

# **Corte Suprema de Justicia de Honduras Sala de lo Constitucional**

Acción constitucional de amparo por violación al derecho al debido proceso en favor de Kelvin Alejandro Romero Martínez, José Daniel Márquez Márquez, Porfirio Sorto Cedillo, José Abelino Cedillo Cantarero, Ewer Alexander Cedillo Cruz, Orbin Nahum Hernández, Arnold Javier Alemán y Jeremías Martínez, contra resolución de la Corte de Apelaciones de Jurisdicción Nacional.

## **Amicus Curiae**

**“Estándares Internacionales sobre Garantías Judiciales y Derecho de Defensa”**

### **ORGANIZACIONES QUE FIRMAN EL DOCUMENTO**

**International Human Rights Clinic,  
University of Virginia School of Law**



**Equipo Jurídico por los Derechos Humanos**



**Clínica de Derechos Humanos, Centro de  
Investigación y Enseñanza en Derechos Humanos de  
la Universidad de Ottawa**

**CIVICUS**



**Equipo de Reflexión, Investigación y Comunicación  
(ERIC-SJ)**



**Robert F. Kennedy Human Rights (RFKHR)**

Centre  
de recherche  
et d'enseignement  
sur les droits  
de la personne



Human Rights  
Research  
and  
Education  
Centre



**Due Process Law Foundation**



**Protección Internacional Mesoamérica**



**Centro de Derechos de Mujeres CDM**



**Organización Mundial Contra la Tortura (OMCT) y  
FIDH, en el marco del Observatorio para la  
Protección de Defensores de Derechos Humanos**



**Centro de Estudios de Derecho, Justicia y Sociedad -  
Dejusticia**



Bogotá, Charlottesville, Johannesburg, Geneva, Ottawa, Tegucigalpa, Washington D.C.

Noviembre de 2021

# Contents

<b>Contents</b>	1
<b>1. Presentation of <i>Amicus Curiae</i></b>	4
<b>1.1 Organizations that present this <i>amicus curiae</i></b>	4
<b>1.2 Background and objective of this <i>amicus curiae</i> brief</b>	6
<b>1.3 Interest of the organizations presenting the <i>amicus curiae</i> brief</b>	7
<b>2. The decision under appeal by the amparo is not based on evidence connecting the individual detainees with the alleged crimes that occurred during the protest of the Community of Guapinol, therefore the Defenders must be released.</b>	7
<b>2.1 Due Process and Adequate Judicial Reasoning</b>	8
<b>2.2 Presumption of Innocence</b>	11
<b>3. Should the Court choose to move forward with the trial, they should declare that the Guapinol Environmental Defenders were wrongly charged with aggravated arson in violation with international principles on criminal procedure and revise the charges brought.</b>	13
<b>3.1 Retroactive application of an outdated penal code</b>	13
<b>3.2 Principle of Legality</b>	15
<b>4. Conclusion and Recommendations</b>	16

## 1. Presentation of *Amicus Curiae*

### 1.1 Organizations that present this *amicus curiae*

#### **International Human Rights Clinic at the University of Virginia School of Law**

The International Human Rights Clinic at the University of Virginia School of Law works to promote a global culture of human rights. Based on a combination of approaches, the Clinic promotes collaborative learning in alliance with social, intergovernmental and academic human rights organizations, as well as with private institutions, public agencies, and policymakers in various parts of the world.

#### **Centro de Estudios de Derecho, Justicia y Sociedad - Dejusticia**

El Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia) is a socio-legal research center dedicated to the promotion of human rights in Colombia and the Global South, the guarantee of the public interest and the strengthening of the Rule of Law. Over more than fifteen years, we have conducted investigative, litigation and advocacy actions on various issues, including issues related to environmental justice, due criminal prosecution and the guarantee of law to defend rights.

#### **CIVICUS**

CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society throughout the world.

#### **Clínica de Derechos Humanos del Human Rights Research and Education Centre, University of Ottawa**

The Human Rights Clinic is an initiative of the Human Rights Research and Education Center of the University of Ottawa that, through an interdisciplinary approach, seeks to: (i) strengthen the protection of human rights, by promoting advocacy, research, training and technical assistance emphasizing their effective implementation; (ii) foster capacity-building and provide recommendations to ensure that policy and law have a human rights-based approach; and (iii) promote research regarding the implementation of human rights standards in Canada and abroad.

#### **Due Process of Law Foundation (DPLF) / Fundación para el Debido Proceso**

DPLF is a non-governmental organization based in Washington, D.C., dedicated to promoting the rule of law and human rights in Latin America through applied research, strategic alliances with actors in the region, and lobbying activities. The purpose of our work is to achieve full respect for the rule of law and human rights under the framework of international norms and standards.

#### **Equipo Jurídico por los Derechos Humanos**

El Equipo Jurídico por los Derechos Humanos is a space that promotes legal analysis and strategic litigation in human rights. Its vision is to contribute to the promotion and enforcement of human rights in Honduras and to the achievement of justice as an end for social change.

### **Equipo de Reflexión, Investigación y Comunicación (ERIC-SJ)**

ERIC-SJ is a social work of the Society of Jesus in Honduras for the construction of a just, equitable and sovereign society through reflection, research and communication.

### **International Federation for Human Rights (FIDH)**

FIDH (International Federation for Human Rights) is an international human rights NGO federating 192 organisations from 117 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights.

### **Protección Internacional Mesoamérica**

Protection International Mesoamérica is the regional office of Protection International (PI), an international non-profit NGO based in Brussels. It accompanies and facilitates the formulation of strategies and the use of security management and protection tools between groups exercising the right to defend human rights.

### **Robert F. Kennedy Human Rights (RFKHR)**

RFKHR is a non-governmental organization founded in 1968 by the family and close friends of former US Attorney General Robert F. Kennedy to continue his legacy of fighting for a more just and peaceful world. The international advocacy and litigation team works on the protection of human rights throughout Africa, the Americas and Asia, with a particular emphasis on the protection of civic space. RFKHR is directly involved in strategic litigation of flagship cases at the international and regional levels. RFKHR has also intervened in various cases with the Inter-American human rights system and national courts in the form of amicus curiae.

### **World Organization Against Torture (OMCT)**

The OMCT works with 200 member organisations to end torture and ill-treatment, assist victims, and protect human rights defenders at risk wherever they are. Together, we make up the largest global group actively standing up to torture in over 90 countries. We work to protect the most vulnerable members of our societies, including women, children, indigenous peoples, migrants and other marginalized communities. To achieve this, we advocate with governments to change or implement their laws and policies, we help victims seek justice and strive to hold perpetrators to account. Because torture can never be tolerated, and human dignity is not negotiable.

## 1.2 Background and objective of this *amicus curiae* brief

This *amicus curiae* is presented in support of the amparo action filed by attorney Edy Alexander Tábora Gonzalez, director of Bufete Justicia para los Pueblos, for the violation of the judicial guarantees of Kelvin Alejandro Romero Martínez, José Daniel Márquez Márquez, Porfirio Sorto Cedillo, José Abelino Cedillo Cantarero, Ewer Alexander Cedillo Cruz, Orbin Nahum Hernández, Arnold Javier Alemán, and Jeremías Martínez, based on a resolution of the National Jurisdiction Court of Appeals issued on March 3, 2020.<sup>1</sup> The people seeking judicial protection from the amparo in this case are defenders of the Guapinol and San Pedro rivers on the northern coast of the country. The defendants have been in pretrial detention for more than two years for events related to their participation in a peaceful protest camp that was established to protect the water sources that originate in the Parque Nacional de la Montaña de Botaderos from iron oxide mining operations.

The objective of this brief is to present the considerations on the international standards of judicial guarantees before the Honorable Constitutional Chamber of the Supreme Court of Justice. The signatory institutions argue that the presentation of these standards will allow the Court to evaluate the compatibility of the decision of the National Jurisdiction Court of Appeals with international standards that have been integrated into Honduran constitutional law,<sup>2</sup> but were not considered in the instant decision.

In particular, this intervention provides the Honorable Supreme Court of Justice of Honduras with observations based on the norms of international law and jurisprudence of international bodies that show that the resolution as set forth by the amparo, was not based on individualized evidence that connects the specific people detained with the alleged crimes that occurred during the Guapinol Community protest. In light of this, the Honorable Court should agree to the requested amparo and order the release of the Guapinol Environmental Defenders from pretrial detention and the withdrawal of the criminal charges against them. Alternatively, if the Honorable Court finds that there is sufficient evidence to warrant proceeding with the trial, we argue that the Court should declare that the Guapinol Environmental Defenders were wrongly accused of aggravated

---

<sup>1</sup> Presentación de acción constitucional de amparo por violación del derecho al debido proceso. Solicitud de medida cautelar, Tegucigalpa, M.D.C., 12 de octubre de 2019 [hereinafter *Amparo*].

<sup>2</sup> In *López Lone et al. v. Honduras*, the Inter-American Court reminded the Honduran State "that when a State is a party to an international treaty such as the American Convention, all its organs, including its judges, are subject to that treaty, which obliges them to ensure that the effects of the provisions of the Convention are not lessened by the application of norms contrary to its object and purpose. Judges and bodies involved in the administration of justice at all levels are bound to exercise *ex officio* a "control of conventionality" between domestic norms and the American Convention, evidently within the framework of their respective jurisdictions and the corresponding procedural regulations". *I/A Court H.R. López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Paragraph 307.* In the Case of the Garífuna Community of Punta Piedra and its Members v. Honduras, the Court complemented this message to the Honduran State, emphasizing that "in this task, judges and bodies linked to the administration of justice must take into account not only the treaty, but also the interpretation of the same by the Inter-American Court, the ultimate interpreter of the American Convention." *I/A Court H.R. Case of the Garífuna Community of Punta Piedra and its Members v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 08, 2015. Series C. No. 304. Paragraph 346.*

arson in violation of applicable international standards of criminal procedure and order a review and substitution of the charges presented.

### **1.3 Interest of the organizations presenting the *amicus curiae* brief**

The present filing is part of the legal tradition known as *amicus curiae*. It is an institution that goes back to Roman Law and whose literal meaning (“friend of the court”) denotes the purpose for which it was conceived: to supplement the facts or *de jure* to a court for a better solution of the case. The *amici curiae* are, therefore, people or entities outside the case who seek to help the members of the court, particularly in controversies that deal with relevant issues for a given legal-political community.<sup>3</sup>

Since its inception, the institution of the *amicus curiae* has established itself as a citizen’s tool for maximizing principles and values shared by the international legal community. With the affirmation of constitutional paradigms established in democratic states of law, and its immersion in the process of the universalization of human rights, this institution transcends the domestic sphere of doctrinal and jurisprudential construction of law.

Currently, the institution of *amicus curiae* is incorporated into the jurisdictional practice of most of the high courts in Latin America. Similarly, the Inter-American Court, the European Court of Human Rights, the Court of Justice of the European Union, among other international tribunals and courts, expressly establish in their regulations or statutes, or through consolidated practice, the intervention of *amici curiae*. Also, in the field of arbitration tribunals with competence to resolve disputes on investment treaties and free trade, as well as in ad hoc criminal tribunals, such as the tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone, amici curiae intervention is a regular practice.<sup>4</sup>

Due to the convergence of knowledge and specialized action of the organizations that subscribe to it, which includes professors, students, and human rights defenders, we trust that the Constitutional Chamber of the Supreme Court of Honduras shall accept this *amicus curiae* brief and consider the factual and legal arguments set out below.

### **2. The decision under appeal by the amparo is not based on evidence connecting the individual detainees with the alleged crimes that occurred during the protest of the Community of Guapinol, therefore the Defenders must be released.**

The organizations presenting this *amicus curiae* respectfully urge the Honorable Corte Suprema de Justicia de Honduras to protect the fundamental rights violated, and as a

---

<sup>3</sup> Scourfield McLauchlan, Judithanne, Congressional Participation as Amicus Curiae Before the U.S. Supreme Court. LFB Scholarly Publishing (2005), p. 266.

<sup>4</sup> Ver al respecto, Pascual Vives, José Francisco, EL DESARROLLO DE LA INSTITUCIÓN DEL AMICUS CURIAE EN LA JURISPRUDENCIA INTERNACIONAL. Revista Electrónica de Estudios Internacionales (2011), disponible em: [www.reei.org/index.php/.../Estudio\\_PASCUAL\\_FcoJose.pdf](http://www.reei.org/index.php/.../Estudio_PASCUAL_FcoJose.pdf)

consequence, dismiss the criminal charges against Profirio Sorto Cedillo, José Abelino Cedillo, Kelvin Alejandro Romero Martínez, Arnold Javier Aléman, Ewer Alexander Cedillo Cruz, Orbin Nahún Hernández, José Daniel Márquez Márquez, and Jeremías Martínez Díaz, hereinafter “the Guapinol Environmental Defenders” and release them from pretrial detention. Honduras is party to a multitude of human rights instruments that ensure certain procedural guarantees that have not been upheld in the Guapinol case.<sup>5</sup> The Public Ministry’s lack of individualized evidence to connect any of the detained Guapinol Environmental Defenders to the alleged crimes, in combination with the egregiously extensive pretrial detention since September 2018, violate a multitude of human rights protections. These include the guarantees of due process under Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 8(1) of the American Convention on Human Rights (ACHR),<sup>6</sup> and the right to be presumed innocent until proven guilty under Article 14(2) of the ICCPR and Article 8(2) of the ACHR.<sup>7</sup>

## 2.1 Due Process and Adequate Judicial Reasoning

The Guapinol Environmental Defenders have not been accorded their fundamental human rights of due process, which notably include the right to a fair trial and the right to adequate judicial reasoning.<sup>8</sup> Due to applicable international standards, the Public Ministry has a duty to state the grounds for criminal responsibility, especially in situations of prolonged pretrial detention, and reviewing courts have the duty to provide adequate

---

<sup>5</sup> As a founding member of the UN, Honduras is subject to the UDHR and the jurisprudence of various UN Human Rights bodies, such as the Human Rights Council (HRC), which is responsible for the implementation of the ICCPR. 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 of Human Rights (IACHR) since 1981.

<sup>6</sup> International Convention on Civil and Political Rights, Art. 14, Dec. 16, 1966, 999 U.N.T.S.

“(1). All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”;

American Convention on Human Rights “Pact of San Jose, Costa Rica” Art. 8, Nov. 22, 1969, S. Treaty Doc. No. 95-21,

“(1) Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>7</sup> ICCPR, at Art. 14 (“(2). Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”); American Convention on Human Rights, at Art. 8, (“(2). Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.”).

<sup>8</sup> See American Convention Human Rights, at Art. 8 Right to a Fair Trial and Art. 25 Judicial Protections.



judicial motivation for continuing the criminal proceeding and restricting the individual liberty of the accused.<sup>9</sup> According to the Inter-American Court of Human Rights (IAHCR), the duty to state grounds is “a guarantee 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>10</sup> Further, the Inter-American Court says that in order to “restrict the right to personal liberty by measures such as preventive detention, there must be sufficient evidence allowing it to be reasonably supposed that the person subject to the proceeding has taken part in the illegal act investigated.”<sup>11</sup> Moreover, the UN Human Rights Committee has maintained that the reasoning for pretrial detention requires proper disclosure that “must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory,” and “[e]xculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence.”<sup>12</sup>

The Honduran Public Ministry, through its theory of individual liability for crowd actions, is seeking to criminalize social protest and unreasonably restrict the Guapinol Defenders’ freedoms of political speech and collective gathering.<sup>13</sup> According to the Special Rapporteur for Freedom of Expression, the Inter-American Court has repeatedly documented instances of prosecutors using protestors as scapegoats, seeking to use the punitive power of the State to “deter, punish, or prevent the exercise of the right to protest, and...to social and political participation more broadly, through the arbitrary,

---

<sup>9</sup> See *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, INTER-AM. COMM’N H. R., at para. 21, <https://www.cidh.oas.org/countryrep/AccessoDESC07eng/Accessodesci-ii.eng.htm>,

“The right to a reasoned decision on the merits of a matter has also been recognized by the IACHR and the Court as an integral element of due process of law in judicial proceedings. Thus, the Inter-American Commission has found that after the stages in which the evidence and arguments are presented, the jurisdictional organs should provide a reasoned basis for their decisions and so determine the admissibility or not of the legal claim on which the complaint is founded.”;

see also *Milton García and others v. Nicaragua*, IACHR, Report No. 100/01, Merits Case No. 11.381, (Oct. 11, 2011) paras. 85-87; *Guide to Article 6 on European Convention on Human Rights*, EUR. CT. H. R. (2021) at para. 184:

“While courts are not obliged to give a detailed answer to every argument raised (*Van de Hurk v. the Netherlands*, § 61), it must be clear from the decision that the essential issues of the case have been addressed (*Boldea v. Romania*, § 30; *Lobzhanidze and Peradze v. Georgia*, § 66) and that a specific and explicit reply has been given to the arguments which are decisive for the outcome of the case (*Moreira Ferreira v. Portugal* (no. 2) [GC], § 84; *S.C. IMH Suceava S.R.L. v. Romania*, § 40, concerning contradictions in the assessment of evidence; *Karimov and Others v. Azerbaijan*,\* § 29, concerning the allegations of imprisonment for debt).”

<sup>10</sup> *Case of Apitz Barbera et al. v. Venezuela*, para. 77, Inter-Am. Ct. H. R. (Aug. 5, 2008); see also *Tristan Donoso v. Panama*, Inter-Am. Ct. H. R. Jan. 27, 2009).

<sup>11</sup> *J v. Peru*, para. 159, Inter-Am Ct. H.R. (ser. C) No. 275 (Nov. 27 2013)

<sup>12</sup> Human Rights Committee, *General Comment 32 Article 14: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32, at para. 33 (Aug. 23, 2007).

<sup>13</sup> *Amparo*, at 11.

disproportionate, or repeated use of the criminal justice system against demonstrators.”<sup>14</sup> This criminalization of social protest is exceedingly evident in cases in which there are criminal proceedings that are “based on circumstances for which there is no evidence or for which the evidence is directly false.”<sup>15</sup>

In turn, the Inter-American Commission underscores the tendency of some judges, prosecutors, and law enforcement officers to “manipulate the punitive power of the state for the purpose of criminalization” through courses of action such as a “lack of diligence in the investigation” or proceeding with criminal indictment “before gathering the necessary evidence to verify that the unlawful conduct has occurred.”<sup>16</sup> Most relevant for the case at hand, the Commission warns against prosecutors’ “fail[ure] to individually identify each defendant’s role in the alleged facts when establishing the circumstances of time, place, and manner.”<sup>17</sup>

In the Guapinol Environmental Defenders’ case, the Public Ministry has substantially relied upon a crowd argument, in which they are attempting to hold a few individuals responsible for the actions of the entire crowd at the Guapinol protest. There has not been adequate investigation into the events of the protest, and no evidence exists that directly ties these individuals with the alleged crimes. This is consistent with the opinion from the U.N. Working Group on Arbitrary Detention, which found that the detention of the Defenders was arbitrary based on the lack of legal basis, detention from the exercise of fundamental freedoms, and fair trial violations.<sup>18</sup>

Notably, the Working Group found that the Second Court of Appeals of La Ceiba, which most recently upheld the detention of the Defenders, disproportionately stressed the severity of the events that took place at the protest camp, rather than investigating the individual involvement of the protestors who are in detention.<sup>19</sup> The Working Group criticized the Court’s misinterpretation of the jurisprudence of the IACHR and the lack of individual determination as a violation of the ICCPR.<sup>20</sup> Thus, the Public Ministry’s attempt to hold a few people responsible without direct evidence of their individual involvement

---

<sup>14</sup> Special Rapporteur for Freedom of Expression, *Protest and Human Rights*, INTER-AM. COMM’N H. R. para. 188 (2019).

<sup>15</sup> *Id.* at para. 197.

<sup>16</sup> *Id.* at para 214.

<sup>17</sup> *Id.*

<sup>18</sup> Grupo de trabajo sobre la Detención Arbitraria, *Opinión núm. 85/2020, relativa a José Daniel Márquez Márquez, Kelvin Alejandro Romero Martínez, José Abelino Cedrillo, Porfirio Sorto Cedillo, Orbín Nahúm Hernández, Arnold Javier Alemán, Ewer Alexander Cedillo Cruz y Jeremías Martínez Díaz (Honduras)*, at para. 63-93, U.N. Doc. A/HRC/WGAD/2020/85 (Feb. 8, 2021) [hereinafter *Working Group*].

<sup>19</sup> *Id.* at para. 8-9, 54-55; La Corte Segunda de Apelaciones de la ciudad de la Ceiba, 0209-2021-01809

<sup>20</sup> *Working Group*, at para 67.

violates international standards on due process and seeks to make an example out of these human rights defenders to further disincentivize social protest.

## 2.2 Presumption of Innocence

Both the ICCPR and the ACHR provide that each person accused of a criminal offense has the right to be presumed innocent so long as guilt has not been proven by law. In *Saidov v. Tajikistan*, the UN Human Rights Committee, through its jurisprudence on Article 14, found that the presumption of innocence is “fundamental to the protection of human rights,” “imposes on the prosecution the burden of proving charge,” “guarantees that no guilt can be presumed until the charge has been proved beyond a reasonable doubt,” and recommends full transparency in criminal proceedings.<sup>21</sup> The Inter-American Court has similarly stated in various cases that the principle of presumption of innocence “demands that a person cannot be convicted unless there is clear evidence of his criminal liability,” and if the “evidence presented is incomplete or insufficient, he must be acquitted.”<sup>22</sup> Further, the right to the presumption of innocence implies that the defendant need not prove that he or she has not committed the offense of which he or she is accused, as the onus is on the prosecution.<sup>23</sup>

Therefore, the burden of proof falls upon the prosecution to establish clear evidence as a prerequisite to criminal punishment. The Inter-American Commission recognizes that the “lack of presentation of convincing evidence of responsibility” is a violation of the principle of the presumption of innocence.<sup>24</sup> In the context of social protests, the Commission found that “a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest.”<sup>25</sup> The Inter-American Commission has stressed that these types of practices are incompatible with the ACHR and that justice authorities have an obligation to investigate complaints involving “manifestly unfounded criminal accusations” and the protection of the right to protest.<sup>26</sup>

---

<sup>21</sup> *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, (Sept. 20, 2018) at para. 9.4.; see also *J.O. v. France*, 23 March 2011, UNHRC, 1620/2007; *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, (Mar. 20, 2007) at para. 6.7.; *Arutyuniantz v. Uzbekistan*, (March 30, 2005), Communication No. 971/2001.

<sup>22</sup> *Cantoral Benavides v. Peru*, para. 120, Inter-Am. Ct. H. R. (Aug. 18, 2000); see also *Ricardo Canese v. Paraguay*, para. 152-154, Inter-Am. Ct. H. R., (Aug. 31, 2004); *García-Asto & Ramírez-Rojas v. Peru*, para. 160, Inter-Am. Ct. H.R. Nov. 25, 2005); *Tibi v. Ecuador*, para. 181, Inter-Am. Ct. H. R. (Sep. 7, 2004); *Acosta Calderon v. Ecuador*, para. 113-115, Inter-Am. Ct. H. R. (June 24, 2005); *Cabrera García v. Mexico*, para. 178, Inter-Am. Ct. H. R. (Nov. 26, 2010).

<sup>23</sup> *Ricardo Canese v. Paraguay*, para. 152-154

<sup>24</sup> *Protest and Human Rights*, at para. 216.

<sup>25</sup> *Id.* at para. 229. See also *Servellón García et al. v. Honduras*, para. 93, Inter-Am Ct. H. R. (Sep. 21, 2006).

<sup>26</sup> *Protest and Human Rights*, at para. 220.

The Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas, a document of the IACHR that delineates Inter-American standards in the field, establishes the exceptionality of preventative deprivation of liberty and stresses that “[i]n the context of criminal proceedings, there shall be sufficient evidentiary elements that associate the accused with the facts of the case, in order to justify an order of preventive deprivation of liberty.”<sup>27</sup> Further, it “shall only be applied within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigations nor will evade justice, provided that the competent authority examines the facts and demonstrates that the aforesaid requirements have been met in the concrete case.”<sup>28</sup>

Regarding the Guapinol Environmental Defenders, the U.N. Working Group on Arbitrary Detention noted that Honduras had clearly violated the right to presumption of innocence with the application of unreasonable and extensive pretrial detention.<sup>29</sup> The government of Honduras has not denied that pretrial detention was automatically applied to the Defenders.<sup>30</sup> The Working Group noted that the Ceiba Court’s recent rationale for upholding the pre-trial detention distorts international standards.<sup>31</sup> The Honduran Court acknowledged that pretrial detention cannot be based solely on the severity of the charged crime, yet still upheld the detention, noting that the Defenders have an incentive not to appear in court because of the possibility of lengthy sentences.<sup>32</sup> This logic directly assumes the guilt of the Defenders and violates the presumption of innocence. The Working Group noted that preventative detention must be an “exceptional” measure enacted “solely to guarantee the representation of the accused in judicial proceedings.”<sup>33</sup> The seriousness of the charged crime is insufficient under international norms to justify the lengthy preventative detention already applied. Accordingly, the Honduran Courts continue to fail to uphold their human rights obligations, which should be corrected by the Honorable Constitutional Chamber of the Supreme Court.

Further, extensive and unreasonable periods of pretrial detention can lead to violations of international protections against cruel, inhuman, or degrading treatment.<sup>34</sup> The American Convention guarantees that persons in pretrial detention will be tried within a reasonable time or released, which imposes temporal limits on the duration of pretrial

---

<sup>27</sup> IACHR, *Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas*, at p. 157 (March, 2008) <https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> *Working Group*, at para. 91.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at para. 72.

<sup>32</sup> *La Corte Segunda de Apelaciones de la ciudad de la Ceiba*, hasta 10-12.

<sup>33</sup> *Working Group*, at para. 72.

<sup>34</sup> See ICCPR, Art. 7; American Convention on Human Rights, Art 5(2).

detention.<sup>35</sup> When the period of preventative detention supersedes a reasonable period of time, this amounts to the use of inhuman and degrading treatment, which negatively impacts the victim's personal dignity, integrity, and seriously alters the course of their life.<sup>36</sup> The Guapinol Environmental Defenders have been held in pretrial detention for an unjustifiable and unreasonable length of time, ranging from over two to three years, depending on the individual defendant. Beyond the aforementioned rights, this meritless detention profoundly impacts their right to liberty and rises to the level of cruel, inhuman, or degrading.

The U.N. Working Group for Arbitrary Detention has already found the detention of the Guapinol Environmental Defenders arbitrary, yet they remain incarcerated away from their families and community. As a result of these human rights violations, this third-party intervention implores the Court to release the Guapinol Environmental Defenders and drop all charges against them.

**3. Should the Court choose to move forward with the trial, they should declare that the Guapinol Environmental Defenders were wrongly charged with aggravated arson in violation with international principles on criminal procedure and revise the charges brought.**

If the honorable Constitutional Chamber should decide not to end the prosecution of the Guapinol Environmental Defenders, this intervention implores the Court to ask the tribunal to change the charged crime of aggravated arson to one that more adequately applies to the alleged situation. The Defenders are currently charged with incendio agravado, privación injusta de la libertad, y robo.<sup>37</sup> Contrary to international principles on criminal procedure and retroactive application of laws, the old version of the criminal code is being applied to the Defenders in order to utilize an out-of-date crime with a more serious sentence, justifying pretrial detention. Further, the vagueness of the criminal code with respect to the crimes applied to the Defenders violates the international principles of legality.

**3.1 Retroactive application of an outdated penal code**

The Honduran Criminal Code was recently amended on June 25, 2020, therefore the crimes charged against the Defenders should be adjusted accordingly. The Public Ministry is retroactively applying the older definition of aggravated arson--which was

---

<sup>35</sup> *American Convention on Human Rights*, at para. 153.

<sup>36</sup> *Case of López Álvarez v. Honduras*, Series C No. 152, para. 100 (February 1, 2006); *See also Case of Bayarri v. Argentina*, Preliminary Objection, Merits, Reparations and Costs, Series C No. 187 (Oct. 30, 2008).

<sup>37</sup> *Amparo*, at 7.

broader in scope than the new definition--rather than the new definition of arson that does not apply to the Guapinol Environmental Defenders. This is in violation of Article 15 of the ICCPR, which provides that “[i]f subsequent to the commission of the offence, [the] provision is made by law for the imposition of a lighter penalty, the offender shall benefit from this.”<sup>38</sup> Application of the old definition is being applied despite this being in violation of international standards on legality and retroactive application of laws. Given its more serious nature, the motivation for the application of the old penal code is presumably motivated by a desire to further disincentivize human rights defenders from engaging in social protest.

The older formulation of aggravated arson, under decreto 144-83, varies in scope to the new and arguably more applicable definition of arson under decreto 130-2017. The older formulation defines aggravated arson as an act that causes a fire that endangers the life, bodily integrity or property of another.<sup>39</sup> The new formulation of arson carries a much longer punishment, but its application is restricted to defendants who, by fire, risk the life, integrity or health of people.<sup>40</sup> The updated penal code restricts the application of arson

---

<sup>38</sup> International Convention on Civil and Political Rights, at Art. 15; See also American Convention on Human Rights, at Art. 9.

<sup>39</sup> Decreto 144-83,

Art. 256 “Quien cause incendio, poniendo en peligro la vida, la integridad corporal o el patrimonio de otro, incurrirá en reclusión de tres (3) a seis (6) años. La pena será de seis (6) a doce (12) años si el incendio se comete:

- (1) Con intención de lucro, en provecho propio o ajeno
- (2) En edificio, alquería, choza o albergue habitados o destinados a habitación
- (3) En edificio público o destinado a uso público o a obra de asistencia social o de cultura
- (4) En embarcación, aeronave, convoy o vehículos de transporte colectivo
- (5) En aeropuerto, estación ferroviaria o vehículos automotores
- (6) En astillero, fábrica o taller
- (7) En depósito de sustancias explosivas o inflamables
- (8) En pozo petrolífero o galería de mina
- (9) En sembrado, campo de pastoreo o bosque”

<sup>40</sup> Decreto 130-2017

Art. 183: INCENDIO. Quien provoca un incendio con riesgo para la vida, la integridad o la salud de las personas, debe ser castigado con las penas de prisión de diez (10) a quince (15) años y multa de ciento cincuenta (150) a trescientos (300) días.

ARTÍCULO 381.- DAÑOS. Quien destruye, deteriora, inutiliza o causa daños a cosa ajena, no comprendidos en otras disposiciones del presente Código, debe ser castigado con las penas de prisión de seis (6) meses a dos (2) años y multa de ciento ochenta (180) a setecientos veinte (720) días si la cuantía del daño excede de Cinco Mil Lempiras (L5,000).

ARTÍCULO 383.- DAÑOS A INFRAESTRUCTURAS O EQUIPAMIENTOS. Quien destruye, deteriore, inutilice o dañe edificios, establecimientos, instalaciones, embarcaciones, aeronaves, vehículos u otros recursos similares, militares, policiales o de cuerpos de seguridad del Estado, debe ser castigado con la pena de prisión de tres (3) a seis (6) años y multa de trescientos (300) a mil (1000) días si la cuantía del daño excede de Cinco Mil Lempiras (L.5,000) y si no sobrepasa dicha cuantía, con prisión

to those who endanger other people, rather than those who endanger property. Under this conception, the government carries the burden of showing that the Guapinol protestors had an intent to harm other people when setting the fire in question. Since the fire set at the protest only caused damage to property, the arson charge is inapplicable and should be updated to Art. 381 damages or Art. 383 damages to infrastructure or equipment.

Thus, use of the older penal code for purposes of imposing a heavier penalty against the Guapinol Environmental Defenders violates international standards like the principle of legality and retroactivity. Now that Honduras' penal code has been updated, the applicable charges against the defenders must be revised to accommodate new laws with lighter penalties.

### **3.2 Principle of Legality**

The U.N. Commission on Human Rights has noted that one of the more serious deficiencies in the protection of human rights is the “trend towards the use of laws and the justice system to penalize and criminalize social protest activities and legitimate demands” in defense of their rights.<sup>41</sup> The Public Ministry in this case is charging demonstrators with aggravated arson for what seems to be a clear incident of property damage. This is indicative of a larger issue, as noted by the Inter-American Commission, of governments using vague penal codes to criminalize the work of human rights defenders and deter others from engaging in public protest.<sup>42</sup>

The Inter-American Commission has noted a particular issue with respect to the application of the punitive power of the State to human rights defenders: oftentimes “preventative measures are the result of the initiation of criminal proceedings as a result of the misapplication of offenses that do not conform with the principle of legality, in which legitimate behaviors in defense of human rights are framed within the criminal offenses.”<sup>43</sup> Further, in the context of social protest, the Commission acknowledges that it is common for authorities to accuse “demonstrators of crimes such as property damage, coercion, threats, kidnapping or terrorism, sometimes adapting the criminal definitions so that they

---

de dos (2) a cinco (5) años y multa de trescientos (300) a quinientos (500) días, salvo que el hecho esté castigado con mayor pena en otra disposición del presente Código. Las penas anteriores se deben incrementar en un tercio (1/3) si los hechos anteriores afectan a grandes infraestructuras como puertos, aeropuertos o redes de transporte público.

<sup>41</sup> U.N. Economic and Social Council Commission on Human Rights, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, 26 January 2004, E/CN.4/2004/80, para. 44.

<sup>42</sup> *Criminalization of Human Rights Defenders*, INTER-AM. COMM'N H. R. para. 41 (2015).

<sup>43</sup> *Id.* at para. 196.

can be applied to the act of demonstrators they wish to punish in order to justify their arrest” or “overcharge demonstrators in order to justify the use of pretrial detention.”<sup>44</sup>

The Commission notes that this phenomenon tends to occur through “a formalistic application of criminal concepts,” which “isolates the behaviors it seeks to punish from the context in which they occur” and develops an “interpretation of the criminal texts that contradicts constitutional norms.”<sup>45</sup> It is clear that this phenomenon has taken place with respect to the charges chosen to keep the Guapinol Environmental Defenders in an extensive pretrial detention.

Again, the U.N. Working Group for Arbitrary Detention determined that the detention of the Guapinol Environmental Defenders lacked legal basis.<sup>46</sup> It was noted that on September 1, 2019, a judge dropped the charge for illicit association, which was the only charge that provided the basis for their pretrial detention.<sup>47</sup> The Honduran authorities have justified continued detention on the basis of the Defenders’ formation of the Municipal Committee of Public and Common Goods of Tocoa, despite its legal recognition as an association for the defense of human rights.<sup>48</sup> Further, it was found that the illegality of the detention traces back even to before the dismissal of the charge of illicit association, again because the government did not conduct individual determinations for such detention.<sup>49</sup>

The contorted use of the Honduran criminal code to keep the Guapinol Community Defenders in pretrial detention violates the fundamental principle of legality, and the charges against them should be revised to more accurately reflect the events of the protest.

#### **4. Conclusion and Recommendations**

For all of the above reasons, the signatory organizations of this *amicus curiae* ask the Honorable Court to release the Guapinol Environmental Defenders from their pretrial detention and to drop all criminal charges against them. The Public Ministry has no evidence to connect the individual Defenders to the alleged crimes which occurred during

---

<sup>44</sup> *Protest and Human Rights*, at para. 215.

<sup>45</sup> *Id.* at para. 195.

<sup>46</sup> *Working Group*, at para. 63-73

<sup>47</sup> *Id.* at para. 65

<sup>48</sup> *Id.* at para. 66

<sup>49</sup> *Id.* at para. 67



the protest. This is a flagrant violation of their right to due process. In addition, the Defenders have been in pretrial detention since September 2018. Holding the Defenders in pretrial detention for such an extended period of time is a grievous violation of their human rights and fundamental liberties, especially the right to the presumption of innocence.

Clearly, the Public Ministry is attempting to use this case to criminalize social protests in an effort to restrict the absolute freedoms of political speech and collective gathering. This intervention urges the Court to end the Public Ministry's arbitrary actions and restore the personal liberty and judicial guarantees of the Guapinol Environmental Defenders, by ordering their immediate release and revoking the criminal charges against them.

In the event that the Court should find there is enough evidence to merit a trial, this intervention asks the Court to determine that the Guapinol Environmental Defenders were wrongly charged with aggravated arson and thus revise the charges. In opposition to international principles on criminal procedure and retroactive application of laws, the old version of the criminal code is being applied to the Defenders. The Public Ministry is attempting to use an out-of-date crime that brings a harsher sentence in its mission to justify the extensive pretrial detention. The vagueness of the criminal code further violates the international principle of legality. Therefore, in order to prevent the flagrant violation of retroactive application of laws and protect the inviolable principle of legality, the Court should revise the charges. This is the best course of action to remedy the injustices imposed upon the Defenders.