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ABSTRACT

An examination of three infamous atrocities of the Salvadoran civil war and the attempts to bring those responsible to justice. The first case is the March 1980 assassination of Archbishop Romero, an outspoken critic of the Salvadoran government. The second case is the December 1980 rape and murder of four American churchwomen by a paramilitary death squad. The final case discussed is the November 1989 murder of six Jesuit professors and their two domestic servants on the Universidad Centroamericana campus. Ultimately, justice was never served, due to four factors: corruption within the government of El Salvador and the Salvadoran judicial system; a lack of power given to the United Nations Truth Commission; United States Cold War politics; and the inability of the United States civil courts to create meaningful accountability.

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Justice Denied: Impunity During and After the Salvadoran Civil War

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I.

The Salvadoran civil war, a twelve-year war that left an estimated 75,000 people dead¹, *officially* began in 1980, following both the murder of Archbishop Romero and the election of Ronald Reagan as President of the United States. According to Robert White, who was the United States Ambassador to El Salvador at the time, “The Salvadoran military understood this [Reagan’s election] as a go-ahead signal and unleashed a torrent of violence”.² Although Reagan’s election did mark the beginning of a new level of violence in El Salvador between the military and guerillas that would last until the signing of peace accords in 1992, it is misleading to refer to the Salvadoran civil war as lasting from 1980 to 1992. The struggle between the indigenous and rural poor people against the oligarchy has been ongoing since the nineteenth century. The oligarchy, who controlled El Salvador’s economy, military, and government, has been exploiting the indigenous people and peasants and suppressing labor organizations and opposition political parties with violence for more than a century; even massacring thousands of Indians and peasants in 1932 during what has become known as *La Matanza*.³

The assassination of Archbishop Oscar Romero on March 24, 1980 was an event that marked the heightening of an ongoing conflict that escalated to an all out civil war.⁴ An advocate for the poor in El Salvador, and outspoken critic of the oligarchy, Archbishop Romero was highly respected and popular among the people of El Salvador and his sermons were broadcast nationwide every Sunday.⁵ Romero worked with the Nongovernmental Human Rights Commission of El

¹Thomas Skidmore and Peter H. Smitt, *Modern Latin America* (New York: Oxford University Press, 2005), 388.

²Robert E. White, “Justices Deferred”, *Commonweal* 127, no. 21(2000): 12.

³Brian Loveman and Thomas M. Davies Jr., *Guerilla Warfare* (Lanham: SR Books, 1997), 389.

⁴Bill Hutchinson, *When the dogs ate candles* (Niwot: University Press of Colorado, 1998), xiv.

⁵Gail Pellet, “Justice and the Generals,” ed. Alison Amron (New York: Gail Pellet Productions, Inc. and Thirteen/WNET, 2002).

Salvador, formed in 1978. They were the first group in El Salvador to document human rights abuses and murders. The group reported its findings to the United Nations and El Salvador became known as one of the six worst human rights violators in the world. Archbishop Romero, along with many others within the Nongovernmental Human Rights Commission of El Salvador and within other organizations paid for their efforts with their lives.⁶ The assassination gained world-wide publicity and created enormous outcry within El Salvador.

Not long after, on December 2, 1980 an event took place that would bring the atrocities of El Salvador in to every American home. Four American women, three nuns and a missionary were raped and murdered by right wing death squads in El Salvador. The women were stopped at a checkpoint and taken to a remote location where they were raped and shot at point-blank range.⁷ According to Ambassador White, the Salvadoran military death squads differentiated between “good nuns and bad nuns, good priests and bad priests”, and it had been decided that these women were “bad nuns.” For their work feeding and clothing the poor of El Salvador they were called communists and murdered.⁸

Nearly nine years later, on the morning November 16, 1989, a third, iconic atrocity of the Salvadoran civil war occurred. Six Jesuit priests, along with a domestic servant and her daughter, were murdered by the Salvadoran military in retaliation for a guerrilla offensive that occurred on November 11. The priests were professors at the Universidad Centroamericana, where the murders took place.⁹ The priests were known not just in El Salvador, but were internationally recognized for their work.¹⁰ The murders were found to have been committed by U.S. trained members of the Salvadoran military’s *Batalion Atlacatl*, causing outrage in the United States Congress.¹¹

These three events: the assassination of Archbishop Romero, the rape and murder of four American churchwomen, and the murder of six Jesuit priests and their companions, are representative of the atrocities committed throughout El

⁶ Hutchinson, 4.

⁷ Pellet.

⁸ Ibid.

⁹ Chandra Lekha Sriram, *Confronting past human rights violations: justice vs. peace in times of transition*, The Cass series on peacekeeping, 15, (London: Frank Cass, 2004), 79.

¹⁰ International Commission of Jurists, *A breach of impunity: the trial for the murder of Jesuits in El Salvador* (New York: Fordham University Press, 1992), 10-16.

¹¹ Sriram, 7.

Salvador's history and especially during the civil war. As advocates for the poor and indigenous people, members of the church were regularly targeted for intimidation, brutality, and murder at the hands of right wing death squads and uniformed members of the Salvadoran government.

As the atrocities committed mounted during the war, various mechanisms were employed, with varying degrees of success, to hold accountable those individuals who committed such acts. The rape and murder of four American churchwomen in December of 1980 represents the first attempt by the Salvadoran government to prosecute members of the military responsible for the murder of civilians. The Salvadorans arrested five members of the National Guard for the murders, but took no steps to bring them to trial. Under heavy pressure from Congress, with a bill sponsored by Arlen Specter, the U.S. cut of one third of all of the aid to the Salvadoran government until the five men who had been arrested for the murders were held trial death squad responsible. These men were found guilty and sentenced to the maximum of thirty years.¹² The lawyers for the slain women, who were Americans, were told they could not raise the issue of military orders for the killings coming from higher up in the chain of command. If orders for the murders came from high up the Salvadoran military's chain of command, the soldiers would use this as a defense in the trial. These men had to be convicted, so these questions were never raised. There was little satisfaction in the conviction for the relatives of the churchwomen and the few members of the United States government who wanted not only the men directly responsible for the murders to be held accountable, but also those individuals who orchestrated the murders, the men who had "command responsibility" for the men under their command.

Another attempt within El Salvador to prosecute military personnel responsible for the murder of civilians was made after the murder of the six priests and two women in 1989. Leading the investigation was the Commission for the Investigation of Criminal Acts [CIHD]. The CIHD was created in 1985 with funds from the United States to investigate human rights violations that were attributed to members of the Armed Forces. CIHD's directors and personnel were themselves members of the Armed Forces. Evidence in the case was lost and the investigation was poorly conducted. Soldiers were even given time to formulate alibis before statements were taken from them. There have been practically no cases where the CIHD, formed to investigate human rights

¹² Pellet.

violations involving military personnel, has found a member of the military responsible for a violation.¹³

The investigation of the murders some gained legitimacy when President Cristiani, under pressure from the church and the international community to find those responsible, asked the FBI, Scotland Yard, and the Canadian and Spanish police forces to advise the CIHD.¹⁴ The FBI learned that Colonel Alfredo Benavides Moreno had confessed to the CIHD about his role in the murders, but this had never been reported and would not be admissible in court. After this revelation, President Cristiani created the Commission for Honor, which was a commission made up of members of the military to help with the investigation. The Commission named Colonel Moreno along with eight other men as being responsible for the murders. The Commission did not look for responsibility further up the chain of command.¹⁵

After his arrest, Colonel Moreno consistently denied his role in the killings. The eight men under his command, however, all confessed their roles in the murders to investigators. Despite their confessions, seven of the men were completely exonerated. Colonel Moreno was found guilty of committing all eight murders. His Lieutenant, Yushy René Mendoza Vallecillos, was found guilty of the murders of the two women. Colonel Moreno was also convicted of conspiracy to commit terrorism. Both were sentenced to thirty years in prison, the maximum under Salvadoran law.¹⁶ The Salvadoran legal system gained two convictions from these murders, but six confessed killers went free. There was no effort by investigators to find how from how high in the chain of command the order for the killings came. The Salvadoran legal system was clearly unwilling to properly investigate the pattern of human rights abuses within its own military. What was needed was an external investigatory body to find who was truly responsible for the atrocities of the war.

The opportunity for this came after the signing of a peace agreement between the FMLN and the Salvadoran government in Mexico City on January 16, 1992.¹⁷ As a part of the peace accords, a United Nations truth commission was created to find which individuals, both from the military and the FMLN were responsible for human rights violations during the twelve year civil war. Every truth

¹³ *A Breach of Impunity*, 32.

¹⁴ *Ibid.*, 33.

¹⁵ *Ibid.*, 34.

¹⁶ *Ibid.*, 61.

¹⁷ Loveman, 413.

commission is unique for the nation and situation it is investigating. In Chile, for example, the Rettig Commission led to a successor body which, over a period of years, further investigated what happened to individuals and assigned reparations to help achieve reconciliation. The Rettig Commission also investigated the whereabouts of Chile's "Disappeared". In South Africa, the Truth and Reconciliation Commission acted as a substitute for the judicial system, investigating individuals and assigning fines, prison terms, or amnesty where necessary.¹⁸ El Salvador's Truth Commission, by comparison, was not authorized to find guilt in a legal sense or to award reparations. The Commission could refer cases to the Attorney-General of El Salvador for prosecution¹⁹ but as evidenced by the previous discussion of the Salvadoran judicial system, justice was unlikely. The Truth Commission did not investigate the fate of El Salvador's disappeared. The Truth Commission was also unique in that it was made up entirely of non-Salvadorans.²⁰

The Truth Commission's mandate was to "investigate serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth".²¹ The Truth Commission was not given power of prosecution and did not see prosecution within the Salvadoran judicial system as a viable option due to the "glaring deficiencies of the judicial system".²² The commission was given eight months to fulfill its mission of finding the truth of what happened during a war that lasted longer than a decade and during which more than seventy five thousand people died.

A major obstacle to the Truth Commission's ability to ascertain who committed crimes during the war was that it was extremely difficult to get people to talk about what they had gone through. The "transitional" government after the war was the same right wing government that had been in power for the final years of the war and there was great fear and apprehension among the people about testifying to the Commission.²³ According to Thomas Buergenthal, who was one of three members of the Truth Commission, the commissioners had to hold

¹⁸ Margaret Popkin, "The Salvadoran Truth Commission and the Search for Justice," *Criminal Law Forum* 15 (2004): 105.

¹⁹ Mark Ensalaco, "Truth Commissions for Chile and El Salvador: A Report and Assessment," *Human Rights Quarterly* 16, no. 4 (1994): 659.

²⁰ Thomas Buergenthal, "The Truth Commissions: Between Impunity and Prosecution", *Case Western Reserve Journal of International Law* 38, no. 2 (2007): 218.

²¹ Popkin, 108

²² Sriram, 89.

²³ Buergenthal, 218.

many “scary, cloak and dagger meetings” and needed to have their offices regularly swept for listening devices in order to assure the anonymity of those cooperating with the Commission.²⁴ The three commissioners and their team of investigators went to the countryside to interview those who lived through the war. They visited massacre sites, inspected the work of forensic anthropologists studying specimens from the war, and subpoenaed government officials, members of the military, and guerrillas in their efforts to find the whole truth of what happened in El Salvador.²⁵ The Salvadoran people have seen the sham trials of military personnel accused of human rights violations and it took a lot of work by the Commission members to gain the trust of the public.

II.

Of the twenty two thousand cases brought to the Truth Commission’s attention, only thirty three cases of symbolic importance were included in their final report.²⁶ In these thirty three cases the Commission found that they had ample evidence to make a finding and to name those individuals who were responsible for human rights violations. For these cases, the Commission created three levels of evidence for its findings: overwhelming, substantial, and sufficient.²⁷ Of the seven thousand cases that the commission actively investigated but were not included in the final report, ninety five percent were found to have been committed by government forces. The Commission found that in the case of the Jesuit murders, the “Minister of Defense had ordered the killings and most of the members of the Armed Forces High Command had been involved in the decision to kill the priests”.²⁸ The Commission endorsed the Jesuits’ call to pardon Colonel Moreno and Lieutenant Mendoza, who earlier were convicted of the crime, as those who ordered the killings remained at liberty.²⁹

The Truth Commission can hardly be thought to have provided justice or reconciliation within El Salvador. Before the Commission began its work, an amnesty was granted to those who had committed political crimes during the war, with the exception of, “persons who will be named in the Truth

²⁴ Ibid., 219.

²⁵ Ibid., 218.

²⁶ Ensalaco, 660.

²⁷ Popkin, 111.

²⁸ Ibid., 112.

²⁹ Ibid., 113.

Commission report as being responsible for serious acts of violence”.³⁰ After the Commission issued its findings, however, a “broad, absolute, and unconditional” amnesty was granted by the Salvadoran assembly as the report, according to the assembly, was “unjust, unethical, illegal, and biased”.³¹ The Commission’s report called for the resignation of the Supreme Court and recommended that those named in the report could not hold office for ten years. The report also recommended that an investigation be led in to the rise of the death squads to prevent them in the future, and that Salvadoran judges be named by an independent council, and it recommended that a fund be created to help compensate victims of atrocities during the war.³² The Commission only had the power to make recommendations; they had no power to implement policy.

Although Supreme Court Justices were replaced, per the recommendation of the Truth Commission, other recommendations went unheeded. The death squads resurfaced just years later, as there was no mechanism created to prevent them. Although quite democratic, assassinations and accusations of fraud plagued the 1994 elections. In 1995 there were one thousand eight hundred complaints of human rights violations against the government, mostly by political demonstrators.³³ No effort was made to locate the “disappeared” of El Salvador, and no fund was set up to help compensate the civilian victims of the war. Most Salvadorans lost faith in the peace accords, democratic reforms, and with the Commission because of President Cristiani’s “flouting of the Truth Commission’s recommendations”.³⁴ The Commission was able to find the answer to many key questions, such as who assassinated Archbishop Romero and who gave the order for the killing of the six Jesuits, but nothing was done by the Salvadoran judicial system with this information, and impunity reigned.

The general amnesty granted after the release of the Truth Commission’s report was not the end of the story for some perpetrators of human rights violations. According to the Alien Tort Claims Act of 1789, the U.S. federal courts are open “to...aliens for torts committed in violation of customary international law, even when the case involves acts perpetrated in another country by a non-U.S.

³⁰ Ibid., 109

³¹ Sriram, 89.

³² Ibid., 89.

³³ Ibid., 90.

³⁴ Ibid., 91.

actor”.³⁵ With this law, victims of torture and other human rights crimes can seek justice in U.S. courts if their own nation’s court systems are unwilling, or unable to do so. There have been three cases in which the ATCA has been used to prosecute military commanders from El Salvador for their crimes during the war.

In 2000, the first case against former Salvadoran military commanders was brought against Generals Jose Guillermo Garcia and Carlos Eugenio Vides Casanova for the having “command responsibility” for the 1980 murder and rape of four American churchwomen. Ambassador White was called to testify. White testified that he had on many occasions pleaded with the generals to put a stop to the death squads, arguing that the death squads had directly led to an escalation in violence. He testified that the generals had full knowledge of the crimes being committed by men under their command, and they simply refused to do anything about. In his testimony, he relayed a telling conversation:

“... Garcia finally admitted that perhaps one percent of his troops might be involved in death squads. I then pointed out that with sixteen thousand men under arms that meant that, at a minimum, one hundred and sixty uniformed criminals were murdering civilians with total impunity. Despite his admission, Garcia refused to make any commitment to take action against the soldiers”.³⁶

The general’s defense in the case was that they were simply carrying out U.S. policy in stopping the spread of communism. If they were doing anything wrong, they argued, why had General Garcia received the Legion of Merit, the highest honor the U.S. can bestow upon a foreign dignitary? General Casanova had also received the Legion of Merit, and a letter of commendation from President Reagan. U.S. Ambassador to El Salvador from 1985-1988, Edwin Corr, testified at the trial that General Casanova “made a tremendous contribution to the country and to the reduction of human-rights abuses”. The men were found to be not responsible.³⁷

In 2002, the same two generals, Garcia and Casanova, were brought to trial under the Alien Tort Claims Act. This time the claim was brought by three

³⁵ Kevin Scott Prussia, “NAFTA & the Alien Tort Claims Act: Making a Case for Actionable Offenses Based on Environmental Harms and Injuries to the Public Health,” *American Journal of Law and Medicine* 32, no. 2/3 (2006): 381.

³⁶ White, 12.

³⁷ *Ibid.*, 13.

Salvadorans who claimed that they had been tortured by men under the generals' command during the civil war. It was found that the generals had "command responsibility" for the tortures committed by their men and were ordered to pay \$54.6 million dollars in damages to the plaintiffs. According to a church worker who testified at the trial, and who herself had endured twelve days of torture during the war, the court's decision showed "that the Salvadoran military bears responsibility for what we, as a people, suffered".³⁸

Although the perpetrators of his assassination were named by the Truth Commission's report, Archbishop Oscar Romero's killers were not held to account until 2002, when Alvaro Saravia was tried before a civil court in Fresno, California for his role in the murder. Saravia, the court found, had supplied the actual triggerman with a gun, logistical information, and transportation to commit the murder. At large at the time, Saravia was found guilty, in absentia, for committing state-sponsored murder and a "crime against humanity". Saravia was ordered to pay \$10 million in damages.³⁹ Saravia later surfaced, in 2006, and publicly acknowledged his role in the killings in an interview with *El Nuevo Herald* of Miami. Saravia asked forgiveness from the church and promised to tell everything he knew about the killings in El Salvador in a forthcoming book.⁴⁰

III.

As shown in this examination of the mechanisms used to achieve justice for the victims of rape, torture, and murder in El Salvador, justice has not been served. Trials held within El Salvador during the war were a complete sham, never addressing the fact that the crimes were part of a systematic effort on the part of the military to terrorize opposition to the tyrannical political and military regime in power. The Truth Commission, although effective in finding individuals who were responsible for crimes during the war, lacked prosecutorial power. Their key recommendations were not implemented, which led to the resurgence of death squads, a lack of closure for the relatives of the "disappeared", no legal recourse for victims of torture, and no compensation to victims of torture and relatives of those murdered. The impunity for individuals who, despite having been identified in the report, were responsible for massive

³⁸ Preston.

³⁹ Mellissa Jones. "Damages awarded in Romero case," *National Catholic Reporter* 40 (2004): 7.

⁴⁰ Gerardo Reyes, "Salvadoran suspected in Romero's assassination acknowledges role," *The Miami Herald*, March 23, 2006, 1.

human rights atrocities, contributed to an overall lack of faith in democratic reforms by the Salvadoran people.

Trials within the U.S. under the Alien Tort Claims Act have held individuals responsible for their actions during the war, but they can only award monetary damages to those plaintiffs who brought the case. The result of this is that several members of the Salvadoran military have been ordered to pay millions of dollars that they do not have, to a handful of victims and their families who will never see the money. The moral victory in these cases must seem minute to the individuals who saw their families tortured, killed, or disappeared, individuals who are still living in El Salvador, where the situation, due to lack of meaningful reforms, is once again deteriorating to a point where fear, violence, oppression, and death squads rule the day.