

Rights Action
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Otto Perez Molina Inaugurated President Of Guatemala Days Earlier A Court Improperly Dismissed Charges Against Him Of Forced Disappearance And Torture

By Annie Bird

On January 5, 2012, just days before the January 14 inauguration of former general Otto Perez Molina as President of Guatemala, a Guatemalan court in a highly irregular procedure dismissed charges against Perez Molina for the 1992 forced disappearance, illegal detention, prolonged torture and presumed extrajudicial execution of Efraim Bamaca.

This extremity of the violation of universal standards of judicial independence and due process makes it appear that the clandestine networks which for decades have been dedicated to destroying the Guatemalan justice system and rule of law have been set to work on behalf of the incoming president, an ominous event that does not bode well for the struggle against violence and impunity in Guatemala during the upcoming administration of Perez Molina.

The inauguration was attended by the presidents of Central America, as well as the presidents of Mexico, Honduras, Colombia, Haiti, Costa Rica, El Salvador, Nicaragua, Surinam, Georgia, and the Prince of Spain. A scandal erupted earlier this month when rumors circulated that the president of Iran, Mahmoud Ahmadinejad, currently on tour of Latin America, would attend the event.

Guatemala's standing in international politics is getting a big boost this year as it takes a rotating seat on the United Nations Security Council for the first time in history. The new standing at the United Nations is ironic given that it occurs as a former general with credible allegations of participation in genocide assumes the presidency.

The United Nations has been a strong backer of the decades' long struggle against impunity which has focused strongly on freeing justice administration from the tentacles of organized crime, the same tentacles which appear to have set to work on behalf of Perez Molina earlier this week.

GENOCIDE DENIAL

Perez Molina has publicly challenged the findings of the United Nations backed Commission for Historical Clarification (CEH) truth commission, claiming genocide did not occur. The CEH report released in 1999 found that the army was responsible genocide and for a minimum of 93% of the human rights violations that occurred during the war which left more than 200,000 dead and 45,000 disappeared.

PROCEDURAL IRREGULARITIES

The First High Impact Court made a mockery of due process in an irregular hearing in which it dismissed charges against two individuals charged in the Bamaca case. Two days prior to the hearing, the lawyer representing Bamaca's widow was notified by telephone that a hearing would be held in that court, a court reviewing numerous cases represented by the same lawyer, without explaining what case or what petition would be heard.

Despite calls to the public prosecutor's office and the court, it was not until arriving at the hearing that the lawyer found out it was in reference to the Bamaca case. Despite the lack of proper notification, the judge refused to postpone the hearing, violating the victim's right to be notified and prepare a rebuttal.

The petition presented was a motion to dismiss charges against Perez Molina and one other military intelligence officer. Though the Public Prosecutor had previously informed the victim's lawyers that he had not requested any hearing, by Guatemalan law only the Public Prosecutor can initiate a request for the dismissal of charges. Further, a hearing at this stage should not evaluate the evidence, simply judge if there is enough evidence to warrant a trial.

RULING IGNORES EVIDENCE

The sole evidence used to dismiss charges against Perez Molina was an expert opinion by a Peruvian military officer which asserted that the command responsibility over the Joint Task Force Quetzal, the unit which initially captured Bamaca, was held by other units of the military, not military intelligence, and that military intelligence officers when tasked out to other sectors of the military would not fall under the command of military intelligence. From 1992 to 1994 Perez Molina was Director of Military Intelligence (D-2).

This expert opinion contradicted declassified US State Department documents. The United States was a close ally of the Guatemalan military governments, and it has been reported that Perez Molina while Director of Military Intelligence was on the payroll of the Central Intelligence Agency (CIA).

Guatemalan newspapers report that declassified US State Department documents make it clear that military intelligence officers, even when assigned to regional bases, maintain their hierarchical relationship to their superiors in Military Intelligence (D-2).

Had the rights of Bamaca's widow, U.S. immigration lawyer Jennifer Harbury, to prepare a rebuttal to the motion to dismiss charges been respected, this and other evidence could have been presented to the courts.

However, Harbury had already presented overwhelming evidence showing that D-2 in fact controlled Bamaca throughout his detention. Some evidence placed Perez Molina in direct physical control of Bamaca, not just command responsibility for his detention. This evidence includes testimony presented before the Inter-American Court of Human Rights by two prisoners who escaped from the Santa Ana Belen military base, another escaped military prisoner, two former military intelligence specialists, and Major Sosa Orellana, the head of intelligence in the FTQ under the direct command of Perez Molina.

Also presented by Harbury at the time of the initial complaint was extensive documentary evidence, mostly declassified reports from the Department of Defense, Central Intelligence Agency, and State Department.

THE EVIDENCE

Through this evidence it becomes apparent that on March 12, 1992, Efraim Bamaca, a commander of the Guatemalan guerrilla movement ORPA for 17 years, was captured and illegally detained by the Joint Task Force Quetzal (FTQ).

He was taken to the Santa Ana Belen military base while a meeting of military commanders from all over the country who had personnel in the FTQ was taking place at the base. He was immediately turned over to the D-2. Some evidence reports that Perez Molina was present in that meeting.

The commanders took the decision to submit Bamaca to a secret D-2 prisoner program of prolonged torture, while publicly claiming Bamaca had been killed in combat. To replace Bamaca's body they decided to murder a young prisoner known as "Valentine". The FTQ Military Intelligence commander, Major Sosa Orellena, ordered military intelligence specialists to kill Valentine.

Bamaca was held and tortured in the Santa Ana Base in the military intelligence section, and then transported to the military intelligence headquarters in Guatemala City. He was held in D-2 headquarters and with D-2 permission lent out to different bases, where he was held in D-2 compounds, transported in D-2 helicopters, and tortured by D-2 personnel, until sometime in 1994 when he was presumably killed. He was tortured throughout his captivity, and sometimes held in a full body cast to prevent escape attempts.

OTHER CRIMES IN WHICH PEREZ MOLINA HAS BEEN IMPLICATED

It was estimated in a State Department document that at this time, while Perez Molina directed the unit, Military Intelligence maintained a secret prison and torture center with between 340 and 360 prisoners.

Declassified documents also reported that the presence on military bases of a number of former prisoners recruited as intelligence collaborators suddenly ceased, having been eliminated (killed) to prevent information getting out should they decide to talk. This occurred as the Bamaca scandal grew and military officers imprisoned for the murder of a US citizen Michael Devine spoke to the press about the existence of clandestine prisons and graves. Around this time the military “cleaned up” a number of clandestine cemeteries and jails.

In addition to the Bamaca case, and the other murders it has brought to light, credible allegations have implicated Perez Molina in a number of crimes.

“OPERATION SOFIA” - Beginning in 1982 Perez Molina commanded the Nebaj military base, the epicenter of the Ixil genocide. Leaked military documents related to military “Operation Sofia”, carried out over approximately two months in 1982, implicated Perez Molina in at least one massacre.

Survivors of the massacres and genocide (as determined by the 1999 United Nations Truth Commission) in the Ixil area implicate Perez Molina in a number of other crimes, including torture and massacres. Video footage of a 1982 interview in Nebaj by journalist Alan Nairn of Major “Tito”, Perez Molina’s pseudonym and by physical appearance clearly Perez Molina, shows him standing over the tortured, lifeless bodies of three Ixil men who soldiers reported they had captured alive.

KILLING OF A JUDGE - The Archbishop’s Human Rights Office (ODHA) has alleged that Perez Molina participated in the 1994 murder of a judge.

KILLING OF A BISHOP - US writer and journalist Francisco Goldman placed Perez Molina at the scene of the 1998 killing of Bishop Juan Jose Gerardi just after he released, in 1998, the findings of the Catholic Church’s Truth Commission.

FRAGILE ADVANCES IN CLEANING OUT PUBLIC PROSECUTORS NOT MATCHED IN THE COURTS

The dismissal of charges against Perez Molina in the Bamaca case was such an extreme travesty of justice that it seems clear that the procedure could only have responded to external intervention.

Over the past decade, under close international scrutiny, Guatemala has undeniably experienced advances in cleaning out some of the clandestine structures which have manipulated the police, military, public prosecutor's office and the courts in order to continue their illegal activities with impunity, including massive and widespread violence both during and after the war.

Over the past two years the murder rate has dropped in Guatemala while in neighboring Honduras and El Salvador it has grown markedly. Over the past four years, but particularly the past year, 12 top drug kingpins have been arrested.

But what has been most impressive has been advances, through 2010-2011, in the prosecution, in national courts, of those responsible for crimes against humanity such as massacres, genocide, forced disappearance, rape and torture, cases that implicate Perez Molina himself, and many of his closest associates.

IMPLICATED JUDGE

The judge who improperly dismissed the charges against Perez Molina was criticized, in May 2011, by CICIG (United Nations sponsored Guatemalan Commission Against Impunity), for dismissing charges against the former National Director of the Penitentiary System, Alejandro Giamatti, in a pre-trial hearing, despite extensive evidence against him. Giamatti had been charged with extrajudicial execution and illicit association, crimes related to an alleged participation in a death squad in 2005 to 2007. That ruling was later overturned.

In addition, on January 5, 2012, the same day she dismissed charges against Perez Molina in the Bamaca case, she ruled that 80 year old Mejia Victores was not fit to stand trial for crimes against humanity.

Advances in the reform of the Guatemalan justice system have been particularly evident in the Public Prosecutor's office, but reform of the courts has lagged behind. The process for appointment of judges has been the subject of intense criticism, as has a lack of separation of powers.

As Perez Molina launches his presidency, with the backing of a Central American regional security strategy spearheaded by the US State Department and the Inter American Development Bank, he plans to heavily militarize the nation in a war against crime modeled after the Merida Initiative in Mexico, which Mexican human rights activists claim has cost between 40,000 and 50,000 lives. A war against crime destined to fail when justice administration is subject to manipulation by clandestine networks that respond to organized crime networks.

RIGHTS ACTION

Since 1995, Rights Action has been funding and working to eliminate the underlying causes of poverty, environmental destruction, repression, racism and impunity in Guatemala and Honduras, as well as in Chiapas (Mexico) and El Salvador. The Canadian Rights Action Foundation, founded in 1999, is independent from and works in conjunction with Rights Action (USA) that was founded originally in 1983. Since 1995, Grahame Russell and Annie Bird have been co-directors of Rights Action; Grahame is founder and director of Rights Action (Canada).

Rights Action: funds and works with community-based organizations implementing their own development, environmental justice, human rights and disaster relief projects, & educates about and is involved in activism aimed at critically understanding and changing unjust north-south, global economic, military and political relationships

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