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SUBJECT: GOES COURT CASES - UPDATE #3

REF: SAN SALVADOR 10936

1. THIS CABLE IS THE THIRD OF PLANNED MONTHLY UPDATES ON THE STATUS OF SALVADORAN LEGAL CASES OF PARTICULAR INTEREST TO THE USG.

2. BANCO AGRICOLA CASE: THE BANCO AGRICOLA COMERCIAL (BAC) FRAUD CASE IN THE AMOUNT OF A REPORTED 87 MILLION COLONES (APPROXIMATELY USD 10 MILLION IN TODAY'S TERMS BUT VALUED AT OVER USD 30 MILLION AT THE TIME) IS NOTORIOUS IN EL SALVADOR. AN INVESTIGATION WAS BEGUN BY THE SPECIAL INVESTIGATIVE UNIT (SIU) UNDER THE DUARTE GOVERNMENT. WHEN THE CRISTIANI ADMINISTRATION TOOK OFFICE ON JUNE 1, 1989, IT DISCOVERED THAT ALTHOUGH SUFFICIENT EVIDENCE HAD BEEN COLLECTED, NO INDICTMENTS OR ARREST WARRANTS HAD BEEN ISSUED. ON JUNE 12, 1989, AN ARTICLE APPEARED IN A LEADING NEWSPAPER, DENOUNCING THE FRAUD COMMITTED AGAINST THE BAC. THE SAME DAY, THE ATTORNEY GENERAL REQUESTED THE ASSISTANCE OF THE SIU IN FURTHER INVESTIGATIONS. THE RESULTS OF THIS INVESTIGATION WERE SUBMITTED TO THE SECOND PENAL COURT ON MAY 2, 1990.

ON JUNE 15, 1991, THE JUDGE OF THE SECOND PENAL COURT ISSUED 45 ARREST WARRANTS, 18 OF WHICH WERE SUBSEQUENTLY DISMISSED. (NOTE: ARREST WARRANTS MAY BE ISSUED ON VERY LITTLE EVIDENCE IN EL SALVADOR. NEW EVIDENCE, HOWEVER, MAY BE PRESENTED WHICH WOULD REOPEN ANY CASE THAT HAD BEEN DISMISSED FOR LACK OF EVIDENCE.) AMONG THOSE NAMED ON THE WARRANTS WERE MEMBERS OF THE BAC BOARD OF DIRECTORS, EMPLOYEES OF THE BAC, AND INVESTORS IN CORPORATIONS WHICH HAD BORROWED FROM THE BAC WITH INSUFFICIENT GUARANTEES.

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REVIEW AUTHORITY: Adolph Eisner, Senior Reviewer

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ONE INDIVIDUAL WHOSE ARREST WARRANT WAS DISMISSED, ROBERTO MATHEIS REGALADO, NEGOTIATED WITH THE CENTRAL BANK LAWYERS TO REPAY HIS "SHARE" OF THE ALLEGED FRAUD. HE HAS NOT, AS YET, RETURNED ANY MONIES TO THE STATE. UNDER SALVADORAN LAW, A PERSON ACCUSED OF FRAUD MAY RETURN THE EQUIVALENT AMOUNT AND AVOID INCARCERATION. IN FACT, AS DEMONSTRATED IN A CASE INVOLVING FORMER PRESIDENT DUARTE, INCARCERATION OF THE DEFENDANT IS NOT USUALLY THE MAIN OBJECTIVE OF THIS TYPE OF CASE. REPAYMENT IS WHAT THE BAC AND THE STATE NORMALLY SEEK.

AT THIS TIME, THE CASE CENTERS ON RAFAEL TOMAS CARBONELL, THEN-BAC PRESIDENT OF THE BOARD OF DIRECTORS, AND PEDRO RAFAEL ESCALON LOPEZ, A MAJOR INVESTOR IN PEZCA, A CORPORATION WHICH BORROWED MONEY FROM THE BAC, FOR WHOM ARREST WARRANTS REMAIN OUTSTANDING. BOTH OF THE ACCUSED ARE BELIEVED TO BE IN THE UNITED STATES. THERE IS REPORTEDLY A POSSIBILITY THAT UP TO FORTY-THREE OTHER PEOPLE WILL BE CHARGED.

3. CHACON/PAYES CASE: ON JUNE 30, 1989, RIGHT WING POLITICIAN LIC. EDGAR CHACON WAS ASSASSINATED; ON JULY 19, 1989, RIGHT WING POLITICIAN ING. GABRIEL PAYES WAS SHOT AND SUBSEQUENTLY DIED OF HIS WOUNDS. ADOLFO AGUILAR PAYES (NO RELATION) WAS ARRESTED FOR BOTH ASSASSINATIONS. ON OCTOBER 15, PAYES BEGAN A HUNGER STRIKE TO EMPHASIZE THAT THE ONLY EVIDENCE REPORTEDLY WAS ELICITED UNDER TORTURE, A CONFESSION WHICH PAYES RETRACTED; TO PROTEST HIS THREE YEAR DETENTION WITHOUT ACCESS TO A "SPEEDY TRIAL"; AND TO DRAW ATTENTION TO THE MANIPULATION OF THE TRIAL DATE BY JUDGE FELIPE ROBERTO LOPEZ ARGUETA OF THE SIXTH CRIMINAL COURT. THE HUMAN RIGHTS OFFICE OF THE ARCHDIOCESE OF SAN SALVADOR, TUTELA LEGAL, SENT A DOCTOR TO EXAMINE PAYES, AND HE WAS RELEASED TO A HOSPITAL FOR CARE. FAMILY MEMBERS CLAIMED THAT THE CASE HAD BEEN ILLEGALLY TURNED OVER TO THE TRUTH COMMISSION BY THE SUPREME COURT. ON NOVEMBER 19, THE HUMAN RIGHTS OMBUDSMAN GAVE THE JUDGE THREE DAYS TO BEGIN THE TRIAL PROCESS. ON NOVEMBER 25, THE JURY WAS POLLED. ON DECEMBER 2, THE TRIAL WAS HELD AND A JURY OF THREE WOMEN AND TWO MEN RETURNED A VERDICT OF NOT GUILTY.

4. CONADES CASE: ON NOVEMBER 24, THE GOES ATTORNEY GENERAL'S OFFICE REQUESTED THAT THE FIRST TREASURY JUDGE ISSUE ANOTHER

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ARREST ORDER FOR CONADES (THE NATIONAL COMMISSION FOR ASSISTANCE TO THE DISPLACED) EXECUTIVE DIRECTOR, HERIBERTO ALONSO GUERRERO MUNGUIA, FOR FRAUD AND MISMANAGEMENT OF PUBLIC FUNDS IN THE AMOUNT OF APPROXIMATELY USD 600,000. AFTER HIS ARREST IN JULY FOR FRAUD AND MISMANAGEMENT OF PUBLIC FUNDS IN THE AMOUNT OF APPROXIMATELY USD 45,000, GUERRERO MUNGUIA CLAIMED HE HAD GIVEN ALL THE MONEY HE HAD OBTAINED FRAUDULENTLY TO THE ARENA PARTY. ARENA QUICKLY DISAVOWED THIS CLAIM, AND PUBLISHED A FULL-PAGE ADVERTISEMENT IN A CONSERVATIVE DAILY CONGRATULATING THE GOVERNMENT ON ITS SUCCESSFUL INVESTIGATION OF THE CASE AND EXHORTING THE GOVERNMENT TO CONTINUE INVESTIGATING ACTS OF ADMINISTRATIVE CORRUPTION VIGOROUSLY. (NOTE: GUERRERO MUNGUIA'S WIFE WAS ROBERTO D'AUBUISSON'S SECRETARY; HIS BROTHER IS AN ARENA ASSEMBLYMAN.) GUERRERO MUNGUIA WAS RELEASED ON OCTOBER 5, 1992 BY THE SAME FIRST TREASURY JUDGE FOR LACK OF EVIDENCE THAT GUERRERO MUNGUIA HAD DEFRAUDED CONADES. GUERRERO MUNGUIA IS REPORTEDLY LIVING IN THE UNITED STATES.

5. EL MOZOTE CASE: DURING A DECEMBER 1981 ESAF OFFENSIVE INTO FMLN STRONGHOLDS IN THE DEPARTMENT OF MORAZAN, AS MANY AS 700-800 MEN, WOMEN AND CHILDREN WERE ALLEGEDLY MASSACRED BY THE ATLCATL BATTALION. EXHUMATIONS AT THE FIRST OF SIX SITES BEGAN ON OCTOBER 13, 1992. BY DECEMBER 3, THE REMAINS OF 132 PEOPLE--127 OF THEM UNDER THE AGE OF TWELVE--HAD BEEN REMOVED TO THE CORONER'S LABORATORY IN SAN SALVADOR. THREE U.S. FORENSICS EXPERTS ARE ASSISTING THE GOES IN ITS INVESTIGATIONS. THE U.S. AND ARGENTINE TEAMS, WORKING WITH THE SKELETONS, PROJECTILES AND CARTRIDGE CASINGS RECOVERED FROM THE SMALL HOUSE NEXT TO THE VILLAGE CHURCH WHERE THE MASSACRE TOOK PLACE, CHARTED THE LOCATION OF THE BODIES AND PROJECTILES. THE PHYSICAL EVIDENCE CONFIRMS THE MURDERS.

6. THE JESUIT CASE: NOVEMBER 16 MARKED THE THIRD ANNIVERSARY OF THE MURDER OF THE SIX JESUIT PRIESTS, THEIR HOUSEKEEPER AND HER DAUGHTER. THE EVENT WAS COMMEMORATED WITH A CANDLELIT MARCH TO THE UNIVERSITY CAMPUS WHERE THEY WERE KILLED, TWO MASSES, PRESS CONFERENCES AND SUBSTANTIAL NEWSPAPER AND TELEVISION COVERAGE OVER A THREE DAY PERIOD. THE JESUIT ORDER, THROUGH ITS PROVINCIAL (CENTRAL AMERICAN) HEAD, JOSE MARIA TOJEIRA, INDICATED THAT IT WOULD REQUEST THAT PRESIDENT CHRISTIANI PARDON THE TWO

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MILITARY OFFICERS CONVICTED OF THE MURDERS. IN AN HOUR-LONG TELEVISED INTERVIEW, TOJEIRA GAVE NUMEROUS EXAMPLES OF WHY THIS CASE, WIDELY SEEN AS EL SALVADOR'S MOST SIGNIFICANT HUMAN RIGHTS CASE, IS SYMBOLIC OF WHAT IS NON-FUNCTIONAL IN THE SALVADORAN JUSTICE SYSTEM. TOJEIRA WAS MOST CRITICAL OF WHAT HE CALLED THE ARBITRARY NATURE OF JUSTICE IN EL SALVADOR. HE CITED THE SITUATION OF YUSSHI RENE MENDOZA, WHO WAS CONDEMNED FOR THE MURDER OF THE HOUSEKEEPER'S DAUGHTER, EVEN THOUGH BALLISTICS TESTS PROVED THAT HE HAD NOT FIRED HIS WEAPON. ON THE OTHER HAND, BALLISTICS TESTS DID PROVE THAT EIGHT OTHER, MOSTLY LOW RANKING MILITARY MEN--WHO WERE ABSOLVED OF THEIR CRIMES--HAD FIRED THEIR WEAPONS. TOJEIRA SAID THE CASE WAS AN IMPORTANT STEP IN BREAKING THE ANONYMITY OF HUMAN RIGHTS ABUSES BY THE ESAF, AS IT MARKED THE FIRST TIME THE MILITARY WAS FORCED TO TURN OVER OFFICERS TO THE JUDICIAL SYSTEM FOR CRIMES COMMITTED AGAINST CIVILIANS. TOJEIRA APPEARS CONFIDENT THAT THE AD HOC COMMISSION'S LIST OF OFFICERS TO BE DISMISSED WILL INCLUDE AT LEAST SOME OF THOSE PUTATIVELY INVOLVED IN PLANNING THE CRIME OR THE SUBSEQUENT COVER-UP. THE TRUTH COMMISSION IS INVESTIGATING THE CASE.

7. THE JOYA-MARTINEZ CASE: RECENTLY-EXTRADITED MURDER SUSPECT CESAR VIELMAN JOYA MARTINEZ IS BEING HELD FOR TRIAL AT MARIONA PRISON NEAR SAN SALVADOR. THE CASE IS IN THE INVESTIGATIVE PHASE IN THE FIRST INSTANCE COURT OF QUEZALTEPEQUE.

8. THE LEIVA CASE: LTC. ROBERTO ANTONIO LEIVA WAS ARRESTED ON MARCH 7, 1992 BY ANTINARCOTICS AGENTS FOR THE SALE OF FOUR BOMBS TO THE CALI CARTEL TO BE USED IN AN AERIAL ATTACK ON THE PRISON WHERE COLOMBIAN NARCOTRAFFICKER PABLO ESCOBAR WAS BEING HELD. ONLY ONE BOMB WAS RECOVERED. HIS CASE IS BEING INVESTIGATED BY THE SIXTH CRIMINAL COURT OF SAN SALVADOR AND THE MILITARY COURT. HIS EXTRAJUDICIAL CONFESSION STATED THAT HE HAD ACCEPTED USD 400,000 FOR THE BOMBS, AND WAS IN THE PROCESS OF DECIDING WHETHER OR NOT, FOR \$4,000, TO PILOT THE PLANE THAT WOULD DROP THE BOMBS ON THE COLOMBIAN PRISON. HIS JUDICIAL CONFESSION SAYS THAT HE HAD USD 400,000 IN HIS SAFE BECAUSE HE SOLD CARS AS A SIDELINE. THE JUDGES WERE UNABLE TO ESTIMATE WHEN THEIR INVESTIGATIONS MAY BE CONCLUDED.

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9. THE PICKETT/DAWSON CASE: ON JANUARY 2, 1991, A U.S. HELICOPTER EN ROUTE TO HONDURAS WAS SHOT DOWN BY THE FMLN NEAR LOLOTIQUE IN THE SAN MIGUEL DEPARTMENT. THE PILOT WAS KILLED UPON IMPACT; LTC. DAVID PICKETT AND AIRMAN ERNEST DAWSON WERE LATER SHOT BY MEMBERS OF AN FMLN PATROL. ON MARCH 17, 1992, TWO FMLN SUSPECTS TURNED THEMSELVES IN: SEVERIANO FUENTES (AKA "APARICIO") AND FERMAN HERNANDEZ (AKA "PORFIRIO") AND ARE CURRENTLY BEING DETAINED IN THE SAN SALVADOR PENITENTIARY. THE CASE IS IN THE INVESTIGATIVE PHASE, WITH THE JUDGE OF THE FIRST INSTANCE OF CHINAMECA HEARING TESTIMONY FROM MEMBERS OF THE FMLN PATROL. THE DEPARTMENT OF DEFENSE AUTHORIZED AND HIRED A PRIVATE ATTORNEY TO REPRESENT THE INTERESTS OF THE PICKETT AND DAWSON FAMILY; HE HAS BEGUN HIS REVIEW OF THE CASE FILE. THE DEFENSE HAS HIRED A SECOND ATTORNEY, A WELL-KNOWN DEAN OF A LAW SCHOOL. THE TRUTH COMMISSION IS LOOKING INTO THE CASE.

10. THE ZONA ROSA CASE: ON JUNE 19, 1985, FOUR U.S. MARINES AND FOUR OTHER NON-SALVADORANS WERE MURDERED AT CHILI'S RESTAURANT IN THE ZONA ROSA OF SAN SALVADOR. WILLIAM ARCELIO RIVAS BOLANOS AND JUAN MIGUEL GARCIA MELENDEZ WERE ARRESTED BY THE TREASURY POLICE ON JULY 12, 1985; THEY WERE TRIED AND CONVICTED BY THE MILITARY COURT OF THE FIRST INSTANCE. RIVAS BOLANOS IS NOW SERVING OUT A THIRTY YEAR SENTENCE; GARCIA MELENDEZ COMPLETED HIS SEVEN YEAR SENTENCE AND WAS RELEASED. RIVAS BOLANOS MAY BE ELIGIBLE FOR AMNESTY, AS HE WAS NOT CONVICTED BY A JURY. A THIRD PERSON, JUAN ANTONIO MORALES LUCERO, ARRESTED BY THE TREASURY POLICE ON JULY 23, 1988, WAS TURNED OVER BY THE MILITARY COURT TO THE FIFTH PENAL COURT OF SAN SALVADOR, WHERE HE IS CHARGED WITH THE MURDER OF ALL EIGHT FOREIGNERS. THE CHARGE OF SUBVERSIVE ASSOCIATION WAS DISMISSED IN SEPTEMBER, BUT THE REQUEST FOR AMNESTY WAS REFUSED. THE JUDGE CITED INTERNATIONAL TREATIES TO WHICH EL SALVADOR IS SIGNATORY, WHICH COMMIT THE GOVERNMENT TO PROTECT THE LIFE AND PROPERTY OF FOREIGNERS, AS THE BASIS FOR THE DENIAL OF AMNESTY. THE JURY WAS POLLED AT THE END OF NOVEMBER; THE TRIAL IS SCHEDULED TO BEGIN ON FEBRUARY 5, 1993. THE TRUTH COMMISSION IS INVESTIGATING THE CASE.

11. THE SAN SEBASTIAN CASE: MAJOR MAURICIO DE JESUS BELTRAN OF THE 5TH INFANTRY BRIGADE OF SAN VICENTE WAS ARRESTED WITH THREE OTHER OFFICERS FOR THE MURDER OF NINE PEASANTS IN SAN FRANCISCO

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DE SAN SEBASTIAN, SAN VICENTE DEPARTMENT ON SEPTEMBER 25, 1988. THE PROCESSING OF THE CASE BEGAN ON FEBRUARY 7, 1990 BEFORE THE FIRST INSTANCE JUDGE OF SAN VICENTE. ON JUNE 26, 1990, THE ATTORNEY GENERAL'S OFFICE REQUESTED A CHANGE OF VENUE TO SAN SALVADOR, WHICH WAS GRANTED. IN NOVEMBER, 1991, A PETITION WAS PRESENTED TO THE SUPREME COURT TO RELEASE BELTRAN FOR LACK OF EVIDENCE. THE PETITION WAS REJECTED BY THE COURT IN APRIL 1992. THE JUDGE OF THE 7TH CRIMINAL COURT OF SAN SALVADOR HAS NOW ANNOUNCED THE POLLING OF A JURY "IN THE NEXT FEW DAYS;" HE PREDICTS THE TRIAL WILL BEGIN IN JANUARY, 1993. THE TRUTH COMMISSION IS INVESTIGATING THE CASE.

- 12. THE GUERRERO CASE: NO CHANGE.
- 13. THE ESPINO CASE: NO CHANGE.
- 14. THE RODRIGUEZ PORTH CASE: NO CHANGE.
- 15. THE GARCIA ALVARADO CASE: NO CHANGE.
- 16. THE GARCIA ROMERO CASE: NO CHANGE.
- 17. THE PECCORINI CASE: NO CHANGE.
- 18. THE ANAYA SANABRIA CASE: NO CHANGE.

(DOC. COURT) ROMERO

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