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# EL SALVADOR

## IMPUNITY PREVAILS IN HUMAN RIGHTS CASES

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### I. INTRODUCTION

*Despite a decade of promises by government officials to bring to justice those responsible for gross violations of human rights in El Salvador, the impunity of military officers and death squads members remains intact. Although thousands of cases of political killings, torture, and disappearances of civilians at the hands of government forces have been documented, to date, no officer has been convicted of a politically motivated human rights abuse in El Salvador.<sup>1</sup> Six officers have been charged in connection with two recent*

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<sup>1</sup> In a few cases, low-ranking members of the military or security forces have been convicted and punished for human rights abuses. In May 1984, five National Guardsmen were convicted and sentenced to thirty-year jail terms for the December 1980 slaying of four American churchwomen, they remain imprisoned; in February 1986, two other Guardsmen were sentenced to the thirty-year maximum term for the murders of two U.S. labor advisers and a Salvadoran colleague, although they have since been released as a result of a 1987 amnesty. In addition, a sergeant of the Third Brigade and his brother-in-law, a former soldier, were convicted for the November 1984 murder of Lutheran Reverend David Ernesto Fernández on June 17, 1987; three municipal police from Quetzaltepeque, La Libertad, were convicted in May 1987 of two separate murders committed in January 1983 (see Americas Watch, The Civilian Toll 1986-1987: Ninth Supplement to the Report on Human Rights in El Salvador, p. 236); and on June 13, 1990 a soldier was sentenced to 16 years in prison for the October 13, 1982 murder of U.S. citizen Michael David Kline (ELMundo, June 13 1990; and ELDiario de Hoy; June 14, 1990).

*massacres (see below, Massacre at San Francisco and Slayings of Jesuits, Their Cook, and Her Daughter), but have yet to be tried. The following is a status report on nine human rights cases in which prosecutions are still pending. Despite their particular visibility and significance both internationally and within El Salvador, each case is a story of the denial of justice. The way in which each case has unraveled -- investigations never completed or never initiated, trials that never occur, the persecution of witnesses or judicial officials -- sheds light on the impunity of the armed forces and death squads which allows such gross abuses to continue.*

## **II. ARCHBISHOP OSCAR ARNULFO ROMERO**

On March 24, 1980, Archbishop Oscar Arnulfo Romero was killed by a single bullet to the chest while performing mass at a chapel at the Divine Providence cancer hospital. His murder is perhaps the most dramatic example of the impunity with which the military and death squads in El Salvador carry out their crimes. Although the assassination deprived the Salvadoran people of a venerated leader, and despite repeated government promises that the killers would be discovered and punished, no arrests were ever made and no investigation completed. Even more importantly, evidence of official involvement in the murder and coverup has yet to be probed seriously. Ten years after the assassination, there is little prospect that the killers will ever be prosecuted or punished.

The judge originally assigned the case, Atilio Ramírez Amaya, was precluded from carrying out a serious investigation by death threats and an assassination attempt which prompted him to leave the country shortly after the Archbishop's slaying.<sup>2</sup>

Within months of the killing, evidence based on insider military accounts and documents began accumulating linking military officers, right wing civilians, and former army Major Roberto D'Aubuisson to the crime. Yet little action was taken to follow up these leads. Although then-President Duarte promised in August 1984 the murder would be assigned a top priority by a newly formed, U.S.-sponsored Commission for Investigations, little effort was expended until 1986-87, when the Christian Democratic administration faced a serious electoral threat from ARENA.<sup>3</sup>

In November 1987, in the heat of campaigning, President Duarte held a press conference to announce that his government had solved the Romero case. The announcement was based on the testimony of Antonio Amado Garay, who claimed to have driven a single assassin to and from the scene of the Archbishop's murder on orders from Alvaro Saravia, D'Aubuisson's bodyguard at the time. Garay also stated that he overheard Saravia report to D'Aubuisson that the murder had been carried out, to which D'Aubuisson responded that Saravia had acted too soon. Saravia is said to have insisted that he had done what D'Aubuisson had ordered.

Salvadoran authorities charged Saravia with participation in the murder plot and requested his extradition from the United States, where he was living illegally. This effort fell apart in December 1989 when the ARENA-dominated Supreme Court blocked extradition proceedings against Saravia on wholly unconvincing grounds. The Court argued that Garay's testimony contradicted that of another witness with respect to the position in which the triggerman stood when he fired the fatal shot. However, a significantly lower burden of proof is required for an extradition request and detention order than for a conviction; the relatively insignificant discrepancy in witness testimony ought not to have ruled out Saravia's arrest and extradition. Further, the lower court judge in the case had heard Garay's testimony and found it credible. The Supreme Court did not listen to Garay before determining that he was not credible.

The Court also objected to the fact that Garay's testimony came more than seven years after the crime was

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<sup>2</sup> See Americas Watch and the American Civil Liberties Union, Report on Human Rights in El Salvador, January 26, 1982, pp. 102-103.

<sup>3</sup> Lawyers Committee for Human Rights, A Decade of Failed Promises: The Investigation of Archbishop Romero's Murder, March 1990.

committed, and was therefore too old. In addition to excluding the potentially useful testimony of Garay, this ruling could establish a dangerous precedent with respect to any other evidence in the case.

Since the Supreme Court struck down the Saravia extradition, all efforts to prosecute the crime have ceased. Although President Cristiani declared in June 1990 that the investigation had not been closed, there is no evidence that it is being actively pursued. Attorney General Roberto Mendoza expressed doubt in July that the case would ever be solved. "Legally, the possibilities of resolving the case have been exhausted, and a lot of time has passed," he said.<sup>4</sup>

Other political obstacles include the June 1, 1989 presidential election victory of ARENA, removing the slim possibility that the investigation into D'Aubuisson's involvement would proceed. The November 16, 1989 murder of six Jesuits and two women has also hindered the case in that it has burdened Judge Ricardo Zamora of the Fourth Penal Court with both the Romero case and the Jesuit case (see below).

### III. KIDNAPPING FOR PROFIT

Senior U.S. diplomatic officials touted this as a test case for the Salvadoran justice system. Because the victims are members of the conservative Salvadoran elite, it was widely believed that justice would prevail. Instead, the case has illustrated the worst El Salvador has to offer -- with suspects and judges offered bribes, intimidated, and killed while judicial proceedings have gone nowhere.<sup>5</sup>

An investigation carried out by the U.S.-funded Special Investigative Unit and aided by the Venezuelan police and the FBI uncovered a multi-million dollar right-wing kidnapping ring whose operatives, often posing as leftist guerrillas, seized and held for ransom at least five wealthy Salvadoran businessmen between 1982 and 1985. The accused are believed to have been motivated by profit, not politics, although many of them have been linked to politically-motivated death squad activities over the years.<sup>6</sup>

Three suspects were arrested in April 1986. One of them, former National Guard intelligence officer Rodolfo Isidro López Sibrián, had been implicated but not convicted in the January 1981 murder of U.S. labor advisors Michael Hammer and Mark David Pearlman and their Salvadoran colleague, agrarian reform chief José Rodolfo Viera. Also arrested was López Sibrián's father-in-law, Orlando Llovera Ballete, a member of ARENA and close friend of Roberto D'Aubuisson, and army Major José Alfredo Jiménez.

The most important military officer implicated was Colonel Roberto Mauricio Staben, head of the U.S.-trained Arce Rapid Reaction Battalion and until May of this year, the commander of the Seventh Military Detachment in Ahuachapán. (Partly in response to accusations of corruption and human rights abuses, Staben was sent abroad as a defense attaché.) Shortly before his scheduled arrest, another officer, Lieutenant Colonel Joaquín Zacapa Astasio reportedly was granted a 15-day vacation and advised to leave the country, which he did. Suspects Victor Antonio Cornejo Arango and Lieutenant Carlos Zacapa also fled the country.

Not long after the case was broken, three former National Police detectives implicated in the ring -- Ramón Erasmo Oporto, Moisés López Arriola, and Edgar Sigfredo Pérez Linares -- died under suspicious circumstances,

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<sup>4</sup> Diario de Hoy, July 26, 1990, cited in El Rescate Human Rights Department, "Report form El Salvador," July 23-30, 1990, p. 4.

<sup>5</sup> See Americas Watch, The Civilian Toll, pp. 237-245; and Americas Watch, Nightmare Revisited 1987-88: Tenth Supplement to the Report on Human Rights in El Salvador, September 1988, pp. 40-42.

<sup>6</sup> Colonel Roberto Staben, until 1984, commanded the army barracks next to El Playón, an infamous dumping ground for the bodies of death squad victims; Lieutenant López Sibrián was implicated in the 1981 Sheraton killings (see below); and Staben and López Sibrián, as well as Lieutenant Colonel Joaquín Zacapa and Antonio Cornejo Arango, were all captured together with then-Major Roberto D'Aubuisson in May 1980 plotting a coup.

two of them reportedly in police custody.<sup>7</sup>

In early April 1987, Judge Miriam Artiaga Alvarez, presiding over a separate but related case (the theft by dismantling of a warehouse) against defendants López Sibrián, Llovera, and Jiménez, reduced charges against them after her house was machine-gunned twice. The judge, who was pregnant at the time, subsequently resigned.

On May 11, 1988, unidentified armed men shot dead the military judge presiding over the main case against the defendants. Judge Jorge Alberto Serrano Panameño was killed days before he was to rule on an amnesty petition filed by the defense. He had recently told the press he would not grant amnesty for the kidnapping charges. Serrano told Americas Watch and others months before his death that he had turned down bribe offers from individuals connected to the kidnapers.

On August 16, 1988, the Supreme Court named Second Military Judge of First Instance Jorge Ernesto Cruz Cienfuegos to replace Serrano. In late 1988, Judge Cruz Cienfuegos applied the October 1987 amnesty to the charge of illegal possession of firearms (the charge which had caused the case to fall under the military court's jurisdiction) and referred the case to Juan Hector Larios Larios, San Salvador's Third Criminal Judge.<sup>8</sup> On March 31, 1989, Judge Larios Larios dismissed all charges in the kidnapping case against the eight defendants and ordered that the three defendants in custody -- López Sibrián, Jiménez and Llovera -- be released immediately. Twenty minutes after this dramatic step, Judge Larios stepped down from the criminal court.<sup>9</sup>

The decision created a major scandal and threatened to damage seriously the reputation of President-elect Alfredo Cristiani, with whose ARENA party many of the eight defendants were affiliated. On April 3, 1989, Judge Larios's replacement at San Salvador's Third Criminal Court, Ricardo Mejía Angulo, examined the evidence and reversed the earlier ruling. As of April 1990, Major Jiménez and López Sibrián remained in custody. However, Llovera, the only defendant actually freed after Judge Larios's ruling, had escaped by then.

On April 23, 1990, charges were dropped against three military men and three civilians who had never been captured. Judge Jorge Ernesto Cruz Cienfuegos, who had earlier that month been transferred to the post of Third Criminal Judge of San Salvador, dismissed for lack of evidence charges of kidnapping and robbery against Lieutenant Colonel Joaquín Eduardo Zacapa Astasio, Captain Carlos Zacapa, Victor Antonio Cornejo Arango, Pedro Serrano Pineda, José Antonio Alvarado Centeno and Major José Alfredo Jiménez Moreno (detained). The Court also ruled that the cases against López Sibrián (still detained) and Luis Orlando Llovera Ballete (still at large) should proceed to trial on the kidnapping charge, but that the charges of robbery against them should be dismissed.<sup>10</sup>

On April 26, 1990, President Cristiani instructed the Attorney General to appeal the dismissal. Attorneys for the two remaining defendants appealed the remaining charges.<sup>11</sup> Jury selection in the trial of López Sibrián and Llovera Ballete will not begin until the appeals are resolved, which court officials say could take several months.

#### **IV. MASSACRE AT SAN FRANCISCO**

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<sup>7</sup> Pérez Linares has been implicated in the murder of Archbishop Romero by at least one account, see Douglas Farah, "Death Squad Began as Scout Troop," The Washington Post, August 29, 1989.

<sup>8</sup> Lawyers Committee for Human Rights, Underwriting Injustice: AID and El Salvador's Judicial Reform Program, April 1989, p. 132.

<sup>9</sup> Douglas Farah, "Salvadoran Court Ruling Is Reversed," The Washington Post, April 5, 1989.

<sup>10</sup> Diario de Hoy, April 24, 1990.

<sup>11</sup> El Mundo, April 26, 1990; Diario Latino, April 26, 1990.

The Bush Administration made prosecution of this September 1988 massacre of ten peasants by the army a major priority in its dealings with El Salvador. Vice President Dan Quayle warned that U.S. aid would be affected if the killers were not brought to justice, and U.S. Ambassador William Walker was photographed in the domestic press paying a protocol visit to the judge in the case to show U.S. interest. The Miami Herald reported on August 16, 1990, that setbacks in the prosecution of this and the kidnapping for profit case prompted the Bush administration to suspend \$2 million in U.S. aid to the judiciary in August 1990. State Department and Embassy officials consulted by Americas Watch would not confirm or deny the aid cut, but reiterated their frustration with the handling of the two cases.

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.<sup>12</sup>

Acting under Major Beltrán's orders, soldiers blindfolded and bound seven men and three women they had identified against a list of names. They were led to a secluded spot where Major Beltrán commanded soldiers to detonate several captured guerrilla mines near the victims. Under Major Beltrán's orders, the soldiers then shot the wounded civilians at point blank range to finish them off. Beltrán ordered one soldier to smear blood on his uniform and pretend he had been wounded during a fictitious armed confrontation. Soldiers planted guerrilla arms and propaganda at the scene of the massacre to provide further "evidence" of a confrontation.

The soldiers and officers rehearsed an elaborate coverup story invented by the major. The story held that while evacuating eight peasant detainees to the Fifth Brigade, the soldiers and their captives were ambushed by guerrillas. In the ensuing fight, all the captives as well as two guerrillas perished. When questioned, the military men gave uniformly false testimony.

After an autopsy revealed that the victims had been shot in the head and heart at close range, the Army conducted an investigation whose results reiterated the coverup story. The head of the Fifth Brigade, Colonel José Emilio Chávez Cáceres, claimed that guerrillas had returned at night after the ambush and shot the dead civilians close up to make it look as if they had been executed by the Army.

The coverup held until U.S. Vice President Dan Quayle visited El Salvador on February 3, 1989, and strongly urged that those responsible for the massacre be punished, giving the Salvadoran government to understand that U.S. aid was in jeopardy because of the lack of progress in the case. This prompted a serious and rapid investigation by the Army General Staff. On February 20, the Army gave the green light to military prosecutions, directing the U.S.-assisted Special Investigative Unit (SIU) to question soldiers from the Jíboa Battalion.

On March 12, 1989, five months after the massacre and five weeks after Quayle's visit, the Army General Staff publicly announced that it had discovered a massacre and deceit by the head of military intelligence of the Fifth Brigade, and was consigning the case to the courts. It cleared Colonel Chávez Cáceres, a member of the powerful military academy class of 1966 (the *tandona*) of any wrongdoing. Two officers, including Major Beltrán (who was not a member of any military academy class), three non-commissioned officers, and four soldiers were accused by the Army and detained by the security forces, although they continued to receive their salaries.

On March 15, 1989, Judge Edis Alcides Guandique Carballo of San Sebastián formally ordered the judicial detention of the nine defendants.

On February 7, 1990, Judge Guandique dismissed charges against all but two defendants and ruled that the case should proceed to trial against Major Beltrán and sub-Sergeant Rafael González Villalobos.<sup>13</sup> Defense lawyers appealed the indictment of the two remaining defendants and the attorney general appealed the dismissal of the case against the other soldiers, whom Guandique had found to have either not been at the murder site at the time of the massacre or to have not participated in the killing.

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<sup>12</sup> See Americas Watch, Nightmare Revisited, p. 18; and News From Americas Watch, "El Salvador: The Army Massacre at San Francisco," September 1989.

<sup>13</sup> Diario Latino, February 27, 1990.

On May 2, 1990, the appeals court in San Vicente affirmed Judge Guandique's ruling that the case against Major Beltrán should proceed to trial, as well as the dismissal of charges against the remaining defendants. The appeals court reversed Judge Guandique's decision to bring to trial the case against sub-Sergeant Rafael González Villalobos. The court reasoned that the principal evidence against him -- his confession and the testimony of another soldier, both taken by the SIU -- was not admissible. The Court held that, insofar as the SIU is not an officially established auxiliary organ of the judiciary (it is excluded from Article 11 of the Criminal Procedure Code which stipulates the auxiliary organs which can provide evidence to the courts), testimony taken by the SIU is not admissible in court. Accordingly, the chamber ruled that Villalobos should be freed, and the case is now proceeding to trial only against Major Beltrán.

On June 26, 1990, the Supreme Court granted the Attorney General's motion to transfer the case against Major Beltrán, the only remaining defendant, from the Court in San Vicente to the Sixth Criminal Court in San Salvador. The petition was granted, the court said, because it would have been impossible to constitute an impartial jury in San Vicente. Jury selection is now scheduled to begin in San Salvador.<sup>14</sup> Jury selection itself could take up to two and one-half years.

## V. BOMBING AT FENASTRAS OFFICE

At 12:30 p.m. on October 31, 1989, a powerful bomb destroyed the headquarters of the National Federation of Salvadoran Workers (FENASTRAS), killing 10 people and wounding more than 30. Eight of the dead were affiliated with FENASTRAS, including Febe Elizabeth Velásquez, a member of the executive committees of both FENASTRAS and the National Unity of Salvadoran Workers (UNTS) and a leading spokeswoman for the most militant sector of the Salvadoran labor movement. Clearly intended to kill, the bomb exploded as many of the FENASTRAS members were having lunch inside the offices.<sup>15</sup>

One witness told Americas Watch that, shortly before the explosion, he was standing in the corridor which runs between the inner and outer doors, when he saw a man in plainclothes enter the outer door and quickly place a smoking burlap bag on the floor of the corridor before leaving. Several seconds later, the bomb exploded.

The bombing marked a qualitative escalation in the use of political violence in the urban war, and served as a catalyst for the FMLN offensive launched 11 days later.

Shortly after the bombing, President Cristiani announced the appointment of a high-level investigative commission to identify the culprits. In addition to representatives of the government and international organizations, the commission was to include Jesuit Father Ignacio Ellacuría (subsequently killed with five other priests, their housekeeper and her daughter by soldiers) and representatives from FENASTRAS. FENASTRAS declined to participate in the proposed commission, as did opposition political leaders, absent certain guarantees.

Visiting El Salvador in early November, Assistant Secretary of State for Inter-American Affairs Bernard Aronson surmised that "violence by the extreme right is a credible idea" in seeking a suspect for the bombing. Indeed, government and military figures have consistently characterized FENASTRAS as nothing more than a "guerrilla front." Since October 1988, FENASTRAS has experienced four bomb or grenade attacks, the August disappearance of two members, and the arrest and mistreatment of dozens of members in September by the National Police and National Guard. This recent history of official and quasi-official violence against FENASTRAS raises a presumption of military or death squad responsibility for the October bombing which only a thorough and satisfactory investigation might rebut. To date no such investigation is in evidence. In January 1990, Tutela Legal, the human rights office of the Archdiocese of San Salvador, blamed death squads for the attack.

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<sup>14</sup> Diario Latino, June 26, 1990; Diario de Hoy, June 27, 1990.

<sup>15</sup> Americas Watch, A Year of Reckoning: El Salvador A Decade After the Assassination of Archbishop Romero, March 1990, pp. 122-125.

On January 23, 1990, FENASTRAS Secretary General Gerardo Díaz wrote to President Cristiani that FENASTRAS sought an independent investigation conducted under the auspices of international observers from the U.S. Congress, American or European labor unions, the Organization of American States or the United Nations. FENASTRAS also sought protection outside El Salvador for all witnesses to the massacre and the release of all imprisoned unionists, among whom, it contended, were witnesses. Currently there are complaints about the bombing pending before the human rights commission of the United Nations, the Organization of American States, and the International Labor Organization.

The Salvadoran judicial investigation has proceeded slowly. On November 8, 1989, FENASTRAS permitted justice of the peace Nelson Ulises Umaña Bojórquez, visiting FBI agents and members of the Special Investigative Unit to examine the premises and collect evidence. Following the FMLN offensive launched November 11, attention was diverted to the Jesuit killings, among other things. On December 1, 1989, the court asked Lieutenant Colonel Rivas Mejía, head of the SIU, to turn over the results of its investigation. Rivas replied that, as the investigation was continuing, he could not yet provide the results to the court.

The FENASTRAS case is currently before Daniel González Romero, Second Criminal Judge in San Salvador. There has been no significant progress in the investigation this year. Since January, the court has asked several FENASTRAS members to offer testimony, most of whom had not appeared as of late July. The court has obtained hospital records concerning the medical condition of those injured in the blast and has sought unsuccessfully to obtain the cooperation of the SIU.

On May 25, 1990, the court again formally requested that Rivas transmit the results of the SIU investigation to the court. On May 30 Rivas replied that the investigation was inconclusive because FENASTRAS barred investigators from the scene for eight days, by which time it was too late to identify the type of explosives used. FENASTRAS has denied barring entry to the headquarters. Rivas also stated that the SIU could not send the court any information gleaned from its investigation because, seven months after the bombing, the SIU's report was still incomplete. The case remains stalled.

## VI. SEVEN YOUNG MEN KILLED IN CUSCATANCINGO

Apparently because the victims were little known neighborhood soccer players with no international connections, the massacre of seven unarmed young men by the army in this San Salvador suburb has received even less attention in the Salvadoran judicial system than the other cases described here. The comments of court officials and the attorney general at the time of the killings indicate their complete lack of interest in pursuing those responsible for the tragic crime.

At approximately 4:30 p.m. on November 18, 1989, during the FMLN offensive, soldiers shot dead seven unarmed young men in *colonia* San Luis, Cuscatancingo, a northern suburb of San Salvador. Six of the victims were players or assistants of the "Olimpia" soccer team of Cuscatancingo. The seventh was a boy who was selling bread.<sup>16</sup>

The military, warning that it would soon attack by air, had ordered all residents to leave the area on the afternoon of November 17, after having strafed the day before. The young men had stayed behind to guard their families' houses from looting. Residents said none of the young men were involved in politics or the insurgency, and that all had lived in or near the community for a long time.

Two residents who returned to pick up clothes on the afternoon of the shooting said that the guerrillas had all left the area by that morning, and that five to eight Army soldiers were patrolling within two blocks of the murder site.

One witness saw and heard a soldier scream at a young man who ventured into view with his arms raised.

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<sup>16</sup> The victims were Jorge Alberto Campos, 22; José Oscar López, 23; Raúl Mauricio Cetino, 24; Walter Antonio Cetino López, 19; José Raúl Castro, 27; José Estéban Crespín Cartagena, 21-22; and Manuel de Jesús Medrano Recinos, 14 (the bread vendor).

Sensing that it would be more prudent to leave, the witness ran with a friend to a nearby house. Ten minutes later, he heard a burst of machine-gun fire, followed by several single gunshots, one after the other.

The bodies were found the following morning in front of a blood- and bullet-sprayed wall next door to the house of José Esteban Crespín Cartagena, one of the victims. They had been shot in the stomach and front of the head. M-16 cartridges were found at the site. Friends and relatives buried the victims in a common grave on November 19.

The justice of the peace had the bodies exhumed on November 24. He was able to identify firearm wounds in the abdomens, but was unable to determine the extent of other wounds because of decomposition and his own inexperience. He found no signs that the deceased were armed at the time of death. In an interview with Americas Watch, the justice asserted that he would not forward the case to a judge for prosecution because no one had come forward to make a formal complaint (under Salvadoran law, criminal investigations in murder cases must be initiated as a matter of official duty, whether or not an injured party complains).

Despite his comments to Americas Watch, on December 7, 1989, the justice of the peace sent the case to the Judge of First Instance in Mejicanos. The case has been stalled since that time, according to a review of the court files in mid-July 1990. On February 22, 1990, in response to a petition by the mother of one of the deceased (María Albertina Ramirez, 51) for insurance purposes, the body of Jorge Alberto Campos Ramírez was exhumed and examined by Justice of the Peace Berciano Gómez and forensic physician Dr. Carlos Enrique Parada. The body was found in a state of complete putrefaction. However, the forensic physician concluded that the cause of death was trauma of the cranium with destruction of the brain mass possibly produced by a projectile explosion. It was not possible to determine the type of projectile.

The judge in the case told the Associated Press in February that "the case will be under investigation until it is forgotten." In a frank assessment he noted, "Unless the killings cause an uproar abroad, nothing gets done."<sup>17</sup> With respect to one of two eyewitnesses who told AP he saw the soldiers and then ran, the judge said, "Coming forward would be a real risk. I can only offer him security up to a certain point." AP reported that then-Attorney General Mauricio Colorado had not even heard of the Cuscatancingo killings in late January. "There were a hundred cases like that," he said after listening to a summary of what had happened on November 18. He surmised they were killed in crossfire or were guerrillas.<sup>18</sup>

On June 1, 1990, following his service in the Third Criminal Court in San Salvador in the kidnapping case (see above), Judge Cruz Cienfuegos was transferred to the Court of First Instance in Mejicanos, where he remains. In an interview with Americas Watch, Judge Cruz Cienfuegos said that the case has been suspended because no one has come forth with information. When reminded that the mother of one of the dead had come forth seeking to know more, the judge said that the courts lack the kind of ballistics expertise which would be necessary to determine the kind of firearm used, if in fact one was used.

He acknowledged that to date no court had cited any witness to come forward to give evidence, but said, "these matters are not simply the function of the courts; it is the responsibility of interested parties to come in and pursue the case." After all, he suggested, quite improbably, "it could have been an accident ... or a bomb."

## VII. ROCKETING AT CORRAL DE PIEDRA

Between 9:00 and 9:30 a.m. on February 11, 1990, a Salvadoran Air Force helicopter fired two rockets which hit a house in which 21 civilians had taken refuge, killing five and wounding sixteen in Corral de Piedra,

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<sup>17</sup> Douglas Mine, "Jesuit Investigation: Exception that Confirms Rule of Military Impunity," Associated Press, February 16, 1990.

<sup>18</sup> *Ibid.*



Guancorita, San José las Flores, Chalateno. <sup>19</sup> After initially denying responsibility and blaming the explosion on the FMLN, on February 17 the Army admitted that its helicopter had rocketed the house. It promised to indemnify the families, but ruled out punishment for those responsible. The Armed Forces lashed out at the Church human rights office, Tutela Legal, which had called for prosecution of those responsible for the killings. The rights group was engaged in a "malicious...effort to create a criminal case which does not exist against those who were complying with their duty," the Armed Forces stated. <sup>20</sup>

The victims were members of four families, all officially registered as repatriates by the United Nations High Commissioner for Refugees (UNHCR). Four of the five dead were children between two and eleven years of age. The dead adult was a 30-year-old father who held his two-year-old daughter, also killed, in his arms. Eleven of the wounded were children between four months and twelve years of age.

Those hiding in nearby houses learned of the disaster when one of the wounded women, who was pregnant, ran out of the house bleeding, screaming and crying with part of a child still in her arms. Later in the morning, soldiers went house to house looking for guerrillas, and helping themselves to blankets, sugar, money, shoes and a radio.

Soldiers on the scene defended the air strike to relatives of the victims on the grounds that guerrillas were hiding in the house which was hit. Even if there were guerrillas inside the one-room building, which Americas Watch does not believe to be true, rocketing the civilian structure was an indiscriminate attack in violation of the rules of war. Under those rules, the armed forces of both sides have the obligation to take care to avoid civilian casualties and to refrain from attacks which may be expected to cause incidental loss of civilian life which would be excessive in relation to the concrete and direct military advantage anticipated.

Despite the public promise to provide compensation, on July 10, 1990, in the presence of Americas Watch, Air Force General Villamariona told the Army human rights office that the Air Force had not compensated anyone and had no plans to do so.

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<sup>19</sup> The community has since been renamed "Comunidad de Ignacio Ellacuría," after one of the Jesuit priests slain on November 16, 1989. See Americas Watch, *A Year of Reckoning*, pp.39-42.

<sup>20</sup> *El Mundo*, February 21, 1990.

## VIII. KILLINGS OF MEMBERS OF THE PRESS

### A. Mauricio Pineda Deleón

Mauricio Pineda of Salvadoran Television Channel 12 went to San Miguel on March 18, 1989, with other journalists to report on the presidential elections there. Pineda was killed the next morning when a soldier fired at the clearly marked press vehicle in which he was riding with three other journalists.<sup>21</sup>

The journalists had gone about 75 meters beyond a checkpoint at a turnoff known as Shell Palo Blanco on the road to La Unión, when shots were fired at the back of the truck, penetrating Pineda's back and passing through his right hand. Raúl Beltrán, the journalist driving the vehicle, turned the truck around and drove back to the checkpoint, which was at a Shell gas station. By that time, Pineda was dead. One of the soldiers told them the shooting occurred "because you shot at the gasoline station." Soldiers said they were going to detain the journalists because they had been armed and because they were members of a guerrilla urban command unit.

Arce Battalion corporal José Antonio Orellana Guevara, 24, was identified as having fired the fatal shots and arrested shortly after the shooting. The Armed Forces contended that the corporal intended only to stop the car, and that poor aim was responsible for the tragic results.

However, the markings of the car and the light conditions were such that the soldiers would have known that the vehicle was carrying journalists. On no occasion in which the journalists passed by the checkpoint did any soldier signal them to stop. Indeed, a videotape taken by two of the journalists after the shooting disproves the soldiers' original contention that the truck's occupants were armed and establishes convincingly that the vehicle was clearly identified as carrying journalists. It appears undeniable that the soldier who fired his weapon knew he was shooting at a press car.

After an eight-hour trial on June 6, 1990, a jury in the Second Criminal Court in San Miguel rendered a verdict of not guilty in the case.<sup>22</sup> During the trial, about thirty non-uniformed soldiers, including two officers, entered the courtroom and watched the proceedings. While the two officers were allowed to testify on the accused's behalf in what amounted to a character reference, the defendant was not required to be present or take the stand.<sup>23</sup> The Associated Press quoted Marcos Antonio Guevara, who covered the trial for Channel 12:

They were telling the jury in so many words that if they delivered a guilty verdict, they would have to contend with the Arce battalion. The jury members live there. They leave the court alone and have their skins to think about.<sup>24</sup>

When asked about the possible influence of the soldiers' presence on the jurors' decision, President Cristiani pronounced himself interested in the case and said the members of the jury would have to be questioned about any influence the soldiers' presence may have had.<sup>25</sup> Following the trial, however, the Second Criminal Judge of San Miguel, Manuel Efraín Colato Urquía, rejected the suggestion that any improper motive had influenced the jury's

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<sup>21</sup> See *A Year of Reckoning*, pp. 32-34.

<sup>22</sup> *El Diario de Hoy*, June 7, 1990; *El Mundo*, June 7, 1990; El Rescate Human Rights Department, "Report from El Salvador, June 4-11, 1990," p. 1.

<sup>23</sup> Douglas Mine, "Jury Absolves Soldier in Journalist Slaying," Associated Press, June 7, 1990.

<sup>24</sup> *Ibid.*

<sup>25</sup> *El Mundo*, June 7, 1990.

verdict.<sup>26</sup>

## **B. Roberto Navas, Luis Galdámez**

On March 18, 1990, the night before the presidential elections, Air Force soldiers on the Boulevard del Ejército running between San Salvador and Ilopango shot and killed Roberto Navas and wounded Luis Galdámez as the two were on a motor bike heading for San Bartolo, where Galdámez lives. Navas, who was driving, was killed instantly by two bullets. Galdámez was badly injured by one bullet which shattered his left arm and entered his lung. Both men were photographers for Reuters.<sup>27</sup>

The Air Force alleges that the soldiers fired only after the journalists ignored signs to stop at three successive checkpoints. (Ironically, the guerrillas had declared a national traffic stoppage.) However, physical evidence and Galdámez's testimony disprove the military's contentions that soldiers were shooting to stop a speeding vehicle, and that the journalists openly defied clear signals to stop. The placement of Navas' body and the position of the motorcycle suggest that the bike was either stopped or almost stopped at the time the shots were fired. Neither Galdámez, Navas, nor the bike exhibited scratches or dirt, further casting doubt on the notion that the bike was moving rapidly at the time shots were fired.

The actions of the military in this case are put into further question by the fact that Air Force soldiers on the scene did not quickly secure medical attention for Galdámez, despite his grave condition. Reuters was told by officials at the hospital that Galdámez was not brought there until 11:30 or 11:45, almost three hours after the 9:00 p.m. shooting. The hospital is a 15-minute ride away from the scene of the shooting.

Air Force soldiers Lieutenant Nelson Saúl Solano Reyes, Benjamín Caballero Pleitez, and Nicolás Rodríguez Huevo were charged on May 9, 1989, and have been confined to a military base during the investigation of the shootings. For several months, however, the investigation has been stalled. As of mid-September, 1990, Galdámez had not yet been questioned or given an opportunity to testify regarding what happened on the night of March 18.

When interviewed by Americas Watch in late July, José Angel Vanegas Guzmán, the Judge of First Instance for Soyapango, said that the case is still in the investigative stage. He said the decision of whether to go to trial rests with him, and he did not know when he would decide as he had not read the case and did not know much about it. There had been no progress in the case as of mid-September, 1990.

## **IX. SLAYINGS OF JESUITS, THEIR COOK, HER DAUGHTER**

On November 11, 1989, the FMLN launched an urban offensive that, by many accounts, led the Salvadoran Armed Forces High Command to doubt its ability to maintain military control of San Salvador. On November 13, 1990, members of an elite Special Commando Unit of the U.S.-trained Atlacatl Battalion searched the Jesuit residence of the Central American University in San Salvador. At approximately 1:00 a.m. on November 16, 1990, members of that same unit summarily executed six Jesuit priests, their cook and her daughter.<sup>28</sup> Nine members of the

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<sup>26</sup> El Mundo, June 19, 1990.

<sup>27</sup> See A Year of Reckoning, pp. 29-32.

<sup>28</sup> The victims were Fathers Juan Ramón Moreno, Amando López Quintanilla, Ignacio Ellacuría, Segundo Montes, Ignacio Martín-Baró, Joaquín López y López; Julia Elba Ramos; and Celia Maricet Ramos. See Americas Watch, Carnage Again: Preliminary Report on Violations of the Laws of War By Both Sides in the November 1989 Offensive in El Salvador, November 24, 1989, pp. 13-28; Americas Watch, Update on El Salvador: The Human Rights Crisis Continues in the Wake of the FMLN Offensive, December 1989, pp. 6-19; Americas Watch, A Year of Reckoning, pp.9-24; and Lawyers Committee for Human Rights, Memorandum "Status of Jesuit Murder

Armed Forces (including Colonel Alfredo Benavides Morales, then head of the Salvadoran Military Academy) have been charged with participation in the murders and another with destruction of evidence.<sup>29</sup> However, the process by which the accused were identified remains unclear,<sup>30</sup> and significant questions remain as to higher up responsibility for ordering the attack.

Much of the evidence in the case has been produced by the U.S.-funded Special Investigative Unit (SIU), which has conducted at best a superficial investigation. A conflict of interest (the fact that SIU agents are all security force members) has prevented a complete accounting of Armed Forces involvement in the slayings. Particularly troubling have been the difficulties Fourth Criminal Court Judge Ricardo Zamora has confronted in exploring the likely possibility that senior officers ordered Colonel Benavides to carry out the murders. Among the obstacles Judge Zamora has been forced to overcome are the destruction and fabrication of evidence, false testimony by Salvadoran military officers, and the refusal of the United States to allow its officers to provide testimony expected to be highly relevant.

Furthermore, a provision of Salvadoran law which prohibits testimony of a co-defendant against another defendant presents a serious obstacle for the prosecution. While plea bargaining and immunity from prosecution in exchange for testimony are common in the United States, no such practice is permitted in El Salvador. Nonetheless, there exists a precedent for allowing co-defendant testimony which has been commonly overlooked: in the 1986 kidnapping for profit case (see above), the Salvadoran legislature approved a law which allows co-defendant testimony in cases involving drug trafficking, kidnappings or extortion. Very simply, this legislation could be broadened to include cases of murder. The question of whether such legislation could be applied retroactively to an investigation in process without violating the principal of non-retroactivity in penal law has been widely debated, but it is the opinion of respected attorneys that such legislation would be of a procedural and not a penal nature, and thus applicable to cases in progress.

Fearful that the U.S.-supported Armed Forces would continue to enjoy immunity from prosecution for the massacre, the Speaker of the U.S. House of Representatives constituted a Special Task Force on El Salvador to report on the progress of the case. On April 30, 1990, the "Moakley Report" (named for the Chairman of the Task Force, Congressman John Joseph Moakley) concluded that none of the soldiers currently detained would likely have been arrested or charged if not for the testimony of a U.S. major stating that knowledge of Benavides' participation in the crime had been communicated to and then concealed by the head of the SIU, Lieutenant Colonel Manuel Antonio

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Investigation in El Salvador," July 27, 1990.

<sup>29</sup> Eight of the nine have been detained. They are Colonel Benavides, Lieutenant Yushy René Mendoza Vallecillos, Lieutenant José Ricardo Espinosa Guerra, First Lieutenant Gonzalo Guevara Cerritos, Sergeant Antonio Ramiro Avalos Vargas, Sergeant Thomas Zarpate Castillo, and Corporal Angel Pérez Vásquez. Private Jorge Alberto Sierra Ascencio deserted before the arrests were made. In addition, Lieutenant Colonel Camilo Hernández has been charged with ordering the burning of logbooks kept at the Military School on the night of the slayings. He was released on bail on July 31, 1990.

<sup>30</sup> An investigation by the SIU, including the use of ballistics tests to match weapons, narrowed the field of suspects to a 45-member commando unit of the Atlacatl Battalion, Colonel Benavides, and Lieutenant Mendoza. A special Honor Commission consisting of five security force officials and two civilian lawyers employed by the armed forces was subsequently designated to work with the SIU and identify those to be charged with the murders. After a six-day period in which Commission members say they exhorted suspects to tell the truth about the crime, nine were singled out and charged. The only public record of the Commission's activities is a vague, seven-page document now on court record but whose existence was denied for months by Commission members and Salvadoran President Cristiani.

Rivas. (Although the Moakley Report did not name the major, he has since been identified in the press and elsewhere as Major Eric Buckland.) The report also pointed out that at the time of its publication, the investigation of the case and preparations for the prosecution of those detained and charged were completely stalled.

Four months later, Representative Moakley issued a dramatic press statement accusing the Salvadoran High Command of engaging in "a conspiracy to obstruct justice in the Jesuits' case."<sup>31</sup> Moakley cited the following elements of a coverup:

\* Logbooks from the Military School showing the comings and goings of vehicles from the School on the night of the murders were burned, apparently on the orders of a senior military officer;

\* When Judge Zamora requested the presence of four cadets on duty at the Military School on the night of the murders, the wrong four cadets were produced; when the right ones were produced, they claimed to have seen nothing;

\* The Military Honor Commission which chose the nine defendants out of some 47 members of the military falsely denied it had written "even the skimpy report it did prepare in the case" and has not otherwise indicated how it chose the nine;

\* Captain Herrera Carranza lied to investigators by asserting that he had reported the murders to a meeting of fellow intelligence officers on November 16 after he heard of the slayings on commercial radio. Yet Herrera's announcement to the meeting came before any commercial stations had begun broadcasting the news;

\* Colonel Carlos Amando Aviles, who reportedly was instrumental in breaking the case by telling Major Buckland of military involvement in the case, denied this in court. He also testified that he barely knows Major Buckland. In fact, the two worked "side by side" for months and Colonel Aviles specifically requested Major Buckland's assignment to El Salvador;

\* The military provided the judge with a fabricated logbook from the Military School;

\* An employee of the Military School in charge of checking weapons in and out on the night of the murders has twice ignored a subpoena to testify before Judge Zamora.<sup>32</sup>

Further, the U.S. Embassy has notified Judge Zamora that Major Buckland will not respond to a subpoena issued by the judge.<sup>33</sup> President Cristiani himself withheld the seven-page report of the Honor Commission from the court until someone informed the judge of its existence. Moreover, it was not until July 12, 1990, that Cristiani also revealed that he had personally authorized the November 13 search of the Jesuit residence, now thought to be a reconnaissance mission in preparation for the murders. (It was later learned that Cristiani ok'd the mission after it had already taken place.)<sup>34</sup>

The defense has slowed the process by submitting a series of petitions for a change of venue to the court in

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<sup>31</sup> Statement by Congressman Joe Moakley on the Jesuits' Case and the Salvadoran Negotiations, August 15, 1990.

<sup>32</sup> "Statement by Congressman Joe Moakley..."

<sup>33</sup> El Rescate Human Rights Department, "Report From El Salvador, August 6-13, 1990," p. 2.

<sup>34</sup> "Statement by Congressman Joe Moakley..."

Santa Tecla; the third such petition was submitted on July 20, 1990, and reportedly denied by the appeals court on August 29.<sup>35</sup> At any rate, the case is still in the "investigative phase" for which there exists no effective deadline. It is entirely possible that, as in the murder of Archbishop Romero, the case will never move out of the investigative stage.

In his August 15, 1990 press release, Congressman Moakley stated that he did not believe military officers would have withheld, destroyed, and falsified evidence nor repeatedly committed perjury "without at least the tacit consent of the High Command."

Even more important, I believe that the High Command's goal, from the beginning, has been to control the investigation and to limit the number and rank of the officers who will be held responsible for the crimes. As a result, some individuals who may have direct knowledge of the murders have been shielded from serious investigation.

Americas Watch concurs. While the judge is not above criticism for leaving persons or issues uninvestigated, most observers have praised his courage and initiative. The real obstacles in this case have been created by the Armed Forces.

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Unfortunately, the case of the murder of the Jesuits and two women shows the Salvadoran judicial system at its best, not its worst. The detention of the accused soldiers and officers is a rare judicial achievement in cases of human rights violations in El Salvador. Large numbers of significant human rights cases not mentioned here -- including several well-documented massacres of dozens of civilians -- have never resulted in arrests, much less convictions. It is unlikely that those responsible for the cases described in this newsletter will ever be brought to justice. On the contrary, all indications point to a continuation of the total impunity with which the Salvadoran Armed Forces commit extrajudicial execution, torture and massacres.

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

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

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<sup>35</sup> El Rescate Human Rights Department, "Report from El Salvador, August 27-September 2, 1990," p. 3.

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