



## **Human Rights First Report to the Human Rights Committee**

On its Consideration of the Initial Report by the Government of Honduras under the International Covenant on Civil and Political Rights (ICCPR)  
88<sup>th</sup> Session, October 16-17, 2006

### **1 About Human Rights First and the Human Rights Defenders Program**

Human Rights First is a leading human rights advocacy organization based in New York City and Washington, D.C. Since 1978, we have worked in the United States and abroad to create a secure and humane world – advancing justice, human dignity, and respect for the rule of law. All of our activities are supported by private contributions. Human Rights First protects people at risk: refugees who flee persecution, victims of crimes against humanity or other mass human rights violations, victims of discrimination, those whose rights are eroded in the name of national security, and human rights advocates who are targeted for defending the rights of others.

Human Rights First has promoted and protected the work of local human rights activists across the world since its inception in 1978. By working in partnership with local activists, we have been able to learn about the human rights challenges they face and overcome these problems. In our Human Rights Defenders Program, we provide support and assistance for these activists at the national and international levels. For example, we mount advocacy campaigns to assist individuals and organizations threatened or targeted for persecution resulting from their activities in support of human rights. By mobilizing government officials, diplomats, academics, corporate leaders, and U.N. officials we pressure governments to ensure the basic rights and freedoms needed by human rights activists to carry out their essential functions. In particular we urge governments to fulfill their commitments in the 1998 U.N. Declaration on Human Rights Defenders.<sup>1</sup>

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<sup>1</sup> U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. Doc A/RES/53/144, March 8, 1999.

## 2 Executive Summary

Human Rights First recommends that the Human Rights Committee makes the following observations with respect to the situation of human rights defenders in Honduras.

- ***Right to Freedom of Expression (Article 19)***: The State Party should take steps to prevent any threatening or intimidating behavior towards human rights defenders by state agents. It should strengthen protective measures available to human rights defenders in order that they may fully enjoy their right to freedom of expression.
- ***Right to an Effective Remedy (article 2(3))***: The State Party should promptly investigate attacks against human rights defenders and the perpetrators should be disciplined or punished as required. In its next report to the HRC, the State Party should provide details on the results of such investigations and the procedures involved in disciplining or punishing offenders. Moreover, compensation should be provided to human rights defenders where their rights have been violated.
- ***Right to Liberty and Security of Person (article 9)***: The State Party should end the practice of arbitrary detention and ensure that the judicial sector is sufficiently resourced to minimize pre-trial detention. It should also provide compensation to those wrongly convicted and detained.
- ***Right to Privacy (article 17)***: The State Party should ensure effective implementation of its laws requiring authorities to seek judicial authorization before searching an individual's house. More specifically, the State Party should ensure that article 212 of the Code of Criminal Conduct is enforced in practice.

### 3 Introduction

Human Rights First submits this report for consideration by Human Rights Committee in anticipation of its review of Honduras' initial report (CCPR/C/TND/2005/1) on October 16-17, 2006. This report focuses only on issues related to human rights defenders and is therefore not a comprehensive analysis of the human rights situation in Honduras. Our focus on human rights defenders corresponds with Issue Nine as identified by the Human Rights Committee (HRC) in its List of Issues for Honduras.<sup>2</sup> We would like to comment in particular on the situation of indigenous and Afro-descendant human rights defenders.

Part 4 of this report briefly describes the rights in the ICCPR on which this submission will focus. Part 5 provides an overview of the situation of human rights defenders in Honduras. Part 6 presents four emblematic cases where human rights defenders have had their ICCPR rights violated. In Part 7 we analyze how the State Party has failed to adequately implement various aspects of the ICCPR and present recommendations which the HRC can adopt in its Concluding Observations. Finally, in Part 8 we list suggested questions which could be used by the HRC in its dialogue with the State Party.

### 4 Legal Framework

The rights of human rights defenders to express themselves freely and conduct their work in an environment free from threats or intimidation are derived from the following articles in the ICCPR:

- the right to life (article 6);
- prohibition of torture and cruel, inhuman or degrading treatment or punishment (article 7);
- the right to liberty and security of person (article 9);
- the right to privacy (article 17); and
- the right to freedom of expression (article 19)

When human rights defenders are deprived of their rights to life and to personal security, it not only hinders their ability to exercise their rights and fulfill their responsibilities as human rights activists, but also serves to intimidate and silence the broader community. Moreover, when these rights are breached, human rights defenders are entitled to an effective remedy under article 2(3) of the ICCPR. The right to an effective remedy contains a positive obligation for the State Party to conduct timely, exhaustive and impartial investigations into allegations of human rights violations in order to identify the perpetrators and bring to them justice.<sup>3</sup>

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<sup>2</sup> Human Rights Committee, *List of Issues: Honduras*, U.N. Doc. CCPR/C/HND/Q/1, April 26, 2006, Issue 9: "Please state what steps have been taken to prevent ill-treatment, threats, intimidation and attacks on human rights defenders and to investigate and punish those responsible."

<sup>3</sup> See *eg Sarma v. Sri Lanka*, Human Rights Committee, UN Doc: CCPR/C/78/D/950/2000 (Jul. 16, 2003) at para 11:

More specifically, the rights of human rights defenders are also recognized in the U.N. Declaration on Human Rights Defenders.<sup>4</sup>

## 5 Situation of Human Rights Defenders in Honduras

Human rights defenders in Honduras who advocate for the economic and social rights of indigenous and Afro-descendant communities face systematic discrimination, judicial harassment, and serious threats to their safety and liberty. Our case studies below demonstrate how the State Party's efforts to protect them have been either inadequate or, in some cases, apparently nonexistent. Furthermore, in the majority of cases involving threats or attacks against indigenous or Afro-descendant community leaders, the authorities have failed to conduct timely and comprehensive investigations, in breach of article 2(3) of the ICCPR. They have therefore been unable to bring those responsible to justice or tackle the climate of impunity that surrounds such attacks.

Many indigenous and Afro-descendant groups in Honduras have sought to assert their rights to the land which they inhabit. This has brought them into conflict with powerful political and business interests that seek to use the land for commercial and touristic purposes. In particular, the Honduran Garífuna population (an ethnic group in the Caribbean area, descendant of Africans and native Carib and Arawak Indians) occupies a prime section of coastal territory. This land is coveted by national and international business interests who expect to benefit from major tourist projects and demand for beachfront property. Garífuna activists, like activists from other indigenous and Afro-descendent communities, are actively resisting development projects and attempts to seize their land. They believe such projects will severely disrupt their way of life and potentially cause irreparable harm to the environment.

Individuals who have defended the rights of these communities have been targeted with threats, intimidation, and violence. The State Party's failure to adequately investigate these incidents has had a dual effect. Firstly, it has prevented the identification of the perpetrators and their motives. Secondly, the failure to prosecute perpetrators has exacerbated the climate of impunity surrounding such attacks. In some cases (see, for example, the cases of Jessica García and Wilfredo Guerrero) it is evident that the perpetrators are politically-connected private interests. They either claim portions of disputed territories or seek to make a considerable profit from their commercial development.

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“In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance ... his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family.”; *Wilson v. The Philippines*, Human rights Committee, UN Doc: CCPR/C/79/D/868/1999 (Oct. 30 2003) at para 9: “the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised...”

<sup>4</sup> See *supra* note 1. The Declaration on Human Rights Defenders explicitly establishes the obligation of the state to protect human rights defenders against any attacks, violence, threats and discrimination, and requires that it adopt all necessary measures to ensure that individuals and groups that peacefully defend their rights are protected by law *and in practice* (Article 12). Article 9 of the Declaration lays out the state's obligation to conduct timely, exhaustive and impartial investigations into allegations of human rights violations in order to identify and bring to justice the perpetrators.

It is commendable that the State Party has recognized that:

- it has paid inadequate attention to the needs of indigenous communities;
- those with political access and wealth have unlawfully appropriated large tracts of land to the detriment of local populations; and
- those who have attempted to defend local natural resources have lost their lives and that those murders have gone unpunished.<sup>5</sup>

However, the State Party makes no mention of any recent cases in which indigenous or Afro-descendant activists have been threatened, attacked or killed for their work.<sup>6</sup> Moreover, the government has failed to take sufficient action to rectify these problems in breach of its obligations under the ICCPR (see section 7 below).

## 6 Selected Human Rights Defender Cases

Over the past year, Human Rights First has worked closely with prominent Garífuna activists both in the U.S. and in Honduras. With the exception of the Alfredo López Alvarez case, Human Rights First has been involved in each of the cases outlined below. We have:

- assisted in monitoring and documenting attacks against Garífuna community leaders;
- issued public and private appeals on their behalf;<sup>7</sup> and
- communicated directly with Honduran officials to urge that they investigate attacks and threats against Garífuna activists.

The following cases of Afro-descendent leaders highlight how they have been threatened, attacked and wrongfully imprisoned in reprisal for their legitimate activities as human rights activists. The case studies demonstrate typical violations perpetrated against indigenous and Afro-descendant activists. They also demonstrate the systematic failure of the State Party to abide by its obligations under the ICCPR. We have highlighted in each section below how each case demonstrates the State Party's failure to adequately implement aspects of the ICCPR. These cases deserve attention and action on the part of the Honduran government as recommended in sections 2 and 7.

### A. Gregoria Flores Martínez

Gregoria Flores is the General Coordinator of the Honduran Black People's Fraternal Organization (OFRANEH), a prominent Honduran organization dedicated to promoting the political, social,

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<sup>5</sup> *Initial Report Submitted by Honduras to the Human Rights Committee*, U.N. Doc. CCPR/C/HND/2005/1 (para 15), April 26, 2005

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., Human Rights First, *Garífuna Community Leader in Honduras Threatened with Death*, Jul. 6, 2006 available at [http://www.humanrightsfirst.org/defenders/hrd\\_women/alert070606\\_garifuna.asp](http://www.humanrightsfirst.org/defenders/hrd_women/alert070606_garifuna.asp); Human Rights First, *Garífuna Indigenous Activists Under Attack in Honduras*, Nov. 23, 2005, available at [http://www.humanrightsfirst.org/defenders/alert112305\\_garifuna.htm](http://www.humanrightsfirst.org/defenders/alert112305_garifuna.htm)

economic, and land rights of the Afro-descendant Garífuna community.<sup>8</sup> Ms. Flores was shot and wounded on May 30, 2005, as she was collecting testimony to present to the Inter-American Court of Human Rights in a case against the Honduran government.<sup>9</sup> The testimony was on behalf of another outspoken Garífuna community leader, Alfredo López Alvarez (see below).<sup>10</sup> Police reported that the shooting of Ms Flores was a robbery attempt.<sup>11</sup>

However, such an explanation lacks credibility given the context of intimidation aimed at Garífuna community activists and the tension surrounding struggles over territorial rights.<sup>12</sup> Moreover, other members of the Garífuna community had been warned that Ms Flores should end her campaign for Garífuna land rights. Firstly, a few days before Ms Flores was shot, Mr. Crisanto Meléndez, a member of the Garífuna community who collaborated with the State Party's Ministry of Culture, had been warned that Ms Flores must end her opposition to the government's land entitlement program known as PATH.<sup>13</sup> Secondly, Luis Ángel Acosta, who was detained with Mr. López Alvarez (see below), reported that prior to the shooting of Ms. Flores, Honduran authorities had offered to pay him compensation for his wrongful detention but only if he informed them of Ms. Flores' whereabouts.<sup>14</sup>

The prosecutor assigned to investigate the shooting of Ms Flores attempted to arrange for a monetary settlement between the perpetrator and Ms. Flores requiring her to waive her right to press charges. Ms. Flores refused and consequently the Prosecutor failed to initiate even the most rudimentary elements of an investigation, such as taking Ms. Flores' statement about the attack.<sup>15</sup>

Following the attack on Ms. Flores, the Inter-American Court of Human Rights issued a resolution acknowledging the precarious security situation of the Garífuna activists.<sup>16</sup> It also requested the Honduran government to adopt protective measures for Ms. Flores, Mr. López Alvarez, and another Garífuna activist.<sup>17</sup> The Inter-American Court issued a subsequent resolution in September 2005 noting that the state of Honduras had failed to comply with its previous resolution.<sup>18</sup> It reiterated its requirement that the State Party implement protective measures for Ms. Flores, her immediate family and her colleagues.<sup>19</sup> To date, the State Party has not effectively implemented these measures and Garífuna activists remain vulnerable to intimidation and violence. Ms. Flores left Honduras soon after the

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<sup>8</sup> U.S. State Department, *2005 Country Report on Human Rights Practices in Honduras*, Section C, Mar. 8, 2006, available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61732.htm>

<sup>9</sup> Human Rights First Interview with Gregoria Flores Martínez on November 3, 2005.

<sup>10</sup> *López Alvarez vs. Honduras*, Inter-American Court of Human Rights, Series C No 141, Feb. 1, 2006, para 33.

<sup>11</sup> U.S. State Department, *2005 Country Report on Human Rights Practices in Honduras*, *supra* note 8, 3 (“Police reported that the shooting was a robbery attempt, but indigenous rights advocates did not believe that this was a credible explanation and continued to push for a reopening of the investigation.”)

<sup>12</sup> *Id.*

<sup>13</sup> *López Álvarez v Honduras*, Inter-American Court of Human Rights, Provisional Measures, Sep. 21, 2005, para 3(a).

<sup>14</sup> *Id.*, para 3(h).

<sup>15</sup> Human Rights First Interview with Gregoria Flores Martínez on November 3, 2005. *See also López Álvarez y Otros*, *supra* note 13, para 3(d).

<sup>16</sup> *López Álvarez y Otros*. Inter-American Court of Human Rights, Provisional Measures, Jun. 13, 2005.

<sup>17</sup> *Id.*

<sup>18</sup> *López Álvarez v Honduras*, *supra* note 13, paras 2, 8-17.

<sup>19</sup> *Id.*

incident, fearing for her safety.<sup>20</sup> The continuing threats and attacks against Garífuna leaders in Honduras – and the failure of the State Party to effectively investigate them – has convinced Ms Flores that it is not safe to return.<sup>21</sup>

### *B. Alfredo López Alvarez*

Alfredo López Alvarez was the Secretary of OFRANEH and President of the Committee for the Defense of Tribunal Lands (CODET). Mr. López Alvarez had distinguished himself as a particularly active and effective defender of the rights of the Garífuna people. On April 27, 1997, Mr. López Alvarez was arrested in the city of Tela, together with Luis Angel Acosta and Zuni Loreto Cubas, and was accused of possessing and trafficking in narcotics. Mr. López Alvarez was exonerated of the charges in January 2003, although not released until August 2003. His detention and trial were marked by severe irregularities. For example, he remained in preventative custody for more than 56 months without the investigation progressing beyond the indictment phase.<sup>22</sup> The Inter-American Commission on Human Rights stated that Honduran authorities had prolonged his detention and delayed his trial.<sup>23</sup> Despite negative drug test samples and weak evidence, Mr. López Alvarez was convicted on November 7, 2000, to 15 years in prison. An appeals court overturned the conviction in 2001, noting the considerable irregularities and lack of judicial guarantees in his case.<sup>24</sup>

The case of Mr. López Alvarez is well-documented. In February 2006, the Inter-American Court of Human Rights condemned the government of Honduras for the arbitrary detention of Mr. López Alvarez.<sup>25</sup> The decision noted numerous violations of his rights under the American Convention on Human Rights, including:

- the right to personal liberty;
- the right to humane treatment, including protection from torture and separation of those accused of crimes from those already convicted;
- the right to a fair trial; and
- the right to freedom of expression and thought.<sup>26</sup>

The Court called on the State Party to investigate the violations of Mr. López Alvarez's rights and to bring those responsible to account.<sup>27</sup> It also ordered the State Party to pay Mr. López Alvarez and his family adequate reparations for the considerable harm caused to them.<sup>28</sup> The State Party has not

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<sup>20</sup> Human Rights First Interview with Gregoria Flores Martínez on November 3, 2005.

<sup>21</sup> Human Rights First Interview with Gregoria Flores Martínez on November 15, 2005 and June 14, 2006.

<sup>22</sup> *López Alvarez vs. Honduras*, *supra* note 10, paras 54.11 – 54.53.

<sup>23</sup> *Alfredo López Alvarez*. Report 124/01 of the Inter-American Commission on Human Rights, Dec. 3, 2001, para 27.

<sup>24</sup> *Id.*, para 11.

<sup>25</sup> *López Alvarez vs. Honduras*, *supra* note 10.

<sup>26</sup> *Id.*, paras 1-5.

<sup>27</sup> *Id.*, paras 7, 10-15.

<sup>28</sup> *Id.*, paras 7, 10-15.

indicated to Mr. López Alvarez when it will pay the reparations nor when it will implement the various requirements of the Court's decision.<sup>29</sup>

We submit that the State Party breached Mr. López Alvarez's right to liberty and security enshrined in article 9 of the ICCPR by arbitrarily detaining him and failing to bring him to trial within a reasonable time (articles 9(1), (3)).<sup>30</sup> It also breached his right to a fair trial by failing to organize a trial without undue delay (and 14(3)(b), ICCPR). Given that Mr Lopez Alvarez's conviction was overturned on appeal in recognition of a miscarriage of justice, the State Party has also breached article 14(6) of the ICCPR by failing to provide him with compensation.<sup>31</sup> **The State Party should end the practice of arbitrary detention and ensure that the judicial sector is sufficiently resourced to minimize pre-trial detention. It should also provide compensation to those who are wrongly convicted and detained.**

### *C. Wilfredo Guerrero*

Wilfredo Guerrero is the President of the Committee to Defend the Lands of San Juan. He has been a vocal and prominent defender of the land and social rights of the Garífuna community of San Juan in Atlántida department, Northern Honduras. This region has been the site of significant controversy and tension because the land is coveted by business interests. There are also plans for a hotel complex, the Los Micos Beach & Golf Resort, in the Tela Bay region of Atlántida. The Resort is planned to occupy communal lands currently inhabited and used by the Garífuna, who believe the project will do irreparable damage to the local environment and the natural resources on which they rely.<sup>32</sup>

Mr. Guerrero has denounced attempts by politicians and businessmen to expropriate the communal territories of San Juan and, as a result, has been the target of threats, intimidation, and violence. On November 7, 2005, Mr. Guerrero's house was burned down by unidentified assailants.<sup>33</sup> Fortunately no one was in the building at the time. However, crucial documents related to his community's territorial

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<sup>29</sup> Human Rights First Interview with Gregoria Flores Martínez on September 27, 2006. Ms Flores' organization OFRANEH, lodged Mr Alvarez's complaints with the Inter-American Commission on Human Rights while Mr. Alvarez was detained. She is therefore familiar with the facts of his case.

<sup>30</sup> HRC, *ICCPR General Comment 8: Article 9: Right to Liberty and Security of Persons*, UN Doc: A/37/40 (1982) 95 at para. 3 (“*Pre-trial detention should be an exception and as short as possible.*”)

<sup>31</sup> ICCPR, article 14(6): “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed... [where] there has been a miscarriage of justice, the person.. shall be compensated according to law..”; Human Rights Committee, *General Comment 13: Article 14: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, UN Doc: A/39/40 (1984) 143 at para. 18, “Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice... this right is often not observed or insufficiently guaranteed by domestic legislation.”

<sup>32</sup> OFRANEH Public Communication, *El Proyecto Turístico de Laguna de Micos y la Supuesta Protección Ambiental* Oct. 11 2005; *See also, Report of the Internacional Delegation of Human Rights en San Juan Tela and Surrounding Areas* (Informe de la Delegación Internacional de Derechos Humanos en San Juan Tela y Alrededores), Jul. 10-15, 2006

<sup>33</sup> Human Rights First, *Garífuna Indigenous Activists Under Attack in Honduras*, *supra* note 7; *See also* Comunicado Público de OFRANEH, *Atentado Contra Wilfredo Guerrero*, Nov. 9, 2005.

disputes were destroyed in the fire. The police apparently do not know who is responsible for the crime.<sup>34</sup>

In January 2006, armed security guards, believed to be employees of a major tourism real estate company (PROMOTUR), began illegally to build a wall on disputed territory in San Juan.<sup>35</sup> Mr. Guerrero and members of the Garífuna community notified the local authorities of the construction. The following day, in retaliation to the community's complaints, the guards returned and shot at unarmed members of the community, including Wilfredo Guerrero.<sup>36</sup> Fortunately no one was injured in the incident. However, a videotape of the event recorded by Mr Guerrero's organization reveals the seriousness of the incident.<sup>37</sup>

#### *D. Jessica García*

Jessica García, a Garífuna community leader in San Juan and President of the San Juan Tela *Patronato*, is also a defender of the land and social rights of the Garífuna community of San Juan. Ms. García has been the target of a campaign of harassment in reprisal for her advocacy. On several occasions in March 2006 security guards presumed to be working for a tourism real estate company reportedly visited her home and threatened her. Out of concern for the safety of her children, Ms. García has sent them elsewhere to live.<sup>38</sup>

On June 22, 2006, Ms. García was approached at her home by an unidentified man, who offered her money if she agreed to sign a document surrendering ownership of communal Garífuna lands to the real estate company PROMOTUR. When she refused, the man put a gun to her head and forced her to sign.<sup>39</sup> He threatened her life and the lives of her children if she publicized the document. The document (a copy of which has been reviewed by Human Rights First) stipulates that:

- the disputed territories would immediately be turned over to PROMOTUR;
- the Garífuna community would desist from any further legal actions or complaints against PROMOTUR; and
- that the company would have the right to evict and relocate Garífuna currently residing on the land they claim for their tourism project.

Next to Ms. García's signature, procured under duress, is that of Jaime Rosenthal, the owner of PROMOTUR.<sup>40</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> Human Rights First Interview with Gregoria Flores Martínez on January 24, 2006

<sup>36</sup> *Id.* See also OFRANEH Public Communication, *Atentado contra dirigentes garifunas en la comunidad de San Juan Tela*, Jan. 17, 2006.

<sup>37</sup> Email from Gregoria Flores Martinez to Human Rights First, September 29, 2006.

<sup>38</sup> Human Rights First Interview with Gregoria Flores Martínez and Miriam Miranda on June 29, 2006.

<sup>39</sup> *Id.* See also Human Rights First, *Garífuna Community Leader in Honduras Threatened with Death*, supra note 7

<sup>40</sup> *Id.*

Apparently, there has been no effective investigation into the incident or attempt to determine the identity of the perpetrators. Human Rights First was assured by the General Director of Special Affairs at Honduras' Ministry of Foreign Affairs that several protection measures had been implemented in order to safeguard Ms. García and Wilfredo Guerrero.<sup>41</sup> However, both individuals deny that the measures were put into place or that the authorities had visited them to discuss their security situation.

#### *E. Miriam Miranda*

Miriam Miranda is a principal leader within OFRANEH and is actively involved in the struggle to defend the land and social rights of the Garífuna community. On March 25, 2005, (only a few months before the shooting of her colleague, Gregoria Flores) several agents of the Criminal Investigative Division illegally entered and searched Ms. Miranda's home.<sup>42</sup> They claimed they were searching for weapons and stolen goods. Ms. Miranda is a well-respected community leader who has never been implicated in illegal activities. The authorities carried a search warrant that was signed by a judge but not directed at any particular individual.<sup>43</sup> No contraband was found and, following international outcry, the judge who issued the warrant claimed the incident was an "intelligence error."<sup>44</sup> Ms Miranda has not subsequently received an adequate explanation for the unlawful search of her home. She feared that the search was a prelude to the laying of arbitrary charges against her, as was the case with Alfredo López Alvarez.

Honduras' report to the HRC recognizes that Article 99 of the Honduras Constitution prohibits unlawful and arbitrary searches of a private home.<sup>45</sup> It also states that article 212 of the Code of Criminal Procedure (Honduras) requires prior authorization from a judicial authority before a person's house can be searched. In exceptional cases, judicial authorization may be sought after the search, where such a search is necessary to prevent an imminent crime.<sup>46</sup> However, there has been no suggestion that the search of Ms Miranda's house was necessary to prevent the commission of a crime and in any event no *post-facto* authorization was sought. Article 99 of the Constitution and article 212 of the Code of Criminal Procedure essentially codify article 17 of the ICCPR. Article 17(1) states that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."

Given that the search warrant was unnamed, the authorities did not have the required judicial authorization to search Ms. Miranda's property. The search therefore breached article 212 of the Code of Criminal Procedure, article 99 of the Constitution and article 17 of the ICCPR. **The State Party should ensure that article 212 of the Code of Criminal Conduct is enforced in practice in order to comply with article 17 of the ICCPR.**

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<sup>41</sup> Letter from Ambassador Roberto Ramos Bustos to Neil Hicks, Human Rights First, Aug. 7, 2006.

<sup>42</sup> Human Rights First Interview with Gregoria Flores Martínez on November 3, 2005. *See also* Human Rights First Alert, *Garífuna Indigenous Activists Under Attack in Honduras*, *supra* note 7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Initial Report Submitted by Honduras to the Human Rights Committee*, *supra* note 5, para 165.

<sup>46</sup> *Id.*, para 167.

## 7 Analysis of Cases and State Party's Compliance with ICCPR

A synthesis of the above cases reveals two widespread breaches of the ICCPR by the State Party.

### *A Freedom of Expression (Article 19(2) ICCPR)*

Firstly, the State Party has systematically failed to protect human rights defenders right to freedom of expression enshrined in Article 19(2) of the ICCPR. In order to uphold this right, the government of Honduras must take positive measures to protect freedom of expression both formally and in practice. The cases above reveal a pattern of threats and intimidation targeted towards human rights defenders aimed at deterring their expression of opinions. They also reveal that these threats are originating from:

- governmental authorities; OR
- authorities acting with government acquiescence; OR
- private actors where the government is failing to take adequate measures to prevent those actors from engaging in the intimidation.

In all of these cases the government is failing to adequately protect the right to freedom of expression as enshrined in article 19(2) of the ICCPR.<sup>47</sup> **The State party should cease supporting, by acquiescence or otherwise, any threatening or intimidating behavior against human rights defenders. Moreover, it should strengthen protective measures available to human rights defenders in order that they may fully enjoy their right to freedom of expression.**<sup>48</sup>

### *B Right to Effective Remedy (Article 2(3))*

Secondly, the State Party has failed to investigate incidents where human rights defenders have had their human rights violated. Even if the State Party is not involved in the violation of the human rights, it has a positive obligation to investigate allegations of human rights violations. Article 2(3) of the ICCPR enshrines a victim's right to an effective remedy to be determined by a judicial, administrative or legislative authority and that those remedies shall be enforced where granted. The Human Rights

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<sup>47</sup> Human Rights Committee, *Concluding Observations on Slovakia*, UN Doc: A/58/40 vol. I (2003) 52 at para. 82(15): "The Committee is concerned about the threat by governmental authorities of criminal prosecution of [human rights defenders] ... the Committee is ... concerned at the impact of the case on the exercise of the right to freedom of opinion and expression, particularly by human rights defenders (art. 19)"; Human Rights Committee, *Concluding observations on Colombia. UN Doc: CCPR/CO/80/COL (May 26, 2004) at para 18*: "The Committee deplores ... actions taken against human rights defenders, including intimidation and verbal and physical attacks originating at the highest political and military levels, as well as the interception of communications. Such acts constitute restrictions of their rights to freedom of expression and association."; Human Rights Committee, *Concluding observations on Slovakia*, UN Doc: CCPR/CO/78/SVK (Aug. 22, 2003) "The State party should ensure that provisions of the criminal code are not used in such a way as to deter individuals from exercising their right to freedom of expression, and in particular for human rights defenders to carry out independent research and publish the results."

<sup>48</sup> Human Rights Committee, *Concluding observations on Colombia, supra* note 47, at para 18: "The State party should halt such practices, and should also strengthen the protective measures ... so that human rights defenders may fully enjoy the rights to freedom of expression and association recognized in articles 19 and 22 of the Covenant."

Committee has consistently stated that the right to an effective remedy includes a positive obligation on States Parties to investigate allegations of breaches of human rights and provide compensation.<sup>49</sup>

**The State Party should promptly investigate attacks against human rights defenders and the perpetrators should be disciplined or punished as required. Compensation should also be provided. In its next report to the HRC, the State Party should provide details on the results of such investigations and the procedures involved in disciplining or punishing offenders.<sup>50</sup>**

## 8 Suggested HRC Questions for the State Party

Human Rights First urges the Committee to follow up on its communications with the Government of Honduras, specifically in relation to the questions below:

1. *What is the status of investigations into the shooting attack on Ms. Gregoria Flores?*
2. *What is the status of investigations into the arson attack on Mr. Wilfredo Guerrero's home?*
3. *What is the status of investigations into the threats made against Ms. Jessica García?*
4. *What steps have been taken to implement the protection measures ordered by the Inter-American Court of Human Rights for Ms. Flores and her family, Mr. Alfredo López Alvarez, and other threatened Garífuna community activists?<sup>51</sup>*
5. *What steps have been taken to provide adequate protection for Mr. Guerrero and Ms. García, and other threatened leaders of the San Juan Garífuna community?*
6. *What steps have been taken to implement the Lopez Alvarez decision of the Inter-American Court of Human Rights, including paying adequate reparation to him, his family and the other individuals wrongfully detained?<sup>52</sup>*

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<sup>49</sup> Human Rights Committee, *Concluding observations on Colombia*, *supra* note 47, at para 11: “The State party should take immediate and effective steps to investigate these incidents, punish and dismiss those found responsible and compensate the victims, so as to ensure compliance with the guarantees set forth in articles 2, 3, 6, 7 and 9 of the Covenant.”; Human Rights Committee, *Concluding Observations on the Philippines*. UN Doc: CCPR/CO/79/PHL (Dec. 1, 2003) at para 8: “The Committee is concerned about the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against human rights defenders, ... and the lack of measures taken to prosecute and punish the perpetrators. Furthermore, the Committee is concerned at reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated. ... The State party should adopt legislative and other measures to prevent such violations... and ensure effective enforcement of the legislation.

<sup>50</sup> Human Rights Committee, *Concluding observations on Argentina*, UN Doc. CCPR/CO/70/ARG, Nov. 3, 2000, at para 13.

<sup>51</sup> *López Álvarez y Otros*, *supra* note 16; *López Álvarez v Honduras*, *supra* note 13.

<sup>52</sup> *López Alvarez vs. Honduras*, *supra* note 10, paras 7, 10-15.