

GUATEMALA - "War Crimes Trials Are A Real Possibility"

April 27, 2010

BELOW:

- Article, by Annie Bird (annie@rightsaction.org), that provides history and context to struggle for justice, against impunity in Guatemala
- Letter from Jennifer Harbury (jharbury@yahoo.com) describing her on-going efforts to prosecute those responsible for the kidnapping, torture and murder of her husband, Efrain Bamaca

Rights Action: This is an important moment in Guatemala. It appears that ten key criminal cases from the time of genocide and repression in the 1980s are again advancing - ever so slowly, ever so dangerously - in the justice system, including the Bamaca case. Some military officers implicated in the "Dos Erres" massacre have already been arrested. Before this year, no military officers implicated in the genocide of the 1980s had faced prosecution, only a handful of Civil Patrollers and Military Commissioners.

Since 1995, Rights Action has provided funding and other support to a number of the war crimes cases that are now, again, proceeding.

These cases are important not only to end the impunity for the repression and genocide of the recent past, but also as a step toward ending the violence, repression and impunity today. Many of the same actors responsible for the State repression and violence of the 1970s, 80s, 90s, continue in power and are linked to organized crime and ongoing repression.

- TO SUPPORT organizations seeking justice in Guatemala, see below
- WHAT TO DO: see below
- Please re-publish this information all around
- To get on/ off Rights Action's listserv: www.rightsaction.org
- FOR MORE INFO: Annie Bird, annie@rightsaction.org, Grahame Russell, info@rightsaction.org

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JENNIFER HARBURY'S QUEST FOR JUSTICE IN GUATEMALA: COULD IT AGAIN SHAKE UP WASHINGTON?

By Annie Bird, Rights Action (annie@rightsaction.org)

Seventeen years ago Jennifer Harbury came to Guatemala City on a mission to save her husband's life that ended up exposing the CIA's role in torture in Guatemala (and, indeed, around the world) and its complete lack of accountability.

Today, Jennifer is back in Guatemala City on a quest for justice for her husband's torture and murder; one but can't help but wonder who in Washington is getting nervous.

JENNIFER'S HUSBAND TORTURED BY CIA ASSETS

In the 1991, Jennifer Harbury, a Texas based immigration lawyer who had come to Guatemala and Mexico for investigations to support asylum cases, married Efrain

Bamaca, a Guatemalan guerilla commander. They had gotten to know each other in Guatemala and Mexico City while Bamaca was involved in preparations for peace negotiations. He returned to Guatemala in 1992 and was captured by the Guatemalan army.

Though the army reported he had died in combat, in 1993 a prisoner escaped from a military base and informed Jennifer her husband was alive, detained in a clandestine detention center and being tortured. She then embarked on a series of actions, including two hunger strikes in Guatemala City, hoping to gain her husband's release.

Increasingly suspicious that the US State Department had information about her husband, on March 12, 1995 Jennifer began a hunger strike in front of the White House.

On March 24, 1995, then Senator Robert Torricelli gave Jennifer documents indicating her husband had been killed and tortured at the hands of a CIA paid asset. This revelation tipped off a scandal. Senator Torrecelli, in his capacity as a member of the Senate Intelligence Oversight Committee had made inquiries as to whether the CIA had information related to Jennifer's husband, and the CIA claimed it did not.

However, a State Department analyst, Richard Nuccio, was already concerned about information he had found indicating that a CIA asset was not only implicated in Bamaca's torture and killing, but also in the murder of Michael Devine, an US citizen and hotel owner in Guatemala. Nuccio knew that information was being withheld, illegally, from the Senate Oversight Committee. So, Nuccio presented the memos to Senator Torrecelli.

Nuccio's security clearance was revoked. In his line of work that is equivalent to being fired.

However, the CIA proceeded to conduct its own internal investigations, and the then CIA director John Deutch issued some directives, one of which led to dropping about 1,000 CIA assets from their payrolls, most for not producing useful information and about 100, mostly in Latin America, for participation in egregious human rights violations.

Another directive obligated the CIA to ask permission before hiring assets known to use torture to obtain information.

ATTACKED FOR GETTING OUT THE TRUTH

As limited as the fallout was, the CIA, and who knows who else, was furious. High ranking officials called for Deutch's resignation. In the spring of 1995 the FBI visited Jennifer's home at night to inform her that the Guatemalans were hiring a hit man to kill her. The iron security door of the Guatemala Human Rights Commission, a Washington based organization that supported her efforts, was torn off its hinges and left in the street, and only the answering machine was taken. In January 1996 Jennifer's lawyer's car was bombed outside his Washington DC home. The home where Jennifer lived while in DC was shot at.

After the September 11, 2001 bombing of the World Trade Center, in many televised interviews in which CIA officials were questioned about the weaknesses in the US intelligence system that it did not prevent the bombing, officers blamed Jennifer,

claiming the directive obligating permission to hire torturers was responsible for the intelligence lapses, even though the CIA itself admitted it has never denied permission.

Then the interest in intimidating and even criminalizing Jennifer reached new heights when, in 2002, the FBI told Amnesty International that they considered Jennifer to be a suspect in the March 2002 kidnapping of Barbara Bocek. Bocek, an Amnesty International Guatemala country specialist, was briefly kidnapped, bound and gagged during a trip to Guatemala in 2001. Then, following months of death threats, while having car problems on a deserted road near her home in the state of Washington, she was again bound, gagged and threatened in 2002. The attacks and intimidations against Barbara all seemed to follow her reporting on the killing of Bishop Gerardi in Guatemala.

US EMBASSY BACKED GUATEMALAN PRESIDENTIAL CANDIDATE IMPLICATED IN TORTURE AND KILLING

In 1996 Jennifer presented the case of her husband's murder and torture to the Inter-American Commission on Human Rights, and in November 2007 the Inter-American Court of Human Rights ruled that the Guatemalan government had not complied with its duty to prosecute those responsible.

No action for the criminal investigation and prosecution was ever taken, so – years later - in 2009 the Inter American Court called the Guatemalan government to Costa Rica to explain their lack of compliance. Surprisingly, the case (along with other key cases) was re-opened, and Jennifer has been busy over the past months assisting in the preparation of the case.

Initially, the re-opening of Jennifer's case was kept quiet, in hopes of better insuring arrests and the safety of those involved in the case. But in the end of March 2010, the Secretary of a Guatemalan political party, the Patriot Party, accused the administration of President Alvaro Colom of promoting the Bamaca case as part of a political strategy to undermine the 2012 presidential campaign of former general Otto Perez Molina.

POST "PEACE ACCORD" VIOLENCE AND IMPUNITY

In the 2008 presidential elections, Colom narrowly beat Perez Molina. Perez Molina had run on a "Hard Hand" anti-crime platform. Guatemala, along with neighboring Honduras and El Salvador, suffer from Latin America's highest murder rates, which hover around 60 murders per 100,000 residents, a level of violence the United Nations says surpasses the killings during most of the years of the wars and State repression the region.

Following the December 1996 signing of the Peace Accords in Guatemala, the death squad networks that carried out much of the killing of 250,000 Guatemalans 30 years ago, transformed themselves into the organized crime networks responsible for the ongoing violence. These "clandestine" networks of power maintain a strong control over governance, elements of organized crime hold elected office and exert influence in the justice system, to maintain the impunity they need to operate.

As the 2008 presidential elections approached, in the final days of the campaign, a national rampage of killing of bus drivers was launched, and continued into the first few months of Colom's presidency. In March 2009 over 30 bus drivers were killed, mostly by gunmen aboard motorcycles, often killing passengers.

It would be hard to think of a more effective way of terrorizing the population.

Many believed this was a ploy by Perez Molina supporters to demonstrate that Colom could not control crime, and destabilize his government.

'VIDEO FROM THE GRAVE'

As the bus driver crisis came under control after a series of measures, Colom's administration was rocked by a bizarre murder scandal that many savvy Guatemalan political observers diagnosed immediately as a coup attempt. On May 11, 2009 a video was released the day after the murder of Rodrigo Rosenberg, a right wing political activist and lawyer, which showed the victim accusing Colom of his own murder.

This 'video from the grave', which quickly appeared in every major international media outlet, was taped and distributed by figures known to have been associated with Guatemalan military intelligence during and after Guatemala's period of massive military repression, figures also associated with Perez Molina. The scandal made CNN news, and Perez Molina promoted marches and media campaigns calling for Colom's resignation.

Interpreting the Rosenberg murder as a political destabilization attempt is an intricate conspiracy plot hard to accept, but in January 2010, a UN sponsored commission to investigate organized crime in Guatemala (CICIG, by its Spanish acronym) made public its investigations into Rodrigo Rosenberg's killing, which demonstrated through video footage, and cellular phone and bank records that the murder was actually a suicide in which Rosenberg hired hit men to kill him.

WHO IS OTTO PEREZ MOLINA?

Former general, now presidential candidate Perez Molina has a terrifying record of violence. He has been implicated directly in torture and massacres, and during the height of the genocide he commanded the military base in the department of Quiche, the area where the most massacres occurred.

Despite this, to many who visited the U.S. embassy during the 2008 presidential campaign, he seemed to be the embassy's favorite candidate. The U.S. ambassador defended him against reports published in the book "The Art of Political Murder" by Francisco Goldman, reports that claimed Perez Molina was present at the park during the April 2008 assassination of Bishop Gerardi. The assassination occurred the evening after Bishop Gerardi released to the public the Catholic Church's "truth commission" report (Nunca Mas) that attributed 89% of the country's State repression and human rights violations to the army.

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The criminal case of the torture and murder of Efraim Bamaca will be extremely important in Guatemala, not just to clarify the crimes of the past, but because the criminals are still in power.

That, and Jennifer Harbury's track record of generating earthquakes in Guatemala whose aftershocks reach the White House, make this is an important case to watch.

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GUATEMALA: TEN PARADIGMATIC LEGAL CASES AND THE NEW COYUNTURA

By Jennifer Harbury, April 8, 2010

Dear Friends,

I would like to bring everyone up to date on the new situation in Guatemala. I have spent most of my time there since January, and will return there soon to stay the entire month of April. I think that a truly historic opportunity to end the impunity is at hand, but it is very fragile and could be lost at any moment. For the first time that I can remember, war crimes trials are a real possibility. Needless to say, the army is displeased.

For those of you that missed my earlier letters, the chain of events began in February 2009, when the Inter-American Court on Human Rights of the OAS held a number of hearings on whether or not the Guatemalan government had complied with the Court's earlier sentences.

The judges wanted to know whether or not there was any progress in the required criminal prosecutions in the cases of Everardo [Jennifer's disappeared and murdered husband], Carpio Nichol , and a number of others [Dos Erres massacre, the genocide cases, and more]. Of course there was no progress at all, and in fact our entire evidentiary files had once again vanished.

Although I thought this was rather comical, the Court was not at all amused, and issued a series of very emphatic orders. Upon my return to Guatemala, I found most of the government officials to be sincere in wanting to do the right thing. However, as we slowly retrieved the records, we learned that the accused military officers had secretly gone before a military court and had themselves declared innocent. They were hence claiming double jeopardy.

The military rulings violated a large number of international legal prohibitions, but not necessarily Guatemalan law. A group of very dedicated new fiscals and lawyers took the issue to the Guatemalan Supreme Court, which to everyone's amazement, ruled that the *sobreseimientos* ["decisions" from the military court] were invalid, and that we were free to move forwards.

The basis for this series of decisions was that Guatemalan courts must follow Inter-American law and CIDH rulings. This has set remarkable precedents for all of the human rights cases.

However, I hear that the army is now in charge of the Supreme Court Justice's personal safety. I will try to verify this and get back to everyone.

These rulings coincided with a group of really committed fiscals at the *Fiscalia de Derechos Humanos*, and an MP willing to back them up. In turn the international community has strongly backed the movement towards prosecutions. The Dutch Embassy, for example, has given the government financial backing to press ten paradigmatic war crimes cases through the courts.

So far these include the Dos Erres massacre case, the genocide cases, the Bamaca case, the Carpio Nicol case, and the Fernando Garcia case. Many other cases involving massacres, killings of union leaders, and the femicide cases are being pressed as well.

The first army response came in the first case yielding arrests: namely, the Dos Erres case brought by FAMDEGUA (Family Members of the Disappeared in Guatemala). A young

attorney was shot point blank in the head and left dead, with nothing stolen. The matter is still being investigated. I will let everyone know when there are formal findings.

Not surprisingly, I was the next in line. I filed my petition for "querrellante adhesivo" status in Everardo's case, which gives me quasi-prosecutorial powers. Within two days, the Partido Patriota came out with a front page declaration that the current government had a written "Plan Victoria", which the Patriota members had been allowed to see but not to copy, and that this was a plan to destroy the presidential candidacy of poor General Otto Perez Molina.

Specifically, officials like Orlando Blanco of Sepaz were supposedly trying to bring false charges of corruption against Perez Molina, and had even paid my tickets and hotels in order to have me bring false charges as well. I, once again, was accused of just wanting money, although criminal prosecutions do not involve money in any way, just prison sentences.

I thought this would blow over and did not answer. Instead it blew up completely, with Blanco and Congresswoman Baldetti duking it out daily in the press and suing each other as well.

This has been a remarkable pre-emptive strike by General Perez Molina, and the intent is clearly to block the prosecutions that may involve him by casting him as an innocent political target.

All this placed a huge and dangerous spotlight on the Fiscalia, which had desperately been avoiding any publicity about the ten cases. I ended up doing two interviews, one on television and one in El Grafico, although based on past experience nothing I say is ever published or aired. I asked everyone to let the fiscals and the courts do their work without any political pressures or threats, and urged that the Bamaca case not be treated like a political football.

To my amazement, the paper printed exactly what I said, and gave it front page coverage, and the TV station aired it twice as well.

Once again, I am forced to recognize that things are changing, albeit slowly. The public response was good, especially on the streets, and from people in the judiciary. However, there was a storm of very military letters to the editor, some of which amounted to death threats, and the usual suspects began to slam my marriage and my motives once again.

Everardo's old friends, at that point, reached the limits on their patience and sent me a former ORPA combatant as a body guard.

Despite the firestorm, the judge in Retalhuleu just granted my petition, citing the Inter-American Court ruling, and the Guatemalan Supreme Court's insistence that Inter-American law be followed. This was incredibly courageous on his part, as well as personally dangerous, so I will be monitoring his situation as well.

Again, I am forced to recognize a new aperture in human rights efforts. This is why I am returning now. For the first time in 18 years I will give my formal testimony to a Guatemalan Judge, and I will be permitted to be present at all proceedings and demand files, etc.

The other cases are moving along swiftly and the Dos Erres case is already in court. These cases are hugely important in the history of Guatemala, and clearly the military response has just begun. Collectively we are going to need a great deal of help in terms of calls, letters, fundraising, and emergency actions on behalf of all of these cases as well as the court and MP officials.

If you can help us by sharing this letter with as large a network as possible, we would much appreciate it.

For more information, please coordinate with Amanda Martin at the Guatemala Human Rights Commission-USA (amartin@ghrc-usa.org, 202-529-6599).

Abrazos, Jennifer Harbury

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HOW TO SUPPORT PURSUIT OF JUSTICE IN GUATEMALA?

TAX DEDUCTIBLE DONATIONS

Since 1995, Rights Action has been funding and working grassroots groups in Guatemala that are working endlessly, courageously against impunity, for justice in the war crimes and genocide of the State repression of the recent past. To support these organizations and efforts, make check payable to "Rights Action" and mail to:

UNITED STATES: Box 50887, Washington DC, 20091-0887

CANADA: 552 - 351 Queen St. E, Toronto ON, M5A-1T8

CREDIT-CARD DONATIONS: <http://rightsaction.org/contributions.htm>

EDUCATIONAL ACTIVITIES & MATERIALS

- SPEAKING TOURS, ONTARIO (CANADA), MAY 2010: "Community resistance to harmful mining in Guatemala & Honduras" (To host an event: spring.kj@gmail.com)
- DELEGATION TO HONDURAS, JUNE 26-JULY 4: First anniversary of June 28, 2009 oligarchic-military coup against the elected government (For information: annie@rightsaction.org)
- NEW BOOK: "CODE Z59.5: There Is Only One People Here", by Grahame Russell. Code Z59.5 is a series of diary excerpts (comments, facts, quotes, etc.) from the 1990s and 2000s, related to the author's work in Central America, Mexico and North America, in defense of human rights. TO ORDER: info@rightsaction.org

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RECOMMENDED BOOKS: Eduardo Galeano's "Open Veins of Latin America"; Howard Zinn's "A People's History of the United States"; Naomi Klein's "The Shock Doctrine"; Paolo Freire's "Pedagogy of the Oppressed"; Dr Seuss's "Horton Hears A Who"

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Contact us to plan educational presentations in your own community, school, place of worship, home (info@rightsaction.org)

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Form your own group or join one of our delegations to learn first hand about community development, human rights and environmental struggles (info@rightsaction.org)

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