

IMPUNITY IN HONDURAS

for Crimes Against Humanity
Between 28 June 2009 and 31 October 2012

**Submission Pursuant to Article 15
of the Rome Statute of the International Criminal Court**

Submitting Organizations

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Introduction:

Why This Report?

The gravity of the situation in Honduras facing human rights defenders, those in opposition to ruling authorities, trade unionists, journalists and increasingly land rights advocates cannot be overstated. Even as we prepared this report, we learned of a new wave of political killings: On 3 November 2012, Edgardo Adalid Motiño, a mayoral candidate belonging to the LIBRE Party in the department of Yoro was gunned down after a political rally.¹ On 5 November 2012, three campesinos were killed in a drive-by shooting in Tocoa, in the Bajo Aguán region which has been the site of pervasive violence.² On 9 November, campesino leader José Cecilio Pérez was kidnapped by three armed men wearing the uniforms of security guards for landowners. His body was found the next day near a palm oil plantation.³

Since the coup d'état of 28 June 2009, violent political persecution involving targeted killings and other severe deprivations of fundamental rights has continued unabated -- as has the rampant impunity for those who commenced the violent political suppression and persecution that followed the coup. Indeed, a number of experts have observed that it is the very culture of impunity in Honduras that fosters the continuation and expansion of these widespread and systematic attacks.

We present this communication to provide more current information as to the dire and worsening state of affairs in Honduras, including the continued killing of opposition leaders, human rights defenders, trade unionists, journalists and campesinos, as well as the enduring obstacles to accountability -- all of which necessitate a prompt intervention by the prosecutor of the International Criminal Court (ICC). After more than three years since the coup and the work of two

¹ *Asesinan a precandidato de Libre en el norte de Honduras (LIBRE Candidate Killed in North of Honduras)*, El Heraldo, 4 Nov. 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Asesinan-a-precandidato-de-Libre-en-el-norte-de-Honduras>.

² *Conflict Over Land Leaves 3 Dead in Honduras*, Fox News Latino, 5 Nov. 2012. Available at <http://latino.foxnews.com/latino/news/2012/11/05/conflict-over-land-leaves-3-dead-in-honduras/>

³ *Honduras: Matan a otro campesinos en conflictivo valle del Aguan (Honduras: More Campesinos Killed in Aguán Valley)*, Agencia AFP, 10 Nov. 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Matan-a-otro-campesinos-en-el-Aguan>.

separate truth commissions finding systematic attacks on civilian populations in Honduras for which key individuals should be held accountable, there have been no meaningful efforts to investigate, prosecute and punish those responsible for the coup itself, nor for the violent persecution that has followed.

We note that the Office of the Prosecutor (OTP) undertook a preliminary examination into the situation in Honduras as of November 2010. In the eleven months since the issuance of the OTP's report on the status of its preliminary examination, the abuses have continued to escalate in both severity and number. The attacks by state agents or those acting at their behest have continued and worsened as have the attacks on campesino communities involved in the struggle to assert their rights to their land. Moreover, two truth commissions and other human rights investigators have documented overwhelming evidence that state-sanctioned death squads are operating in Honduras with an awful efficacy.

Recently, two prominent human rights attorneys were killed within 72 hours of each other. Antonio Trejo Cabrera, a lawyer representing the interests of campesino cooperatives, was shot and killed on September 22, 2012, after having received numerous death threats in the months prior to his murder. On September 24, Eduardo Manuel Díaz-Mazariegos, a human rights prosecutor, was shot and killed. The continued lack of accountability, even for the earliest violations occurring in 2009 in the immediate aftermath of the coup and found by both truth commissions to have been the result of illegal state action, is a key factor enabling the ongoing violations. As the United Nations High Commissioner for Human Rights stated recently with regard to the killings of Trejo and Díaz, "When the perpetrators know they are very likely to get off scot-free, there is nothing to deter them from killing off more of the country's finest human rights defenders."⁴

In the OTP's December 2011 status report, Honduran authorities were characterized as "forthcoming" when the prosecutor's examination of the situation in Honduras was announced.⁵ The evidence submitted herewith shows that their apparent responsiveness was intended to shield against the exercise of the ICC's jurisdiction as their "forthcoming-ness" has not translated into or resulted in genuine investigations and prosecutions of the violations noted in the OTP's report. In short, Honduras has failed its complementarity test.

⁴ Pillay Urges Action To Confront "Chronic Insecurity" Facing Lawyers, Journalists and Human Rights Defenders in Honduras, Office of the UN High Commission for Human Rights, 26 Sept. 2012. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12581&LangID=E>

⁵ Report on Preliminary Examination Activities, Office of the Prosecutor, International Criminal Court, 13 Dec. 2011, at para. 41. <http://www.icc-cpi.int/NR/rdonlyres/63682F4E-49C8-445D-8C13-F310A4F3AEC2/284116/OTPReportonPreliminaryExaminations13December2011.pdf>. ("OTP Status Report")

Basis of This Report

The organizations joining in the submission of this communication have actively worked toward accountability for the widespread human rights violations in Honduras in partnership and collaboration with Honduran organizations and human rights defenders. This work has included investigation and documentation, legal advocacy as well as policy advocacy at national, regional and international levels. The cases described and/or noted herein are based on either first-hand documentation through investigations and victim/witness interviews and/or accounts of incidents confirmed by multiple sources. The data contained in the tables included in this report is sourced from memoranda and reports compiled by one or more of the organizations as noted therein.

This information is intended to supplement that provided in the reports of the governmental Truth and Reconciliation Commission (TRC) and the civil society True Commission (TC), two investigative entities that have studied and investigated the situation in great detail. The TRC's report covered the period from 28 June 2009, the day of the coup, through 10 January 2010. The TC's report covered the period from 28 June 2009 through August 2011. In this report, we provide additional documentation and evidence of the commission of crimes within the ICC's jurisdiction through October 2012.

For purposes of this communication, we have focused on violations that correspond to crimes within the ICC's jurisdiction for which we had enough information to assess and analyze the probability that the offenses had been committed under circumstances that meet the threshold requirements of the ICC. In particular, this report highlights incidents of murder, enforced disappearances, and forcible transfer of populations occurring in the context of the widespread and/or systematic attack against civilian populations. There are numerous incidents of acts amounting to torture, including rape and other forms of sexual violence, inhuman treatment, arbitrary arrest and imprisonment, which are not listed in this report though some accounts can be found in the memoranda annexed in the appendix. Also, as a general matter, we have not included numerous instances in which crimes within the ICC's jurisdiction were attempted but not completed, such as attempted murder. In a large number of such attempts, numerous people, including children, have been critically wounded. When attempted ICC offenses resulted in the wounding of those attacked, such conduct could be viewed by the OTP as inhumane treatment punishable under Art. 7(1)(k) when it results in great suffering or serious injury to body or mental or physical health. Many such incidents are listed in documents in the appendix.

I. Evidence of Crimes

Within ICC's Jurisdiction

As noted in the OTP's Report on the status of its preliminary examination, Honduras is party to the Rome Statute of the ICC, having ratified the treaty on 1 July 2002. The ICC therefore has jurisdiction over crimes occurring in Honduras from 1 September 2002, when the treaty entered into force for Honduras.

A. Political Context

On 28 June 2009, the democratically-elected president of Honduras, Manuel Zelaya, was forcibly removed from office -- and the country -- by the military in collusion with the President of the Honduran National Congress, Roberto Micheletti. Micheletti immediately assumed power as *de facto* head of state. Under Micheletti, the *de facto* authorities began a severe and violent crackdown of protestors and those in opposition to the coup. As noted by the OTP in its December 2011 report, Micheletti ordered severe restrictions on freedom of movement and assembly.⁶

Under pressure by its neighbors in the region and international organizations, Micheletti's *de facto* government proceeded with regularly scheduled elections in November 2009. Current president Porfirio Lobo took office on 27 January 2010. However, the elections were widely criticized as illegitimate, with the Organization of American States, European Union and the Carter Center refusing to send election observers and the United Nations refusing electoral support.⁷

While most of the inquiries into widespread and serious human rights violations have focused on the period between the coup and the beginning of the Lobo administration, the same pattern of widespread and systematic violations has continued and even expanded under Lobo's watch. Campesinos and land rights advocates have become a prime target of the political persecution in addition to the ongoing attacks on political opponents. As discussed further below, the land

⁶ OTP Status Report at para. 34.

⁷ See Malkin, Elisabeth. *Conservative Poised to Win in Honduras*, New York Times, 29 Nov. 2009, available at <http://www.nytimes.com/2009/11/30/world/americas/30honduras.html>. In announcing its decision not to send observers, the Carter Center noted "that restrictions on press, protest, and movement have occurred since the presidential coup on June 28, 2009, and into the formal campaign period, impinging on the electoral rights of Hondurans." See *Carter Center Statement on the Honduran Elections*, 25 Nov. 2009, available at http://www.cartercenter.org/news/pr/honduras_112509.html.

rights struggle was a major impetus for the coup, along with other factors, due to the steps that ousted President Zelaya had taken to resolve the crisis in the weeks before the coup.

1. Post-Coup Period (28 June 2009 - 27 January 2010)

In July 2011, the Truth and Reconciliation Commission (TRC) issued the report of its investigation into the coup and human rights violations that followed.⁸ The TRC was set up pursuant to agreement of the *de facto* Honduran authorities in order to resolve the crisis that ensued as a result of the coup. The TRC's report focused on the period from 28 June 2009 through January 2010, when the Lobo administration assumed power.

It is significant that even the *de facto* government's own commission was unequivocal in concluding that the coup was illegal and that Micheletti was among those who bore the greatest responsibility for it. The TRC also concluded based on its investigations that the Micheletti regime had undertaken political persecution, a crime against humanity, and that it was responsible for a number of killings committed by state agents and those acting at their behest, in addition to the widespread and violent repression of rights to speech, assembly, association, and to be free from arbitrary arrest and cruel, inhuman and degrading treatment.⁹

2. Post-election Period (January 2010 - October 2012)

On 3 October 2012, the True Commission (TC), an investigative entity established in July 2010 by six Honduran civil society organizations working together as the Platform for Human Rights issued its report after a 14-month investigation.¹⁰ The TC's report focused on the period from the day of the coup, through August 2011. It too found widespread and severe human rights violations occurring not just in the immediate after-math of the coup but also under the authorities who took power in January 2010 after the controversial and problematic elections.

Importantly, the TC noted a continuation and expansion of the targeting and attacks documented by the TRC, and an escalation in the number of killings, threats and harassment of human rights defenders, lawyers and those in opposition

⁸ *Para que los hechos no se repitan (So That the Events Will Not Be Repeated)*, Report of the Truth and Reconciliation Commission, July 2011. (hereinafter "Truth and Reconciliation Commission Report")

⁹ Annex, Truth and Reconciliation Commission Report, Tomo II, Chapter 3, p. 539.

¹⁰ *La voz más autorizada es la de las víctimas (The Most Important Voice Is that of the Victims)*, Informe de la Comisión de Verdad / Report of the True Commission, October 2012. Available at <http://www.comisiondeverdadhonduras.org/>. (hereinafter "True Commission Report")

to the coup through August 2011. Likewise, examining similar policies and patterns of violations as the TRC, the TC also concluded that crimes against humanity were being committed in Honduras even under the new administration.¹¹ Both commissions noted the lack of accountability for those responsible for the violations. Subsequently, non-governmental organizations (NGO's) and the media have continued to document the ongoing systematic and widespread attacks, many of which are identified further below.

The systemic impunity has continued under the Lobo regime along with the ongoing attacks against the civilian populations in Honduras. Under Lobo's administration, Micheletti was named a "legislator for life" and has not been investigated or held accountable for his actions – despite the finding by the governmental truth commission that he bore the weight of responsibility for the illegal coup carried out by the military and then continued to exercise authority and control, i.e., command responsibility, for some of the killings committed by the army, other state actors, and those acting at their behest.¹²

Lobo also appointed General Romeo Vásquez Velásquez to a prime position as head of Hondutel, the state-owned telecommunications company.¹³ This too was despite the fact that as head of the Honduran armed forces Vásquez oversaw the execution of the coup and Zelaya's forced exile, a serious violation of the Honduran constitution, and served as high command of the military at the time it was committing gross human rights abuses.¹⁴ Vásquez has since announced he will run for president in the next elections.¹⁵ In May 2012, Lobo appointed Juan Carlos Bonilla Valladares, also known as “El Tigre” or the “The Tiger,” to be the national Chief of Police. Bonilla is alleged to have run a death squad a decade ago.¹⁶

The barriers that still exist to accountability for these violations are discussed further in Section II.

¹¹ True Commission Report, p. 297

¹² See Truth and Reconciliation Commission Report, pp. 382-383; See also, *Honduras Tolerates Death-Squad Style groups: Panel*, Agence France Presse, 3 Oct. 2012. Available at <http://www.google.com/hostednews/afp/article/ALeqM5jjFr0oQACIcqlPw4mxRKKDCduA?docId=CNG.ef6f3dedd57db923ae338ab33227f4.9b1>.

¹³ *Romeo Vásquez, Nuevo gerente de Hondutel*, El Heraldo, 9 March 2010. Available at

<http://archivo.elheraldo.hn/Ediciones/2010/03/10/Noticias/Romeo-Vasquez-nuevo-gerente-de-Hondutel>.

¹⁴ Truth and Reconciliation Report, p. 384.

¹⁵ *Alianza postula a Romeo Vásquez Velásquez (Alliance Puts Forward Romeo Vásquez Velásquez)*, La Prensa, 27 Oct. 2011. Available at <http://archivo.elheraldo.hn/Pa%C3%ADs/Ediciones/2010/01/16/Noticias/Presidente-Micheletti-no-tendra-inmunidad>.

¹⁶ See, Katherine Corcoran and Martha Mendoza, *New Honduras Top Cop Once Investigated in Killings*, Associated Press, 1 June 2012. Available at: <http://bigstory.ap.org/article/new-honduras-top-cop-once-investigated-killings>.

B. Evidence of Crimes Against Humanity in Honduras

Article 7 (1) of the ICC Statute provides that, *inter alia*, murder, torture, rape and other forms of sexual violence, enforced disappearance, and forcible transfer of a population, constitute crimes against humanity "*when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.*"

As the OTP noted in its status report, the Truth and Reconciliation Commission established by the Lobo government in May 2010 specifically highlighted evidence and analysis which showed that crimes against humanity within the ICC's jurisdiction were committed in Honduras subsequent to the coup d'état. The findings of the civil society True Commission further support this conclusion, as it covered a longer period – from the day of the coup through August 2011 – and documented the same kinds of violations and patterns of execution throughout. Below, we identify and briefly describe dozens of serious violations, including killings, forced displacement of populations, and enforced disappearances that have continued through October 2012 and which add to the growing and undeniable weight of evidence supporting the conclusion that crimes against humanity continue, as does the impunity.

As an initial matter, we would urge that this case is of more than sufficient gravity to justify further action by the Court, in accordance with Art. 17(1)(d). As the Office of the Prosecutor has itself noted, this provision "should not be construed narrowly, the issues of the nature, manner and impact of the attack are critical."¹⁷ The situation in Honduras is critical. In this report alone, we identify over 100 killings, most of which are selective, or targeted killings, occurring even *after* two truth commissions concluded their investigations. The others types of killings can be said to result from excessive use of police or military force on civilians who have criticized or expressed opposition to the ruling authorities, which the TRC found was also pursuant to policy. The killings are one horrific manifestation of the broader attack which is also characterized by death threats against activists, lawyers, journalists, trade unionists, and campesinos, as well as attempted killings, torture, sexual violence, arbitrary arrests and detentions. The True Commission described the regime's "attack" as one of using terror as a means of social control.¹⁸

¹⁷ *Situation in Darfur, the Sudan, Summary of the Prosecutor's Application Under Article 58*, No. ICC-02/05, 20 Nov. 2008.

¹⁸ True Commission Report, p. 298.

1. Widespread or Systematic

It is well established – and clear from the text of Article 7(1) of the Statute – that the attack in question need be *either* widespread *or* systematic, and need not be both.¹⁹ The requirement that acts be widespread or systematic serves as a “threshold” in order to distinguish crimes against humanity from common or local crimes,²⁰ and to bar sporadic acts from being considered crimes against humanity.²¹ The rationale behind this contextual element is “to exclude isolated or random acts from the notion of crimes against humanity.”²² Moreover, it is the attack, and not the alleged individual acts, which must be widespread or systematic.²³ “Widespread” refers to “both the large-scale nature of the attack and the number of resulting victims.”²⁴ It can be the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”²⁵

A systematic attack further refers to the “improbability of their random occurrence.”²⁶ An attack is “systematic” if it was “organized and followed a consistent pattern.”²⁷ The systematic nature of an attack can “often be expressed through a pattern of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis.”²⁸

The TRC specifically found that the violations were occurring on both a widespread *and* systematic basis during the period it reviewed, 28 June 2009

¹⁹ See *Prosecutor v. Kordić/Čerkez*, Case No. IT-95-14-2-T, Judgment, ¶ 178 (Feb. 26, 2001)

²⁰ Darryl Robinson, *The Elements of Crimes Against Humanity*, in *THE INTERNATIONAL CRIMINAL COURT: ELEMENTS OF CRIMES AND RULES OF PROCEDURE AND EVIDENCE*, 57, 58 (Roy S. Lee ed., 2001).

²¹ A. Cassese, *Crimes Against Humanity*, p. 357, in *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY*, Vol. 1A, A. Cassese, P. Gaeta and J. Jones (Eds.), Oxford University Press: 2002.

²² *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 94 (citations quoted herein omitted).

²³ *Id.*

²⁴ *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95. (citations omitted)

²⁵ *Id.* (citations omitted).

²⁶ *Situation in the Democratic Republic of the Congo in the Case of Prosecutor v. Katanga and Chui*, ICC-01/04-01-04, Decision on the confirmation of the charges, 30 September 2008, para. 394 (citations omitted). *See also Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 96. (citations omitted) (qualification of “systematic” is understood to reflect the “organized nature of the acts of violence and the improbability of their random occurrence.”)

²⁷ *Id.*

²⁸ *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 96.

through January 2010.²⁹ In particular, the commission noted that the violations resulted in several thousand illegal detentions, between 20 and 56 deaths, and cases of torture and rape throughout the country.³⁰

The TRC also found that the violations were systematic in that they were the result of operational planning and methodical execution mainly using conventional police and army hierarchies, with a common goal to suppress opposition and unify the *de facto* government.³¹ Authorities mobilized and involved the resources of state institutions, including weapons, transportation and communication systems, thousands of officials, and state facilities and funds.³² In particular, the TRC found that the national police and armed forces acted in coordination in their operations aimed at detaining and repressing demonstrators.³³

The report of the civil society commission further documented the same patterns and practices that illustrate the systematic nature of many of the offenses.³⁴ Moreover, because the TC report extended through the period to August 2011 during which dozens more killings were documented under circumstances similar to the selective killings noted by the TRC, it illustrates also that the attacks are widespread, having expanded after the period observed by the TRC. The killings and violations described in this communication, encompassing the period from August 2011 through October 2012 further support the conclusions of both commissions that these attacks are occurring on a widespread *and* systematic basis.

2. Attack Directed Against Any Civilian Population

Article 7(2)(a) of the ICC Statute defines “attack directed against any civilian population” as “a course of conduct involving the multiple commission of acts referred to in [Art. 7(1)] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” An attack is not limited to a military attack.³⁵ Indeed, the “attack” need not “involve

²⁹ Annex, Truth and Reconciliation Commission Report, Tomo II, Chapter 3, p. 538-539.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See True Commission Report, p. 107.

³⁵ The Elements of Crimes states that the “acts need not constitute a military attack.” Doc. ICC-ASP/1/3(Part II-B) (hereinafter Elements of Crimes); See, e.g., *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 80. See also A. Cassese, *Crimes Against Humanity*, p. 356, in THE ROME STATUTE OF THE

military forces or armed hostilities, or any violent force at all.”³⁶ An “attack” is characterized by a “course of conduct involving the multiple commission of acts referred to in article 7(1).”³⁷ Additionally, the reference to “any civilian population” “does not mean that the entire population of a State, entity or territory must be subjected to the attack” but implies instead “the collective nature of the crimes to the exclusion of single acts.”³⁸

The TRC found that this element was satisfied in that the victims of violations it investigated and reviewed were not members of any armed group or force and that the violence used by the state was completely unjustified and / or disproportionate. The TRC also rejected the *de facto* government’s assertions that the violence was justified so as to reduce the threat of instability, as instability had been caused by their own actions in carrying out the coup of 28 June 2009.³⁹ The TC report and the additional violations described herein also clearly support the conclusion that there is an ongoing “attack” and that it is against a civilian population, in these instances human rights defenders, trade unionists, political opponents, campesinos and their advocates.

3. State or Organizational Policy to Commit Attack

The ICC Elements of Crimes states that “policy” is understood to mean when a state “actively promote[s] or encourage[s]” the attack. It is further clarified that “[s]uch a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such an attack.”⁴⁰ The purpose behind the policy requirement is to ensure that spontaneous or isolated criminal acts or “crime sprees” are not improperly framed as crimes against humanity,⁴¹ and indeed, reflects qualities of “widespread” or

INTERNATIONAL CRIMINAL COURT: A COMMENTARY, Vol. 1A, A. Cassese, P. Gaeta and J. Jones (Eds.), Oxford University Press: 2002. Cassese elaborates on the sources for this conclusion: Control Council No 10, 20 December 1945; national legislation, post-World War II case-law including the *Einsatzgruppen* and *Justice* cases, the 1948 Genocide Convention, the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, and the 1973 Convention on Apartheid.

³⁶ See Rodney Dixon, Crimes Against Humanity: Analysis and Interpretation of Elements, in Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article 124-125 (Otto Triffterer ed., 1999)

³⁷ See, e.g., *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 80.

³⁸ Dixon, *supra* n. 22 at 127;

³⁹ *Id* at 537.

⁴⁰ Elements of Crimes, n. 6.

⁴¹ See, e.g., “[T]he policy element only requires that the acts of individuals alone, which are isolated, un-coordinated, and haphazard, be excluded.” R. Dixon, C.K. Hall, “Article 7,” in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article*, 2d. ed., 2008, p. 236.

“systematic” such as the presence of a pattern or acts that are not isolated or sporadic in nature.⁴² Indeed, in some respects, the policy requirement of crimes against humanity is intended to reach “the authors of the decisions and the policy-makers that set in motion the chain of events that brings about the specific conduct of individual perpetrators who commit the [underlying criminal] acts.”⁴³

The TRC also found that the violations committed during the seven-month period between the coup and the new regime were the result of a:

...policy dictated by the highest level of state authorities (de facto President, high command of the police and armed forces) to suppress opposition to the coup government through arrests, closure of newspapers, and other forms of violence that were explicitly ordered or the predictable result of a general policy of repression. In particular, deaths and torture were a general policy of repression against the political opposition, as well as systemic conditions of impunity and cover-up by the State.⁴⁴

The civil society commission also concluded that the attacks were committed as a matter of state policy:

7. The Commission has concluded that the effects of the coup still continue and that before and after the elections of October 2009, both governments used terror as a means of social control.

8. The Commission has determined that improper conduct attributed to the police and military personnel, not only during the de facto regime of Roberto Micheletti Bain, but in the current administration of Porfirio Lobo, was and is the policy of the State.⁴⁵

The violations described herein, based on the reporting of NGO’s as well as media sources, further affirm the existence of a policy pursuant to which these attacks on the civilian populations are taking place. In addition, the complete impunity and failure to genuinely investigate the offenses can also be seen as an

⁴² See, e.g., *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, paras. 83-86, and cases cited therein.

⁴³ C. Bassiouni, *CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW*, 2d ed. 1999, Kluwer International Law, p. 247

⁴⁴ Truth and Reconciliation Commission Report, Tomo II, Chapter 3, p. 538.

⁴⁵ True Commission Report, p. 298.

expression of the underlying policy as a “deliberate failure to take action, which is consciously aimed at encouraging such an attack.”

4. Knowledge of the Attack

Art. 7 of the Rome Statute requires that a perpetrator know of the context of the widespread or systematic attack against a civilian population in which the offense took place and that the offense is part of that attack. According to the ICC Elements of Crimes, this element “should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization.”⁴⁶ In *Prosecutor v. Katanga et al*, the Pre-Trial Chamber held that “knowledge of the attack and the perpetrator's awareness that his conduct was part of such attack may be inferred from circumstantial evidence.”⁴⁷

The TRC found that the existence of the attack against the civilian population in Honduras “*was easily knowable to all participants*” in light of the scale of the operations, the abundant flow of information in the public, media as well as internally, and the repeated complaints of citizens, civil society organizations and international institutions.⁴⁸ Such knowledge was particularly available to the higher-level authorities that had qualified training and privileged information.⁴⁹

The recent issuance of the report by the TC in October 2012 and the ongoing violations described herein further demonstrate that the existence of the attack against the civilian population in Honduras “is easily knowable to all participants.” There has been a consistent flow of information about these attacks, additional complaints from international institutions and UN experts as well as repeated complaints from civil society organizations. In particular, those bearing the greatest responsibility for the political persecution and for failing to prevent and punish the violations or turn the matter over to appropriate authorities for investigation and prosecution cannot escape knowledge of the attack given that it is so pervasive not to mention revealing of a high level of coordination.

⁴⁶ Elements of Crimes, Art. 7, Introduction.

⁴⁷ *Prosecutor v. Germain Katanga, et al*, ICC, Document No. ICC-01/09-19, op. cit., par.402, <http://www.icc-cpi.int/iccdocs/doc/doc571253.pdf>.

⁴⁸ Truth and Reconciliation Commission Report, p. 539

⁴⁹ *Id.*

C. Against Opposition to *De Facto* Authorities, Trade Unionists, Human Rights Defenders, and Journalists

Since the coup, those in opposition to the coup and the *de facto* government that assumed power have been targets of government repression and state-sponsored attacks. Both the governmental and civil society truth commissions have underscored this fact. Combined, their documentation and analysis covers the period from the day of the coup through August 2011. The findings of both commissions establish that the attacks on the regime's opponents, journalists and human rights defenders have been pursuant to a state policy. The attacks have amounted to the crime against humanity of political persecution which has involved murders and other severe deprivations of fundamental rights. Both commissions have also identified evidence that death squads are operating in the country again. The attacks occurring since the periods documented in the commissions' reports, many of which are described herein, affirm that the patterns and practices are still in place, that crimes against humanity are still being committed and that the obstacles to impunity still exist.

1. Political Persecution

Persecution “against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law” is a crime against humanity in the jurisdiction of the ICC, in connection with any other act referred to in Art. 7 of the Rome Statute, such as murder, torture, rape and other sexual violence, enforced disappearance, and forced displacement of a population. Persecution is defined in Art. 7(2)(g) of the Rome Statute as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”

The TRC specifically found that post-coup authorities began a campaign of political persecution, where those targeted were deprived of the rights to life, personal integrity, and other fundamental freedoms, e.g., the right to freedom of expression in violation of international law.⁵⁰ The TRC further found that the violence was specifically directed against the segment of the population that was opposing the *de facto* government. In particular, the TRC found that victims were persons connected to this opposition, either as activists, as in the case of several people killed and tortured, or officials who were fired, those who participated in demonstrations, or who were reporting on the developments in the media. The

⁵⁰ *Id.*

specific targeting of those in opposition was further revealed through the fact that those undertaking similar activities in support of the coup government were not met with the same violations by state agents.⁵¹ Additionally, offenders on numerous occasions referred to the victims as “rebels,” “troublemakers,” etc., accompanied by insults and the use of violence.⁵²

The findings of the TC support the TRC’s conclusions in this regard as do the dozens of additional violations documented by NGO’s and the media. The following incidents of murder, enforced disappearances and forcible transfers of populations should be investigated as crimes against humanity in and of themselves as they are occurring as part of a widespread *and* systematic attack against a civilian population. They can and should also be seen as a manifestation of the political persecution in violation of Art. 7(1)(h) of the Rome Statute.

2. Killings of Coup Opponents, Human Rights Defenders and Journalists

The TRC investigated in detail the cases of twenty killings which occurred subsequent to the coup. It emphasized that the twenty cases were illustrative – those which it viewed as particularly serious or illustrative of a broader pattern of conduct that it could confirm with certainty. Thus, the TRC’s focus on the twenty cases was not an indication that other reported killings were not also politically motivated and related to opposition to the coup. Of the twenty cases, it distinguished between killings which were the apparent result of the excessive use of force by military and/or police and those which were undertaken in a targeted, or selective, manner.

Importantly, particularly in light of the evidence of death squad involvement in more recent killings, the TRC also found there was evidence of the existence of clandestine operatives who carried out killings of activists opposing the coup.⁵³ In particular, the TRC observed: The use of vehicles, homes, weapons and the coordination of those responsible demonstrates the existence of an organized armed group with the characteristics of the death squads that operated in the 80’s in Honduras.⁵⁴ In reaching this conclusion, the TRC also noted patterns in the killings such as the fact that with the exception of one of the cases it reviewed in detail, the killings were carried out by two or more subjects with firearms traveling in normal vehicles without license plates, in all but three cases there had been an illegal detention prior to the killing and in half of the cases the victim’s

⁵¹ *id*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 340

body was left in a unpopulated area.⁵⁵ Like the TRC, the TC also concluded that death squads were operating at the instigation of or with the acquiescence of government agents.⁵⁶ The violations listed below further support this conclusion as many of them present circumstances that comport with the patterns identified by both commissions.



Defensores en la línea

Victim Profile: Walter Tróchez

Walter Orlando Tróchez, 26, was killed on 14 December 2009, when he was shot from a vehicle in the center of Tegucigalpa. The TRC reviewed Tróchez' case as it considered it "paradigmatic" and an example of "selective killings."⁵⁷ The TRC concluded that there was reliable evidence that members of state security forces were involved in his killing.

Tróchez was a human rights defender, a prominent member of the opposition to the coup government, and an active leader in the lesbian, gay, bisexual and transgender movement. He played a high-profile role in the

regional level of the Global Youth Coalition on HIV / AIDS. Subsequent to the coup, he played a leading role in the resistance and opposition to the coup authorities. He assisted people who were detained during demonstrations.

During this work, he was witness to the arrest of Pedro Magdiel Muñoz by Honduran Army and National Police before Muñoz was found dead around 25 July 2009. The TRC concluded that there was conclusive evidence of the involvement of members of the Army and National Police in the killing of Muñoz and subsequent cover-up and surmised that his witnessing of Muñoz' arrest may have been a motive for Tróchez' killing.

Ten days before he was killed, Tróchez was kidnapped on 4 December 2009, near Freedom Park in Tegucigalpa, when a van stopped near him and a hooded person armed with a gun forced him into the vehicle. Once inside the vehicle, four individuals told him that their order was to kill him. They established telephone contact with someone and advised that the Tróchez would not talk and solicited orders. Tróchez struggled with his captors and managed to jump out of the vehicle and escape that time.

To date, there has been no meaningful investigation or prosecution in this case.

Violent Attacks on the LGBTI Community: The TRC noted that the LGBTI community played an active role in opposition to the coup.⁵⁸ According to a report released in October 2012, the years 2009 and 2011 had the highest incidence of violent deaths in the LGBTI community, with 52 violent deaths over the two years. Moreover, the second half of 2009 under the *de facto* government of Roberto Micheletti saw the highest number of deaths in a six month period – 24 killings.⁵⁹

⁵⁵ *Id.*

⁵⁶ True Commission Report, at p. 298.

⁵⁷ Truth and Reconciliation Commission Report, p. 305.

⁵⁸ *Id.*

⁵⁹ Situación de las muertes violentas de la comunidad lgttbi en Honduras (Violent Deaths in the LGBTTI Community in Honduras), Catrachas, 24 October 2012.

The incidents below include cases in which evidence suggests the killings were selective, or targeted, as well as killings that were the result of the excessive use of force by police and/or military between December 2011 and October 2012. *Please note this is a partial list.*

Art. 7(1)(a) – Murder

- 6 December 2011 Journalist **Luz Marina Paz Villalobos** and photographer **Delmer Canales** were shot and killed by two individuals on a motorcycle. The two were travelling in a vehicle owned by an officer of the armed forces when killed. Paz Villalobos is the first female journalist to be killed. She had previously worked for a TV station directed by Eduardo Maldonado, whose son was kidnapped in 2010; she had declared herself anti-coup.⁶⁰
- 7 December 2011 Former Security Minister (1992-2010) and former secretary of the antidrug trafficking commission, **Alfredo Landaverde**, was shot five times and killed by gunmen on motorcycles. He was in a car with two others, both of whom were also gravely wounded. Prior to the assassination, Landaverde had made public comments criticizing the police and calling for public investigations into the police, army, and the Department of Public Prosecutors.⁶¹
- 8 December 2011 Journalist/Radio Presenter **Josué Torres** was found dead, hanged. The forensic examiner called for an investigation due to suspected criminal involvement and the fact that his hands were tied behind his back.⁶²
- 17 January 2012 **Ricardo Rosales**, a lawyer who had recently accused police in the northern town of Tela of serious human rights abuses, was shot dead by three hooded gunmen outside his home.⁶³
- 5 February 2012 **Otilio Jiménez**, the president of a Villanueva workers' union, was murdered in his workplace in broad daylight.⁶⁴
- 17 February 2012 Student activist **Marlon Eugenio Villeda Izaguirre**, 19, and his two friends, **Gabriela Lizeth Cárdenas**, 19, and **Paxi Yamileth Escobar Ortega**, 34, were murdered in a drive-by shooting. Villeda was a vocal member of the Revolutionary Socialist Student Front.⁶⁵

⁶⁰ *Memo Regarding Reports Received by the Center for Constitutional Rights of Human Rights Violations in Honduras in December 2011 and January 2012*, Center for Constitutional Rights, February 2012. (hereinafter "CCR February 2012 Report" annexed hereto as Appendix E)

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Memo Regarding Reports Received by the Center for Constitutional Rights of Human Rights Violations in Honduras in February and March 2012*, Center for Constitutional Rights, April 2012. (hereinafter "CCR April 2012 Report" annexed hereto as Appendix F)

⁶⁵ *Id.*

- 29 February 2012 Journalist **Saira Fabiola Almendares Borjas**, 22, was shot and killed alongside **José Ramón Orellana Castellanos** and an **unknown companion**. Their bodies were found in a field in Choloma.⁶⁶
- 12 March 2012 **Fausto Elio Hernández**, former correspondent of the news program La Voz de la Noticia, was murdered by attackers with machetes on his way home. Hernandez was the 19th journalist murdered since the coup and the second since the start of 2012.⁶⁷
- 3 April 2012 Journalist and television presenter **Noel Alexander Valladares** and **two companions** were assassinated as they were leaving local TV channel Maya TV in Tegucigalpa. When driving away together, they were shot by hooded men on a Toyota Prado. Noel's spouse and co-presenter Nelly Yorleny Pavón survived but was hospitalized with gunshot wounds in the legs requiring surgery.⁶⁸
- 1 May 2012 In the indigenous Lenca community of San Bartolo, Intibucá police entered María de Los Santos Domínguez Benítez' home without permission, searching for her son. When police could not find him, and her other son and active COPINH member and antihydroelectric dam activist, **Santos Alberto Rodríguez**, protested, police shot him in the head, killing him instantly.⁶⁹
- 3 May 2012 Sitraunah Autonomous University Workers' Union lecturer in pedagogy **Miguel Ángel Barahona Fiallos** was assassinated outside his home in Colonia San Miguel, El Progreso. Miguel was a coordinator of the M.A. program of the UNAH-VS and had worked there 35 years.⁷⁰
- 5-7 May 2012 A leader of the LGBTI community, human rights and anti-coup activist, LIBRE party candidate and journalist, **Erick Alexander Martínez Ávila**, went missing on 5 May , and was found dead by asphyxiation resulting from strangulation, lying face up in a sewer two days later.⁷¹
- 8 May 2012 Choloma Cortés community leader and Secretary General of the Socialist Morazanico Party, **Edilberto Solano**, was assassinated by two men on a motorcycle.⁷²
- 9-15 May 2012 HRN news director **Ángel Alfredo Villatoro** was kidnapped while commuting to work in the capital city of Tegucigalpa. On May 15, his corpse was found in

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Memo Regarding Reports Received by the Center for Constitutional Rights of Human Rights Violations in Honduras in April and May 2012*, Center for Constitutional Rights, June 2012. (hereinafter "CCR June 2012 Report" annexed hereto as Appendix G)

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

- Las Uvas in Tegucigalpa.⁷³
- 20 May 2012 National Front of Popular Resistance (FNRP) activist **Jesús Octavio Pineda** was shot and killed by unknown persons in a drive-by shooting near his home in the La Pradera neighborhood of San Pedro Sula.⁷⁴
- 7 June 2012 **Miguel Ángel Ramos Díaz**, an active member of the FNRP and the LIBRE Party, and deputy director of the Technological Institute of Business Administration, was gunned down by men in a black vehicle in San Pedro Sula while walking with his 12-year-old son. Ramos' son escaped uninjured.⁷⁵
- 12 June 2012 **Joel Orellana**, a member of the FNRP and the Bo El Estadio Collective, was shot and killed.⁷⁶
- 24 June 2012 Gunmen in a black vehicle shot and killed **Jenny Concepción Reyes Izaguirre**, a teacher and leader in both the LIBRE Party and the Progressive Resistance Movement (MRP). Also wounded in the attack were Reyes Izaguirre's son and her husband Arturo Ramírez, also a LIBRE Party leader.⁷⁷
- 26 June 2012 The body of **Carlos Jese Portillo Yanes**, 20, was found inside a black plastic bag in Cortés. The previous Sunday he had been at an event organized by the FNRP, after which his family had not seen him.⁷⁸
- 8 July 2012 Radio journalist **Adonis Felipe Bueso Gutiérrez** and two of his cousins, **Francisco Ireata López** and **Miguel Ángel Gutiérrez Coto**, were forced into a car by unknown men in Villanueva. Their bodies were found on the street a half-hour later; all three were killed by gunshots.⁷⁹
- 19 July 2012 Four Garifuna persons, **Vidal Cacho**, **Jimmy Colón Centeno**, **Orvin Roberto Amaya** and **Pablo Castillo**, were kidnapped and assassinated by four armed men dressed as Honduran police officers in Triunfo de la Cruz. According to Garifuna activist Miriam Miranda, one of the victims had more than twenty-five bullet wounds.⁸⁰
- 10 August 2012 Journalist **Jose Noel Canales** was shot to death on his way to work. His body was found inside a pickup truck.⁸¹

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Memo Regarding Reports Received by the Center for Constitutional Rights of Human Rights Violations in Honduras in June, July and August 2012*, Center for Constitutional Rights, October 2012. (hereinafter "CCR October 2012 Report" annexed hereto as Appendix E)

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

- 13 August 2012 Human rights activist and member of Frente Amplio Popular en Resistencia (Faper) **José Marcos Ávila Maradiaga** was shot nine times outside of a drugstore in the neighborhood of La Popular 1 in Comayagua.⁸²
- 15-17 August 2012 Honduran youth **Herlin Lainez Edenilson Knight**, his brother **Wilmer Caballero Yoenis Lainez**, **Carlos Ponce**, and an **unnamed minor** were arrested August 15 and released on August 16, when they went to a diner and were abducted by several uniformed but masked police officers. Their four bodies were found August 17 in the Cuyamel River and showed signs of **torture**. On August 21, the Attorney General of Honduras reported that eight National Police officers were suspended and under investigation for the murders.⁸³
- 22 August 2012 **Juan de Dios Sáenz**, president of la Junta Directiva Central del Sindicato de Trabajadores de la Universidad Nacional Autónoma de Honduras (SITRAUNAH), was found murdered.⁸⁴
- 24 September 2012 Human rights lawyer Manuel **Eduardo Díaz Mazariegos**, a prosecutor with the Honduran Public Ministry, was shot eleven times and killed near his office in Choluteca.⁸⁵

D. Against Campesinos and Land Rights Advocates

The increasing and violent attacks on campesino cooperatives, particularly in the Bajo Aguán region, must be seen as related to and forming a part of the overall context of state repression and persecution in partnership with powerful private actors. The land struggle in which campesino cooperatives and communities are engaged were a major impetus for the coup d'état of June 28, 2009. Just two weeks prior to the coup, President Manuel Zelaya initiated a negotiation process with the cooperatives which many hoped would finally resolve long-running legal actions brought by the cooperatives challenging the validity of titles to property that had been stolen from cooperatives in the 1990's through illegal and fraudulent "transfers." The transfers resulted in the consolidation of valuable farmland in the hands of a few wealthy individuals, including Miguel Facussé, whose private security forces could be involved in international crimes against members of the cooperatives, as noted further below.

The coup government ended the negotiations and in December 2009, campesinos organized through the Unified Campesino Movement of the Aguán (MUCA) to take back possession of the stolen farms. On 19 April 2010, MUCA signed an agreement with the National Agrarian Institute which committed to purchasing

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

11,000 hectares of land for twenty-four of the twenty-eight cooperatives. Four of the MUCA cooperatives – El Despertar, La Trinidad, San Isidro and San Esteban – decided not to sign the agreement and to proceed with the legal challenges and formed the Authentic Campesino Reclamation Movement of the Aguán (MARCA). In rulings issued in 2011 and 2012, courts ruled in the cooperatives’ favor and annulled the title transfers in question and reverted full title and ownership of the land back to the San Isidro, El Despertar, and La Trinidad cooperatives.⁸⁶ The San Esteban cooperative had previously dropped its legal case, having suffered a series of enforced disappearances and murders.

Since the coup, Honduran military and police, along with private security forces hired by individuals and businesses disputing the campesinos’ claims, have engaged in outright violence, threats, and other intimidation tactics against such groups and their members. Specifically, campesinos and journalists covering the conflict have been the targets of torture, kidnappings, disappearances, forced evictions (displacement) and targeted killings. As documented by one human rights mission to Aguán, “All the peasants visited by the [International Verification] Mission reported a generalized atmosphere of fear and terror caused by continual threats and harassment from the military, police, and the local businesses’ security guards.”⁸⁷ Thus, in addition to violations by police and military, private security forces have been identified as having perpetrated human rights abuses, including murder, kidnappings, and violent attacks, on campesinos and groups both on their own and in connection with state security forces, as noted in a number of cases below.

(For a more detailed historical background of the land reform issues and their relevance to the coup d’état of June 28, 2009, and post-coup repression, please see Honduras: Human Rights Violations in Bajo Aguán, Report of the International Verification Mission, at Appendix A.)

⁸⁶ *Court Victory Arouses Hope for an End to Land Conflict in Bajo Aguán*, Human Rights House Network, 11 July 2012. <http://humanrightshouse.org/Articles/18329.html>. See also, Annie Bird, *Another Assassination in Honduras: Antonio Trejo Gunned Down*, Rights Action, 24 Sept. 2012, <http://rightsaction.org/action-content/another-assassination-honduras-lawyer-antonio-trejo-gunned-down>.

⁸⁷ *Honduras: Human Rights Violations in Bajo Aguán*, Report of International Verification Mission, p. 19. (hereafter “International Verification Mission Report, Appendix A”)



Victim Profile: Antonio Trejo

On 22 September 2012, **Antonio Trejo Cabrera**, 41, was shot five times while attending a wedding in Tegucigalpa.

Trejo was a lawyer who successfully represented three peasant cooperatives in the Bajo Aguán in helping them regain legal title to several plantations in the area, a

longstanding subject of controversy.

Trejo had also assisted in legal efforts to declare unconstitutional an effort to build three privately run “model cities” on Honduran territory. Just hours before he was killed, he had participated in a debate televised on Honduran TV where he accused members of the Honduran Congress of corruption.

He had been receiving numerous death threats in the weeks leading up to his death. On one occasion, Trejo placed an advertisement in the La Tribuna newspaper in which he accused landlord and palm oil magnate Miguel Facussé of being among those responsible for the threats.

Trejo’s colleagues have expressed a number of concerns about the investigation so far.

1. Killings Connected to Land Rights Struggle

The following is a *partial list* of killings of campesinos, land rights advocates and journalists covering the issue that have been documented and confirmed by multiple sources between March 2010 and September 2012.

Art. 7(1)(a) – Murder

- 14 March 2010 **Nahún Palacios**, 33, director of the television channel 5 in Aguán. Murdered close to his home by unknown persons carrying AK-47 assault rifles.⁸⁸ **Yorleny Yadira Sánchez Rivas**, 33, wounded by a bullet on March 14th when hitmen attacked the vehicle in which she was travelling with journalist Nahún Palacios. Days later, she died in the hospital.⁸⁹
- 17 March 2010 **José Antonio Cardoza** and **José Concepción Carías**, both 50, from the Associative Business Brisas de COHDEFOR in the municipality Bonito Oriental. Unidentified individuals shot them while they were on their way home from working in the bean fields. They had already reported being threatened.⁹⁰

⁸⁸ International Verification Mission Report, Appendix A.

⁸⁹ *Id.*

⁹⁰ *Id.*

- 1 April 2010 **Miguel Ángel Alonzo Oliva**, 22, from the Guanchías cooperative. (MUCA) Killed after being shot in the back.⁹¹
- 7 April 2010 **José Leonel Guerra Álvarez**, 32, from the Cooperativa La Confianza. (MUCA) Shot to death. Two individuals got off a motorcycle and shot him inside his house in front of his wife and children.⁹²
- 29 May 2010 **Agustín Bustillo**, 40, from the Cooperativa Camarones disappeared on May 24th. Found dead five days later on the banks of the Aguán River.⁹³
- 20 June 2010 **Oscar Giovanni Ramírez**, 17, from the Cooperativa La Aurora. (MUCA) Found murdered, according to the report, in the location where an armed attack had occurred, led by National Police Cobra agents, the Preventative Police and the Orion company's security guards (body displayed signs of torture).⁹⁴
- 9 August 2010 **Esteban García Cruz**, 45, from the Cooperativa 25 de Abril. (MUCA) Murdered by unknown individuals driving a white SUV vehicle.⁹⁵
- 17 August 2010 **Rodving Omar Villegas**, 15, **Victor Manuel Mata Oliva**, 40, and **Sergio Magdiel Amaya**, 18, from the Cooperativa San Esteban. (MUCA) Shot to death by an AK-47 weapon while travelling towards his village from Tocoa in a vehicle. The victims were reportedly ambushed by security guards travelling in a blue vehicle with a double cabin.⁹⁶
- 10 September 2010 **Francisco Miranda Ortega**, 55, from the Cooperativa La Aurora. (MUCA) Shot to death with six bullets by unknown persons while the victim was travelling by bicycle towards Tocoa.⁹⁷
- 10 September 2010 **Enrique Alfredo Larios Cruz**, of the peasant association company "Unión Catracha". (MCA) Murdered alongside his companion, **Rodríguez Valdés**, (MUCA) by firearm near the village Honduras Aguán, in the municipality of Trujillo.⁹⁸
- 15 November 2010 **Raúl Castillo**, 48, of the Cooperativa "14 de Mayo," (MCA), murdered by private security guards from the El Tumbador estate.⁹⁹
- 15 November **José Luis Saucedo Pastrana**, 25, MCA, murdered by private security guards from the El Tumbador estate.¹⁰⁰

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

- 15 November 2010 **Ciriaco de Jesús Muñoz**, 50, from the Cooperativa Nueva Esperanza. (MCA) Murdered by private security guards from the El Tumbador estate.¹⁰¹
- 15 November **Teodoro Acosta**, 39, from the Cooperativa Nueva Vida. (MCA). Murdered by private security guards from the El Tumbador estate.¹⁰²
- 15 November 2010 **Ignacio Reyes García**, 50, from the Cooperativa Familias Unidas (MCA). Murdered by private security guards from the El Tumbador estate.¹⁰³
- 2 January 2011 **Ermin Nabarro**, of Cooperativa La Aurora (MUCA). Murdered on the public motorway close to the La Aurora settlement.¹⁰⁴
- 30 March 2011 Police and military used live ammunition to disperse a peaceful protest in Planes, a municipality of Sonaguera. One person was killed by the gunfire. At least eleven others were wounded including: **Neptalí Esquivel**, of the Nueva San Esteban peasant cooperative who was left permanently disabled; **Waldina Diaz**, a teacher from Trujillo; **Mauro Rosales** of the MUCA; **David Corea**, television cameraman in Olanchito; **Juan Antonio Vasquez**, president of the peasant cooperative Bolero; **Paulino Chavez Rosales** and **Franklin Hernández** of the peasant cooperative “4 de Marzo”; **Victor Ecuada** of the peasant cooperative “4 de Febrero”; **Daniel Pérez** of the peasant cooperative “4 de Diciembre”; and professors **Elías Erazo Hernández** and **Eduardo Rivera** of Trujillo.¹⁰⁵
- 5 or 7 May 2011 **"Henry" Roney Diaz**, (MARCA), was ambushed by Orion Security guards, police and soldiers from the Honduran Army's 15th Battalion, after having been critical of businessman and landowner Miguel Facussé and his Dinant Corporation. Orion provides security for Dinant. After the murder, police monitored Diaz's parents' home.¹⁰⁶
- 5 June 2011 **Jose Recinos Aguilar**, **Joel Santamaria** and **Genaro Cuesta**, MARCA members, were shot and killed while in a car a few meters from the San Esteban Cooperative. Their assailants were in a marked Honduran police vehicle that retrieved the bodies and brought them to the forensic medicine office in La Ceiba the same afternoon.¹⁰⁷
- 9 June 2011 **Jose Luis Rodriguez**, 89 years old, was burned alive in his home in the agrarian community of 28 de mayo, which borders Tocoa, during an assault by 40 police officers using tear gas and setting fire to homes in the community. A community member who pleaded with the security forces to not burn the houses was

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Memo Regarding Reports Received by the Center for Constitutional Rights of Human Rights Violations in Honduras in Bajo Aguán March-September 2011*, Center for Constitutional Rights, April 2012. (hereinafter “CCR Bajo Aguán Report” annexed hereto as Appendix D)

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

- severely beaten.¹⁰⁸
- 15 August 2011 Seventeen-year-old **Javier Melgar** was killed after the military launched a joint attack with private security forces against campesinos from the Movimiento Campesino Colonia Nueva Vida de Rigores in Colon.¹⁰⁹
- 9 January 2012 **Eight people**, including four children, were murdered by attackers with firearms and machetes in a field near their home in Regaderos village in the Bajo Aguán. Seven of the eight were reportedly from the same campesino family.¹¹⁰
- 20 January 2012 **Matias Valle**, a campesino community leader and representative of MUCA was gunned down by two men on a motorcycle.¹¹¹
- 12 March 2012 **Marvin José Andrade**, a farmer in the Cayo Campo community, was burned, tortured and murdered after receiving numerous death threats from nearby landholders' security guards.¹¹²
- 29 March 2012 A group of campesinos were heading home from work in Trujillo when they were attacked by unknown men in cars. **Four** men died and eleven were injured.¹¹³
- 11 April 2012 MUCA farmer of the Camarones cooperative and father of five **Doninely López Alvarado**, 46, was shot and killed with at least six high caliber gunshots in an ambush by at least two hooded unknown persons who were hiding near the Salamá extraction plant while Doninely was driving his motorcycle toward the La Confianza palm plantation. An underage youth who was riding with Doninely was injured from falling from the motorcycle.¹¹⁴
- 16 May 2012 Farmer **Juan José Peralta Escoto**, of the Marañones MUCA settlement was killed. His son **Juan Peralta** of Rigores and son-in-law **Antonio Vélez** of Marañones were critically wounded. The three men were attacked while driving corn and wood toward the National Agrarian Department office and the La Confianza farm.¹¹⁵
- 2-6 July 2012 Farmer **Gregorio Chávez Arando** disappeared on July 2 from his land. On July 6, his body was found buried on the Paso Aguán estate, which is under the control of the businessman and palm oil producer **Miguel Facussé**.¹¹⁶
- 7 July 2012 **Jacobo Erazo López**, MUCA member and ex-director of the Tranvía business, was kidnapped and shot to death on his way to work by unknown assailants.¹¹⁷

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ CCR February 2012 Report, Appendix E.

¹¹¹ *Id.*

¹¹² CCR April 2012 Report, Appendix F.

¹¹³ *Id.*

¹¹⁴ CCR June 2012 Report, Appendix G.

¹¹⁵ *Id.*

¹¹⁶ CCR October 2012 Report, Appendix H.

- 8 July 2012 MUCA member **José Luis Dubón Díaz** was murdered in la Ceibita, near the Lempira settlement.¹¹⁸
- 26 July 2012 **Israel García**, member of el Movimiento Campesino Recuperación del Aguán (MCRA), was shot and killed by a long-range rifle.¹¹⁹
- 29 July 2012 **Evaristo Lopez**, member of MARCA, was killed in a hit-and-run incident while riding his motorcycle. Campesino organizations have classified his death as suspicious.¹²⁰
- 21 August 2012 **Angel Pérez**, member of the Movimiento de Recuperación del Aguán, was killed in Tocoa by a person riding a motorcycle while walking down the street in the Fabio Ochoa neighborhood.¹²¹
- 27 August 2012 **José Braulio Díaz López**, Secretary of Tranvío/la Empresa Asociativa Campesina de Producción (EACP) and member of MUCA was murdered. Mario Roberto Hernández was injured in the attack on López.¹²²
- 9 September 2012 **Hector Navarro** was killed by excessive tear gas inhalation when national police and private security believed employed by Miguel Facussé violently forced a group of 300 campesinos from the Los Laureles plantation.¹²³
- 12 September 2012 26-year-old **Herman Alejandro Maldonado** was shot and killed when gunmen opened fire on campesinos from the group Refundación Gregorio Chavez near Tocoa. **Ivis Ortega**, age 22, was gravely wounded and later died from his injuries. While attempting to assist the victims, a group of individuals were shot at while in their car.¹²⁴
- 23 September 2012 Campesino rights lawyer and activist **Antonio Trejo** Cabrera was ambushed by unidentified gunmen, shot six times, and killed while attending a wedding. Trejo represented the MARCA peasant collective in their fight to reclaim their land in the Bajo Aguán region and publicly opposed the creation of special autonomous development zones, or “Model Cities.”¹²⁵

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ CCR November 2012 Report, Appendix I.

¹²⁴ *Id.*

¹²⁵ *Id.*



Miguel Facusse: Possible Involvement in Crimes Against Humanity

Miguel Facussé has been described as “the wealthiest, most powerful man in Honduras.”¹²⁶ He owns the Dinant Corporation, a palm oil company, and is the purported owner of thousands of hectares of lands in the Bajo Aguán and in the southern part of the country in the peninsula of Zacate Grande.¹²⁷

The True Commission recently reported that on the day of the coup President Manuel Zelaya’s Minister of Foreign Affairs Patricia Rodas was also forcibly removed from the country and was flown out in a private plane owned by Facussé.¹²⁸ This evidence tends to confirm the links between powerful business elites like Facussé to the coup and de facto coup leaders.

Facussé’s title to lands in Bajo Aguán was successfully challenged by three campesino cooperatives represented by lawyer Antonio Trejo in the months before Trejo was killed.¹²⁹ Facussé’s security forces appear to have been involved in forcible transfers of campesinos and in a number of killings and attacks, as noted in the incidents identified in this report.¹³⁰ In particular, Facussé’s security personnel are said to have been involved in the killings of five campesinos in November 2010,¹³¹ “Henry” Roney Diaz in May 2011,¹³² and Gregorio Chavez Arando in July 2012,¹³³ in addition to numerous attempted killings and violent attacks against campesinos.

In a cable released last year by Wikileaks, it was revealed that he is believed to have links to drug trafficking.¹³⁴

¹²⁶ See Dana Frank, *Wikileaks Honduras*, *The Nation*, 21 Oct. 2011. Available at: <http://www.thenation.com/article/164120/wikileaks-honduras-us-linked-brutal-businessman#>; Dana Frank, *Honduras: Which Side Is the U.S. On?*, *The Nation*, 22 May 2012. <http://www.thenation.com/article/167994/honduras-which-side-u>. See also, Letter of Representative Howard Berman, Ranking Member of the House Committee on Foreign Affairs, to Hon. Hillary R. Clinton, U.S. Secretary of State, 2 Oct. 2012. Available at: <http://www.justforeignpolicy.org/sites/default/files/11-28-11.%20Letter%20to%20Secretary%20Clinton%20re.%20Human%20Rights%20in%20Honduras.pdf> (hereinafter “Letter to Sec. Clinton”)

¹²⁷ True Commission Report, p. 265

¹²⁸ True Commission Report, p. 18

¹²⁹ Letter to Sec. Clinton. See Annie Bird, *Why Good Lawyers Are Being Assassinated in Honduras*, Rights Action, 4 Oct. 2012. <http://rightsaction.org/action-content/why-good-lawyers-are-being-assassinated-honduras-small-farmer-cooperatives>. See also, Frank, *supra* n. 129.

¹³⁰ *Id.*

¹³¹ International Verification Mission Report, Appendix A.

¹³² CCR Bajo Aguán Report, Appendix D.

¹³³ CCR October 2012 Report, Appendix H.

¹³⁴ “Drug Plane Burned on Prominent Honduran’s Property,” Cable 04TEGUCIGALPA672, Available at: <http://www.leakoverflow.com/questions/362782/04tegucigalpa289-honduran-air-interdiction-procedures-us>.

2. Forcible Transfer of a Population, Art. 7(1)(d), of Campesino Communities

The Rome Statute defines “forcible transfer of a population” as forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.” As set out above, recent court rulings in cases brought by campesino cooperatives indicate that it has been the purported landowners, who had been using violence and force to remove campesinos, who were, as it turns out, unlawfully present on the land.

Art. 7(1)(d) - Forcible Transfer of Population

- | | |
|------------------|---|
| 8 January 2010 | Forced eviction executed by police, army officials, and security guards working for René Morales and Miguel Facussé against the Peasant Groups of the Agricultural and Livestock Cooperative July 21 st , the Associative Business of Peasants December 9 th , Associative Business of Peasants el Despertar, Associative Business of Peasants San Esteban, and all members of MUCA. ¹³⁵ |
| 10 May 2010 | Forced eviction executed against the San Isidrio Cooperative, and on 12 May 2010, against the El Despertar Cooperative, both members of MARCA. ¹³⁶ |
| 9 December 2010 | Forced eviction of two peasant groups settled in El Paso Aguán (see box for detailed description) and the Panamá estate. ¹³⁷ |
| 16 December 2010 | Forced eviction of the El Despertar Cooperative, member of MARCA. ¹³⁸ |
| 12 January 2011 | Forced eviction of the Campo Verde II Cooperative, and on 13 January 2011 of the Corfinito Cooperative. ¹³⁹ |
| 7 March 2010 | Forced eviction of peasant groups affiliated with the El Despertar and La Trinidad cooperatives, members of MARCA. ¹⁴⁰ |

¹³⁵ International Verification Report, Appendix A.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

- 18 March 2011 MARCA members forcibly removed from the San Esteban Cooperative by police, army and private security personnel.¹⁴¹
- 21 March 2011 San Esteban Cooperative attacked by armed men in vehicles bearing police insignias.¹⁴²
- 9 June 2011 Police violently evicted people from the homes in the community of "28 de Mayo," which borders Tocoa, when over forty officers used tear gas on community members and set fire to the homes.¹⁴³
- 23-26 June 2011 Members of the Rigores community in Tocoa violently and unlawfully evicted; over 100 homes burned by fifty police, mostly of the special forces "COBRA" unit and private security forces working for palm plantation owners. Additionally, the police and security forces set fire to the community's crops, school, kindergarten, and two churches, leaving the families without shelter and means of subsistence. The COBRA unit included a military sharp shooter and the entire attack carried the markings of a strategic military assault. Authorities claim to have conducted the eviction "lawfully," notwithstanding the clearly excessive use of force and lack of any investigation by the Public Ministry into land rights.¹⁴⁴
- 1 July 2011 Rigores community in Tocoa attacked again by police and private security forces, burning the homes that were being rebuilt after the June 2011 attack.¹⁴⁵
- 2 August 2011 Rigores community in Tocoa attacked again by police and private security forces, wounding **Ariel Lara**, a man from a neighboring community.¹⁴⁶
- 15 August 2011 Attack on campesino movement members in Colon by military and private security forces. One person, Javier Melgar, 17, was killed. Private security forces refused to turn over Melgar's body to the family.¹⁴⁷
- 8 February 2012 A delegation organized by the United States-based La Voz de los de Abajo reported that military of the La Ceiba 4th Battalion forcibly evicted farmers from the Salado Lislis community. The community reported that 200 armed troops were present, some of whom were allegedly wearing shirts that said "Dole" under army or police-issued bullet-proof vests. The officers were

¹⁴¹ CCR Bajo Aguán Report, Appendix D.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

- accompanied by bulldozers that reportedly destroyed eighty homes and destroyed fields of crops. The community reported that the officers cut down plants and trees and pulled up yucca.¹⁴⁸
- 8 February 2012 The Permanent International Observatory of Human Rights in the Aguán reports that farmer Mártines was shot several times in front of the land of the Buenos Aires Peasant Movement. Mártines' uncle, Juan Galindo, is the president of a Marañones settlement farmers' company.¹⁴⁹
- 24 February 2012 Police forcibly evicted the campesino collective "Recuperando lo Nuestro" in La Paz and detained nine peasant workers. In a statement about the incident, the National Rural Workers Association (CNTC) reported that nighttime raids, repeat evictions, violence and the mistreatment of children and pregnant women have become regular tactics of the police in La Paz, Santa Barbara, Comayagua and the Aguán.¹⁵⁰
- 15 March 2012 Approximately twenty private security guards entered a community in Comayagua and opened fire on a group of campesinos and their families; they wounded two women with bullets and beat another. Two of the private security guards threatened Francisco Caraccioli, a human rights defender who has been documenting human rights violations of the community.¹⁵¹
- 21 March 2012 An estimated 200 military and police officers raided a camp where relatives of the Comayagua prison fire victims were protesting. They beat the protestors with clubs and detained at least one person, Ricardo Pineda, without any formal charge.¹⁵²
- 12 April 2012 A forced eviction was carried out by police and military against the farmers' settlement at El Coroso in Catacamas, Olancho. Approximately 100 families' homes and belongings within were destroyed by tractors, leaving them homeless. Farmers reported that livestock and grains were robbed. The community had been living on that land for over seven years.¹⁵³
- 17 April 2012 Military and police officers, accompanied by private security guards, carried out a forced eviction without lawful eviction orders. Approximately 1,500 families had been occupying land they claimed was rightfully theirs in a coordinated action by the San Manuel Cortes farmers' movement MOCSAN.

¹⁴⁸ CCR April 2012 Report, Appendix F. See also, Submission to UN Working Group on the Use of Mercenaries, La Voz de los de Abajo, 12 October 2012 (redacted) at Appendix O.

¹⁴⁹ CCR April 2012 Report, Appendix F.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ CCR June 2012 Report, Appendix G.

- MOCSAN members were detained and fingerprinted.¹⁵⁴
- 12 June 2012 Eighteen members of the San Miguel Peasants Movement (MOCSAM) were violently evicted from lands they argue have been illegally taken by the Honduran Sugar Company. This was the third such eviction against MOCSAM during this particular campaign.¹⁵⁵
- 21 June 2012 A court ordered the eviction of forty villagers accused of occupying privately owned land in the Jamastrán Ruano Valley. Evicted farmers pointed to the regional head of the National Agrarian Institute's confirmation that the lands in question belong to the national government, and are not privately owned.¹⁵⁶
- 20 July 2012 Police violently evicted families from Merriam Altos. A pregnant young woman, Amber Lagos, was badly beaten by police and taken to the hospital with the threat of miscarriage. Other reported beatings were of one-year-old Isis López, 17-year-old Alex Fernando Perdomo, and Santos Perdomo, an elderly man. Those evicted have since been intimidated by unknown persons on motorbikes and wearing masks.¹⁵⁷
- 24 July 2012 Several people were injured in confrontations between the National Police and farmers in Los Laureles as police attempted to evict the farmers.¹⁵⁸
- 15 August 2012 Police and military agents evicted a group of approximately 150 farmers in El Progreso.¹⁵⁹
- 27 July 2012 An armed group attacked families associated with MCRA. No injuries were reported.¹⁶⁰
- 28 July 2012 Farmers and members of MARCA Eldin Noel Ortiz, Jimmy Burgos Tobías, Santos Eliseo Pavón, Gilberto López, and Jorge Nájera were shot at and injured by three unknown assailants.¹⁶¹
- 6 September 2012 The Xatruch III Task Force evicted peasants from the Los Laureles plantation. The peasants had been present on the plantation since 20 July 2012.¹⁶²
- 9 September National police and private security employed by Miguel Facussé violently

¹⁵⁴ *Id.*

¹⁵⁵ CCR October 2012 Report, Appendix H.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² CCR November 2012 Report, Appendix I.

- 2012 evicted a group of 300 campesinos from the Los Laureles plantation. Thirty-four members of el Movimiento Campesino Recuperación del Aguán were detained for two days. During the eviction raid, armed men fired tear gas canisters into homes and broke down doors looking for fleeing campesinos. Hector Navarro died from apparent excessive tear gas inhalation while resting in his backyard. Reports indicate that two other unnamed persons were killed in the attacks.¹⁶³
- 23 October 2012 Police evicted persons occupying land in San Pedro Sula. Tractors demolished the unsteady structures that the occupiers had built on the land.¹⁶⁴

3. Enforced Disappearances

Art. 7(2)(i) of the Rome Statute defines “enforced disappearance” as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” The following is a partial list of disappearances.

Art. 7(1)(i) - Enforced Disappearances

- 21 May 2011 **Olvin Gallegos** and **Segundo Gomez**, MARCA members, were kidnapped by private security forces while crossing the El Mochito, a palm plantation. An attempt to investigate the matter at El Mochito a few hours later was met by two patrols, thirty-two police officers, and army commandos, about 100 soldiers altogether, guarding the plant, all wearing masks. The company denied the two men were on the premises. They are still missing.¹⁶⁵
- 2 August 2011 **Mauricio Joel Urbino Castro**, a taxi driver having his cab repaired at a local garage when four armed men wearing ski masks who identified themselves as police ordered everyone on the ground, kicked the garage owner, and beat Mauricio Joel Urbino Castro before tying his hands behind him, violently removing him from the garage, and forcing him into an unidentifiable truck. He has not been seen since.¹⁶⁶

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ CCR Bajo Aguán Report, Appendix D.

¹⁶⁶ *Id.*

- 21 August 2011 **Oscar Elias Lopez Munoz** was kidnapped from his home in the presence of his wife and 10-year-old daughter by hooded men wearing ski masks in the Suyapa neighborhood of Chamelecon in northern Honduras. The men arrived in three cars, broke down the doors of his home, and identified themselves as agents of the National Department of Criminal Investigation (DNIC) before forcibly removing him.¹⁶⁷
- 30 August 2011 **Jose Reynaldo Cruz Palma**, president of the Community Council (Patronato) of the Planeta neighborhood in San Pedro Sula was kidnapped by agents of the DNIC and Preventative Police who intercepted a bus on which he was traveling and forcibly abducted him without cause in the presence of his wife.¹⁶⁸

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

II. Impunity for Those Bearing the Greatest Responsibility

Article 17, setting out the ICC's complementarity scheme, provides in relevant part that a case is not admissible in the ICC when: (a) the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; or (b) the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.

To determine whether a given state is "unwilling" in a particular case, the Court must consider, whether: (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; (b) there has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; or (c) the proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.¹⁶⁹

In order to determine whether a State is "unable" in a particular case, the Court must consider whether "due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings."¹⁷⁰

A. Evidence That Honduras is Unwilling *and* Unable to Investigate and Prosecute Key Perpetrators of Coup and Human Rights Violations in the Aftermath

Honduras is both unwilling and unable to genuinely investigate and prosecute these offenses. As discussed in more detail below, even those few courageous individuals in the Human Rights Division or the Public Prosecutor's office who might have been willing to investigate have been unable to do so because of the obstacles they encounter at the same time that they have been threatened against doing their job. Moreover, the case of the very first person to fall victim to the coup regime is illustrative of the numerous obstacles and circumstances making genuine accountability impossible.

¹⁶⁹ Art. 17(2)

¹⁷⁰ Art. 17(3)



Silvia Mencías holds the placard of her son, Isis Murillo.

Isis Obed Murillo

The ongoing impunity and lack of genuine investigation and prosecution of the first post-coup casualty illustrates that the ICC's intervention is critical. Nineteen-year-old Isis Obed Murillo was shot and killed by Honduran military on 5 July 2009, at a peaceful protest against the coup at the Toncontín Airport in Tegucigalpa.

On 23 June 2011, represented by the Center for Constitutional Rights, his parents, David Murillo and Silvia Mencías, brought a civil case in the United States in

which they sued former *de facto* president Roberto Micheletti for his command responsibility for the death of their son.¹⁷¹

The complaint and subsequent filings in the case set out the evidence supporting Micheletti's liability for Murillo's killing under the doctrine of command responsibility, as well as the evidence which helps establish that the killing of Murillo took place in the context of a widespread or systematic attack against a civilian population. It is worth noting that in applying the doctrine of command responsibility set out in Art. 28 of the Rome Statute, the TRC also found that Micheletti bore command responsibility for the killing of Isis Murillo, and others, through the military's excessive use of force, "especially when they responded to the general policy of repression of the political opposition, ordered and directed by President Micheletti."¹⁷² In particular, the TRC found:

In addition to his responsibility for contributing to cause these violations *a priori*, the president also has a corresponding responsibility for failing to fulfill his obligation to denounce and properly punish the violations afterward. His responsibility for omission extends to those violations by state agents that were more beyond the scope of these decrees...¹⁷³

¹⁷¹ *David Murillo and Silvia Mencías v. Roberto Micheletti Báin*, United States District Court, Southern District of Texas, Houston Division, Case No. 4:11-CV-2373. The case is currently awaiting the Court's ruling on defendant Micheletti's motion to dismiss which was filed more than a year ago on September 28, 2011.

¹⁷² Truth and Reconciliation Commission Report, p. 383; Tomo II, Chapter 3, p. 538.

¹⁷³ *Id.*

1. Existence of Proceedings

There are no proceedings against Micheletti in Honduras for the death of Isis Murillo, or any other killings for which the TRC and TC found Micheletti bore command responsibility. To date, no one at any level has been held accountable for Murillo's killing. Because they had no meaningful legal recourse in Honduras, the Murillos brought the case under the Alien Tort Statute, 42 U.S.C. §1350 ("ATS"), a law which allows non-citizens to bring civil suits in United States courts for a narrow set of violations of customary international law. Crimes within the ICC's jurisdiction are among the violations which can provide a basis for tort claims under the ATS. ***However, it should be noted that the only relief afforded through such cases are civil remedies. There are no penal sanctions against an accused found to be liable in such cases. As such, it should not be seen as a substitute for the ICC's exercise of jurisdiction.***



Roberto Micheletti, right, former *de facto* president with General Romeo Vásquez Velásquez, head of the Honduran armed forces at the time of the coup.

Micheletti himself filed testimony in the case from key authorities in Honduras which affirms that Micheletti is not being investigated -- for anything. On 28 September 2011, following the normal course of action in civil cases in U.S. federal courts, Micheletti filed a motion to dismiss the case against him. In arguing that the case should be dismissed, Micheletti suggested to the Court that because Honduran authorities did not seek to hold him responsible for the violations, neither should a United States court.

Micheletti submitted an affidavit by Jose Alfredo Saavedra, who succeeded Micheletti as President of the Honduran National Congress immediately after the coup. Saavedra's affidavit states that his inquiry confirmed that the Attorney General's office has not pursued any investigation into Micheletti's liability for the killing of Isis Murillo by the Honduran Army. *See* Affidavit of Jose Alfredo Saavedra, paras. 21-22, annexed hereto as Appendix L. He further asserted in the affidavit that there has been no civil or criminal procedure filed against Micheletti for *anything*. Additionally, Micheletti produced a certificate issued by the Public Ministry from the Prosecutor's Office affirming that Micheletti was not being

investigated by that office for his command responsibility for the death of Isis Murillo. See Certificate of Public Ministry, annexed hereto as Appendix M. Again, this is despite the fact that in July 2011, the TRC issued its report which concluded Micheletti did bear command responsibility for Murillo's killing as well as others.

2. Unwillingness

The affidavits filed by Micheletti affirm that there are no proceedings under way which seek to hold him accountable for his role in Murillo's death more than three years after the killing, which would be an "unjustifiable delay" even if relevant authorities were willing and able to prosecute, which they are not. Not only is Micheletti not being held accountable by Honduran authorities, some of those same authorities are seeking to help shield him from the exercise of jurisdiction by a U.S. court in a civil case.

Obstruction: While some human rights attorneys in the prosecutor's office attempted to investigate the killing of Isis Murillo, they were obstructed at every turn. In the Murillo case in the U.S., the plaintiffs filed an expert declaration by human rights investigator Tamara Taraciuk Broner, who did an in-depth study of the Honduran judicial system post-coup. See Expert Declaration of T. Taraciuk Broner, annexed hereto as Appendix K. According to Taraciuk Broner, under the *de facto* government, there was an "absolute" lack of cooperation with investigations by military and police personnel, according to members of the Human Rights Unit. Military or police officers refused to turn over firearms for ballistics tests (including in Murillo's case), provide information on police officers accused of committing violations, or grant access to military installations. In fact, the TRC arrived at the same conclusion, finding that there was "systematic obstruction" of investigations by police and military officials including "altering crime scenes and official documents, criminal negligence, and helping suspects escape."¹⁷⁴

Threats Against Prosecutors: Taraciuk Broner further reported that immediately after the coup, in at least two instances military officers threatened human rights prosecutors. On 29 June 2009, a prosecutor who was monitoring developments outside the Presidential Palace noticed that military officers were beating an elderly woman. He immediately requested that the men stop. A captain, who was nearby, walked up to the prosecutor and threatened to beat him. Another example occurred in early July 2009 when prosecutors investigating the closure of Radio El Progreso sought to enter a military battalion to review records that would have the names of the military officers who closed the radio station. At that time, an army officer told a prosecutor of the Human Rights Unit, "I wish I were in the Cold War, the days of Pinochet, the days when you could just disappear

¹⁷⁴ See e.g., Truth and Reconciliation Commission Report, p. 308; See also, Human Rights Watch, World Report: Honduras Country Summary, January 2012. Available at: http://www.hrw.org/sites/default/files/related_material/honduras_2012.pdf. (hereinafter "HRW World Report")

(someone)." The prosecutor interpreted this as a direct threat. Appendix L, paras. 34-35. In addition, Human Rights Watch has reported that Sandra Ponce, the head of the Human Rights Unit of the Attorney General's Office, has also received intimidating threats and text messages after she was publicly criticized by the deputy ministry of security for opening an investigation into the deaths of seven youth.¹⁷⁵

Lack of independent investigators: Taraciuk Broner also found that the Human Rights Unit's prosecutors rely on investigative police who lack the independence necessary to conduct impartial investigations into violations committed by security forces. These investigators are members of the national police force. Like other police, their careers—including promotions, benefits, and disciplinary matters — are determined by the Ministry of Security, which is also responsible for placing them with the Attorney General's Office. Even while working with the Attorney General's Office, they maintain a strong institutional loyalty to the police force. Consequently, prosecutors do not feel they can rely on the police to investigate cases involving other police officers. Appendix L, paras. 18-24.

Lack of Judicial independence: Taraciuk Broner further described actions by the Honduran Supreme Court immediately after the coup which created a climate in which lower court judges were discouraged from ruling against *de facto* authorities and in favor of coup opponents, independent of the facts of the case at hand. The Supreme Court issued public statements immediately after the coup declaring that the military's actions on June 28 had been legal without mentioning that the military physically removed former President Zelaya from the country and forced him into exile. The broad and unqualified endorsement of the military's actions sent a clear message that the Supreme Court did not object to them. The Court then disregarded constitutional appeals challenging the legality of policies by the *de facto* government. While Honduran law establishes the principle that lower courts should be independent of undue influence from higher courts, until February 2011 it also granted the Supreme Court administrative and disciplinary powers over lower court judges. The Supreme Court exercised this authority in an arbitrary and seemingly political fashion in May 2010 when it fired four judges who publicly questioned the legality of the coup. Appendix L, paras. 50-61.

The Honduran Supreme Court, which was found by even the TRC to have played a role in seeking to legitimate the coup, has continued to whitewash the offenses arising from it. In October 2011, the Court voted 12 to 3 to reject abuse of authority charges which had been brought against the generals who were in command at the time of the coup and post-coup abuses by the military, including

¹⁷⁵ HRW World Report.

now-retired Generals Romeo Vásquez Velásquez, Luis Prince Suazo, Venancio Cervantes, Miguel García, Juan Pablo Rodríguez and Carlos Cuellar.¹⁷⁶

3. Inability

Honduras has not enacted its domestic legislation implementing the Rome Statute. As a result, its courts do not have jurisdiction over political persecution and other crimes against humanity, and therefore cannot hold those bearing the greatest responsibility for the larger system of political attacks in which the individual killings and others violations are taking place. Even if the ICC wished to defer to national prosecutions for municipal crimes that are within the jurisdiction of Honduran judiciary and which might be seen as alternatives or domestic parallels, all of the obstacles set out above still remain.

Meanwhile, David Murillo, Isis' father, as well as other members of his family have been harassed and threatened repeatedly since Isis' death. Most recently, on 12 September 2012 Murillo was forcibly removed from an inter-city bus and taken to a police station where he was detained for several hours. He was told by police that he was detained per order of "el cabecita blanca," which Murillo understood to be a nickname for Micheletti.¹⁷⁷

¹⁷⁶ *Honduran Court Clears Army Generals Linked to Coup*, Associated Press, 23 Oct. 2011. Available at: <http://cnsnews.com/news/article/honduran-court-clears-army-generals-linked-coup>.

¹⁷⁷ CCR November 2012 Report, Appendix H.

Conclusion

As the recently documented violations make clear,

- The crisis in Honduras did not end with the coup. In fact, the political persecution has deepened and expanded.
- The climate of complete impunity is a decided factor in the situation as it now stands.
- There is no meaningful, genuine hope for real accountability within Honduras.

Accordingly, we urge the Office of the Prosecutor to open an investigation into these crimes.

The Center for Constitutional Rights

Founded in 1966 by attorneys who represented the civil rights movements in the U.S. South, CCR is a non-profit legal and education organization committed to the creative use of law as a positive force for social change. CCR is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

International Federation for Human Rights

FIDH was established in 1922, and today unites 164 member organizations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level. FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.