

# HONDURAS

## Continued struggle against impunity

### INTRODUCTION

The struggle against impunity continues in Honduras, despite the strong opposition from those responsible for past human rights violations. It was given an important boost in July 1995 when the *Fiscalía Especial de Derechos Humanos del Ministerio Público*, Special Prosecutor for Human Rights of the Public Ministry, charged ten military officers (in active service and retired) with human rights violations against six students in 1982. The response of the military to the charges has been to argue that they cannot be subjected to trial because they are covered by amnesty laws approved by the National Congress, a claim strongly opposed by human rights organizations and professional bodies, among others. The judicial proceedings continued with arrest warrants against three of the ten officers who immediately went into hiding, allegedly helped by fellow military personnel. Court proceedings created a public uproar when the Appeals Court ruled in favour of the officers' claim that they should benefit from the amnesty laws but this decision was later overturned by the Supreme Court of Justice.

The role of the judiciary has been of paramount importance because of the impact that decisions in this case would have on the cases of the 184 "disappeared" identified in the report of Dr. Leo Valladares Lanza, the *Comisionado Nacional de Protección de los Derechos Humanos*, Human Rights Commissioner, *Los Hechos Hablan Por Si Mismos (The Facts Speak For Themselves)*, published in 1993.

The efforts to investigate and clarify the fate of the "disappeared" have also seen important developments with regards to these cases. Following those carried out in 1994, there were further exhumations during 1995 of remains of victims of "disappearances", initiated by the Special Prosecutor for Human Rights and local human rights organizations with the cooperation of forensic experts from various countries. By the end of the year nine bodies had been exhumed.

There was little progress in other cases of past human rights violations going through the courts and human rights defenders continued to receive threats for their efforts to bring those responsible for past human rights violations to justice.

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## 1. MILITARY CHARGED FOR “TEMPORARY DISAPPEARANCE” OF SIX STUDENTS IN 1982

In an unprecedented decision in July 1995 the Special Prosecutor for Human Rights charged ten military officers (either in active service or retired)<sup>1</sup> with the attempted murder and unlawful detention of six students in 1982. Judicial proceedings are in progress.

### □ Background

On 27 April 1982 six university students - Milton and Marlen Jiménez Puerto, Gilda and Supaya Rivera Sierra, Edwin and Adán Guillermo López Rodezno - were arrested in the early hours of the morning in the house they shared in the Miraflores neighbourhood in Tegucigalpa. The father of Gilda and Supaya - Rafael Rivera Torres - a lawyer and at the time *Sub-Procurador General de la República*, Assistant Attorney General, also lived in the house. The arrest was carried out by armed men in civilian clothes; they did not have an arrest warrant and claimed they were “only carrying out orders” (“*nosotros estamos cumpliendo órdenes*”<sup>2</sup>). Appearing before the *Corte Interamericana de Derechos Humanos, CIDH*, Inter-American Court of Human Rights, in October 1987, Milton Jiménez declared:

“The house where we were arrested was in a residential neighborhood. One of our neighbors had been a Supreme Court Justice, labour minister, vice rector at the university and dean of the law school. In front of us lived Liberal Party representative and attorney, Carlos Rivas García. Both these people - the former Court Justice and the representative - made them see that they couldn't arrest us without a warrant and that the assistant attorney general had judicial immunity, that he couldn't be arrested under any circumstances. This didn't stop them from arresting us. What's more, they arrested [Rivera Torres] in his pajamas”<sup>3</sup>.

The seven were put in two vehicles, without license plates, and taken to the police station in the Manchón neighbourhood. Rafael Rivera Torres was released some two hours later. The six students remained in unacknowledged incommunicado detention and later on were taken to an unidentified place. They were bound and blindfolded.

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<sup>1</sup>The ten are: Colonel Raymundo Alexander Hernández Santos, Colonel Juan Blas Salazar Meza, Colonel Juan Evangelista López Grijalva, Colonel Julio César Fúnez Alvarez, Captain (r) Billy Fernando Joya Améndola, Major (r) Manuel de Jesús Trejo Rosa, Colonel (r) Amílcar Zelaya Rodríguez, and Colonel Juan Ramón Peña Paz.

<sup>2</sup>*Los Hechos hablan por si mismos*, tomo 1-B, p. 939.

<sup>3</sup>Original texts in Spanish can be found in the Appendix.

They were held for four days during which they were tortured.

In his testimony to the CIDH, Milton Jiménez said:

“ That same night the torture began ... they began to torture the tallest person - not me - to the verge of death. I know this because I could hear them, they had to give the victim artificial respiration because they had put the *capucha*<sup>4</sup> on 15 times without stopping. Later, they began beating me, but they didn't use the *capucha* on me. They put me in front of a firing squad and pretended to fire. They told us very clearly that they were going to kill us”.

The students remained blindfolded throughout their detention and did not get any food. The interrogation centred on university politics, they were asked about the identity of student leaders but were not accused of being terrorists or subversives. Four days after their arrest they were transferred to a different place within the center; four of the six detained were released that day while Milton Jiménez and Adán Guillermo López were taken to the El Manchén prison. In May 1982 both were charged with “*Actividades Totalitarias y Disociadoras contra la Forma de Gobierno Republicano Democrático y Representativo en perjuicio del Estado de Honduras*” (antisocial and totalitarian activities against the democratic and representative government of the State of Honduras). The accusation against them came from the head of the *Sección de Investigaciones Criminales de la Dirección Nacional de Investigaciones*, Criminal Investigations Section of the National Direction of Investigation, Major Juan Blas Salazar. Proceedings were initiated in the *Juzgado Primero de lo Criminal* (First Criminal Court) and the judge issued an order for their incarceration. Six days later they were released on bail. Milton Jiménez queried with the judge the prison order since the case, he argued, had no merit. The judge reportedly told him:

“Look, this is the least harm I can do to you. My goal is for you to go free on bail because they are asking me to sentence you for a much more serious crime, for which you could not get out on bail”,

thus illustrating the lack of independence of the judiciary at the time.

The proceedings continued for 18 months. In November 1983 the First Criminal Court dismissed the case and the *Corte de Apelaciones*, Court of Appeal, affirmed this decision in December 1983.

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<sup>4</sup>The *capucha* is described by Milton Jiménez as “*un hule que utilizan los cuerpos de seguridad... que golpean, a la persona, le sacan todo el oxígeno que tiene y después le ponen el hule en la cara y esa persona está a punto de asfixiarse...*” (the *capucha* is “a rubber [bag] used by the security forces... who beat the person [until] he/she is breathless and then place the rubber [bag] over their faces and that person is nearly asphyxiated”).

Milton Jiménez also testified to the appalling treatment of other detainees:

“On one occasion, when they took me to the bathroom, I could see through my blindfold a person wrapped in newspapers lying on the floor. As a result of the torture, this person was reduced to a bloody mass that could only groan in pain”.

Milton Jiménez giving testimony to the Commissioner for Human Rights in 1993 stated that, having done his own research, he believed the clandestine detention centre where they were kept was a country house belonging to a military officer, Colonel Amílcar Zelaya, one of those charged in July 1995.

### □ Judicial Proceedings

On 25 July 1995 the Special Prosecutor for Human Rights of the Public Ministry, Sonia Marlina Dubón de Flores, charged ten<sup>5</sup> army officers with attempted murder and unlawful detention, in connection with the “*desaparición temporal*” (temporary disappearance) of the six students in April 1982. This was the first time that government authorities initiated judicial proceedings against military personnel for violations of human rights.<sup>6</sup>

The officers submitted petitions through the courts arguing that the amnesty laws approved in 1987, 1990 and specifically that of 1991, applied to them and therefore charges had no legal standing given that legal responsibility had elapsed.

The 1991 Amnesty Law came into force on 24 July 1991 and granted “broad and unconditional amnesty” (*amplia e incondicional amnistía*) to those who, prior to the law coming into effect, had been “sentenced, against whom legal proceedings have been initiated or who could be liable to prosecution” (*personas sentenciadas, procesadas o sujetas a ser procesadas*) for certain political crimes or common crimes linked to them. Crimes covered by the law included killings, torture and unlawful arrests committed by police and military personnel. However, the amnesty law also explicitly recognized Honduras’ international

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<sup>5</sup> The Special Prosecutor for Human Rights later on in the year withdrew the charges against one of the officers when it became apparent that there had been confusion between the identity of Colonel Juan Ramón Peña and another officer who is now dead and who allegedly participated in the kidnapping of the students.

<sup>6</sup> In the mid-1980s relatives of victims of “disappearance” initiated proceedings against military personnel but they were acquitted. However, the Special Prosecutor has repeatedly said that she would seek the annulment of the acquittals considering the proceedings to have been improperly conducted. See *Honduras - The beginning of the end of impunity*, AI Index: AMR 37/01/95, p 8-9.

human rights obligations which include bringing to justice state officials implicated in cases of fundamental human rights violations.

On 17 October 1995 Judge Roy Edmundo Medina, of the *Juzgado de Letras Primero de lo Criminal*, First Criminal Court, issued a warrant for the arrest of three of the officers: Manuel de Jesús Trejo, Billy Fernando Joya and Alexander Hernández since they had failed to make themselves available to the court. The three officers went into hiding and it was reported in the press that they were being harboured by fellow military personnel. They are still at large.

On 6 December 1995 a warrant was issued for the arrest of Colonel Juan Blas Salazar by the First Criminal Court, one of the ten military officers charged in July in connection with this case. However, he was already in custody serving a 21-year prison sentence on a conviction for drugs trafficking passed on 30 October 1995.

In October 1995 the officers submitted writs of *habeas corpus* to the Court of Appeals arguing that the 1991 Amnesty Law should be applied to them and, therefore, they should not be prosecuted on the charges of attempted murder and unlawful detention of the six students in 1982. On 5 January 1996 the First Court of Appeals issued a 2-1 ruling in favour of the appellants, a decision which caused great concern among human rights groups and families of human rights victims - it was seen as closing all avenues for the prosecution of those responsible for past human rights violations and giving dangerous signs on impunity for the future.

**“To accept an amnesty without knowing the truth of the events is to leave the doors open for the justice in the country to be used according to political ends.... An amnesty which takes impunity as its starting point becomes an instrument which favours social disintegration, strengthens impunity and encourages the repetition of the same crimes in the future instead of contributing to reconciliation...”**

**Statement by the Asamblea Nacional de los Jesuitas en Honduras, National Assembly of Jesuits in Honduras, made on 10 January 1996 following the decision of the Court of Appeals.**

President Carlos Roberto Reina was strongly criticized for declarations he made following the Court's decision. He was reported as saying that the Court had taken the correct decision in accepting the *habeas corpus* petitions submitted by the military officers. He had been reported in the press in December 1995 saying that the amnesty laws “applied to everybody” (*comprenden a todos*) and implied “forgetting the facts” (*el olvido de los hechos*).

On 19 January 1996, however, the *Corte Suprema de Justicia, CSJ*, Supreme Court of Justice, unanimously overturned the decision of the lower court, denied the *habeas corpus* petition and ordered the case to be sent back to the original court. The decision leaves the way clear for Judge Roy Medina of the First Criminal Court to proceed with the case against the nine officers.

The outcome of the case against the military officers and the decision on whether the Amnesty Laws were applicable to them (and who should decide on its applicability) were of paramount importance because of the impact they would have on the cases of the 184 “disappeared” identified in the report the Human Rights Commissioner, *The Facts Speak For Themselves*. The report, published in 1993, provided the first official acknowledgment that government forces were involved in the “systematic, clandestine and organized” practice of “disappearance”<sup>7</sup> against political opponents throughout the 1980s.

Amnesty International believes that amnesty laws which have the effect of preventing the emergence of the truth and subsequent accountability before the law should not be acceptable, whether effected by those responsible for the violations or by successor governments. However, Amnesty International takes no position regarding the granting of post-conviction pardons once the truth is known and the judicial process has been completed. Therefore, the amnesty laws should not be used to block the prosecution of those responsible for “disappearances” and other human rights abuses.

## 2. EXHUMATIONS CARRIED OUT

The exhumation of remains of victims of “disappearance” in the 1980s and early 1990s, as part of the efforts to bring to justice those responsible for them, began in 1994 and continued in 1995. They have been undertaken in cooperation between the authorities and human rights organizations in Honduras. As a result 16 bodies were found, of which five were identified and 11 were not.

### □ Exhumations in May 1994

<sup>7</sup> ...práctica «sistemática, clandestina y o

All Index: AMR 37/01/96

**“The Comité para la Defensa de los Derechos Humanos en Honduras, CODEH, has warned President Reina about the legal and political consequences of this [ruling], if... the Supreme Court of Justice confirms the resolution of the First Court of Appeals. The meaning of the application of the unconstitutional amnesty decree 87/91, concludes CODEH, is that it organizes and consolidates the impunity of state and parastatal [security] forces; forecloses the possibility of verifying human rights violations...; prevents the identification of the perpetrators and their accomplices; precludes the right to bring those responsible to justice; negates for ever the right of the victims, their families and society as a whole to know the truth; postpones for ever the state of law the [Honduran] people long for..”**

**Editorial, Diario Tiempo, 10 January 1996**

In early 1994 the Supreme Court of Justice of Honduras decided to bring forensic experts into the country to look into the allegations that at least four people “disappeared” in the 1980s had been buried in a clandestine cemetery in Jacaleapa. In May 1994 an exhumation was carried out in Las Vueltas de la Calera, two kilometres from Jacaleapa, El Paraíso.

The *Comité de Familiares de*

*Detenidos-Desaparecidos*, COFADEH, Committee of Relatives of the “Disappeared” in Honduras, believed the remains of Enrique López Hernández, Julio César Méndez Zavala, María Ediltrudis Montes and Francisco Samuel Pérez Borjas, who had “disappeared” in 1982, would be found in that place. On 6 May 1994 the forensic experts working on the exhumation found the first signs of esquelatal remains and by 12 May six skeletons had been found. It was determined that they were all male and all of them showed signs of multiple bullet wounds; bullets, pieces of cloth and rope were also found next to the remains. However, after examining all the evidence available to them the forensic experts concluded that the remains did not belong to the people named above. Until now they have not been identified. However, these exhumations were important because they uncovered the *corpus delicti* - the facts that constitute a crime - without which no judicial investigation was deemed possible.

Physician for Human Rights’ Forensic Anthropologist Clyde Snow, observing part of a human skull exhumed in October 1995.

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#### ❑ Exhumations in December 1994

In December 1994 the Special Prosecutor for Human Rights initiated the exhumation which resulted in the finding of the remains of **Nelson Mackay Chavarría** in Costa de los Amates, near the border with El Salvador, on 9 December 1994. He had “disappeared” in 1982 (for further information on his case see *Honduras - The beginning of the end of impunity*). This finding brought hope that a major step forward had been given in the struggle to clarify past “disappearances” in Honduras. The *Fiscalía General*, Attorney General’s Office, expressed a commitment to initiate judicial investigations against “whoever proves to be involved” (“*resulte quien resulte implicado*”) and the Human Rights Commissioner saw these events as the “beginning of the end of impunity” (“*el principio del fin de la impunidad*”).

Legal proceedings were started shortly after the exhumation and relatives, witnesses and members of the military were called to give evidence. In January 1995 Amelia Rivera de Mackay, wife of Nelson Mackay Chavarría, appeared before the First Criminal Court in Francisco Morazán. In October, the former head of the armed forces military intelligence, Colonel Leónidas Torres Arias gave evidence before Judge Rafael Castro Avila about “disappearances” in the 1980s in Honduras. As a result of his evidence the Inspector of the *Fuerza de Seguridad Pública, FUSEP*, Public Security Force, Colonel Alexander Hernández, was to be called to testify as well. However, he was in hiding following the arrest warrant issued against him (and two other officers) in connection with the case of six students who were illegally arrested and temporarily “disappeared” in 1982 and involving nine military officers altogether (see above).

#### ❑ Body found - February 1995

On 2 February 1995 a skeleton was found in the sewer system of Tegucigalpa. In October 1995 forensic experts identified the remains as those of **Estanislao Maradiaga Linares**, a trade union leader who “disappeared” after being arrested in May 1980.

Estanislao Maradiaga was taken from his home by five armed men belonging to the former National Directorate of Investigations (DNI) on 24 May 1980. He was president of the Choluteca Branch of the *Sindicato de Trabajadores del Servicio Autónomo Nacional de Acueductos y Alcantarillados - SITRASANAA*, National Service of Sewage and Aqueducts Workers’ Union. He had served his military service at the *Onceavo Batallón de Infantería* Eleventh Infantry Battalion in Choluteca, reaching the rank of *cabo* (Private).

His remains were rescued on 2 February 1995 from a drain in the municipality of San Miguel in Tegucigalpa. These remains were examined by forensic anthropologists, at the Judicial Morgue on 21 October 1995. On 24 October 1995, relatives of Maradiaga identified the remains. An important clue had been given by relatives who informed that he



had suffered a fracture in the leg and for which he had been operated on and a metal pin inserted in the leg. DNA tests were performed to help confirm that these remains belonged to him.

#### □ Exhumations in October 1995

Exhumations carried out in October 1995 were initiated by the Special Prosecutor for Human Rights and COFADEH and carried out by a team of three forensic experts from Physicians for Human Rights, a US based NGO.

#### ○ Cemetery of El Maguelar, San Martín, El Paraíso

There were expectations that in this place were the remains of Gustavo Morales Fúnez, Rolando Vindel and someone known as “El Bachiller” or “Oscar Manuel”, presumed to be a Salvadorean trade unionist who was with Vindel at the time of the arrest. Gustavo Morales and Rolando Vindel had been captured in different places of Tegucigalpa on 18 March 1984.

On Monday 23 October 1995, the forensic anthropologists exhumed a coffin in the Sitio II, in El Maguelar cemetery (El Paraíso region, 70km east of Danlí) reportedly containing the remains of a victim of human rights violations.

The body had been buried on 17 April 1984 by neighbours from El Maguelar who had found it the previous day, near El Guajiniquil.

The victim had been shot in the back and apparently tortured. It was believed that the remains were those of a Salvadorian who, according to the people who buried him, was a young man of between 18 and 23 years of age. Later on it was thought that the remains could belong to someone from San Pedro Sula and members of COFADEH were to get in touch with the relatives.

On 18 April 1984, the same individuals from El Maguelar had found two other bodies which were buried near the first, although there were disagreements about the exact place.

On 25 October 1995, the forensic team (helped by personnel from the *Fiscalía Especial de Derechos Humanos* and the *Dirección de Investigación Criminal*, DIC,

**“If [the victims’ bodies] are not found today, someone else will find them tomorrow... Whoever is found, we will gather the remains and if I die someone else will do the same with my son’s remains.”**

**Fidelina Borjas, vice-president of COFADEH and mother of Samuel Pérez Borjas, who “disappeared” on 24 January 1982.**

(Directorate of Criminal Investigations), found a common grave containing two bodies in the sector known as *Las Trincheras* in El Maguelar. Relatives of Gustavo Morales and Rolando Vindel participated in the excavations. The skeletons were in a bad condition: the spinal vertebrae and ribs of both bodies could not be recovered.

Gustavo Adolfo Morales Fúnez

**Gustavo Adolfo Morales Fúnez**, born in Olanchito, Yoro, on 17 September 1947, was detained by the security forces on 18 March 1984 near the US Embassy in Tegucigalpa, by six armed men in civilian clothing. His kidnapping was witnessed by Luis Mendoza Fugón, then magistrate of the Supreme Court of Justice. Gustavo Morales had a degree in Economics, worked as deputy director of the National Lottery and was a trade union leader at the *Patronato Nacional de la Infancia, PANI*, (national body overseeing orphanages in Honduras).

The body of Gustavo Morales Fúnez was identified through pieces of his clothing, a shoe and a dental prosthesis on 26 October 1995. The clothes, including the remains of a stripey shirt, were found near a skull believed to be his. He also had a driving license folded in a plastic cover in an inside pocket in his trousers. The height and age were also consistent with those of Gustavo Morales.

**Rolando Vindel González**, born in Sonaguera, Colón, on 18 September 1944, was detained at 8am, on 18 March 1984 at La Leona Park in Tegucigalpa, by a sub-lieutenant and a soldier from the Cobra battalion. An electrician by profession, at the time of his

abduction, Rolando Vindel was the president of the *Sindicato de Trabajadores de la Empresa Nacional de Energía Eléctrica, STENEE*, National Electricity Company's Trade Union, and was participating in the negotiation of a collective bargaining agreement for the STENEE.

In January 1981, Rolando Vindel was held by the DNI on charges of "subversion" and later released for lack of evidence. Upon his release he had denounced having received beatings, electric shocks and death threats while in police custody in a full-page paid announcement in the newspaper *Tiempo*. In September 1983, while being involved in trade union negotiations on behalf of the STENEE, Rolando Vindel had been reportedly detained by members of the DNI and also tortured.

Rolando Vindel González

At the time of his "disappearance" in March 1984, he was wearing a white t-shirt, a pair of old jeans and white trainers. The forensic experts were unable to fully identify the remains found near those of Gustavo Morales, believed to be those of Rolando Vindel, despite some similarities between odontological information provided by Vindel's relatives and teeth of the exhumed remains.

The relatives of some "disappeared" people, Rolando Vindel included, filed a complaint in the courts in the mid 1980s against several senior officers, accusing them of murder, torture and abuse of authority.

This initiative followed the release of a report and conclusions in 1985 of a Special Armed Forces Commission which looked at over 100 cases of "disappearance". The Commission concluded that there was no evidence to suggest that the armed forces were responsible for the "disappearances" or that the victims had been held by military or security units. In its recommendations the Commission emphasized that accusations against people held responsible for "disappearances" could be brought before the appropriate judicial authorities. In January 1986, however, the First Criminal Court ordered the case against the accused to be closed, despite the fact that the judge had not subjected any of the accused to thorough questioning and had ruled inadmissible key evidence, including the testimony of a retired army colonel implicating the main accused in the "disappearances".

**“We will not forgive the perpetrators of the “disappearance”, torture and assassination of Rolando [Vindel]... I have the hope that his remains are in El Maguelar and we will not forgive those responsible for his death, but we ask that they are brought to justice.”**

**Alicia Durón de Vindel, wife of Rolando Vindel, 25 October 1995.**

Amnesty International expressed concern at the time that the investigations of the Special Commission had not been conducted thoroughly and impartially. The Commission was composed entirely of members of the military; its findings were based largely on interviews with former army officers and members of the DNI, some of whom had been

named as responsible for “disappearances” by local human rights groups, and it appeared not to have examined key evidence during the proceedings.

#### ○ Cuesta La Pirámide, Municipality of El Rodeo, Comayagua

At 1:30pm, on 25 October 1995, the forensic team (also helped by personnel from the *Fiscalía Especial de Derechos Humanos* and the *Dirección de Investigación Criminal*) found remains in La Pirámide (Comayagua, Km 49 on the road between Tegucigalpa and San Pedro Sula), that were thought to belong to **Hans Albert Madisson López**. The team removed hundreds of rocks to eventually find two plastic bags containing human remains, including a skull which was completely destroyed.

Hans Albert Madisson López was 24 when he was arrested and “disappeared” on 8 July 1982 in a joint military-police operation in the Florencia Sur district of Tegucigalpa, along with journalist Oscar Reyes Bacca; both were going to the cinema. Madisson had no known political affiliation. He was originally from Puerto Cortés; he had just finished his secondary education and was preparing to start an engineering degree at the *Universidad Nacional Autónoma de Honduras (UNAH)*, National Autonomous University. It is reported that he was kidnapped by mistake and that some of the military involved in his abduction informed the family that his body was at La Pirámide, in Comayagua.

Between three and five days after the abduction, Marco Tulio Andino - a peasant from the community of *El Rodeo*, near La Pirámide - found two bags containing human remains in a state of semi-decomposition. The man had apparently been tortured and was decapitated. Marco Tulio, helped by Abraham Hernández and Pablo Maldonado, buried the remains after informing local Judge Juan Blas Domínguez, from the community of San Antonio. The judge had prepared a formal document detailing that the body had been found in two bags: the head and part of the neck were found in one, the other contained the trunk from the neck to the knees.

**“...We exhort the President of the Republic to demand those subordinates on trial and pending trial for crimes against humanity to present themselves to the judge to prove their innocence when called. At a time when the official lies come out defeated from inside the time capsules that are clandestine graves, we cannot tolerate attitudes of indifference, even less delaying tactics. ...”**

**Press release from COFADEH,  
2 November 1995.**

The skeleton examined by the forensic team was identified as Hans Albert Madisson based on a bone fracture and dental records. After examination, it was established that Madisson had received several wounds in the hips, head, legs and arms. The lower legs and arms were missing. Madisson is believed to have died of a shot to the head. The bullet was found among the remains.

**“...the exhumations of the “disappeared” will continue because they are a process to end a very painful era which filled the country with shame and anxiety.... There are four steps [to follow in the case of the “disappeared” in Honduras]: It is the responsibility of the courts to determine whether the amnesty laws are valid and if there is evidence of responsibilities; to find the remains of the “disappeared”; to pay compensation to their relatives; and to build a large monument in memory of the victims.”**

**President Carlos Roberto Reina, October 1995**

### ○ Identification of the five bodies

The skeletons were taken to the *Dirección General de Medicina Forense* (Directorate of Forensic Medicine) in Tegucigalpa, to be identified through forensic techniques.

On 29 October 1995, in a press conference, the forensic team presented their findings. Two of the four were identified, one was partially identified and the last one could not be identified. It was believed that DNA testing would fully confirm the identities and blood samples were taken from the relatives.

The bodies provisionally identified and awaiting confirmation through DNA testing were those of Gustavo Adolfo Morales Fúnez and Hans Albert Madisson López. The body of Rodolfo Vindel was partially identified.

The forensic experts were able to determine that the remains of the fourth victim belonged to a short man of between 35 and 50 years of age but could not ascertain that they belonged to a man called Oscar, known also as “El Bachiller”, as originally expected.

The team also confirmed the identity of the remains of Estanislao Maradiaga found in February 1995 (see above).

#### □ **Exhumations in November 1995**

Further exhumations were carried out in November 1995 under the auspices of the Special Prosecutor for Human Rights and CODEH.

#### ○ Cemetery in Azacualpa, El Triunfo, Department of Choluteca

On 6 November three members of the *Equipo Argentino de Antropología Forense, EAAF* (Argentine Forensic Anthropology Team), who were invited to Honduras to contribute their expertise to the investigation, initiated the exhumations in the cemetery of the Azacualpa village, El Triunfo, Choluteca. In an individual grave they found the remains of a male, of between 35 and 40 years of age, and approximately 1.70 mts in height. Odontological information and details of an old injury - provided by relatives - helped the team to identify the remains as those of **Adán Avilez Fúnez**. The team also established that his death had been caused by two shots in the thorax.

Map of Honduras showing the sites (Δ) of exhumations carried out between 1994 and 1995.

Adán Avilez Fúnez (45, farmer) and José Amado Espinoza Paz (see below) had been arrested on 12 June 1982 in Choluteca by agents of the *Dirección Nacional de Investigaciones, DNI* (National Directorate of Investigations) and members of the *Fuerza de Seguridad Pública, FUSEP* (Public Security Force). On 15 June 1982 two bodies were found by the roadside (Km 93 of the south road near Jicaro Galán, Department of Valle); they did not have any identity papers on them and were barefoot. They were buried in the same place.

The widow of Adán Avilez heard news on the radio of the finding of two bodies and a description of the clothes of one of them, which coincided with her husband's clothes. She approached the authorities and managed to recover his body from the grave where he had

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been buried. His body was then taken to the cemetery in the village of Azacualpa, El Triunfo, Choluteca, where he was buried on 24 June 1982.

José Amado Espinoza Paz, a Nicaraguan citizen, had moved to Honduras in 1979 with his family and had settled in Choluteca, working as a mechanic. He was accused of arms trafficking and to have links with the Salvadorean guerrillas.

On 7 November 1995 the EAAF started an excavation on Km 93 of the road to Choluteca, Department of Valle. The following day a body was found. Laboratory examination determined that the remains belonged to a male, over 35 years of age, and a height of around 1.65 mt. Due to the poor state of the remains it was not possible to determine the cause of death and there was not enough personal information to allow a definite identification. The only known information to link the remains with José Amado Espinoza were the clothes found in the grave which according to witnesses coincided with those the man which was buried in that spot in 1982 was wearing. However, further genetic analysis of some teeth found, in good condition, compared with samples from relatives found enough evidence to establish that the remains were those of **José Amado Espinoza Paz**.

○ Yuscarán, El Paraíso Department

The forensic team proceeded to excavate a spot near the river Dantas, some 10 kms from Yuscarán. On 14 November, after two days' work, they found remains which they could only determine to be of a male, between 25 and 35 years' old, due to the poor state of conservation. The skeleton had been lying in water and had nearly desintegrated.

○ Sabanagrande, Francisco de Morazán Department

On 14 and 15 November, the EAAF worked on a place where a witness had testified to have buried a body in 1981. According to this information, they had expected to find the remains of Jorge Zavala Eurake, a former president of the *Federación de Estudiantes Secundarios, FESE*, Secondary Education Students' Federation, who had "disappeared" in August 1981. However, no body was found at this site.

○ Santa Bárbara, Santa Bárbara Department

Between 20 and 22 November the EAAF worked a large area in Santa Bárbara, behind the *Escuela Normal*, Teacher Training College. There were reports that several bodies had been buried in the Santa Bárbara Department during 1985, among them eight bodies behind the College. Although the team did not find any human remains after three days' work and considering the size of the site (some 17 hectares), they were reluctant to conclude that no further investigations should be carried out there.



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### ○ Callejones, Santa Bárbara Department

On 23 and 24 November the EAAF worked in the north-east part of Honduras, near the road between Callejones and Chiquila. In June 1981 four male bodies, with signs of torture had been found in a 3 km stretch of the road and had been buried by people in the neighbourhood. The remains of one person were found in one of the sites excavated but none in the other. Laboratory tests concluded that the remains, which were in very poor conditions, belonged to a male, of between 20 and 30 years of age, around 1.68 mts in height. Searches in two other sites, *El Mango* and *La Culebra*, did not produce any results either.

In its final report the EAAF concluded, among other things, that “the documentation and scientific evidence of some of the cases investigated amount to very important judicial evidence”.<sup>8</sup> On this basis, CODEH submitted a criminal accusation on 12 December 1995 against those believed to be responsible for the “disappearances” of Adán Avilez Fúnez and Amado Espinoza Paz. Charges of death threats, illegal detention, theft, damage to property and murder were presented to the First Criminal Court in Choluteca against six officers (active service and retired).

### **3. HUMAN RIGHTS DEFENDERS UNDER THREAT**

Members of CODEH and COFADEH, as well as others involved in the defence of human rights and who seek that those responsible for human rights violations do not go unpunished, continued to be targets of attacks and threats.

The killing of Juan Pablo Rivas Calderón, a retired major, who was murdered on 4 January 1995, was seen as an attempt to prevent him from giving details of past military abuses. He had denounced fears for his life after accusing another former head of the armed forces of acts of corruption. After his death his family received threatening telephone calls warning them not to continue their attempts to have his killing investigated. An investigation on the killing started shortly afterwards but has not made much progress to the present time.

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<sup>8</sup> “La documentación y prueba científica de algunos de los sucesos investigados constituye evidencia judicial importantísima”.

#### 4. CONCLUSIONS

Amnesty International welcomes the continued efforts made by the Special Prosecutor for Human Rights, the Human Rights Commissioner and the local human rights organizations CODEH and COFADEH to clarify past human rights violations and bring to justice those responsible. The organization urges the authorities to continue facilitating this process and calls on the authorities:

- to support and provide the necessary conditions for the culmination of proceedings against those charged with the attempted murder and unlawful detention of six students in 1982. Such conditions would include protection for the Judge prosecuting the case and that the accused submit themselves to the Court.
- to initiate promptly the procedures against those suspected of involvement in the “disappearance” of Gustavo Morales Fúnez, Rolando Vindel González, Hans Albert Madisson López, Adán Avilez Fúnez and José Amado Espinoza Paz, whose remains, showing signs of extra-judicial execution, were exhumed in October and November 1995, and of Estanislao Maradiaga Linares.
- to ensure that the investigation into the “disappearance” of Nelson Mackay Chavarría is completed as soon as possible.
- to ensure the safety of all those involved in the protection of human rights and the clarification of past human rights violations, including witnesses.

## APPENDIX

### TEXTS IN SPANISH

Testimony by Miltón Danilo Jiménez Puerto before the *Corte Interamericana de Derechos Humanos*, as quoted in *Los Hechos hablan por sí mismos* (tomo 1-B, pp. 939-941):

p. 2

*“La casa donde nos detuvieron es una zona residencial, fue vecino nuestro una persona que fue Magistrado de la Corte Suprema de Justicia, fue Ministro de Trabajo, Vice Rector de la Universidad, Decano de la Facultad de Derecho. Enfrente vivía un diputado del Partido Liberal,... el abogado Carlos Rivas García. Y estas personas, tanto el ex-magistrado de la Corte como el Diputado, les hicieron ver – a los elementos que llegaron a detenernos – de que no podían detenernos sin orden judicial y que además, el Sub Procurador General de la República gozaba de inmunidad, que no podían bajo ninguna circunstancia detenerlo. Esto no fue obstáculo para que nos detuvieran. Es más, se llevaron al señor en pijamas.”*

p. 3

*“Esa misma noche comenzaron las torturas... a la persona que era más alta, que no era precisamente yo, comenzaron a torturarla y estuvieron a punto de matarlo – eso por que yo mismo lo escuché – tuvieron que darle después respiración artificial por que le pusieron quince veces seguidas la capucha. Posteriormente – a mi no me pusieron la capucha – me golpearon y me pusieron ametralladoras e hicieron simulacro de fusilamiento y nos dijeron claramente que nos iban a matar.”*

*“Mire, este es el mal menos peor que yo puedo provocarle, el objetivo mío es que usted salga en libertad bajo fianza, porque a mi me están exigiendo que le dicte auto de prisión por un delito mayor, de tal manera que usted no pueda salir bajo fianza.”*

p. 4

*“En una ocasión, cuando me llevaban al baño, pude ver a través de la venda a un individuo tirado en el suelo, estaba envuelto en periódicos. Producto de la tortura esta persona había sido reducida a una maza [sic] sanguinolenta, irreconocible, que sólo emitía gemidos de dolor.”*

**Text of the statement by the *Asamblea Nacional de los Jesuitas de Honduras***

p. 5

*“Aceptar una amnistía sin conocer la verdad de los hechos es dejar las puertas abiertas para que la justicia en el país siga utilizándose de acuerdo a fines políticos... Una amnistía que tiene como punto de partida la impunidad, en vez de contribuir a la reconciliación, se convierte en un instrumento que favorece a la descomposición social, fortalece la impunidad y propicia la repetición de los mismos crímenes en el futuro.”*

**Text of the statement by the *Comité para la Defensa de los Derechos Humanos en Honduras (CODEH)***

p. 6

*“El Comité para la Defensa de los Derechos Humanos en Honduras, CODEH, ha advertido al Presidente Reina sobre los alcances legales y políticos de este hecho, si... la Corte Suprema de Justicia confirma la resolución de la Corte Primera de Apelaciones... [el decreto de amnistía 87/91] organiza y consolida la impunidad de los agentes estatales y paraestatales; cierra las posibilidades de comprobar las violaciones de los derechos humanos...; impide identificar a los autores, cómplices e incubidores de tales delitos; imposibilita el derecho a imponerle a los autores las sanciones penales; niega para siempre el derecho de las víctimas, de sus familiares, y de la sociedad misma a conocer la verdad; pospone para siempre el estado de derecho que tanto anhela el pueblo...”* (Editorial, Diario Tiempo, 10 de enero de 1996).

**Statement by Fidelina Borjas, vice-president of COFADEH**

p. 9

*“Si hoy no aparecen, otros los encontrarán mañana... Sea quien sea, lo vamos a recoger y si yo algún día muera, alguien se encargará de hacer lo mismo con los restos de mi hijo.”*

Fidelina Borjas, vicepresidenta de COFADEH y madre de Samuel Pérez Borjas, quien “desapareció” el 24 de enero de 1982.

**Statement by Alicia Durón de Vindel, wife of Rolando Vindel**

p. 12

*“No vamos a perdonar a los autores de la desaparición, tortura y asesinato de Rolando [Vindel].... Tengo la esperanza de que sus restos aquí están [en El Maguelar] y nosotros no vamos a perdonar a los responsables de su muerte, más bien pedimos castigo para ellos.”*

**Text of press release by COFADEH, following the October 1995 exhumations**

p. 13

*“... Exhortamos al Presidente de la República a que exija a esos subordinados procesados y pendientes de proceso por delitos de lesa humanidad que acudan ante el Juez a probar su inocencia tras que sean requeridos. En momentos cuando surgen derrotadas las mentiras oficiales del interior de esas cápsulas del tiempo que son las tumbas clandestinas, no pueden ser toleradas actitudes displicentes mucho menos dilatorias....”*

**Comments by President Carlos Roberto Reina, October 1995**

p. 13

*“...las exhumaciones de desaparecidos continuarán, porque son un proceso para liquidar una etapa muy dolorosa que llenó al país de vergüenza y angustia.... existen cuatro pasos, entre ellos el jurídico: corresponde al poder judicial determinar si son válidas o no las amnistías; si hay evidencias de responsables... También encontrar a los desaparecidos. En tercer lugar, indemnizar y en cuarto un homenaje a esas víctimas en un gran mausoleo...”*