

Guapinol Case - Honduras

In 2011, the Botaderos mountain in the Bajo Aguan region on the northern coast of Honduras was declared a National Park by Congress. That means that the water sources that originate there, such as the Guapinol and San Pedro rivers, must be protected. It was a community achievement, which is why the park was named "Carlos Escaleras," in commemoration of a local farmer who was fighting to protect the land and water in the Bajo Aguan before he was killed in 1997.

However, in 2012, the National Congress disingenuously passed a Decree that reduced the park's core zone to exactly the size the EMCA mining company (now Inversiones Los Pinares), needed to operate their iron oxide mine owned by Lenir Pérez and Ana Facussé, a Honduran power couple closely aligned with the National Party and with far-reaching economic ties.

State agencies, such as the Forest Conservation Institute, ruled that mining should not take place in the Park and asked the Ministry of the Environment to reject the mining project's application for an environmental license.

In January 2014, without consulting the affected local communities, the Municipal Corporation of Tocoa approved the operating permits for the mine, citing the existence of an environmental license, even though this license had not been granted, and was not granted for 11 more months.

In 2015, the Municipal Committee for the Defense of the Common and Public Property of Tocoa was created with the objective of articulating local organizations in an effort to collectively fight against the threats of extractive projects in Tocoa, among others.

The Committee filed criminal and administrative complaints, took its concerns to Congress, and engaged in dialogue with the mayor and municipality of Tocoa, Colón; it organized peaceful mobilizations and sit-ins. In August 2018, residents of the community of Guapinol and surrounding villages organized a peaceful camp "For Water and Life" in the community of Guapinol as part of their right to oppose a project that would endanger their community's main water sources. As a result, members have been harassed and intimidated, victims of smear campaigns, and criminalized.

In September 2018, the Los Pinares mining company filed criminal charges against community members. The Public Ministry, without conducting a diligent investigation and abusing its power, used false evidence together with police agents and accused 31 community members of the crime of illicit association, in an attempt to present the local popular movement as an organized criminal group. These baseless accusations, to the extent that they accused a man who had died three years before the alleged crimes were committed, have been dismissed, but they have made clear the state's intention to punish and imprison environmentalists and water defenders.

The case of Guapinol and San Pedro has served as a warning to all Hondurans who dare to speak out against extraction projects in their communities.

It has been two years since the judicial harassment of the peaceful resistance to mining in Tocoa began. In September 2019, the Judge of the National Jurisdiction Liseth Vallecillo issued a formal order of indictment against 8 men, on charges of aggravated arson and unjust imprisonment, and

ordered that they be sent to preventive detention, despite not justifying the measure, as required by law.

As a result, the National Penitentiary Institute also punished them, and sent them to the maximum security prison La Tolva, where they remained for two months before being sent to a penal center closer to their home in Olanchito. The eight defenders have been in prison despite repeated efforts by their legal team and recommendations by national and international human rights organizations that they be released. The courts have maliciously delayed resolutions and notifications, and the Public Prosecutor's Office will not give up on its efforts to insist that they wait for their legal process in prison.

In addition to the eight men already in jail, in August 2020 the Court of Appeals overturned an earlier dismissal of charges against five of the most visible leaders of the anti-mining struggle in Tocoa and they too could end up in jail.

This September, a National Court of Jurisdiction will decide the future of the water defenders of Guapinol and San Pedro. We need your help to demand that all charges be dropped and that the imprisoned water defenders be finally released.

More about Los Pinares:

Global Witness Cast Study: Businessman Lenir Pérez's Mining Operation in Atlantida:

https://www.globalwitness.org/documents/18714/Defenders_Honduras_Case_Study3.pdf

Two members of PROAH held captive by armed men from Lenir Pérez's mining company in La Nueva Esperanza: <https://hondurasaccompanimentproject.wordpress.com/2013/07/28/urgent-action-two-members-of-proah-held-captive-by-armed-men-from-the-mining-company-in-la-nueva-esperanza/>

Perez and Facussé's EMCO, [along with German interests](#), is also behind the controversial Palmerola Airport project, which in July sent a letter to the Honduran State asking for more than \$50 million USD in losses due to COVID: <https://criterio.hn/filtracion-de-carta-mete-en-apuros-a-concesionaria-de-aeropuerto-palmerola-que-ahora-niega-reclamo-de-51-3-millones/>

Perez and Facussé's Inversiones Los Pinares also runs the Port Castillo in Trujillo:

<https://tzibalnaah.unah.edu.hn/bitstream/handle/123456789/8282/20180517.pdf?sequence=4&isAllowed=y>

Background on Criminalization Case

On August 1, 2018, residents of communities in the Guapinol sector set up an encampment to protest the activities of the mining company "Inversiones Los Pinares" that was working on the opening of a road within the Montaña de Botaderos National Park where two concessions are located, passing some 20 meters from the Guapinol River. According to the inhabitants, the dragging of the sediments from the opening of the road caused the drinking water systems to fill

up with mud. In addition, residents of 13 communities in the San Pedro sector joined the protest because the mining operation is located in the area where the San Pedro River begins, which supplies them with water. The inhabitants consider the authorization of mining concessions in the core zone of a protected area, where the water they use for survival is born, to be illegal and unjust.

On September 7, 2018, a young man was wounded after being attacked by a group of guards hired by the company "Inversiones Los Pinares" at the site where the residents of Guapinol and Sector San Pedro were maintaining their camp.

On October 27, 2018, approximately 1500 military and police personnel carried out a violent eviction from the camp.

On February 21, 2019, 13 of 18 people from the municipality of Tocoa voluntarily presented themselves to the court of La Ceiba in response to the arrest warrant issued against them for alleged crimes of "usurpation" and "damages" against the company "Inversiones Los Pinares" and the State of Honduras. Upon presenting themselves to the court, the defenders and their lawyers were surprised by the existence of a second request for arrest against 31 persons, within which 12 of the 13 persons who had presented themselves were accused of additional crimes, including "unjust deprivation of liberty", "aggravated arson", "theft" and "illicit association". Faced with this situation, the defense attorneys filed a challenge against the judge in La Ceiba and the case was transferred to a National Court judge based in Tegucigalpa.

The 13 people were transferred to Tegucigalpa with strong military and police security measures. The following day, the accused was heard by National Jurisdiction Judge Victor Méndez, who ordered judicial detention for 12 of the 13 people^[3], since the crimes for which they were accused included the crime of "illicit association," which automatically leads to preventive detention, something that has been repeatedly denounced as a type of crime used to criminalize the defense of human rights.

The twelve defenders were at the Tamara Penal Center until February 28, when they began their first initial hearing for the first requirement of "usurpation" and "damages" before Judge Méndez himself.

At 2:35 in the morning on March 2, 2019, the Judge of National Jurisdiction issued a final dismissal for the crimes of "usurpation" and "damages" against the company "Inversiones los Pinares" of which the 13 defenders were accused according to the initial file number 148-2018 issued by the Court of National Jurisdiction in San Pedro Sula in October 2018.

Hours later, the second initial hearing began for the second case in the case of criminalization against the twelve persons defending the right to water who were being held in preventative detention.

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On March 4, Judge Méndez of the National Court issued a final dismissal for the crimes of "unjust deprivation of liberty," "aggravated arson," "theft," and "illicit association," and the 12 defenders were released on March 6.

The Observatory showed its concern for the lamentable role played by the Public Prosecutor's Office during the almost 50 hours of hearings in which it was clear that it was completely lacking in evidence. As an example, as part of the evidence presented by the Public Prosecutor's Office, there was a matrix that pointed to the members of "La Banda de la Aldea de Guapinol" in which the photograph and name of Mr. Antonio Martínez Ramos appeared as a presumed member of the alleged criminal group. Mr. Martínez Ramos appeared in the second prosecutorial request despite having died in 2015, so he obviously could not be guilty of the crimes attributed to him.

The company appealed the decision of final dismissal and the Court of Appeal accepted the appeal.

On Monday, August 26, 2019, a group of seven human rights defenders^[4] of the 31 who had been criminalized voluntarily presented themselves before the judge of National Jurisdiction, Lisseth Vallecillo, seeking to end the process of criminalization against them and to have their innocence recognized in the framework of the "Guapinol" case, in which, in March 2019, 12 defenders facing the same charges were acquitted.

During the hearing for the presentation of the accused held on August 26, Judge Lisseth Vallecillo of National Jurisdiction issued a judicial arrest against the seven defenders and against Mr. Jeremías Martínez Díaz^[5] on the grounds that there was an accusation of "illicit association" against him. The defenders were deprived of their liberty in the Marco Aurelio Soto National Penitentiary in Támara, Department of Francisco Morazán.

On August 28, 2019, Mr. Argueta Tejada, one of the defenders criminalized in the Guapinol case who had voluntarily decided not to appear before the judge, was shot and killed by unknown individuals.

Between August 31 and September 1, the initial hearing against the eight defenders took place. A final dismissal was issued for the crimes of "theft" and "illicit association" and a formal order of indictment was issued for the crimes of "aggravated arson" and "unjust deprivation of liberty". Although these crimes do not require this measure, it was issued for the eight defenders and for Mr. Antonio Martínez Ramos, who had died four years earlier.

On November 6, 2019, a hearing was held to review the measures, in which the judge confirmed the preventative detention measures for the defenders. The following day, their legal representatives filed an appeal with the Court of Appeals, which was not received until 25 February 2020.

On March 11, 2020, a new request for a hearing to review the measure was filed and the Court of Appeals denied the request on the grounds that it was not competent. Despite public calls made by the United Nations High Commissioner for Human Rights, Michelle Bachelet, urging States to

take alternative measures to the deprivation of liberty for those detained without sufficient legal grounds as well as letters from dozens of EU and German Parliamentarians and US lawmakers.

On August 13, 2020, the legal representatives of the Guapinol defenders were notified of four rulings issued by the Court of Appeals on March 3, 2020.

The first ruling ratifies the September 1, 2019 decision of the Judge of National Jurisdiction Lisseth Vallecillo to issue a formal order of indictment for the crimes of "aggravated arson" and "unjust deprivation of liberty" for Messrs. Porfirio Sorto Cedillo, José Abelino Cedillo, Kelvin Alejandro Romero, Arnol Javier Alemán, Ever Alexander Cedillo, Orbin Nahún Hernández, and Daniel Márquez, who are deprived of their liberty in the Olanchito Penal Center, as well as for Mr. Jeremías Martínez, who is deprived of his liberty in the La Ceiba Penal Center.

With respect to the preventive detention of these eight persons, the Court of Appeals ruled on an appeal filed by the defense on November 7, 2019, requesting the revocation of the preventive detention measure. In its ruling, however, the Court of Appeals referred to a completely different file.

In its third ruling, the Court of Appeals denied the request for a hearing on review of precautionary measures, submitted by the legal representation of the defense on March 11, 2020, claiming that it did not have jurisdiction to hold such a hearing.

In the fourth ruling, the Court revoked the final dismissal for the crimes of "aggravated arson" and "unjust deprivation of liberty" for Messrs. Juan Antonio López, Leonel George, Reynaldo Domínguez, Marco Tulio Ramon, and José Adalid Cedillo, five of the twelve defenders in favor of whom those charges had been dismissed in March 2019. In its decision, the Court of Appeals did not individualize the charges or provide any legal argument to justify its decision. In this case, the legal defense team has filed motions to challenge the Court's ruling.

In addition, the Court of Appeals upheld the final dismissal for the crime of "illicit association" for all the criminalized Guapinol defenders who voluntarily appeared in court, and changed the final dismissal for the crime of "theft" to a provisional dismissal.

The Court of Appeals has not ruled on the crimes of "usurpation" and "damages" that 14 of the 20 criminalized defenders also face.

The four rulings were issued on 3 March 2020. However, the Court of Appeals did not officially notify this until 13 August, which represents a serious denial of justice. Furthermore, the Court refused to accept and consider in its ruling a supplementary document presented by the defenders' legal team on 6 August 2020. It contained the changes to the new Honduran Criminal Code and their favorable impact on the case.

In the coming weeks, the case file should be transferred to the National Court of Justice, which should convene a hearing to notify the parties and to decide what measures should be applied to

the five newly criminalized defenders. During the hearing, the legal representation will request the change of measures for the eight defenders in pretrial detention.

The Observatory reiterates its condemnation of the improper use of criminal law to control, neutralize, and punish those who exercise the right to resistance in defense of land and territory and expresses its concern for the maintenance of the precautionary measure of preventive detention for Mr. Porfirio Sorto Cedillo, Mr. José Abelino Cedillo, Mr. Kelvin Alejandro Romero, Mr. Arnold Javier Alemán, Mr. Ever Alexander Cedillo, Mr. Orbin Nahún Hernández, Mr. Daniel Márquez and Mr. Jeremías Martínez.