

GUATEMALA

@Denial of Justice

THREATS AND INTIMIDATION OF SURVIVORS, RELATIVES AND THOSE INVOLVED IN THE INVESTIGATION INTO THE KILLING OF JORGE CARPIO NICOLLE, JUAN VICENTE VILLACORTA, ALEJANDRO AVILA, AND RIGOBERTO RIVAS

THE KILLINGS AND THEIR INVESTIGATION THUS FAR

Jorge Carpio Nicolle, newspaper owner and publisher, and a leading politician, having been the founder member of the centrist political party the *Unión del Centro Nacional* (UCN), Union of the National Centre, was shot and killed by 20 masked gunmen on the way from a political rally in El Quiché department on 3 July 1993. Three others were also killed in the attack, **Juan Vicente Villacorta**, **Alejandro Avila** and **Rigoberto Rivas**.

The government first attributed the killings to the armed opposition, who denied responsibility, and then to common delinquents. In July 1993 13 suspects were arrested, four of whom were subsequently charged in connection with the killing of Jorge Carpio Nicolle and the three others killed with him. Two of those charged, **Tomás Pérez Pérez** and **Jesús Cuc Churunel**¹, both members of the *Comité de Unidad Campesina* (CUC), Committee of Peasant Unity, a largely indigenous peasant trade union, were subsequently released with all charges against them dropped. CUC claimed that the evidence against them had been planted by the army and Jorge Carpio Nicolle's widow, Marta de Carpio stated publicly that they were being held as scapegoats to cover up deficiencies in the official investigation into the killing of her husband and the three others killed with him. The charges against the other two men were also dropped, although they remained in prison on other unrelated charges.²

The families of the victims, some of whom were survivors of the attack, have carried out their own private investigation and believe the killings to be the work of the armed forces. They accuse official agencies of not aggressively pursuing their inquiries into the killings. In

¹ See UA 231/93, AMR 34/47/93, 15 July 1993 and follow-up AMR 34/28/94, 7 June 1994.

² For further background information on the killings, see Appendix attached, which contains the extract on the killings from Guatemala: Extrajudicial executions persist under government of former Human Rights Procurator, AMR 34/31/94, July 1994.

May 1994 Jorge Carpio's daughter-in-law Karen Fischer de Carpio announced that she would present evidence that members of *Patrullas de Autodefensa Civil* (PAC), Civil Defence Patrols³, military commissioners and G-2 intelligence agents were responsible for the killing. She successfully petitioned the courts to have the case moved from the jurisdiction of Santa Cruz del Quiché to Guatemala City because of the danger she said witnesses to the killings would face in El Quiché.

In May and June 1994 four men were arrested, including a former governor of El Quiché, a mayor and an ex-member of military intelligence G-2 and a PAC chief, all from San Pedro Jocopilas, department of El Quiché. They were brought before a judge accused of involvement in the killing of Jorge Carpio Nicolle and the three others. All were subsequently released from custody despite protests from the State Prosecutor who reported that there was strong evidence against them. Three of them were subsequently granted provisional liberty and a fourth declared immune from prosecution as an elected official. (see Appendix)

According to the lawyer acting for the family, six others, all members of the PAC from San Pedro Jocopilas were subsequently arrested accused of the killings, but all but one were subsequently released. There are now a total of ten named people accused of involvement in the killings.

Since the killings took place, the four survivors, including Jorge Carpio's widow, Marta Arrivillaga, his daughter-in-law Karen Fischer de Carpio, and family members of the other victims have been the subjects of repeated death threats, acts of intimidation, and harassment. Karen Fischer was forced to temporarily leave the country with her children following an incident of harassment. Judicial and security force officials charged with the investigation into the killings have also been targeted. (see Appendix for details of these past incidents)

TRIAL PROCEEDINGS BEGIN

³ The PACs were created as a component of the military's counter-insurgency strategy in 1982. Although made voluntary according to the subsequent Constitution of 1985, civil patrols are in effect compulsory. Those refusing to take part in them have been branded "guerrillas" and many have been subjected to human rights violations, including harassment and attacks, "disappearance" and extrajudicial execution. In January 1994 President de León announced that the PACs were henceforth to be called the *Comités Voluntarios de Defensa Civil* (CVDC), Voluntary Civil Defence Committees, suggesting that the PACs could be re-organized to serve as the basis for creating development committees. His critics charged that the President's move was intended to re-orient the PACs as a new political base for him. However, they are still commonly referred to as PACs.

The first phase in the trial proceedings into the killings, the *apertura de prueba* (hearing of evidence), began on 11 October and ended on 25 November 1994. During this phase of the trial the four survivors were called upon to give evidence. Government officials and military personnel in their posts during the time the killings took place, and who might have had information to supply to the court are also being called to give evidence. Officials being called to give evidence include the ex-head of Military Intelligence, now Vice-Minister of the Interior, Col. Mario Mérida González, ex-member of the National Police, now Chief-of-Staff of the Armed Forces General Col. José Luis Fernández, and Víctor A Vásquez, who at the time of the killings was Commander of El Quiché Military Zone. Also called to give evidence was the President of Guatemala, Ramiro de León Carpio, who at the time of the May/June 1994 arrests publicly stated that there was strong evidence against those accused of the killing.

In addition, during the *apertura de prueba*, a reconstruction of the killings took place in the department of El Quiché. However, given the recent threats against the survivors, and as the reconstruction was due to take place at the precise time the killings were originally carried out, ie. between approximately 8.00-9.00pm, in an area which they consider to be very dangerous, the survivors decided not to participate in the reconstruction for their own safety. They have also decided against attending any court proceedings that may take place in the department of El Quiché, again because of what they consider to be lack of adequate security in the region.

Examples of recent threats and harassment against those involved in the case which have been reported to Amnesty International include the following:

- on 1 October 1994, two unidentified men attempted to force their way into the home of **Mario López Arrivillaga**. Mario López, a witness to the killings, is the nephew of Jorge Carpio Nicolle's widow, Martha Arrivillaga, and himself a former member of the UCN. He also reported that in the previous week members of the National Police stopped him outside his apartment and confiscated his gun. He believes these incidents were meant to intimidate him prior to the opening of the trial, during which he would be called upon to give evidence. Both incidents were denounced to the Ministry of Interior, who has promised to investigate.

- **Karen Fischer de Carpio**, the daughter-in-law of Jorge Carpio Nicolle reported that the Vice-Minister of Interior, Col. Mario Mérida, (the Head of Military Intelligence, at the time of her father-in-law's killing), made verbal threats against her at a meeting which took place on 29 September 1994. She stated that "*este oficial aseguró ser un buen enemigo mío y me advirtió que no fuera a atestiguar, porque si yo declaraba podría desatar una desestabilización interna en el Ejército.*" ("This officer assured me he was my enemy and warned me not to testify, because if I did it would provoke internal instability in the army.") Karen Fisher also reported that Col Mérida said "*Ud. debería hacerle caso a su familia y*

dejar el caso." ("You had better consider your family and drop this case.")⁴ Col. Mérida reportedly denied that he had been threatening Karen Fischer, and stated that his conversation with her consisted of friendly advice.

- **Marta Arrivillaga viuda de Carpio**, the widow of Jorge Carpio Nicolle, who survived the killings of 3 July, also reported that since the killing of her husband, she has received a series of telephone calls threatening her life.

- on 12 October police commissioner **César Augusto Medina Mateo** was gunned down in Guatemala City. At the time of his killing, he was in charge of the investigation into the killing of Jorge Carpio Nicolle and the others. According to information received by Amnesty International, Commissioner César Augusto Medina was stopped apparently by a man he knew in Zone 18 of Guatemala City. While he was conversing with this man, three other men approached in a grey car and fired at him at point-blank range. The four men then fled the scene. An attempt was subsequently made on the life of another member of the National Police team investigating the killing of Jorge Carpio Nicolle. Commissioner **Benjamín Franco Pineda**, who was the third in command was attacked and wounded on 17 October. Both men had been involved in the police investigation into the killing of Jorge Carpio Nicolle and the three others killed with him.

From the circumstances of the killing of César Augusto Medina Mateo, it would appear that the security forces may have been involved, as for example, the fact that he appeared to know and was seen to converse with the man who stopped him in Zone 18. César Medina had carried out the detention of the four men arrested on 31 May and 1 June 1994, referred to above.

THE ACCUSED

As mentioned above, there are currently a total of ten people, including the four arrested in May and June, accused of participating in the killing. Only one of the accused is currently imprisoned, but on another charge. Juan Acabal Patzán, a member of the PAC from San Pedro Jocopilas is currently imprisoned, charged with a separate killing in Amatitlán, Guatemala department. According to a written ballistics report from the National Police, a gun belonging to Juan Acabal Patzán was reportedly used during the killing of Jorge Carpio Nicolle and the others. This gun, according to the ballistics report, was the same gun apparently used to carry out the killing in Amatitlán. The police evidence, however, does not appear to be soundly based as subsequent to the report, the ballistics' expert for the National Police stated in his oral declaration to the court, that the *cañon* (barrel) and the *percutor* (hammer) of the gun involved in both killings had been changed. It was not clear however,

⁴ Siglo Veintiuno, 12 October 1994

from his declaration, when the changes took place. The families of the victims also learned that the evidence linking the gun with the Amatitlán killing was no longer in the police files.

The families also learned that two of those accused of participation in the killing were released when it was found when they were brought before a judge that their names did not coincide with the names on the warrant sheets issued.

BACKGROUND

In the last three decades of what Amnesty International would describe as a period of gross human rights violations by security forces in Guatemala, in only a few cases have prosecutions for human rights violations resulted in convictions against members of the security forces involved. In cases where convictions have been obtained against members of the security forces, it has been more as a result of sustained pressure by the families with the help of human rights groups to force the courts to pursue the cases, rather than a willingness on the part of authorities to prosecute those responsible. And in those few cases where judicial proceedings have been instituted against members of the security forces for human rights violations, Amnesty International has seen a pattern of sustained intimidation and harassment against the relatives including, threats and attempts on their lives. Those testifying against the accused members of the security forces have also been targeted. This pattern of intimidation and harassment has often been particularly acute at the beginning of the judicial process, or when the families of the victims or witnesses are due to give evidence and usually carries on right through to the end of the trial.

Those targeted have also included members of the judiciary and security forces themselves charged with investigating the cases. In at least one other case, a high-ranking officer, José Miguel Mérida Escobar, who was in charge of the investigation into the killing of anthropologist Myrna Mack, stabbed to death by two men in September 1990, was gunned down on the street only meters away from the National Police headquarters, in circumstances strongly suggesting security force involvement. At the time of José Mérida Escobar's killing he was about to give evidence before the Inter-American Commission of Human Rights on the killing of Myrna Mack.⁵ During the legal proceedings in this case, the sister of Myrna Mack, Helen Mack was also consistently targeted by the security forces and witnesses were threatened and evidence interfered with. Despite all this, international pressure on the case was so strong that former army Sergeant Noel de Jesús Beteta was

⁵ see UA 271/91, Apparent Extrajudicial Execution of José Miguel Mérida Escobar, AI Index: AMR 34/34/91 of 8 August 1991

eventually sentenced to 30 years in prison as the material author of the killing of Myrna Mack.⁶

President Ramiro de León Carpio was elected by Congress to step in as President of Guatemala on 6 June 1993, following an attempted *autogolpe* (self-imposed coup) by his predecessor, President Jorge Serrano Elías which was reversed in May 1993. Since he took office Amnesty International has called on President de León to initiate enquiries on over 60 separate occasions involving reported or feared violations against some 400 people. Over a dozen of these appeals have dealt with apparent extrajudicial executions, which Amnesty International believes merit in-depth inquiries to determine those responsible and bring them to justice. The government's failure to aggressively pursue inquiries into these and other reported human rights violations which have occurred under President de León's administration, combined with increasing reports of harassment and death threats, suggests that despite initial hopes for an improvement in the human rights situation, the government's human rights performance continues to warrant close monitoring.

The violations have continued despite the government's purported commitment to respect and promote human rights and to take firm action against impunity, as affirmed in a human rights accord agreed by the government and the armed opposition. The human rights accord, which was signed on 29 March 1994 in Mexico City, by representatives of the Guatemalan Government and the armed opposition coalition, the *Unidad Revolucionaria Nacional Guatemalteca* (URNG), Guatemalan National Revolutionary Unity, is to be followed by a series of talks, in which different topics are to be discussed each month, including indigenous people, a ceasefire accord, constitutional reforms and finally, in December 1994, a peace treaty. In addition, some meetings between the government and the URNG took place in Norway from 13 June until 23 June, in which human rights issues were discussed. During the Norway talks an agreement was signed on the resettlement of those displaced by the armed conflict, including refugees in Mexico and internal refugees. Agreement was also reached in Norway on the formation of a *Comisión para el esclarecimiento histórico de las violaciones a los derechos humanos y los hechos de violencia que han causado sufrimientos a la población guatemalteca, vinculados con el enfrentamiento armado* (Commission for the Clarification of Violations of Human Rights and Acts of Violence which Caused Suffering to the Guatemalan People during the Armed Conflict). The Commission, which is to have three members, will have no legal authority to punish those responsible for human rights violations. It will cover the period from the beginning of the armed conflict until the signing of the final peace agreement⁷ and will begin operating

⁶ see Guatemala: Impunity - A Question of Political Will, AI Index: AMR 34/17/93, May 1993)

⁷ "la Comisión será a partir del inicio del enfrentamiento armado, hasta que se suscriba el acuerdo de paz firme y duradera".

after the signing of the planned peace treaty in December 1994⁸ and will last for an initial six months, which may be extended for a further six months if members of the Commission so decide. The Commission is to produce a report containing the results of the investigations and making specific recommendations. However, the Commission's report will not name specific individuals involved in the perpetration of human rights violations and its findings will not be considered valid as evidence in a court of law⁹. Another round of talks took place in Mexico on 20 October to discuss the subject of the Rights and Identity of the Indigenous Peoples, but failed to reach agreement. A second round of talks on this issue which took place on 4 November also failed to reach agreement and a third round of talks were scheduled to begin on 27 November.

Prior to the Norway talks Amnesty International called on both parties to put the serious investigation of past human rights violations and the punishment of those found responsible high on their agenda. The organization made clear its view that any such Commission should be given a mandate and sufficient resources to enable it to look into all reported cases of human rights violations carried out by both government forces and the armed opposition. It continues to believe that the results of the Commission's findings should be referred to the appropriate judicial bodies and those found responsible for human rights violations and abuses¹⁰ be brought to justice. Amnesty International also urges that such a Commission should study, report on, and make recommendations to eliminate the structures, policies or mechanisms which contributed to the persistence of human rights violations in Guatemala over a period of almost three decades. Such steps are vital, not only for the sake of the victims and their relatives, but so as to prevent the recurrence of such violations.

Amnesty International believes that the killing of Jorge Carpio Nicolle and the three others in July 1993 is illustrative of the sort of human rights cases where sufficient information already exists to make possible genuine in-depth inquiries by such a Clarification Commission.

⁸ "La Comisión se integrará, instalará y empezará a funcionar a partir del día de la firma del acuerdo de paz firme y duradera".

⁹ "no individualizarán responsabilidades, ni tendrán propósitos o efectos judiciales".

¹⁰ The term "human rights violations" is used when referring to governments (which have formal obligations in international human rights law at all times). The term "abuses" is used for political non-governmental entities (where international standards are explicit and binding only in the context of armed conflict).