/2024/11/19/environmental-social-and-governance-esg-ratings-council-greenlights-new-regulation/>

¹⁸⁰ ESG Access. (n.d.). *What is ESG backlash and why is it happening?* Retrieved May 16, 2025, from <https://esgaccess.io/what-is-esg-backlash-and-why-is-it-happening/>

¹⁸¹ See footnote 14, paragraph 32.

lobster and seafood products extracted in La Moskitia shape the ethical sourcing standards indicating a disconnect between these consumer regions and the informal, high-risk activities at the origin demonstrate a need to promote shared understanding and advance international cooperation in the management of business and human rights challenges¹⁸².

¹⁸² United Nations Human Rights Council. (2011). *Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” framework* (HR/PUB/11/04). Office of the High Commissioner for Human Rights, principle 10, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

Conclusions

The case of the Miskito divers in Honduras illustrates a systemic failure in the protection and enforcement of labor rights, indigenous rights and corporate accountability. Although Honduras has ratified international human rights treaties¹⁸³ and formally incorporated them into national law¹⁸⁴, these commitments remain ineffective in practice when it comes to the Miskito Divers.

In La Moskitia, where the populations live in multidimensional poverty, and despite the judgement of the Interamerican Court of Human Rights, labor oversight and occupational safety remains ineffective due to the lack of enforcement, limited access to justice and structural inequalities. These factors continue to leave Miskito divers vulnerable to serious health risks and high-risk in their work environment.

Other actors involved in the supply chain of deep-sea dive fishing in La Moskitia such as companies, hold the primary obligation to act with due diligence in the activities¹⁸⁵, as their active participation is essential for the respect and observance of human rights. Given the foreseeable risks involved in deep-sea dive fishing, the employment relationship with the divers should be formalized from the outset. Additionally, the companies have also the risk of complicity if they do not take action for the human rights abuses, even if they are not the perpetrators¹⁸⁶.

In the lower tiers of production, particularly within fishing companies in La Moskitia, working conditions and reparations are marked by ineffectiveness and limited access to justice. However, companies that operate internationally, including importers, distributors and final consumers, should use their leverage to protect workers' rights beyond their immediate suppliers.

In the context of deep-sea dive fishing, corporate negligence of the fishing companies in La Moskitia, may constitute a breach of the duty of care, particularly when considering the foreseeability of harm, the clear proximity between the actors in the supply chain, and the economic dependence of the

¹⁸³ Secretaría de Derechos Humanos(2024), Compendio de Marco Normativo Nacional e Internacional en Materia de Derechos Humanos y Derecho Humanitario, <https://dccj.sedh.gob.hn/documentacion/>

¹⁸⁴ See page 25.

¹⁸⁵ Interamerican Court of Human Rights (2023), *Case of La Oroya Population v. Peru*, paragraph 114, https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_esp.pdf

¹⁸⁶ United Nations, *Global Compact*, principle 1, <https://unglobalcompact.org/what-is-gc/mision/principles/principle-2>

divers on these operations. Consequently, companies purchasing these products bear a clear responsibility to ensure human rights are respected throughout their supply chains.

Enterprises should align their operations with the United Nations Guiding Principles of Business and Human Rights. However, this obligation is being challenged by recent developments. The growing backlash against sustainability frameworks and the consolidation of the frameworks of the primary markets for the lobsters and seafood in La Moskitia, particularly the trend to simplify due diligence and reduce sustainability reporting requirements, threatens to undermine one of the few mechanisms capable of promoting positive change at the top tiers of the supply chain.

The right to health is indivisible and interdependent from other human rights¹⁸⁷. States have the duty to address the root causes of health disparities, including poverty and inequality¹⁸⁸. The region of the Moskitia, where public health services are often unavailable at the time of diving accidents and during the diver's recovery, especially when they require an accessible decompression chamber, should be recognized as an issue of national concern, given the precarious medical infrastructure in La Moskitia and the high incidence of diving-related accidents.

According to the Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Honduras must take steps, to the maximum of its available resources, to progressively realize the right to health.

The State remains the primary duty bearer of rights, however, companies involved in the deep-sea dive fishing sector also have obligations under the UN Guiding Principles on Business and Human Rights (UNGPs). Given their direct involvement and proximity to the deep-sea dive fishing, actively contributing in the three stages of health care prevention¹⁸⁹ of a diver. These actions must complement, but not replace, the State's duty. Neglecting these obligations contributes to long-term harm in the community.

¹⁸⁷World Health Organization (2023), *Human Rights*, retrieved may 9th of 2025, <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health#:~:text=The%20right%20to%20health%20is,%2C%20housing%2C%20work%20and%20in-formation>.

¹⁸⁸ World Health Organization(2018), *human inequities and their causes*, retrieved may 9th of 2025, <https://www.who.int/news-room/facts-in-pictures/detail/health-inequities-and-their-causes>

¹⁸⁹ Primary prevention, through adequate protections to avoid accidents, Secondary prevention, by enabling early diagnosis and timely treatment of injuries, and Tertiary prevention, through long-term care, rehabilitation, and reintegration of injured divers into the workforce. *See page 22.*

Based on the analysis of relevant judgements, academic literature, and international standards, this research proposes the following recommendations, with a focus on the Miskito Divers the Honduran State and companies in the supply chain.

With regard to the Miskito community, it is essential to promote their empowerment and participation in the monitoring, creation and implementation of measures related to deep-sea dive fishing. Their participation must be in accordance with the principle of prior, free and informed consultation.

As a primary duty bearer under international human rights law, the Honduran State must comply with the judgement of the Interamerican Court of Human Rights by prioritizing the implementation of the structural measures in the judgement as ensuring access to justice, strengthening of the education and health system, accessibility of public institutions, incorporation of Miskito divers and their families into existing social programs, adopting adequate regulation and supervision of industrial fishing companies in the Moskitia and launching national awareness campaign¹⁹⁰.

In addition, the State should promote responsible business conduct and provide non-judicial grievance mechanisms for alleged corporate abuses such as adhering to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which includes the establishment of a National Contact Point.

Given the systemic health risks, the frequency of diving-related accidents, and the lack of adequate public health infrastructure in La Moskitia, the situation of the Miskito divers should be declared as a matter of national concern as an urgent, but temporary, measure to ensure their safety, pending the implementation of structural measures. By declaring a state of emergency this would mandate the coordination of efforts to prevent further diving accidents and to direct concrete actions during lobster fishing season in Honduras.

The State should set out clearly the expectation to companies domiciled in the territory and/or jurisdiction to ensure respect human rights in all their activities. To address these challenges, Honduras must take decisive measures to strengthen both its regulatory framework and the grievance mechanisms for divers and communities to seek redress. The current gap between legal obligations and practical implementation expose Miskito divers to risks.

¹⁹⁰ Inter-American Court of Human Rights. (2021). *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras* (Series C No. 432) page.45-53, https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_ing.pdf.

According to the United Nations Guiding Principles, companies in the supply chain, even in contexts where the State do not fulfill their obligations, are expected to respect human rights, avoid infringing them and should address adverse impacts with which they are involved. Therefore, they should promote ethical trade practices throughout the lobster and seafood supply chain, by implementing labour codes that focus on improving employment conditions.

In addition, companies must adopt complementary measures with the State to redress the structural inequalities faced by the Miskito Divers, including immediate assistance after a diving fishing accident, as well as support for rehabilitation and reintegration into the workforce. They should also participate in all the stages of the health care required by Miskito Divers who suffer decompression accidents.

Finally, companies should prioritize human rights due diligence by conducting internal assessments of procedures and systems, engaging externally with the Miskito community potentially affected by their operations, and establishing accessible and effective grievance mechanisms.

Annex



Figure 1. Value chain of the industrial lobster fishing in La Moskitia. Figure gathered from CONADEH (2023) “*estudio de impacto sectorial de la industria de pesca por buceo en los derechos humanos de los buzos indígenas Miskitus, desde un enfoque de empresas y derechos humanos*”, page 20. https://conadeh.hn/wp-content/uploads/2024/02/Informe-EIS-Industria-de-pesca-por-buceo-en-Honduras_WEB.pdf

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1.2 Legal instruments.

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