

December 1992

Volume IV, Number 11

BOLIVIA

**Almost Nine Years and Still No Verdict
In the "Trial of Responsibilities"**

Introduction

CONTENTS

Introduction 1

The Background 2

The Raid of the COB and the
Harrington Street Massacre..... 3

The Men and the Charges..... 4

How the Trial Got Started 4

The Summing-up Hearings 5

Legal and Technical Hurdles 5

Suspensions 6

Political pressures..... 6

In the 1980s, as Latin American countries shifted from military dictatorships to elected civilian governments, their societies were obliged to face the legacy of egregious past human rights abuses. Organizations of civil society, led by human rights advocates and by families of victims, undertook to ensure that crimes against humanity would not be forgiven nor forgotten. The result has been a series of victories and partial defeats, but a single outcome of the process is that the search for truth and justice has been recognized, not only as a legitimate endeavor of human rights organizations, but as an obligation of the state. Americas Watch wholeheartedly supports the right of the families of victims to obtain full disclosure of the fate of their lived ones and to seek redress through legal means. We also support the proposition that governments have an obligation to investigate crimes against humanity, to disclose all that can be known about them, to prosecute and punish those who may be individually responsible, and to provide reparations to the victims.

This newsletter is the latest in a series of Americas Watch publications which examine the efforts in the hemisphere to bring to account those responsible for gross violations of human rights. It was researched and written by Americas Watch consultant Sebastian Brett.

* * *

Relatives of victims of human rights violations and Bolivian human rights groups still await the outcome of the historic trial of former military dictator Luis García Meza Tejada and 55 of his former associates, now in its final stages in the city of Sucre, Bolivia. The proceeding, known as the "trial of responsibilities" (*Juicio de Responsabilidades*), is already in its ninth year, but a verdict before the end of 1992 appears nearly impossible. That means the future of the drawn-out hearings is more uncertain than ever. Twelve Supreme Court judges have heard the case, which was begun in 1984 and now runs to more than 30,000 pages of evidence, since February 1986. On December 20, the term of office of six of them expires. And presidential and parliamentary elections are scheduled for May 1993.

In October, a representative of Americas Watch attended part of the public hearings at the request of the Association of Relatives of Disappeared Detainees and Martyrs for National Liberation (ASOFAMD). On the days in question, the attorney representing the victims and the Bolivian trade union federation (*Central Obrera Boliviana*, COB) gave an oral summation of the case against the accused. This was followed by a summary of the defense case, presented by the former dictator's court-appointed attorney.

The Background

Army commander General Luis García Meza seized power in a violent coup on July 17, 1980, and ruled Bolivia for a little over one year. Determined to purge Bolivian political life of what he called "the subversive terrorism of the ultra-left," his regime attracted international condemnation due to its widely reputed involvement in cocaine-trafficking as well as gross abuses of human rights. In August 1981, García Meza was forced from office by his military colleagues. There followed a series of short-lived military administrations before the elected civilian government of Hernán Siles Zuazo took office in October 1982. For the last ten years, despite sometimes acute political tensions, elected civilian governments have alternated in power.

García Meza was the last in a succession of right-wing military strongmen who dominated Bolivian politics for almost twenty years (1964-1982), apart from brief democratic interludes in 1970-1971 and 1978-1980. Several of his predecessors in power were responsible for brutal excesses, in particular René Barrientos Ortuño (1964-1969), Hugo Banzer Suárez (1971-1978), and the 14-day administration of Alberto Natusch Busch (1979). The history of the period is punctuated by army massacres, such as the "Night of San Juan" on June 24, 1967, when soldiers slaughtered more than 100 miners, the Toluta massacre of 1974, and the so-called Massacre of All Saints in early November 1979, when General Natusch's troops ran amok in the streets of La Paz killing more than 200 demonstrators.

In its careful planning and ruthless execution, General García Meza's coup bore a resemblance to that of Chile's General Pinochet, with whom García Meza liked to compare himself: "I will stay in power for twenty years until Bolivia is reconstructed. My government has no fixed limits and in this sense I am like General Pinochet," he stated in an interview. As in Chile, suspected political opponents rounded up in the early days of the regime were herded into a sports stadium in La Paz, where they were "packed together for two days and nights without food or water and forced to sleep and urinate where they stood."¹ Martial law was imposed throughout the country, trade union activity banned, censorship decreed and left-wing parties harassed and persecuted. By September 1980 between 1,500 and 2,000 people had been detained without warrant or charge, according to Amnesty International. About 1,500 Bolivians were forced into exile.

The worst abuses were committed by members of paramilitary squads linked to the Interior Ministry, such as the Special Security Service (SES), headed by Colonel Freddy Quiroga and responsible to the Interior Minister, Colonel Luis Arce Gómez (both men are now on trial). The SES, a branch of the National Department of Investigation (DIN), was reportedly established under the supervision of Argentine advisers, including former officers from the notorious Navy

¹ This account is taken from James Dunkerley, *Rebellion in the Veins: Political Struggle in Bolivia 1952-1982*, (London: Verso), 1984.

Mechanics School. With García Meza's blessing, Bolivia became a haven for an unsavory assortment of former Nazis, Italian neo-fascists and foreign mercenaries.

According to the Bolivian Permanent Assembly for Human Rights (APDHB), as many as 164 individuals "disappeared" for political reasons between 1979 and November 1982. The National Commission of Inquiry into Disappearances, established by the government of Hernán Siles Zuazo in October 1982 just days after the return to democratic rule, received denunciations of 22 cases alleged to have occurred during the García Meza dictatorship.

The Raid of the COB and the Harrington Street Massacre

On the morning of the coup, armed men travelling in commandeered ambulances and under cover of heavy gunfire stormed the headquarters of the COB, where members of political parties had joined the union federation in a National Committee for the Defense of Democracy (CONADE) to prepare a response to the army's seizure of power. Marcelo Quiroga Santa Cruz, a parliamentary deputy, former oil minister and leader of the Socialist Party-Uno (PS-1) was shot in cold blood, after he had surrendered. Also killed during the raid was trade union leader Gualberto Vega. Juan Carlos Fores Bedregal, a young trotskyist parliamentarian who was seriously wounded in the assault, was allegedly taken to army headquarters, but his body has never been recovered.

On January 15, 1981, SES agents acting on Arce's orders staged a raid on a house on Harrington Street, La Paz, in which nine young leaders of the Movement of the Revolutionary Left (MIR) were holding a meeting. Eight party members were shot to death after they had given themselves up without resistance; according to some reports they were tortured first. The victims included miners' leader Artemio Camargo, economist Ramiro Velasco, student leader Gonzalo Barrón and José Luis Suárez, the son of a prominent retired general. Parliamentary deputy Gloria Ardaya, who had hidden under a bed in an upstairs room, was the only survivor and witness. She was arrested and imprisoned for 45 days and allegedly tortured in the SES headquarters at the Ministry of the Interior, where she reportedly recognized some of the attackers. For his part, the Minister attempted unsuccessfully to cover up the murders by claiming that there had been a fire². The raid on the COB and the Harrington Street massacre are the only two human rights crimes of which García Meza, Arce Gómez, Quiroga, and former SES agents and paramilitaries stand accused.

The Men and the Charges

Altogether 49 former officials and paramilitary agents of the García Meza government are facing charges (four have died since the original indictments were issued in 1986). Notably absent from the two courtrooms in October were the two principal defendants. García Meza went into hiding in January 1989, after a warrant for his arrest was issued in connection with the

² James Dunkerley, *Rebellion in the Veins*; Amnesty International Latin America Bureau Special Brief, "Bolivia Coup D'Etat" (London: 1980); and *Amnesty International Annual Reports*, 1981 and 1982.

theft of the diaries of Ernesto "Che" Guevara. García Meza has been officially declared a fugitive from justice, but has never been detained although he is widely believed to be in the country. Arce also absconded, but was arrested in December 1989 and abruptly handed over to the United States authorities to stand trial in the U.S. on drug-trafficking charges. Among the other defendants are air force commander General Waldo Bernal, members of García Meza's cabinet (all except one are former military officers), and a large group of former security men and paramilitary agents. None are currently in detention. García Meza and Arce face charges of sedition and armed insurrection, violation of constitutional freedoms and guarantees (cabinet ministers are included in these charges for signing decrees violating trade union freedoms and judicial independence), and murder and genocide for the COB and Harrington Street incidents, respectively. Paramilitary agents are identified and charged as the material authors of the killings in both cases. In addition, García Meza and several of the accused face charges on separate counts of theft, fraud and illegal economic activity, including an illicit trade in semi-precious stones.

This is the first time senior military officers have faced trial in Bolivia for human rights violations. Earlier efforts to prosecute former dictators René Barrientos and Hugo Banzer proved fruitless. Impeachment proceedings against Banzer were launched in parliament by Marcelo Quiroga in 1979, but they led only to a parliamentary free-for-all which angered the military (it was thought this was why Quiroga was singled out in the raid on the COB) and failed to lead to an indictment.

The trial has enormous political significance in Bolivia. Unlike trials in Argentina and Chile which have been limited to human rights crimes, the accusations against García Meza and his associates refer also to their illegal seizure of power and suppression of constitutional freedoms. This may appear ironic and contradictory in a country seemingly inured to military intervention, as Bolivia is so often portrayed. Yet, as members of Bolivia's human rights community stressed to Americas Watch, for many Bolivians the trial represents a historic opportunity to reinforce the rule of law and consolidate democracy.

How the Trial Got Started

The trial follows a procedure laid down in the 1967 Constitution for the impeachment of heads of state and senior government officials known as a "trial of responsibilities." In the first stage, which is regulated by laws dating back to October 31, 1884, and October 23, 1944, the joint Commission of Constitution, Justice and Judicial Police of Congress investigates the charges, summons and cross-examines witnesses, and decides whether or not to open a prosecution. If the Commission recommends prosecution and Congress upholds its recommendation, a formal indictment is made and the case is transferred to the Supreme Court. In the second phase of the trial which is heard by the Supreme Court, procedures generally follow those laid down for ordinary criminal trials in the Code of Penal Procedures. There is one important difference: since the trial is conducted by the Supreme Court, there is no avenue of appeal by either party to an independent tribunal.

The origins of the trial go back to late 1983, when relatives of the victims and their political groups (especially the PS-1, the MIR and the COB) abandoned efforts to seek redress through the criminal courts, after months of unsuccessful pressure for court investigations. A committee representing the COB, the National University and ASOFAMD was formed, and, with the backing of PS-1 and MIR deputies, in February 1984 it launched a parliamentary accusation against García Meza and his former associates. However, the case was soon swamped by the successive

political crises which led to President Siles Zuazo's resignation in 1985, and it was not until February 25, 1986, that a newly elected Congress voted to press charges, issued indictments and transferred the case to the Supreme Court. The hearing of evidence, cross-examination of defendants and witnesses—normally the longest phase of trial proceedings—in this case took over six years. The case has now passed to the penultimate phase, in which the parties sum up the evidence and their conclusions. Following that, the court must give its verdict and pass sentence.

The Summing-up Hearings

Under Bolivian law, both the state prosecutor and the "civilian party" (*parte civil*—in this case the lawyers representing the victims and their organizations) have the right to summarize the evidence and argue their case to the court. In the October hearings both the prosecutor and the victims' representatives called for the maximum sentence under Bolivian law—30 years imprisonment without right of pardon—for García Meza and Arce, holding them directly responsible, among other crimes, for the raid on the COB and the Harrington Street killings. However, they reached different conclusions on the responsibility of the *de facto* cabinet for the coup and the infringement of constitutional rights. The prosecutor singled out García Meza, Arce and the members of the military junta for blame, and called for the absolution of the cabinet. The victims' representatives disagreed with this and requested a 15-year sentence for the cabinet members, and the maximum sentence for García Meza and Arce.

Although the victims' representatives were unable to identify who fired the shots that killed Quiroga and the other victims in the raid on July 17, 1980, they called for the maximum sentence for five paramilitary agents who they claimed participated directly in the raid, nine who were described as members of irregular armed groups, and three who commanded these groups, including Freddy Quiroga. They noted that these men operated from the army base of Miraflores, whence the agents returned after the operation was completed.

In the Harrington Street case, the victims' representatives sought to prove that the killings responded to a deliberate and preconceived plan by García Meza, Arce and their associates to eliminate the MIR leadership. They called for the maximum sentence for genocide, which is listed in the penal codes as a crime against international law. Detailed evidence was cited to refute the "official version" that the killings occurred during a gun battle, and that an arms cache had been discovered in the house. Particularly striking was the discovery of a secret memo addressed by Arce to García Meza immediately after the events, which made no reference to any armed resistance, and, indeed, reassured García Meza that the minister was carrying out his instructions to publicize the "terrorist offensive" as widely as possible. This was apparently a reference to a confidential memo to the armed forces and official communiqués published later in the national press which disseminated the phony version that the victims had been heavily armed, and security agents had been wounded in the "clash." The civilian party called for the maximum penalty for García Meza, Arce, Quiroga, Guido Benavides and seven other paramilitary agents, and for nine others not cited in the accusations to be prosecuted as accomplices.

Legal and Technical Hurdles

Both legal or technical factors, and political pressures have apparently contributed to the long delays in the trial. Among the technical factors are the large number of defendants in the case, the complexity of the charges (an accumulation of eight separate cases to which a ninth—the theft

of the diaries of Ernesto "Che" Guevara—has now been added), and the lack of precedents on this type of case (few impeachment prosecutions have been successfully completed, despite frequent attempts to initiate them.³ No special procedures exist for trials of this type.) The Supreme Court must reach a single comprehensive judgement, carrying out work that under normal circumstances would be divided between several lower level criminal courts, each dealing with a smaller number of cases and defendants. Its jurisdiction in this case covers crimes such as murder and genocide, which are not expressly envisaged in the law governing trials of responsibility. In fact, the law refers only to the crimes of treason, infringement of the constitution, misuse of public funds, subornation, bribery, violation of constitutional guarantees, and expenditure in excess of budget when committed by rulers and officials in exercise of their public office. Furthermore, the accusation also includes defendants (the paramilitary agents) who evidently do not have legal status as government officials. However, under Bolivian laws the principle of indivisibility means that jurisdiction over all the crimes committed must fall to the senior court with competence in the case.

Additional pressures on the court's time are caused by defense and prosecution appeals, which under normal procedure would be dealt with by an independent tribunal. According to attorneys, the court has twice issued detailed rulings rejecting appeals by the defense seeking to nullify the trial. Delays have also been caused by suspensions of the hearings due to the non-appearance of witnesses and defendants. Finally, the court has itself come under criticism for abrupt postponements and suspensions of the hearings.

Suspensions

The summing up hearings were suspended twice during the month of October. On October 9, after the prosecutor had delivered his summation, the president of the Supreme Court postponed the hearings for a week, on grounds of the court's excessive work-load. The hearings resumed on October 19, allowing the victims' representatives to complete their presentation, but on October 23, the president suspended them again "indefinitely" (but in effect until November 4). Evidently due to the adverse publicity this caused, the court agreed to put back the date of its annual vacation (due to start on November 3) to November 14 to make up for lost time. However, hopes of a prompt termination of the readings and an early sentence were soon dashed. No time limit had been imposed on the parties in presenting their case, and these were read verbatim to the court, without a single interruption from the bench in the sessions Americas Watch observed. While the victims' representative was able to summarize his case in two sessions, García Meza's court-appointed attorney required more than a week to complete her reading, and Americas Watch was informed that up to 12 other lawyers acting for the other defendants could also put their case without any time limit. On November 24 the trial was adjourned until the end of the court vacation on December 15. A resumption on that date would leave the judges only five days to reach a verdict before the terms of office of six of them expired.

Political pressures

Political pressures have also had behind-the-scenes effects on the trial. Mutual distrust and lack of cooperation between the executive and judicial branches has been an important factor.

³ There are no recent examples. Former President Hilario Daza and former minister Jorge Mercado Rosales were impeached in 1877 and 1942 respectively, but in both cases the files are said to be missing from the archives of the Supreme Court.

This almost reached the point of constitutional crisis in 1990-1991 when deputies of the ruling coalition between the MIR and the Nationalist Democratic Action (ADN), the party of former dictator Hugo Banzer, tried unsuccessfully to impeach eight members of the Supreme Court, including its president, Dr. Edgar Oblitas, for prevarication. The charge proved to be without any basis and the Court interpreted it simply as a pretext for a politically motivated intervention in the judiciary. Indeed the case did lead to the unwarranted suspension for six months of the impugned judges, which paralyzed the trial of responsibilities.

One year earlier, President Jaime Paz Zamora had bypassed the Supreme Court entirely in handing over Arce Gómez to the U.S. Judicial authorities claimed publicly that his action was justified in view of "the terrible weaknesses and the terrible immorality through which our judicial system is passing." The effect of the measure was to place one of the case's most important witnesses beyond the reach of Bolivian justice, as the Supreme Court itself pointed out in a strongly worded statement of protest.⁴ Government officials and parliamentary deputies have repeatedly accused the judiciary of corruption and receiving bribes from the drug mafia. The most recent example was on October 23, 1992, during Americas Watch's visit, when the president of the Supreme Court suddenly announced the indefinite suspension of the trial because a MIR deputy had alleged in a press interview that "heavy doses of money were preventing the judges from reaching a verdict on the case." (The suspension was lifted a few days later, after the president of the Chamber of Deputies travelled to Sucre to present apologies to the court.) While Dr. Oblitas has admitted in the past that some members of the judiciary accept bribes from drug-traffickers, he has levelled similar charges against parliamentarians and public officials.

Opponents of the current government argue that the *Acuerdo Patriótico*, the ruling MIR-ADN coalition, is nervous about possible revelations from the trial about links between ADN officials and García Meza's regime. Banzer, who is standing as the official AP presidential candidate in the 1993 elections, and therefore enjoys the backing of the MIR, is believed to have initially supported the García Meza coup, although he later distanced himself from the regime and ultimately opposed it. There is little doubt that many of the men who supported the coup and benefitted from its illegal activities continue to occupy positions of power and influence. Indeed, some army officers who were known as hardliners under García Meza have been given important positions under the current government of Jaime Paz Zamora. The consistent failure of the government to detain García Meza himself despite a court order for his arrest has done nothing to inspire public confidence that justice will be done in Bolivia.

Americas Watch was established in 1981 to monitor and promote the observance of internationally recognized human rights. *Americas Watch* is one of five regional divisions of Human Rights Watch. The Chair of *Americas Watch* is Peter D. Bell; Vice Chairs, Stephen L. Kass and Marina Pinto Kaufman; Executive Director, Juan E. Méndez.

Human Rights Watch is composed of five regional divisions—Africa Watch, Americas Watch, Asia Watch, Helsinki Watch

⁴ Speech by Supreme Court President Edgar Oblitas Fernández on January 2, 1990. Cited in M. Calderón Saravia, *Juicio de Responsabilidades: Por Un Delito Imaginario*, (Sucre: 1991), p. 25. Calderón, who acted as defense attorney for the eight judges, claims that Oblitas's speech—a strongly worded defense of the judiciary—triggered the impeachment proceedings.

and Middle East Watch—and the Fund for Free Expression. Its Chair is Robert L. Bernstein; Vice Chair, Adrian W. DeWind; Executive Director, Aryeh Neier; Deputy Director, Kenneth Roth; Washington Director, Holly J. Burkhalter; California Director, Ellen Lutz; Press Director, Susan Osnos; Counsel, Jemera Rone.