

# Country Systems Report 6 | Honduras

Policies and regulatory systems for  
environmental & social licensing and enforcement



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## Country Systems Report 5 | Honduras

Policies and regulatory systems for environmental licensing and enforcement



### I. Constitutional and policy framework for sustainable development

#### a. Constitutional basis for environmental protection

The Constitution of the Republic of Honduras (1982) addresses environmental protection only within a narrow context, providing that the State must maintain a satisfactory environment in order to protect the health of all citizens. In 1993, Honduras' national congress built upon and broadened this mandate through passage of the *General Law of the Environment*, declaring that the “technical and rational use” of the country’s natural resources was in the public interest and recognizing the State’s duty to promote this use in a sustainable manner.<sup>1</sup> The Law’s preamble states that:

“The accelerated destruction of natural resources and the degradation of the environment threatens the future of the nation, causing economic and social problems that affect the quality of life of the population, and that it is the State’s duty to encourage a style of development that, through the appropriate use of natural resources and the environment, promotes the satisfaction of the basic needs of the present population without compromising the ability of future generations to meet their own needs.” (Ley General del Ambiente, Decreto No. 104-93)

#### b. National policies on the environment and sustainable development

Honduran national development policies link environmental sustainability inseparably with the goal of inclusive economic growth that benefits all of the country’s citizens. During the past decade, Honduran environmental policy statements have focused on human needs (public health, jobs, and competitiveness) as a contextual filter for addressing green economic growth and reduced climate change vulnerability.

**Table 1. Key national policies, plans, and programs**

Three of the country’s overarching development policy statements, the **Country Vision 2010-2038**, the **Nation’s Plan**, and the **Plan for a Better Life for Everyone (2014-2018)**, position environmental governance as an integral part of the country’s broader economic development objectives. The *Country Vision* proclaims the objective of a “productive Honduras, generating opportunities and jobs that leverage its resources and reduce its environmental vulnerability sustainably.” Similarly, the *Nation’s Plan* and *Plan for a Better Life for Everyone* emphasize healthy living conditions, employment, and competitiveness, linking these to improved regional management of natural resources and the environment.

The **Environmental Strategy 2016-2026** was adopted by the government of Honduras in November of 2016. The Strategy recognizes three pillars underlying the mission of the environmental ministry (MiAmbiente): (1) Sustainable Economic Development, (2) Resilience,

<sup>1</sup> The preamble of Decree 104-93 (1993).



and (3) Inclusion.<sup>2</sup> The Strategy declares that the pillars are anchored in promoting robust economic growth that uses natural resources sustainably, building capacities to reduce climate vulnerabilities, and promote informed public participation.<sup>3</sup> In addition, the Strategy addresses fundamental issues, such as environmental enforcement, pollution control, and biodiversity. A 2016 update of the Strategy integrates a variety of additional principles and criteria, including interinstitutional coordination, transparency and integrity, continuous improvement, the Polluter Pays Principle, competitiveness, and payment for ecosystem services.<sup>4</sup>

The **National Climate Change Strategy for Honduras** (ENCC), addresses interactions among different aspects of climate change, such as causes, and responses to adverse effects, as well as the social, environmental, and economic dimensions of its impact on Honduran society.<sup>5</sup> The ENCC's goal is to provide a national instrument to guide policies, programs and measures that are oriented toward reducing the country's vulnerability to climate impacts. The policy includes 15 strategic objectives for climate adaptation and 2 objectives for climate mitigation.

The **National Strategy for Compliance with Environmental Legislation** (ENCA) was published in 2009 to support Honduras in fulfilling its environmental performance obligations under the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA). ENCA's goals consist of strengthening **four key mechanisms** in order to secure improved levels of environmental compliance:

1. The legal system
2. The institutional framework
3. Compliance promotion and other flexible, voluntary mechanisms
4. Environmental education and public awareness.

An important feature of the strategy is its recognition of the private sector and civil society as indispensable participants in the realization of the strategy, rather than passive subjects.

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<sup>2</sup> Honduras Secretary of Energy, Natural Resources, Environment, and Mines (MiAmbiente) (2016) *Estrategia MIAMBIENTE 2016-2026: Adaptándonos al cambio: desarrollo económico sostenible, inclusivo y resiliente*. The subtext of the title of the strategy is "Adapting to change: sustainable, inclusive and resilient economic development."

<sup>3</sup> MiAmbiente is an acronym for *Secretaría de Energía, Recursos Naturales, Ambiente y Minas* (the Ministry of Energy, Natural Resources, Environment and Mines).

<sup>4</sup> <https://www.slideshare.net/LeonardoLeninBanegas/analisis-del-contexto-politica-ambiental-en-honduras>.

<sup>5</sup> *Estrategia Nacional de Cambio Clima de Honduras* (2010).

## II. Legislative and institutional framework for environmental licensing and enforcement

### a. Overview

The General Law of the Environment (Decree 104-93) established the requirement that any project, industrial facility, or activity that has the potential to pollute or degrade the environment must be preceded by an environmental impact assessment.<sup>6</sup> The General Law directed the former Secretariat of Natural Resources and the Environment (SERNA, the precursor to MiAmbiente) create and manage a **National Environmental Impact Assessment Evaluation System (SINEIA)** for administering the ESIA process, overseeing the implementation of prescribed measures for protecting the environment throughout the life of an activity.<sup>7</sup> More generally, SINEIA was designed as a key mechanism for achieving sustainable development. The passage of Accord 189-2009 (the "SINEIA Regulation") fulfilled the General Law's mandate by providing detailed rules and procedures for SINEIA's operation.

### b. The modernization of SINEIA

In 2015, Executive Order 008-2015 repealed and replaced Decree 189-2009, modernizing SINEIA and its regulation in order to streamline the environmental licensing process, facilitate the tracking of compliance, achieve transparency, and strengthen coordination between all relevant actors and stakeholders.<sup>8</sup> The preamble of the new SINEIA Regulation recognizes the "new reality" of globalization and free trade agreements, which call for Honduras to adopt new environmental tools, recognizing the need for environmental standards that comport with those of the international community.<sup>9</sup> In addition, the preamble proclaims the need for the harmonious integration of both the public and private sectors, assigning to SINEIA responsibility for facilitating domestic and international private sector investment, productivity, and competitiveness.<sup>10</sup>

#### Article 2 of the updated SINEIA Regulation proclaims its objectives as:

- a) Organizing, coordinating, and regulating SINEIA and establishing connections between the relevant public, private, and international actors involved in the system;
- b) Ensuring that plans, policies, programs, and projects that have the potential to pollute or degrade the environment are submitted to the ESIA process.
- c) Developing mechanisms for the interoperation of the SINEIA Regulation with sectoral laws;
- d) Incorporating other entities into SINEIA, such as members of the public, NGOs, and financial institutions; and
- e) Applying policies, rules, and procedures congruently with national economic, political, social, legal, cultural, and environmental circumstances, *continuously striving to be expeditious*, with the aim of coordinating the environment and economic development needs (Emphasis added).<sup>11</sup>

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<sup>6</sup> Art. 5.

<sup>7</sup> Ibid.

<sup>8</sup> E.O. No. 008-2015, Art. was amended by Accord No. 11-2016, which added the requirement that proponents must submit an economic guarantee (bond) of compliance to MiAmbiente before a license can be issued.

<sup>9</sup> E.O. No. 008-2015 Preamble, Par. 3.

<sup>10</sup> E.O. No. 008-2015 Preamble, Par. 5.

<sup>11</sup> The objectives listed in Article 2 of E.O. 008-2015 are identical to those in Accord No. 189-2009, with the important exception of adding the mandate for expeditious processing of project applications.

Finally, the 2015 Regulation mandated the creation of a key tool for carrying out SINEIA's mission: A web-based **information and communication technology platform**, which integrates geographic information system (GIS) data and links all government bodies having competency with respect to the ESIA and licensing process.<sup>12</sup> The platform includes a "single window" system for license applications.

### ***b. Competent government institutions***

Since 2009, Honduras has decentralized the process of issuing environmental licenses, with the aim of maximizing efficiency through simplification and coordination, delegating licensing tasks, when feasible, to government entities that are closest to the population and have localized and/or sector-specific expertise.<sup>13</sup> In addition to competent environmental authorities, the SINEIA Regulation recognizes other actors as integral participants in the SINEIA system, including other government agencies (within and outside of MiAmbiente), as well as project proponents, environmental consultants, and NGOs. The degree to which the implementation of SINEIA's online "single window" licensing platform—accessible from anywhere—has affected decentralized decision-making is an issue for follow-up study.

#### **Secretariat of Energy, Natural Resources, Environment and Mines (MiAmbiente)**

The top-level agency that has primary authority for matters concerning the environment, including oversight and coordination of the ESIA process, licensing, monitoring, and enforcement. MiAmbiente also has an important outreach role, creating awareness of environmental issues, while partnering with private sector entities to improve environmental performance.

#### **Directorate of Environmental Assessment and Control (DECA)**

DECA is the executing agency under MiAmbiente with primary responsibility for managing and coordinating SINEIA, administering the ESIA process, issuing environmental licenses, undertaking environmental inspections, monitoring and enforcing license commitments for all activities that have the potential to pollute or degrade the environment.<sup>14</sup> DECA has a mandate that involves both promoting the use of natural resources, as well as policing their protection through the licensing process and enforcement. DECA is also responsible for evaluating good practices, application forms, verification of the categorization table, and other administrative tools. Lastly, plays a role in the oversight and supervision of cleaner production initiatives.

Under Honduras' decentralized environmental governance structure, DECA has authority to delegate licensing and monitoring tasks to other competent authorities. Before delegating these functions to municipalities or other competent authorities, DECA must ensure that they are adequately organized and have qualified staff, technical equipment, and logistical capacity.<sup>15</sup>

<sup>12</sup> E.O. No. 008-2015 Preamble, Par. 4.

<sup>13</sup> Originally, decentralization was achieved through provisions of Decree 189-2009 (Arts. 4.46, 7, and 19). The new SINEIA regulation (E.O. 008-2015), continues this arrangement through the provisions of Articles 6, 7, and 19.

<sup>14</sup> A full list of DECA's mandates are prescribed in Accord No. 1089-97, Chapter XI, Section 4, Art. 36.

<sup>15</sup> This information was obtained during interviews in March, 2015.

## Other competent environmental authorities and advisory bodies

1. **General Directorate of Environmental Management (DGA)**

The DGA is responsible for coordinating the affairs of public and private entities in connection with the environment and the sustainable use of natural resources, as well as providing training and developing the national environmental strategy. The DGA also provides analysis and advisory support on the effectiveness of legislation and the institutional framework in improving environmental compliance.
2. **Strategic and Management Planning Unit (UPEG)**

A unit within MIAMBIENTE responsible for coordinating all the procedures related to MiAmbiente's system of monitoring, assessment and follow-up, in technical coordination with the National System of Environmental Information (SINIA) which includes environmental databases, geographic information systems, remote sensing, and indicators. UPEG has created a management by results model, enabling competitiveness and sustainable exploitation of natural resources.
3. **Center for Pollution Studies and Control (CESSCO)**

An auxiliary agency which provides laboratory services to DECA and other departments of MiAmbiente, for the purpose of monitoring, sampling and testing emission and effluent samples to ensure compliance with legislation and license requirements.<sup>16</sup>
4. **Municipal Environmental Units (UMAs)**

Municipal bodies that have local authority for managing natural resources and projects whose impacts are geographically limited to the municipality. Under Honduras' decentralized system, DECA may delegate certain licensing and enforcement tasks to UMAs in cases where DECA deems municipal authorities to have an adequate organization, capacity and expertise.<sup>17</sup> In practice, delegation of these functions has been limited, due to a lack of qualified experts in most municipalities and the use of MiAmbiente's online environmental licensing platform.
5. **Environmental Management Units (UGAs)**

Technical bodies that operate within other sectoral ministries where significant environmental issues are implicated. UGAs work jointly with MiAmbiente on matters within the SINEIA environmental licensing framework. In addition, UGAs have responsibilities for environmental management issues that are internal to and specifically related to their sector, including the performance of strategic environmental assessment (SEA).<sup>18</sup>
6. **Technical Advisory Committee (*Comité Técnico Asesor*)**

The committee is a consultative body, whose role is to advise DECA concerning the ESIA studies for large proposed projects which affect the national interest and which merit a broad consultative process of public participation.<sup>19</sup> An ad hoc committee is created for each project and is composed of members drawn from schools, universities, and professional associations, who have specialized expertise pertinent to a proposed project.<sup>20</sup>

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<sup>16</sup> Portal del CESSCO (an abbreviation for *Centro de Estudios y Control de Contaminantes*, by the organization's Spanish name). <http://cesccoserna.net/index.html>.

<sup>17</sup> SINEIA Reg. (Accord 8-2015), Arts. 18-19.

<sup>18</sup> SINEIA Reg. Art. 5.53.

<sup>19</sup> SINEIA Reg, Arts. 21-23; The Committee appears to have only been convened in recent years. A 2007 World Bank report stated that the Committee had not been convened since the adoption of the Law on the Environment (1993).

<sup>20</sup> SINEIA Reg, Art. 23.

**Table 2. Inter-agency coordination**

Coordination between DECA and other competent authorities is generally accomplished in three ways:

- **Requests for assistance** – Formal and informal communications between other agencies and DECA in cases where DECA is needed to provide expertise or must respond to environmental license violations or DECA requests assistance from sectoral or municipal environmental units.
- **Coordination through SINEIA** – A comprehensive licensing and information system that facilitates real-time coordination between all actors involved in the SINEIA system, including MiAmbiente and its departments, sectoral environmental units, municipalities, project applicants, licensees, approved consultants, financial institutions, outside experts, and members of the public.
- **Cross-sectoral coordination bodies** – These bodies help harmonize the operations of different agencies whose activities implicate environmental issues.



### III. Environmental licensing

#### a. Overview of ESIA and licensing functions

The modernized SINEIA Regulation implements MiAmbiente’s objective of streamlining the environmental licensing process for new investments in commercial and infrastructure projects in Honduras.<sup>21</sup>



The web-based “single window” information technology platform used by the licensing system for project applications uses an iterative approach to define the correct Category of impact of the project based initially on the information submitted by the proponent. This information is then subject to several stages of evaluation by environmental authorities, based on project-specific information and a site visit. Proponents of projects categorized as posing a high or very high level of environmental risk (Categories 3 and 4) must use the services of a MiAmbiente-approved environmental consultant.

**Table 3. Environmental licensing instruments:**

**Operational Environmental License (*Licencia Ambiental de Operación*)**

The provisional license granted by MiAmbiente stating that the proponent has complied in a satisfactory manner with all the technical and legal requirements of the license application process. An Operational Environmental License is void once the proponent has obtained the Functional Environmental License that is used for actual implementation of the project.

**Functional Environmental License (*Licencia Ambiental de Funcionamiento*)**

The final license granted by MiAmbiente stating that the proponent has complied in a satisfactory manner with all the procedural steps and obligations required by Law to commence operating the project, work, or activity. A Functional Environmental License is valid for five years.

**Table 4. SINEIA single window licensing system**

**Screening (“Pre-viability”) process**

**Step 1: Register** with the Environmental Licensing System.

**Step 2: Location** - Determine the geographical coordinates of the proposed project.

**Step 3: Project attributes** - Provide information on the characteristics of the project, including the names of the project proponents, the amount to be invested, an estimate of the number of jobs that will be created, the sector and subsector, its geographic coordinates, and the scale of the project.<sup>22</sup>

**Step 4: Preliminary feasibility** - The system then analyzes the preliminary feasibility of the proposed project, using a database of geospatial maps that include detailed site-specific data in order to identify any restrictions on the proposed location (such as proximity to protected areas, schools, hospitals, indigenous lands, aquifers) that may disqualify the proposal or implicate the need for a full ESIA study.<sup>23</sup>

<sup>21</sup> SINEIA reg. Art. 24.

<sup>22</sup> The SINEIA Regulation, Art. 24.1 refers to the screening platform as the Consultation and Preliminary Technical Opinion Platform (*Plataforma de Consulta y Pre-Dictamen Técnico*).

<sup>23</sup> International Institute for Sustainable Development (iisd), The licensing system’s geospatial data contains information on local characteristics at the coordinates of the proposed projects such as the presence of wetlands, indigenous lands, schools, or protected areas.



**Step 5: Categorization** (screening) - After determining the feasibility of the proposed project's location, the licensing system then categorizes the project within one of four levels of potential impacts, with Category 1 corresponding to minor impacts and Category 4 corresponding to activities that have a very high potential for environmental impacts. The categorization process uses an algorithm that assigns weights to project attributes, such as type of activity, project viability, and the magnitude of impacts.<sup>24</sup>

The category assigned by the system is subsequently reviewed by DECA to determine if it is appropriate, given the potential risks for the type of activity. The industry categories are established based on the *Uniform International Industry Classification of all Economic Activities* (ISIC), a United Nations industry classification system.<sup>25</sup> Based on the categorization of the project and the principle of proportionality, DECA determines the appropriate instruments of environmental assessment, control and monitoring to be applied.

### Review of application by DECA and the Legal Services Unit

**Step 5: Presentation and review of required documents** – The proponent must submit copies of required technical documents to the General Secretariat for Environmental Licensing. For Category 4 projects, applicants must submit **five copies of the ESIA report**, including the environmental management plan (EMP). The documents are then reviewed by a DECA representative and a representative of the Legal Services Unit.<sup>26</sup> In addition, the proponent must submit an **economic guarantee of compliance** (a bond) in an amount specified by MiAmbiente.<sup>27</sup> (See Section VI. Cost Recovery below)

**Step 6: Commitment to environmental license requirements** - If the documentation presented by the proponent is accepted by the Single Window licensing system, the system issues a **Contract for Compliance with Environmental Control Measures**, which the applicant must sign, thereby making a legal commitment to fulfill the terms of the contract.<sup>28</sup> If the proponent fails to carry out the environmental requirements, MiAmbiente may impose fines or other sanctions. The licensing system then issues an *Operational Environmental License*, which the applicant must also sign.

**Step 7: Inspection by DECA** – The single window environmental licensing system transmits the application dossier to the DECA, which then carries out an on-site inspection of the pre-authorized project.

**Step 8: Issuance of the Preliminary Technical Opinion** - Based on the inspection, DECA issues a Technical Report and Opinion on whether to grant the *Functional Environmental License*. MiAmbiente's Legal Services Unit then drafts a formal legal opinion pronouncing the final decision on granting or rejecting the Environmental License for Operation, as well as stating the sanctions that will apply in the case of noncompliance.

<sup>24</sup> International Institute for Sustainable Development (2015), Key aspects of EIA legislation and EMP in Honduras, 3.

<sup>25</sup> SINEIA reg. Art. 5.50 and 29.

<sup>26</sup> SINEIA reg. Art. 24.3.

<sup>27</sup> Accord No. 11-2016 amended the SINEIA Regulation (E.O. 008-2015) to include the guarantee requirement.

<sup>28</sup> SINEIA reg. Art. 24.4.

### ***b. Specifying legal performance requirements in environmental management plans***

The environmental management plan (EMP) is an important component of a finalized ESIA document, containing specific measures for mitigation and avoiding adverse environmental impacts. An EMP is also required for environmental licenses that do not require a full ESIA study. During the licensing process, environmental management measures that have been approved or prescribed by DECA (or other competent authorities) become legally-binding commitments.

For Category 3 projects (high impact), detailed sets of environmental management measures and performance indicators have been standardized for a range of sectors in Honduras and are elaborated in a series of *Environmental Good Practices Guides*.<sup>29</sup> Proponents may elect to adopt the methodologies contained in the Guides in lieu of developing and soliciting approval of project-specific procedures.

For Category 4 projects, the proponent's consult team must develop and specify project-specific mitigation requirements and contingent (adaptive management) practices, consulting the Good Practices Guides, but also applying specific measures that are responsive to the unique environmental and social setting of the project site. The proposed management measures must then be approved or amended by DECA staff.

**Table 5. Applying standards from the *Environmental Good Practices Guides***

Excerpts from the tourism and hotel sector guide indicate the nature of the instructions:<sup>30</sup>

**Project feasibility and planning section:**

**FR-14.** "Consider threats and vulnerabilities in the area (flooding, mudslides, and fires, among others).

**FR-35** "Where possible, it is recommended that alternative energy sources that reduce pollution should be planned (wind, solar, etc.)

**Construction section:**

**CM-8.** "Appropriate management must be carried out solid waste, liquid and soil removed (establish collection sites, management, final disposal, etc.). At no time should the soil be deposited removed or remains of the construction in the bodies of water."

**Contingency plans:** The guides include adaptive management and contingency instructions. For example, for CM-8, the measures of correction specified are:

**CC-8.** "When the construction waste or the removed soil are being arranged directly over the bodies of water, immediately you must stop the activity; Then, you must define a waste management plan and a site for temporary storage of the soil."

The guides also provide the complete legislative text of the sanctions established by the General Law on the Environment Regulation.

Adapting the provisions of the Good Practice Guides to project-specific prescriptions requires additional work, both in developing a number of management plans for specific functions, such as hazardous waste

<sup>29</sup> Sectors for which *Environmental Good Practices Guides* have been drafted include, for example, biodiesel production, hotels & tourism, poultry, pork, sugarcane, textiles, and tilapia.

<sup>30</sup> DECA/USAID/CNP+LH (2009) Guía de Buenas Prácticas Ambientales para el subsector turístico-hotelerero.

disposal, according to the considerations provided in the guides, and specifying management procedures and tolerances in quantitative, auditable terms, wherever possible. Procedures must be adapted to specific local conditions.

When DECA encounters technical questions in connection with a specific project that cannot be not addressed by its staff or Good Practices Guides, DECA convenes an ad hoc inter-institutional group with relevant expertise to address the issues involved. DECA can summon nongovernment actors, NGOs, citizens with knowledge of local conditions, academicians, and others to support and supplement DECA’s technical staff.<sup>31</sup>

### c. Public consultation and conflict avoidance

On paper, Honduran legislation strongly supports the right of citizens and local communities to participate in protecting the environment, to be informed concerning proposed activities that pose environmental risks, to voice their concerns during the ESIA process, and to lodge complaints with environmental authorities when they observe environmental harm.

**Table 6. Selected provisions from two legislative texts establish a mandate for public consultation and provide current rules for its implementation:**

Article:	<b>The General Law of the Environment</b> (Decree 104-93)
	Function: establishes <i>general principles</i> concerning the right of public participation.
Preamble	States that “community participation is essential to achieve protection, conservation and rational use of the natural wealth of the country and the environment in general.”
Art. 80	Provides that <i>any person</i> may submit a complaint before a competent authority regarding any activities that degrade the environment.
Art. 102	Residents of local communities should participate directly in actions for defending and preserving the environment and that the participation of private organizations serves the public interest.
	<b>The SINEIA Regulation</b> (Executive Order 008-2015)
	Provides <i>specific procedural rules</i> regarding public consultation in the context of the ESIA process.
Art. 58	MiAmbiente will encourage the participation of civil society during all the phases the ESIA process, in proportion to the degree of a proposed project’s risk or environmental impact.
Art. 59	Proponents must involve residents living near the project area at the earliest possible planning stage.
Art. 61	MiAmbiente will create an information system which allows interested parties to obtain data on the ESIA files processed and in process, as well as the most relevant environmental data, including every matter related to public participation or civil society that has been carried out in accordance with the rules established in this Regulation.
Arts. 26-28	The Regulation also provides rules on the process of disseminating information concerning public consultative hearings, including type of media and frequency

Despite the existence of significant legislative detail concerning public consultation requirements, the reality on the ground has not effectively supported the right of public participation in the context of the ESIA process. In practice, Honduras has in recent decades gained notoriety as one of the most dangerous places on earth to defend the environment.<sup>32</sup> Cases of intimidation and violence are

<sup>31</sup> Information obtained during 2015 DECA interview.

<sup>32</sup> See e.g., Pierce, Fred (February 2017), *In Honduras, Defending Nature Is a Deadly Business*, YaleEnvironment360, <https://e360.yale.edu/features/honduras-berta-caceres-murder-activists-environmentalists-at-risk>; (Discussing the

common in connection with citizens who have spoken in opposition to dams, mines, logging, and agricultural projects that pose high risks of negative impacts to the environment and communities.<sup>33</sup>

Recent regional negotiations for a new multinational agreement may offer increased protections for Honduran citizens who voice opposition to large development projects. In early 2018, Honduras and other Latin American and Caribbean countries met to discuss a proposed legally-binding treaty, the **Latin American and Caribbean countries declaration on Principle 10 (LAC-P10)**, which would compel signatory countries to investigate and punish murders and attacks on citizens defending their land or the environment.<sup>34</sup> Further attention should be focused on the negotiations to determine if they catalyze changes that give effect, in practice, to right of public consultation established in legislation.

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assassination of Berta Cáceres, a well-known activist was opposing a dam project and noting that over 109 people have been killed while opposing dams, mines, logging, and agricultural projects in Honduras since 2009.

<sup>33</sup> Global Witness (January 31, 2017) *Honduras: the deadliest country in the world for environmental activism*, <https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>.

<sup>34</sup> LAC-P10 is a result of the United Nations Rio+20 conference on sustainable development in 2012 and encompasses access to information, environmental justice, and public participation during the ESIA process. The official website for the initiative is found at <https://www.lacp10.org/lac-negotiation-process>.



## IV. Monitoring and enforcement

### a. Overview: monitoring and inspections

DECA is the directorate within MiAmbiente that has primary responsibility monitoring and overseeing the environmental performance and legal compliance of each licensed project. It accomplishes this through on-site inspections and the review of self-monitoring reports submitted by licensees. Municipalities (through their UMAs) and sectoral Environmental Management Units (UGAs) are responsible for supporting DECA's supervision efforts. Due to resource limitations, DECA generally undertakes inspections of existing activities and installations in three instances: (1) when environmental licenses are renewed (first renewal after two years, then every five years), (2) when there is a citizen complaint, or (3) when asked for assistance by another government body, such as Honduras' forestry agency (ICF).<sup>35</sup> Although the ICF makes arrests for forestry-related crimes, DECA has primary authority for surveillance or cases of noncompliance with the requirements of a licensed forestry activity.

If DECA receives a citizen complaint or finds evidence of a serious violation or environmental crime, it refers the case to a Special Prosecutor (*Fiscalía*). The Regulation for the General Law on the Environment provides that any citizen may submit a complaint to the competent authority or the *Fiscalía* via the Attorney General's Office (*Procuraduría*) concerning any act or omission that constitutes a crime or administrative infraction.<sup>36</sup> When responding to complaints, DECA examines evidence of environmental violations, including the results of laboratory analysis. A case may take several possible routes to the office of the Special Prosecutor (*Fiscalía*), such as:

- (1) Citizen complaint → DECA → CESSCO (lab analysis) → *Fiscalía*
- (2) Citizen complaint → *Fiscalía* → may call DECA and CESSCO for support<sup>37</sup>

In cases where complaints were lodged directly with the Special Prosecutor, DECA is consulted to provide support and technical expertise.

DECA utilizes remote sensing data from satellites as well as field visits to monitor compliance by licensed activities. When conducting monitoring or on-site inspection visits, DECA sends air, water, soil, and other types of samples to CESSCO for testing, in order to determine if effluents and emissions are within legal limits. If DECA determines that a licensee has failed to comply with the requirements of the Functional Environmental License, it will impose administrative sanctions (as described in Section V below) or forward the case to a Special Prosecutor. Since the amounts of administrative fines were established by the Regulation on the General Law of the Environment (Accord No. 109-93) twenty-five years ago, further investigation is needed to determine if these amounts have been brought up to date in more recent legislation.

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<sup>35</sup> ICF is a Spanish acronym for National Institute of Conservation, Development of Protected Forest Areas, and Wildlife.

<sup>36</sup> Accord No. 109-93, Art. 128; The Attorney General's Office generally refers cases to the *Fiscalía* for investigation. World Bank (December 2007), *Republic of Honduras Country Environmental Analysis*, Report No. 69132-HN, 5 Available at <http://documents.worldbank.org/curated/en/911681468251687944/Honduras-Country-environmental-analysis>.

<sup>37</sup> Information obtained during 2015 DECA interview.

## b. Sanctioning regime

The Regulation for the General Law of the Environment (Accord No. 109-93) establishes a mandate for imposing administrative and criminal sanctions. Articles 110 to 112 classify acts and omissions relating to the environment into mild, serious, and severe infractions. Article 113 states that the sanctions that are applicable to acts and omissions that violate environmental legislation are the following:

- Detention (prison),
- Fines,
- Permanent closure of all or part of projects or facilities,
- Temporary suspension of activities or facilities,
- Confiscation of tools or instruments,
- Cancellation or revocation of authorizations or economic or fiscal benefits,
- Obligation to provide compensation for damages, and
- Replacement or restoration of the environmental features to their natural state.

Table 7. Rules for the implementation of sanctions under Accord No. 109-93	
Article:	Rule for application of sanction
Art. 114	The penalty of <b>imprisonment</b> applies in the case of an action classified by law as a <i>criminal offense</i> and must be ordered in a final judgment by a competent court of law.
Art. 115	<b>Fines</b> for administrative infractions must be imposed by a judicial authority and may not be less than one thousand Lempiras (L. 1,000.00 ≈ USD \$42.30) or higher than one million Lempiras (≈ USD \$42,300.00), except in special circumstances provided by law.
Art. 122	For minor infractions, fines must be no lower than (L. 1,000.00) and no greater than (L. 5,000.00) The penalty of confiscation may be imposed at the same time if appropriate.
Art. 123	For the first recurrence of a minor infraction, the amount of the fine may not be less than (L. 5,000.00), or higher than (L. 20,000.00).
Art. 124-127	Fines are increased successively based on the frequency of recurrence and the gravity of the infraction.
Art. 116	<b>Permanent closure</b> must be applied when activities or facilities pollute the environment and harm human health beyond the limits established in the current regulations and technical standards. Closure may be ordered in a decision by the administrative authority or by judicial decree (for crimes).
Art. 117	<b>Temporary suspension</b> is to be applied in the case of activities or facilities that cause damage to the environment and natural resources. In cases of noncompliance with a suspension decree, the offender will be punished with successive (cumulative) fines, until the harmful activity is suspended.
Art. 118	Tools, instruments, or materials used in the commission of a crime or administrative infraction will be subject to <b>confiscation</b> .
Art. 119	<b>Cancellation or revocation</b> of operating permits, waivers, exemptions, subsidies, or benefits will be imposed if the beneficiary is shown to responsible for violating environmental legislation.
Art. 120	Except as provided in special laws, an order for <b>compensation for damages</b> caused to the environment and natural resources must be decreed by a competent court. The compensation order in favor of the State will only apply to the restoration of the environment and damaged natural resources.
Arts. 121	The sanction of <b>replacement or restoration</b> applies when the environment or damaged natural resources can be restored or rehabilitated to its natural state. When this sanction is applied, a timeframe will be specified for the start of the restoration and its completion. If the deadline is not met, a fine will be applied for each day of the delay of the start or completion.

### *c. Prosecution of environmental violations*

Although DECA is responsible for monitoring compliance with environmental license obligations and imposing administrative sanctions in the case of violations, Honduras also has a **Special Prosecutor for the Environment** (*Fiscalía Especial de Medio Ambiente* or FEMA).<sup>38</sup> The Special Prosecutor for the Environment is a specialized division of the Office of Public Prosecutor (*Ministerio Público*) that is responsible for investigating and prosecuting environmental crimes, such as illegal logging, the dumping of hazardous wastes into the environment, and illegal mining. In addition, it is responsible for investigating citizen complaints regarding activities that harm the environment.<sup>39</sup> Under Article 56 of the **Law of the Public Prosecutor** provided authorization for that body to create special prosecution units for cooperation with the office of the Attorney General in “matters related to the defense of ecosystems, the environment, consumers, ethnic groups, national assets, archeological, cultural heritage and other public and social interests.”<sup>40</sup>

In the past, the Special Prosecutor for the Environment has carried out raids on illegal operators in coordination with the Institute of Forest Conservation (ICF), the armed forces, the Political Directorate of Investigations (DPI), and local municipal governments.<sup>41</sup> Although it appears that DECA does not routinely refer cases to the office of the Special Prosecutor for the Environment in connection with severe violations by environmental licensees, more study is needed to confirm this.

### *d. Compliance promotion programs*

The SINEA Regulation provides for **recognition awards** for enterprises and activities that have superior environmental compliance and performance.<sup>42</sup> The Regulation states that the aim of the awards is to provide “incentives for sustainable development, economic growth, and the improvement of the quality of life” for the country’s citizens. The recognition awards apply to enterprises or activities whose environmental performance meets one or more criteria. For example, the awards would apply to activities that use internationally-certified environmentally sustainable methods; those that use “environmentally friendly technologies, practices, or innovative methods of production, or certified cleaner production technologies” or activities that were found to be compliant with their Compliance with Environmental Control Measures Contract during at least three consecutive inspections.<sup>43</sup>

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<sup>38</sup> DECA’s mandate for implementing measures for environmental control, as well as corrective and preventative measures is contained in Executive Agreement No. 008-2015, Art. 54.

<sup>39</sup> It should be noted that until 2013, the Attorney General for the Environment (*Procuraduría del Ambiente*) was responsible for carrying out many of the same tasks performed by the Special Prosecutor for the Environment. Chapter II of the General Law of the Environment established the *Procuraduría* and mandated that it would undertake civil and criminal proceedings against violators of environmental laws. The position of *Procuraduría* was eliminated by Decree 400/13 in 2013, citing a government finding that this post had not accomplished its intended purposes. Instead, DECA is responsible for carrying out administrative enforcement for violations of environmental licensing terms.

<sup>40</sup> Decree No. 288/93 (Ley del Ministerio Público), Art. 56.

<sup>41</sup> See e.g., Proceso Digital (23 October 2018) *Operación “GAIA” le entra a los delitos ambientales en Honduras*, (Describing Operation GAIA, a nationally coordinated “sting” operation that targeted many forms of environmental crime) <https://www.proceso.hn/nacionales/9-nacionales/operacion-gaia-le-entra-a-los-delitos-ambientales-en-honduras.html>.

<sup>42</sup> SINEIA Reg., Art. 55.

<sup>43</sup> SINEIA Reg., Art. 55(2).



## V. Information systems and technology tools for case management and monitoring

### a. *The National Environmental Impact Assessment System (SINEIA)*

As described above, SINEIA is a system for coordinating information on projects and activities that are subject to the environmental assessment process and facilitating the process of issuing environmental tools. It is also a mechanism that is allowing DECA to begin the process of decentralizing licensing and monitoring tasks (getting them “closer to the population”) by delegating these functions—where feasible—to regional offices and municipalities. SINEIA’s online licensing platform interfaces with SINIA, drawing GIS and other data from SINIA databases.

### b. *The National System of Environmental Information (SINIA)*

The General Law on the Environment directed SERNA (now MiAmbiente) to “develop and coordinate a national system of environmental information.”<sup>44</sup> SINIA, which is managed by UPEG, includes environmental databases, websites, geographic information systems, remote sensing, and environmental indicators. Unlike SINEIA, which is an environmental licensing platform (and which relies on SINIA geographic data), SINIA is increasingly used as a strategic planning and decision-making tool for sustainable development and climate resilience. Although the process of implementing SINIA was begun in 1999, it was sidelined for a number of years before development was actively resumed during the past decade. SINIA now consists of three environmental information systems:

- **MIGA:** The Environmental Geographic Information Module adapted from the US EPA’s *NepAssist*.
- **MIRA:** The Environmental Information and Registry Module (a tracking system)
- **MIAH:** The Environmental Indicators Module for Honduras

The Environmental Information and Registration Module tracking system is particularly important in connection with compliance assurance following the granting of environmental licenses. The MIRA Registry is a web-based tool that facilitates and streamlines the process of following up of on questions and compliance issues related to existing licenses, while providing transparency. UPEG is currently working on making SINIA a reliable and robust information system, updating the environmental indicators in order to ensure that national development is undertaken in a manner consistent with sustainable development that is inclusive and advances environmental and climate resilience.

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<sup>44</sup> General Law on the Environment, Art. 11(f).

## VI. Cost recovery and funding for licensing and enforcement tasks

### a. Budget allocations

As a percentage of the national budget as a whole, annual budget allocations for MiAmbiente from the national Treasury reflect a low political priority for environmental protection in Honduras. Nevertheless, the issuance of environmental licenses by DECA is exploited as a profit center, with more than half of the revenues from licensing fees being transferred to the national Treasury for other purposes, rather than being utilized to increase the quality and coverage of DECA's compliance assurance functions. Further study could examine strategies for documenting and highlighting the connection between more stringent environmental oversight and cost savings (e.g., reduced costs of pollution-related public health issues) and enhanced competitiveness for the Honduran economy. This might be politically persuasive in to securing less anemic budget allocations.

**Table 8. MiAmbiente general budget - Revenues and Expenditures**

(All amounts stated in Honduran Lempiras)

	2016	2017	2018
Treasury allocations	34,216,264	304,278,757	212,481,207
With MiAmbiente funds added*	269,460,807	354,278,757	2,284,190,722
MiAmbiente Total budget	74,748,799,472	120,510,309,954	135,805,405,198
% of all Treasury allocations	<b>0.05%</b>	<b>0.25%</b>	<b>0.16%</b>
Licensing fee revenues	84,872,340	58,134,996	Not available
Estimated monitoring revenues	1,800,000	1,400,000	3,700,000

\*MiAmbiente funds include licensing and monitoring revenues that have not been transferred to the Treasury.

### b. Fees for services: processing environmental license applications

Applicants for an environmental license must pay a licensing fee, the value of which is calculated based on the amount of investment and the industry sector. The applicant can make the payment in any banking institution and will receive a special receipt that must be used to prove that the payment has been made. If the license management system determines that an on-site inspection by DECA is necessary, the applicant must also deposit 7,000.00 Lempira (~USD \$295.00) in a DECA bank account. The applicant must then secure a bank guarantee to ensure the availability of funds in case environmental rehabilitation is required during or after the operation of the activity. Since these fee revenues are collected through DECA and other bodies within MiAmbiente do not, the directorate acts as an important conduit for funding for MiAmbiente—apart from budget allocations.