

# University of Virginia School of Law

**International Human Rights Law Clinic**



## **PRETRIAL MONITORING OF THE GUAPINOL AND SAN PEDRO COMMUNITY**

Updated Version  
September 2020

## EXECUTIVE SUMMARY

In 2018, residents and neighbors of Guapinol, Honduras in the Bajo Aguán valley erected a “Camp in Defense of Water and Life” on a public path as a protest against the alleged contamination of their drinking water by the part of a mining project. The peaceful assembly was met with violence. On September 7, private security at the mine, consisting of security agents hired that day and a group of armed guards from the municipality of La Ceibita linked to the mining company, attempted to violently evict the camp. As a result, a protestor was seriously injured, but no official investigation was undertaken. Meanwhile, the judicial authorities issued two arrest warrants for the protesters. First, on September 1, the Public Prosecutor began to arrest 18 people from the community for alleged violence exercised during the eviction of the camp. Furthermore, the Public Prosecutor linked 32 members of the same community to another case based on common crimes allegedly committed on September 7, 2018.

On two separate occasions, the defendants, as a group, voluntarily presented themselves to a National Jurisdiction Court in order to peacefully resolve the legal dispute. The existence of the second arrest warrant came to light during the first of these two court encounters. In March 2019, the judicial authorities dismissed in the first instance all the charges against the thirteen activists of the first group. However, this decision was partially reversed in March 2020 although not communicated until August of that year. Conversely, the second group, consisting of nine Guapinol community defenders,<sup>1</sup> was sent to pretrial detention on September 1, 2019 where they have remained till this day.

The judicial process against the Guapinol community defenders has suffered from various irregularities. First, the judges who approved the arrest warrants and tried the cases are National Jurisdiction judges, a forum with subject matter jurisdiction reserved for high impact criminal cases, with a particular focus on organized crime. Second, under national and international law, pre-trial detention is reserved for extreme circumstances and should be treated as the exception, not the rule. The Public Prosecutor’s office has presented zero evidence supporting this extreme measure and prolonged deprivation of the community leader’s freedom and integrity. Third, despite various attempts by the defense attorneys and civil society organizations, the community defenders have not been afforded adequate review of their detention nor have they been allowed the right to a fair trial on the charges against them.

This case falls in line with a pattern of violence, harassment, and intimidation directed towards human rights defenders in Honduras. Furthermore, it illustrates the government’s tendency to favor economic interests over human rights and its willingness to attack their citizens’ freedom of association, expression, and peaceful assembly.

To begin the process of rectifying the potentially unlawful actions taken against the Guapinol environmental defenders and those similarly situated, the Clinic recommends the Honduran government take the following actions.

---

<sup>1</sup> This group includes Antonio Martínez Ramos whose case has not been dismissed despite his death in 2015.

**Recommendations regarding the pending case against the Guapinol and San Pedro community defenders:**

- (1) Immediately release the Guapinol community members who remain in pretrial detention; and give them the opportunity to face the criminal proceedings in freedom;<sup>2</sup>
- (2) Ensure that all criminal proceedings are carried out in the appropriate forum and with strict adherence to the judicial guarantees established by national law and international right;
- (3) Hold the public prosecutors and judges to the requisite evidentiary standards for each and every charge faced by the Guapinol community defenders; and
- (4) Conduct the remainder of the relevant judicial process transparently, allowing the participation of national and international legal observers, including civil society organizations.
- (5) Carry out a thorough, impartial and transparent investigation into serious injuries caused to one of the member of peaceful protest.

**Recommendations regarding the protection of human rights defenders in Honduras more generally:**

- (1) Recognize and protect the essential role of human rights defenders in a democratic society;
- (2) Respect international standards regarding the participation of local communities in the decision-making processes regarding the granting of concessions or execution of projects of an extractive nature that affect them.
- (3) Prevent the adoption or application of laws in violation of international human rights standards, including but not limited to, laws which may stifle freedom of expression and association;
- (4) Refuse to use Criminal Court or Sentencing Courts of National Jurisdiction to try human rights defenders without sufficient evidence that they committed crimes that fall within the jurisdiction of these specialized courts;
- (5) Avoid prosecuting the crime of trespass or similar low-level offenses in Criminal Courts of National Jurisdiction given its narrow mandate over high profile, high impact criminals and crimes;
- (6) Reserve the use of pretrial detention for exceptional cases where, based on sufficient evidence, the circumstances demand such an extreme deprivation of liberty;

---

<sup>2</sup> No response has been given to the appeals filed by the defense against the formal processing order and against the resolution denying the replacement of preventive detention. Nor has a response been given to the request for a hearing to review the detention measure.

- (7) Act in accordance with the requirements stipulated in the Criminal Procedure Code to afford defendants and other relevant parties the right to initiate, appeal, or otherwise challenge adverse rulings, particularly when detained; and
- (8) Condemn the use of fraudulent smear campaigns against human rights defenders.

## Table of Contents

<b>INTRODUCTION</b> .....	6
<b>BACKGROUND INFORMATION</b> .....	7
POLITICAL AND LEGAL CONTEXT .....	7
JUDICIAL INDEPENDENCE .....	8
VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS .....	9
RURAL COMMUNITIES, INDIGENOUS PEOPLES AND DEVELOPMENT PROJECTS	11
<b>CASE HISTORY</b> .....	12
<b>LEGAL ANALYSIS</b> .....	19
APPLICABLE LAW .....	19
INVESTIGATION AND PRETRIAL STAGE VIOLATIONS.....	19
OTHER POTENTIAL HUMAN RIGHTS VIOLATIONS .....	25
<b>RECOMMENDATIONS</b> .....	26

## INTRODUCTION

The International Human Rights Law Clinic of the University of Virginia School of Law (“the Clinic”) works to promote a global culture of human rights. Through a combination of approaches, the Clinic promotes collaborative learning in partnership with social, intergovernmental and academic human rights, as well as with private institutions and public agencies and policy makers in various parts of the world.

One of the priorities of the Clinic's work is the promotion of a safe environment and with full guarantees for the exercise of the rights to freedom of expression and association, as well as for the full defense of human rights in the world. With this objective in mind, the Clinic decided to study the case of the defenders of the Guapinol and San Pedro rivers, in Honduras.

This is a preliminary report based on the Clinic's investigation of procedural as well as public information.<sup>3</sup> The report benefits from the American Bar Association's Center for Human Rights' monitoring of the preliminary hearing. In addition to the reports from the field monitors, the Clinic carried out a background investigation and consulted national and international experts with extensive knowledge of the situation in Honduras.

Based on this information, the Clinic evaluated Honduran authorities' compliance in this case with human rights, especially due process guarantees. Since the judicial process is on-going, the Clinic considers it appropriate to make some preliminary recommendations that may allow for the relevant authorities to come into accordance with the human rights norms.

This report is divided into four main parts. First, the report presents the background context in which the facts of this case occurred. Second, the report recounts the specific factual and procedural background of the case of the community defenders of Guapinol and San Pedro. Subsequently, the report evaluates these facts from the perspective of international human rights standards that bind the Honduran state. The report closes with some conclusions and recommendations.

---

<sup>3</sup> This report was researched and written by students Camilo Navas Cuervo, Uiko Murakami and Rachel Davidson Raycraft, under the supervision of Professor and Director of the Clinic Nelson Camilo Sánchez.

## BACKGROUND INFORMATION

### POLITICAL AND LEGAL CONTEXT

The Honduran Constitution guarantees inviolable rights to life, dignity, and physical, moral and mental integrity while also protecting the right to be free from torture and cruel inhuman or degrading treatment. It guarantees freedom of expression, movement, speech, thought, religion, assembly, and association. It also recognizes the writ of habeas corpus and the remedy of amparo. Under the Honduran Constitution, international treaties ratified by the State become part of domestic law as soon as they enter into force.

However, the actual implementation of those provisions has been limited due to the fragility of the State's institutions.<sup>4</sup> The country not only continues to suffer from the political, social, and economic consequences of the 2009 coup, but it also has to deal with the effects of being a major hub of the transnational illegal drug trade, as well as other forms of organized crime. Honduran society faces serious governance problems with significant implications for the enjoyment and effective exercise of human rights.<sup>5</sup> Violent crime, corruption, and impunity are commonplace in Honduras and have been for decades.<sup>6</sup> Despite a recent downward trend, the murder rate remains among the highest in the world<sup>7</sup> as poverty and inequality continue to dominate Honduran society.<sup>8</sup>

As noted by the U.N. Special Rapporteur for the Independence of Judges and Lawyers, the independence of the judicial system and other essential democratic norms, such as separation of powers, remain a significant challenge in Honduras.<sup>9</sup> In a 2019 report, the Special Rapporteur expressed his concerns regarding the politically motivated removal of four justices of the Constitutional Chamber of the Supreme Court by Members of Congress, highlighting both the lack of transparency in judicial appointments and lack of public scrutiny in the selection of high officials.<sup>10</sup>

---

<sup>4</sup> See Inter-Am Comm'n H.R. Situation of Human Rights in Honduras (Report in Spanish). OEA/Ser.L/V/II (2019). Doc. 146, at ¶ 22, 365.

<sup>5</sup> FREEDOM HOUSE, *Freedom in the World: Honduras Country Report* (2019), <https://freedomhouse.org/country/honduras/freedom-world/2019>.

<sup>6</sup> Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on his mission to Honduras, A/HRC/35/23/Add.1*, UN OHCHR, ¶ 15 (2017), <https://digitallibrary.un.org/record/1298722?ln=en> [hereinafter *UN Extrajudicial Killing 2017 Report*].

<sup>7</sup> Honduras' murder average decreased from 86 per 100,000 people (2011-2012) to 40 per 100,000 people (2018). It remains, however, nine times higher than the world average murder rate. *Id.*, 3, at ¶ 15.

<sup>8</sup> U.N Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras, A/HRC/40/3Add.2*, UN OHCHR, Sec. V (Jan. 28, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/019/97/PDF/G1901997.pdf?OpenElement>.

<sup>9</sup> Special rapporteur on independence of judges and lawyers, *Preliminary observations about the official visit to Honduras*, UN OHCHR (Aug. 22, 2018), <https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24910&LangID=S>.

<sup>10</sup> *Id.*

Despite some recently implemented safeguards, corruption in Honduras remains deeply entrenched.<sup>11</sup> Multiple studies have demonstrated that corruption diverts essential resources away from the State.<sup>12</sup> Organized crime has infested government agencies and the broader political arena through corruption and collusion, while Honduran officials, including national legislators, have diverted significant State resources into their pockets and political campaigns.<sup>13</sup> Simultaneously, politicians have leveraged the public trust to protect and direct resources to their private-sector allies.<sup>14</sup>

## JUDICIAL INDEPENDENCE

The lack of judicial independence and corruption in the judiciary render the Honduran criminal justice system ineffective and unaccountable.<sup>15</sup> The Inter-American Commission on Human Rights (IACHR) has reported the existence of a system of “selective justice” that acts slowly, offers no effective response, and favors the interests of parties with public, political, or economic power.<sup>16</sup>

The IACHR has also expressed concern that the persistently high rate of violence in the country has been equally matched with cries for justice that have gone entirely unanswered – facilitating an environment of structural impunity.<sup>17</sup> The U.N. Special Rapporteur on the Situation of Human Rights Defenders (“U.N. Special Rapporteur on Human Rights Defenders”) has indicated that around 95 percent of femicides and 97 percent of homicides in Honduras go unpunished.<sup>18</sup> The Global Impunity Index ranks Honduras among the 13 countries with the highest impunity levels in the world.<sup>19</sup>

The U.N. Special Rapporteur for Extrajudicial Killings has pinpointed the pervasive effects of corruption on crucial State institutions, including the National Police. The Special Rapporteur has unearthed police involvement in bribe solicitation, extortion, and murder, often colluding with gangs and other organized criminal groups. According to the expert’s findings, there is a widespread feeling among the population that for many years the police has failed to fulfil its function, instead becoming part of the problem.<sup>20</sup> International human rights bodies are concerned with the increasing militarization of public security and excessive use of force by its

---

<sup>11</sup> In recent years, Honduras made some progress in combatting corruption with the support of the Organization of American States (OAS)-backed Mission to Support the Fight Against Corruption and Impunity in Honduras (MACCIH). However, on January 19, 2020, Honduran President Juan Orlando Hernández allowed the mandate of the MACCIH to expire.

<sup>12</sup> U.N. Human Rights Council, *supra* note 8, at Sec. V.

<sup>13</sup> See OEA, *Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH)*, [www.oas.org/es/sap/dsdme/maccih/new/default.asp](http://www.oas.org/es/sap/dsdme/maccih/new/default.asp) (last visited June 14, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> *UN Extrajudicial Killing 2017 Report*, *supra* note 6, at ¶ 77.

<sup>16</sup> In its most recent *in loco* visit to the country, the IACHR witnessed itself how political and business elites exerted excessive influence over the judiciary. See Inter-Am Comm’n H.R., *supra* note 4, at ¶ 75.

<sup>17</sup> See *id.* at ¶ 77.

<sup>18</sup> U.N. General Assembly. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders on his visit to Honduras. A/HRC/40/60/Add.2 (Jan. 11, 2019), at ¶ 22.

<sup>19</sup> Fundación Universidad de las Américas. Global Impunity Dimensions. Global impunity Index (GII 2017). San Andrés Cholula, Puebla, Mexico.

<sup>20</sup> *UN Extrajudicial Killing 2017 Report*, *supra* note 6, at ¶ 22.



members.<sup>21</sup> The U.N. Special Rapporteur on Extrajudicial Killings has emphasized the correlation between the surge of human rights abuses and militarization of citizen security.<sup>22</sup> The IACHR has also expressed concerns regarding the overlapping functions of the Military Police and the National Civil Police, and the involvement of the latter in criminal investigations.<sup>23</sup>

In this context, arbitrary arrests and detentions are frequently used as a means of intimidation.<sup>24</sup> These occurrences were especially worrisome during post-election demonstrations in 2017. According to Amnesty International, the government and the police used exceptional powers to illegally detain more than a thousand people for curfew violations in a period of ten days. A total of 118 individuals faced criminal proceedings, and twenty-one were held in pretrial detention. Additionally, the security forces were accused of using excessive force, having employed guns and tear-gas during and after the protests.<sup>25</sup>

## VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS

Human rights defenders are a common target of threats, harassment, intimidation, and beatings. During 2019, the number of human rights defenders killed in Honduras quadrupled compared to the year prior,<sup>26</sup> with environment, land, and water rights defenders facing an even higher risk of attack. The U.N. Special Rapporteur on Human Rights Defenders reports that such attacks have been perpetrated by members of the National Police and Army, hired assassins, and unidentified individuals. Moreover, profit-motivated attacks have been instigated by corrupt public officials, members of the business community, and private-sector security forces.<sup>27</sup> The vast majority of murders and attacks targeting rights defenders go uninvestigated and unpunished – the few investigations which do occur typically fail to hold anyone to account.<sup>28</sup> Most attacks are not even reported, with the U.N. Special Rapporteur discovering that out of 109 cases involving the death of an environmental rights defender, only 8 were reported.<sup>29</sup>

Political leaders, media outlets, and other non-State actors, such as companies and religious groups, frequently conduct smear campaigns targeting defenders and journalists.<sup>30</sup> For example, public officials have made statements associating human rights defenders with criminals, drug traffickers, terrorists, or ‘anti-progress’ groups.<sup>31</sup>

---

<sup>21</sup> *Id.* at ¶ 16.

<sup>22</sup> *Id.* ¶ 92.

<sup>23</sup> See Inter-Am Comm’n H.R., *supra* note 4, at ¶ 59.

<sup>24</sup> FREEDOM HOUSE, *supra* note 5.

<sup>25</sup> AMNESTY INTERNATIONAL, *Protest Prohibited: Use of Force and Arbitrary Detentions to Suppress Dissent in Honduras*, (2018), <https://www.amnesty.org/download/Documents/AMR3782892018ENGLISH.PDF>.

<sup>26</sup> FRONTLINE DEFENDERS, *Frontline Defender Global Analysis 2019* (2019), [https://www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2019\\_web.pdf](https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf).

<sup>27</sup> U.N. General Assembly, *supra* note 18, at ¶ 24.

<sup>28</sup> *Id.* at ¶ 25.

<sup>29</sup> Genevive Talbot, *Development and Peace. Honduras: Impunity for the murders of human and land rights defenders?*, DEVELOPMENT AND PEACE: CARITAS CANADA (Apr. 20, 2016), [www.devpc.org/en/blog/Honduras-impunity-murders-human-and-land-rights-defenders](http://www.devpc.org/en/blog/Honduras-impunity-murders-human-and-land-rights-defenders).

<sup>30</sup> U.N. General Assembly, *supra* note 18, at ¶ 32.

<sup>31</sup> Inter-Am Comm’n H.R., *supra* note 4, at ¶ 64.

Human rights defenders also face attempts by the authorities to use the criminal justice system as a tool to stymie and silence their advocacy. According to the IACHR, there is evidence that the State has leveraged such as charges arson, trespass, encroachments, and slander to hamper the protection of human rights.<sup>32</sup> Likewise, the U.N. Special Rapporteur on Human Rights Defenders has pointed out that the Honduran Criminal Code has been implemented in a way that imposes undue restrictions on freedom of assembly and expression, as well as the right to civic participation.<sup>33</sup> The Special Rapporteur found the practice of criminalizing or threatening to criminalize the human rights defenders to be widespread.<sup>34</sup>

Honduran human rights defenders have denounced the use of prolonged judicial proceedings, pretrial measures, and arrest orders aimed to harass defenders judicially and to silence the local resistance.<sup>35</sup> Public prosecutors are increasingly issuing indictments against well-known indigenous and human rights defenders and judges are granting arrest warrants with no evidence to link the accused to the supposed crimes.<sup>36</sup> Even when accusations do not result in incarceration, human rights defenders are often saddled with liberty-depriving alternative penalties such as obligatory weekly court appearances and even measures that benefit repressors and impede the right to peaceful protest such as prohibitions to travel abroad or return to the place of protest.<sup>37</sup> Such measures frequently entail significant financial consequences, increase burdens placed on family caretakers, and may even lead to the stigmatization of rights defenders' children.<sup>38</sup> Additionally, human rights defenders are repeatedly refused bail, leading to arbitrary detentions while they wait months or even years for their legal cases to proceed.<sup>39</sup> The IACHR and the U.N. Office of the High Commissioner for Human Rights (OHCHR) have concluded that the objective of these measures is not for the prosecution of crimes, but rather as a way of preventing rural and indigenous communities from carrying out legitimate actions in defense of human rights and the environment.

Recently, a new constitutional amendment, approved by the Honduran Congress, caused widespread international concern. It defines “terrorist associations” as any group of two or more people who commit a crime with the intention of ‘gravely subverting the constitutional order, gravely affecting public peace or provoking a state of terror in the population or any part of it.’”<sup>40</sup> According to the U.N. Working Group on Business and Human Rights, “[t]he vague and broad terminology may criminalize individuals exercising their right to freedom of expression, and of assembly and association.”<sup>41</sup> The U.N. Working Group recently expressed

---

<sup>32</sup> *Id.* at ¶ 157.

<sup>33</sup> U.N. General Assembly, *supra* note 18, at ¶ 19.

<sup>34</sup> *Id.* at ¶ 27.

<sup>35</sup> Inter-Am Comm’n H.R., *supra* note 4, at ¶ 158.

<sup>36</sup> “The Honduran [...] justice system is increasingly using laws that were created to prosecute and sanction organized crime structures in a spurious way” See UNHCHR & IACHR, *Joint Report on the Situation of Human Rights Defenders in the Americas*, 3-5 (May 2019).

<sup>37</sup> U.N. General Assembly, *supra* note 18, at ¶ 28.

<sup>38</sup> See *id.* at ¶ 28 and Inter-Am Comm’n, *supra* note 4 at ¶161.

<sup>39</sup> UNHCHR & IACHR, *supra* note 36, at 4.

<sup>40</sup> Working Group on Business and Human Rights, Statement at the end of visit to Honduras by the United Nations, Tegucigalpa (Aug. 28, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24925&LangID=E> (quoting the proposed language for the Criminal Code amendment).

<sup>41</sup> *Id.*

concerns over the impact that these amendments may have on human rights defenders and their legitimate work, calling on the Honduran government to delay the implementation of the new Code.<sup>42</sup>

## RURAL COMMUNITIES, INDIGENOUS PEOPLES AND DEVELOPMENT PROJECTS

In the words of the U.N. Special Rapporteur on Human Rights Defenders, “Honduras is one of the most dangerous places in the world for land rights defenders and environmental activists.”<sup>43</sup> The latest report by the corporate accountability watchdog, Global Witness, found Honduras to be the country with the most killings of environmental and land defenders per capita – for five years running.<sup>44</sup> Since 2009, 11123 environmental activists have been assassinated and many more have suffered threats, attacks, and imprisonment.<sup>45</sup> A 2019 joint report from the OHCHR and IACHR shows that peasant farmers and environmental defenders face an increased risk when denouncing unlawful or irregular activities that lead to the licensing and operation of extractive projects.<sup>46</sup> Additionally, environmental and indigenous rights defenders are maliciously targeted by private corporations with the backing of the State’s justice system.

The notorious case of Berta Cáceres is representative of the high risks environmental defenders face in Honduras. Berta Cáceres was a Lenca indigenous woman who, for over twenty years, defended the territory and rights of her people. “She faced off against illegal loggers, plantation owners, multinational corporations, and dam projects that would cut off food and water supplies to indigenous communities.”<sup>47</sup> As a response to her activism, Cáceres received threats of death, rape, and physical attack. She faced charges of “illegal possession of a firearm endangering the security of the Honduran state,” trespass, coercion, and damaging the property of a hydroelectric dam. On March 3, 2016, Berta Cáceres was murdered in her home. In 2018, a manager of the company Desarrollos Energéticos S.A. (DESA) and an active officer of the Honduran armed forces, among other aggressors were convicted for her murder. In the ruling, the court indicated that more than one DESA executive had knowledge and consented to the plan to assassinate Berta Cáceres, but to date, only one, David Castillo has faced judicial proceedings.

Today, natural resource exploration and extractive projects continue to be implemented in rural areas and indigenous territories without their meaningful consultation or free, prior, and informed consent.<sup>48</sup> According to the U.N. Working Group on Business and Human Rights, “the absence of a comprehensive legislative and regulatory framework on participation rights has contributed to the creation of scattered participation landscape, in which companies have large

---

<sup>42</sup> *Id.*

<sup>43</sup> U.N. General Assembly, *supra* note 18, at ¶ 41.

<sup>44</sup> GLOBAL WITNESS, *How Many More?* 16 (Apr. 20, 2015), <https://www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/>.

<sup>45</sup> GLOBAL WITNESS, *The Deadliest Place to Defend the Planet*, 1, 6 (Jan. 2017).

<sup>46</sup> UNHCHR & IACHR, *supra* note 36, at 2.

<sup>47</sup> FRONTLINE DEFENDERS, *Case History: Berta Cáceres*, <https://www.frontlinedefenders.org/en/case/case-history-bera-caceres> (last visited June 12, 2020).

<sup>48</sup> ACAFREMIN, *Informe Internacional Encuentra que el Gobierno Hondureño Viola los Derechos de los Defensores de Tocoa*, OCMAL (Mar. 2, 2020), <https://www.ocmal.org/informe-internacional-encuentra-que-el-gobierno-hondureno-viola-los-derechos-de-los-defensores-ambientales-de-tocoa/>.

margins of discretion on how to engage the community.”<sup>49</sup> Nevertheless, the Honduran state has not established an adequate regulatory framework that respects international human rights standards and goes beyond merely “socializ[ing]” a project.<sup>50</sup> In addition, the UN Working Group highlighted the systematic failure of public authorities to ensure meaningful participation from an early stage, when all options remain open and no irreversible decision has been made before the start of the project.<sup>51</sup> Moreover, in relation to the potentially affected indigenous communities, the IACHR has warned about the lack of prior, free and informed consultations.<sup>52</sup> The Working Group is particularly worried that the Framework Legislation on Free, Prior, and Informed Consultation and Consent with Indigenous and Afro-Honduran Peoples does not reflect international and regional norms on consultation and consent.<sup>53</sup> It is important to highlight that in traditional territories, a project aimed at exploration and extraction of natural resources must be carried out with a participatory and appropriate consultation process in relation to each community and its individual traditions.<sup>54</sup>

Furthermore, the U.N. Working Group has identified several recurring patterns of conflicts in Honduras connected to land and natural resources. First, the government has granted land titles to companies in disputed areas or areas used or controlled by small-scale farmers, including indigenous peoples. Second, the government has granted operating licenses to private corporations in non-core protected areas, affecting communities and indigenous peoples’s cultural heritage and livelihoods. Third, government authorities have conducted numerous evictions, seeking to allow business to operate at the expense of current residents. These actions are frequently conducted with the excessive use of force by the police and military, and, in some cases, with the involvement of private security companies, resulting in loss of life and grave injury.<sup>55</sup>

## CASE HISTORY

The Bajo Aguán valley in Carlos Escaleras National Park has been an epicenter of violence for over 25 years – initially due to landgrabs and abuse, and now involving illegal land concessions and alleged water pollution from an open-air iron oxide mine run by Pinares Investment.<sup>56</sup> This conflict, which has involved local communities, corporate agents, local police, and the Honduran

---

<sup>49</sup> Working Group on Business and Human Rights, *supra* note 40.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Inter-Am Comm’n H.R., *supra* note 4, at ¶ 190.

<sup>53</sup> Working Group on Business and Human Rights, *supra* note 40.

<sup>54</sup> See *Garifuna Trinfo de la Cruz Community & its Members v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser C) No. 305 (Oct. 8, 2015).

<sup>55</sup> *Id.* Working Group on Business and Human Rights, *supra* note 40.

<sup>56</sup> ACAFREMIN, *Voces desde el Territorio: Como la Industria Minera Mundial se está Beneficando con la Pandemia de COVID-19*, 20 (June 2020), [http://acafremin.org/images/documentos/voces\\_desde\\_el\\_territorio\\_-\\_web.pdf](http://acafremin.org/images/documentos/voces_desde_el_territorio_-_web.pdf); Jared Olson, *Honduras’s Deadly Water Wars*, THE NATION (Mar. 24, 2020), <https://www.thenation.com/article/world/honduras-mine-conflict/>.

military, has been described as a “mini war,” resulting in the murder or disappearance of over 150 campesinos between 2010 and 2014 and leaving many more in State custody.<sup>57</sup>

In August of 2018, when the Pinares Investment mining project allegedly began to contaminate the Guapinol river, which supplies drinking water to fourteen nearby communities, residents of the local Guapinol community erected a “Camp in Defense of Water and Life” on the path to the mine.<sup>58</sup> Weeks later, on September 7, the mine’s security guards attempted to evict those in the camp, shooting and injuring a young community-member in front of dozens of witnesses.<sup>59</sup> In response, the community took custody of the director of the Pinares Investment security forces in order to hand him over to the police.<sup>60</sup> The company alleges that during the turmoil of the attempted eviction, the director’s truck and company containers were set on fire.<sup>61</sup> A second eviction occurred on October 27, 2018, when 1,500 police and military personnel violently attacked the camp with live bullets and tear gas.<sup>62</sup> The violent altercation resulted in the death of two military personnel and one community member – over a dozen other individuals were wounded.<sup>63</sup>

The Public Prosecutor’s office took no action to investigate the shooting of the young community-member, but rather focused exclusively on prosecuting the Guapinol community members. In October of 2018, the prosecutor’s office issued arrest warrants, approved by a National Jurisdiction judge in San Pedro Sula, for the arrest of eighteen community members.<sup>64</sup> The defendants were charged with trespassing (or “unlawful occupation”) and property damage. On February 21, 2019, thirteen defendants voluntarily appeared before a court in La Ceiba where they learned of a second arrest warrant accusing 31 community members of unjust deprivation of liberty, aggravated arson, theft, and unlawful association.<sup>65</sup> The second warrant named twelve of

---

<sup>57</sup> Olson, *supra* note 56.

<sup>58</sup> UUSC, *In Face of Pandemic, Detained Human Rights Defenders Must be Immediately Released* (Mar. 26, 2020), <https://www.uusc.org/in-face-of-pandemic-detained-human-rights-defenders-must-be-immediately-released/>; Kelsey Hawkins-Johnson, *Celebrating Environmental Defenders at the Letelier-Moffitt Human Rights Awards*, INSTITUTE FOR POLICY STUDIES (Oct. 27, 2019), <https://ips-dc.org/celebrating-environmental-defenders-at-the-letelier-moffitt-human-rights-awards/>; Hannah Hafter, *Water is Life: The Criminalization of the Defenders of Guapinol, Honduras*, UUSC (Feb. 28, 2019), <https://www.uusc.org/water-is-life-the-criminalization-of-the-water-defenders-of-guapinol-honduras/>.

<sup>59</sup> EarthRights International, *Criminalized Guapinol Earth Rights Defenders Should be Immediately Released* (Feb. 27, 2020), <https://earthrights.org/blog/criminalized-guapinol-earth-rights-defenders-should-be-immediately-released/>; OCMT, *Honduras: Nueva Criminalización contra los Defensores de Guapinol* (Aug. 28, 2019), <https://www.omct.org/es/human-rights-defenders/urgent-interventions/honduras/2019/08/d25488/>.

<sup>60</sup> CMDBCP & CCI, *Cronología de la Criminalización del Campaneto Guapinol*, 13 (Aug. 2019), <http://www.oeku-buero.de/files/docs/Laender/Honduras/Cronolog%C3%ADa%20Caso%20Guapinol%20Final.pdf>.

<sup>61</sup> *Id.* (describing the company’s accusations against the Guapinol community members related to the alleged detention of the security company director and arson).

<sup>62</sup> Olson, *supra* note 56; UUSC, *supra* note 58.

<sup>63</sup> Olson, *supra* note 56; TIEMPO DIGITAL, *Intensifican Operativos y el Desarme en Guapinol, tras Muerte de Soldados* (Nov. 1, 2018), <https://tiempo.hn/intensifican-operativos-y-el-desarme-en-guapinol-tras-muerte-de-soldados/>.

<sup>64</sup> ACAFREMIN, *Coalición Contra la Impunidad Constata Terrible Violación de Derechos Humanos en El Guapinol, Tocoa, Colón* (Nov. 16, 2018), <https://www.acafremin.org/es/noticias-regionales/honduras/314-coalicion-contra-la-impunidad-constata-terrible-violacion-de-derechos-humanos-en-el-guapinol-tocoa-colon>.

<sup>65</sup> OCMT, *supra* note 59; FIDH, *Honduras: Cese de la Criminalización contra los 13 Pobladores de Guapinol* (Mar. 13, 2019), <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/honduras-cese-de-la-criminalizacion-contra-los-13-pobladores-de>.

the thirteen defenders in court that day.<sup>66</sup> Once Judge Juan Carlos Irías de Leon, who was presiding over the hearing in La Ceiba, made clear his intention to detain the community members, their attorneys decided to file for a transfer to a National Jurisdiction Court (NJC) in Tegucigalpa.<sup>67</sup>

The thirteen community members were held in pretrial detention in Tegucigalpa until National Jurisdiction judge, Víctor Méndez, dismissed the charges against the thirteen arrested defenders during the initial hearings.<sup>68</sup> The judge considered that the actions fell within the Honduran Secretary of Human Rights' definition of a "socio-environmental conflict."<sup>69</sup> Consequently, the judge decided that the protest was legitimate, and that it was the only tool available for civil society actors to gain the attention of relevant State officials.<sup>70</sup> In regards to the charges contained in the second arrest warrant, the judge found the temporary (~three-hour) detention of the security director to be a legitimate response to shooting of a community member by one of his officers, particularly due to the fact that the police did not arrest the shooting officer.<sup>71</sup> The judge held that Article 84 of the Honduran Constitution empowers any citizen to detain a person with the intention of handing him or her over to the proper authorities, which was found to be the case for the acts in question.<sup>72</sup> Finally, the judge dismissed the theft and damages charges, finding it impossible to identify the specific authors of the crimes and based on some doubt that a fire had occurred at all.<sup>73</sup> By March 2, the National Jurisdiction judge definitively dismissed all charges and released the detainees on March 6.<sup>74</sup> Pinares Investments appealed the decision, allowing the case to be reopened.<sup>75</sup>

The appeals were resolved in March 2020 but not made known to the defense attorney till August of that year. The Court of Criminal Appeals partially reversed the March 2019 definitive dismissal meaning that five of the defenders were formally linked to the proceedings as alleged perpetrators of unjust deprivation of liberty and aggravated arson. That Court also decided that the facts of the accusation of robbery remained unclear and issued a provisional dismissal of that crime. Lastly, the Court confirmed the definitive dismissal of the crime of illicit association. On August 26, 2019, seven additional community leaders appeared voluntarily before the NJC in Tegucigalpa to address the charges contained in the second aforementioned warrant.<sup>76</sup> The seven defenders came carrying a casket representing an eighth community member listed in the arrest warrant, Don Antonio Martínez Ramos, who had died in 2015, long before the acts in question, and underlining the false nature of the charges against them.<sup>77</sup> They were also joined by an

---

<sup>66</sup> OCMT, *supra* note 59; FIDH, *supra* note 65.

<sup>67</sup> OCMT, *supra* note 59; CMDBCP & CCI, *supra* note 60, at 10.

<sup>68</sup> OCMT, *supra* note 59.

<sup>69</sup> CMDBCP & CCI, *supra* note 60.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 13.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 10.

<sup>75</sup> *Id.*

<sup>76</sup> UUSC, *Urgent Update: Guapinol Water Defenders Trial in Honduras* (Aug. 29, 2019), <https://www.uusc.org/urgent-update-guapinol-water-defenders-trial-in-honduras/>.

<sup>77</sup> *Id.*

eighth community member, Jeremías Martínez Díaz, who was being held in pretrial detention in La Ceiba since December 2018 facing the same charges.<sup>78</sup>

The defense attorneys were informed on August 28 that the subsequent hearings would take place in San Pedro Sula in front of National Jurisdiction Judge Carlos Irías de León.<sup>79</sup> However, due to potential bias and irregularities arising out of the last interaction between the Guapinol community members and the judge on February 21, 2019, the defense attorneys requested the judge recuse himself from the proceedings and had the hearings moved back to Tegucigalpa.<sup>80</sup>

On August 30, 2019, one of the community members, Arnold Javier Alemán, faced a separate hearing in front of National Jurisdiction Judge Claudio Aguilar, who granted Alemán a temporary dismissal on the charges of “illegal trespass” and “damages,” leaving the remainder of the charges intact.<sup>81</sup>

Back in Tegucigalpa, the case was assigned to National Jurisdiction Judge Víctor Méndez – the same judge who dismissed the charges against the thirteen community members in February.<sup>82</sup> However, attorneys representing Pinares Investment requested the recusal of Judge Méndez citing “abuse of power” and replacing him with National Jurisdiction Judge Lizeth Vallecillo.<sup>83</sup>

At an initial hearing on September 1, 2019, Judge Vallecillo addressed a complaint submitted by Santos Hernández Corea, an employee of Pinares Investments company.<sup>84</sup> In his complaint, Corea asserted that he and thirty other company security guards were preparing for work one day in January 2018 when 300 heavily armed Guapinol community members showed up, threatened them, destroyed their work equipment, and set a vehicle on fire.<sup>85</sup> The complaint added that the company’s security guards only carried paint-ball-type guns with rubber bullets, but that the Guapinol community members carried firearms.<sup>86</sup> In response, an attorney for the defenders explained that the public prosecutor’s office had not adequately investigated the case and did not have sufficient evidence to prove the crime of “unlawful” or “criminal” association, which was

---

<sup>78</sup> FRONT LINE DEFENDERS, *Honduras: Upcoming Hearing of Members of Comité Municipal de Defensa de los Bienes Comunes y Públicos amid Increasing Tensions* (Aug. 29, 2019), [https://www.frontlinedefenders.org/sites/default/files/ua\\_hnd\\_eng\\_290819.pdf](https://www.frontlinedefenders.org/sites/default/files/ua_hnd_eng_290819.pdf).

<sup>79</sup> *Id.*; FRONT LINE DEFENDERS, *Upcoming Hearing of Members of Comité Municipal de Defensa de los Bienes Comunes y Públicos amid Increasing Tensions*, <https://www.frontlinedefenders.org/en/case/upcoming-hearing-members-comite-municipal-de-defensa-de-los-bienes-comunes-y-publicos-amid> [hereinafter *Frontline Case History*] (last visited June 12, 2020).

<sup>80</sup> CMDBCP & CCI, *supra* note 60, at 19; *Frontline Case History*, *supra* note 79.

<sup>81</sup> *Frontline Case History*, *supra* note 79.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> RADIO PROGRESO HN, *Estado Insiste en Acusaciones contra Ambientalistas Defensores del Río Guapinol* (Aug. 27, 2019), <https://wp.radioprogreso.hn.net/estado-insiste-en-acusaciones-contra-ambientalistas-defensores-del-rio-guapinol/> [hereinafter *Estado Insiste en Acusaciones*] (noting the hearing was postponed by one day, originally scheduled on November 5).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

necessary to trigger National Jurisdiction.<sup>87</sup> Specifically, the attorney argued that the prosecutors had to prove that the community members committed crimes with the goal of turning a profit.<sup>88</sup>

Despite the concerns raised by the defense attorneys, Judge Vallecillo issued a ruling that linked the defenders to judicial proceeding for crimes of aggravated arson and unjust deprivation of liberty while dismissing the crimes of illicit association and theft. Additionally, the judge ordered without any justification that community defenders be placed in pretrial detention in the Olanchito Criminal Center.<sup>89</sup> Faced with these decisions, the defense team filed an appeal, which was resolved in March 2020 but communicated in August of that year.<sup>90</sup>

The National Penitentiary Institute intervened in the case and sent the defenders to La Tolva. They were detained there for approximately two months until pressure from family members, international human rights organizations, and their defense attorneys caused the National Penitentiary Institute to transfer the men in October to the Olanchito Criminal Center, a minimum security facility closer to their homes.<sup>91</sup> However, according to Guapinol defense attorney, Efraín Ramírez, there is no factual or legal basis for the men to be detained at all – the crimes at issue do not necessitate pretrial detention and, furthermore, the community leaders voluntarily presented themselves in court – an act of good faith which generally guides against this type of deprivation of liberty.<sup>92</sup> In addition to demanding pretrial detention, Judge Vallecillo dismissed the charges against the deceased defendant and dropped the count of “unlawful association” across the board, finding the latter to be too vaguely defined by the prosecution.<sup>93</sup>

The defense attorneys promptly filed a writ of habeas corpus with the Constitutional Chamber of the Honduran Supreme Court challenging the pretrial detention of the Guapinol community

---

<sup>87</sup> *Id.*

<sup>88</sup> The Courts with National Jurisdiction were established in 2011 with limited jurisdiction, with the specific intent to address organized crime and "high impact" criminal offenses, such as murders, kidnappings and drug trafficking. The objective of the restricted mandate of these courts is to remove the cases mentioned above from the jurisdiction of local judges, who may be more susceptible to bias or infiltration by criminal groups. Special Rapporteur on extrajudicial, summary or arbitrary executions, (May 27, 2016), Preliminary observations on the official visit to Honduras, OHCHR, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20030&LangID=E> [hereinafter, UN Extrajudicial Executions Report 2016].

<sup>89</sup> UUSC, *supra* note 76; Hannah Hafter, “*When They Poison the River, it’s like They’ve Laid Hands on my Mother*”: Accompanying Guapinol Water Defenders, UUSC (Oct. 15, 2019), <https://www.uusc.org/accompanying-the-guapinol-water-defenders-delegation/> [hereinafter *Poison the River*]; RADIO PROGRESO HN, *Abitrariamente envían a Cárcel de Máxima Seguridad a Defensores del Río Guapinol* (Sept. 6, 2019), <https://wp.radioprogreso.hn.net/arbitrariamente-envian-a-carcel-de-maxima-seguridad-defensores-del-rio-guapinol/> [hereinafter *Abitrariamente envían a Cárcel*].

<sup>90</sup> The Court of Appeals dismissed the appeal filed by the defense, confirmed the definitive dismissal of the crime of illicit association, and decreed the provisional dismissal on the crime of theft. Due to the lack of communication, the defense team presented a supplementary brief that was not considered by the Court of Appeals. The brief demonstrates that full compliance with the new criminal code in Honduras (Decree 130-17) requires a dismissal of the crime of aggravated arson and to reduce the penalty in terms of the crime of damages.

<sup>91</sup> RADIO PROGRESO HN, *No hay Razones Jurídicas para Privar de Libertad a Defensores del Río Guapinol* (Nov. 1, 2019), <https://wp.radioprogreso.hn.net/no-hay-razones-juridicas-para-privar-de-libertad-a-defensores-del-rio-guapinol/> [hereinafter *No hay Razones*]; UUSC, *Take Action for the Guapinol, Honduras Water Defenders* (Oct. 17, 2019), <https://www.uusc.org/take-action-for-the-guapinol-honduras-water-defenders/>.

<sup>92</sup> *No hay Razones*, *supra* note 91.

<sup>93</sup> CMDBCP & CCI, *supra* note 60, at 18.



leaders.<sup>94</sup> One of the attorneys, Carlo Jiménez, asserted that the detention was unlawful on various grounds. First, he explained that, based on the crimes alleged, the NJC did not have jurisdiction over the case.<sup>95</sup> Second, he argued that Judge Lizeth Vallecillo failed to provide a justification for requiring pretrial detention – a punishment reserved, under the Honduran Criminal Code, for extreme situations.<sup>96</sup>

On or around September 25, 2019, the National Jurisdiction Court of Appeals rejected the defense’s habeas petition.<sup>97</sup> In response, prominent international advocacy organizations, including the Due Process of Law Foundation (DPLF), Human Rights Research and Education Centre, and the Collective Corporation of Lawyers “José Alvear Restrepo” filed a joint amicus brief echoing the defense attorneys’ previously expressed concerns and asserting that the community leaders’ detention was in violation of both domestic and international law.<sup>98</sup>

On November 6, 2019, the Guapinol community defenders had another hearing in front of Judge Lizeth Vallecillo.<sup>99</sup> At the hearing, the judge upheld her decision to place them in pretrial detention and reportedly did not allow national or international court observers into the courtroom.<sup>100</sup> According to the defense attorneys, Judge Vallecillo justified her decision by asserting that the community leaders might face serious charges, which might cause them to flee or imbed themselves further into a criminal organization.<sup>101</sup> One of the defense attorneys, Omar Menjivar, views this rationale as arbitrary, citing the fact that there is no evidence that the community leaders are part of a criminal organization and, furthermore, Judge Vallecillo already dismissed the charge of unlawful association, which was the only charge potentially related to organized crime.<sup>102</sup> The outcome of this hearing makes it seem as if their guilt has been prejudged and predetermined.<sup>103</sup> Consequently, the defense appealed the judge’s decision. In March 2020, said court denied the appeal and confirmed the decision rendered by Judge Vallecillo, but this information was not communicated until August.

The defense team and human rights advocates have continued to submit motions and appeals on behalf of the Guapinol community members. On February 27, 2020, the Center for International Justice and Law (CEJIL) submitted an amicus brief to the National Jurisdiction Court of Appeals

---

<sup>94</sup> *Abitrariamente envían a Cárcel*, *supra* note 89.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* See also, CRITERIO HN, *Vida de Defensores de Guapinol está en Peligro por la Negligencia del Poder Judicial* (Mar. 19, 2020), <https://criterio.hn/vida-de-defensores-de-guapinol-esta-en-peligro-por-la-negligencia-del-poder-judicial/> (explaining that under Honduran law, pretrial detention is supposed to be the exception, not the norm, and that this case presents zero evidence that the defendants would flee or destroy evidence if they awaited trial in their homes).

<sup>97</sup> DPLF, Human Rights Research and Education Centre, *Colectivo de Abogados José Alvear Restrepo, Presentación de Amicus Curiae: No. Expediente: 565-19 (Corte de Apelaciones) / SCO-0761-2019 Sala de lo Constitucional*, Due Process Law Foundation (Nov. 4, 2019), [http://www.dplf.org/sites/default/files/amicus\\_curiae\\_detencion\\_ilegal\\_caso\\_guapinol\\_honduras.pdf](http://www.dplf.org/sites/default/files/amicus_curiae_detencion_ilegal_caso_guapinol_honduras.pdf).

<sup>98</sup> *Id.*

<sup>99</sup> *Frontline Case History*, *supra* note 79.

<sup>100</sup> *Id.*

<sup>101</sup> RADIO PROGRESO HN, *Jueza Niega Libertad a Defensores del Río Guapinol* (Nov. 6, 2019), <https://wp.radioprogreso.hn.net/jueza-niega-libertad-a-defensores-del-rio-guapinol/> [hereinafter *Jueza Niega Libertad*].

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

advocating the release of the Guapinol community defenders due to the arbitrary and unlawful nature of their detention.<sup>104</sup> Subsequently, on March 11, 2020, defense lawyers filed a request for a new hearing date.<sup>105</sup> In the pursuit of obtaining freedom for the community defenders, the defense lawyers suggest the possibility of bond. In March 2020, the court found that it did not have jurisdiction to review the precautionary measures. This decision was not communicated until August.

Additionally, amid the rising numbers of confirmed COVID-19 cases in Honduras, a group of civil society organizations including the National Committee against Torture and Cruel, Inhumane, and Degrading Treatment (MNP-CONAPREV) and the Committee for Family of the Detained and Disappeared (COFADEH), amongst others, filed a second habeas corpus petition with the Supreme Court of Honduras in late March 2020,<sup>106</sup> after MNP-CONAPREV rendered a report on this risk of contagion for those in detention. Furthermore, according to Members of the European Parliament, at least ten legal and administrative challenges have been brought against the Pinares Investment mining project, all of which have similarly gone unanswered by the Honduran justice system.<sup>107</sup> The Center for Justice and International Law (CEJIL) submitted a request for precautionary measures to the IACHR.

Other members of the Guapinol community have continued to face harassment as well. There were reportedly a series of break-ins at the office of the Coordination for Grassroots Movements in Aguán (COPA) in December 2019 and January 2020 – many of whose members belong to the Guapinol community.<sup>108</sup> Unidentified individuals stole a computer and printer and ransacked drawers filled with documents.<sup>109</sup> COPA member Carlos Leonel George reported the incident to the police along with other organization members.<sup>110</sup> Rather than investigate the break-ins, the police arrested Carlos Leonel George, who was one of the twelve Guapinol community members who voluntarily went to court in February 2019, only to have all the charges against them dismissed.<sup>111</sup> Even after Carlos Leonel George proved that the charges against him had already been dropped for lack of evidence, the police reportedly still attempted to arrest and have him prosecuted before he was ultimately released.<sup>112</sup>

---

<sup>104</sup> CRITERIO HN, *CEJIL Solicita Revocación de Prisión Preventiva a Defensores de Guapinol* (Feb. 27, 2020), <https://criterio.hn/cejil-solicita-revocacion-de-prision-preventiva-a-defensores-de-guapinol/>.

<sup>105</sup> European Parliament, *Call to Free Guapinol Rights Defenders Amidst COVID Crisis* (Apr. 6, 2020), <https://eulatnetwork.org/wp-content/uploads/2020/04/Letter-to-Honduras-authorities-re-Guapinol-HRDs-06.04.20201.pdf>.

<sup>106</sup> Marc Allas, *Coronavirus: CONAPREV Demanda que Ambientalistas de Guapinol enfrentan Juicio en Libertad por Existir Riesgo de Contagio*, DEFENSORES EN LINEA (Apr. 11, 2020), <http://defensoresenlinea.com/coronavirus-conaprev-demanda-que-ambientalistas-de-guapinol-enfrenten-juicio-en-libertad-por-existir-riesgo-de-contagio/>.

<sup>107</sup> European Parliament, *supra* note 105.

<sup>108</sup> SYDNEY WITH HONDURAS, *January and February 2020 Honduras Coup Update* (Apr. 1, 2020), <https://sydneywithhonduras.wordpress.com/2020/04/01/january-and-february-2020-honduras-coup-update/>; Marianne Gulli, *Nye Angrep Mot COPA Og Aktivistene I Guapinol*, LATIN-AMERIKAGRUPPENE I NORGE (LAG) (Feb. 2, 2020), <http://www.latin-amerikagruppene.no/artikkel/2020/02/02/nye-angrep-mot-copa-og-gruveaktivistene-i-guapinol>.

<sup>109</sup> SYDNEY WITH HONDURAS, *supra* note 108.

<sup>110</sup> *Id.*

<sup>111</sup> SYDNEY WITH HONDURAS, *supra* note 108; Gulli, *supra* note 108.

<sup>112</sup> Gulli, *supra* note 108.

According to civil society organizations, Pinares Investment has initiated a smear campaign against the Guapinol community defenders. On Twitter the company has asserted that “the Honduran environmentalists are really criminals that have killed innocent people.”<sup>113</sup> Similar attacks followed community members to Washington, D.C. where they traveled to receive the Letelier-Moffitt Human Rights Award in recognition of their environmental and human rights advocacy in Honduras.<sup>114</sup> Pinares Investment contacted various U.S. congressional offices to share “a defamatory and gruesome video making baseless claims that the water defenders are murderers and drug traffickers.”<sup>115</sup> Members of the Guapinol community also noted an individual outside of the award event handing out flyers that accused the defenders of committing brutal murders.<sup>116</sup> Journalists covering the conflict have similarly reported intimidation campaigns aimed at silencing their efforts toward holding Pinares Investment accountable for their actions in the region.<sup>117</sup>

## LEGAL ANALYSIS

### APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR); jurisprudence from the U.N. Human Rights Committee (HRC), tasked with monitoring implementation of the ICCPR; the American Convention on Human Rights (“American Convention”); jurisprudence from the Inter-American Court of Human Rights (“Inter-American Court”), tasked with interpreting and enforcing the American Convention; and reports and jurisprudence from the IACHR, tasked with monitoring the human rights situation in the Americas, including compliance with the American Convention. Honduras ratified the ICCPR in 1997 and its Optional Protocol I in 2005. Honduras ratified the American Convention in 1977 and has recognized the jurisdiction of the Inter-American Court since 1981.

### INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

#### RIGHT TO BE NOTIFIED IN DETAIL OF THE ACCUSED CHARGES

According to Article 14(3)(a) of the ICCPR, an accused person must be informed of the charges against him or her prior to the commencement of criminal proceedings. The HRC has stated that, in the absence of advanced notice, both the right of defendants to be adequately prepared for trial and the right to choose legal assistance under Article 14(3)(b) may be violated.<sup>118</sup> Similarly, in interpreting Article 8(2)(b) (Right to Have Prior Notification of Charges) of the American Convention, the Inter-American Court has noted that a defendant’s right to be notified about the

---

<sup>113</sup> Olson, *supra* note 56.

<sup>114</sup> *Id.*; *Poison the River*, *supra* note 89.

<sup>115</sup> *Poison the River*, *supra* note 89.

<sup>116</sup> *Id.*

<sup>117</sup> ACAFREMIN, *Más Presiones contra Periodista Rigoberto Mendoza que Cubre Conflicto Minero Guapinol* (Nov. 21, 2018), <https://www.acafremin.org/es/noticias-regionales/honduras/325-mas-presiones-contra-periodista-rigoberto-mendoza-que-cubre-conflicto-minero-en-guapinol>; Olson, *supra* note 56.

<sup>118</sup> See Daniel Monguya Mbenge v. Zaire, Communication No. 16/1977, 25 March 1983 (U.N. Doc. CCPR/C/OP/2), ¶ 14.1

nature of, and rationale for, charges against him or her is triggered the moment the person is accused – even before formal processes are commenced.<sup>119</sup> Notably, the Court has emphasized that in criminal proceedings “the detainee and those who represent him or are his legal guardians have the right to be informed of the motives and reasons of the detention when it takes place, as well as regarding the rights of the detainee.”<sup>120</sup> To fulfill this obligation, the judicial authorities must provide: “(a) oral or written information on the reasons for the detention, and (b) notification, in writing, of the charges.”<sup>121</sup>

In the case of the Guapinol community members, the defendants were not duly notified of the crimes for which they were charged. The thirteen defenders who voluntarily presented themselves in front of the court in La Ceiba in February of 2019 learned of the second arrest warrant – affecting all but one of the thirteen individuals – upon entering the court room that day.<sup>122</sup> This was in spite of the fact that the defense attorneys specifically inquired about additional charges before bringing their clients to court in February and were told that no additional charges existed.<sup>123</sup>

## RIGHT TO A HEARING WITHIN A REASONABLE TIME

The HRC has determined that Article 14(3)(c) of the ICCPR provides all persons with a right to not be kept in prolonged uncertainty about their fate within the criminal justice system and a right against unnecessarily extended pretrial detention.<sup>124</sup> These rights also serve the interests of justice, as they ensure criminal investigations and prosecutions are conducted in a timely manner when physical evidence and witnesses are more readily available.<sup>125</sup> The following factors may be considered when assessing a potential violation of the right to a hearing within a reasonable time: 1) the complexity of the matter, 2) the procedural activity of the party, 3) the conduct of the judicial authorities, and 4) the effects on the legal situation of the person involved in the proceedings.<sup>126</sup> The Inter-American Court has understood this to mean that a “detention [...] cannot be for longer than a reasonable time and cannot endure for longer than the grounds invoked to justify it. Failure to comply with these requirements is tantamount to a sentence without a conviction, which contradicts universally recognized general principles of law.”<sup>127</sup>

---

<sup>119</sup> I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment, 1288 (Nov. 17, 2009), [https://iachr.ils.edu/sites/default/files/iachr/Cases/Barreto\\_Leiva\\_v\\_Venezuela/Barreto%20Leiva%20v.%20Venezuela.pdf](https://iachr.ils.edu/sites/default/files/iachr/Cases/Barreto_Leiva_v_Venezuela/Barreto%20Leiva%20v.%20Venezuela.pdf).

<sup>120</sup> I/A Court H.R., Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, ¶ 92.

<sup>121</sup> See I/A Court H.R., Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, ¶ 132.

<sup>122</sup> CMDBCP & CCI, *supra* note 60, at 11.

<sup>123</sup> *Id.*

<sup>124</sup> See Human Rights Committee. General Comment 32. 23 Aug. 2007(CCPR/C/GC/32), ¶ 35.

<sup>125</sup> See I/ACt.H.R. Case of Coc Max et al. (Massacre of Xamán) v. Guatemala. Merits, Reparations and Costs. Judgment of Aug. 22, 2018. Series C No. 356, ¶ 80.

<sup>126</sup> See I/A Court H.R., Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293, ¶ 255.

<sup>127</sup> I/A Court H.R., Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of Sept. 2, 2004. Series C No. 112, ¶ 229.

In the Guapinol case, eight persons are still being held as part of the pretrial detention measures while more than nine months have passed without a substantive decision regarding their freedom. This violation is even more severe in the case of Jeremías Martínez Díaz, who has been detained since December 2018 on these same charges. The uncertainties surrounding COVID-19 intensify these violations as the resumption of court procedures remains uncertain.

## RIGHT TO JUDICIAL REVIEW OF PRETRIAL DETENTION

Article 9 of the ICCPR protects the right of every individual deprived of liberty to appeal the lawfulness of his or her detention before a competent judge or court, so that the latter may decide without delay on the matter and, if the detention is deemed illegal, order his or her release.<sup>128</sup>

Article 9 also states that pretrial detention should be the exception, not the rule.<sup>129</sup> Even when the initial detention may have been lawful, if the justification for continued detention is not subject to periodic review, it is considered to be arbitrary and in violation of Article 9 of the ICCPR.<sup>130</sup>

Article 7(6) of the American Convention also protects the rights of those subjected to pretrial detention. The Inter-American Court has stated that “when a person is detained, judges must not wait until delivering an acquittal for him to recover his liberty, but must periodically assess whether the reasons and purposes that justified the deprivation of liberty remain, whether the preventive measure is still absolutely necessary to achieve these purposes, and whether it is proportionate.”<sup>131</sup> Furthermore, the Court has emphasized that the ability for detainees to pursue review “must not only exist formally by law but must be effective; in other words, comply with the purpose of obtaining a prompt decision on the lawfulness of the arrest or detention.”<sup>132</sup>

Regarding the promptness of a decision, the HRC has highlighted that the right to review is especially important for persons deprived of liberty. Therefore, such persons “are entitled not merely to take proceedings, but to receive a decision, and without delay.”<sup>133</sup>

However, the Guapinol defendants have not been afforded these guarantees. Firstly, the National Jurisdiction judge held a closed-door hearing in which the petition for alternative measures was rejected without justification. Then, after the defendants appealed this resolution, the judge neglected to forward the appeal to the tribunal’s review for more than three months. In response to the unreasonable delay in their appeal, the defendants requested a new hearing. However, the judge denied their request, alleging that there was already an appeal in the process. Thus, the appeals tribunal failed to decide upon requests for new hearings in at least two instances. In doing so, the court has denied the detainees their right to judicial review, which they are guaranteed under Honduran and international law. Furthermore, It should be noted that, by way of the Court of Appeals’ abstention, the offer of economic surety guaranteed in the National

---

<sup>128</sup> I/A Court H.R., Case of *J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of Nov. 27, 2013. Series C No. 275, ¶ 166. *See also*, Human Rights Committee, General Comment 35, CCPR/C/GC/35, ¶ 39 (Dec. 16, 2014), <https://www.refworld.org/docid/553e0f984.html> [hereinafter, *GC 35*].

<sup>129</sup> *GC 35*, *supra* note 128, at ¶ 38.

<sup>130</sup> *Id.* at ¶ 12, 38.

<sup>131</sup> I/A Court H.R., *Yvone Neptune v. Haiti* (Merits, Reparations and Costs), ¶ 108 (May 6, 2008), [https://iachr.ils.edu/sites/default/files/iachr/Court\\_and\\_Commission\\_Documents/Yvon%20Neptune%20v.%20Haiti.Merits.05.06.08.pdf](https://iachr.ils.edu/sites/default/files/iachr/Court_and_Commission_Documents/Yvon%20Neptune%20v.%20Haiti.Merits.05.06.08.pdf).

<sup>132</sup> I/A Court H.R., Case of *Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment, Series C No. 289, ¶ 135 (Nov. 20, 2014), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_289\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_289_ing.pdf).

<sup>133</sup> *GC 35*, *supra* note 128, ¶ 47.

Constitution was also rejected, which constitutes a clear violation of the right to personal freedom according to international standards. Additionally, the Constitutional Chamber of the Supreme Court of Justice has failed to respond to two writs of habeas corpus in a timely fashion – one filed in early September 2019 and the second filed in March 2020.

## RIGHT TO KNOW THE BASIS OF AN ARREST OR INDICTMENT

The American Convention imposes upon States the duty to provide the accused with the basis of an arrest or indictment, [a]s one of the “due guarantees” included in Article 8(1) in order to safeguard the right to due process. Without prejudice to the above, it is necessary to evaluate any threat to the principle of presumption of innocence and to exercise the right to a defense in situations where a criminal judge is presiding. The Inter-American Court understands this duty to be linked to the “proper administration of justice, protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.”<sup>134</sup> In the view of the Court, any decision that affects human rights is arbitrary if it is not properly grounded in the law.<sup>135</sup>

In the case at hand, neither of the arrest warrants were duly substantiated. The prosecutors have not provided any supporting evidence for the charges against the Guapinol community and have failed to rebut strong indications that the charges are fabricated. Local civil society organizations note that the Public Prosecutor’s office conducted almost fifty hours of hearings during the February and March trials, during which it became clear that the prosecutors completely lacked evidence for the arrests.<sup>136</sup> Most egregiously, the prosecutors asserted that the land rights defenders were connected with a local gang, pointing specifically to an alleged gang member named Antonio Martínez Ramos, who could not have played a role in the relevant company-community conflict since he passed away years earlier in 2015.

Furthermore, Judge Lizeth Vallecillo have provided zero evidence backing the decision to place the Guapinol community leaders in pretrial detention since September 1, 2019, and did so deficiently during the November 6, 2019 hearing. Under Honduran Criminal Code, this highly restrictive preventative measure is exclusively reserved for extreme situations.<sup>137</sup> The men at issue face low-level charges and voluntarily presented themselves in court. Furthermore, there is zero proof that the defendants might flee or destroy evidence if allowed to await trial at home – factors generally considered to be prerequisites for lawful pretrial detention.

---

<sup>134</sup> I/A Court H.R., Case of Aplitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of Aug. 5, 2008. Series C No. 182, ¶ 77.

<sup>135</sup> I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of Sept. 1, 2011. Series C No. 233, ¶ 148.

<sup>136</sup> OCMT, *supra* note 59.

<sup>137</sup> Article 176 of the Honduran Code of Criminal Procedure enumerates specific circumstances that may lawfully trigger pretrial detention including (1) when there is reason to believe the arrested individual will flee, (2) when the culprit remains unknown and witness must be detained to ensure timely arrest, and (3) when a witness or arrested individual refuses to cooperate once summoned by judicial authorities. It is expressly reserved for very narrow set of circumstances and requires prompt review by a competent judge within 24-48 hours. Poder Judicial Honduras, CÓDIGO PROCESAL PENAL: DECRETO NO. 9-99-E, art 176, <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/PPP-RefDPI.pdf> (last visited June 14, 2020). Article 440-E of the Honduran Code of Criminal Procedure limits the length of pretrial detention to a maximum of 30 days. *Id.* at art. 440-E

Along those same lines, the Court of Appeals, when deciding the motion for review submitted September 4, 2019, prevented the defense attorneys for the community leaders from presenting a change of circumstances that merits the retroactive application of the New Penal Code for being more beneficial. Without prejudice to the above, it is true that the new criminal legislation was not applied to the defenders in violation of their rights to personal liberty, judicial guarantees and the principle of legality and non-retroactivity according to the understanding of the Interamerican Court.<sup>138</sup>

## RIGHT TO BE HEARD BY A COMPETENT COURT

Courts and tribunals must be competent to determine the rights, obligations, or privileges of litigating parties. As the HRC has clarified, tribunals must possess “sufficient jurisdictional competence” to ensure adequate access to justice.<sup>139</sup> To comply with this guarantee, States must specifically delineate the jurisdictional scope of courts and judges.<sup>140</sup> Similarly, the Inter-American Court has ruled that if a court improperly hears a case – in that it does not possess jurisdiction over the issue or litigating parties – any subsequent actions in the context of those criminal proceedings “would be invalid *in toto*.”<sup>141</sup>

As mentioned above, NJCs have a narrow jurisdictional mandate covering only those charges related to organized crime and “high impact” criminal offenses.<sup>142</sup> In the IACHR’s 2019 country report on human rights in Honduras, it specifically noted that judges and prosecutors linked with NJCs had surpassed their jurisdiction to try “cases related to the post-electoral crisis, and ... trespass.”<sup>143</sup> The IACHR stated that trespass charges are of “particular concern to the Commission, due to the fact that the adjudication of such crimes in these tribunals could result in the criminalization of land rights activists, and the stigmatization of the work of land rights defenders if they are forced to adjudicate these disputes in a system designed for high impact crimes committed by organized criminal syndicates.”<sup>144</sup> Consequently, the concern of the IACHR regarding what processes are to be used to silence political activists and land rights defenders was not in vain as it became reality for the Guapinol community members.

The decision made by the Public Prosecutor’s office and National Jurisdiction judges to allow this case to proceed in an NJC may violate the principle of court competency. Honduran law requires that cases tried before the NJC shall be related to organized crime and corruption – there is zero evidence that the environmental activism at issue meets this standard. The principle of a competent court was first violated in September 2018, when the initial warrant for eighteen community members was approved by an NJC judge. The arrest warrant charged the defenders with trespass and property destruction, neither of which fulfil the prerequisites for valid NJC

---

<sup>138</sup> See, ACHR, Art. 9. “If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

<sup>139</sup> Human Rights Committee, General Comment 32, 23 Aug. 2007 (CCPR/C/GC/32), ¶ 18.

<sup>140</sup> I/A Court H.R., Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs. Judgment of Feb. 4, 2019. Series C No. 373, ¶ 85.

<sup>141</sup> See Case of Yvon Neptune v. Haiti, *supra* note 131, ¶ 84.

<sup>142</sup> UN *Extrajudicial Killing Report 2016*, *supra* note 6.

<sup>143</sup> Inter-Am Comm’n H.R., *supra* note 4, par. 92.

<sup>144</sup> *Id.*, ¶ 92.

jurisdiction. While the charge of “unlawful association” included in the second arrest warrant could potentially trigger NJC jurisdiction, at the initial hearing on September 1, Judge Lizeth Vallecillo reportedly dismissed this charge because the prosecutors had not made clear which alleged acts constituted the crime. Consequently, if the NJCs ever possessed jurisdiction over the Guapinol community members named in the second arrest warrant – which remains in doubt – jurisdiction was stripped with the dismissal of the charge of “unlawful association.”

## PRINCIPLE OF PRESUMPTION OF INNOCENCE

According to Article 14(2) of the ICCPR, all persons must be considered innocent unless proven guilty. The HRC has recognized that this presumption is fundamental to the protection of human rights. The Inter-American Court has also emphasized that, particularly in the context of pretrial detention, the right to a presumption of innocence – codified in Article 8(2) of the American Convention – requires States to provide clear proof that they are granting the accused the benefit of the doubt.<sup>145</sup>

In this case, the prosecutors and the judicial authorities violated this principle. The conduct of those officials has been to presume the culpability of the environmental activists y to seek to impose a deprivation of liberty at all costs. Specifically, eight of those leaders have spent close to a year in pretrial custody ordered on the authority of a dubious factual basis. The situation is particularly egregious given that nine people were brought on charges, and eight of them arrested, on the basis of equal charges that were entirely dismissed by a National Jurisdiction judge only six months earlier in March 2019. The decision to send the defendants to pretrial detention without clear evidence or justification may constitute a violation of the presumption of innocence as understood by the IACHR.<sup>146</sup> According to the Inter-American Court, a State cannot restrict someone’s liberty based “on mere suspicions or personal perceptions that the accused belongs to an illegal group or gang” as the Honduran state appears to have done in this case.<sup>147</sup> Furthermore, the government’s decision to initially send the community leaders to La Tolva, the high security prison, demonstrates a desire to stigmatize and criminalize the environmental activists, placing them in the same category as high-profile and dangerous criminals.

## GUARANTEE AGAINST DOUBLE JEOPARDY

Article 14(7) of the ICCPR prohibits double jeopardy, guaranteeing the right to remain free from repeated prosecution or punishment for an offense which has already been determined with finality.<sup>148</sup> The Inter-American Court has pointed out that, “unlike the formula used by other international human rights protection instruments [...], the American Convention uses the expression ‘the same cause,’ which is a much broader term in the victim’s favor.”<sup>149</sup>

---

<sup>145</sup> I/A Court H.R., Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of Nov. 27, 2013. Series C No. 275, ¶166.

<sup>146</sup> See Inter-Am Comm’n H.R., *supra* note 4, at ¶ 167.

<sup>147</sup> I/A Court H.R., Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs. Judgment of Apr. 27, 2012. Series C No. 241, ¶ 106.

<sup>148</sup> See GC 35, *supra* note 128, ¶ 35.

<sup>149</sup> I/A Court H.R., Case of Loayza Tamayo v. Peru. Merits. Judgment of Sept. 17, 1997. Series C No. 33, ¶ 66.



The actions reportedly taken by the State against Carlos Leonel George, one of the Guapinol community members who presented himself with the initial group of twelve in February 2019,<sup>150</sup> demonstrate a clear violation of the prohibition against double jeopardy. Although all charges against him were dismissed by March 2019, authorities reportedly took Carlos Leonel George into custody in January of 2020 with the goal of arresting and prosecuting him. While he was ultimately released, Honduran authorities took these steps with full knowledge that the charges had already been dismissed by a National Jurisdiction judge.

## OTHER POTENTIAL HUMAN RIGHTS VIOLATIONS

### FREEDOM OF ASSOCIATION, PEACEFUL ASSEMBLY, AND EXPRESSION

Article 13 of the American Convention guarantees freedom of thought and expression. Article 15 establishes the right of assembly, which prohibits restrictions on peaceful assembly without arms. Additionally, Article 16(1) affirms the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. On the other hand, paragraphs 2 and 3 layout exceptions. They acknowledge that in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others, the exercise of this right can be restricted.

Likewise, Article 19 of the ICCPR mandates freedom of expression. Every State party as a whole has an obligation to respect freedoms of opinion and expression.<sup>151</sup> Articles 21 and 22 mandate freedom of assembly and freedom of association, respectively. These articles also layout exceptions to the exercise of these freedoms. In short, restrictions on these rights are allowed when they are necessary to protect democratic interests, national security, public safety, public order, public health and morals, or the rights and freedoms of others.

Moreover, the Inter-American Court has noted that freedom of expression includes the exchange of ideas and information, encompassing the right to communicate one's point of view, as well as the right to receive reports and news.<sup>152</sup> In this sense, human rights defenders exercise and contribute to this right by exposing on-the-ground realities within a given geographic region.<sup>153</sup> States, therefore, must acknowledge that they possess a special obligation to respect and guarantee the speech and association of human rights defenders.<sup>154</sup>

The Guapinol community set up the “Camp in Defense of Water and Life” to demonstrate their objection to an iron ore mining project that was egregiously contaminating the Guapinol river – the main source of water for fourteen local communities. In doing so, they were exercising their

---

<sup>150</sup> CMDBCP & CCI, *supra* note 60, at 7 (identifying Carlos Leonel George as one of the Guapinol community members included in the initial arrest warrant alongside seventeen other individuals).

<sup>151</sup> UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 Sept. 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

<sup>152</sup> I/A Court H.R., Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of Feb. 5, 2001. Series C No. 73. ¶ 66.

<sup>153</sup> I/A Court H.R., Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, ¶ 96.

<sup>154</sup> I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of Nov. 27, 2008. Series C No. 192, ¶ 87.

rights protected under international law. The subsequent criminal charges and prolonged pretrial detention violate the activists' freedom of expression, assembly, and association. The Honduran government is actively deteriorating these freedoms by publicly criminalizing the human rights defenders and trying them in a jurisdiction intended exclusively for organized criminals.

## PHYSICAL AND MENTAL INTEGRITY

Article 5 of the American Convention guarantees the right to humane treatment. Paragraph 1 states that every person has the right to have his physical, mental, and moral integrity respected. Paragraph 4 elaborates that "accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons." The Inter-American Court understands that criminal sanctions are an expression of a State's punitive power, and "they imply detriment, deprivation, alteration of a person's rights, as a consequence of an unlawful behavior."<sup>155</sup> Nonetheless, when harsh circumstances lead to the deterioration of physical, psychic, and moral integrity above and beyond that which normally results from the deprivation of liberty itself, the Inter-American Court may view such confinement as a form of cruel punishment.<sup>156</sup>

In this case, the National Jurisdiction judge sent the Guapinol community members to prolonged pretrial detention without any legitimate grounds. Being detained under such circumstances, particularly for this extended period of time, violates the accused's physical, mental, and moral integrity. The Guapinol community leaders have also suffered from extreme and inhumane treatment while detained. First, though Judge Lizeth Vallecillo ordered the community leaders be sent to the Olanchito minimum security facility, they were instead sent to the high-security ward La Tolva, where they spent a month before being transferred to Olanchito upon the demand of local and international advocates. Second, according to defense attorneys, the Guapinol community leaders are being deprived of fundamental aspects of human dignity while in detention. For example, they are reportedly unable to speak with family members or lawyers and some of the detainees have been stripped of clothes, money, and personal hygiene products.<sup>157</sup> Representatives from MNP-CONAPREV visited the men in Olanchito Criminal Center and called the conditions "inhuman and degrading."<sup>158</sup>

## RECOMMENDATIONS

Viewing the case history in the context of the Honduran government's various obligations under international law, the Clinic believes that the State may be actively violating a series of human rights, each of which is essential to the realization of human integrity and fundamental freedoms. To begin the process of rectifying the potentially unlawful actions taken against the community leaders for the area surrounding Tocoa and those similarly situated, the Honduran government should take the following actions.

---

<sup>155</sup> I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of Nov. 25, 2006. Series C No. 160, ¶ 314.

<sup>156</sup> *Id.*

<sup>157</sup> *Abitramente envían a Cárcel, supra* note 89.

<sup>158</sup> *Allas, supra* note 106.

### **Recommendations regarding the pending case against the Guapinol community leaders:**

- (1) Immediately release the Guapinol community members who remain in pretrial detention. These individuals should be allowed to await trial from their homes, as required by national and international law given the charges against them. Likewise, the criminal law must be retroactively applied where it benefits the defendants. The prosecution must immediately cease to request the cautionary measure of pretrial detention.
- (2) Move forward with relevant criminal proceedings without further delay, ensuring they occur in the proper forum. The incidents in question occurred almost two years ago and the criminal proceedings began almost one year ago, but the case has not yet come to the Supreme Court, and the defendants have yet to benefit from a fair trial assessing their guilt for the crimes alleged. Furthermore, given the disturbing dearth of evidence against the defendants to date, it is imperative that the prosecutors are forced to argue their case and produce evidence, if it exists.
- (3) Hold the public prosecutors and judges to the requisite evidentiary standards for each and every charge faced by the Guapinol community leaders. Ensure that guilt or innocence is determined based on predetermined, objective norms and processes. Refuse to detain or otherwise punish individuals for which there is insufficient evidence on the crimes alleged.
- (4) Conduct the remainder of the relevant judicial process transparently, allowing the participation of national and international legal observers, including civil society organizations. Provide both substantive and procedural transparency regarding the facts alleged and process through which guilt or innocence is determined. Increased transparency will deter and document any further deterioration of human rights, and should be embraced at the outset of similar judicial proceedings in the future.

### **Recommendations regarding the protection of human rights defenders in Honduras more generally:**

- (1) Recognize and protect the essential role of human rights defenders in a democratic society. Ensure governmental authorities do not wield their power to silence or diminish those who speak up for rights and privileges protected by national and international law. This is of heightened importance when advocates come from or represent historically marginalized populations.
- (2) Prevent the adoption or application of laws in violation of international human rights standards, including but not limited to, laws which may stifle freedom of expression and association. Ensure laws are written in such a way that no interpretation could permit a violation of these rights. Human rights – individually and collectively – are crucial to a functioning democracy. Even in states of emergency, governments should take great lengths to serve the best interest of the people and preserve these rights to the fullest extent possible.
- (3) Refuse to use Courts of National Jurisdiction to try human rights defenders without sufficient evidence that they committed crimes that fall within the jurisdiction of these specialized courts. NJCs were created with a narrow jurisdictional mandate – adjudicating the gravest and most impactful criminal cases, with a particular emphasis on organized crime. By trying human rights defenders in this forum, the government is equating advocates with the most dangerous criminals in the country, stigmatizing and silencing the defenders, their families, their communities, and those similarly situated nationwide.

- (4) Avoid prosecuting the crime of trespass or similar low-level offenses in Courts of National Jurisdiction given the forum's narrow mandate over high profile, high impact criminals and crimes. By expanding the jurisdiction of NJCs over lesser offenses, the government dilutes the gravity of being tried in this forum, stigmatizes individuals who were never intended to fall within NJCs' jurisdictional scope, and opens the potential for arbitrary or politically motivated forum selection. Furthermore, trespass is a charge often associated with protesters, particularly in the context of community-company disputes. Elevating this crime to fall within NJC jurisdiction thus threatens freedom of speech and association, amongst other human rights.
- (5) Reserve the use of pretrial detention for rare cases where, based on sufficient evidence, the circumstances demand such an extreme deprivation of liberty. As is dictated by both national and international law, pretrial detention should be treated as the exception, not the norm. In general, pretrial detention should be reserved for cases where a defendant's liberty seriously threatens the integrity of the trial due to risk of flight, destruction of evidence, or concerns regarding public safety – and even then, only for short, pre-defined periods of time.
- (6) Afford defendants and other relevant parties the right to initiate, appeal, or otherwise challenge adverse rulings, particularly when detained. Procedures for pursuing remedy or appeal should be clearly outlined and made accessible to defendants. Responses to such challenges should be free from undue or arbitrary delay.
- (7) Condemn the use of fraudulent smear campaigns against human rights defenders. Misinformation intended to stigmatize or criminalize lawful acts and actors should not be tolerated.