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IDHUCA Report:
Recent verdicts undermine justice

Recent jury verdicts issued in three important cases have not conformed to expectations, nor -apparently- with the available evidence. Many have questioned the reliability of jury trials under present conditions. The Minister of Justice, Rene Hernandez Valiente, acknowledged that "the country's procedural system has serious deficiencies and, for that reason, the verdicts handed down in the most recent jury trials have been criticized by many" (El Noticiero television news, 10/15/91).

The most complex of the three verdicts was issued on September 28 in the Jesuit case, when an officer who ordered the massacre was convicted along with another officer who was in charge of seeing that his orders were carried out, while the self-confessed triggermen were acquitted. Soon afterwards, on October 9, a jury acquitted all the defendants, 13 members of the civil defense, charged with killing seven persons between 1981 and 1983, whose bodies were tossed in a well (the so-called "well of death") in Armenia, Sonsonate. To round out the picture, on October 12, another jury convicted Jorge Alberto Miranda Arevalo, admitted FMLN collaborator, for the October 1987 murder of Herbert Anaya Sanabria, then coordinador of the non-governmental Human Rights Commission (CDHES).

If the jury trial in the Jesuit case raised more questions about the judicial system, these latest verdicts increased the doubts still further. In case anyone still failed to realize it, the trials proved that something is very wrong in our judicial system.

Before addressing the logic or implications of these verdicts, we shall first recall the history of each case, leaving aside the Jesuit case, which has received ample comment in previous articles (cf. Proceso 490). Test cases

The "well of death" case in Armenia was one of the five cases President Duarte selected for special treatment when he entered office in 1984. The other cases were: the murder of Monsenor Romero; the murder of two U.S. labor advisers and their Salvadoran colleague in the Sheraton Hotel in January, 1981; the disappearance and murder of U.S. journalist John Sullivan in December, 1980; and the 1983 slaying of over 70 indigenous campesinos near the Las Hojas cooperative located in the town of San Antonio El Monte, Sonsonate. A review of the status of these five cases sheds considerable light on the Salvadoran judicial system.

The case of Monsenor Romero was simply shelved after December 1988, when the Supreme Court rejected a request from then Attorney General Roberto Giron Flores to have a potential witness, Capt. Saravia, extradited from Miami (Giron Flores had been appointed by the Christian Democratic majority in the Legislative Assembly). In the Sheraton case, two former National Guardsmen were convicted in 1986 as the triggermen in the

slayings; those accused of plotting and ordering the murders managed to elude justice. The following year, the gunmen were set free under the amnesty law. In the Las Hojas case, efforts begun by Giron Flores in 1987, when he requested the arrest of Col. Elmer Gonzalez Araujo, who at the time of the killings was commander of Military Detachment No. 6 in Sonsonate, were fruitless. The amnesty decree issued in October, 1987, gave the judge an opportunity to dismiss the case by characterizing it as a common crime involving over 20 persons (cf. Amnesty Law for National Reconciliation, Decree No. 805, Official Register, vol. 297, no. 199, October 28, 1987, Art. 1). The Western Appellate Court and the Supreme Court upheld this application of the amnesty law.

These test cases clearly demonstrate the failure of the Salvadoran judicial system. After so many years, only two of the five cases have reached the trial stage: in one of them -which was only tried because of strong U.S. pressure due to the nationality of two of the victims- those truly responsible for the crime remained free, while the two who carried out their orders were released under the 1987 Amnesty Law. In the other case -the "well of death"- all the defendants have been acquitted and set free. The "well of death"

According to the Attorney General's Office, the evidence available in the "well of death" case included confessions by three of the defendants, statements given by witnesses who specifically identified some of the defendants as having committed particular murders, and three statements from individuals who had, to some extent, collaborated with the killers. The thirteen defendants, six of whom were not present at the trial, were tried on seven counts of first-degree murder, for which there was sufficient evidence. They had apparently killed 29 persons in all, but there was insufficient evidence to try them for all the murders.

In this case, the government's commitment to pursue the case was chiefly seen in technical efforts to get the bodies exhumed from the well. A second attempt to exhume the bodies in May 1986, undertaken by the Special Investigative Unit (SIU) with greater technical resources, achieved some success: the identifiable remains of four persons were retrieved from the well.

Given the physical evidence, as well as the testimony of witnesses, the case appeared to be solid enough to obtain a conviction. One of the six defendants present at the trial admitted the charges to a Channel 6 television reporter, saying he was "obligated by the local commander" to kill a friend. Nevertheless, after the first round of arguments by the defense lawyers, the jury said it did not need to hear any more and acquitted the thirteen.

What, then, happened to the case? On Monday, October 14, the Attorney General's Office asked for the verdict to be annulled on the basis of paragraph 4 of Art. 390 of the Criminal Procedure Code, which allows for annulment "when one or more votes which decided the verdict were obtained by bribery, intimidation or violence." According to the Attorney General's Office, the jurors were intimidated by the very circumstances under which the trial

was held. The physical layout of the courtroom was inadequate. The jurors were not only in full view of the defendants, but they were also seated quite close to them in a very limited space. One defendant told a television news reporter, right in front of the jurors, that he had committed one of the murders. There was a strong military presence at the trial, with troops from Sonsonate's Military Detachment No. 6 surrounding the courtroom. Legislative deputies from the governing ARENA party were present at the trial, and one of them embraced the president of the jury after hearing the verdict.

"Not just the prosecution was left perplexed by the outcome of the trial: this morning, a number of attorneys called [daily newspaper] El Mundo to express their surprise at the acquittal of all of the defendants, two of whom had confessed to the murders. 'Jury trials are not reliable; something is wrong. The system used to call jurors, which allows their identity to be known, may allow coercion, of any kind, which can influence the jury. We believe that the administration of justice in this country must be thoroughly reviewed. All is not well,' said one of the attorneys, who asked that his name not be used" (El Mundo, 10/9/91).

Even the president of the Supreme Court, Mauricio Gutierrez Castro, said he was not notified of the date of the trial, and thus had no opportunity to order special measures to ensure protection for the members of the jury, as was done in the Jesuit case and the Herbert Anaya case. The background to the case, as well as the reaction of some judicial sources, indicate that the outcome was not what the judicial branch expected. The case of Herbert Anaya

In contrast, the outcome of the Herbert Anaya case could well have satisfied the expectations of the judicial branch, which ordered protection for the jurors and overturned the dismissal of the case ordered by the presiding judge at the time, Luis Edgar Morales Joya.

Anaya, along with three other members of the CDHES, was arrested by the Treasury Police in May, 1986, following public statements by a former CDHES staffer who sought to link this group and other humanitarian organizations to the FMLN. Anaya and his companions were tortured by the Treasury Police, while the government propaganda machine publicized the accusations against them.

Anaya kept on working in prison, researching and denouncing torture to which political prisoners were subjected. He was freed in February, 1987; his father was arrested in March by the National Guard, who questioned him about his son's activities. The Treasury Police continued to make public statements linking Anaya and other members of the CDHES to the FMLN, while the human rights group steadfastly rejected the claims and denounced threats against its members.

On the morning of October 26, 1987, Herbert Anaya was shot to death by two men in civilian clothing as he was getting ready to drive his children to school. This background makes it probable that his killers were linked to the security forces.

The murder of Anaya, a well-known defender of human rights,

created an image problem for the Duarte government, particularly given its efforts to show how well it was complying with the provisions of the Esquipulas II peace agreement signed in August, 1987; these efforts included a sweeping amnesty law which was enacted the day after Anaya was killed.

The Christian Democratic government promised a full investigation of the murder, and appointed the SIU to carry it out. If, as presumed, members of the security forces actually killed Anaya, the investigation was severely limited in scope from the start: SIU detectives are also members of the security forces, and would thus have no interest in seeking suspects in their own ranks. The case was "solved" with the arrest of Jorge Alberto Miranda Arevalo on December 23, 1987, while he was engaged in shooting out the tires of a Pepsi Cola truck in the Zacamil neighborhood of San Salvador. Miranda was kept under incomunicado detention by the National Police for twelve days, nine days longer than the law allowed. During this period, he admitted to being an FMLN member and, subsequently, to having acted as lookout during the Anaya murder. According to this version of events, Anaya was killed by the People's Revolutionary Army (ERP), one of the five member organizations of the FMLN.

In a press conference on national television, President Duarte said he had the moral conviction, backed up by police evidence, that the FMLN had killed Anaya. Miranda repeated his statements to the court, and identified other members of his guerrilla "cell" as Anaya's killers, two of whom were conveniently "killed in combat." The human rights organizations were denied access to Miranda, who was kept isolated in Mariona prison. In February 1988, however, Miranda recanted his previous confession, saying he had been coerced. In his new statement, Miranda still admitted belonging to the ERP, but denied any involvement in the murder of Anaya and denied knowing the identity of the murderers.

The government gave wide publicity to Miranda's first confession, particularly on national television, yet never offered any coherent hypothesis to explain why the FMLN would have wanted to kill Anaya, an outspoken critic of the government. The chief "argument" put forth by the government was that the FMLN needed a martyr to blame on the government. The SIU closed its investigation.

The evidence against Miranda therefore consisted of his extrajudicial statement and his statement to the court, both given without the presence of an attorney and after twelve days of incomunicado detention in the National Police headquarters. Miranda's statements showed certain inconsistencies, as the Attorney General's Office once admitted, as did the First Criminal Court Judge at the time, Luis Edgar Morales Joya, when he dismissed the case. Among other things, Miranda had stated that he saw the bullets hit Anaya in the chest, while the forensic reports show that Anaya was shot in the back. The Appeals Court overturned the dismissal of the case, arguing that since Miranda was acting as lookout for the killers, he could not have seen from which direction Anaya was shot.

Although the evidence against Miranda had these

deficiencies, the defense sought to establish his innocence through other evidence. They obtained school records showing that Miranda took two written tests on the day of the crime. Furthermore, it was proven that, despite being a poor student, he passed the two tests. The jurors were read a letter written by Anaya's widow, Mirna Perla de Anaya, in which she stated that she did not consider herself an "offended party" with regard to Jorge Alberto Miranda, as she knew that he had not killed her husband, and urged the jury to refrain from committing an unjust act by convicting him for a crime in which he was not involved.

During the trial, held on October 11 in the Fifth Criminal Court, measures were taken to protect the jurors by concealing them from the public and the defendant. After 16 hours, the jury convicted the defendant. The defense has said it will appeal the guilty verdict, on the grounds that the defendant's constitutional rights were violated because he was not provided a defense lawyer at the time of detention, and that he had been illegally detained for twelve days by the National Police. The Minister of Justice also maintained that a prisoner's right to a defense lawyer "is a guarantee from the moment a person is detained; not just when the person appears in court" (Diario Latino, 10/15/91). As the defense pointed out, this guarantee is violated in almost all cases; furthermore, the Appeals Court accepted Miranda's statements as true even after Judge Morales had dismissed the murder charge against him. It therefore seems unlikely that the judicial branch could overrule this decision.

Conclusion

Some have speculated that Miranda's conviction reflects the government's need to have members of the FMLN convicted for important crimes as well as members of the military, to give the appearance of symmetry in cases of human rights violations by each side, thus making a broad amnesty more likely. Along these lines, immediately after the verdict in the Jesuit case, the Armed Forces Press Office (COPREFA) published a list of cases attributed to the FMLN. Many observers have commented on the timing of these jury trials in key cases, which are finally being scheduled just before the Truth Commission is established.

It appears as if the Supreme Court only sees deficiencies in the "well of death" case, because the jurors were not protected. The solution it proposes is to offer all judges throughout the country "the necessary resources to ensure that exceptional trials can be held" (El Mundo, 10/15/91).

Others believe that the current jury system has proven too arbitrary and vulnerable to manipulation to handle such delicate cases. The Institute of Legal Studies (IEJES) has asked, as a temporary measure, for jury trials to be suspended in cases in which "human rights violations have so affected national and international public opinion that a jury trial could create a climate of even greater unease and dissatisfaction instead of contributing to national reconciliation." IEJES believes that the current situation is creating obstacles for the work of the Truth Commission.

As shown by the test cases selected by President Duarte, jury trials are not the only problem plaguing the judicial

system. The great majority of cases either disappear into oblivion without a serious investigation, or are sidetracked during the investigative period, which rarely comes to a close. The case of Herbert Anaya is a clear example of an investigation which was sidetracked for political reasons, like the Jesuit case, in which the limited and deficient investigation presented by the SIU responded to political necessities determined by the Armed Forces itself (cf. Proceso 490).

The Minister of Justice has stated that his office would be willing to "propose changes in the criminal procedures which would make criminal cases more credible when they come to trial, so that juries may base their decisions on better investigations or more reliable evidence" (El Noticiero television news, 10/15/91). The visible problems indicate that this time, urgent and necessary reforms must address the entire system and not remain at the level of a few superficial reforms to the trial stage and the jury system, such as those approved last year.

We are now facing a delicate situation which truly complicates the search for truth by generating even greater mistrust of the seriously questioned judicial system, and creating a less than propitious climate for national reconciliation. The latest arbitrary verdicts have clearly demonstrated that the judicial system continues to be highly politicized and subject to military domination, and is thus far from achieving the independence, impartiality and functionality essential to any system of justice.

In this context, what will ONUSAL do to "offer its support to the judicial branch as a way to help perfect the judicial means for protecting human rights and respecting the rules of due process"? What will the Truth Commission do faced with these verdicts, which contribute nothing to the search for the truth? And what will we all do to build a new judicial system which truly protects the human rights of all, and which helps establish the truth -and the end of impunity- instead of hindering these goals?