



## **An unprecedented hearing in the case of the *Diario Militar* against the State of Guatemala for forced disappearances**

Over 25 years after the commission of the crimes, an unprecedented hearing before the Inter-American Human Rights System in the case of the *Diario Militar* will finally. On April 25, 2012, the Inter-American Court of Human Rights will hear the representatives of the victims (Fundación Myrna Mack and the International Human Rights Law Clinic – UC Berkeley School of Law), the Inter-American Human Rights Commission and the State of Guatemala. The hearing will be held in Guayaquil, Ecuador and will be streamed via internet at <http://www.corteidh.or.cr/index.cfm>, beginning at 9:00 a.m. Central Time.

The document known as the *Diario Militar* or the Death Squad Dossier is a log which systematically registers intelligence from 1983 to 1985, during the *de facto* regime of Oscar Humberto Mejía Víctores. The *Diario Militar* details the actions taken by agents of the State as part of a counterinsurgency plan implemented in the urban areas of Guatemala during the abovementioned period. It is an annex to an intelligence report and is divided into six sections. The sixth section contains a list of 183 persons who were forcibly disappeared, transferred, sequestered and summarily executed by State agents. In respect of each of these 183 individuals, the log includes his or her full name, a general description of his or her alleged occupation (unionist, university student, etc.), a photograph, the date of his or her (unlawful) arrest, as well as a code and a date, which is inferred to be the date of his or her summary execution. It is noteworthy that the victims featured in the *Diario Militar* resided in urban areas, in contrast to the majority of cases that occurred during the Internal Armed Conflict.

During the Internal Armed Conflict and within the framework of the National Security Doctrine, Guatemala's military designed counterinsurgency strategies in order to neutralize guerrilla forces. According to the Report entitled "*Guatemala: Memoria del Silencio*", the military defined "enemies of the State" as "any person, group or organization attempting to break the established order through illegal actions, as represented by individuals who adhere to the principles of international communism and are involved in revolutionary warfare and subversion in the country. Individuals, groups or organizations who, despite not being communists, attempt to disrupt the established order are also considered "enemies of the State".<sup>1</sup> The ambiguity of this definition as well as the prevailing ideological trends of the time meant that such counterinsurgency strategies were implemented not only against guerrilla members, but also against their supporters, support personnel or, anyone who rebelled against, or expressed its

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<sup>1</sup> Unofficial translation

opposition to, the “established order”: that is to say students, farmers, trade unionists, labor leaders, academics and others.

According to a report issued by the Historical Clarification Commission [*Comisión de Esclarecimiento Histórico*], the referenced regime applied the concept of “enemy of the State” indiscriminately, with such cruelty and harshness that government forces considered every citizen either in favor of, or against, the established order—No citizen could be considered neutral. This resulted in dire consequences: the loss of generations of valuable academic leaders, unions, professionals, artists, etc. Those considered communists and leftists, those who expressed an opinion against the unfairness or arbitrariness of the regime, or those simply interested in knowing and studying the truth, and contribute to a positive change, were considered “enemies of the State” and were therefore summarily executed, forcibly disappeared, exiled or subjected to a variety of human rights violations. The regime’s prevailing terror meant that social sciences were considered criminal; which meant that many academics and students working in this area suffered numerous abuses, with the consequence that, to date, interest in this discipline is scarce.

The Death Squad Dossier was released in 1999 when an agent of the Guatemalan military gave the document to a human rights organization which in turn turned it over to academic Katherine Doyle, analyst for the National Security Archives, based in Washington D.C. On May 20 of that same year, Katherine released the Death Squad Dossier to the press. Many questioned the document’s legitimacy; however, the respective governments of Oscar Berger and Alvaro Colom admitted to its authenticity before the Inter-American Human Rights Commission. Similarly, in 2009, the State of Guatemala acknowledged the authenticity of the Death Squad Dossier in a publication authored by the Peace Secretariat [*Secretaría de la Paz*] (SEPAZ) entitled “*La autenticidad del Diario Militar a la luz de los documentos del Archivo Histórico de la Policía Nacional*” [*The authenticity of the Diario Militar in light of documents from the Historical Archive of the National Police*].

Additionally, in November 2011, an unprecedented event confirmed the legitimacy of the Death Squad Dossier: the Guatemalan Forensic Anthropology Foundation [*Fundación de Antropología Forense de Guatemala*] (“FAFG”) identified the remains of two victims mentioned in the Dossier: Amancio Samuel Villatoro and Sergio Saúl Linares. Their remains were found in San Juan Comalapa, precisely where a former military detachment operated during the Internal Armed Conflict. Three new victims were recently discovered in March 2011. Although they are not parties to the case before the Inter-American Court, this further identification reinforces the Dossier’s authenticity and confirms today’s prevailing impunity for which the State is responsible.

Indeed, prior to 1999, the Guatemalan authorities failed to perform any inquiries or diligences to determine the identity of the perpetrators of these forced disappearances or the whereabouts of the victims. Criminal records contain no evidence that the authorities have taken witness statements, secured and isolated crime scenes, gathered physical evidence, including ballistic evidence, or analyzed the latter. Also, despite legal complaints filed by family members, the authorities failed to conduct any searches, to issue orders to seize the vehicles involved in the incidents or arrest warrants or subpoenas to those suspected of having committed, or participated in, those events.

In 1999, after the appearance of the Dossier, FAMDEGUA filed a complaint with the Public Prosecutor's Office for the crimes therein recorded. However, 12 years later, the domestic legal process has not yielded any results. The criminal investigation of the Public Prosecutor's Office has been deficient, lacking direction or an investigative strategy. The criminal investigation has not produced any results and hasn't shown any sign of progress. 30 years after the facts, it remains in a criminal pretrial stage. The Public Prosecutor's Office has ignored evidence regarding the identities of the perpetrators contained in the Death Squad Dossier and documents found in the Historical Archives of the National Police, discovered by accident in 2005 and which provide information regarding the victims of forced disappearances listed in the Death Squad Dossier. In fact, none of the documents from this Historical Archive appears to have been included in the criminal files. Finally, despite the fact that, according to criminal records, an examining judge has been assigned to the cases, since his assignment said judge does not appear to have taken any action in the case.

On November 30, 2005, the Fundación Myrna Mack, on behalf of the families of 28 of the victims who appear in the Death Squad Dossier, filed a complaint with the Inter-American Commission of Human Rights for the violation of various of the human rights set forth in the American Convention on Human Rights, including, among others, the right to life, truth, human treatment, personal liberty, the freedom of expression, gender, association, the rights of the child and judicial protection and the right to a fair trial.

On May 12, 2011, after the parties' numerous pleadings, evidence, observations and arguments, the Commission informed them that it authorized that the case be submitted to the Inter-American Court of Human Rights. As a result, the Death Squad Dossier case has been scheduled to be heard by the Inter-American Court on April 25, 2012.

At the hearing, the father and the daughter of two victims of forced disappearance, in representation of the 24 families, will testify before the Inter-American Court of Human Rights about these forced disappearances and the violations they and their respective families suffered as a result thereof. Freddy Peccerelli, FAFG director, has also submitted his written statement.

Various individuals will provide their expert testimony on said date. Analyst Katherine Temple Doyle will present the Death Squad Dossier, its characteristics and confirm its authenticity as well as talk about access to information in Guatemala. Additionally, Carlos Castresana Fernández, former commissioner of the International Commission against Impunity in Guatemala [*Comisión Internacional contra la Impunidad en Guatemala*] (CICIG) has provided his expert testimony regarding the administration of justice, criminal investigations in cases of serious human rights violations and denial of justice in Guatemala. The following expert witnesses have also provided their written expert statements: Silvio Gramajo Valdez (on the implementation of the Law respecting Access to Public Information), Alejandro Valencia Villa (on military intelligence and operations), Carlos Martín Beristain (on the psycho-social consequences of the violations), among others. The State will be represented by a member of the Public Prosecutor's Office, who will describe the steps taken by the State in the investigation of the facts. Also, Marco Tulio Alvarez Bobadilla has submitted his written expert statement regarding his experience in the declassification process of government files.

The victims' relatives are awaiting this hearing with great expectations as such could represent an invaluable form of redress and remedy in and of itself. The Death Squad Dossier hearing before the Inter-American Court underlies the families' commitment to the fight against impunity, search for the truth and pleas for justice and non-repetition of such serious crimes. Indeed, the proceedings before the Commission and Inter-American Court of Human Rights is the result of the inability and failure of the Guatemalan justice system to respond adequately to the cry for justice of the victims of the Death Squad Dossier or *Diario Militar*.

For more information regarding the Death Squad Dossier, please visit the following websites:

- The original document entitled the Death Squad Dossier or *Diario Militar*, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB15/dossier-color.pdf>.
- Publication "*La Autenticidad del Diario Militar a la Luz de los Documentos del Archivo Histórico de la Policía Nacional*" [*The authenticity of the Diario Militar in light of documents from the Historical Archive of the National Police*] available at [http://sepaz.gob.gt/media/publicaciones/coprekeh\\_diario\\_militar.pdf](http://sepaz.gob.gt/media/publicaciones/coprekeh_diario_militar.pdf).

If you have any questions or comments, please do not hesitate to contact Martha Paz at [mpaz@myrnamack.org.gt](mailto:mpaz@myrnamack.org.gt).

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