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HONDURAS

INTER-AMERICAN COURT OF HUMAN RIGHTS WRAPS UP FIRST ADVERSARIAL CASE

A series of decisions by the Inter-American Court of Human Rights of the Organization of American States holding the government of Honduras responsible for the disappearance and presumed murder of two young men in the early 1980s have provided a major victory for the human rights movement in its struggle against a particularly insidious repressive tool still widely employed in this hemisphere: forced disappearances. In deliberations which stretched from 1986 to 1989, the Court found Honduras responsible for violating the American Convention on Human Rights by designing and implementing, between 1981 and 1984, a deliberate plan to cause disappearances which eventually claimed the lives of more than 140 victims. The first decision, rendered in July 1988, found the Honduran government responsible for the 1981 disappearance of Manfredo Velásquez Rodríguez. In January 1989, the Court faulted Honduras for the disappearance of Saúl Godínez Cruz in 1982. A subsequent decision held the evidence insufficient to blame Honduras for the disappearances in 1981 of Costa Rican citizens Francisco Fairén Garbí and Yolanda Solís Corrales. The Court demanded that Honduras pay damages in the amount of 1,400,000 lempiras (US \$280,000) to the Velásquez and Godínez families.

On August 17, 1990, the Court issued another decision on damages, again favorable to the families of the victims. If Honduras pays the damages that the Court has ordered --as it has repeatedly said it will do--, the latest decision will probably be the final action taken by the Court in this historic first adversarial case.

The unprecedented Honduras litigation has been an enormously valuable experience in the use of inter-governmental mechanisms for the protection of human rights and reflected prolonged coordinated efforts by relatives of the disappeared and local and international human rights organizations. It is time to take stock of what has been achieved and to closely analyze the experience. As a contribution to that analytic effort, Juan E. Méndez and José Miguel Vivanco, who were part of the legal team that represented the families in the litigation, have published an article in a special issue of Hamline Law

Review, a publication of Hamline University in Saint Paul, Minnesota.¹ The article discusses the decisions reached in *Velásquez and Godínez* as well as in the related case of *Fairén and Solís*. In addition to a close examination of the substantive decisions, Méndez and Vivanco explore the process itself and critique procedural and interlocutory decisions adopted by the Court. Americas Watch believes that the litigation experience holds valuable lessons for the future of human rights protection in the Americas, and will therefore circulate the law review article as widely as possible.

This bulletin summarizes Americas Watch's experience in the litigation, which culminated our eight year effort to press for resolutions of cases of disappearances in Honduras, and describes last month's decision on the question of damages.

The Velásquez and Godínez families scored an important victory on August 17, 1990. Through the Inter-American Commission on Human Rights,² they had moved for a clarification of the decisions on damages issued in July 1989, under which seventy-five percent of the sums to be paid by Honduras were to be set up as a trust for the victims' children until each reaches 25 years of age. (The remaining twenty-five percent was to be paid directly to the victims' widows.) The motion sought to clarify that the sums placed in trust be protected against devaluation of the *lempira*. In addition, since the payment had been due on October 20, 1989, and Honduras has still not paid, the Commission requested an order from the Court to make Honduras pay interest since that date, and to compensate for two devaluations of the *lempira* that have occurred. The Court ruled favorably on both counts. It instructed the Central Bank of Honduras, as trustee for the children, to take all appropriate measures under the most favorable banking practices and, as a good *pater familias*, not only avoid deterioration of the trust but indeed to increase it. The Court also ordered the government of Honduras to adjust the sums to be paid, adding interest since October 20, 1989, and reflecting the official devaluations that have taken place in the interim. The Honduran government has created a budgetary provision to pay the money owed and has repeatedly told the Court that it intends to pay.

Americas Watch and Disappearances in Honduras

Americas Watch conducted its first mission to Honduras in October 1982, at the height of the campaign, led by the late General Gustavo Alvarez Martínez, to use forced disappearances as a primary repressive tool against perceived ideological enemies. The mission interviewed anguished relatives of the disappeared, including the mother and sister of Manfredo Velásquez, when they were still clinging to the hope that he might be found alive. We also contacted the *Comité para la Defensa de los Derechos Humanos en Honduras* (CODEH), led by Dr. Ramón Custodio, which was making an effort to document disappearances.

The December 1982 report of the Americas Watch mission, written by Méndez, focused on disappearances, and was titled *Human Rights in Honduras: Signs of the "Argentine Method"*. The report

¹ "Disappearances and the Inter-American Court: Reflections on a Litigation Experience," Vol. 13, Number 3, Summer 1990, pp. 507 *et seq.* Juan E. Méndez is the Executive Director of Americas Watch. José Miguel Vivanco was a one-year fellow with Americas Watch at the time the litigation started; he continued to be involved with the case as a staff attorney for the Inter-American Commission on Human Rights between 1987 and 1989.

² The Inter-American Commission, like the Court, is a body of the Organization of American States. The Commission (IACHR) acts as prosecutor in adversarial cases before the Court. The victims or relatives only participate in the litigation through their lawyers, who are designated *ad hoc* "advisors" to the Commission. See Hamline Law Review article, pp. 519-535.

noted the similarities between the style of repression in Argentina and Honduras: heavily armed plainclothesmen who never identified themselves seized people in their homes or on the streets in broad daylight, with no interference from regular police. The victims were taken to clandestine detention centers for torture and interrogation. Few survived. General Alvarez was not shy about his admiration of the Argentine military's methods: trained at the Argentine Military Academy, Alvarez brought military advisers to Honduras both to train his own forces and to help set up the anti-Sandinista *contra* army. Apparently unfazed by the comparison with a military that killed or disappeared at least 9,000 people to wipe out several small but violent bands of guerrillas, Alvarez publicly advocated the "Argentine method" of dealing with the insurgent threat in Honduras.

In October 1983, Americas Watch conducted a joint mission to Honduras with the Lawyers Committee for Human Rights and the Washington Office on Latin America. By then, the families of the disappeared were organized as the *Comité de Familiares de Desaparecidos en Honduras* (COFADEH) and they presented to the delegation several personal testimonies about the practice. Their outspoken demands for information on the fate of their children had brought them harassment rather than answers. In 1983, a few victims of the disappearance campaign had reappeared after months in clandestine detention. They provided details that left no doubt about the responsibility of the Honduran armed forces in disappearances. The highlight of the 1983 mission was an interview with Inés Consuelo Murillo, a young law graduate who had spent 80 days in clandestine detention and had been interrogated under torture until the public outcry about her disappearance caused the authorities to produce her alive. The authorities refused to allow our delegation a private interview with Murillo during our visit to the Támara prison for women. Nonetheless, while the prison guards looked on, Murillo gave us stunning testimony about two safe houses where other disappearance victims were held and tortured, as well as the names and ranks of some of her tormentors.³

In later years, Americas Watch repeatedly visited Honduras to look into political killings and disappearances; refugee policy; arbitrary detention, torture and prison conditions; labor rights; and the treatment of Indian minorities. In each trip we have expressed concern about the persecution of human rights monitors, including Dr. Custodio and his colleagues. We have published several reports as a result of these missions.⁴

The systematic use of disappearances ended in Honduras when General Alvarez was ousted by fellow officers in an internal coup in March 1984, although sporadic cases of disappearances by government forces have continued to occur. Nonetheless, the civilian government and Alvarez's successors in the military have failed to carry out promises to investigate and publicly report on the disappearances which shook Honduras during Alvarez's reign. A military commission assigned the task issued a complete whitewash after two years. CODEH and COFADEH have continued all along to press for accountability, with the active support of international human rights organizations. Americas Watch has continued to monitor the efforts for truth and justice.

In early 1986, an Honduran noncommissioned officer named Florencio Caballero defected from the armed forces and escaped into El Salvador. Jemera Rone, the Director of our San Salvador office, conducted a long interview with him about his membership in a clandestine force called Battalion 3-16, which had been in charge of the disappearances. Caballero provided information about the structure of the

³ See Americas Watch, Washington Office on Latin America and Lawyers Committee for Human Rights, Honduras: On the Brink: A Report on Human Rights Based on a Mission of Inquiry, New York, February 1984.

⁴ See Americas Watch, Human Rights in Honduras After General Alvarez, February 1986; Human Rights in Honduras: Central America's Sideshow, May 1987; The Sumus in Nicaragua and Honduras: An Endangered People, September 1987; and Honduras: Without the Will, July 1989.

battalion, the safe houses and installations used, specific cases of abduction and the killing of most victims and secret disposal of the bodies. Caballero later gave more details to CODEH in Mexico, and Americas Watch arranged for him to talk to journalists with experience in Central America. His testimony was not immediately made public because his family was still in Honduras, but it was thoroughly checked against other information that had been collected in previous years.

At least three other defectors contributed other details, thus providing a remarkably detailed description of Battalion 3-16's structure, personnel and chain of command. This careful examination of evidence allowed human rights groups to reconstruct the phenomenon of disappearances with more accuracy than has been possible in most countries, particularly since the whole purpose of engaging in this practice is to ensure deniability.

Preparations For Trial

Since 1982, CODEH had submitted many cases of disappearances to the Inter-American Commission under the procedures set forth in the American Convention on Human Rights. In some cases the IACHR made urgent appeals to the government that helped save lives, including that of Inés Murillo. Other cases were processed by the IACHR with little or no cooperation from the Honduran government. By 1986, the IACHR had gathered enough evidence on three cases to rule that Honduras was responsible for the disappearance of Velásquez, Godínez and of Costa Ricans Fairén and Solís and to submit the cases to the Inter-American Court for trial. This was to be the first use of the Court's "contentious jurisdiction," in which a country that has ratified the American Convention is judged to determine whether a particular action or omission constitutes a violation of that instrument. Unlike the Court's advisory opinions, decisions in the Honduras litigation are binding.

The relatives of the victims were represented by Méndez, Vivanco, Professor Claudio Grossman of The American University in Washington, and Hugo Muñoz Quesada, a former Minister of Justice in Costa Rica. Vivanco spent several weeks in Honduras gathering documentary evidence and interviewing witnesses; Méndez traveled to Toronto to interview Florencio Caballero and to Mexico to meet with Inés Murillo, both of whom agreed to testify before the Court. Later, Vivanco and Méndez searched for documentary evidence for the case in government offices in Guatemala. The lawyers also assisted the staff of the IACHR in the preparation of briefs and joined its delegation at hearings in San José, Costa Rica, in June and October 1987, in January and July 1988 and in January and July 1989.

The hearings on the merits took place in October 1987 and January 1988. Our side put on seventeen witnesses, including relatives of the disappeared, human rights monitors and former officials. The highlight of the trial was the testimony of Murillo and Caballero. Like all other witnesses, they were cross-examined by the Honduran delegation as well as by each of the seven justices of the Court. Their stories mesmerized those in attendance and, more significantly, acquired the value of evidence produced and evaluated in a court of law.

For the witnesses who returned to Honduras, however, the Court appearance was a very risky business. Days after the first session, many of them received death threats and were publicly vilified as "traitors to the fatherland." Although the Court demanded protective measures from the Honduran government, two of the witnesses decided to leave the country in November 1987. In January 1988, Miguel Angel Pavón, an alternate member of Congress and vice-president of CODEH who had been the lead witness in San José a few months earlier, was murdered in San Pedro Sula, Honduras. A few days earlier, unknown assailants had killed José Isaiás Vilorio, a noncommissioned officer in the Honduran police whose testimony had been requested by the Court. He was killed the day after the government had announced that he would appear at the Court's next session.

As the persecution of monitors linked to the case intensified, Americas Watch urged the

government of Honduras to ensure their safety. We also took the United States Department of State to task for misrepresenting the court case, for disparaging the evidence produced in it, and for contributing to the climate of hatred against Dr. Custodio and other monitors.⁵

The first decision on the merits was issued on July 29, 1988, in the Velásquez case. A very similar decision was reached in Godínez on January 20, 1989. In them, the Court describes the phenomenon of disappearances and unequivocally states that they constitute a crime against humanity that governments must investigate, prosecute and punish. The Court further states that governments not only have a duty to respect the rights of the individual, but indeed have an affirmative duty to "guarantee" their exercise; in practical terms this means, according to the Court, that governments must organize the whole of their state apparatus in order to provide such a guarantee.⁶ On July 20, 1989, the Court issued a judgment on damages to be paid by Honduras to the two families, as compensation for the loss suffered in the forced disappearance of their loved ones. As explained earlier, that judgment was further strengthened in the most recent ruling of the Court.

Other Initiatives by Americas Watch

Americas Watch has continued to press the Honduran government for full investigation and disclosure of the fate of the disappeared, in keeping with our policy position that governments have the obligation to account for human rights abuses, including prosecuting and punishing those responsible, and providing information to the families.⁷ As part of our continuing investigation into disappearances in the early 1980s and beyond, Anne Manuel, Associate Director of Americas Watch, conducted several interviews with another Honduran military defector in 1988. Fausto Reyes Caballero provided valuable information about the way Battalion 3-16 operated in the area of San Pedro Sula and offered information about the murder of Miguel Angel Pavón. Americas Watch urged the government of Honduras to investigate Reyes's allegations. Unfortunately, the murders of Pavón and Vilorio and the threats against others involved in the litigation remain unresolved and the Honduran authorities have shown no interest in pursuing them.

Conclusion

The successful completion of this litigation has aroused hope in the human rights community that redress can be obtained by using the inter-governmental protection system. Americas Watch is acting as co-counsel in several dozen cases brought by human rights groups in Latin America before the IACHR, many of which we expect eventually to be submitted to the Court. On August 6, Méndez represented the Committee to Protect Journalists before the Inter-American Court at a preliminary hearing to request protective measures for the widow of a slain Peruvian journalist, for a colleague who survived the attack, and for several eyewitnesses. This was the first time that the Commission and the Court exercised their

⁵ See Americas Watch, The Reagan Administration's Record on Human Rights in 1988, January 1989; The Bush Administration's Record on Human Rights in 1989, January 1990; Human Rights Watch and Lawyers Committee for Human Rights, Critique: Review of the Department of State's Country Reports on Human Rights Practices for 1987, June 1988; and Critique: Review of the Department of State's Country Reports on Human Rights Practices for 1988, July 1989.

⁶ Méndez and Vivanco, *cit.*, pp. 542-557.

⁷ See Human Rights Watch newsletter, Special Issue: Accountability for Past Human Rights Abuses, No. 4, December 1989.

respective powers under the Convention to provide injunctive relief, in ordering the government of Peru to provide protection to the threatened individuals.

The cases against Honduras are an auspicious first use of the Inter-American Court's adversarial jurisdiction. It is very significant that the first cases should deal with forced disappearances, a distinctively Latin American feature of repression that has achieved tragic proportions. Disappearances continue to be used in several Latin American countries, and Americas Watch will continue to make the struggle against them a very high priority. In this endeavor, we work side by side with Latin American domestic groups that use *habeas corpus* and other domestic remedies to find the victims, and that promote investigations of past abuses. We also join those who are working for more precise and more practical instruments in international law to ban disappearances as a crime against humanity. The General Assembly of the OAS will consider a Convention on Disappearances at its next session and the United Nations Commission on Human Rights is drafting a declaration on the same subject. We urge all governments to support these efforts, and we call on the Bush administration to promote those instruments vigorously.

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Copies of the Hamline Law Review are available from Americas Watch for \$6.00. Please send check or money order (including an additional \$.90 shipping and handling charge) to Human Rights Publications, 485 Fifth Avenue, New York, NY 10017. Phone 212/972-8400.

The Americas Watch Committee was established in 1981 to monitor and promote observance of free expression and other internationally recognized human rights in Latin America and the Caribbean. The Chairman of Americas Watch is Adrian W. DeWind; Vice Chairmen, Peter Bell and Stephen Kass; Executive Director, Juan E. Méndez.

Americas Watch is part of Human Rights Watch, which comprises also Africa Watch, Asia Watch, Helsinki Watch and Middle East Watch. The Chairman is Robert L. Bernstein; Executive Director, Aryeh Neier; Washington Director, Holly Burkhalter.