

IV. 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.⁶² 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.⁶³

A. Pending Cases

1. The Murders at the UCA⁶⁴

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 16, 1990, presiding Judge Ricardo A. Zamora of the Fourth Penal Court in San Salvador filed additional charges against Salvadoran soldiers

⁶² Christopher Marquis, "Angry U.S. Cuts Salvador Legal Aid After Court's Murder Probes Wither," *Miami Herald*, August 16, 1990.

⁶³ See Americas Watch, "Violation of Fair Trial Guarantees by the FMLN's Ad Hoc Courts," May 1990.

⁶⁴ For the U.S. role, see section on U.S. policy

involved in the murders, all but one of whom had been detained since mid-January 1990.⁶⁵ All nine defendants were charged with murder; eight, including Colonel Guillermo Alfredo Benavides Morales, 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 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."⁶⁶

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

⁶⁵ Private Jorge Alberto Sierra Ascencio deserted and is still at large.

⁶⁶ Speaker's Task Force on El Salvador, "Interim Report," April 30, 1990, pp. 8-9.

that he had been ordered to participate by the head of Salvadoran military intelligence.⁶⁷ 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.⁶⁸

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.⁶⁹

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.⁷⁰ 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."⁷¹ 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

⁶⁷ 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.

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ Lawyers Committee for Human Rights, "The Jesuit Case A Year Later: An Interim Report," November 15, 1990, p. 32.

⁷¹ Memorandum to Hon. Joe Moakley, January 7, 1991, *op. cit.*, p. 4.

hierarchy -- not the investigating authorities -- controlled who was questioned, who was detained, and who was charged."⁷²

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."⁷³ 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 trial.⁷⁴**

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

⁷² *Ibid.*, p. 7.

⁷³ "Prosecutors Cite 'Irregularities,'" San Salvador Radio Cadena Sonora, in *Foreign Broadcast Information Service*, January 10, 1991, p. 20.

⁷⁴ Interview, Edward Sidney Blanco Reyes and Alvaro Henry Campos Solórzano, January 30, 1991.

that it was false and that the U.S. warning "had another objective: to drive us from the case."⁷⁵

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.⁷⁶ 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."⁷⁷ 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.

2. 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

⁷⁵ *Ibid.*, and Christopher Marquis, "Ex-prosecutors Say U.S. Tried to Drive Them from Jesuit Case," *Miami Herald*, January 11, 1991.

⁷⁶ 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."

⁷⁷ 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.⁷⁸

In February 1990, a judge dismissed charges for lack of evidence against all but two defendants, Major Beltrán and Sub-sergeant Rafael González Villalobos.⁷⁹ 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".⁸⁰

3. 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."⁸¹ 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

⁷⁸ 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.

⁷⁹ In court records he is identified as Rosales Villalobos.

⁸⁰ Department of State, Country Reports on Human Rights Practices for 1990 (Washington, D.C.: U.S. Government Printing Office, February 1991) p. 615.

⁸¹ *Ibid.*

Sibrián is in custody.

4. Héctor Oqueli Colindres

Héctor Oqueli 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 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.⁸²

5. 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

⁸² 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.

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.

6. Begoña García de Arandigoyen

Begoña García, 24, a doctor providing medical care to the FMLN, was killed on September 10, 1990 near La Montañita, 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 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."⁸³

⁸³ 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.

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."⁸⁴ 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."⁸⁵

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.

7. 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."⁸⁶

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

⁸⁴ Report of the Economic and Social Council, "Situation of Human Rights in El Salvador, Note by the Secretary General," October 22, 1990, p. 22.

⁸⁵ Department of State, *Country Reports on Human Rights Practices for 1990*, (Washington D.C.: U.S. Government Printing Office, February 1991), p. 609.

⁸⁶ Douglas Mine, "Jesuit Investigation: Exception that Confirms Rule of Military Impunity," Associated Press, February 16, 1990.

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.

8. 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.⁸⁷

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

⁸⁷ *El Mundo*, June 7, 1990 and June 19, 1990; *Diario Latino*, June 13, 1990.

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.⁸⁸ 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.⁸⁹ 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 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.⁹⁰ 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

⁸⁸ 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.

⁸⁹ 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.

⁹⁰ Some press reports initially indicated that four FMLN members stayed behind.

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... 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.⁹¹ However, no further autopsies were performed.

⁹¹ Lee Hockstader, "Salvadoran Guerrillas Shot Two Americans, Autopsy Shows," *Washington Post*, January 6, 1991.

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."⁹²

Following its own initial investigation, the FMLN then announced in a 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.⁹³

⁹² "Communique of the FMLN about the Circumstances in which the Death of the Northamerican Crew Occurred," January 8, 1991.

⁹³ Channel 6, El Noticiero, Transcribed by REDES, January 31, 1991.

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 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.⁹⁴ 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.⁹⁵ 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

⁹⁴ Doyle McManus and Ronald J. Ostrow, "U.S. Targets Salvadoran Rebel Chief for Prosecution," *Los Angeles Times*, January 15, 1991.

⁹⁵ 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 combats* prohibited by the Geneva Conventions.

since they may be used as part of a case that the U.S. government is considering bringing to trial in U.S. courts.⁹⁶

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 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.⁹⁷ 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

⁹⁶ 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.

⁹⁷ 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."

culprits available for trial by the courts of Nicaragua.⁹⁸ 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.⁹⁹ More recently we had occasion to comment on claims by the Resistance that it had prosecuted abuses by their troops.¹⁰⁰

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 UNO prosecutor,¹⁰¹ to sentences imposed on contra combatants,¹⁰² and to a request that the U.S.-funded investigatory organization (ANPDH) be allowed to obtain evidence in Nicaraguan territory.¹⁰³ The 1988 report again describes the UNO military prosecutor's office¹⁰⁴ and refers to persons held by the Resistance as "prisoners of war"¹⁰⁵; the 1989 report mentions a case tried by the Resistance's "tribunal created to judge cases involving RN members in serious crimes."¹⁰⁶ 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.

⁹⁸ 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.

⁹⁹ Americas Watch, *Human Rights in Nicaragua 1986*, February 1987, pp. 49-54.

¹⁰⁰ Americas Watch, *Human Rights in Nicaragua, August 1987 to August 1988*, pp. 111-121.

¹⁰¹ Department of State, *Country Report on Human Rights Practices for 1987*, p. 549.

¹⁰² *Ibid.*, p. 551.

¹⁰³ *Ibid.*, p. 555.

¹⁰⁴ Department of State, *Country Report on Human Rights Practices for 1988*, p. 645.

¹⁰⁵ *Ibid.*, p. 646.

¹⁰⁶ U.S. State Department, *Country Report on Human Rights Practices, 1989*, p.669.

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 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.¹⁰⁷

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

¹⁰⁷ The CDHES qualified these findings as preliminary, but as of early March, they had not issued a more detailed report on the case.

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.¹⁰⁸ In addition, a sergeant from the Belloso Battalion said in a declaration in the court records that Juan Humberto told him that ten individuals had been involved.¹⁰⁹ 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

¹⁰⁸ Tutela Legal, "Investigation of the Murder of 15 Peasants in Cantón El Zapote Abajo, Ayutuxtepeque, San Salvador, Between Jan. 21-22, 1991."

¹⁰⁹ Extrajudicial declaration of Sergeant Linares of the Ramón Belloso Battalion, January 26, 1991.

that the number of murderers is greater than that given by the witnesses.¹¹⁰

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 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**

¹¹⁰ 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.

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.¹¹¹ 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

¹¹¹ 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.

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.¹¹² 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 Bellosos Battalion came to the Paz Vanegas' house following a military operation; the mother of two of the accused reportedly issued a complaint about harassment.

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.¹¹³

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.¹¹⁴ 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 on 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.¹¹⁵ In the February 7, 1991 press

¹¹² Cited in the CDHES 1990 Annual Report, p. 14.

¹¹³ Americas Watch has asked permission of the Salvadoran government to interview the five persons detained in the case. That request is pending.

¹¹⁴ Some family members accuse the guerrillas of being responsible for this, while others have accused the military.

¹¹⁵ 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.

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.¹¹⁶

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.¹¹⁷ 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.¹¹⁸

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.¹¹⁹ Especially in the case of the

¹¹⁶ 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.

¹¹⁷ The SIU limited its investigation in the Jesuit case to the existing defendants despite evidence of the involvement of higher military authorities.

¹¹⁸ For background on the SIU, see Lawyers Committee for Human Rights, *Underwriting Injustice: AID and El Salvador's Judicial Reform Program*, April 1989.

¹¹⁹ 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.

Belloso 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 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.¹²⁰

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.

¹²⁰ TCS Television, March 5, 1991, transcribed by INSISTEM.

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 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 5.¹²¹ 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.¹²² 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.

¹²¹ *Al Día*, Channel 12 Television, February 5, 1991, transcribed by INSISTEM.

¹²² 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.

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 story, saying that it was not the judge who had come to see her, but rather a lieutenant.¹²³ 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.

¹²³ 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.