

B. New Cases

1. Murder of Two U.S. Servicemen

On January 2, 1991, shortly after 2 p.m., a U.S. helicopter transporting three U.S. Army servicemen was brought down by FMLN rebel gunfire near Cantón San Francisco, Lolotique, San Miguel. According to the declarations of area residents given both to the press as well as the Salvadoran courts, two of the U.S. personnel, Private First Class Earnest Dawson and Lieutenant Colonel David H. Pickett, were alive immediately after the crash. The third, Chief Warrant Officer Daniel Scott, was killed in the crash.

According to witnesses' testimony, after the helicopter crashed, nearby residents heard the guerrillas shout "Surrender!", after which they heard several shots. One rebel known as Comandante Domínguez went to the village to ask people to come to the site to help with the wounded occupants of the helicopter. Others were also instructed to bring an ox-pulled cart to help retrieve items from the crash site. Some of those initially refused to help, one saying that he could get in trouble with the Armed Forces. One said that he couldn't help because he had earlier been taken prisoner for several days for having helped the guerrillas. But both of these persons eventually joined with others.

When several villagers arrived at the site, they saw four male and two female FMLN guerrillas.¹ One villager said that a rebel known as Aparicio was the one giving orders to the villagers at the site; other rebels recognized by the villagers included Ulises and Porfirio. One resident, who claims to have been hiding and thus witnessed the killings, said that Domínguez was also present when he got there, which was before any of the other villagers arrived to help.²

One of the villagers noted in a declaration given to the court that Aparicio told the people to help the survivors and said that their lives should be

¹ Some of these villagers earlier told reporters that they had seen about 20 guerrillas at the site. See Lee Hockstader, "Salvadoran Put at Risk By Account of Killings," *Washington Post*, January 7, 1991; and Christopher Marquis, "Two Crewmen Survived Crash, Salvadoran Says," *Miami Herald*, January 8, 1991.

² This witness did not immediately come forth out of fear. He finally declared before the First Instance Judge in Chinameca after receiving a note from Domínguez, who wanted to talk to him. Like five of the other witnesses, he has not returned to San Francisco and is under government protection. Americas Watch has not independently interviewed this witness, but the account is consistent with what is known from interviews given to the press in the immediate aftermath of the event.

respected. One of the rebels said to the villagers arriving at the site to hurry up in order to help the wounded, because they were going to burn the helicopter. Two of the three, later identified as Dawson and Pickett, were clearly still alive, according to villagers. One asked for water, and both spoke to the villagers (mostly in English) who helped move them away from the helicopter.

Also, one person noticed that one of the FMLN women carried a small radio, with which she supposedly communicated with Domínguez, although no one could tell what was said.

After they had moved the three servicemen away from the helicopter and taken away all its cargo, all but one of the guerrillas, Porfirio, left with the villagers, who transported the cargo toward the San Francisco River.³ While at the river, shots were heard coming from the direction of the helicopter; smoke was seen coming from that direction as well. One of the guerrillas told the villagers that it was probably ammunition going off that had been left in the helicopter. Several minutes later, Porfirio caught up with the other guerrillas and villagers, most of whom then went back to their houses.

In his judicial declaration, the eyewitness (mentioned above), who had been hiding and watching everything up until this point, said this about what happened when Porfirio was left alone at the helicopter:

[Porfirio] began to move and handle things of the apparatus, as if he wanted to remove something, but because of the distance he could not precisely tell what he was doing. Then he observed that the apparatus went up in flames, raising a strong column of thick, black smoke...the two persons who were still alive made signs with their hands and shouted at Porfirio, who perhaps got angry and went over toward [Dawson] pointing his rifle at him and at the same time hit Dawson's head with one of his hands...and immediately shot at his face, not being able to say which part he specifically fired at, nor the number of shots that he fired, given the nervousness of the witness... Next Porfirio went over to the other one who was still alive and, thinking that he was going to shoot him, the witness hid and didn't see when Porfirio shot at him, but he heard the detonations that sounded hollow...

³ Some press reports initially indicated that four FMLN members stayed behind.

When he looked up at the helicopter again, he observed that Porfirio had left the area, following the same path that his companions took.

This witness also said that between 15 and 20 minutes transpired between the time he began watching the helicopter and the time the U.S. servicemen were killed.

After finishing helping transport the cargo for the guerrillas, some of the villagers then returned to the helicopter site to bring the two wounded men water, but found them now dead with new bullet wounds to the head.

Shortly after this, a delegation from the village went down to the Third Brigade to notify them of what had happened, while others stayed at the site. The bodies were recovered by helicopter that night around 7 p.m., when they were taken to San Miguel and later to San Salvador.

a. Forensic Evidence

On January 4, 1991, forensic teams from both the U.S. Armed Forces Institute of Pathology and the Instituto de Medicina Legal "Doctor Roberto Masferrer" of El Salvador performed autopsies on the bodies of the three servicemen. Also on January 4th, Tutela Legal requested permission from the U.S. Embassy to observe the autopsy, but received no response until the following day after the examination had been concluded. Although this was apparently due to a failure of communication, U.S. officials later said that permission should have been sought from Salvadoran officials. Tutela Legal had been referred to the U.S. Embassy after trying to obtain access to the military hospital where the autopsy was to be performed.

The preliminary report released by the Armed Forces Medical Examiner's Office on January 5 said that Scott, the pilot, "died of injuries from the crash," while Pickett and Dawson died from fatal wounds to the head and face. Pickett reportedly sustained ten gunshot wounds, including four fatal face wounds and six "graze" injuries. "One 7.62 mm minimally deformed full jacketed round was recovered from the left flank," the report noted. In addition, it indicated that the position of the injury to the left elbow "suggests defensive posturing (intentional self-defense movements)" and that the multiple gunshot wounds suggests "that he tried to evade his captors prior to being killed." Dawson "received serious but not fatal blunt force injuries" from the crash, but died of a single, small caliber gunshot wound to the head. The U.S. team concluded that three different weapons were used: two high-velocity rifles and

one handgun. However, U.S. officials indicate that the final report may be revised to say that only one weapon was used.

The Salvadoran forensic report, while less specific in many ways, reported one finding about Pickett that was not included in the preliminary U.S. report. The Salvadorans reported finding an AK-47 bullet lodged between the 8th and 9th rib (presumably on the left side), as opposed to the slightly different U.S. finding of a bullet in the left flank (outer lower back region). The Salvadoran report also found blood in the left side of the chest cavity; fractures of the 6th through 12th ribs; a lung laceration; laceration of the spleen; and blood in the abdominal cavity, all presumably caused by the bullet. The two autopsy reports, which were written based on the same autopsy, attach different significance to the condition of Pickett prior to receiving his fatal head wounds.

The FMLN, on January 4, asked for an autopsy by an independent forensic team, and U.S. Ambassador William Walker was reported as saying that the U.S. would consider such an examination.⁴ However, no further autopsies were performed.

b. Aftermath

The FMLN initially reported on their clandestine radio on the evening of January 2 that they had shot down a helicopter and that all three passengers had died in the crash. Then, in a January 4 communique, the FMLN changed the story to say that two of the three had survived the crash, were given basic help, then turned over to the local civilian population, but did not survive their wounds.

On January 8th, the FMLN released another communique saying that they had carried out an in-depth investigation of the case and found "that there was sufficient basis to assume that part of the crew, having been wounded and taken prisoner, could have been killed by one or several members of our military unit." Thus, they announced the arrest of two members of the military unit on suspicion of murder of wounded "prisoners of war" and said they would act "with all rigor, in accordance with our standard wartime judicial procedures."⁵

Following its own initial investigation, the FMLN then announced in a

⁴ Lee Hockstader, "Salvadoran Guerrillas Shot Two Americans, Autopsy Shows," *Washington Post*, January 6, 1991.

⁵ "Communique of the FMLN about the Circumstances in which the Death of the Northamerican Crew Occurred," January 8, 1991.

January 18 communique that a subzone commander named Domínguez gave the order and that the chief of a rebel unit named Porfirio carried out the execution. The two were discharged from the FMLN and detained for violating the FMLN's own code of conduct as well as international humanitarian law. The FMLN also stated that they would immediately prepare the conditions for "clear and impartial" judicial process that is consistent with those principles and that "independent observers" would be invited. They also said they would establish a tribunal of both FMLN members and independent personalities to assure its impartiality and would guarantee the accused the right to defense.

On the basis of information gathered by Tutela Legal, Archbishop Rivera y Damas announced in his January 6 homily that there was sufficient evidence to presume that two of the U.S. servicemen were killed by the FMLN. He condemned the assassination as a violation of international humanitarian law.

For their parts, the Salvadoran and U.S. governments demanded that the accused be turned over to the Salvadoran judicial system; they are clearly against any FMLN proceeding taking place on Salvadoran territory. The president of the Supreme Court, Mauricio Gutiérrez Castro, even said that nationals or foreigners that participated in an "Honor Commission" to judge the guerrillas would be subject to criminal proceedings for usurping the judicial powers of the state.⁶ The First Instance Judge in Chinameca, San Miguel, decreed the provisional detention of Domínguez and Porfirio on February 13 on the basis of testimonies and other evidence obtained by the court. It is worth noting that, according to Salvadoran law, accused parties may be tried in absentia.

c. Accused FMLN Members' Testimony

On February 3, 1991, María Julia Hernández, director of Tutela Legal of the San Salvador Archdiocese, and Francisco Estrada, S.J., rector of the Central American University (UCA), traveled to Perquín, Morazán, where Ms. Hernández interviewed several of the members of the FMLN unit implicated in the killing of the two U.S. servicemen.

In comments given to journalists on February 5, and in a judicial declaration rendered on February 10 in San Salvador, Ms. Hernández recounted what the guerrillas had told her. According to her interviews, Porfirio arrived first at the crash site and found Pickett walking around. When he gave the order to surrender, Pickett seemed to crouch down as if to reach for something, so

⁶ Channel 6, El Noticiero, Transcribed by REDES, January 31, 1991.

Porfirio instinctively fired a burst. When the other guerrillas arrived, Domínguez left to gather villagers to help with the wreckage and the survivors. Later, Domínguez radioed to Aparicio that a vehicle was not available to transport the survivors. When the guerrillas and villagers left to transport the cargo to a nearby river, Porfirio was left behind with the order: "If the survivors are suffering, shoot them." According to Aparicio, he had always told his fellow rebels that if he were suffering, he would prefer to be put out of his misery.

d. Unresolved Issues

Currently available information on this case still leaves several important issues unresolved. First, there is a discrepancy as to whether Aparicio or Domínguez was in command of the rebel unit and gave the order to carry out the executions of the U.S. servicemen. Villagers in the area have known Domínguez for several years and identified him as the local commander. However, Aparicio was the one in charge at the helicopter site, while Domínguez had the task of recruiting help from the area residents. The FMLN will have to clarify why they noted the detention of Domínguez (and said he was in a commanding position) in their January 18 communique, but later said that Aparicio was in charge when interviewed by Tutela Legal.

The second important discrepancy lies with the differences in the Salvadoran and U.S. forensic reports, with the former elaborating on the extensive damage caused by Lt. Col. Pickett's lower chest wound. If the FMLN's version is true, the lower chest wound could be explained by Porfirio's shooting of Pickett when he first approached the plane. While a resolution of this point might be important in reflecting on the issue of intent or the degree to which Pickett was suffering, it will not change the fact that his execution is a serious war crime.

A third question involves answering whether higher authorization was given for the executions or whether it was the decision of the local commander. Higher authorization would have required very quick radio communication, since the time which transpired between the arrival of guerrillas at the site and the executions was probably no more than twenty minutes, according to one eyewitness. Furthermore, one of the few witnesses who noticed that the guerrillas were carrying radios thought that it was used only to communicate with Domínguez.

The U.S. Department of Justice is apparently considering bringing an

indictment against Joaquín Villalobos for his possible role in this case.⁷ However, some U.S. officials privately think that it was the decision of the local commander and did not involve senior leadership, crediting the guerrilla leadership with greater political sensitivity in the matter.

e. Position of Americas Watch

On January 8, 1991, Americas Watch sent a letter to the General Command of the FMLN reminding them of their responsibility under international law to investigate the crime and prosecute and punish any perpetrators that might have come from FMLN ranks.⁸ In that letter, Americas Watch requested that it be able to send an observer to whatever proceedings were carried out. That same day, Americas Watch requested from the U.S. government access to any forensic evidence obtained by the U.S. Army team, but was informed in a meeting with Ambassador Walker that such materials could not be made available at this time since they may be used as part of a case that the U.S. government is considering bringing to trial in U.S. courts.⁹

The request to observe the trial created concern among U.S. and Salvadoran government officials that Americas Watch's observation of any FMLN proceedings would lend them legitimacy. On January 28, Americas Watch sent letters to Assistant Secretary of State Bernard Aronson and Salvadoran President Alfredo Cristiani clarifying our position, stating the reasons for observation: one, in order to insure that a very grave breach of the laws of war does not go unpunished, and two, to make certain that those who are charged with the crime receive adequate guarantees of fair trial. Statements of opinion about the legitimacy of the proceedings will come only after careful review and observation of the entire process, which will include making sure that all leads

⁷ Doyle McManus and Ronald J. Ostrow, "U.S. Targets Salvadoran Rebel Chief for Prosecution," *Los Angeles Times*, January 15, 1991.

⁸ In its January certification to Congress on El Salvador, the State Department contended that "U.S. personnel in El Salvador are noncombatants. The helicopter shot down had no role in supporting the Salvadoran Armed Forces and no role in combat in El Salvador." (p.7) The helicopter in which the U.S. personnel were traveling was a legitimate military target; nevertheless, the killing of persons placed hors.de.combat is prohibited by the Geneva Conventions.

⁹ The case might be brought under Section 1202 of the Omnibus Security and Antiterrorism Act of 1986, which established jurisdiction for U.S. courts to prosecute defenders in cases where the Attorney General certifies that, in his judgement, such an offense against a U.S. national was intended to coerce, intimidate or retaliate against a government or civilian population.

point to the possible involvement of others are properly and thoroughly explored.

In the past, Americas Watch has been very critical of the trial procedures the FMLN claims to have in place to impart justice, but insists that it nevertheless live up to the requirements of international law. Similarly, we have criticized the inability of the Salvadoran judiciary to deal with cases of human rights violations, but we insist that they investigate, prosecute and punish crimes such as the murder of the Jesuits.

Under international humanitarian law, the FMLN is responsible for ensuring that all its members abide by the laws of armed conflict and is under an obligation to prosecute and punish whomever in its ranks may be responsible for grave breaches. The Salvadoran judiciary also has jurisdiction over this case and may carry out its own proceedings as well.¹⁰ We do not believe, however, that the FMLN is obliged to produce the suspects for trial by Salvadoran courts.

The position of Americas Watch on the FMLN's obligations is consistent with what we held with regard to violations of the laws of war attributed to the Nicaraguan contras. On many occasions, we documented their abuses and urged their leadership to discipline their forces, but never asked them to make the culprits available for trial by the courts of Nicaragua.¹¹ We met repeatedly with the human rights commissions and prosecutorial bodies set up by the Nicaraguan Resistance to comply with Congressional and State Department guidelines.¹² More recently we had occasion to comment on claims by the Resistance that it had prosecuted abuses by their troops.¹³

The position of the U.S. State Department on the law applicable to the Nicaraguan Resistance is substantially similar to that of Americas Watch. The Country Reports on Human Rights Practices for 1987 refers to UNO trials and a

¹⁰ However, we note that Article 144 of the Salvadoran Constitution states that "in cases where there is a conflict between the law and a treaty, the treaty will prevail."

¹¹ See, for example, the description of our contacts with the UNO leadership about the Cuapa massacre, Americas Watch, *Human Rights in Nicaragua 1985-1986*, March 1986, pp. 119-121.

¹² Americas Watch, *Human Rights in Nicaragua 1986*, February 1987, pp. 49-54.

¹³ Americas Watch, *Human Rights in Nicaragua, August 1987 to August 1988*, pp. 111-121.

UNO prosecutor,¹⁴ to sentences imposed on contra combatants,¹⁵ and to a request that the U.S.-funded investigatory organization (ANPDH) be allowed to obtain evidence in Nicaraguan territory.¹⁶ The 1988 report again describes the UNO military prosecutor's office¹⁷ and refers to persons held by the Resistance as "prisoners of war"¹⁸; the 1989 report mentions a case tried by the Resistance's "tribunal created to judge cases involving RN members in serious crimes."¹⁹ These passages mean that the State Department believed that the Nicaraguan Resistance had a duty to prosecute and punish violations committed by its members. We believe that the same principles apply to the FMLN Deficiencies in FMLN disciplinary procedure do not relieve the rebels of their obligations under international humanitarian law to punish abuses.

2. El Zapote Massacre

Around 11 p.m., January 21, 1991, several armed men dressed in black with black and red kerchiefs covering their faces entered six peasant households in Cantón El Zapote Abajo near San Salvador, killing 15 men, women and children, all members of the same family. Three members of the Aragón family died of gunshot wounds, while the rest were killed with knives. The only eyewitnesses to the killings were several small children, who hid under their beds, and the elderly grandmother of the family, Eleuteria Ortiz de Aragón, none of whom recognized the assailants.

The victims were: Venancio Aragón, 47; José Omar Aragón, 21; Jerónimo Santos Morales, 35; Ismael Aragón López, 59; Eugenio Dimas Beltrán, 22; Lázaro Hernández Martínez, 25; Herbert Aragón, 17; Lilian Aragón Rosa, 26; Rosa Santos Hernández, 18; Araceli Aragón, 35; Rosa Delmy Aragón Santos, 14; Jesús Aragón

¹⁴ Department of State, *Country Report on Human Rights Practices for 1987*, p. 549.

¹⁵ *Ibid.*, p. 551.

¹⁶ *Ibid.* p. 555.

¹⁷ Department of State, *Country Report on Human Rights Practices for 1988*, p. 645.

¹⁸ *ibid.*, p. 646.

¹⁹ U.S. State Department, *Country Report on Human Rights Practices, 1989*, p.669.

Ortiz, 60; Emelina Aragón, 40; Eugenia Aragón, 15; and Ana Maritza Aragón, 18.

This massacre, the largest in several years, shocked El Salvador, especially given that an entire family was killed. The only other two massacres of this scale in recent years occurred in San Sebastián in September 1988, when 10 campesinos were murdered by army soldiers, and at the Catholic University (UCA) in November 1989, when six Jesuits, their housekeeper and her daughter were killed by members of the Atlacatl Battalion.

The Salvadoran government sought quickly to investigate the killings and assigned two prosecutors and the Special Investigative Unit (SIU) to the case. However, early suspicions of Salvadoran military involvement led many observers to be skeptical about whether the case would ever be resolved.

The case took on further political overtones when the Modesto Ramírez Front of the FMLN issued a communique on January 30, 1991 (later confirmed by the FMLN in Mexico) saying that those massacred were active collaborators of the FMLN and that one of those murdered was a combatant. The FMLN held Colonel Francisco Elena Fuentes of the First Infantry Brigade responsible.

By early February, Tutela Legal came out with a report that also pointed toward the First Infantry Brigade and said that its soldiers should be investigated, but the government rejected that conclusion as unsupported by the evidence and saw behind Tutela's charges an attempt to defame the military. According to the Tutela report, the El Zapote case "presents certain characteristics that are different than other human rights violations that have occurred" in El Salvador. Since the massacre, the public debate over responsibility for the act has been highly charged and contentious.

On February 7, 1991, the government announced the results of the investigation carried out by the SIU, saying that the motive for the crime was a family dispute and that the perpetrators were common criminals who had some links to the "subversion." In a press conference, National Information Secretary Mauricio Sandoval named three prime suspects: two brothers, Rafael Antonio and Armando de Paz Vanegas (both ex-military), and Jesús Vanegas Alvarenga (who had reportedly deserted from the civil defense 24 hours earlier).

This conclusion was given some credibility when, on February 9, the non-governmental Human Rights Commission (CDHES) gave a press conference in which they confirmed the involvement of the three named by the government and provided three more names, which the government soon thereafter named as well. However, the CDHES argued that the incident was not just a common crime, that members of the Paz Vanegas family had been picked up by the Atlacatl Battalion in recent months, and that as many as 20 persons may have

been involved in the killing.²⁰

Finally, on February 17, the government turned over to the courts María Cristina and Natividad Vásquez, two sisters who were allegedly the intellectual, if not material, authors of the crime. Several days later, on February 21, Rafael Antonio de Paz Vanegas was captured by the SIU in downtown San Salvador; Armando de Paz Vanegas and Jesús Vanegas were captured on February 22. All three confessed to having participated in the crime. The government says that a sixth person implicated, Oscar Ortiz, is still at large.

Although a question remains as to whether those currently implicated and detained were solely responsible for the Zapote killings and not aided by others, a preliminary investigation by Americas Watch finds it plausible that the massacre may have been the result of a family feud carried out without greater political motives. Major questions remain, however, as to exactly how a family feud resulted in a well-executed operation in which so many were killed. Moreover, the investigation by the government, which never seriously considered the possibility of military involvement, and on occasion actually sought to dismiss it, needs to continue in order to clarify the possibility of further perpetrators.

What follows is an assessment of the evidence and the investigation so far.

a. The Evidence

Initial conclusions of Tutela Legal and the press were based on the testimonies of the young children and the elderly grandmother who survived the massacre, as well as of other residents in the area.

Both independent and government investigations took testimonies of persons saying that as many as six people, dressed in military uniform and armed, were involved in the killings. However, some of the initial statements of the children also seemed to indicate that there were far more people involved. Citing press reports, Juan Humberto, 13, the oldest of the children who survived the massacre was quoted in the Tutela Legal report as saying that several men came to his house, but that he heard "quite a lot of" (bastante) voices from all sides. Another child reportedly said that he saw three men, but that he also noticed men all around the houses of the Aragón family.²¹ In addition, a

²⁰ The CDHES qualified these findings as preliminary, but as of early March, they had not issued a more detailed report on the case.

²¹ Tutela Legal, "Investigation of the Murder of 15 Peasants in Cantón El Zapote Abajo, Ayutuxtepeque, San Salvador, Between Jan. 21-

sergeant from the Beloso Battalion said in a declaration in the court records that Juan Humberto told him that ten individuals had been involved.²² Part of the confusion over numbers derives from the fact that it was very dark and only the assailants had flashlights.

The assumption that more than a few men were involved in the killings was also bolstered by the fact that no one fled the site once they heard that people were being killed. If only a few people were involved, one might assume that several people would have gotten away; a larger group of persons could have either killed them all simultaneously or at least guarded the perimeter so that no one could leave or enter.

Even the First Brigade made this assumption initially. In a January 23, 1991 internal memorandum found in the court records and sent to Colonel Elena Fuentes, two investigators state that:

The witnesses declare having observed only five individuals that were those who took part in said murders, but in light of the fact that the dead were located in different houses and that they were murdered in different forms simultaneously, since none of the victims were able to escape, the majority remaining inside their houses, it can be estimated that the number of murderers is greater than that given by the witnesses.²³

This theory assumes that the natural reaction of the victims was to try to leave their houses once they heard the killing begin. But an equally plausible reaction of the families could have been to simply wait inside their houses in hopes that the killers would not come for them.

According to the witnesses, the massacre occurred over a period of two hours. Yet the murders perpetrated in each of the individual houses appeared to take no more than a few minutes. Thus, the question arises, if the families were killed simultaneously by a large number of persons, why did the

22, 1991."

²² Extrajudicial declaration of Sergeant Linares of the Ramón Beloso Battalion, January 26, 1991.

²³ Internal First Brigade Memorandum, January 23, 1991, from Lt. Col. José Bernal and Major José Antonio Cruz to the Commander of the First Infantry Brigade.

entire episode last two hours? Some observers conjecture that a certain amount of time might have been taken to interrogate two of the victims, 17-year-old Herbert and 57-year-old Ismael, both of whom were taken out of their respective houses before they were killed (Ismael's hands were tied behind his back.) While this may have been the case, none of those interviewed so far have indicated that this may have taken place, nor does Tutela make reference to it in its initial report.

Although the confessions of those detained do not indicate a larger number of people were involved, many observers maintain, based on their early interviews with some of the survivors, that this kind of operation would have had to have involved more people for all of the reasons noted above.

Other evidence highlighted by Tutela Legal in its report include the following:

- * The place where the massacre occurred is under the military control of the First Brigade;**

- * Approximately one kilometer to the north of Zapote, there is a CEL (energy) substation, which is permanently guarded by the soldiers of the First Brigade;**

- * The men who carried out the crime wore military uniforms with insignias;**

- * The assailants came from the north, that is to say, from the direction of the CEL substation, and that they fled to the north after committing the crime.**

- * At 7 a.m. the next morning, members of the 1st Brigade came to the house to see what had happened, before anyone could have advised them of the incident.**

- * Soldiers of the First Brigade circulate in the area;**

- * The area is not a zone of frequent guerrilla activity, at least not since the 1989 offensive.**

Among these circumstances, the most telling is that soldiers arrived on the scene before they could have possibly known anything had happened.

In interviews several weeks after the fact, Americas Watch received conflicting testimony from area residents and witnesses as to the exact time that soldiers from the CEL substation arrived on the morning following the massacre. Some said that they arrived at the site by 8:30 a.m., while others put the time closer to 10:00 a.m. However, none of those interviewed so far indicated that the soldiers arrived without warning; all recalled that one or two

people had gone to advise them of the incident and that only then did the troops arrive.

Americas Watch was unable to confirm or deny the direction taken by the assailants as they came and went from the area. Probably out of fear, many neighbors of the victims now have far less to say about the case to inquisitive visitors. However, given the rural, mountainous, and isolated nature of the location, it appears quite possible that the assailants could have fled without anyone taking notice.

As for the uniforms and the insignias, it is undisputed, given the confessions of the persons detained by the government, that military uniforms of some kind were used. How they were obtained may still be open to question.

b. The Motive

One reason for being skeptical that a family feud could have resulted in the death of an entire family is simple: there are no cases in recent Salvadoran history in which such a thing has happened. However, massacres by government soldiers have occurred with great frequency in the early 1980s and less so in recent years, because of suspicion of involvement with the leftist rebels.

In its report, Tutela Legal discusses four possible motives for the massacre: common crime (robbery), family feud, or a motive linked to the armed conflict in which the murders are carried out either by the FMLN or the military. Tutela discards the robbery motive based on the fact that the family was extremely poor and that it was unlikely they would have been killed for the few possessions they had. The motive of robbery was considered because some possessions were, in fact, stolen and witnesses heard the assailants ask for money.

Tutela also discarded the motive of a family feud, although it recognized that there did exist great animosity between the Vásquez and the Aragón families. The Vásquez family is also poor; hence, it would seem difficult for them to find the resources to hire a group of assassins. Furthermore, it hardly seemed possible that a family dispute could result in such a massacre. In other comments to the press, Tutela and the church did not discount the possibility that the family motive might have played some role in the massacre, but that it was not the overriding issue.

The two possible motives left, in Tutela's view, relate to the two sides in the armed conflict, the FMLN and the military. In pointing to the First Brigade, Tutela cited the circumstances of the killing and the evidence noted above.

Although it did not comment on the FMLN's statement that the family had been collaborators (probably for the safety of the remaining family members), that was clearly an additional factor in pointing to the First Brigade.

The assessment of Americas Watch that the motive was more potentially related to a family dispute than to political motives is based on interviews with two of the key witnesses, residents in the area, and family members, as well as a review of the existing declarations and documents in the court record. Questions remain, however, as to how members of a poor family were able to find the resources to hire assassins, and as to whether more people than those currently implicated were involved in the killings.

Various sources lead Americas Watch to believe that it is credible that the Aragón family had collaborated with the FMLN, but this is not necessarily sufficient evidence for a political motive to the killings. The Aragón family also had relatives in the Armed Forces; but because of the pervasiveness of forced recruitment, that could be said of most families in El Salvador. However, it also appears that both the Vásquez family and the Paz Vanegas brothers had family ties to both the FMLN and the Armed Forces. A brother of the Paz Vanegas' is currently detained in Mariona Prison, accused of being a member of the FMLN. Documents in the court record provide extensive details about his involvement with the rebels. It also appears to be true that both Rafael Antonio and Armando de Paz Vanegas were discharged from the Artillery Brigade and First Brigade, respectively, largely on suspicion of having collaborated with their brother.²⁴ However, there appears to be no credible evidence that the two brothers are themselves collaborating with the FMLN.

Furthermore, as recently as September 1990, the Paz Vanegas brothers had given testimony to the non-governmental Human Rights Commission about being captured, beaten and interrogated by the Atlacatl Battalion, accused of belonging to the FMLN.²⁵ It is possible that they could have since then decided or have been forced to collaborate with the military, but that seems unlikely. Shortly after the massacre, the Belloso Battalion came to the Paz Vanegas' house following a military operation; the mother of two of the accused reportedly issued a complaint about harassment.

²⁴ Often when soldiers are discharged accused of being "subversive infiltrators," their picture appears in one of the newspapers with that accusation. In the court record, there is a clip of an article (probably from *El Diario de Hoy*) noting the discharge of Armando de Paz for such reasons.

²⁵ Cited in the CDHES 1990 Annual Report, p. 14.

What could be the explanation, then, for the massacre? The background to the family dispute was obtained through press accounts and through interviews by Americas Watch with family members; many of the details also come from declarations given to the court, some of which have been independently verified.²⁶

The family dispute appears to date back several years, when Aragón family members charge that the head of the Vásquez family, Francisca, had her son-in-law, who was a member of the Aragón family, "disappeared" because he was apparently mistreating her daughter.²⁷ Since then, there have been a number of incidents between members of the two families. Several witnesses also testified to hearing comments from members of the Vásquez family in the days prior to the massacre that they were going to kill the entire family, one by one. While this was the primary explanation given by family members and acquaintances shortly after the massacre, it has gained further credibility based the numerous accounts given by family members.

According to judicial declarations in the court record from both the accused as well as family members of the Paz Vanegas brothers, the two Vásquez sisters came with a man named Oscar Ortiz to the Paz Vanegas' house on the night of January 20 to enlist their help in the killings, apparently offering to pay them between 5000 and 20,000 colones.²⁸

In the February 7, 1991 press conference given by Salvadoran government Information Secretary Mauricio Sandoval, the government also claims to have some evidence linking the Paz Vanegas brothers to other crimes in recent months, including robbery and rape. If this and other accounts prove to be accurate, it could give more credence to the "family feud" explanation for the massacre of the Aragón family.²⁹

²⁶ Americas Watch has asked permission of the Salvadoran government to interview the five persons detained in the case. That request is pending.

²⁷ Some family members accuse the guerrillas of being responsible for this, while others have accused the military.

²⁸ At least one of the Vásquez' sisters had been romantically involved with one of the Paz Vanegas, having met while working on the same farm. Thus, the declarations note that the Paz Vanegas brothers were upset when Herbert Aragón continued to accuse the Vásquez family of disappearing Cruz Aragón several years ago.

²⁹ On February 27, 1991, JesUs Vanegas and the Paz Vanegas brothers were also charged with another homicide, committed on January 17 against Felipe Guardado Alvarenga Valenzuela, a brother-in-law of JesUs Vanegas. *La Prensa Grafica*, February 28, 1991.

c. The Investigation

Despite indications that the El Zapote massacre might not have been a politically motivated crime, human rights groups and others in El Salvador continue to be suspicious of this explanation. Because of the historic failure of the government to bring human rights violators to justice, and because of several major problems with the government's investigation, further investigation is needed.

Perhaps the most prominent reason for skepticism comes from the work of the Special Investigative Unit itself.³⁰ The SIU is theoretically under the control of civilians, led by the Minister of Justice. However, its detectives and investigators come from the military and police, which seems to have circumscribed the depth with which they have been able to probe military involvement in human rights cases.³¹

While the court record contains declarations taken by members of the SIU with members of the First Brigade who guard the CEL substation near El Zapote, as well as members of the Beloso Battalion who were involved in an armed clash the day after the massacre, it is not clear from the record that these soldiers were ever asked about events the night of the massacre.³² Especially in the case of the Beloso Battalion, which Information Minister Sandoval said had responsibility for the area rather than the First Brigade, it does not appear that troops who might have been on patrol that night were interviewed. Thus, Sandoval's February 7, 1991 statement that "declarations have been taken from units of the First Brigade, declarations have been taken from all of the Civil Defense in the area and, yes, the investigation has been done at all levels" is not true.

Moreover, as noted by the church, two of the surviving children, Juan

³⁰ **The SIU limited its investigation in the Jesuit case to the existing defendants despite evidence of the involvement of higher military authorities.**

³¹ **For background on the SIU, see Lawyers Committee for Human Rights, Underwriting Injustice: AID and El Salvador's Judicial Reform Program, April 1989.**

³² **The First Brigade soldiers' declarations begins with the morning of the 22nd, following the massacre; the Beloso Battalion was questioned about their investigation into the Paz Vanegas' house shortly after the massacre. All declarations are summaries of interviews, rather than transcripts, so they are necessarily filtered and do not probably contain all that was declared.**

Humberto and Héctor Aragón, remained in the custody of the SIU for several weeks following the massacre. Although the SIU apparently claims that the children were there for protection and at the request of family members, family members on March 4 petitioned the court to have the children returned to them. Although the state certainly has a duty to look after the welfare of orphans, it hardly seems appropriate that the children should have remained in the custody of the SIU rather than in some other institution. In mid-February, the judge in a children's court sent the two children to an orphanage in the western province of Ahuachapán. If the SIU was concerned about the safety of the two children due to the fact that the assailants were still at large, then why did it release the youngsters to the custody of the children's court and local orphanages in mid-February before the prime suspects had even been captured? That the children might still be in danger was noted by Eleuteria Aragón herself, who said that Francisca Vásquez had recently threatened her and her family.³³

In addition, the military has sought, as in other cases, to discard or minimize the possibility that its own troops were involved in a crime. A First Brigade memo written on January 23 shortly after the massacre, for example, states that the murder "could have been committed by FMLN terrorists or by common delinquents with the purpose of involving or belittling the armed forces in order to obtain some political advantage. It is dismissed that our units are involved in said killings." The memo goes on to recommend that:

the release of information in this case be centralized in order to avoid possible contradictions that can be exploited by organizations close to the interests of the communists in El Salvador or by politicians. This is so as to avoid the introduction of the name of the Armed Forces in the present case. If it is proven that the murderers are from the FMLN, [it is recommended] that this fact be exploited at a national and international level.

Another problem with the investigation is that the military has been slow to cooperate with the judicial authorities, who themselves have appeared timid in exploring the possibility of military involvement. Prosecuting attorney Edwin Bonilla says that on January 24, the Justice of the Peace in charge of the

³³ TCS Television, March 5, 1991, transcribed by INSISTEM.

case, José Miguel Valdez, asked the Defense Minister which troops were operating in the area of El Zapote and also requested the logbooks of such brigades. "Extrajudicially, we have had the information that it was the First Brigade (operating in the area), but we don't have it from a direct source such as the Defense Minister," said Bonilla on February 5.³⁴ Several days later, the Defense Ministry sent the judge a map of the area with locations of troops. Ponce also sent a letter to Judge Valdez on February 6 saying that he had instructed the commander of the First Brigade to open his books to inspection by the judge, but the judge had still not followed through before the case moved to the First Instance Court in Mejicanos two weeks later.

Another criticism of the investigation arises from the fact that, according to Salvadoran law, cases are only to stay with the Justice of the Peace for 12 days before passing to the First Instance Court. In this case, the judge held the case for approximately one month.³⁵ The fact of the delay -- which was unusually long -- only added to suspicions about the prosecution of this case.

A final example of how the judicial authorities may have intentionally avoided following up on leads that would require an investigation into the military can be seen in the testimony of Eleuteria Ortiz de Aragón, the 88-year-old matriarch of the Aragón family who survived the massacre. On February 8, Eleuteria told Tutela Legal that, when she went to give testimony before the Justice of the Peace of Ayutuxtepeque, she said the men who killed her family were soldiers dressed in camouflage green. When she said this, according to the Tutela declaration, the judge tried to persuade her that she hadn't seen who had killed her family. Eleuteria insisted, saying that she knew they were soldiers because she had seen men dressed the same way in the house of Francisca Vásquez only the day before.

Also in the Tutela declaration on February 8, Eleuteria said that, four days after declaring before the justice of the peace, he had come to her house and showed her two pictures, saying that they were the guerrillas who had killed her family. She replied that she had already told him they were soldiers, because she had seen them. Later, on February 22, Eleuteria corrected her

³⁴ *Al Día*, Channel 12 Television, February 5, 1991, transcribed by INSISTEM.

³⁵ The reason given by the government officials for the delay is that the Mejicanos judge is old and was less likely to do the work necessary to prepare the case.

story, saying that it was not the judge who had come to see her, but rather a lieutenant.³⁶ Whether this soldier had come from the SIU or the police, such an incident seemed clearly intended to get her to change her story.

The day after Eleuteria's February 8 Tutela declaration, the Justice of the Peace denied that he had tried to tell her what to say. However, a review of the judicial declaration of Eleuteria Aragón, given on January 24 to the Justice of the Peace, has her saying only that "the subjects carried rifles, not being able to distinguish the clothes they wore nor the color." The very next day, January 25, in a report written by agents from the Zacamil Battalion of the National Police, Eleuteria is noted as saying that the men wore "black uniforms with kerchiefs covering their faces, without being able to say the color [of the kerchiefs]." That more specific information was given one day after the judicial declaration raises a concern that, in fact, the judge had not wanted to record what she had seen.

d. Conclusion

Although there are indications that the El Zapote massacre may have been the result of a family feud, judicial authorities have either been unable or unwilling to investigate leads that pointed toward involvement by the Armed Forces, leaving several questions unanswered. Although the SIU has been able to interview various military units in relation to the case, it is not clear that they have fully pursued every lead. The failure to pursue possible involvement of the Armed Forces only creates greater suspicions that something is being hidden. Indeed, the behavior of the judicial authorities in investigating this case gives reason to doubt that the political will exists to investigate other cases in which the Salvadoran military might be implicated in the future.

³⁶ During a visit to the Justice of the Peace in Ayutuxtepeque on February 22, the judge asked her he had ever been to her house, to which she replied, "No, it was a lieutenant and a woman who came" and not the judge. Coincidentally, a film crew from Channel 6's "El Noticiero" news program was there to speak with the judge and the exchange was broadcast that night on the news. El Noticiero, Channel 6 Television, February 22, 1991.