

MEXICO

Silencing dissent: The imprisonment of Brigadier General José Francisco Gallardo Rodríguez

Introduction

Brigadier General José Francisco Gallardo Rodríguez, who was adopted by Amnesty International as a prisoner of conscience in 1994, has been under military arrest since November 1993. He was jailed in connection with the publication in the Mexican magazine *Forum* of an article in which he criticized human rights violations against civilians and soldiers by members of the Mexican armed forces and called for the appointment of an *ombudsman* for the armed forces. Brigadier General Gallardo remains imprisoned at *Campo Militar No. 1*, Military Camp No. 1, on the outskirts of Mexico City, formally accused of several crimes, including libel. Following the rejection of these charges by the civil courts, the Mexican army has filed new proceedings with a view to impeding his release (see below)¹.

The case against Brigadier General Gallardo

José Francisco Gallardo is one of the youngest military officers to hold the rank of Brigadier General in Mexico. Born in Atotonilco, state of Jalisco, and the son of a military man, he has been serving in the Mexican army for over 30 years. Married with four children, General Gallardo has been awarded several prizes and decorated with honours.

He was arrested on 9 November 1993 on charges relating to an alleged crime of embezzlement (*malversación*) of which he had been exonerated four years previously. His detention was also connected with the publication in October 1993 of an article entitled "*Las necesidades de un ombudsman militar en México*" ("The need for a military *ombudsman* in Mexico"), in issue 22 of the magazine *Forum*. The article summarized General Gallardo's Master's degree dissertation concerning the need to set up the post of *ombudsman* for the armed forces.

¹Amnesty International opposes the imprisonment, detention or other physical restrictions imposed on any person by reason of his or her political, religious or conscientiously held beliefs, among others. Such persons are known as "prisoners of conscience" and Amnesty International strives to obtain their release. General Gallardo is considered a prisoner of conscience, since he was imprisoned for proposing the creation of an *ombudsman* to defend human rights within the armed forces.

Judicial proceedings were initiated against General Gallardo for “*injurias, difamación y calumnias en contra del ejército mexicano y de las instituciones que de él dependen*” (“damaging, libelling and slandering the Mexican army and the institutions which it oversees”, article 280 of the *Código de Justicia Militar*, Military Justice Code) in the article published in *Forum*. Charges were also brought under article 350 of the *Código Penal del Distrito Federal*, Code of Penal Proceedings of the Federal District, which concerns the crimes of damage and libel. On 18 December 1993, the *Segundo Juzgado Militar*, Second Military Court, attached to the First Military Zone, issued an *auto de formal prisión* against him (a written order remanding a prisoner in custody, pending his or her trial).

General Gallardo sought protection in the civil courts, and on 7 October 1994 he was cleared of the charges which had been brought against him in a decree by the *Cuarto Tribunal Colegiado en Materia Penal del Distrito Federal*, Fourth Criminal Court of the Federal District, a court of appeal². He continues in active military service.

²Letter from Brigadier General José Francisco Gallardo Rodríguez, the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH)*, and the *Centro por la Justicia y el Derecho Internacional (Cejil)* to the Inter-American Commission on Human Rights, 10 August 1995, pages 41-44.

The military and civil courts have instituted at least 15 preliminary investigations (*averiguaciones previas*) and nine criminal proceedings relating to the Gallardo case, some in connection with alleged crimes on which the relevant courts had already ruled.³ In total, seven *autos de formal prisión* have been handed down against him, four of them since his imprisonment in November 1993.⁴ The crimes he has been accused of and prosecuted for include: *fraude, malversación, enriquecimiento ilícito, daño en propiedad de la nación, abuso de autoridad, deserción en su modalidad de abandono de plaza, destrucción de bienes del Ejército en su modalidad de quema de archivos, e infracción de deberes comunes a todos los que están obligados a servir en el Ejército y contra el honor militar*. (fraud; embezzlement; unjust enrichment; damaging property belonging to the nation; abuse of authority; desertion [abandoning his post]; destroying army property [burning files]; breach of duties obligatory to all who have to serve in the army and discrediting the latter).

On 24 November 1994, after the Fourth Criminal Court of the Federal District had decreed that General Gallardo be cleared of the charges of damaging, libelling and slandering the Mexican army, the *Juez Primero Militar*, First Military Judge, issued another *auto de formal prisión* against him for allegedly committing the crime of "unjust enrichment" (*enriquecimiento ilícito*). This case and another for "embezzlement" (*malversación*), which are both under appeal, are the only two proceedings remaining against him. He is still imprisoned at Military Camp No. 1 in Mexico City.

Amnesty International, like other Mexican and international human rights organizations, believes that the Mexican authorities have formulated this series of charges against General Gallardo in order to prevent his release. The organization considers that there is no real evidence to support any of the charges brought against him.

A military ombudsman for Mexico

The governmental *Comisión Nacional de Derechos Humanos*, CNDH, National Human Rights Commission, has a mandate similar to that of an *ombudsman*, and it has the power to receive reports of human rights violations perpetrated against members of the population by law enforcement agents. Yet its reluctance to issue recommendations against the armed forces for human rights violations of civilians - despite the marked

³See article "Autoritarismo, impunidad y ejercicio irracional del poder dentro del Ejército, ponen en riesgo la seguridad nacional", *Proceso*, No. 893, 13 December 1993, pp. 20 and 24.

⁴Letter from Brigadier General José Francisco Gallardo Rodríguez, et al, Op. Cit., pp 27-29.

increase in the latter since 1994⁵ - has fuelled extensive criticism by non-governmental human rights organizations.

While its mandate does not preclude the CNDH from receiving complaints from members of the armed forces (as victims of human rights violations), in practice it is unusual for this type of complaint to be registered, either because victims fear the possible repercussions that such reports could bring them, or because they lack knowledge about the CNDH.

In the article published in *Forum*, based on General Gallardo's dissertation - written as part of his Master's degree at the *Universidad Nacional Autónoma de México, UNAM*, National Autonomous University of Mexico -, he proposes that a human rights *ombudsman* be appointed for the military:

⁵See *La actuación de la Comisión Nacional de Derechos Humanos frente al ejército mexicano*, Centro de Derechos Humanos Fray Francisco de Vitoria O.P., April 1997.

"The MO [Military Ombudsman] acts to safeguard the law and assists in inspiring in the public a feeling of safety and confidence in the dominion of the rule of law. This being the case, Members of Parliament argue that the existence of the institution of the Military Ombudsman is justified, for whatever reason, and that it is an independent, impartial, legally competent organization to whom citizens who have been wronged in any way can appeal and which provides [military] officers with an additional reason for carrying out their duties with scrupulous care and demanding that their rights be respected".⁶

⁶ «El MO [*Militie Ombudsman*] actúa como un protector de la ley y contribuye a crear un sentimiento público de seguridad y confianza en que prevalece el imperio de la Ley, en estas circunstancias justifican los parlamentarios la existencia de la institución del *Militie Ombudsman* cualquiera que sea su razón, constituyéndose en un organismo independiente, imparcial y jurídicamente calificado, al que puede recurrir un ciudadano agraviado cualquiera que éste sea, y que da a los oficiales una razón adicional para el cumplimiento escrupuloso de sus deberes y la exigencia de sus derechos.» J. F. Gallardo, "Las necesidades de un *ombudsman* militar en México", *Forum*, No. 22, October 1993, p.13.

In addition, the article criticizes the Mexican army's behaviour towards the human rights of its own subordinates:

"Why, if the Army is an institution whose role is to act as guarantor of other guarantees, are the rights intrinsic to the dignity of soldiers and officers violated with impunity? Why is justice imparted in the Army in a selective, and, therefore, discriminatory manner? Why is it that the "military justice" punishes individuals for what they are and not for what they have done? Why, at the dawn of the new century, do army superiors continue to act with arrogance and omnipotence? How can "military justice" be termed "justice" in absolute terms if it is based on a system of inquisition? Does this not make the accused the object of persecution rather than the subject of proceedings? ... Why should cruel, degrading treatment, which undermines the dignity and morale of the Army, go unpunished, with the sole justification that there is a need to ensure that "discipline" is respected?..."⁷

⁷«¿Por qué, si el Ejército es una institución que se torna en garante de las demás garantías se violan impunemente los derechos inherentes a la dignidad de soldados y oficiales? ¿Por qué la impartición de justicia en el Ejército es selectiva y por lo tanto discriminatoria? ¿Por qué la "justicia militar" castiga al sujeto por lo que es y no por lo que hizo? ¿Por qué, en los albores del nuevo siglo, aún persiste la arrogancia y la omnipotencia de los mandos? ¿Cómo es que la impartición de la "justicia militar" si se puede llamar justicia en términos absolutos, está fundada en un sistema inquisitivo. En este contexto el acusado no es sujeto de procedimiento, sino un objeto de persecución?... ¿Por qué han de quedar en la impunidad hechos degradantes y crueles que socavan la dignidad y moral del Ejército, como única justificación de hacer respetar la "disciplina"?...», Ibid.

In its ruling in favour of General Gallardo and against the charges of which he was accused for publishing this article, the Fourth Criminal Court of the Federal District was of the opinion that the proposal concerning the military *ombudsman* "...*en nada menoscaba el mérito militar*" ("did not bring the army into disrepute in any way"), and that the aforesaid article reveals "*el gran respeto que tiene el peticionario de garantías [General Gallardo] hacia el Instituto Armado y la autoridad militar*" ("the great esteem which the person requesting the guarantees [General Gallardo] feels both for the army as an institution, and for military authority").⁸ At the same time, the court granted the *amparo* (similar to a writ of habeas corpus) requested by General Gallardo against his *auto de formal prisión*, since denying it "...*equivaldría a afirmar que el Ejército Mexicano no admite crítica alguna por parte de sus miembros...*" ("would be tantamount to declaring that the Mexican army does not permit criticism by any of its members...")⁹

According to non-governmental human rights organizations, despite the decision by this court, the military authorities continued to argue that General Gallardo "*difama, calumnia e injuria al Instituto Armado*" ("libels, slanders and insults the Army")¹⁰ in his press article, and to press charges against him to prevent his release.

Violation of the right to freedom of expression: the case of the *Forum* magazine

⁸Letter from Brigadier General José Francisco Gallardo Rodríguez, et al, Op. Cit., p. 7.

⁹Op. Cit., p.14.

¹⁰*Procurador General de Justicia Militar*, Communique No. DH-30996, 2 May 1995. Quoted in Letter from Brigadier General José Francisco Gallardo Rodríguez, et al, Op. Cit., p. 7.

Amnesty International considers that the imprisonment of General Gallardo for openly criticizing the armed forces as an institution represents a clear violation of the right to freedom of expression set out in international instruments which Mexico has signed. This right is also envisaged in article seven of the Mexican Constitution, which stipulates: "the right to write and publish documents on any subject is inviolable. No law or authority can institute prior censorship or demand a bond from authors or printers, or limit publishing freedom, the only restrictions to which are respect for private life, morals and public order ...".¹¹

Furthermore, article six of the Mexican Constitution guarantees the right to information: "There shall be no judicial or administrative inquisition into the expression of ideas, unless such an expression constitutes an attack on morals, the rights of third parties, or leads to crime or a disturbance in public order; the State shall guarantee the right to information".¹²

Despite these constitutional guarantees, the armed forces deemed it necessary to institute proceedings against Eduardo Ibarra Aguirre, the director of *Forum*, for libel and alleged infringement of the *Ley de Imprenta*, Publishing Law.

Eduardo Ibarra Aguirre was called to testify on three occasions between November and December 1993 on the case of General Gallardo before the *Procuraduría General de Justicia Militar*, PGJM, Military Attorney General's Office. On the first occasion, the agents who delivered the summons showed him a file containing political and personal information on him¹³, in what was apparently an attempt at intimidation.

The case was sent to the *Procuraduría General de Justicia de la República*, PGR, Attorney General's Office. This summonsed Eduardo Ibarra Aguirre to testify on 6 October 1994, and he was asked the same questions that the PGJM had put to him at his three appearances there.

¹¹"Es inviolable la libertad de escribir y publicar escritos sobre cualquier materia. Ninguna ley ni autoridad puede establecer la previa censura, ni exigir fianza a los autores o impresores, ni coartar la libertad de imprenta, que no tiene más límites que el respeto a la vida privada, a la moral y a la paz pública..." , *Constitución Política de los Estados Unidos Mexicanos*, edition 108, 1995, p. 11.

¹²"La manifestación de ideas no será objeto de inquisición judicial o administrativa, sino en el caso que ataque a la moral, los derechos de tercero, provoque algún delito, o perturbe el orden público; el derecho a la información será garantizado por el Estado", *Ibid.*

¹³"Replica el director de *Forum*: Violación evidente de la libertad de expresión", *Proceso*, No. 894, 20 December 1993, pp 18 -19.

According to an editorial in *Forum* in October 1994, "the message is as ominous as it is clear: no editor should permit subjects concerning the army to be aired in a reflective, deliberate manner, particularly if the authors are members of the armed forces, unless he or she is prepared to face the consequences of criminal action."¹⁴

On 7 October 1994, the Fourth Criminal Court of the Federal District upheld the 24 March 1994 ruling in favour of General Gallardo by the *Juzgado Décimo Primero de Distrito en Materia Penal del Distrito Federal*, 11th District Criminal Court of the Federal District, and cleared him of the charges relating to the publication of the article in *Forum*. Despite this ruling, the *averiguación previa*, preliminary investigation, into the case of Eduardo Ibarra Aguirre remained open for over eighteen months.

On 22 April 1996, the PGR approved a request submitted to it on 21 December 1995 by the *sub-procurador de averiguaciones previas*, deputy attorney general for preliminary investigations, to drop charges against Eduardo Ibarra Aguirre and to close the case.

Eduardo Ibarra Aguirre learned that the charges against him had been withdrawn through a written communication from the CNDH in August 1996. However, to date neither he nor his lawyer have been officially informed by the PGR of this decision.

Threats against the Gallardo family

General Gallardo has reported on several occasions about a campaign, apparently undertaken by the armed forces, to discredit and harass him. This campaign has included the transfer of military prisoners sympathetic to him away from the military prison in Military Camp No. 1 to other civilian and military prisons in different areas of the country¹⁵ and the harassment of members of his family.¹⁶

¹⁴ «...el mensaje es tan ominoso como claro: ningún editor debe permitir que en las páginas de su publicación se ventilen de manera reflexiva y propositiva los temas relativos al Ejército, y menos aún si los autores son integrantes de éste, salvo que esté dispuesto a atenerse a las consecuencias penales.» "Ominosa amenaza a la libertad de expresión", *Forum*, No. 32, October 1994.

¹⁵See "Dejan al General Gallardo aún más aislado en la prisión militar", *Proceso*, No. 906, 14 March 1994, pp 44 and 46.

¹⁶See 1 March 1996 letter by the *Red Nacional de Organismos de Derechos Humanos "Todos los Derechos para Todos"* to the CNDH.

On 8 June 1996, Marco Vinicio Gallardo Enríquez, General Gallardo's son, was attacked inside his housing estate by two strangers who threatened him and stole his watch, wallet and car keys (but did not take the car). He was later able to recover his credit cards, and for this reason it is felt that the motive behind the attack was not robbery but intimidation.¹⁷

The incident occurred a few days after a hearing in late May 1996 at which his father reported a number of irregularities. Moreover, the previous day, 7 June, the *Comité Pro-Liberación del General Gallardo*, Committee for the Release of General Gallardo, had organized a demonstration in Mexico City, and another in Monterrey, state of Nuevo Leon, where approximately 10,000 leaflets had been distributed on the case.

In May 1996 and November 1995, Marco Vinicio Gallardo also suffered similar attacks, and for months his family received constant telephone threats. Moreover, according to press reports, in early 1996, a parked car belonging to a member of the Committee for the Release of General Gallardo was broken into by persons unknown. They stole papers on the case of General Gallardo and left behind a threatening taped message.¹⁸

Recommendations on the Gallardo case by the Inter-American Commission on Human Rights

¹⁷See Urgent Action 144/96, AMR 41/27/96, 13 June 1996.

¹⁸"Sobreseimiento o un consejo de guerra, opciones para Gallardo", *La Jornada*, 18 June 1996, page 17.

In January 1995, having exhausted all instances at the national level to resolve the case, national and international non-governmental human rights organizations approached the *Comisión Interamericana de Derechos Humanos*, CIDH, Inter-American Commission on Human Rights, to present the case of General Gallardo and to call on the organization to intervene.¹⁹

A hearing on the case took place on 21 February 1996 in Washington D.C., and the CIDH decided to visit Mexico in mid-July the same year to verify details concerning this and other reports it had received of human rights violations in Mexico. In October 1996, in accordance with article 51 of the American Convention on Human Rights²⁰, the CIDH submitted its report on the Gallardo case to the Mexican Government and set a two-month time limit for it to respond to its recommendations. On 23 January 1997, the CIDH decided to publish the report (No. 43/96, Case 11,430) on the case of General Gallardo, which contains the following recommendations:

1. That Brigadier General José Francisco Gallardo be released immediately.
2. That the necessary steps be taken to halt the campaign of persecution, slander and harassment against Brigadier General José Francisco Gallardo.
3. That those responsible for the campaign of persecution, slander and harassment against Brigadier General José Francisco Gallardo be identified and punished.
4. That the necessary steps be taken to permit the swiftest possible decision on the cases pending.
5. That fair compensation be paid to Brigadier General José Francisco Gallardo as redress for the violations of which he has been victim.²¹

This is the first time, in the case of Mexico, that the CIDH has made a pronouncement about an individual case of human rights violations.

¹⁹Letter from Brigadier General José Francisco Gallardo Rodríguez, et al, Op. Cit., p.49.

²⁰Article 51: "2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the State is to take the measures that are incumbent upon it to remedy the situation examined. 3. When the prescribed period has expired, the Commission shall decide by vote of an absolute majority of its members whether the State has taken adequate measures and whether to publish its report".

²¹«1. Se libere inmediatamente al General Brigadier José Francisco Gallardo. 2. Se tomen todas las medidas necesarias para que cese la campaña de persecución, difamación y hostigamiento en contra del General Brigadier José Francisco Gallardo. 3. Se investigue y sancione a los responsables de la campaña de persecución, difamación y hostigamiento en contra del General Brigadier José Francisco Gallardo. 4. Adopte las medidas necesarias para que se decidan lo antes posible las causas pendientes. 5. Se le pague una justa indemnización al General Brigadier José Francisco Gallardo como reparación por las violaciones de las cuales ha sido víctima.» Comisión Interamericana de Derechos Humanos, *Informe No. 43/96, Caso 11.430, Mexico*, October 1996, page 29.

In its report, the CIDH states that "*...el Ministerio Público mexicano, ordinario o militar... ha utilizado [su] potestad pública para fines distintos a los establecidos en el ordenamiento jurídico mexicano, configurándose así una desviación de poder, mediante actos sucesivos y encadenados, tendientes a confluir en la privación de la libertad personal al General José Francisco Gallardo, a través de actos con apariencia legal...*" ("... The Public Ministries in Mexico, be they civilian or military, have used their powers for purposes other than those laid down in Mexico's legal regulations. A divergence of power has therefore occurred, comprising successive, inter-connected actions aimed at depriving General José Francisco Gallardo of his personal freedom, by means of outwardly legal actions").²²

Previously, on 17 January 1997, the *Secretaría de Relaciones Exteriores*, SRE, Ministry of Foreign Affairs, had published a press release "concerning information which has appeared in different newspapers regarding recommendations that the Inter-American Commission on Human Rights of the Organization of American States has allegedly made to the Mexican Government"²³ on the Gallardo case. In the press release, the SRE denied that a violation of the fundamental human rights of General Gallardo as laid down in the American Convention on Human Rights, had occurred. According to press reports, the communiqué by the SRE denying the existence of the recommendations may have influenced the decision by the CIDH to make the latter public six days later, on 23 January.²⁴

Two days after the publication of the report, SRE officials informed journalists that Mexico would not adopt the CIDH recommendations not only because they are not binding (that is to say, compliance with them is not compulsory), but because this was a case of corruption: "...the imprisoned General is not being persecuted because of his ideas, and an offence against his human rights has not been committed..." ("*...el general preso no es perseguido por sus ideas, como tampoco se han violentado sus derechos humanos...*").²⁵

²²Ibid.

²³"...en relación a informaciones aparecidas en distintos medios de prensa sobre presuntas recomendaciones que habría hecho al Gobierno de México la Comisión Interamericana de Derechos Humanos de la Organización de Estados Americanos."

²⁴"Hubo *desviación de poder* en contra del militar, afirma el organismo de la OEA" *La Jornada*, 24 January 1997.

²⁵"No se liberará a Gallardo: fuentes de la SRE", *La Jornada*, 25 January 1997.

Initially, Mireille Roccatti, President of the CNDH, stated that "it will not be very difficult for [the Mexican government] to comply with these decisions" ("*no le será muy difícil [al gobierno de México] cumplir con estas determinaciones*")²⁶, although in April 1997, during a visit to Spain, she said that "the case of General Gallardo does not represent a violation of individual guarantees" and that "he has been imprisoned for fraud committed previously".²⁷

Despite the publication of the CIDH recommendations, at the time of writing, the Mexican authorities had not complied with them and General Gallardo remained in prison.

Conclusion

Amnesty International believes that General Gallardo is a prisoner of conscience who is being persecuted for his political ideas and for calling for the creation of an *ombudsman* to deal with the problem of human rights within the Mexican armed forces.

The organization hereby calls on the Mexican authorities to:

- Immediately and unconditionally release Brigadier General José Francisco Gallardo Rodríguez;
- Put an end to the harassment suffered by General Gallardo and his family;
- Carry out an in-depth investigation to find out who is responsible for this harassment and publish the results, together with details of the methods used in the investigations;
- Provide adequate compensation for General Gallardo and his family for the human rights violations to which they have been subjected.

²⁶"Atender la recomendación de la CIDH 'no será muy difícil': Mireille Roccatti", *La Jornada*, 25 January 1997.

²⁷"el caso del general Gallardo no es una violación de las garantías individuales»; «su encarcelamiento se debe a fraudes cometidos con anterioridad". See "Los altos mandos del ejército deben regresar a sus cuarteles: General Gallardo", *Proceso*, 20 April 1997.

Write to the Mexican authorities listed below, calling for the release of General Gallardo. Include the following points in your letters:

√ **Mention that General Gallardo has been arbitrarily jailed for freely expressing his ideas about the need to create a military *ombudsman* for the Mexican armed forces, and that, for this reason, Amnesty International considers him to be a prisoner of conscience and demands his immediate, unconditional release;**

√ **Express your concern over the threats and harassment to which General Gallardo and his family have been subjected. Call for an end to these, for an immediate investigation and for those responsible to be prosecuted;**

√ **Call for adequate compensation to be granted to General Gallardo for his arbitrary arrest and the harassment inflicted upon his family members.**

Send your letters to:

**Ernesto Zedillo Ponce de León,
Presidente de la República,
Palacio Nacional,
06067 México DF
MEXICO**

**Lic. José Angel Gurría Treviño,
Secretario de Relaciones Exteriores
Secretaría de Relaciones Exteriores
Av. Ricardo Flores Magón No. 1,
Colonia Nonoalco Tlatelolco,
06995 Mexico DF
MEXICO**

Send copies of your letters or messages of support to:

**General José Francisco Gallardo Rodríguez Sr. Eduardo Ibarra Aguirre
c/o Familia Gallardo
Apartado Postal 22813,
Tlalpan, México DF
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