



OPEN LETTER TO THE GENERAL ATTORNEY OF HONDURAS

RE: CRIMINAL PROCEEDINGS AGAINST HUMAN RIGHTS DEFENDERS JOSÉ DANIEL MÁRQUEZ, KELVIN ALEJANDRO ROMERO, JOSÉ ABELINO CEDILLO, PORFIRIO SORTO CEDILLO, EWER ALEXANDER CEDILLO, ORBIN NAHÚN HERNÁNDEZ, ARNOL JAVIER ALEMÁN AND JEREMÍAS MARTÍNEZ DÍAZ

Dear Attorney General Óscar Fernando Chinchilla,

I am writing to you to express Amnesty International's concern at the misuse of the Honduran criminal justice system to unfairly detain and prosecute eight human right defenders from Tocoa, Colón Department. José Daniel Márquez, Kelvin Alejandro Romero, José Abelino Cedillo, Porfirio Sorto Cedillo, Ewer Alexander Cedillo, Orbin Nahún Hernández, Arnol Javier Alemán and Jeremías Martínez Díaz are standing trial since 1 December 2021 in Tocoa, Colón, on charges of deprivation of liberty (*privación injusta de la libertad*) and aggravated arson (*incendio agravado*) allegedly committed against a contractor of the mining company Inversiones Los Pinares (ILP), and aggravated arson against ILP. Seven of them have been in pretrial detention since August 2019, and the eighth, Jeremías Martínez Díaz, since November 2018.

The eight human rights defenders are members of the Tocoa environmental organization, the Municipal Committee for the Defence of Common and Public Goods (Comité Municipal en Defensa de los Bienes Comunes y Públicos, CMDBCP). Amnesty International has researched in depth the criminal case which has resulted in their prosecution and detention. As the UN Working Group on Arbitrary Detention (WGAD), the organization has concluded that the criminal charges against the eight men and their protracted pretrial detention are unwarranted and are a misuse of the justice system aimed at targeting, harassing and ultimately silencing human rights defenders. Based on a comprehensive analysis of the case file, it appears that the charges have been brought to target environmental defenders who have exercised their right to freedom of peaceful assembly in their quest to protect and defend local water resources and oppose two iron mines and a processing plant. Amnesty International believes this forms part of a [wider documented pattern of persecution and criminalization of environmental and land defenders in Honduras](#).

Amnesty International's close examination of the judicial case file, videos and in-person interviews with witnesses, representatives of local human rights organizations and authorities has evidenced the partial and selective manner in which prosecutors have investigated and presented the case, and the way in which judges have assessed the evidence and adjudicated proceedings. Of particular concern is the failure to provide consistent and reliable evidence of individual conduct of the accused fitting the criteria of a criminal offence in Honduran criminal law with a detailed description of the alleged crime scenes, an explanation of the sequence of events, the location of actors supposedly involved, the sole reliance on contradictory and inconsistent testimony of the key witnesses, and above all, the almost complete failure to impartially investigate or clarify key aspects of the case, which should have also taken into account fundamental elements such as the peaceful protest the eight men were involved in as human rights defenders. These findings demonstrate not only the lack of due diligence and negligence on the part of law enforcement and judicial authorities, in breach of [core international principles](#) of access to justice on the [conduct of prosecutors](#), but also indicate a clear determination to pursue charges against CMDBCP members regardless of the actual events.

The CMDBCP is a network of community groups that organized after 2015 to peacefully oppose the development of two iron oxide mines (ASP1 and ASP2) in the Montaña de Botadero Carlos Escaleras National Park. According to the information received by Amnesty International, the CMDBCP filed legal complaints before national mining and environmental authorities, as well as local municipal authorities, regarding the legality of the mining concessions and permits granted to ILP. Given the lack of progress in the [CMDBCP's](#)



[demands](#), on 1 August 2018, they installed an encampment on a public road which was supported by diverse communities in the area as a form of peaceful protest to prevent the continuity of the company's operations and to protect the Guapinol and San Pedro rivers. The camp remained for almost three months until the police and military carried out a violent eviction on October 27-28 of the same year.

The charges for which the eight men are in pre-trial detention relate to alleged events of 7 September 2018, near the camp. According to information gathered by Amnesty International, around 250-300 people from the encampment and local communities approached ILP contractors who had arrived with ILP security staff and members of the Military Police, to question the work. ILP officials and Military Police then withdrew, but negotiations took place between protesters and an ILP contractor, who was in charge of the contractors, resulting in an agreement for the contractors and their machinery to also be withdrawn. However, after this agreement was reached, a vehicle reportedly belonging to ILP returned toward the protesters, a window was lowered, and repeated shots were fired at protesters before the vehicle drove off. In response, the ILP contractor was retained by a group of protesters demanding he identify the gunman responsible for the shooting. Protesters also called for medical assistance for the wounded man. At some point during the confusion, the ILP contractor's hired car was set alight together with two recently installed shipping containers housing ILP offices. The protesters that had retained the ILP contractor then handed him over to the National Police to be investigated for the injuries caused to the wounded demonstrator, but the complaint of the CMDBCP members was not taken up by the authorities. According to information gathered, the delay in the ILP contractor being handed to police was due to the police failure to intervene at the scene rather than the protesters. However, the police only followed-up a complaint filed by the ILP contractor on 7 September 2021 claiming that he had been kidnapped, robbed and their property destroyed.

Among the numerous and serious failures and irregularities Amnesty International noticed in the case file against the eight human rights defenders is the fact that, in his first statement, the ILP contractor recognised that a protester had been shot apparently from an ILP vehicle and could not name anyone involved in his alleged kidnap or the burning of his vehicle. However, the ILP contractor modified his subsequent statements to include a list with the full names of 31 people, including the eight men currently in detention, who were supposedly involved in his kidnap and burning the property without attributing any particular activity to individuals. The ILP contractor subsequently changed his testimony again during following hearings to attribute specific actions to individuals and in different proceedings. Another prosecution witness whose identity is protected, also made contradictory statements about the series of events.

In addition, Amnesty International has found other major failings of due diligence and impartiality in the investigation conducted by the police and prosecutors, such as the absence of any investigation into the shooting of one of the protesters, who remains with a bullet lodged in his chest close to his heart, and the connection with the accusation against the eight defenders.

According to the analysis carried out by our organization, other grave flaws in the investigation include:

- The lack of independent witnesses not directly linked to the company, ILP (already pursuing the joint prosecution with the Public Prosecutor's Office) in the investigation; and the sole reliance on information provided by ILP, despite the vested interest of the company in forcing the CMDBCP to focus its attention on the release of their colleagues, rather than continuing to challenge the legality of the mines and processing plant.
- The repeated filing of the offence of "criminal association" (asociación ilícita) - a key offence to prosecute organized crime - without any evidence other than unsupported claims of ILP officials that there was an attempt to organize a criminal network. Their only association was to defend human rights, so in essence prosecutors are criminalizing the right to association by equating association to defend human rights with a criminal network. This enabled prosecutors to file the case outside the ordinary criminal jurisdiction of the courts in Tocoa and apply the National Court



jurisdiction, set up in law to deal with the most serious organized crime offences. This intentional misuse of criminal charges also enabled prosecutors and judges to sustain extended pretrial detention. Even when the National Courts finally declined competence after dismissing the charge of criminal association, prosecutors continued to argue for pre-trial detention without providing any evidence of the threat of flight or risk to the investigation.

- Prosecutors ignored ample evidence provided by the defence to demonstrate that the CMDBCP was a human rights organization, engaged in a social conflict,¹ [including reports from government institutions](#) which had engaged in negotiations with the CMDBCP. They failed to analyse the context of the case, in particular the risky situation human rights defenders, [especially environmentalists](#), face in Honduras, which is considered [one of the most dangerous countries](#) in the world for these activists.²
- In addition, prosecutors have failed to gather and analyse the wide range of photographic and video evidence from journalists and witnesses present during the events of 7 September 2018, which clearly shows CMDBCP commitment to ensure the protest remained peaceful, only selecting to present as evidence those clips which supported the prosecution's case. They also failed to verify information in relation to reports made to police and ambulance services regarding the events of 7 September or to explain adequately police conduct during the events. Instead, they presented the CMDBCP as an organized "anti-mining" criminal group without any solid basis.³
- Prosecutors also ignored the fact that suspects voluntarily surrendered to the authorities, that they did not have previous criminal records, had positive character references from community representatives and glowing reports from prison authorities regarding their conduct in prison. Instead, prosecutors continued to demand pretrial detention as "dangerous criminals".

It is important to note that closely linked to the prosecution of the members of the CMDBCP was a smear campaign mounted in local media during the protest encampment. The media reports were then used by prosecutors to misrepresent the CMDBCP to justify initial charges in September 2018 to secure an eviction order. These charges against 18 CMDBCP members in connection with the initiation of the encampment, but unrelated to the events of 7 September 2018, were later dismissed as unsubstantiated ILP allegations. However, they not only served as the pretext for the eviction, but they also secured the arrest of Jeremías Martínez Díaz. This first warrant was for lesser charges of usurpation and damages led 13 members of the CMDBCP to surrender themselves to contest the allegations in February 2019. However, once in custody, the until then secret second arrest warrant was revealed by prosecutors and the judge to prosecute 12 of them for the more serious offences related to the events of 7 September 2018. In March 2018, a judge dismissed the case against the first group of 12 CMDBCP on the grounds that it was evidently a social conflict and prosecutors had not presented evidence of the crimes or individual criminal conduct. They were released, but the prosecutors and ILP appealed the judge's decision, which the Appeals Court overturned and reinstated the main charges.

In 2019, the IACHR issued [a country report on Honduras](#), which highlighted the criminalization of human rights defenders opposing the ILP mines near Tocoa, and raised concern about the inappropriate use of the criminal justice system by prosecutors and judges, including the crime of usurpation, to prosecute human rights defenders through the special organized crime jurisdiction of the national courts.

Amnesty International is gravely concerned at ample evidence in this case that prosecutors misused the justice system and tailored their investigation to a media prepared narrative to keep the eight human rights defenders in pretrial detention for more than two years. These practices now threaten to result in the unfair conviction of eight men whose prosecution appears to be in reprisal for their legitimate defence of human rights against powerful vested interests.⁴

International human rights law and standards protect the right of people to defend human rights, including through the exercise of the right to freedom of peaceful assembly, and to protect their rights to a safe and



healthy environment and to water and sanitation. It also establishes the right to liberty and not to be subjected to arbitrary detention. Various international treaties ratified by Honduras, including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR), set out the principles of the right to fair trial, such as the right to due process, to equality before the law, to the rule of law, and to the presumption of innocence. Effective protection of these rights also require prosecutors to act in accordance with standards of impartiality and integrity in the investigation and prosecution of cases as set out in [UN Guidelines on the role of Prosecutors](#). The Inter-American Commission on Human Rights has provided further guidance to States on the need to ensure that human rights defenders are not targeted through arbitrary and unfair proceedings, which can be found in the [report on the Criminalization of Human Rights Defenders](#).

In 2020, the WGAD issued its [Opinion 85/2020](#) on the case of the Guapinol defenders, concluding that their detention violated Honduras' legal obligation under the Universal Declaration of Human Rights and the ICCPR, calling for the authorities to secure their immediate release and ensure they receive compensation them for the injustices suffered. On 19 November 2021, several [UN experts reiterated this call](#) on the Honduran authorities to ensure the immediate release of the eight defenders, highlighting Honduras' particular obligation as a member of the UN Human Rights Council to implement the decisions of UN mechanisms, such as that of the WGAD.

Amnesty International considers José Daniel Márquez, Kelvin Alejandro Romero, José Abelino Cedillo, Porfirio Sorto Cedillo, Ewer Alexander Cedillo, Orbin Nahún Hernández, Arnol Javier Alemán and Jeremías Martínez Díaz are being detained solely because of their peaceful opposition to the ILP mines and iron processing plant. The organization declared them prisoners of conscience and has initiated a global campaign demanding their immediate and unconditional release. Therefore, based on the grave irregularities documented by the organization that are narrated in this letter in regard to the investigation and prosecution of the Guapinol environmental defenders and also the series of international expert opinions and recommendations issued regarding this case and related judicial practices, we respectfully request that:

1. In light of the evidence presented in this letter and other recommendations by international human rights experts, the Public Prosecutor's Office drops the prosecution against José Daniel Márquez, Kelvin Alejandro Romero, José Abelino Cedillo, Porfirio Sorto Cedillo, Ewer Alexander Cedillo, Orbin Nahún Hernández, Arnol Javier Alemán and Jeremías Martínez Díaz to enable their immediate and unconditional release.
2. Initiate procedures to review whether officials of the Public Prosecutor's Office acted in accordance with the Code of Criminal Procedures and other internal regulations of the Public Prosecutor's Office in the investigation of the events of 7 September 2018 and other events related to the CMDBCP protest encampment.
3. Ensure that the review is carried out in accordance with international human rights standards.
4. Launch a new criminal investigation into the shooting of the protester on 7 September 2018 and subsequent events, ensuring it is in line with international standards of fair trial, so that those responsible are held to account on the basis of an impartial investigation and a fair trial.
5. Finally, in order to provide greater protection to those who defend human rights in the country and avoid similar cases in the future, we request that the Public Prosecutor's Office adopt an internal protocol to prevent the criminalization of human rights defenders.

Yours sincerely

Erika Guevara Rosas
Americas Director