Still Waiting for Justice:

An Assessment of the Honduran Public Ministry's Investigation of the May 11, 2012 Killings in Ahuas, Honduras

By

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Introduction

On May 11, 2012, a joint Honduran and U.S. counternarcotics operation in the remote Ahuas municipality of northeastern Honduras resulted in the killing of four indigenous villagers with no apparent ties to drug trafficking. The four individuals – a 14-year-old boy, two women and a young man – were traveling in a small passenger boat when they were shot and killed by counternarcotics agents. Three other boat passengers were badly injured.

According to Honduran authorities, the operation included 13 Honduran police agents, four State Department helicopters with mounted machine guns, eight U.S. government-contracted pilots and 10 U.S. Drug Enforcement Administration (DEA) agents.[1] In February 2013, DEA spokeswoman Dawn Dearden stated that the Honduran investigation of the incident had "concluded that DEA agents did not fire a single round" and that "the conduct of DEA personnel was consistent with current DEA protocols, policies and procedures."[2]

Though 58 members of Congress recently requested a U.S. investigation of the Ahuas killings, a State Department spokesperson has said "there will be no separate investigation."[3]

In the following report we take a look at how the Honduran Public Ministry's investigation of the incident was conducted and examine the report on the investigation that the Honduran Attorney General (*Fiscal general* in Spanish) submitted to the State Department. We find that both the investigation and report have serious flaws including major omissions of key testimony and forensic exams, a one-sided description and analysis of events, and "observations" (in lieu of conclusions) that aren't supported by the evidence that is cited.

Further, the U.S. government did not grant Honduran investigators access to the U.S. agents that participated in the May 11 operation for questioning, or access to the agents' firearms or to the helicopters' mounted guns for forensic exams.

The State Department has maintained that the DEA only played a "supportive role" during the Ahuas operation, an assertion which is neither contradicted nor confirmed by the Attorney General's report on the incident.[4] However, as we'll see, the report fails to include important Honduran police testimony which in fact suggests that the DEA was in charge of the operation and could bear the ultimate responsibility for its lethal outcome.

1 "Informe: Expediente 2012-4926" Fiscalia Especial de Derechos Humanos, Ministerio Publico de la Republica de Honduras, No Date(Estimated Date: September 2012)
2 Taylor (2013).
3 Ibid.
4 Shanker and Savage (2012).

A Flawed and Incomplete Investigation

Criminal investigations in Honduras are initially conducted by the Public Ministry – roughly equivalent to the Department of Justice in the U.S. – in conjunction with the criminal investigations branch of the police. The main investigation of the Ahuas incident was carried out by a special office within the Public Ministry which examines and prosecutes human rights violations: the Public Prosecutor's Office on Human Rights (PPOHR). It is important to note that, according to multiple sources, this investigation was assisted by a U.S. police detective employed by the U.S. Embassy in Tegucigalpa.[5]

This section of our report presents an analysis of the information at our disposal regarding the PPOHR investigation itself. In the next section we review the PPOHR report which was in turn presented to the State Department by Honduras' Attorney General.

In the course of a July 2012 independent investigation of the Ahuas killings, the results of which were published in an August 2012 report titled "Collateral Damage of a Drug War," we were able to make a partial assessment of the Public Ministry's investigation of the incident.[6] Since that time further information about the investigation has come to light, including the PPOHR report, information from the legal representative of the victims and a report authored by the Honduran government's human rights ombudsman, the National Human Rights Commissioner (CONADEH). Based on the limited available information regarding the Public Ministry's investigation, a number of significant problems are worth noting:

- According to CONADEH, **the PPOHR investigators did not interview the DEA agents and U.S. government contractors who participated in the May 11 operation**. It is our understanding that the U.S. government agents were inaccessible to Honduran investigators as a result of a blanket judicial immunity conferred upon all U.S. agents participating in such missions.

- **The PPOHR investigators failed to interview many key witnesses from the community** who were present at the scene of the incident, according to the witnesses themselves. Only some of those present on the passenger boat were interviewed. None of the key witnesses present on the shore were interviewed by Honduran authorities with the exception of an initial interview days after the shooting by the local police of Puerto Lempira (located near Ahuas). This report was not referenced in the PPOHR report submitted to the State Department.

- **Key forensic examinations were not carried out.** According to Honduran press reports, none of the firearms carried by DEA agents during the May 11 operation were inspected by Honduran investigators.[7] Nor were the State Department helicopters' mounted guns submitted to ballistic tests. As discussed below, there are credible reports that at least one of these large caliber mounted guns fired on the passenger boat carrying the deceased victims.

5 See: Bird and Main (2012).
6 Ibid.
7 Arce (2012).

- **Other key forensic exams were carried out very belatedly.** In general, it appears that the forensic exams conducted were done so many weeks after the incident took place. Inevitably, much of the evidence would have been displaced by this time, or would have undergone significant deterioration. (e.g., the case of organic evidence such as victims' injuries, tests for gunshot residue on those accused of shooting, etc). Here are a few examples of these delays:

    1. **Forensic exams of the two boats involved in the May 11 incident were not conducted until several months after the shooting**, according to multiple reports by local residents, by the boat owners, journalists and human rights activists. At the time of our July 2012 visit to Ahuas, the boat owner asserted no authorities had yet examined the boat. The PPOHR's report is clear that the passenger boat was only examined by forensic experts weeks after the May 11 incident, when all of the bullet holes located in the boat's hull had been patched up and painted over. It is worth noting that the PPOHR and independent sources report the boat piloted by DEA and Honduran police bore no bullet holes.

    2. **Ballistics testing of firearms that were in the possession of the Honduran agents that participated in the May 11 incident did not occur until August 10, 2012** according to Honduran media sources.[8]

    3. **The exhumation and autopsies of the four dead victims were carried out over 40 days after the killings and in an unprofessional manner.** The bodies were already in a state of decay in coffins filled with water. According to witnesses, rather than methodically removing the entire coffin and examining the contents with precision, day laborers simply lifted the putrefying bodies from the coffins, which fell apart as they were lifted, significant sections of the bodies remaining, unexamined, in the coffins. The remains extracted from the coffins were laid out on a nearby tomb. Bones and teeth were even found scattered in the graveyard days later. The victims' legal representative was not notified of the exhumation as is required by law.

- **The legal representatives of the victims' families and surviving victims, human rights defenders at the Committee of Relatives of the Disappeared and Detained in Honduras (COFADEH), have not been given full access to the Public Ministry's file on the Ahuas case,** in violation of Honduran law. The Public Ministry has classified the Ahuas file as "secret" which officially prevents individuals other than the representatives of the victims from accessing the file. Parties related to the crime, both victims and those charged, have the right to access the investigation and request that the prosecutor undertake specific investigative measures. As COFADEH's general coordinator Bertha Oliva explained in a recent interview, the file shared with her and her colleagues is incomplete.[9] According to Oliva, key documents such as the PPOHR report on the Ahuas incident, the reports on the autopsies of the four victims, and the testimony of Honduran police agents who participated in the operation haven't been made available to her organization.

8 "A revisión balística armas usadas en operativo antidrogas en la Mosquitia"
9 Main (2013).

- According to COFADEH, **evidence introduced into the investigation's file has not been properly logged into the file** as is required by Honduran law, a procedural irregularity which would allow alteration of the investigation to occur undetected. It is notable that the PPOHR report describes in some detail video footage from a U.S. surveillance plane which reportedly provides an aerial view of the unfolding of the May 11 counternarcotics operation The law requires all evidence considered by the Prosecutor to be logged into the investigation's file, however, the video has not been presented to COFADEH as part of this file.

A One-sided Report with Notable Omissions

As one would expect, the flawed nature of the Public Prosecutor's investigation results in a report bearing similar flaws. But the PPOHR report contains a number of additional problems of its own, including a one-sided account of the incident and significant omissions. Spanish and English copies of this report, which haven't been published previously, are now posted on CEPR's web page.[10]

Over a third of the PPOHR report is actually lifted from a report by the Public Prosecutor's Office for Organized Crime (PPOOC) and is based on the testimony of the Honduran police agents that participated in the May 11 operation. This account describes two Honduran agents and a DEA agent boarding a small boat banked downriver from the port of Paptalaya which allegedly contained drugs left by traffickers who fled the scene. These agents started the motor of the boat – hereafter referred to as the "drug boat" – and had driven it 50 meters upriver when it stalled. They claim that they then saw a boat, presumably the passenger boat, approaching them and heard gunshots being fired. Other police agents claim to have seen one or more of the boat passengers open fire on the agents in the drug boat. The Honduran police agents in the drug boat say that they then returned fire in self-defense. The Honduran agents say that they fired their rifles but are unaware of whether or not the DEA agent fired his handgun.

The PPOHR report also includes a much shorter account of the incident based on the testimony of the surviving witnesses in the passenger boat. At several points it contradicts the Honduran police account. For instance, according to these witnesses, none of the boat passengers were armed. They also state that shots were fired at them from a helicopter and make no mention of having been fired at by the agents in the drug boat.

Essential Details from the Police Agents' Testimony are Missing from the Report

The Honduran government's National Human Rights Commissioner (CONADEH) published its own report on the May 11 operation that also provides a summary of the testimony of Honduran

10 A copy of the original Spanish-language PPOHR report can be accessed via the following hyperlink: http://www.scribd.com/doc/134081809/Office-of-the-Special-Prosecutor-for-Human-Rights-Report-In-Spanish. A copy of the English-language State Department Translation can be found here: http://www.scribd.com/doc/134081810/Office-of-the-Special-Prosecutor-for-Human-Rights-Report

agents that participated.[11] The CONADEH report provides important details from this testimony that aren't cited in the PPOHR report. Some of the testimony included in the CONADEH report indicates that, contrary to the findings of the PPOHR report, the DEA was in fact directly involved in actions that may have had lethal consequences.

At no point does the PPOHR summary of the police testimony mention a helicopter having fired toward the passenger boat. Yet according to the police agent testimony provided to CONADEH, the DEA agent present in the drug boat gave instructions to one of the helicopters to open fire on the boat following an alleged exchange of fire between the passenger boat and the drug boat. This testimony, if true, indicates that at least one U.S. DEA agent was directly responsible for an attack that may have had lethal consequences.

Furthermore, the CONADEH report states that the Honduran police agents that participated in the operation said that they "only receive orders from American superiors and they don't report anything, neither before nor afterward, to their legal Honduran superiors." This assertion, if true, suggests that DEA agents were in charge of the operation, in reality if not legally, and therefore may be considered ultimately responsible for the lethal outcome of the operation.

It is highly unlikely that the Honduran police agents that participated in the May 11 operation didn't share this important testimony with the Public Prosecutor's Office on Human Rights or Office on Organized Crime. Note that neither the Honduran national police nor U.S. authorities have challenged the veracity of this testimony which was made public in August of 2012.

Finally, the CONADEH report notes that the Honduran police agents offered contradictory accounts regarding what happened during the May 11 operation. If this is true, this is yet another significant omission in the PPOHR report, as contradictory testimony casts serious doubt on the reliability of all of the testimony given by Honduran police agents.

Significant Details from Testimony of Victims and Community Members are Also Missing

As mentioned previously, the PPOHR report gives short shrift to the testimony of the survivors of the incident and of eyewitnesses from the community. Among other omissions from this testimony are descriptions of the alleged human rights abuses perpetrated by members of the counternarcotics team immediately after the shooting incident in the port community of Paptalaya. In international news articles and other independent investigative reports, the reported victims of these abuses and other eyewitnesses report acts of intimidation, physical attacks, property damage and theft.[12] Although the PPOHR apparently did not interview witnesses on shore, this information was at least partially available to them through the testimonies of boat passengers as well as various other reports such as that of COFADEH.

11 CONADEH (2012).
An English translation of the CONADEH report is posted on the CEPR web page at the following location: http://www.cepr.net/documents/other/translation-of-CONADEH-special-report-on-ahuas-killings.pdf

12 See, for instance: COFADEH (2012) and Arce and Corcoran (2012).

The PPOHR 'Observations' Are Not Supported by the Evidence Cited in the Report

Rather than presenting conclusions, the PPOHR report offers final "observations" based on the testimonies and evidence detailed earlier in the report. It is important to note that until the Public Ministry presents conclusions the investigation remains open and charges cannot be formalized before a judge. In Honduras there is a disturbing pattern of investigations remaining open indefinitely and this is considered to be an important factor contributing to the widespread impunity around criminal activity.

a) Victims' testimony

In the first of four 'observations,' the PPOHR asserts that the testimony of the survivors is not consistent with the technical and scientific analysis and cites three pieces of evidence. First, the PPOHR claims that "the bullet trajectories in the bodies and the possible position of the shooter" indicates that the shots were fired horizontally, i.e., presumably by the Honduran police agents in the drug boat. In fact, the forensic analysis in the body of the PPOHR report describes bullet wounds in two of the bodies that have a downward trajectory. The report provides only a vague explanation for the trajectory of one of these wounds stating that it "is explained by how she [Candelaria Trapp] was moving prior to being shot."

Two other pieces of "evidence" are cited: the U.S. government's aerial surveillance video and the testimony of the Honduran police agents who participated in the May 11 operation. With regard to the video: as mentioned above, it has not been released publicly and hasn't even been made available to the victims' legal representatives. However, the report's description of what the video allegedly shows does not suggest that it provides a clear picture of what occurred. "Flashes of light" may or may not have been gunshots (the report itself states these were "presumably" gunfire) and the video cuts off abruptly, suggesting that further significant developments – such as an armed assault carried out by one of the helicopters – may have been omitted.

Finally, police testimony can hardly be described as part of any "technical and scientific analysis" as the report states, nor can it be considered to be stronger evidence than that of the testimony of the victims. It is worth, again, noting that CONADEH – a Honduran government agency – stated that the police agents' testimonies contradicted one another.

b) Bullets and bullet casings

The PPOHR's second observation is that the bullets found in the bodies and the bullet casings found in the boat were fired from 5.56 caliber rifles compatible with those used by National Police in the boat carrying drugs. However the report fails to mention that just one bullet and one bullet tip were recovered, while seven potentially fatal wounds were identified. Earlier in the report he described this bullet as having been recovered in the body of Emerson Martinez during the autopsy and that ballistics testing matched it to the rifle assigned to policeman Alexander Ramón Róbelo Salgado. However the exhumation report cited in the PPOHR report explains that the probable cause of death for Emerson Martinez was a wound to the thorax and related perforation of the lungs. Testimony of family

members who recovered the body explained that the wound fitting this description was large enough to put a fist in and that when the body was moved a large bullet fell from the wound, which they turned over to the Puerto Lempira police a few days later. The PPOHR report contains no mention of this bullet which according to the description is likely to have originated from a high caliber weapon. Finally, the casings mentioned in this "observation" were not mentioned at all in the body of the report and it is unclear how they were recovered.

c) Trajectory of the gunshots that hit the boat

The PPOHR's third observation is that the ballistics investigation determined that the trajectory of the gunshots in the boat carrying the people who were killed 'could have' come from the river bank or the other boat, i.e., on the same level as the victims. Yet, again, the PPOHR's summary of the forensic examination of the boat appears to paint a very different picture. Though this examination wasn't able to "fully establish the trajectory" of the bullets – due to the fact that the bullet holes had been repaired and painted over – the report states that "given the location of the repairs (…) it's possible to infer that the (…) [bullet] trajectories would have to have been from left to right and from top to bottom." Thus, a more probable alternative scenario is that some or all of these shots were fired from above, i.e., from a helicopter, rather than horizontally.

d) The female victims were not pregnant

The final "observation" in the PPOHR report is that neither of the women who died was pregnant. This assertion is not accompanied by text to support it, but was undoubtedly referring to the findings of the exhumations. However, as previously noted, the exhumation and autopsy of the deceased victims were carried out in a shockingly unprofessional manner. Moreover, the PPOHR's findings are contradicted both by testimony from the women's families and by the medical exam of Juana Jackson's body conducted at the time the body was recovered from the river, which described her as 26 weeks pregnant. The prosecutor does not explain why the determination as to whether the women were pregnant is relevant to the investigation, though presumably this would serve to discredit the testimony of the victims.

Though Conclusions Were Not Presented, There Were Implicit or Apparent Conclusions

The PPOHR's report appears to conclude that the police agents fired in self-defense, though this is not explicitly stated. The report states that at least one bullet located in a deceased victim's body originated from the weapon of a Honduran police agent. In Honduras, as in the United States, there are different degrees of homicide. If a homicide is identified, the Public Ministry is obliged to present the case before a judge. According to Honduran law, a homicide in any circumstance is a crime that must be investigated by the judicial system. Homicide resulting from legitimate self-defense can be exempt from penal consequences; however, only a judge can make that determination.

The PPOHR also appears to conclude that none of the State Department titled helicopters fired upon the passenger boat. This implicit determination contradicts various U.S. and Honduran officials, as well as the surviving boat passengers, who have stated that the helicopter fired upon the boat carrying the shooting victims. Jim Kenney,[13] the former DEA chief in Honduras confirmed that this had occurred, and the CONADEH report mentions that one of the artillery men in "helicopter four" opened fire on the boat in order "to support his teammates."[14] Though this conclusion directly contradicts testimony from police, statements from U.S. officials, ballistics evidence and evidence in the autopsies, the conclusion would absolve the DEA of command responsibility as gunmen onboard a helicopter could only fire upon order of the pilots, themselves U.S. State Department contractors.

Conclusion

As we have seen, the Public Ministry's report doesn't actually allow U.S. officials to state that the Honduran Public Ministry's investigation of the Ahuas killings has "concluded that DEA agents did not fire a single round." For one, the report on the investigation offers no definite conclusions, only observations. Second, the report doesn't actually tell us whether or not the DEA fired any rounds, or whether or not DEA agents were ultimately responsible for any of the killings.

The report, in fact, does not tell us much at all. Beyond noting that a bullet fired by a weapon assigned to a Honduran police officer was found in the body of Emerson Martinez, associated with one of two potentially fatal wounds, it doesn't establish who killed the victims. Though these victims and the other boat passengers were initially accused of being drug traffickers, it doesn't seek to determine whether the victims were in any way involved in drug trafficking (so far, all the available evidence indicates that they were not). Nor does the report seek to identify what authority – Honduran or U.S. – was effectively in control of the counternarcotics operation that resulted in the tragic killings.

Apart from these and other gaping omissions, what is most striking about this report is that its authors appear to make every effort to create the impression that none of the State Department helicopters fired on the passenger boat despite numerous reports that indicate that one helicopter did. With the exception of a brief mention within the short summary of the survivors' testimony, the Public Ministry fails to mention any of these reports. Instead, the Ministry's report repeatedly seeks to validate the notion that all the shots that hit the victims and the boat occurred on the same horizontal plane, even though the forensic evidence that is cited suggests otherwise.

The Public Ministry is surely acutely aware that if one of the helicopters is in any way implicated in the shooting, then both the DEA – which reportedly determines when the helicopter guns may be used – and the State Department – which owns the helicopters and contracts its pilots – are implicated as well. One can imagine that the consequences of this potential implication weigh heavily on the mind of senior officials in a government whose security forces rely a great deal on U.S. funding.

13 See: Bird and Main (2012).
14 CONADEH (2012).

Given both the U.S. involvement in the fatal operation in Ahuas and the flawed nature of the Honduran investigation of the incident there have been multiple requests for a U.S. investigation. Among those who have asked for an investigation are the Honduran human rights organization COFADEH, Honduras' governmental human rights ombudsman and 58 members of the U.S. House of Representatives.

We also recommend that the U.S. government, for instance through the Inspector Generals of the Department of State and Department of Justice, carry out its own investigation of the Ahuas incident, to better determine what occurred and to determine what responsibility, if any, DEA agents had in the killings. Given the State Department's recent commitment to increase the support and direct role of the U.S. government in security operations in Honduras a more thorough, balanced and professional examination of the May 11, 2012 killings in Ahuas is more pressing than ever.[15]

Finally, the U.S. government should cease to be an obstacle to an already flawed investigation. All of the DEA agents and State Department contractors that participated in the operation should be made available for questioning by Honduran investigators. The DEA agents' firearms and the State Department helicopters involved in the operation should be submitted to the Public Ministry's forensic experts. The U.S. should immediately turn over key documents to Honduran authorities and to the victims' legal representatives. These include the DEA's internal investigation of the incident, the aerial surveillance video of the Ahuas operation in its entirety and any other relevant documentation.

15 See, for instance: "EEUU entrega USD 16,3 millones a Honduras para combatir crimen."

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