

IDHUCA Report:

Investigation still needed to determine who planned and ordered the Jesuit murders

Although the judge has yet to hand down sentences in the Jesuit case, there are indications that the case is entering a new phase. During activities marking the second anniversary of the UCA massacre, Fr. José María Tojeira, Jesuit Provincial for Central America, announced his intention to ask the Legislative Assembly to open a new investigation, this time to determine the identity of those who planned and ordered the crime. The call for a new investigation is based on a number of pieces of logical evidence indicating that there were others who masterminded the murders. Without waiting for the Jesuits' petition to be presented, the president of the Legislative Assembly, Roberto Angulo, declared to the press that the initiative was inappropriate as it would "politicize" the case. Others have commented that such an investigation is solely the purview of the judicial branch, which has already handed down a verdict, meaning the case is closed.

The latest report from the Congressman Moakley, head of the Speaker's Task Force on El Salvador, dated November 18, sparked the same reactions, only more vehement, since the report named top military chiefs linked to the crime by confidential sources with whom Task Force staff had spoken. Instead of calling for a thorough investigation of Moakley's charges and the suppositions which point to the identity of those who planned and ordered the murders, many have attacked Moakley, using the abovementioned arguments, as well as repeating their demand that Moakley -or whoever shares his views- send their evidence to the "competent authorities."

Instead of dispelling doubts and refuting logical suppositions, the Armed Forces and the government have reacted by trying to undermine efforts to open a new investigation aimed at determining who planned and ordered the Jesuit murders.

In its response to the latest Moakley report, the government warned that:

"Since the case began, the Government has reiterated on countless occasions that anyone who has evidence attesting to involvement on the part of others in this criminal act should send it to the Salvadoran courts, which are the only competent authorities in that case.

"Nevertheless, despite our urgings, individuals or groups have come forward with public statements and out of court charges, with the evident purpose of political manipulation and to attack members of the Armed Forces and even the institution itself. Their attacks are entirely unfounded and are based on pure self-serving speculation" (*El Diario de Hoy*, 11/21/91).

We would like to reflect on the implications of asking the Legislative Assembly to undertake an investigation, as well as on the validity of the arguments raised against legislative involvement in the case.

The powers of the Assembly

From the outset, it should be noted that the Legislative Assembly is empowered to create a special commission to investigate the identities of those who planned and ordered the Jesuit murders.

The Constitution establishes the authority of the Legislative Assembly to form special commissions. According to Article 131, the Legislative Assembly's powers include:

32o-"Naming special commissions to investigate issues of national interest and adopting those agreements or recommendations it considers necessary, based on the reports of said commissions."

Article 132 of the Constitution stipulates that:

"All public officials and employees, including those of the Official Autonomous Agencies and Members of the Armed Forces, are under the obligation to cooperate with the special commissions of the Legislative Assembly; these persons, as well as any other person subpoenaed by these commissions, are under the obligation of appearing and giving statements before them under the same provisions observed in criminal proceedings.

"The conclusions reached by the special investigating commissions of the Legislative Assembly shall not be binding on the courts, nor shall they affect judicial proceedings or decisions, however, the results of these commissions may be communicated to the Attorney General's Office for appropriate action."

It is therefore clear that the constitutional mandate of the legislative branch includes the power to form special commissions to investigate "issues of national interest."

The Jesuit case meets the criteria for naming a special commission in the Legislative Assembly

It is equally clear that the Jesuit case is an issue of national interest. One only needs to cast a glance at the quantity of articles which the press has devoted to the issue since November 16, 1989. El Salvador's international relations have been hurt by the case, especially with Spain and the United States, where military aid was even withheld for a short time due to the case.

Of still greater importance, the case has had an enormous impact on Salvadoran society. For those who thought that military excesses had been controlled over the decade of the 80's, the murders of the Jesuits served to destroy those illusions. For those who feared that the lack of structural changes, civilian control over the Armed Forces, and a judicial system capable of confronting military impunity, left open the door to serious and blatant human rights violations by the Armed Forces, the murders of the

Jesuits only served to confirm their worst fears.

According to Rubén Zamora, Vice-President of the Legislative Assembly, "this is a case of national interest, in which the future of demilitarization of our country is at stake, as well as the good name of the Armed Forces of El Salvador, and it must be treated as such" (*Channel 12 news*, 11/20/91).

The murders of the Jesuits and the subsequent investigation have also served to seriously discredit El Salvador in the world community. In December 1990, the U.N. General Assembly deplored "the irregularities in the judicial proceedings in connection with the assassination of the Rector and other members of the Central American University in 1989 and the lack of co-operation on the part of certain sectors of the armed forces which has impeded full clarification of such an abominable crime and the punishment of the guilty persons."

After stressing the importance of convicting two army officers on charges of human rights abuse as a significant precedent in El Salvador, the Special Representative for El Salvador of the U.N. Human Rights Commission, Dr. José Antonio Pastor Ridruejo, emphasized that:

"The Special Representative shares, however, with many sectors of local and international public opinion, and particularly with non-governmental humanitarian organizations in the local and international sphere, well-founded doubts about the existence of possible intellectual authors of the murders.

"In sum, although the outcome of the trial in the murders of the Jesuit fathers constitutes an important step in the most recent history of Salvadoran criminal justice, the step appears to have been insufficient. In the opinion of the Special Representative, the judicial investigation should continue to determine for once and for all the identities of all possible intellectual authors in the perpetration of the crime, and to prosecute and punish the persons in question." (Report of the Economic and Social Council of the U.N., *Situation of human rights in El Salvador*, prepared by the Special Representative of the Human Rights Commission, in accordance with par. 13 of Resolution 1991/75 of said commission, on 6 March 1991, and decision 1991/257 of the Economic and Social Council of 31 May 1991. Unofficial translation.)

It is worth recalling that a legislative deputy from the ARENA party was one of the first to insist that Col. Benavides did not act alone, and that "his action involved many high-ranking officers." In the CBS television program *60 Minutes*, aired in April 1990, legislative deputy and retired colonel Sigifredo Ochoa Pérez reiterated the position that "Benavides obeyed orders; it was not his decision."

The latest survey taken by the UCA's Public Opinion Institute (IUDOP) shows that 62.4% of those who said they were aware of the jury trial in the Jesuit case believe that there are others involved in the murders who have not been prosecuted, and 75.8% of the same group believe that something more must be done to investigate and prosecute others involved.

"Politicizing" the case

Certain people constantly repeat that some want to "politicize" the case, as if the case were inherently exempt from politics. However, no one questions the fact that the Jesuits were killed for political reasons. According to those who confessed to the murders, their superiors told them that the priests would have to be eliminated because they were the "intellectual ringleaders of the guerrillas." According to second lieutenant Gonzalo Guevara Cerritos, Col. Benavides told them that "these are the intellectuals who have been leading the guerrillas for a long time." They were not killed during a robbery (although in fact they were robbed, at least of the \$5,000 representing the Comín Prize which Fr. Ellacuría had just received in Spain), nor were they killed by mistake. The military killed them because they thought they were the "intellectual ringleaders of the terrorists." Many of those who now show concern about the way the case is being "politicized" helped create the political climate for the murders by accusing the Jesuits of defending terrorism, by charging that the UCA was the place where subversive activities were planned, and so on. Given this background, the argument that a special commission of the Legislative Assembly could "politicize" the case is nonsense.

Furthermore, some say that the investigation is only the purview of the judicial branch, and that whoever has evidence must send it to the competent judicial authorities. It is true that the judicial branch conducted an investigation in the case; an investigation which culminated in the recent jury trial with its unsatisfactory results. However, the petition sent to the Assembly does not call for a revision of the jury verdict nor of the proceedings undertaken by the judicial branch. What is being asked is that the Assembly investigate precisely that which the judicial branch has shown itself incapable of investigating: the identities of those who planned and ordered the murders, in other words, determine political responsibilities.

The problem of evidence

The problem of evidence has already been treated in depth (cf. *Proceso 495*). However, it is worth stressing some of the most salient points. Who possesses evidence that others planned and ordered the murders? Who delivered the nine defendants to justice and set the limits for the investigation? Who refused to cooperate in providing additional evidence after identifying the nine defendants? Simply put, the Armed Forces. What happened during the judicial investigation when attempts were made to collect further information about events and about who could have possessed information about them? Officers of the Armed Forces refused to testify, contradicted each other, denied knowing basic information and lied; they destroyed evidence and sent the wrong witnesses.

Just like the defense lawyers in the jury trial, the officers named in the latest Moakley report (cf. *Proceso 496*) have resorted to attacking their accusers instead of calling for a serious investigation of the allegations or even proposing an alternative version of events. If the Armed Forces has nothing to hide, why has it not suggested or permitted a thorough and independent investigation of the case? Why has it destroyed and concealed evidence? Why have its highest-ranking officers lied? Why does the

Armed Forces not take the obvious step of calling for an exhaustive investigation to clear its members of all doubts?

From the point of view of the Armed Forces, the military has already paid more than its share. Under strong international and domestic pressure, the decision was made to turn over minor players to the judicial system and, although no evidence against the defendants was provided after their controversial extrajudicial statements, the military allowed them to be tried and even allowed two officers to be convicted. In the Armed Forces' view, it was thereby demonstrated that military impunity does not exist and that the Jesuit case is closed. In fact, according to many in the Armed Forces, not even those convicted bore any responsibility. It is worth noting that neither the friends and relatives of the defendants who held a demonstration during the trial, nor the defense attorneys themselves, insisted that the defendants had not committed the acts for which they were charged, but rather that they should not be held to account for them. The Armed Forces has provided no alternative scenario for the crime; instead, it has limited itself to reluctantly doling out, in a calculated fashion, the few shreds of evidence against Col. Benavides and his co-defendants which have to date become public.

It is also interesting that no one in the military has either refuted nor explained the logical evidence of higher military involvement in the case. If Col. Benavides truly acted alone, why did the Armed Forces Joint Command Center not investigate what was going on at the time? What information did it obtain from the security commando to allay its concerns about a possible attack against the Military Complex? What was Benavides' particular motive for carrying out such a delicate endeavor? Why so many strange explanations for the search which took place two days before the murders? No one has explained how so many troops could have passed through a militarized zone during a curfew without providing any justification to anyone. No one has explained the report broadcast over military radio about the death of Fr. Ellacuría "while resisting arrest."

Assembly intervention is appropriate

At this time, it is appropriate for a special commission of the Legislative Assembly to undertake an investigation of the case.

Legislative "special investigative commissions" exist in many parts of the world: one only need recall those set up in the United States for Watergate and the Iran-contra scandal. They are set up for crimes which by their very nature -that is, due to the status of those involved and/or the purpose of the crime- must be treated in a political fashion. Specific charges have been leveled at the Minister and Vice-Minister of Defense as well as other top military chiefs; there are strong logical suppositions indicating involvement by top military leaders in planning and ordering the murders; and it has been shown that the judicial branch alone is incapable of investigating these leads. Those who oppose attempts to determine who planned and ordered the murders claim that the nation is at a delicate crossroads due to the state of negotiations between the government and the FMLN. That is precisely why it is so very necessary to carry out a thorough investigation of the charges, doubts and suppositions which persist in the UCA case. It is time to determine whether or not military impunity will be abolished and if

civilian government can impose its authority over military brutality. Without an in-depth investigation of possible masterminds, the military will have been awarded full discretion in deciding the limits of responsibility in this case. The historical moment demands the full truth in this and so many other cases, and not just the official or limited version.

According to Oscar Santamaría, Minister of the Presidency, President Cristiani has said on repeated occasions that the judicial process is still open to contributions which could lead to a new investigation in the crime, depending on the nature of "the elements which justify it" (*El Diario de Hoy*, 11/19/91). There are numerous and convincing suppositions about others above Col. Benavides who could have planned and ordered the murders. For the judicial branch to open a new proceeding, there would have to be a serious, objective and independent investigation, one willing to go as far as necessary despite the possible involvement of high-ranking officers.

At this stage, the Legislative Assembly, as representative of the people, should make use of its constitutional powers to take on the historical challenge of opening the way to a new investigation which could help discover the truth and see that justice is done. If the petition to form a special commission is not taken seriously, the Assembly will lose an historical opportunity to seek the proper way to reach the truth and clear up the suspicions which currently surround and taint the military. If the Assembly were to take up the challenge and launch a serious investigation, it could make an important contribution to establishing the rule of law with civilian control over the military, which in turn would constitute a fundamental step down the road toward national reconciliation.

Armed Forces not take the obvious step of calling for an exhaustive investigation to clear its members of all doubts?

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