

Subject: Amnesty International: human rights defenders at risk,
Guatemala and Honduras

December 1, 2004

Below and attached are excerpts from an Amnesty International press release concerning human rights defenders. The two cases that AI reports on from the Americas are cases that Rights Action has long been working on:

- Guatemala, the Chixoy Dam Reparations Campaign
- Honduras, the Montana Verde political prisoners

Rights Action has been providing AI with extensive information about these [and other cases] and we are heartened that these cases are receiving global attention.

Please re-distribute this information. If you want on/ off this elist: info@rightsaction.org

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Amnesty International November 2004, AI Index, ACT 30/020/2004

HUMAN RIGHTS DEFENDERS AT RISK

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HUMAN RIGHTS DEFENDERS AT RISK

Human rights defenders around the world face serious dangers and difficulties on account of their work to promote and defend the human rights of others. This report is part of a series of Amnesty International documents illustrating the different patters of

repression faced by human rights defenders worldwide. The appeal cases highlighted in this document show how in some countries legal measures or the threat of prosecution are used to dissuade or prevent activists from conducting human rights work.

The misuse of the judicial system to harass or punish human rights defenders for their legitimate work is not new. However, Amnesty International believes the cases in this report reflect a growing trend in which some government officials or private individuals try to gag and silence human rights defenders by threatening them with detention either on spurious criminal charges or charges that are politically motivated. Amnesty International also believes that such legal measures or charges are designed to discredit the claims of human rights defenders and detract attention from the abuses they report.

Human rights defenders are all those men and women who act on their own or collectively to contribute to the effective elimination of all violations of the fundamental rights and freedoms of peoples and individuals. Across the world, human rights defenders have fought, often against the odds, to establish fairer, more equitable societies. In so doing they have enhanced human dignity and helped alleviate the hardships of many of the most impoverished, marginalised and deprived sectors of the population. They have campaigned to compel governments to deal with gross inequalities in the distribution of wealth, access to basic health facilities, education, water and food. They have fought to protect the environment and defend economic, social and cultural rights. They have sought justice for crimes against humanity, and for violations committed by state agents including extrajudicial killings, "disappearances" and torture. They have insisted on democratic and judicial reform and exposed government corruption.

The United Nations Declaration on the Right and Responsibility Of Individuals, Groups and Organs of Society to Promote And Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly on 9 December 1998, sets out the rights of human rights defenders, identifying specific freedoms and activities which are fundamental to their work, including the right to know, seek, obtain and receive information about human rights and fundamental freedoms, the right to participate in peaceful activities against violations of human rights and the right to criticize and complain about the non-compliance of governments with human rights standards, and to make proposals for improvement. By referring to the right to act collectively the Declaration pays special attention to freedom of association and the right to act in collaboration with others for the protection of human rights.

The Declaration requires that states address these rights and

freedoms to ensure human rights defenders may carry out their work freely, without interference or fear of threats, retaliation or discrimination. Legally, under international human rights treaties, governments are accountable for attacks, harassment, including the misuse of the judicial system carried out by law enforcement officials and other agents of the state. However, human rights defenders in countries from Guatemala to Turkey, from Belarus to Nepal, from Indonesia to Iran and Honduras are increasingly facing spurious or false criminal or politically motivated charges, fines, trials, arbitrary detention, criminal investigation, or restrictions on the right to freedom of association or the right to peaceful assembly.

Amnesty International is urging its members and governments around the world to take effective action to ensure that human rights defenders are able to carry out their legitimate work without fear of prosecution. Amnesty International is asking all governments to present a plan for the implementation of the principles of the UN Declaration on Human Rights Defenders.

[. . .]

AMERICAS

HONDURAS – 25 YEAR SENTENCE FOR INDIGENOUS ACTIVISTS

AI is gravely concerned that, in Honduras, the judicial system appears to have been misused to target environmental and indigenous activists and those who support them, in order to prevent them from carrying out their work on behalf of their communities claiming rights to communal land titles. The actions of community representatives and social activists, like the Miranda brothers, pursuing land and environmental protection initiatives are frequently viewed as an impediment by those involved in land and environmental exploitation. The harassment through the judicial system of environmental and grassroots activists, including indigenous people, is part of a pattern of human rights abuses against those involved in defending the environment in Honduras. Amnesty International has documented killings, death threats, as well as the targeting of activists through spurious criminal charges.

On 8 January 2003, brothers Marcelino and Leonardo Miranda, indigenous leaders of the Consejo Cívico de Organizaciones Indígenas Populares, (COPINH), Civic Council of Indigenous and Popular Organisations, were taken by 21 armed police officers from the Policía Nacional, National Police, and armed civilians wearing ski masks, from the indigenous Lenca community in Montaña Verde, municipality of Gracias, Lempira department. According to reports the two men were tortured in front of their relatives, who were also threatened, during the arrest. The torture reportedly continued as the two men were taken to prison in Gracias municipality. At the prison, the police officers reportedly stabbed Leonardo Miranda in the head with a knife and threatened to kill him and his brother in their cells. Marcelino Miranda was forced to sign a confession under torture for unknown charges. They have reportedly been tortured further while in prison by Cobra officers from an elite group in the National Police force. Leonardo Miranda was reportedly threatened with death unless he signed a piece of paper accepting the charges brought against him.

The Fiscalía Especial de las Etnias (Special Prosecutor for Ethnic Affairs) brought a lawsuit against several police personnel on charges of torture and abuse of authority during the Mirandas' arrest. The torture charges against the police involved were dismissed (sobreseimiento definitivo) in September 2003. On 29 September 2003, the Special Prosecutor for Ethnic Affairs appealed against the dismissal. The Prosecutor for Santa Rosa de Copán confirmed the dismissal, but with a provisional character (sobreseimiento provisional) which allows for new elements to be put forward in the case against the police.

Leonardo and Marcelino Miranda were initially accused of illegal seizure of

land (usurpaci n), battery (lesiones) and manslaughter (homicidio). In addition, Marcelino was charged with grand larceny of livestock and damages

(hurto de ganado mayor y da os), and Leonardo was charged with "attack against the State of Honduras" ("atentado contra el Estado de Honduras").

Several of these charges were dropped and the charges of battery and murder

(asesinato) for the 2001 killing of Juan Reyes G mez in an alleged land

dispute remained. On 16 December 2003, they were sentenced to 25 years in

prison for the murder charge. An appeal was lodged in January 2004.

Amnesty International has received information which would suggest that due

process was not properly observed during the trial and sentencing of the

Miranda brothers. Two men, who were reportedly not at the scene of the

crime when Juan Reyes G mez was killed, were called on by the mayor to tend

to the body, thus removing or disturbing important crime scene evidence.

The sentence for murder is based largely on witnesses' statements for the

prosecution which many believe to be unreliable and contradictory and which

are not supported by evidence (regarding the number of shots fired and the

location of the murder) These reported contradictions in the witness statements were not followed up or analysed.

Amnesty International believes they were also denied a fair trial as they

were not guaranteed the right to equality before the law and courts, the

right to call and examine witnesses and the principle of "equality of arms"¹

was not observed. Despite the fact that 10 witnesses placed the Miranda

brothers far away from the scene of the crime at the time of the murder,

their testimony was ignored; instead there has been total acceptance of the

prosecution's witnesses' statements. Given that there are strong political

and economic interests in Gracias, which are opposed to COPINH's work on

behalf of indigenous communities, Amnesty International is concerned

that
the charges against the Miranda brothers were politically motivated,
that
they were not offered a fair trial, and considers the two political
prisoners.

Amnesty International has also received information that would
indicate
that the Miranda brothers were also denied the right to the
presumption of
innocence during their trial. While there does not seem to be
conclusive
evidence to link the Miranda brothers to Juan Reyes Gûmez's murder, at
least
one of the witnesses stated that he knew that the Miranda brothers
were
guilty because there were already suspicions about them, "digo que
ellos
fueron porque ya hay sospechas...yo de la muerte de Juan no vi nada,
pues yo
no estaba en la monta0a". "I say that it was them because there is
already
suspicion...about the death of Juan [Reyes Gûmez] I didn't see
anything,
because I wasn't there." Ballistic evidence, that indicated that the
nature of the metal fragments found in the body of the deceased could
not be
identified as bullets, was reportedly ignored and the weapons used in
the
killing (a firearm and a machete) were not submitted as evidence.

In June 2004, the Appeals Court in Santa Rosa de Copan
ratified the 25 year
sentence. An appeal was submitted to the Supreme Court. On 11
November
2004, the Supreme Court issued its decision upholding the appeal. The
Supreme Court found serious problems and irregularities in the
judicial
process, including witnesses evidence. The Supreme Court is sending
its
decision to the Appeals Court in Santa Rosa de Copan. Further
proceedings
at the court of appeals could take weeks or months depending on its
decision
on whether to accept or reject the Supreme Court ruling. A decision
to
reject the ruling can still be appealed by the Miranda brothers.

For many years Amnesty International has been concerned about
abuses

against indigenous people in Honduras and the failure of the authorities to investigate the abuses and bring those responsible to justice. According to information Amnesty International has received, much of the abuse and arbitrary detentions against indigenous people has apparently been intended to obstruct the efforts of indigenous leaders to secure recognition of their community's land rights. COPINH fought for and won the first Communal Land Title in Montaõa Verde. COPINH's fight for communal land titles has placed them in direct opposition to landowners and other powerful people in the Gracias municipality, interested in using the disputed land for cattle, logging and the cultivation of coffee beans.

Amnesty International is concerned that the judicial system in Honduras has failed to provide due process to the Miranda brothers inhibiting as a result of the prison sentence imposed on them their ability to carry out their human rights work on behalf of their community.

TAKE ACTION!

Please send appeals to the president of Honduras:
Express concern at the way the judicial system in Honduras is misused to harass human rights defenders using the cases of the Miranda Brothers to illustrate your point;
Calling for the immediate and unconditional release of the Miranda brothers, unless clear evidence against them can be produced;
Urge the authorities to ensure that national and international fair trial standards are upheld.

PLEASE SEND YOUR APPEALS TO:
President of the Honduras Republic
Lic. Ricardo Maduro
Presidente de la Rep'blica de Honduras
Casa Presidencial
Boulevard Juan Pablo Segundo
Palacio JosÈ Cecilio del Valle
Tegucigalpa, Honduras
Fax: +504 2357700

Salutation: Dear President/Señor Presidente
Please send copies of your appeals to:

Special Prosecutor for Ethnic Affairs
Licda. Jany del Cid
Fiscal Especial de las Etnias
Edificio Castillo Poujol, 4a Avda,
Colonia Palmira, Boulevard Morazán
Tegucigalpa, Honduras
Fax: +504 221 3099 extension 2123
Salutation: Dear Licda del Cid / Sra. Fiscal Especial de las Etnias

GUATEMALA

Amnesty International is seriously concerned that the judicial system in Guatemala is being misused to harass communities who have been campaigning for compensation, in relation to past human rights violations. Evidence collected by Amnesty International suggests disproportional charges have been levied against activists campaigning on their behalf to prevent them from carrying out their legitimate human rights work. Amnesty International believes that the charges may be politically motivated and in the event that these activists were detained and prosecuted, Amnesty International would consider them political prisoners.

Members of several communities in the Rabinal municipality, Baja Verapaz Department were evicted from their land over 20 years ago to allow for the construction of the Chixoy hydroelectric dam. Most residents refused eviction and resettlement during the planning and development phases of the project in the 1970's, finding conditions in other areas inferior to what was promised and returned to Río Negro.

Five massacres were carried out at the Achì village of Río Negro, Rabinal municipality, between 1980 and 1982 in the course of operations by the Guatemalan military to combat armed groups. Local human rights groups say 4,000 to 5,000 people were killed during that period in the wider Rabinal

area, and that 444 of the 791 inhabitants of Río Negro were extrajudicially executed. According to numerous studies, Río Negro may have been especially targeted because the land was required to build the Chixoy hydroelectric dam. The dam was part of a government economic development plan. Initial funding for the dam construction came from the Inter-American Development Bank and the World Bank.

In March 1982 the army and a civil defence patrol marched 70 women and 107 children from Río Negro into the mountains and killed them. Three women escaped and 18 children were captured and detained by patrollers. Several of these children have become key witnesses in efforts to bring those responsible for the massacres to justice and to obtain compensation for the community's lost lands and possessions.

On 7 September 2004, around 2,000 members of the Chixoy dam affected communities participated in a peaceful protest at the Chixoy hydroelectric dam. The communities were protesting the lack of reparations for past human rights violations, for the losses incurred during the construction of the dam, and for the lack of free running water and electricity in the communities as offered to the communities before the construction of the dam. On 8 September 2004, the community ended the protest following an agreement with representatives of the Instituto Nacional de Electrificación, (INDE), State Electricity Institute, the authorities and observers from the Procuraduría de los Derechos Humanos, PDH, the state human rights ombudsman's office, to negotiate with the communities.

The week of September 14 2004, INDE representatives formally presented a complaint to the Ministerio Público, Public Prosecutor's Office, in Cobán against members of the Chixoy dam affected communities. Those who took part in the protest were accused of 'actividad contra la seguridad de la

nación,'
activity against national security². INDE claimed that in occupying
the
hydroelectric dam, the communities could have closed the dam's flood
gates,
thereby putting at risk the electricity supply for the whole nation,
damaging the national economy and provoking a catastrophe. However,
according to a report of the Fiscal Regional, or regional prosecutor,
a
police report claimed that the members of the community were
participating
in a peaceful protest, calling for the fulfilment of promises made by
INDE
since 1976. According to the regional prosecutor, the police report
also
stated, following an inspection, there were no damages to the Chixoy
dam.

Once the accusation had been presented to the Ministerio
Público in Cobán,
the regional prosecutor was obliged to determine whether there was
sufficient evidence in order to prosecute. The regional prosecutor has
allegedly been disinclined to prosecute due to the lack of evidence of
criminal damage to the dam, he has allegedly been instructed by the
Fiscal
General de la República, Attorney General, to individualize
responsibility,
to bring criminal charges and to issue arrest warrants against
individuals.

As a result, several representatives of the 18 dam affected
communities
involved in the protest, who signed the agreement with INDE on 7
September
2004, are currently facing criminal charges. Those facing charges
include:
Carlos Chen Osorio a survivor and key witness to the 1982 Rio Negro
massacre; Juan de Dios García, director of the Asociación de Víctimas
de
Rabinal (ADIVIMA), Rabinal Victims' Association; other leaders of
other
Chixoy dam affected communities, including Domingo Sic, Rafael
Santiago
Frenández, Félix Alonso Raymundo, Antonio Viquez Xitumul and Víctor
Lem
Colorado.

Also facing charges is Daniel Pascual, Director of the Comité
de Unidad
Campesino, CUC, Peasants' Unity Committee. According to reports, on

the day
prior to the occupation of the hydroelectric dam site, Daniel Pascual
gave
two declarations to the press in which he stated that the protests
against
the Chixoy dam had links to Guatemala's long-running land conflict.
He
stated that the government had failed to fulfil its obligations to the
Chixoy dam affected communities and claimed the World Bank was also
responsible for the current impoverished situation of the communities.
The
Attorney General has urged the regional prosecutor in Cobán to
initiate
investigations against Daniel Pascual in relation to these statements
to
the press.

Although no arrest warrants have been issued at the time of
writing, the
criminal investigations against community representatives and Daniel
Pascual
reportedly remain open.

Parallel to efforts to bring criminal charges against members
of the
communities the negotiation process regarding compensation for past
violations has begun. On Friday September 24 2004, a meeting took
place
between INDE and the communities affected. At this meeting, INDE
refused to
drop charges. On 13 October community representatives held a meeting
with
representatives of the World Bank, during which the World Bank
reportedly
committed to participating in the negotiating table. However, during
the
most recent meeting organized for 28 October 2004, World Bank
representatives as well as senior government officials failed to
attend.

Amnesty International is concerned that the charges against
the community
members may be politically motivated in order to discredit and prevent
community members from participating in negotiations on behalf of the
Chixoy
dam affected communities.

TAKE ACTION!

Please send appeals to the President and Attorney General of
Guatemala:

Urge the authorities to ensure that any criminal investigation against members of the Chixoy affected dam communities comply with domestic and international standards regarding due process, the right to an adequate defence and fair trial;
Expressing concern that in the case of the Chixoy affected dam communities, criminal charges may be used to punish and prevent community representatives from actively participating in negotiations for compensation and reparations in relation to past human rights violations.

Please send appeals to:

President of the Republic of Guatemala
Licenciado Oscar Berger Perdomo
Presidente de la República de Guatemala
Casa Presidencial, 6 a. Avenida, 4-18 zona 1
Ciudad de Guatemala, Guatemala
Fax: +502 221 4423

Salutation: Excelentísimo Sr. Presidente/Dear President Berger

1- The principle of "equality of arms" between the parties in a case, which must be observed throughout the trial process, means that both parties are treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in equal position to make their case. Each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a disadvantage vis-à-vis the opposing party.

2- According to the Guatemalan Penal Code Article 390: Activity against the security of the Nation is punishable by prison sentences of one to five years and a fine of 1,000 to 15,000 quetzales (about US \$130 to US \$2000) for those who carry out acts which have the objective of sabotage, destruction, stoppage or creating disorder of the businesses that contribute to the economic development of the country with the purpose of hindering the national production of important services of public utilities (unofficial

translation).

[. . .]

Human rights defenders at risk, Amnesty International November 2004,
AI

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RIGHTS ACTION, with its main office in Guatemala, is tax-charitable
NGO that
supports community development work in Chiapas, Guatemala, Honduras
and
Haiti, as well as Peru, Nicaragua and Costa Rica, and engages in
north-south
education and work related to global development and human rights
issues.

To make TAX-CHARITABLE DONATIONS for humanitarian support for the
Miranda
brothers and their families in Honduras, and for the Chixoy Dam
Reparations
Campaign in Guatemala, make check payable to "Rights Action" and mail
to:

UNITED STATES: 1830 Connecticut Av, NW, Washington DC, 20009.

CANADA: 509 St. Clair Ave W, box73527, Toronto ON, M6C-1C0.

Donate on-line in the USA and Canada: www.rightsaction.org

CFC # 9914.

CONTACT US:

- to come to Central America on a fact-finding educational delegation
- to be a community development and human rights accompanier in
Guatemala or
Honduras

info@rightsaction.org/ 416-654-2074/ www.rightsaction.org