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NICARAGUA

@The Case of Jean Paul Genie

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For the past four years Amnesty International has monitored closely the case of the killing of Jean Paul Genie Lacayo in 1990. In the course of its investigation of the case, Amnesty International found serious irregularities in the judicial proceedings, which for the last two years have been carried out by military courts. Its concerns about the case are summarized below.

Jean Paul Genie Lacayo, aged 16, was shot dead in his car on 28 October 1990 as he attempted to overtake what is alleged to have been a military escort on the Managua-Masaya Highway. Evidence indicated that the military escort was that of General Humberto Ortega, Commander in Chief of the **Ejército Popular Sandinista** (EPS), Sandinista Popular Army, the official Nicaraguan army. However, the police investigation failed to name any suspects and was marked by numerous irregularities, including reportedly failing to follow up possible leads, and the death in suspicious circumstances of a police sub-commander involved in the initial investigations.

Given the difficulties faced by the police investigation, the special commission appointed by the Nicaraguan National Assembly requested the Venezuelan judicial police to assist in its inquiries. In August 1991 the Venezuelan judicial police officers identified General Humberto Ortega's escorts as prime suspects in the willful murder of Jean Paul Genie Lacayo. In mid-1992 the Seventh Criminal Court judge ruled that there was sufficient evidence to try eight members of the military escort, and that General Humberto Ortega and two army captains should be tried for covering up the killing. However, the judge recommended they should be tried before the military justice system, **Auditoría Militar**.

In a letter of October 1992 to Alfredo Mendieta Artola, the Interior Minister of the Government of Nicaragua at the time, Amnesty International expressed its concern that the military justice system did not offer the requisite guarantees for an impartial trial.

In the course of official investigations into Jean Paul Genie Lacayo's death, there had been numerous indications of obstruction and non-collaboration by members of the military and the National Police. These included the failure of military witnesses and suspects to comply with the court's summons, and alleged threats and coercion against witnesses and relatives of the victim. Among the most alarming indications of obstruction were the circumstances of the killing in November 1990 of police Sub-Commander Mauricio Aguilar Somarriba, which suggest he may have been killed to prevent him from clarifying the identity of Jean Paul Genie Lacayo's killers.

Raymond Genie Penalba, Jean Paul Genie Lacayo's father, lodged an appeal before a Court of Appeal against the decision to transfer the case to military jurisdiction, but the Appeal Court upheld the judge's ruling. Following the rejection of a further appeal against military jurisdiction by the Supreme Court in December 1993, proceedings went ahead before the Military Court of First Instance of the Auditoria Militar in February 1994.

In a 6 May 1994 letter to President Chamorro, Amnesty International expressed some of its concerns in relation to the retention of the case under military jurisdiction and the apparent irregularities noted since proceedings were resumed. Among its concerns was that the Law of Organization of Military Justice and Provisional Military Penal Procedure (**Ley de Organización de la Auditoría Militar y Procedimiento Penal Militar Provisional**) did not offer guarantees that the next stages of the trial would proceed according to international standards of due process and impartiality.

Article 242 of this law empowers the Auditoría Militar, in case of an appeal against the Military Prosecutor's ruling, to refer the case to the High Command of the EPS. The Army High Command then determines whether the appeal is admissible, and can reject it without any explanation. Even if the appeal is accepted, the Army High Command can appoint four members of the military as additional members of the Court. Amnesty International argued that these procedures would allow a blatant violation of due process if applied in a case where the Commander in Chief of the EPS and his staff are accused of the killing and its cover-up.

On 27 June 1994 the Military Court of First Instance of the Auditoria Militar dismissed the charges against the nine accused, on the grounds that there was insufficient admissible evidence against them. The judge ruled that the case should remain open until responsibility for the crime was established. The victim's father appealed against this ruling. However, the Armed Forces High Command, acting as a Military Court of Appeal, upheld the original ruling. A further appeal (**recurso de casación**) was presented to the Military Court of Appeal in August and passed on to the Supreme Court for its consideration. To Amnesty International's knowledge, this appeal is pending. However, the Army High Command's powers to appoint additional members of the Supreme Court to hear **recursos de casación** gravely undermines the Court's impartiality in this case.

Amnesty International considers that the application of military jurisdiction has proved a major obstacle to the clarification of the killing of Jean Paul Genie and the bringing to justice of those responsible. The undue influence granted to the military hierarchy in this case and the failure to rectify the irregularities which have plagued proceedings from the start, indicate a lack of will to hold government forces suspected of human rights violations accountable for their acts.

On repeated occasions in recent years, Amnesty International has urged the authorities to put an end to the impunity which has surrounded cases of alleged human rights abuses, both by government forces and armed rebel groups in Nicaragua. In this context, it repeatedly called for the Genie case to be thoroughly and impartially investigated before civilian courts. However, all appeals against military jurisdiction have been rejected. As long as the case remains subject to military jurisdiction, Amnesty International considers that all avenues will have been barred to an investigation which meets internationally established standards of fairness.

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