



The Myrna Mack Case: An Update

Committee on Human Rights, National Academy of Sciences, National Academy of Engineering, Institute of Medicine

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NATIONAL ACADEMY OF SCIENCES
NATIONAL ACADEMY OF ENGINEERING
INSTITUTE OF MEDICINE
Committee on Human Rights

The Myrna Mack Case

AN UPDATE

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Background

In 1992 the Committee on Human Rights of the National Academy of Sciences and the Committee on Health and Human Rights of the Institute of Medicine undertook a fact-finding mission to Guatemala.¹ The committees' report, *Scientists and Human Rights in Guatemala* (1992), describes the mission and its findings. It focuses especially on the September 11, 1990, murder of anthropologist Myrna Elizabeth Mack Chang. Myrna Mack researched and wrote about indigenous populations displaced or destroyed due to armed political-military conflict and military counterinsurgency practices.² She was murdered outside her workplace in Guatemala City only two days after her research was published in English.

A portion of the 1992 report reviews the legal steps in the Mack case from the time of the murder to the end of the accusatory phase of the judicial proceeding against Noél de Jesús Beteta Alvarez. Beteta, formerly of the intelligence branch of the Presidential High Command (*Estado Mayor Presidencial*), was then under indictment as one of the killers, although it was widely believed that Beteta's military superiors were involved in planning the murder. This update provides a synopsis of the Myrna Mack case through 1997, with an overview and a descriptive chronology of the primary legal steps taken to prosecute the three military officers accused of ordering Myrna Mack's murder.

¹In 1994 the committees merged into what is now the Committee on Human Rights of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

²Myrna Mack was the principal researcher for the monograph, *Assistance and Control: Policies Toward Internally Displaced Populations in Guatemala* (Washington, D.C.: Center for Immigration Policy and Refugee Assistance, Georgetown University, 1990). Mack conducted her research under the auspices of the Association for the Advancement of the Social Sciences (*Asociación para el Avance de las Ciencias Sociales* or AVANCSO), Guatemala, which she cofounded in 1986.

The Committee on Human Rights works to gain the release of imprisoned scientists, engineers, and health professionals worldwide whose basic human rights, as recognized by the U.N. Universal Declaration of Human Rights, have been violated by their governments. Most of the committee's cases involve colleagues who are in jail or who have recently disappeared and may still be alive. Since so many colleagues in Latin America in the 1980s were either killed outright or killed after abduction and torture for the peaceful expression of their ideas, the committee began to develop lists of such cases and to register protests in their behalf with the governments involved.

In the case of Myrna Mack, the murder was so egregious, the record of the Guatemalan military's impunity so flagrant, and the resulting cessation of virtually all anthropological research in Guatemala so unfortunate, that the committee decided to devote special attention to the development of the legal case and to persistently urge that all those responsible for Myrna Mack's death be brought to justice. The committee recognizes with deep respect the courageous, unselfish, and tireless efforts of Helen Beatriz Mack Chang, Myrna's sister and the self-appointed private prosecutor in the case.³ Without her initiative in leading the prosecution forward through institutional barriers and resistance, the legal proceedings would not have advanced as far as they have. Thanks primarily to her tireless insistence, this case has become a test of the justice system in Guatemala.

³Guatemalan law permits a Guatemalan citizen to act independently as a private prosecutor, although the state still has the responsibility to appoint a state prosecutor. At the trial phase, the private and state prosecutors have equal rights to introduce evidence, questions, and witnesses.

Overview

The Myrna Mack case highlights Guatemala's systemic problems of military impunity, fear of retribution, and judicial inefficacy. These problems are not exclusive to Guatemala, although Guatemala's particular experience is grievous. The Mack case became a vehicle for addressing these crucial issues in the early 1990s, and it remains so today. That the trial of those who have been indicted for ordering the murder has not occurred—some seven years after the crime—indicates the continuing weakness of Guatemala's judicial system and the apparent invulnerability of the military establishment.

Progress in the case has been hampered from the outset by fear of punitive repercussions for cooperating in the investigation. For example, José Miguel Mérida Escobar, the chief of the Homicide Division in the Criminal Investigation Department of the National Police, submitted a report on the Mack murder on September 29, 1990, that purportedly provided evidence that the murder was politically motivated. The report implicated military intelligence officers and identified Beteta as a suspect. José Mérida was murdered under mysterious circumstances on August 5, 1991.⁴ As early as 1992, almost a dozen different judges had played a role in the case, and several used procedural maneuvers to excuse themselves from ruling on the case, presumably out of fear for their personal

⁴José Mérida was shot and killed in the parking lot of the police headquarters in Guatemala City shortly before he was scheduled to give testimony before the Inter-American Commission on Human Rights of the Organization of American States. Members of his family who were with him witnessed the murder. According to human rights sources, José Mérida had expressed fear for his physical safety to them and had requested that they help him and his family to leave Guatemala. Two men were detained in the case and accused of his murder, but a Guatemalan court found the men not guilty because of lack of evidence.

safety. Some complained of direct harassment, including death threats, from unidentified individuals. Witnesses in the Mack case reported being intimidated physically and verbally and fled Guatemala.

Helen Mack believes that three high-ranking military officers—General (retired) Edgar Augusto Godoy Gaitán, Colonel Juan Valencia Osorio, and Lieutenant Colonel Juan Guillermo Oliva Carrera⁵—and others were responsible for Myrna's death. In the early 1990s she was unable to convince the Guatemalan judiciary to prosecute Beteta's superior officers at the Presidential High Command, but in 1994 the Supreme Court considered an appeal by Helen Mack and agreed that the evidence available indicated that Beteta had likely acted under orders. The court ordered a criminal investigation of the three military officers. However, the state prosecutor, Mynor Alberto Melgar Valenzuela, was not appointed by the Public Ministry until almost one and a half years later. Melgar recently explained that the position was hard to fill because the Mack case is "highly complex" and to be involved in it is "very dangerous in Guatemala."⁶

Based on evidence that Melgar presented in 1996, a judge indicted the officers on a charge of complicity in Myrna Mack's murder. Then, one and a half months later, another judge ordered the case closed on a technicality. Not until August 1997 did the Constitutional Court overturn the order for closure and allow the criminal investigation of the military officers to proceed.

At present, there is no action in the case because the military officers initiated pleas for amnesty under the December 1996 Law of National Reconciliation. The request for amnesty must be entirely resolved before the criminal investigation can resume. Thus far, the Guatemalan courts have found that the military officers do not qualify for amnesty because there is no relationship between the crime committed and the political aims related to the violent internal conflict. Given the long procedural delays and periodic setbacks, Helen Mack does not anticipate that the trial phase of the criminal prosecution will begin until mid- or late 1998.

The Committee on Human Rights (CHR) consistently has lent moral support to Helen Mack, who works in the public housing sector and is president of the Myrna Mack Foundation. An earnest and soft-spoken woman, Helen Mack has steadfastly worked to see that those accused of complicity in her sister's murder are brought to a fair and full trial. She has expressed to the CHR her own continuing surprise and gratitude over the number of Guatemalans, personally unknown to her, who approach her on the streets of Guatemala City to quietly voice their support and wishes for success in her search for justice.

The CHR also has lent moral support to Clara Arenas and other associates of the Association for the Advancement of the Social Sciences, who have received

⁵Godoy Gaitán is also a defendant in a legal suit filed by two private Guatemalan citizens who have charged him and six other military officers with abducting, torturing, and murdering ten University of San Carlos students in 1989. The plaintiffs filed suit in the summer of 1997.

⁶Note to CHR from Mynor Melgar, October 24, 1997.

repeated anonymous threats to their personal safety during the 1990s, apparently for collaborating with Helen Mack in formulating the prosecution's case and for continuing some of Myrna Mack's anthropological research. Only since 1995 have Guatemalan social scientists dared to resume the kind of investigative work pursued by Myrna Mack.

Scientists should be free to safely conduct research and publish their findings, no matter how challenging their research endeavors and conclusions may be to a government or its policies. But well-founded fears of retribution persist. For example, there are still frequent reports of intimidation of forensic anthropologists in countries like Guatemala, where they are exhuming mass graves.⁷ Among nonscientists, individuals involved in the prosecution of Myrna Mack's alleged murderers continue to report harassment, including surveillance and telephone threats.

While the CHR focuses on the plight of scientists, engineers, and health professionals, their cases form part of a larger picture. Vigilantism is a dire problem in modern Guatemala and is worsening. Every month there are reports of extrajudicial lynchings of alleged criminals. The long tradition of military impunity certainly has contributed to the continuing climate of violence and insecurity in Guatemala and the lack of respect for the rule of law. The U.N. Verification Commission's seventh report (dated September 20, 1997) on the human rights situation in Guatemala cited the government's failure to curtail impunity and concluded that violations of due process comprise more than 40 percent of the cases submitted for verification. The U.S. State Department's *Country Report on Human Rights Practices for 1996* described a climate of lawlessness. It said that "with judges and other law enforcement officials subject to intimidation, corruption, and inadequate resources, the judicial system was often unable to ensure fair trials," and that "politically motivated killings continued with disturbing frequency." Guatemala's Human Rights Ombudsman recorded 173 cases of possible extrajudicial killings in 1996.

Of the nine accords agreed on by the Guatemalan government and the Guatemalan National Revolutionary Unity (the former guerrilla group now integrated into the political arena) during the 1990s' peace process, several address the country's fundamental need to improve public safety and to strengthen the rule of law. They affirm the legitimacy of human rights activities, legally establish peace, diminish the military's size and redefine its role vis-à-vis civil society, and mandate the building and training of a new national police force. Yet the disparity between the written accords and daily practice is discouragingly pronounced, even given that lasting social change requires time. Cognizant of the urgent need to bolster the rule of law in Guatemala, the international community, led by the United States and the European Union, has recently committed \$130 million

⁷The exhumation of mass graves is an important task for completing the Guatemalan peace process since the scientific results help determine what happened to whom and when.

(U.S.) for reform of the judicial system, the national police, and the public prosecutor's office.⁸ The judicial reform funds currently amount to one-quarter of Guatemala's total economic assistance package.

Because of the difficulties in obtaining justice for her sister's case within Guatemala's courts, Helen Mack in February 1991 sought a hearing before the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS). The Lawyers Committee for Human Rights petitioned the Inter-American Commission on Helen Mack's behalf. It argued that the Guatemalan state had violated the American Convention on Human Rights: specifically, the rights to life, humane treatment, personal liberty and security, due process, and adequate remedy. As of this writing, the IACHR has not yet heard the case, reportedly in the hope that the Guatemalan judicial system itself will now try the case in a timely manner.

A broad spectrum of Guatemalans at home and abroad know of the Mack case, follow its developments, and await a final ruling. The case also has attracted the interest of the United Nations, diverse foreign governments, the international scientific community, human rights organizations, and private individuals worldwide who face similar challenges in establishing and shaping the rule of law in countries beset by internal conflict or impunity of the armed forces.

The Mack case has played a significant role in U.S.-Guatemala relations. Partly because of the international publicity surrounding the Mack case and five others (four involving U.S. citizens), the U.S. government in late 1990 suspended all military aid to Guatemala until the country could point to real progress in these cases. The suspension still applies, although U.S. armed forces have resumed limited training of Guatemalan military officers and covert aid to counter narco-trafficking.

In 1995 the Lawyers Committee for Human Rights, on Helen Mack's behalf, formally sought classified documents relevant to the Mack case from the U.S. government. As a result of interagency cooperation stemming from the Intelligence Oversight Board's 1996 review of U.S. documents on human rights cases in Guatemala, the U.S. government released some significant documents. Several of them appear to contain information regarding persons who might have knowledge of Myrna's murder, but those specific references have been blacked out (redacted). For instance, one citation reads, "[redacted] may have had some involvement in the 1991 [sic] murder of anthropologist Myrna (Mack) Chang."⁹ Helen Mack seeks the release of these documents in their unredacted form. Moreover, both the Guatemalan government and the Guatemalan Clarification Commission independently have requested the release of unredacted U.S. documents

⁸The principal international donors for 1996-1997 are the European Economic Community, the World Bank, the Inter-American Development Bank, and the U.S. Agency for International Development.

⁹Excerpted from document Z-144 R67-1, dated February 1995, from a Central Intelligence Agency release.

relevant to the Mack case.¹⁰ The documents could provide crucial evidence in both the prosecution of the accused military officers and the commission's efforts to clarify historical events as quickly as possible. Several members of the U.S. Congress, inspired in part by the Mack case, in October 1997 introduced a bill—the proposed “Human Rights Information Act” (S-1220 and HR-2635)—that would require the U.S. government to cooperate with formal requests issued by foreign governments or international bodies like the United Nations for declassifying U.S. archival information relating to egregious human rights cases in Guatemala and Honduras, specifically, and Latin American and Caribbean countries in general.

According to Pedro Miguel Lamport Kelsall, Guatemala's ambassador to Washington, there is no comparable initiative in Guatemala's National Congress or any government agency advocating the release of classified documents by Guatemala's Ministry of Defense or the Presidential High Command. The Guatemalan Clarification Commission, as well as Helen Mack and the state prosecutor, have requested access to classified Guatemalan documents that could provide details of crimes committed by the military against civilians. To date, neither the commission nor the prosecution has received relevant documents from the Guatemalan government.

Clearly, cooperation in many areas is needed to bring the Mack case to a just conclusion. Both the U.S. and Guatemalan governments should authorize full disclosure of all evidence related to the case. The Guatemalan courts should expeditiously process the case and, by doing so, recognize that they would be strengthening the rule of law and eroding the institutional impunity that has protected the Guatemalan military for so long. The international scientific community and concerned individuals, organizations, and governments around the world continue to follow the Mack case. Its significance as a test case for the legal system in Guatemala and for measuring respect for human rights and, therefore, social change, grows greater every month.

¹⁰The Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which have Caused Suffering to the Guatemalan People is a creation of the peace accords and has a 6-month mandate that began on July 31, 1997, and may be renewed once. Its mission is to reveal what happened to the approximately 200,000 dead and disappeared people who were the predominantly civilian casualties of 36 years of internal violence. The commission has no authority either to name individuals who perpetrated crimes or to call for their punishment.

Chronology

No country has a perfect justice system, and probably all are subject to some degree of pernicious manipulation. The Mack case in Guatemala stands witness to how the rights of victims, their families, and society continue to be denied by a dysfunctional system of justice long after a murder has been committed. This chronology shows why the CHR and others concerned with human rights must sometimes continue and extend their efforts for many years.

February 12, 1993 — Court convicts and sentences Beteta Alvarez. Judge Carmen Ellgutter sentences Noél de Jesús Beteta Alvarez in criminal court (*del Juzgado Tercero*) to 25 years in prison (incommutable) for the murder of Myrna Mack and 5 additional years for damages/injuries (for an unrelated incident). The judge rejects the prosecution's petition to leave open the proceeding against the alleged "intellectual authors" of the crime, Beteta's superior officers, despite evidence introduced by the Office of the Ombudsman for Human Rights indicating that the killing was politically motivated. The prosecution names the alleged co-conspirators in the crime, three military officers—General (retired) Edgar Augusto Godoy Gaitán, Colonel Juan Valencia Osorio, Lieutenant Colonel Juan Guillermo Oliva Carrera—and Juan José del Cid, Juan José Larios, and one person identified only by the surname Charchal. The private prosecutor (Helen Mack) asserts that Beteta must have acted under orders given by his superior officers since he had no motive to murder Myrna Mack. The evidence suggests a surveillance and murder operation that would not have occurred without official sanction.

April 28, 1993 — Appeals court forecloses prosecution of military officers. The Fourth Chamber of the Court of Appeals (*Sala Cuarta de la Corte de*

Apelaciones) confirms Beteta's sentence and upholds Judge Ellgutter's decision to foreclose further investigation on the grounds that there was insufficient evidence to implicate the three military officers in the murder. The private prosecutor files an appeal to the Supreme Court (*la Corte Suprema de Justicia*) in which she challenges the lower court's decision. Perhaps fearful of implicating senior military officers, the state prosecutor does not join the appeal.¹¹

February 9, 1994 — Supreme Court reversal permits investigation of Beteta's superior officers. The Supreme Court reverses the lower court's decision to foreclose further investigation, holding that the private prosecutor's right to investigate fully all possible suspects responsible for the murder of Myrna Mack has been violated. The Supreme Court orders a military investigation of Beteta's three superior officers. The court also orders an investigation of the three other individuals in a civil proceeding.¹²

March 10, 1994 — Superior officers deny knowledge of the crime. Gen. Godoy, Col. Valencia, and Lt. Col. Oliva petition the Constitutional Court (*la Corte Constitucional*), the highest court in the land for constitutional issues. They claim that the Supreme Court acted illegally in ordering an investigation into their alleged involvement in the Mack murder. The officers deny any knowledge of the murder.

March 18, 1994 — Supreme Court denies private prosecutor's attempt to obtain classified Guatemalan documents. In an effort to gain access to documentary evidence from the National Ministry of Defense and the Presidential High Command, the private prosecutor formally requests an injunction. The Supreme Court denies the request. The private prosecutor files an appeal to the Constitutional Court seeking reversal of the Supreme Court's ruling. The private prosecutor argues that the requested documents contain critical evidence to prove the complicity of the superior officers in the Myrna Mack murder.

July 1, 1994 — Guatemalan National Congress adopts new Criminal Procedure Code. All criminal cases for which the opening of the trial (*apertura de juicio*) has not yet occurred are now to be tried under a new code. (A judge orders a trial to open when both plaintiff and defendant are satisfied that all evidence needed has been introduced in the proceedings.) Because a trial has not yet occurred in the proceedings against Beteta's superior officers, they are to be prosecuted under the new Criminal Procedure Code (the original case against Beteta

¹¹The state prosecutor who prosecuted Beteta is not the state prosecutor, Mynor Melgar, who is currently prosecuting the three military officers accused of complicity in the Mack murder.

¹²The private prosecutor chose not to prosecute the case against del Cid, Larios, and Charchal, even though they were believed to have participated in the actual murder; she stated that it would be a more efficacious use of her time and resources to prosecute the military officers.

was prosecuted under the old Criminal Procedure Code). This decision allows new evidence to be brought into the proceedings.¹³

October 18, 1994 — Denial of access to classified documents is upheld on a technicality. The Constitutional Court denies the private prosecutor's appeal for access to classified government documents. The court bases its decision on the technical grounds that the Supreme Court did not possess the case file at the time of its ruling. The Constitutional Court holds that the correct channel through which to file the "Injunctive Relief of Attachment" was the Court of First Instance (*la Corte de Primera Instancia*), which had the case in its docket. The private prosecutor requests that the Constitutional Court review its decision.

December 6, 1994 — Constitutional court denies officers' petition to annul proceedings. The Constitutional Court denies the petitions of Godoy, Valencia, and Oliva to annul the Supreme Court's February 9 decision, thereby clearing the way for the continuation of the investigation into their possible complicity in the Mack murder.

December 21, 1994 — Denial of access to documents is sustained again. The Constitutional Court rejects the private prosecutor's request for clarification of its October 18 ruling, holding that the request lacks merit. This decision weakens the impact of the Constitutional Court's decision several weeks earlier that cleared the way for the investigation of the accused military officers. Without recourse to classified Guatemalan government documents, the prosecution faces serious difficulties in developing sufficient evidence to prosecute the three officers.

September 1995 — Public Ministry appoints a state prosecutor. After a 10-month delay, the Public Ministry appoints Mynor Alberto Melgar Valenzuela as state prosecutor for the case. Melgar begins an investigation under the new Criminal Procedure Code.

December 6, 1995 — Private prosecutor requests that the case be heard in a civilian, not military, court. The private prosecutor files a petition questioning the ruling to try the case in a military court, on the grounds that the crime was perpetrated against a civilian in a context outside of military authority. The presiding military judge denies the petition; the private prosecutor appeals.

March 1996 — Appeals court affirms that the case remains in military court. The investigation resumes in the military court system.

March 5, 1996 — Organization of American States (OAS) accepts the Mack case for review of a due process violation. The Inter-American Commission on Human Rights (IACHR) of the Organization of American States decides to re-

¹³If the officers were to be prosecuted under the old Criminal Procedure Code, only evidence that had been introduced in the Beteta trial would be permissible.

view the case. The IACHR usually requires that “remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law” before the commission will review a case. However, the IACHR has determined that the private prosecutor has been denied “effective and real access” to domestic remedies. The Commission also describes “an unwarranted delay in the domestic proceedings” as evidenced by both the three and a half year lapse between the murder and the Supreme Court’s order to open an investigation against the military officers who allegedly ordered the murder and the subsequent two years during which the case failed to advance beyond the investigative stage.

April 30, 1996 — State prosecutor seeks permission to obtain depositions from expatriates. The state prosecutor (Mynor Melgar) requests cooperation from Guatemalan judicial authorities to seek sworn statements from six witnesses, then residing in Canada, for submission as evidence. The witnesses have fled Guatemala after intimidation by unidentified individuals.

May 21, 1996 — Defense moves to dismiss state prosecutor. The defendants request that the state prosecutor be removed for improper handling of the case. The defendants specifically allege that the state prosecutor has publicly defamed the accused. The defense motion is denied.

June 6, 1996 — State prosecutor requests indictment of defendants. The state prosecutor petitions the judge to issue an indictment (*auto de procesamiento*) against the accused, based on the prosecution’s findings that: the motive for Myrna Mack’s murder was political; the act was carried out by agents of the Presidential High Command; and the order for her murder was transmitted along the chain of command within the Presidential High Command through the three military officers accused.

June 11, 1996 — Court indicts military officers. Judge Heriberto Guzman Muñoz of the Military Tribunal of the First Instance (*el Juzgado Militar de Primera Instancia*) issues the indictment against Gen. Godoy, Col. Valencia, and Lt. Col. Oliva as “the possible intellectual authors in the murder of Myrna Mack Chang.” The private prosecutor petitions the court to deny bail for the officers; the judge denies this request. The officers remain at liberty providing they each pay bail of 50,000 *quetzales* (equivalent to approximately \$8,000 U.S.) and agree to report to the court every other week (which they do).

July 1996 — Prosecution moves into the civilian judicial system. The National Congress abolishes the special tribunal (*Fuero Militar*) for members of the military accused of committing crimes. As a result, the prosecution of the officers accused in the Mack case reverts to the civilian judicial system—the jurisdiction that the private prosecutor had argued from the start as being the most appropriate. The case is transferred to the Tribunal of First Instance in Criminal

Matters, Narcotrafficking, and Environmental Crimes (*el Juzgado Primero de Primera Instancia Penal, Narcoactividad y Delitos contra el Medio Ambiente*), with Judge Enio Vinicio Ventura Loyo presiding.

July 1996 — U.S. government releases some classified documents. As a result of the Intelligence Oversight Board's "Report of the Guatemala Review" (commissioned by President Clinton and issued June 28, 1996), the Central Intelligence Agency releases some documents relevant to the Mack case to the private prosecutor. Seemingly crucial sections of several of the documents have been redacted.¹⁴

July 30, 1996 — Judge Ventura Loyo annuls indictment and investigation. Judge Ventura Loyo abruptly terminates the investigative proceedings and vacates the indictment of the military officers on the grounds that their case should have been considered one and the same as that of Beteta and, therefore, should be tried under the old (1973) Criminal Procedure Code. Judge Ventura's action means that all evidence collected during the prior year of the open investigative phase under the new criminal code would be inadmissible: only evidence introduced in Beteta's trial would be admissible, and that body of evidence did not implicate the officers. Judge Ventura, who handles cases under the new (1994) Criminal Procedure Code, transfers the case to the First Tribunal of First Criminal Instance (*el Juzgado Primero de Primera Instancia Penal*), Judge Pais presiding, which is specifically charged to administer and hear cases under the old criminal code.

August 1996 — New presiding judge questions Ventura's ruling. Judge Pais questions the decision that his court have jurisdiction over the case and seeks to recuse himself from the case. Both the state and the private prosecutors independently file appeals claiming that due process has been violated by Judge Ventura's decisions and that the judge has not observed proper judicial procedure. Judge Pais transmits the appeals to a court of appeals (*la Sala Tercera de la Corte de Apelaciones*).

September 1996 — Appellate court rules prosecution's appeals irrelevant. On procedural grounds only, the Court of Appeals finds that Judge Ventura is competent to have made the decisions that he made and that his decisions cannot be reviewed.

October 15, 1996 — Supreme Court upholds annulment order, remands case to be heard under old Criminal Procedure Code. Despite the private prosecutor's various appeals, the Supreme Court upholds Judge Ventura's order to annul the investigation and try the case under the old criminal code. The Supreme Court also rejects Judge Pais' effort to recuse himself. The Supreme Court

¹⁴Requests by the CHR and others to the U.S. government for the documents in their unredacted form are still pending.

notifies the private prosecutor of its decision after the time limit to file an appeal has expired.

November 12, 1996 — Court joins case against military officers with that of Beteta. Judge Pais joins the case against the three superior officers with that of Beteta and annuls all previous proceedings against the officers.

December 10, 1996 — Private prosecutor appeals the Supreme Court’s annulment order to the Constitutional Court. The private prosecutor argues that the Supreme Court’s decision violated her and Myrna Mack’s fundamental right to a fair trial.

December 18, 1996 — Guatemalan National Congress approves an amnesty law. The Guatemalan National Congress approves the Law of National Reconciliation (*Ley de Reconciliación Nacional*), No. 145-96, which affords amnesty to individuals who committed political or common crimes in connection with the country’s armed internal conflict. Excluded from receiving amnesty are people who cannot prove an objective link between the crime in question and the achievement of a political end.

January 6, 1997 — Military officers petition for amnesty. The three military officers accused in the case file for amnesty less than a month after the reconciliation law has been adopted.

February 6, 1997 — Court considers military officers ineligible for amnesty. The First Court of the First Instance finds the military officers’ petition inadmissible for amnesty and does not agree to hear the case on its merits. The military officers appeal; the appeal becomes mired in procedural issues.

March 1997 — IACHR reviews the Mack case. The IACHR reviews progress to date in the Mack case. The Lawyers Committee for Human Rights submits a brief concluding that “procedural and other developments have endangered the very existence of the case” and that “the Guatemalan government has consistently failed to produce documentation potentially critical to the prosecution.” The IACHR again refrains from either issuing a statement to the Guatemalan government or deciding to hear the case, in an apparent effort to give Guatemala a further opportunity to redress the lack of due process.

Spring 1997 — Military officers file second petition for amnesty. The court of appeals (*la Sala Tercera de la Corte de Apelaciones*) that is handling the officers’ second amnesty petition also finds that the crime allegedly committed by the officers does not, by definition, fit within the parameters of the amnesty law. The officers again appeal, this time to the Supreme Court.

August 12, 1997 — Constitutional Court overturns the Supreme Court’s annulment order and reinstates the indictment against the three military officers. The Constitutional Court reinstates the interrupted investigation under the

1994 Criminal Procedure Code. This decision reopens the proceedings as of July 1996, when Judge Ventura closed the investigation under the new Criminal Procedure Code. However, the Constitutional Court also rules that the defendants' appeals under the National Law of Reconciliation of 1996 should be heard on their merits. The officers' appeals under the amnesty law must be resolved before prosecution of the officers may continue.

September 1997 — Supreme Court rules that the officers' amnesty appeal is irrelevant. The Supreme Court upholds the lower courts' ruling that the three military officers do not qualify for amnesty under the Law of National Reconciliation on the basis that the murder "had the characteristics of a political crime." The officers seek the last legal protection (called an *amparo*) available to them in the appeals system.

Current Status: March 1998 — After the three military officers exhaust all the appeals available to them in their amnesty cases and, if no appeal is reviewed favorably, the court will renew the criminal proceeding against them. At that point, an intermediary phase, dedicated to the collection of evidence, will begin. In the opinion of an attorney working on the case for the prosecution, the intermediary phase could last anywhere from 3 to 12 months. When a judge closes this phase, with the consent of the state prosecutor, the oral hearing begins.

Sources

The information in this report is drawn from a variety of published and unpublished materials, as well as interviews. They are listed here in chronological order.

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APPENDIX

Committee on Human Rights: A Description

The Committee on Human Rights was created in 1976 in response to concern by members of the National Academy of Sciences (NAS) about widespread abuses of human rights, particularly those of their scientific colleagues. In 1994, the National Academy of Engineering (NAE) and the Institute of Medicine (IOM) joined the NAS as full sponsors of the committee. The committee is composed of 16 members who are drawn from the membership of the three institutions. The committee has the active support of more than 1,700 members of the NAS, NAE, and IOM, who assist it as “correspondents” in its human rights work by writing appeals and letters of support in behalf of imprisoned colleagues. The committee is financially supported by the NAS, NAE, and IOM, several private foundations, and contributions from private donors.

The work of the committee is grounded in principles set forth in the U.N. Universal Declaration of Human Rights and other international agreements. The committee does not support or oppose any government or political system; it does hold governments responsible for conforming to international standards for the protection of human rights and accountable when they do not.

The committee uses the influence and prestige of the institutions it represents in behalf of scientists, engineers, and health professionals anywhere in the world who are unjustly detained or imprisoned for exercising their basic human rights as promulgated by the U.N. Declaration. Each case is carefully investigated through a variety of sources before being taken up by the committee. Such individuals cannot have been known to use or advocate violence. The committee also intervenes in behalf of non-violent colleagues who are the recipients of death threats, and it works to promote just prosecution in cases of individuals who have been killed for political reasons.

Activities of the committee include private inquiries, appeals to governments, moral support to prisoners and their families, and consciousness-raising efforts such as workshops and symposia. Periodically, it undertakes a mission of inquiry to a country. It issues public statements regarding a case or reports on the human rights situation in a country only when significant private efforts have proved unsuccessful and after the NAS Council and the presidents of the NAE and IOM have approved such action by the committee. The committee also is a catalyst for human rights issues of concern to the members of the academy complex.

The committee serves as the secretariat for the International Human Rights Network of Academies and Scholarly Societies. The Network, created in 1993, works to address grave issues of science and human rights, particularly the unjust detention or imprisonment of colleagues, throughout the world. Currently, science academies and scholarly societies in 28 countries are participants in the Network; each is represented by internationally prominent members who are also human rights advocates.