

Report on Science and Human Rights

Salvadoran Government Institutes Changes Affecting Political Prisoners

The Salvadoran government has instituted a number of changes in the prison system with regard to political prisoners, partly as a result of the Esquipulas II Peace Plan signed by the five Central American countries in August 1987. One of the most significant changes occurred in November 1987 when the Salvadoran National Assembly passed a government-proposed amnesty law. The amnesty, one of the provisions of the peace agreement, freed some 450 political prisoners accused of supporting the armed opposition FMLN (Farabundo Martí National Liberation Front) and exempted from prosecution military personnel accused of human rights violations or other crimes related to the armed conflict.¹ Although approximately 450 political prisoners were released from prison, both governmental and non-governmental human rights organizations estimate that approximately 20 political prisoners still remain in detention.²

Formerly, all political prisoners were detained in the Mariona prison in San Salvador. Since 1982, they have had their own political prisoners' association (COPPES), which administered the political prisoners' cell block. Through COPPES the political prisoners maintained discipline, worked in their own craft shops, and provided for their own medical care. The COPPES health clinic provided care not only for the political prisoners and their families, but also for common criminals, and prison guards. Although the remaining political prisoners in Mariona who were not released under the amnesty insisted on their right to remain there, the Minister of Justice announced that there would no longer be any political prisoners, only common criminals.³ Those who were not released were dispersed to various prisons in the countryside where they are not able to organize and where they are detained with common criminal prisoners.⁴ Human rights workers claim that the government will no longer allow members of humanitarian organizations to have access to Mariona prison, with the exception of the International Committee of the Red Cross. The ICRC is still able to locate the remaining, or any future, political prisoners despite the fact that they are no

longer identified as such. The ICRC can examine the prisoner log at military or police detention centers after relatives notify the ICRC that the individual has been detained.⁵

Many observers say that human rights violations in El Salvador are on the rise, especially since the promulgation of the amnesty law. They argue that the military, discouraged by the release of the political prisoners, may now favor killing suspects rather than detaining them for some time, only to be released at a later date. Additionally, they believe the amnesty may cause the military to consider itself immune from prosecution for human rights abuses and it may continue its violent activities with impunity.⁶

Deaths in Detention

Three prisoners have died in detention during December 1987 and January 1988 in what may be an example of increasing violence on the part of the security forces. Two of the detainees were political prisoners and the third had not yet been classified as a common or political prisoner. Salvadoran and international human rights observers believe the deaths were suspicious in nature. One of the three died when, according to prison officials, he jumped from the second story of the prison, thereby committing suicide. Witnesses, however, say that he was thrown or pushed off the building. In another case, the detainee apparently died from torture inflicted by the National Police.⁷ The National Police is one of three internal security police forces in El Salvador which also include the Treasury Police and the National Guard, all of which perform similar functions. In yet another case, the official version of the cause of death states that the detainee died of a "heart attack." Both national and international human rights groups have asked for investigations of all these cases.

Medical Care

Over the last eight years, abuse of political prisoners by the security forces has been a common occurrence,

especially during the period of administrative detention before the detainee is released to the prison (this is now a 72-hour period). One way to reduce the likelihood of abuse would be to provide an immediate medical examination when the detainee is arrested and upon his release to the prison. Within the last year, the Treasury Police has allowed prisoners to be examined by physicians when they are brought into detention and also upon their release. The National Police instituted this practice in January 1988. The governmental Human Rights Commission provides physicians who examine the prisoners upon their release from police custody and before they enter the prison. The National Guard still does not provide for medical examination.⁸ Observers say that medical examinations are now provided for detainees of the National Police because of the recent case of the detainee mentioned above who died of torture while under police custody in December 1987.

Despite these positive measures to protect detainees taken by two of the security forces, other factors indicate a deterioration of the human rights situation in El Salvador. One example is the reported violation of medical neutrality by the military. Although the violation of medical neutrality is well-documented from the early 1980s at the height of the conflict (e.g. "Report of a Medical Fact-finding Mission to El Salvador," AAAS, 1983), the Salvadoran government has insisted that the human rights situation has vastly improved and the army does not commit such abuses. Human rights workers, however, gathered data during November and December 1987 indicating that health promoters have been detained, health clinics have been broken into and equipment confiscated, and health workers have been harassed and accused of giving medical assistance to the

FMLN armed opposition—all committed by the army. Witnesses also reported an army execution of a wounded FMLN combatant in December 1987.⁹ These activities may be another drawback of the amnesty, as the military continues to act with impunity.

—Janet Gruschow

The information in this article was gathered during a trip to El Salvador in January 1988 by staff member Janet Gruschow and David Holiday, Associate, Washington Office on Latin America.

Notes

1. William Branigin, "Amnesty is Hot Topic at Salvadoran Prison," *The Washington Post*, 2 November 1987, p. A24.
2. Interview by author with Lic. Carlos Edmundo Novoa, Chief Legal Counsel, Judicial Department, Human Rights Commission (governmental), 27 January 1988. See also Marjorie Miller, "14 Civilians Said Killed in Salvadoran Violence," *The Washington Post*, 25 December 1987, p. A30.
3. *El Diario de Hoy*, "Trato de Reos Comunes se Dará a Terroristas Presos," 4 December 1987, p. 51.
4. Amnesty International Urgent Action, "Death in Custody: Gerardo Hernández Torres," AI index AMR/29/03/88, 23 February 1988.
5. See Lawyers Committee for Human Rights, "From the Ashes: a Report on Justice in El Salvador," 1987, p. 61.
6. Chris Norton, "Aftermath of Salvador Amnesty Law: Violence on the Rise," *The Christian Science Monitor*, 25 February 1988, p. 16.
7. Op. cit., Amnesty International.
8. Interview with Novoa.
9. This information was provided to the author on condition of anonymity by a human rights worker who interviewed the witnesses in these cases.

The Soviet Union Passes New Law on Psychiatric Care

During the past year there were signs that the policy of *pereštroyka* or "restructuring" was at last beginning to affect Soviet psychiatry. First, several articles criticizing corruption and abuse on the part of psychiatrists appeared in the press. As we reported in the last issue of this newsletter, although journalists avoided any direct reference to political abuse, they documented several cases in which people were committed to psychiatric institutions without any medical justification, many of them people who had repeatedly complained to local authorities about various injustices they had encountered. Second, a number of political prisoners were released from psychiatric hospitals and, although no precise figures are available, it seems that the number of new committals was far below that of the previous year.

Third, in the Fall, Soviet officials made it known that a new law on psychiatric care, intended to increase the rights of patients, was in preparation. This law was passed by the Supreme Soviet on 5 January 1988 and came into effect on 1 March.

Main Provisions of the New Law

The new law replaces administrative directives issued by the Ministry of Health.¹ It gives patients the right to appeal to the courts, and sets out the circumstances in which compulsory psychiatric examination and commitment may be ordered. It establishes the post of chief psychiatrist at every administrative level to oversee the functioning of psychiatric institutions in each region and to hear appeals from patients. The new law also transfers

the special psychiatric hospitals for the criminally insane from the jurisdiction of the Ministry of the Interior to that of the Ministry of Health. The preamble to the law states that psychiatric care shall be based on "a respectful and humane attitude that excludes the degradation of human dignity" and that psychiatric patients shall be guaranteed "the assistance of a defense lawyer in ensuring their rights and lawful interests."² People who are involuntarily committed to a psychiatric hospital under civil proceedings now have the right to appeal this decision in the courts. (Previously, no such appeal was possible.) They may also call on a lawyer to defend them in any kind of dispute with the health authorities or hospital administration. Involuntary patients (and their relatives or legal representatives) also have the right to request that a psychiatrist of their choice, regardless of where he or she works, be included in the panel which conducts the initial examination of those committed to psychiatric care.

An initial compulsory examination may be conducted if a person "commits actions that give sufficient grounds to suppose that he has a pronounced mental disorder and at the same time violates public order or the rules of socialist society, and also represents an immediate danger to himself and or those around him." Involuntary committal may be ordered when "patients . . . present an immediate danger to themselves or those around them." (Previously, this danger did not have to be "immediate.") In such cases, the patient's relatives or legal representative must be notified immediately. (Previously, psychiatric institutions frequently failed to notify relatives, although the Ministry of Health directives required them to do so.) The law goes on to state that, in providing care to the mentally ill, "a psychiatrist . . . is independent in his decisions and is guided only by medical indications and the law." In other words, psychiatrists are not supposed to commit people to mental hospitals simply at the request of KGB or other officials. The law further states that any psychiatrist who commits a mentally healthy person to a psychiatric hospital shall face criminal proceedings. (An amendment to the Penal Code provides for a prison term of up to two years in such cases.³)

Ambiguities in the Law

The new law undoubtedly constitutes an improvement over the previous state of affairs. Whether it will lead to the complete elimination of psychiatric abuse will depend, however, on the extent to which the law is enforced and the way in which its key provisions are interpreted. For example, although the law appears to allow forcible committal only in exceptional circumstances (when the patient constitutes "an immediate danger" to himself or others), it does not specify what is meant by "immediate danger"—whether it means the threat of death or physical injury or some lesser "danger." Even if the former is the case, the history of Soviet psychiatry to date suggests that some psychiatrists would have no difficulty in diagnosing a tendency toward physi-

cal violence on the part of peaceable political "patients." In a recent interview with the government daily, *Izvestia*, the USSR Deputy Minister of Health, Aleksei Moskvichev, stated that the ministry will shortly issue instructions on how to interpret the conditions for forcible committal. The most typical diagnoses used in compulsory committals were being reviewed, he continued, and some of them were being rejected. Moskvichev noted that the ministry would, in the future, take "an extremely cautious attitude" toward the diagnosis of mental illness in "persons who disorganize the work of institutions with letters of absurd content," adding that "purely litigious behavior by no means requires medical intervention."⁴ While this suggests a desire on the part of Soviet health officials to eradicate the most widespread form of psychiatric abuse—the forcible committal of "habitual complainers"—it remains to be seen just how "cautious" the approach to such cases is and whether the authorities take a similar view of political dissent.

As far as conditions in psychiatric hospitals are concerned, the transfer of the special psychiatric hospitals, where many political prisoners are detained, to the jurisdiction of the Ministry of Health suggests at least the possibility of more humane and professional treatment for patients. On the other hand, political offenders have been confined—and subjected to forcible drug treatment—in Ministry of Health institutions in the past, and the Serbsky Institute, which has been under the control of the ministry since 1957, has been the scene of some of the worst political abuses of psychiatry.

Opposition to Reform

In psychiatry, as in other areas of Soviet life, *perestroika* has its opponents—people who achieved positions of power and privilege during the Brezhnev era and who are now struggling to retain them. Such people include Georgy Morozov, director of the Serbsky Institute and head of the Soviet psychiatric society, and Marat Vartanyan, recently appointed head of the All-Union Center for Mental Health following the death last summer of its previous head, Andrei Snezhnevsky, the author of the infamous theory of "sluggish schizophrenia" used to diagnose many political dissidents as mentally ill. Many observers see no possibility for real reform until these and other conservatives are removed from their posts.

The conservatives, too, have made use of the press to publicize their views. Morozov and Vartanyan have continued to deny the existence of political abuse. In an interview for the Soviet news agency, TASS, in October last year Vartanyan stated, "It is a pity, a great pity, that in a number of countries . . . there are people who, pursuing their selfish and political aims, are trying to discredit not only Soviet psychiatry but also this humane profession as a whole, seeking out dubious personalities who distort reality and trumpet about non-existent cases of violations of human rights in the Soviet Union."⁵ Conservative arguments have recently acquired a new twist with the publication of several articles reporting an

upsurge in violent attacks on psychiatrists by their patients, allegedly in reaction to press accounts of psychiatric abuse.⁶ Interviewed by the author of one such recent article, Vartanyan stated that the publication of numerous "incompetent" articles criticising the abuse of psychiatry was also deterring would-be patients from seeking psychiatric help. As a result, he asserted, there was an increasing risk of suicides and "danger to society." In conclusion, the author noted that, "physicians believe that every article touching on the problems of psychiatry should be reviewed by a specialist . . . so that the explosive force of the printed lines can be mitigated by correct wordings, conclusions, and findings."⁷

Despite the conflict between reformers and conservatives, both sides have a common goal—renewed membership in the World Psychiatric Association (WPA), from which the Soviet Union resigned in 1983 rather than face certain expulsion. This issue has acquired a particular urgency for the conservatives: if they can secure the return of the All-Union Society to the WPA, they have an additional argument with which to defend themselves from criticism at home. A majority of the WPA Executive Committee is now reportedly in favor of readmitting the Soviets, but the issue will not be decided until the next WPA Convention in 1989. In an effort to gain American support for Soviet readmission to the WPA,

Soviet officials recently agreed to an exchange program that will allow American psychiatrists to visit Soviet psychiatric hospitals and may allow them to examine specific patients.⁸ According to Ellen Mercer of the American Psychiatric Association, these exchanges will be arranged privately and will not include an official delegation from the APA. Mercer says the APA will wait to see how the new law on psychiatric care is enforced before deciding whether or not to support the Soviet Union's return to the WPA.

—Jane Cave

Notes

1. For details of these directives, see: Roy and Zhores Medvedev, *A Question of Madness*, London: Macmillan, 1981, pp. 72-74.
2. These and other quotes from: *Vedomosti Verkhovnoy Soveta SSSR*, No. 2, 1988, pp. 22-27.
3. E. Maksimova, *Izvestia*, 15 January 1988.
4. *Ibid.*
5. Quoted in: "Criticism and Defence of Soviet Psychiatry in the Soviet Press," *Information Bulletin of the International Association on the Political Use of Psychiatry*, No. 17 (December 1987), p. 3.
6. S. Staroselskaya, *Meditinskaya gazeta*, 13 January 1988.
7. *Ibid.*
8. Associated Press, "Soviets to Allow Visits to Mental Hospitals," *Washington Post*, 27 March 1987.

CSFR Member Detained in Kenya

On 11 January 1988, Kenyan security officials in Nairobi detained and questioned for eight hours Dr. Robert H. Kirschner, a member of the AAAS Committee on Scientific Freedom and Responsibility, and Judge Marvin Frankel, Chairman of the Board of Directors of the New York-based Lawyers Committee for Human Rights. The two men were in Kenya to observe a government inquest into the death of Peter Njenga Karanja, a businessman and rally driver who died while in police custody on 28 February 1987. Karanja was suspected of belonging to Mwakenya (the Union of Nationalists for the Liberation of Kenya), a clandestine opposition organization which the government is seeking to dismantle.

Dr. Kirschner had previously traveled to Kenya in late July 1987 to observe the inquest into Karanja's death. Postponed from an initial May hearing date, the inquest was scheduled to open on 30 July 1987. Dr. Kirschner arrived at the court house only to hear a magistrate announce it was once again postponed. Finally, for a week in early December 1987, the inquest opened with testimony given by family members of the deceased and the physicians who examined the body. In mid-January the inquest resumed. The Committee decided to send Dr. Kirschner to Kenya again. His second trip was sponsored by the AAAS and the Boston-based group Physicians for Human Rights. Kirschner's visa application

expressly stated that he would be attending the inquest, as did Frankel's application.

Kirschner and Frankel traveled to Kenya at a time when human rights was a particularly sensitive subject for the Kenyan government. In the past year, President Moi has asserted that there are no human rights problems in Kenya and repeatedly criticized Amnesty International for its human rights report on Kenya issued in July 1987. Amnesty had documented cases of illegal political detentions without charge or trial, torture and ill-treatment in police custody, deaths in detention, poor prison conditions and medical care for detainees, and forced confessions.

Detained Incommunicado

Shortly after the inquest resumed on 11 January 1988, Kirschner and Frankel were escorted out of the courtroom by a policeman and ordered to get into an unmarked police car. The two men were taken to separate police stations. Each man was later transferred to Nyayo House, the Nairobi province headquarters of the Special Branch police, although they never saw each other until their release. There they were questioned by teams of police, and their personal papers and passports were taken from them. They were accused of taking notes and illegally attending an inquest which was open only to

accredited journalists (there is no law in Kenya which supports such allegations).

Neither Kirschner nor Frankel was allowed to telephone the U.S. Embassy while they were in police custody. A reporter attending the inquest informed the U.S. Embassy that the two men had been taken from the courtroom. Embassy officials made repeated, unsuccessful attempts to see the two men while they were in detention. However, the Embassy was able to secure the release of the two Americans by the evening. Judge Frankel left Kenya that night and Dr. Kirschner the next evening. Their personal papers were never returned.

The AAAS Science and Human Rights Program has sponsored programs which apply the methods of the forensic sciences to human rights investigations and documentation. One of these ongoing projects is a collaborative effort with the Minnesota International Lawyers Committee for Human Rights to develop and disseminate standards for investigations of deaths under suspicious circumstances and an autopsy protocol. Given the reports of human rights violations in Kenya in the past two years as evidenced by the number of arrests without charge or trial, the reports of torture in detention, and apparent forced confessions of crimes, it was significant that the Kenyan government would investigate a death in detention. The Committee felt it was important to send an observer to evaluate and interpret independently the medical and forensic evidence to be presented in the case.

Forensic Evidence Presented

Family members maintain that Mr. Karanja was a healthy man when members of the Special Branch of the Kenyan police arrested him on 6 February 1987. Less than one month later, he died at Kenyatta National Hospital still in police custody.

The Karanja family alleges that he was tortured while in custody. Karanja's body was autopsied two weeks after his death. At the request of the family, a lawyer and pathologist were present. According to testimony presented by the family pathologist, Karanja had bruises and lacerations on various parts of his body. He stated that Karanja died from lobar pneumonia and acute gangrene of the small and large intestines following laceration of the bowel mesentery. Such an injury to the abdomen is usually caused by blunt force to the area. In March, a decision handed down by the magistrate in this case stated that Karanja in fact died from torture but that it was impossible to determine who was responsible for his death.

Torture Still a Concern in Kenya

Since the detention of Kirschner and Frankel, the Kenyan government has demonstrated some changes in its attitude towards human rights. The day after the detention of the two men, President Daniel arap Moi transferred the Minister of State for internal security within the office of the president, Justus ole Tipis, from

that post to Minister for Works, Housing, and Physical Planning. Later, the chief of police was replaced. In early February, nine persons who had been held in detention without trial were released from prison, including a computer scientist whose case the AAAS Science and Human Rights Program was monitoring. (See Releases.)

Despite the encouraging changes instituted by President Moi, there are still significant human rights concerns in Kenya. Kenya has acceded to the International Covenant on Civil and Political Rights which expressly forbids torture. Yet there are numerous reports of the torture of political prisoners and the conviction after unfair trials of some of the over 75 political prisoners.

Three persons who have been detained without charge since 1986 were not released with the others in early February. The three men—Mirugi Kariuki and Wanyiri Kihoro, both lawyers, and Mujaru Ng'ang'a, a lecturer—had lodged against the government complaints of illegal detention and ill-treatment after their arrest. Amnesty International reports that those freed from detention in February publicly appealed for the release of the others. The former detainees gave press interviews describing the torture they sustained and the harsh prison conditions. They said they had been whipped, beaten, threatened with death, held naked and without food in underground cells ankle-deep in water for up to two weeks.

A medical doctor, Odhiambo Olel, was convicted of political offenses involving links with Mwakenya. He was arrested in Kisumu, western Kenya, on 21 March 1987 by the Special Branch of the police and held incommunicado. At the time of his arrest he was a healthy man. On 6 April 1987 he was brought before a court in Nairobi in a wheelchair with facial injuries and with no legal representative. Dr. Olel pleaded guilty to belonging to Mwakenya, to contributing money to the organization, and to reading its publications. He was sentenced to five years' imprisonment.

Dr. Olel had been the personal physician of Oginga Odinga, a former vice president of Kenya who is reportedly barred from standing for parliamentary elections. Odinga has accused the government of Kenya of human rights abuses, including torture and detention without trial. Dr. Olel may have been arrested because of his relationship with Mr. Odinga.

We ask our readers to send courteous letters expressing concern that Dr. Olel may not have received a fair trial as he had no legal representation and that he may have been tortured in order to pressure him to plead guilty. You may ask why he was held for 16 days in illegal pretrial detention without explanation of why he was arrested. Please write to: His Excellency the Honorable Daniel arap Moi, President of the Republic of Kenya, Office of the President, PO Box 30510, Nairobi, KENYA and to His Excellency Denis Afande, Ambassador, Embassy of the Republic of Kenya, 2249 R Street, N.W., Washington D.C. 20008.

—Kari Hannibal