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GUATEMALA:

SOLE CONVICTION IN HUMAN RIGHTS CASE OVERTURNED

Police Acquitted in Killing of Students in Quezaltenango

A Guatemalan appeals court has freed six National Police officers jailed for the 1987 kidnapping and murder of two university students. The appellate court ruling, which overturned the only conviction to date of security force officers for a crime of political violence, underlines the complete impunity with which the Guatemalan authorities commit gross violations of human rights. Americas Watch fears that extra-legal considerations may have influenced the outcome in this politically charged case. The acquittal coincides with a markedly worsening human rights situation just three months before presidential elections.

In July 1988, a trial court in Quezaltenango convicted Catalino Esteban Valiente Alonzo, National Police chief for the department of Quezaltenango, and five other National Police agents, and sentenced them to 30-year prison terms for the kidnapping and murder of **Danilo Sergio Alvarado Mejía**, 32, and **René Haroldo Leiva Cayax**, 28, two agronomists affiliated with the Western University Center (CUNOC) in Quezaltenango. The chief was convicted for ordering the crimes, and his subordinates held responsible for carrying them out. This conviction marked the lone exception to the long-standing immunity enjoyed by the Guatemalan army and security force officials from criminal prosecution for human rights violations.

The conviction was originally obtained using laboratory techniques taught to police investigators by the United States under its Administration of Justice program for Guatemala. This police aid program has operated since January 1986 as a special exception to the generalized ban on U.S. aid to police forces abroad, which was adopted by the Congress in 1974 following widespread reports of torture and murder committed by U.S.-trained law enforcement units around the world. Advocates of U.S. assistance to the Guatemalan police forces have pointed to the convictions in the Quezaltenango case as evidence that such assistance is beneficial for human rights.

Yet in our view, the acquittal of the Quezaltenango police officers shows that technical assistance to police forces is futile in the absence of the political will on the part of judges, prosecutors, and senior government and military officials to see that justice be done, especially when powerful sectors

of society are implicated in crimes. In the absence of such will, further assistance to law enforcement agents will only enhance their repressive capacity. In 1987-1988, at the time of the arrests and convictions in this case, senior government officials gave tremendous publicity to their desire to see justice done in this and other cases in which security forces were implicated in political killings.¹ Yet a military backlash against the prosecutions and other policies of the civilian administration resulted in the dismissal later in 1988 of those in the cabinet and police who had pushed for prosecutions.

Since then, despite a widely recognized increase in gross abuses by the security forces and their agents, there has been no effort to investigate and prosecute the culprits in any human rights case. This failure has brought sharp criticism from the Bush administration, and has prompted the Harvard Law School to end its judicial training program in Guatemala, which was funded by the U.S. Agency for International Development. It is against this backdrop of fear and complete security-force impunity that the decision to free the police occurred.

Americas Watch is gravely concerned over the fate of surviving members of the victims' families, several of whom received explicit death threats from relatives of one of the defendants as well as bribe offers to stop pursuing the case. The widow and sister of René Haroldo Leiva Cayax fled Guatemala after these incidents.

The July 1988 conviction of Police Chief Catalino Esteban Valiente Alonzo and five agents from the police investigations department who operated beneath his command -- Cristobal Antonio Martínez Flores, Eulalio Cabrera Cabrera, Daniel Flores Telles, José Luis Ordóñez de León, and Braulio Ervilio Velásquez Rodas -- was based on the following evidence:

- o In February 1987, Police Chief Valiente ordered an agent in the police investigations division to carry out a confidential investigation of the activities of Leiva and Alvarado. The report accused the two of inciting student activities against the police;

- o On October 17, 1987, Alvarado was kidnapped. No witnesses to his abduction provided testimony in court.

- o Between 4:00 and 4:30 that afternoon, police agents Flores, Cabrera, and Velásquez, with other unidentified agents, visited the Alvarado home in Quezaltenango. The agents, who were dressed in plain clothes and arrived in a beige pickup, told Alvarado's sister that her brother had been kidnapped in Quezaltenango by three men driving a red pickup. The police agents demanded money to pay their gasoline costs for having come to the house. The sister paid the agents 5 *quetzales*.

- o On October 19, three plainclothesmen accosted Leiva as he was leaving a shoe workshop at 12th Avenue, # 7-40, in Zone 1 of Quezaltenango. The men told Leiva they were detaining him, handcuffed him and forced him into the back of his own vehicle and drove off. (The owner of the shoe factory failed to identify any of the defendants in a police lineup as those who had kidnapped Alvarado, "perhaps out of fear of personal reprisal," the trial court decision stated.)

- o Between 4:00 and 5:00 p.m. that same day, three police defendants in plain clothes -- Martínez, Velásquez, and a third man -- went to Leiva's home, where they collected 15 *quetzales* from his widow and sister, purportedly to pay for gasoline.

- o On October 23, the bodies of Alvarado and Leiva were found, Alvarado's at kilometer 165 of the highway leading from Mazatenango to Cuyotenango in the department of Suchitepéquez, and Leiva's at kilometer 117 of the Pan American Highway in the hamlet of Las Trampas, department of Sololá.

¹ In our view, then-Interior Minister Juan José Rodil went overboard when, shortly after the police agents were arrested, he told reporters that he advocated sentencing them to death.

o Postmortem reports indicated that both victims were killed by gunshot wounds.¹ The court record also states that the victims were tortured.

o At 9:00 p.m. on October 22, the night before the victims' bodies appeared on the roadsides, the five police agents left the police headquarters in a beige pickup, asking the agent charged with logging entries and exits not to record their exit, as they had to perform a special task and would soon return. However, the agents did not return that night. A few days later, the same agents were standing together near police headquarters, and one of them, Martínez, was heard vowing: "that old woman will have the same fate as her son," an apparent reference to one of the victims and his mother.

o Hair samples taken from the Toyota jeep at the police chief's disposal were found to be consistent with and similar to that of the victims, leading the trial judge to conclude that the victims had, at some point after their capture, been held in that vehicle.

o On October 26, Police Chief Valiente ordered the Toyota jeep sent to the National Police auto shop in the capital to be painted a new color.

o The five police agents could not provide convincing alibis for the days in which the crimes took place. The fact that the police chief's alibi was accepted by the court did not affect his conviction as intellectual, rather than material author.

This politically sensitive case has had a long and confused trajectory in the Guatemalan court system. The trial judge who wrote the original decision convicting the police, Judge Audelino Marroquín Zelaya, asked for and received a transfer shortly after rendering his decision. The case was appealed to the Seventh Appellate Court in Quezaltenango, which in December 1988 remanded the decision to the trial court for further investigation, ruling that the trial judge had failed to deal with all of the evidence of criminal activity, as is required under Guatemalan criminal procedure. Judge Marroquín's successor at the trial court, Judge Noe Moya García, was reassigned before finishing work on the case, and it was not until July 1989 that his successor, Judge Miguel Angel Villatol Schunimann, issued a new decision. Judge Villatol acquitted the defendants on charges of kidnapping, but upheld their convictions on murder. Sentences of thirty years were again meted out, and civil damages of 15,000 *quetzales* were awarded to the family of each victim. Americas Watch has not been able to examine the court decision acquitting the defendants on kidnapping charges. We find this decision puzzling, as the evidence in the record appears to more easily support kidnapping than murder charges.

Although the case was again appealed, the Seventh Appellate Court in Quezaltenango delayed consideration, and finally avoided hearing the matter altogether. The Supreme Court then reassigned the case to the Fourth Appellate Court in Guatemala City.

While the 1990 appeals court decision did not dispute the facts established by the trial court, it held that they were not sufficient to uphold the charge of murder. On July 30, that panel overturned the convictions of the six police agents and ordered their immediate release from detention in the Granja Penal in Cantel, department of Quezaltenango. The six are now free.

¹ According to the October 26, 1987 report by Dr. César A. Díaz Molina of the Medical Forensic Department of the Department of Sololá, Leiva's body showed erosive wounds on the nasal area, the left molar region, and the face; eight shallow gunshot wounds on the back; pneumonia in the right lung and blood in the left; a penetrating gunshot wound in the left thorax; loss of skin on the abdomen; and signs that the wrists had been tied. The October 26 report by Dr. Julio César Posadas Vásquez, forensic doctor for the department of Suchitepéquez, stated that Alvarado's body showed a contusion in the occipital region and five penetrating gunshot wounds in the left thorax, which entered the left lung and heart.

Attorneys experienced in Guatemalan criminal procedure consulted by Americas Watch have seconded our view that there was an abundance of evidence to uphold the convictions of the police agents, certainly on kidnapping, if not also on murder charges. We fear the reversal of these convictions was based on political motives or on a desire to return to the practice of virtual impunity for political crimes by members of the security forces.

The Quezaltenango criminal prosecution, once hailed by the Guatemalan government as a symbol of its determination to subject members of the security forces to the rule of law, now stands as a symbol of its inability to do so. More important perhaps than the overturning of this case, is the fact that no other cases against members of the military have ever produced convictions, despite the continuing involvement of army and police in torture, murder, and disappearances on a wide scale.

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Americas Watch was formed in 1981 to monitor and promote compliance with internationally recognized human rights in Latin America and the Caribbean. The Chairman is Adrian DeWind and the Vice Chairmen are Peter Bell and Stephen Kass. Juan E. Méndez is Executive Director.

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

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Spanish translation of medical terms: "...la cabeza presentaba heridas erosivas en región nasal, región malar [sic] izquierda y región frontal cara; el Torax: en espalda presenta ocho heridas no profundas ocasionadas con arma blanca; Pulmones: Pulmón derecho con infiltración neumónica, pulmón izquierdo con sangre en cavidad peural, herida penetrante en torax izquierdo; Abdomen: pérdida de tejido; Extremidades: presenta señales de haber sido amarrado en ambas muñecas; Causas de la muerte: HEMATORAX IZQUIERDO, HERIDA PENETRANTE DE ARMA BLANCA. EDEMA PULMONAR...." Alvarado's body is described as follows: "Cabeza: herida contusa en la región occipital; Torax: cinco heridas penetrantes con arma blanca en torax anterior del lado izquierdo lo que ingresó pulmón izquierdo y corazón; las causas de la muerte fueron: Shock Hipovolemico; herida penetrante por arma blanca del torax anterior lado izquierdo...."

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