5-5-2011

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Opposition Leader Accused of Human Rights Violations

by Louisa Reynolds

Category/Department: Guatemala

Published: Thursday, May 5, 2011

While news of President Álvaro Colom and his wife's divorce, which seeks to enable first lady Sandra Torres’ presidential candidacy, continues to hit the headlines (NotiCen, April 7, 2011), less has been said about a human rights case that could prevent opposition candidate retired Army Gen. Otto Pérez Molina of the rightist Partido Patriota (PP) from running for office.

In January of this year, the Corte Suprema de Justicia (CSJ) ordered the Efraín Bámaca case to be reopened (NotiCen, July 4, 2002) in compliance with a resolution issued by the Inter-American Court of Human Rights (IACHR).

Bámaca, known as Comandante Everardo, was born in 1957 in the northern department of San Marcos. He came from an illiterate campesino family, and at the age of 18 he joined the Organización del Pueblo en Armas (ORPA), becoming one of its main leaders. In 1991, he married US lawyer Jennifer Harbury, whom he had met a year earlier when she travelled to San Marcos to research the conditions in which guerrilla combatants lived (NotiCen, July 23, 1998).

The Comisión para el Esclarecimiento Histórico (CEH) said that, on March 12, 1992, the Army captured Bámaca in the eastern department of Retalhuleu. He was imprisoned in the Santa Ana Berlín military garrison in Coatepeque, in the highland department of Quetzaltenango, where he allegedly was tortured before being handed over to the Dirección de Inteligencia (G2), then led by Pérez Molina.

Bámaca’s remains have never been found, and Harbury continues to wage a legal battle to bring those responsible for Bámaca’s death to justice.

A declassified US Central Intelligence Agency (CIA) document dated Nov. 24, 1994, published by the independent, nongovernmental National Security Archive (NAS), claims that crucial documents on the Bámaca case and hundreds of others have been destroyed.

Another piece of evidence from the Intelligence Oversight Board (IOB) mentions a document from the group Por la Reivindicación del Ejército de Guatemala (PREGUA), which holds Pérez Molina responsible for Bámaca’s death.

A report titled "The Bámaca Case—an 18-year-old Struggle for Justice," by the Guatemala Human Rights Commission (GHRC), also mentions the allegations against the retired general.

The evidence has been sent to the Ministerio Público (MP) for the case to be reinvestigated.

Can Pérez Molina run for office?

The PP candidate, who currently leads voter-preference polls with 47.2%, argues that the allegations cannot prevent him from running for office because he cannot be tried twice for the same offense.

In 1999, the Corte de Constitucionalidad (CC) acquitted Pérez Molina, but Harbury took the case to the IACHR, which ruled that there was enough evidence for the case to be reopened.
Legal expert Lea de León said that Pérez Molina’s candidacy could only be invalidated if he was found guilty by the courts and sentenced.

However, the law governing political parties (Ley Electoral y de Partidos Políticos) mentions "honorableness" as one of the requirements for a citizen to run for office, which means that the Tribunal Supremo Electoral (TSE) could stop Pérez Molina from running for office on ethical grounds.

This is unlikely to occur, however, given that the TSE has been notably lax in enforcing the electoral law in general, and its president, María Eugenia Villagrán, is married to retired Army Gen. Roberto Letona Hora, a close friend of Pérez Molina.

But former judge Mayra Véliz points out that the MP can ask the presiding judge to listen to all the parties involved in a preliminary hearing. During that hearing, the judge must decide whether the accused will be granted bail or sent to prison for the duration of the trial. Should the latter occur, Pérez Molina would lose his right to freedom of movement in the midst of the election campaign.

However, Véliz and two other sources, lawyer Ricardo Sandoval and constitutional expert Alejandro Balsells, stress that Pérez Molina would only lose his right to political participation if he was found guilty beyond reasonable doubt and sentenced to prison.

**A smear campaign?**

Pérez Molina has dismissed the allegations as part of a plot hatched by the official Unión Nacional de Esperanza (UNE) party. "I wouldn’t be surprised if they tried to fabricate evidence or produce false witnesses," he says.

In March 2010, PP leaders claimed they had access to a leaked UNE document titled Plan Victoria 2012, which purportedly outlined the strategy it would follow to discredit its opponents and that allegedly included reopening the Bámaca case. On that occasion, the PP claimed that Harbury’s travel and accommodation expenses during the trial were being paid for by the Colom administration.

Orlando Blanco, former director of the Secretaría de la Paz (SEPAZ) and a prominent member of the UNE party, was accused of being the brains behind "Plan Victoria 2012." This is hardly surprising given that, during the 2007 elections, before Blanco joined the UNE, he led the Colectivo de Organizaciones Sociales (COS), a nongovernmental-organization (NGO) umbrella group, and openly campaigned against Pérez Molina’s candidacy on the grounds that he had committed serious human rights violations during the war.

As leader of SEPAZ, Blanco published a report detailing the genocidal policies waged against indigenous communities in the highlands during the 1980s, which provides a list of army commanders who took part in the massacres that includes Pérez Molina.

More recently, a WikiLeaks document published in mid-April by the Guatemalan media and signed by US Ambassador Stephen MacFarland in February 2010 refers to a meeting with Pérez Molina, who accused Blanco of concocting a false story about an indigenous family in the highland department of Quiché that was allegedly murdered by the retired general, a new case that purportedly will be brought to light at the height of the election campaign.
According to MacFarland, Pérez Molina accused Blanco and Gloria Porras Escobar, who then worked for the MP and was recently appointed as a CC judge, of grooming false witnesses as part of this alleged smear campaign against him.

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