

£GUATEMALA

@The Right To Know:

The case of Efraín Bámaca

BACKGROUND

Efraín Bámaca, also known as Comandante Everardo, "disappeared" after apparently being wounded in a clash with the Guatemalan army in March 1992. The Guatemalan military claimed that he had died in combat, but various irregularities in the information given by the authorities concerning his death led the Guatemalan opposition forces, the *Unidad Revolucionaria Nacional Guatemalteca* (URNG) the United Guatemalan National Revolutionary Forces to suspect very early on that the official version of events might be inaccurate. Their doubts were transmitted to US citizen Jennifer Harbury, a lawyer and author who has written a book about the Guatemalan armed opposition. Ms. Harbury, who says that she married Efraín Bámaca in 1991 in Texas, USA,¹ also began to suspect that the "disappeared" opposition leader may have been captured alive. These suspicions were strengthened when two former combatants who said they had escaped from army custody during 1992 testified that while they were in custody they had seen Efraín Bámaca, as well as a number of other former combatants, being held by the military at various bases around the country.²

Since then, Ms. Harbury has conducted a vigorous campaign to press the Guatemalan authorities to account for the fate of the missing opposition leader. She has also pressed US officials and international bodies including the United Nations (UN) and the Organisation of American States (OAS) to assist her in discovering the truth about her husband's "disappearance." Further, she undertook highly-publicised hunger strikes both in Guatemala and the US in an effort to learn the truth about the fate of Efraín Bámaca, and has returned to Guatemala on several occasions to observe exhumations of sites where his body was said

¹The Guatemalan authorities have repeatedly questioned whether the marriage actually took place and if so, whether it was valid, in an apparent effort to discredit Ms. Harbury and so throw doubt on other elements of her account of her relationship with Efraín Bámaca and her efforts to locate him.

²The two have testified *inter alia* to the United Nations (UN), the Organization of American States (OAS) and most recently, to the current government prosecutor (*fiscal*) assigned by the Guatemalan Attorney General's office (*Ministerio Público*) to investigate the case, who travelled recently to Washington, USA to interview on of the men.. [For details concerning the testimonies of the two former combatants, see *Guatemala: Secret detention of hors de combat and non-combatant prisoners* AMR 34/11/93, April 1993.]

to be buried. However, his body has not yet been located, nor the full details of his fate established.

Then, in March of this year, US Congressman Robert Torricelli revealed that he had learned that Efraín Bámaca had indeed been taken into custody alive, was tortured while in army custody, and then extrajudicially executed. Congressman Torricelli further charged that US officials had known of this for some time, even as early as 1992, but had not told Ms. Harbury, had indeed "covered up" the information, both from other US government officials and agencies and from the American public. Finally, Congressman Torricelli revealed that according to his information, a Guatemalan colonel, who had been on the payroll of the US Central Intelligence Agency (CIA), had been responsible for ordering not only the killing of Efraín Bámaca, but also of Michael DeVine, an American citizen, who was murdered in 1990.

Possible New Burial Site - Exhumation

Following these revelations there has been renewed high-level publicity on the case, both in the US and Guatemala, and once again, unconfirmed reports have suggested yet another site where Efraín Bámaca may have been secretly buried after being extrajudicially executed by the Guatemalan military. The new suggested burial site is an area about the size of two soccer fields, at the military base at Las Cabañas, La Montañita, Malacatán, in San Marcos Department.

New information has also come from Angel Urizar, described as a former Guatemalan military intelligence agent, who said he saw Efraín Bámaca in the custody of the Guatemalan army shortly after the army reported his death in combat. Angel Urizar also said that another former opposition combatant, who had deserted the opposition forces and gone to work for army intelligence, had been extrajudicially executed and buried as Bámaca during the period that the army actually had the opposition commander in custody. This was done, he said, in order to support the army's story that Bámaca had been killed in combat. After revealing this information, Angel Urizar then went into hiding, in fear for his life. (He is reportedly now safe in another country.)

Despite the emergence of these new allegations, many Guatemalan officials, including President Ramiro de León Carpio and Vice-President Arturo Herbruger have called for the case to be closed. However, Lic.³ Eduardo Arango Escobar, a prosecutor (*fiscal*) with the Guatemalan Attorney General's Office, (*Ministerio Público*) recently assigned by the *Ministerio Público* to investigate the case has publicly stated that he believes Bámaca did not

³ Lic. is the abbreviation for *licenciado*, the customary honorific for "lawyers" in Spanish-speaking countries.

die in combat. Lic. Arango has also announced that he intends to pursue investigations into the case, despite the continuing death threats he has received since being named *fiscal* on the case. The military have countered by filing a suit asking that Dr. Arango be withdrawn from the case, on the grounds that his impartiality is in question. However, Guatemalan lawyers have told Amnesty International that the military, as the party cited as respondent in the requests for exhumation and other actions on the case filed by Ms. Harbury, cannot initiate such a suit, which should properly be within the preserve of the Attorney General. For his part, Guatemala's Attorney General, Lic. Ramses Cuestas Gómez has made a number of statements which suggest that he is not actively supporting Lic. Arango's efforts to investigate the case, and may in fact even be trying to impede efforts to investigate the case.

Concerns have also been expressed that Ms. Harbury and any others who accompany her to the site or join her campaign to have the exhumation carried out could also be in danger. On a visit to the proposed exhumation site a few weeks ago, Ms. Harbury was reportedly confronted by approximately 40 people, sent to this remote area, it has been suggested, to intimidate her.

Meanwhile, exhumation of the site, originally scheduled for the week of 5 June, was postponed till 13 June after Attorney General Ramses Cuestas reportedly first ordered it cancelled, but then said it was merely delayed. As 13 June approached, a colonel who had apparently only taken over command at the detachment the preceding week, (the base is a very small one, and previously had been under the command of a lower ranking officer) announced that he was not empowered to allow the exhumation, but needed authorization to do so from the Ministry of Defence. By 14 June, such authorization had apparently not been given, and Dr. Arango, Jennifer Harbury and some 8 others accompanying her, including foreign forensic experts and representatives of MINUGUA, the UN mission to Guatemala, set off to the military detachment at San Marcos without it. There, they were met by the commander of the base, accompanied by a military lawyer. Lic. Arango was informed that his authority to observe the exhumation was not recognised, given that he had not received a court order to proceed, and as the military's suit against him, asking for his withdrawal from the case, had not been resolved. For her part, Ms. Harbury was told that because of doubts about the validity of her marriage to Efraín Bámaca, her status as a family member was not recognised in Guatemala and that she therefore could not be recognised as a valid witness to or initiator of an exhumation. The military's lawyer also reportedly questioned MINUGUA's presence, saying that the case did not fall within its mandate area, and should properly be considered by the eventual *Comisión de Esclarecimiento* (Clarification Commission) which is to be established once the ongoing peace negotiations

are completed and a peace agreement signed between the Guatemalan authorities and the armed opposition.⁴

According to Lic. Arango, Guatemala's *Código Procesal Penal* (Code of Legal Procedures), specifies that representatives of the Attorney General's Office should by law be entirely independent and should be able to ask for the cooperation of any state employees. As such, he says, the military should not be able to block prosecutors' access to any areas they wish to enter in the course of their work. To do so, he said, represented an illegal effort by the army to interfere in Guatemala's civil justice system.

After further delays, including efforts to get a court order to carry out the exhumation from a nearby *juez de paz* (Justice of the Peace), Attorney General Cuestas then reportedly notified Lic. Arango that he could search for the remains of the missing opposition leader for twenty-four hours only. Forensic experts have told AI that it could take several months to carry out proper exhumations and forensic investigations on a site as large as the one identified in San Marcos as the possible clandestine burial place of Efraín Bámaca.

⁴MINUGUA was officially inaugurated in Guatemala in November 1994. It is mandated to monitor compliance with the human rights accord signed in March 1994 by representatives of the Guatemalan government and the armed opposition. Guatemalan officials are adamant that MINUGUA should not take on the duties of Guatemalan agencies with respect to investigation of reported abuses, and that it is mandated to verify investigatory procedures of those agencies only with respect to cases reported since it began operations in Guatemala. MINUGUA has, however, become involved in some cases which occurred before its arrival, like the Efraín Bámaca case on the grounds that it is quite properly verifying that Guatemalan investigatory and judicial agencies are operating as they should, with respect to ongoing inquiries into past cases..

For its part, the eventual creation of a Clarification Commission was agreed during talks held in June 1994 between the Guatemalan government and the armed opposition. It is to cover the period from the beginning of the armed conflict in Guatemala until the signing of the final peace agreement, and is to begin operations after a final peace treaty is signed. However, it will not be empowered to name perpetrators nor to initiate proceedings to bring them to justice. Therefore, for the Guatemalan authorities to maintain, as they apparently have done, that the Bámaca case will be handled not by the Guatemalan courts, but only by an eventual Clarification Commission amounts in the eyes of some observers to ensuring that anyone involved in his "disappearance," torture and extrajudicial execution would in effect be granting them a *de facto a priori* amnesty in advance of any hearing of the case, which is prohibited under the peace accords.

On 24 June, Jennifer Harbury left Guatemala to return to the United States, but she reportedly plans to come back to Guatemala shortly, to renew her efforts to have the Las Cabañas, San Marcos site excavated. Meanwhile, Lic. Arango reportedly continues to receive death threats and on 22 June, he apparently was shot at while at work in his office at the Ministerio Público.

AMNESTY INTERNATIONAL'S CONCERNS

- ◆ The apparent blockage by the Guatemalan military of efforts by Ms. Harbury and at least some members of the Guatemalan judiciary, including Lic. Arango, to have the San Marcos site excavated is of grave concern to AI as this impedes efforts to determine whether Efraín Bámaca was in fact secretly buried there after torture and extrajudicial execution at the hands of the Guatemalan military.
- ◆ Amnesty International is also concerned that the Guatemalan Attorney General, Ramses Cuestas and other civilian officials in Guatemala, including President Ramiro Carpio de León and Vice-President Arturo Herbruger have not done everything within their constitutionally mandated powers to ensure that legal procedures for the investigation of this case, including exhumation of the San Marcos site, are respected, that allegations concerning the fate of Efraín Bámaca are fully investigated and that any persons found responsible for any wrong-doing in connection with his "disappearance" and alleged torture and extrajudicial execution are brought to justice.
- ◆ Despite the widespread publicity surrounding this case and the logistical support and protective measures given by various bodies, including the US Embassy in Guatemala and MINUGUA, to those who have been pressing for the truth about what happened to Efraín Bámaca, reports have been received that Lic. Arango and Ms. Harbury have been threatened. For this reason, an Amnesty International delegation joined a group of concerned organisations who accompanied Jennifer Harbury to Guatemala upon her return several weeks ago to press for the exhumation in San Marcos. Throughout her stay concerns continued to be expressed for the security of both Ms. Harbury and Dr. Arango. Ms. Harbury is now safely out of the country, but should she return, concerns have been expressed that she and others who try to assist her in her efforts to exhume the San Marcos site would once again be in danger.

APPENDIX

SOME HUMAN RIGHTS VIOLATIONS AGAINST JUDGES, LAWYERS, LAW STUDENTS REPORTED TO AMNESTY INTERNATIONAL IN 1994 AND 1995

1 March 1994: **Yolanda Pérez Ruíz**: Juez Primero de Primera Instancia (First Judge of the Court of First Instance) of Chimaltenango, reportedly received death threats for having attempted to enforce a writ of habeas corpus filed on behalf of José Mercedes Similoj, detained at the military base in Chimaltenango.

30 April 1994: Appellate Judge **Mario Díaz** reportedly began receiving threats by phone after he overturned the decision of a military court that granted full liberty to two generals allegedly involved in a fraudulent helicopter purchase. Judge Díaz had ruled that there was sufficient evidence to resume proceedings against the two for their role in the illegal procurement of Sikorsky helicopters in June 1988. Two years ago, another judge hearing the case, Raul Pérez Santos, was forced to seek exile in Canada after escalating harassment culminated in a beating by four armed men.

June 1994: It was reported that **Julia Cardina Villegas Nuñez**, Justice of the Peace in San Lucas Tolimán had been threatened by several armed men who told her to resign from her job.

7 July 1994: Abogado infieri (lawyer in training) **Desiderio Bacajol Aquino** was reportedly kidnapped along with Dr. Jorge Figueroa. Bacajol belonged to the *Sindicato de Trabajadores de la Educación de Guatemala* (STEG) (Educational Workers of Guatemala Trade Union) and had reportedly played an important role in a state workers strike in February. Two days later the bodies of the two men reportedly appeared with signs of torture.

25 July 1994: The Guatemalan newspaper *El Gráfico* reported that judges of the Court of Constitutionality and the Supreme Electoral Tribunal have received threatening letters and phone calls, apparently related to their role in congressional elections. On 22 July a number of judges were reportedly told that if they continued with the electoral process they would be assassinated, one by one. Guatemalan President Ramiro Carpio de León reportedly ordered protection for them.

20 August 1994: **Judge Edgar Ramiro Elías Ogáldez** (or s) of the Chimaltenango district court was reportedly shot down execution style outside the University of San Carlos. He had recently ordered the detention of an army officer and a civil patrol chief in connection with two separate murder cases. The *Comité pro Derechos Humanos de Comalapa*, (Human Rights Committee of Comalapa) in Chimaltenango Department said a military commissioner⁵ and a civil patroller had carried out the extrajudicial execution of Judge

⁵ Military commissioners are civilian agents of the army, serving under army discipline. They act as local representatives of the army and as intermediaries between the army and the local community and are frequently in charge of local civil patrols.

Elías Ogáldez after he had issued orders that they be arrested and their homes searched in connection with the death of an indigenous leader, Pascual Serech [UA 297/94, AMR 34/35/94] that month for which they were believed responsible. The military commissioner had been arrested in response to the order issued by Judge Elías Ogáldez, but went free after the judge's assassination.

Archbishop Próspero Penados de Barrio, Archbishop of Guatemala reportedly said Judge Elías Ogáldez was killed because he was carrying out an investigation which threatened the immunity of a military intelligence officer in active service at the Chimaltenango Military Base and that the special presidential security force, the *Estado Mayor Presidencial* was collaborating with this officer and had provided the men who actually carried out the judge's murder.

On 21 November, 1994 a number of Mayan human rights and indigenous rights organisations travelled to Panabajal, on the invitation of the local human rights commission for which Pascual Serech had worked, to discuss human rights issues including the human rights agreement between the government and the armed opposition. While they were there, civil patrollers, former soldiers and military commissioners publicly accused them of being "subversives" and threatened to kill them. A resident of the area who had given testimony identifying those responsible for the killing of Judge Elías Ogáldez said that the sons of the military commissioner implicated in the case, one of whom was a member of G-2 (army intelligence) for the Chimaltenango military zone, had publicly announced that they would kill anyone who tried to take action against their father. They told villagers they had already carried out the killing of Judge Elías Ogáldez.

29 August 1994: Judge **María Eugenia Villaseñor Velarde** goes into exile abroad after a series of incidents of harassment and threats directed against her and two other judges, *Héctor Raú; Orellana* and *Mario Salvador Jiménez* and an attack on a policeman assigned to protect Judge Villaseñor. [See UA 320, AMR 34/37/94 concerning previous intimidation directed at Judge Villaseñor and the two other judges, all of them magistrates of the Court of Appeals in Guatemala city who had been responsible for reviewing appeals in a number of highly-publicised cases of human rights violations.] Judge Villaseñor is also the author of a book on the trial of Noel de Jesus Beteta, formerly a sergeant in the special presidential security force who was tried and convicted in 1993 for having carried out the murder of Myrna Mack, an internationally known anthropologist and sociologist, extrajudicially executed in 1990 [CASA 12/90, AMR 34/55/90]. In her book, Judge Villaseñor also refers to the extrajudicial execution of a number of judges in the 1980s. On 26 July, the IACHR had asked the government of Guatemala to take precautionary measures to protect the lives and physical integrity of the three magistrates.

On 5 September 1994, Guatemala's Human Rights Procurator found that the human rights of María Eugenia Villaseñor Velarde had been violated, particularly her rights to

integrity and security, and warned that the independence of the judiciary in Guatemala was at grave risk.

October 1994: The *Consejo de Comunidades Etnicas-Runujel Junam* (CERT), Council of Ethnic Communities-We are all United, denounced death threats and harassment that it said its legal advisor, **Gustavo Vásquez** has been receiving. Vásquez was apparently told by an anonymous caller that if he continued as advisor to CERT he would be executed.

22 November 1994: The former president of the Cobán Lawyers and Notaries Association in Alta Verapaz, **Judge Olga Choc Jolonna**, was shot and seriously wounded by several gun-shots as she left her office. Choc Jolonna had recently quit her post as judge after receiving constant death threats from a gang whose members have been charged with several murders in the area.

29 November 1994: Gunmen shot at **Abraham Méndez**, special prosecutor (*fiscal especial*) of the *Ministerio Público* (Attorney General's Office) investigating the extrajudicial execution of politician and newspaper publisher Jorge Carpio Nicolle, killed in July 1993 along with three other members of his party as he was travelling in El Quiché department [UA 231/93 AMR 34/47/93 and follow-up AMR 34/28/94, AMR 34/31/94 and 34/47/94]. Fiscal Méndez has apparently been receiving constant threats, and has reportedly been followed and kept under constant surveillance by unknown armed men since he assumed responsibility for investigation of the Carpio Nicolle case in July 1994. The Attorney General's office said the shooting appeared to be an attempt to intimidate Méndez and so scare him off the case. Méndez has also been faced with constant impediments in his efforts to investigate the Carpio Nicolle killing. During a reconstruction of the incident a civil patroller turned his gun on him, and in the following days he found that his movements were being filmed by unknown men who were following him as he proceeded along a public thoroughfare.

January-February 95: **Carlos Hernández Orantes** (or Ovalle) Public Ministry Prosecutor in Cuilapa, Santa Rosa was shot to death by unidentified men near 10th Street and 13th Avenue in Zone 7, Colonia Castillo Lara. The motive for the attack was believed to be related to information he had about certain land evictions.

February 1995: The UN mission in Guatemala, MINUGUA, reported that the *fiscal* and the local priest in Flores-Costa Cuca, Quetzaltenango have been accused of supporting the peasant organization of the workers at the San Juan del Horizonte estate in Quetzaltenango, and have received serious threats against their lives. [See UA 328/94, AMR 38/38/94 and follow-up AMR 34/42/94 concerning riot police action against the peaceful occupation of the San Horizonte Estate in August 1994 which ended with the death of three demonstrators.]

MINUGUA also reported that Guatemala's Attorney General, Ramses Cuestas, has acknowledged that *fiscals* are receiving from three to four threats a month, and that attacks on them are also frequent. MINUGUA says it has also had such reports and knows that in at least one case reported to it, the person threatened was later killed. In another, the victim was forced to leave the country.

Lic. Julio Eduardo Arango Escobar, the prosecutor assigned to investigate the case of Efraín Bámaca announced in June 1995 that he had been receiving death threats. He had publicly stated that he did not believe Bámaca had died in combat and that he was going to pursue investigations into the case. Reports indicate that shots were fired at Dr. Arango on 22 June as he was working in his office. The military have filed a suit asking that Dr. Arango be withdrawn from the case on the grounds that his impartiality is in question.