



## **Historic and emblematic hearing against the State of Guatemala in the *Death Squad Dossier* case**

The hearing before the Inter-American Court of Human Rights in the *Death Squad Dossier* case was a paradigmatic event which will set precedent for the State of Guatemala.

It began at 8:00 AM with a factual summary by the Inter-American Commission of Human Rights. The Commission discussed the context of the internal conflict and the cruelty of the State's counterinsurgency strategy.

This was followed by a statement by the daughter of the late Luz Haydee Mendez, who tearfully described the terror that she lived when she saw her mother being tortured when she was just 9 years of age. She retold the rape to which she was subjected at the time, as a child. She also recalled that Luz Haydee was an idealistic person, who was fighting for a more just and egalitarian society. She was followed by the father of another disappeared victim, Lesbia Lucrecia Garcia, who emphasized that he seeks a more just country, where the facts do not go unpunished. The State refused to cross-examine the witnesses.

Manuel Vasquez, former director of the Special Cases Unit of the Human Rights Office of the Public Ministry, who was proposed as a witness by the State of Guatemala, spoke about the measures taken by the Public Ministry to investigate the case. He stated that there has been no significant progress in investigating the case because the Ministry of Defense refuses to provide documents related to cases. The prosecutor said that, until 2009, there was a state policy that directed them not to investigate cases of serious human rights violations committed during the internal armed conflict. He noted that the efforts performed have only been possible as a result of assistance from civil society organizations. He noted that the documents provided by the Historical Archive of the National Police are still under analysis. Upon cross-examination by the victims' representatives, the prosecutor stated that, in this case, no member of the military had been interviewed because it was prohibited by law.

In this regard, Monica Leonardo, legal representative of the victims, clarified that, pursuant to the Guatemalan internal legal framework, prosecutors not only have the power, but they have the duty and obligation to collect all the evidence required to investigate the facts, through the steps necessary, including, of course, interviews with suspects or those who can provide input or evidence.

Kate Doyle, analyst with the National Security Archives, was proposed as an expert witness in this case. She testified regarding how she received the *Death Squad Dossier* and other documents that prove the grave violations of human rights committed during the internal armed

conflict. She stated that the State of Guatemala is hiding key documents to investigating the truth. The Court expressed its satisfaction with the clarity of the expert's presentation and described it as one of the best in history.

After a recess prescribed by the Court, one of the representatives of the victims, Roxanna Altholz of the Human Rights Clinic at UC Berkeley presented her closing arguments. She emphasized that the cruelty of the events reached such a degree that there were no political prisoners in Guatemala because they were all missing or executed. She stated that this is the first forced disappearance case heard by the Court where there is a collection of specific documents. She noted that the practice of forced disappearance was used as a counterinsurgency strategy in the armed conflict and that the impunity existing in Guatemala has been reinforced by the armed forces' concealment of information and there are no consequences for those who violate the law. This information has not only been kept from the families but from State institutions themselves. The *Death Squad Dossier* disappearances constitute crimes against humanity because they comprise systematic and widespread state practices and must therefore be judged. She also quoted an interview by a Guatemalan newspaper in which Antonio Arenales Forno, who acted as a representative for the State of Guatemala at this hearing, states that there is an amnesty in the country and that those who disagree should challenge it "currently, everyone is subject to the amnesty law, including judges and prosecutors. [...] Amnesty can only be eschewed by challenging it and obtaining a decree of its unconstitutionality." Altholz challenged these arguments by noting their legal inappropriateness.

The State proposed Marco Tulio Alvarez as its expert witness, was referenced by the representatives of the victims. Alvarez, who was responsible for the declassification of military archives, through a written opinion, stated that there are many obstacles in access to military files, many are being destroyed and a complaint has been filed, but the Public Ministry has failed to follow up with it. The State representatives said they were unaware of the complaint, although they proposed and filed the expert affidavit.

Helen Mack, also a representative of the victims in this case, took the floor and said "the simple act of observing the development of this judicial event is highly restorative justice for the victims in Guatemala [...] We need to break the ideological counterinsurgency pattern. We have not been able to build a firm and lasting peace, its proof is the lack of justice. This case is emblematic; this is a case before the Inter-American System that demonstrates conclusively that bestial and brutal practices have been committed. [...] In conclusion, I would like to say that, from personal experience, a judgment from an impartial court does make a difference."

The representative of the State of Guatemala, Antonio Arenales Forno, then took the floor, who said that he recognized that many abuses occurred during the internal armed conflict, but was emphatic that the truth of the facts of the *Death Squad Dossier* could not be determined, as this was the work of the domestic courts. In any case, he also stated that while he acted as State representative at this hearing, he could not speak for the courts or the Public Ministry.

Even before the fortuitous emergence of the *Death Squad Dossier* in 1999, and the Historical Archive of the National Police in 2005, the State representative, Arenales Forno, stated that there are no documents relating to these cases.

Antonio Arenales Forno spent much of the time allotted to present the State's final arguments to declare that Guatemala must apply amnesty for the cases occurred during the internal armed conflict. It should be noted that these statements are contrary not only to the international treaties on human rights, the jurisprudence of the Court before whom he was presenting, but judgments issued by Guatemalan courts in several cases.

The Inter-American Commission on Human Rights noted that the *Death Squad Dossier* is a log of terror. He stated that the victims have been waiting for justice for many years and this has been hampered by impunity, lack of access to information and violations of the rights of family members still remain. The judges made a number of questions to the State of Guatemala and declared the hearing closed.

As the audience took place in Ecuador, the families of victims of forced disappearance, victims in their own right, although better defined as survivors, gathered at the premises of the Myrna Mack Foundation in Guatemala. They were accompanied by the institution's team and some media. They actively presenced the hearing, there were tears, hugs, applause and a power of solidarity and call for justice that filled the place.

The hearing before the Inter-American Court of Human Rights on the *Death Squad Dossier* case was a valuable form of reparation, a plea for change in favor of all, a cry of non-repetition, a clear message against impunity and the hope of obtaining impartial and independent justice.

Guatemala, April 2012