

## Special Cases

Eight of the following special cases represent outstanding examples of the failure of the Salvadoran judicial system to investigate and prosecute those responsible for serious human rights abuses. Two additional cases, the El Zapote massacre and the murder of two U.S. servicemen, raise serious questions about the capacity of either the Salvadoran government or the FMLN to provide justice in cases of horrible crimes.

The collapse of two of the judicial cases discussed below, the San Sebastián massacre and the kidnapping-for-profit ring, led the Bush Administration in August 1990 to suspend U.S. aid for judicial reform in El Salvador.<sup>1</sup> Two cases represent serious violations of the laws of war -- the murder of prisoners following capture -- by both the FMLN and the armed forces. Although the FMLN claims that impunity does not prevail for members of its ranks who have committed abuses, it has yet to demonstrate a capacity to conduct trials which guarantee due process for the accused, in accordance with Common Article 3 and Protocol II of the Geneva Conventions.<sup>2</sup>

### Pending

#### The Murders at the UCA<sup>3</sup>

The investigation into the murders of six Jesuit priests, their housekeeper and her daughter on November 16, 1989 at the *Universidad Centroamericana José Simeón Cañas* (UCA) proceeded at a snail's pace in 1990, impeded by a lack of cooperation by senior military officers and tainted by allegations that senior officers had prior knowledge of the murder plot and conspired to cover up the crime.

On November 20, 1990, presiding Judge Ricardo A. Zamora of the Fourth Penal Court in San Salvador announced formal charges against nine Salvadoran soldiers, including Colonel Guillermo Alfredo Benavides Morales, all but one of whom had been detained since mid-January.<sup>4</sup> All nine defendants were charged with murder, eight were charged with committing acts of terrorism, and Colonel Benavides as well as three lieutenants were accused of planning the crime. The second in command at the Military Academy, Lieutenant Colonel Carlos Camilo Hernández, and one of the lieutenants charged with murder, were also charged with destruction of evidence for the burning of logbooks from the Military Academy. Three other soldiers have been charged with perjury.

The bringing of formal charges presaged Judge Zamora's decision on December 6, 1990 to move the case to the trial or "plenary" stage. The ruling was apparently made at the request of

---

<sup>1</sup> Christopher Marquis, "Angry U.S. Cuts Salvador Legal Aid After Court's Murder Probes Wither," *Miami Herald*, August 16, 1990.

<sup>2</sup> See Americas Watch, "Violation of Fair Trial Guarantees by the FMLN's Ad Hoc Courts," May 1990.

<sup>3</sup> For the U.S. role, see section on U.S. policy

<sup>4</sup> Private Jorge Alberto Sierra Ascencio deserted and is still at large.

the Attorney General, who did not consult with the two principal prosecutors in his office working on the case (see below). While Judge Zamora's decision does not necessarily preclude the development of new evidence implicating others in the murders, it is unlikely that a trial of the defendants will unearth new leads. Rather, Judge Zamora's decision seems to reflect a recognition that the investigation could go no further without the cooperation of the armed forces, which was not forthcoming.

Indeed, as in other cases of serious human rights violations, the attitude of the armed forces remained the principal obstacle to a full investigation of the murders. Members of a special House Task Force on El Salvador set up to monitor the Jesuit investigation hinted at this problem in April 1990, when an interim report observed that the murder of the Jesuits was both a "crime committed by individuals" and "an indictment of the armed forces as an institution." The Task Force noted that Salvadoran investigators had failed to explore seriously "the possibility that military officers senior to Colonel Benavides may have ordered or otherwise had prior knowledge of the crimes."<sup>5</sup>

As the year progressed, the government's investigation yielded several anomalies. Although the government's case rested on extrajudicial confessions by seven of the indicted soldiers, a Military Honor Board provided little information on how those confessions were obtained, and falsely denied that it had written a report on the case. A military intelligence officer who participated in a search of the Catholic University campus three days before the murders told Judge Zamora that he had joined the search on his own accord, later admitting that he had been ordered to participate by the head of Salvadoran military intelligence.<sup>6</sup> The Army sent the wrong four cadets from the Military Academy to testify before Judge Zamora; when those on duty the night of the murders did appear, they claimed to know nothing about the killings.<sup>7</sup>

Frustrated by the military's lack of cooperation in the investigation, the United States quietly slowed military aid deliveries in August. Publicly on August 15, Chairman of the House Task Force Representative Joseph Moakley (D-MA) accused the high command of the Salvadoran armed forces of engaging in a "conspiracy to obstruct justice in the Jesuits' case," citing instances of perjury and the falsification and destruction of evidence by military officers.<sup>8</sup>

---

<sup>5</sup> Speaker's Task Force on El Salvador, "Interim Report," April 30, 1990, pp. 8-9.

<sup>6</sup> The search was carried out by the same commando unit of the U.S.-trained Atlacatl battalion which later carried out the murders. President Cristiani's authorization of the search of the UCA was obtained retroactively.

<sup>7</sup> Statement by Congressman Joe Moakley on the Jesuits' Case and the Salvadoran Negotiations, Addendum, The Armed Forces and the Jesuits' Case, August 15, 1990, pp. 1-3; Memorandum to Hon. Joe Moakley from Staff, Special Task Force on El Salvador, "Report on Staff Trip to El Salvador," September 14, 1990, pp. 2-5.

<sup>8</sup> Memorandum to Hon. Joe Moakley from Jim McGovern and Bill Woodward, "Staff Trip to El Salvador," January 7, 1991, p. 2; Statement by Congressman Joe Moakley, *op cit*, p. 1.

The U.S. actions prompted a flurry of activity in El Salvador, but still left gaping holes in the investigation. President Cristiani made an unprecedented personal appearance before the court on September 7, 1990, admitting that he was present at high command headquarters while the murder operation was being carried out.<sup>9</sup> But Minister of Defense René Emilio Ponce, Army Chief of Staff at the time of the murders, has refused to appear in person and has not been compelled to do so by President Cristiani. Even if Ponce did appear, however, there is no promise that his testimony would differ from that of other military officers who, according to congressional investigators, have "failed to remember, failed to make sense or failed to tell the truth."<sup>10</sup>

Meanwhile, the investigation has also failed to explore the roles played by military intelligence or by captains and majors who in the chain of command stood between Colonel Benavides and the lieutenants charged in the case. These deficiencies account for speculation that "the military hierarchy -- not the investigating authorities -- controlled who was questioned, who was detained, and who was charged."<sup>11</sup>

The commitment of the Salvadoran Attorney General's office to the murder investigation was called into question by the January 8, 1991 resignation of the two principal prosecutors in the case, Edward Sidney Blanco Reyes and Alvaro Henry Campos Solórzano. The two prosecutors accused the Attorney General's office of not "pursuing a clean investigation," and charged that the military was "obstructing the case of the Jesuit priests."<sup>12</sup> The two outlined several steps that the Attorney General had taken to impede their pressing of the investigation:

- \* after asking the judge to detain three members of the Atlacatl Battalion for perjury, the two prosecutors were told by an official of the Attorney General's office that they had committed an error and were ordered by the Attorney General not to request additional detentions;

- \* during the court testimony of an official of the SIU, the Attorney General called and insisted that the two prosecutors not ask questions directly, but only through the coordinator of the human rights unit overseeing the investigation;

- \* after issuing a press statement in October indicating that contradictions existed between the written statement given the court by Colonel Ponce and the testimony of then-Vice Minister of Defense Colonel Juan Orlando Zepeda, the Attorney General prohibited the two prosecutors from working as a team;

- \* despite the two prosecutors' opposition to bringing the case to trial, and without consulting them, the Attorney General issued a written opinion that the case should proceed to

---

<sup>9</sup> Lawyers Committee for Human Rights, "The Jesuit Case A Year Later: An Interim Report," November 15, 1990, p. 32.

<sup>10</sup> Memorandum to Hon. Joe Moakley, January 7, 1991, *op. cit.*, p. 4.

<sup>11</sup> *Ibid.*, p. 7.

<sup>12</sup> "Prosecutors Cite 'Irregularities,'" San Salvador Radio Cadena Sonora, in Foreign Broadcast Information Service, January 10, 1991, p. 20.

trial.<sup>13</sup>

The United States also appears to have played a role in discouraging the prosecutors from continuing to work on the case. In May 1990, a low-ranking Embassy official passed on information from a Salvadoran military source warning that the FMLN had a plot to kill the prosecutors. After attempting to confirm the information independently, the prosecutors came to the conclusion that it was false and that the U.S. warning "had another objective: to drive us from the case."<sup>14</sup>

Following the resignations of Blanco Reyes and Campos Solórzano, State Department spokesman Richard Boucher termed them "junior prosecutors" and echoed the Salvadoran government's false claim that the two left because of longstanding plans to re-enter private practice.<sup>15</sup> The Jesuits, meanwhile, stated that the resignations of the two prosecutors had caused them to lose their "relative confidence in the Attorney General's office."<sup>16</sup> In early 1991, the prosecutors began to advise the Jesuits in representing the families of the slain priests in ongoing court proceedings.

It is possible, if not likely, that the case against the nine defendants in the Jesuit case will go to trial this year. But it is uncertain whether any jury will have the confidence to convict, and unlikely that the full story of the murders will ever be known.

### San Sebastián

Salvadoran soldiers commanded by the head of military intelligence of the Fifth Brigade, Major Mauricio Beltrán Granados, summarily executed ten captured peasants on September 21, 1988, in the San Francisco hamlet of San Sebastián, San Vicente, staging the executions to look like a guerrilla ambush. The soldiers and their commanding officers then rehearsed an elaborate coverup story invented by Major Beltrán.

The Bush Administration, and particularly Ambassador William Walker, made resolution of the case a top U.S. priority. During a trip to El Salvador in February 1989, Vice President Dan Quayle urged that those responsible for the massacre be punished and warned Salvadoran officials that U.S. aid was in jeopardy because of lack of progress in the case. Following Quayle's visit, nine Salvadoran soldiers, including two officers, three non-commissioned officers, and four soldiers were arrested in connection with the case. Three additional suspects were

---

<sup>13</sup> Interview, Edward Sidney Blanco Reyes and Alvaro Henry Campos Solórzano, January 30, 1991.

<sup>14</sup> *Ibid.*, and Christopher Marquis, "Ex-prosecutors Say U.S. Tried to Drive Them from Jesuit Case," *Miami Herald*, January 11, 1991.

<sup>15</sup> Richard Boucher, State Department Regular Briefing, January 10, 1991. Boucher added that the United States would seek to meet with the prosecutors about their "reported disagreement with the conduct of the prosecution."

<sup>16</sup> Communique of the Society of Jesus (Central American Province), San Salvador, January 11, 1991.

subsequently detained, apparently based on the testimony of witnesses in San Francisco the day of the murders.<sup>17</sup>

In February 1990, a judge dismissed charges for lack of evidence against all but two defendants, Major Beltrán and Sub-sergeant Rafael González Villalobos.<sup>18</sup> In May 1990, and perhaps taking advantage of the fact that the U.S. Embassy was focusing almost exclusively on the Jesuit case, an appeals court upheld the dismissal of charges against the ten, and also dismissed charges against González Villalobos. Only Major Beltrán remains in detention. His case is scheduled to go to trial in April 1991. The State Department in 1991 characterized the case against soldiers in the San Sebastián case as "virtually collapsed".<sup>19</sup>

### Kidnapping for Profit

Between 1982 and 1985 a band of former and active duty military officers and rightist civilians, posing as guerrillas, seized at least five wealthy Salvadoran businessmen and ransomed them for profit. The State Department observed in early 1991 that the kidnapping-for-profit case "also virtually collapsed in 1990."<sup>20</sup> Three suspects were arrested in April 1986, including former National Guard intelligence officer Rodolfo Isidro López Sibrián, implicated in the January 1981 murder of two U.S. labor advisers and the head of the Salvadoran agrarian reform agency. Five other defendants were later named, at least three of whom fled the country and escaped arrest.

In April 1990, a judge dismissed for lack of evidence charges against six of the defendants; he dropped robbery charges against the remaining two, retaining only the kidnapping charge. President Cristiani appealed the dismissal, at the same time that defense attorneys for the remaining accused appealed the judge's decision. Of the two against whom charges were not dropped, only Lt. López Sibrián is in custody.

### Héctor Oquelí Colindres

Héctor Oquelí Colindres, Under-secretary general of the social democratic National Revolutionary Movement (MNR) and an official of the Socialist International, and Gilda Flores, a Guatemalan lawyer and activist of the Guatemalan social democratic party, were abducted and killed on January 12, 1990 on their way to the airport in Guatemala City.

In July, after producing two reports on the murders, the Guatemalan government charged ARENA leader Roberto D'Aubuisson and businessmen Orlando and Fernando de Sola with

---

<sup>17</sup> Americas Watch was not able to locate court records indicating the detention of three soldiers in addition to the original nine. However, subsequent appeals rulings have dealt with a total of 12 suspects.

<sup>18</sup> In court records he is identified as Rosales Villalobos.

<sup>19</sup> Department of State, Country Reports on Human Rights Practices for 1990 (Washington, D.C.: U.S. Government Printing Office, February 1991) p. 615.

<sup>20</sup> Ibid.

masterminding the murders. Two prominent lawyers asked by the Socialist International to investigate the murders found both Guatemalan government reports to be seriously flawed. But they concurred that the assassinations were most probably carried out on behalf of, if not by, Salvadoran rightists, and that Guatemalans, including members of the security forces, were probably involved.<sup>21</sup>

#### San Cayetano Cooperative

Six members of the San Cayetano El Rosario cooperative in Llano de la Laguna, Ahuachapán disappeared after being captured by members of the Salvadoran armed forces in December 1989. Two coop members were taken from their homes by uniformed soldiers and local civil defense members on December 5, 1989. Four other coop members were captured on December 29, 1989 by armed men in civilian dress acting in conjunction with uniformed soldiers. The men in civilian dress ordered the coop members into a jeep after their vehicle had been stopped by uniformed soldiers. All police and military personnel in Ahuachapán -- three security forces, the Seventh Military Detachment, and the civil defense post -- told inquiring family members that they had nothing to do with the disappearances. At the time of the disappearances, Col. Mauricio Staben, implicated in the kidnapping-for-profit case, commanded the Seventh Military Detachment in Ahuachapán. He has denied any involvement in the case.

On February 8, 1991, the National Police announced that they had arrested four members of the civil defense for the murder of the two cooperativists captured on December 5, 1989. It was the first official acknowledgment that any of the six of the disappeared were, in fact, dead. All four of the detained civil arrested said that local Civil Defense commander Julio Lico Castañeda had ordered the murders.

The whereabouts of the other four cooperativists captured on December 29, 1989 remain unknown.

#### Begoña García de Arandigoyen

Begoña García, 24, a doctor providing medical care to the FMLN, was killed on September 10, 1990 near La Montaña, Santa Ana, in circumstances which suggest she was executed by the armed forces after being wounded. According to the Army and National Police, García died in an attack against a guerrilla command post by soldiers of the Second Infantry Brigade in which ten guerrillas died. According to the FMLN, the Army had attacked a medical, not command post of the FMLN and García was wounded in combat, captured alive, and subsequently killed by the Army.

A National Police report on the deaths of two women, including García, indicates that samples for the detection of nitrates were taken (a so-called paraffin test), and that the results were positive, indicating that a weapon was fired. In a Police photograph of García's body, the victim's T-shirt and brassiere are gathered around her neck. A recognition of the body by

---

<sup>21</sup> Tom Farer and Robert Goldman, "The Assassination of Lic. Gilda Flores and Dr. Héctor Oqueli Colindres: An Evaluation of the Investigation and Reports Prepared by the Government of the Republic of Guatemala," September 1990, pp. 23-25.

the court of Santa Ana stated that "there are no powdermarks, tatoos, or burns noted in any of the aforementioned wounds, hence one may deduce that the wounds were inflicted at a distance."

Doctors who performed an autopsy at the Anatomic Pathology Service of the Hospital of Navarra in García's native Spain, however, found two bullet wounds in her neck which had been "inflicted at a distance of centimeters". The photographs taken by the National Police were done in such a way as to conceal the neck wounds, and the Salvadoran judge's forensic report also failed to mention them. The autopsy done in Spain found lesions that were "very selective, in some cases symmetrical, and primarily inflicted from behind." They suggested "a situation in which Begoña García was first wounded and then assassinated or finished off by two bullets fired at very close range into her neck."<sup>22</sup>

The United Nations Special Rapporteur's report on El Salvador noted that, despite the Salvadoran government's version of García's death, "the nature of the gunshot wound in the back of her neck could indicate that she was killed after being captured."<sup>23</sup> The U.N. special representative recalled the "obligations imposed by international humanitarian law to respect the life and physical integrity of captured medical personnel and combatants." Echoing the U.N.'s conclusions, the State Department notes in its 1990 human rights report to Congress that García "was apparently captured and murdered by soldiers on September 10."<sup>24</sup>

Despite these contrary reports, the Salvadoran government continues to insist on the version that García was killed in combat. On January 29, 1991, Major Roberto Molina of the Army's human rights office told representatives of Americas Watch that García died of "various wounds" and that it could not be proven that the shots were at close range.

#### Seven Young Men Killed in Cuscatancingo

On November 18, 1989, during the major FMLN offensive, Army soldiers shot dead seven unarmed young men in Cuscatancingo, a northern suburb of San Salvador. Six of the victims were members of the neighborhood soccer team; the seventh was a boy selling bread. The bodies were found the next day in front of a blood- and bullet-sprayed wall; they had been shot in the head and stomach.

A justice of the peace sent the case to the Judge of First Instance in Mejicanos in December 1989, but the case has been stalled since that time. The judge told the Associated Press in February 1990 that "the case will be under investigation until it is forgotten...unless the killings cause an uproar abroad, nothing gets done."<sup>25</sup>

---

<sup>22</sup> Dr. Carlos Martín Beristain, "Informe Sobre la Muerte de Begoña García de Arandigoyen el 10 de Septiembre de 1990 en El Salvador," November 1990. Copies of the Army and National Police reports appear as an annex.

<sup>23</sup> Report of the Economic and Social Council, "Situation of Human Rights in El Salvador, Note by the Secretary General," October 22, 1990, p. 22.

<sup>24</sup> Department of State, Country Reports on Human Rights Practices for 1990, (Washington D.C.: U.S. Government Printing Office, February 1991), p. 609.

<sup>25</sup> Douglas Mine, "Jesuit Investigation: Exception that Confirms Rule of Military Impunity,"

In June 1990, the Attorney General's office assigned Edwin Sidney Blanco Reyes to the case; Blanco Reyes was also assigned to the Jesuit case and resigned in January 1991. An August 1990 memo from Blanco Reyes to the judge in Mejicanos noted serious errors in the justice of the peace's initial handling of the case, including failure to identify the cause of death, and said that his "negligent conduct" necessitated retracing steps that should have been taken at the time of the killings.

#### Mauricio Pineda Deleón

Pineda Deleón, soundman for Channel 12 television, was shot and killed on March 18, 1989 after passing an Army checkpoint on the highway to La Unión. He and several other journalists were covering the March 1989 presidential elections.

A corporal of the Arce Battalion, José Antonio Orellana Guevara, 24, was charged with the murder. On June 6, 1990, a jury in San Miguel found Corporal Orellana not guilty. Before the jury rendered a verdict, about 30 non-uniformed soldiers, including two captains, entered the courtroom and watched the proceedings. The presiding judge rejected the suggestion that any improper motive had influenced the jury's verdict.<sup>26</sup>

---

Associated Press, February 16, 1990.

<sup>26</sup> El Mundo, June 7, 1990 and June 19, 1990; Diario Latino, June 13, 1990.