



FULL REPORT: Humberto Quintero Aguilar Victim of torture and due process violations

José Humberto Quintero Aguilar, National Guard Lieutenant Colonel and Commander of the Anti-Extortion and Kidnapping Unit (GAES- Grupo Antiextorsión y Secuestro) in the State of Táchira, Venezuela, was arrested on January 12, 2005, on charges of treason, abuse of authority, and violating military decorum for allegedly accepting a bribe to detain and hand over to Colombian authorities, Rodrigo Granda, the principal international spokesperson for the Revolutionary Armed Forces of Colombia (FARC).¹ The FARC is widely considered a terrorist organization responsible for war crimes and crimes against humanity, routinely kidnapping civilians for ransom, for political gain, and for use as human shields.

In an interview with HRF in the military prison Ramo Verde, Quintero said that he was not the person who detained and handed over Granda.² Quintero maintains that he said he was Granda's captor only because he was being tortured.

According to then Minister of the Interior and of Justice Jesse Chacón (currently Minister of Communications), Quintero received 1.5 million dollars as bounty;³ however, Quintero's wife denies that her husband received any reward, monetary or otherwise, for turning in Granda. The Colombian government admitted having paid a bounty for Granda's capture; however, they would not reveal the identities of the bounty hunters.⁴

Quintero is a highly regarded officer and has successfully led many GAES operations in the state of Táchira.⁵

On May 15, 2008, Interpol announced that it had verified the authenticity of files found in several computers belonging to leaders of the FARC, which were reportedly recovered by Colombian security forces from a FARC encampment. These files contained messages "describing meetings in which Venezuelan officials also appear to have offered assistance to the Colombian guerrillas, including safe havens, weapons procurement, and possibly even financial support."⁶

Granda's Capture

Venezuelan government sources said that Granda was kidnapped in Caracas on December 13, 2004, at 4:00 p.m. by members of the Venezuelan National Guard, working in conjunction with the National Police of Colombia. On December 14, in the city of Cúcuta, Granda was transferred to Captain Francisco Antonio Rojas Bejarano, commander of the Colombian Army anti-kidnapping unit, Gaula group (Grupos de

Acción Unificada por la Libertad Personal). The Venezuelan government also claims that Granda had not been wanted by the Colombian government or by any other government, and that it was only on January 9, 2005, 25 days after Granda's kidnapping, that Interpol and the Colombian government requested his capture for terrorist acts.⁷ Other sources report that the list of terrorists wanted by the Colombian justice was in fact sent to the Venezuelan government in January 2004, and Interpol confirmed that Rodrigo Granda was part of this list with international circulation since January 15, 2004.⁸

Five GAES officers were identified by the government as participants in the kidnapping:

1. José Humberto Quintero Aguilar
2. Darwin Valero Cordero
3. Carlos Castillo Rivas
4. Simón Rodríguez Rico
5. José Rodríguez Galviz

After Granda's capture, the GAES was dismantled and its officers reallocated in different garrisons throughout the country.

Due Process

Quintero's right to legal defense was violated because on the day of his arrest (January 12, 2005) he was kept incommunicado until late at night.⁹ Additionally, Quintero remained in the DIM cell for seven days and then had to appear at the military tribunal without being able to name a defense attorney.¹⁰

Quintero was charged with the crimes of high treason, abuse of authority and violation of military decorum, established in Articles 464 (3) (20) (26), 509 (1) (2), and 565 of the Military Justice Code,¹¹ and illegal deprivation of liberty established in article 175 of the Penal Code.¹² Quintero was sentenced to 3 years and 8 months in prison¹³ in November of 2007. An appeals court annulled this decision on due process grounds: the court lacked jurisdiction and provided insufficient reasoning for its decision. Quintero continues to be held in the Ramo Verde military prison, now undergoing a new trial for the same charges.

Torture

Quintero was tortured during his seven-day incarceration in the military intelligence division (Division de Inteligencia Militar-DIM). Quintero described his experience at the DIM in an interview with HRF while at the Ramo Verde military prison:

I was detained on Wednesday morning ... without a judicial order for my arrest ... In fact, in my file there is no arrest warrant.... This process is arbitrary. I was held incommunicado. I was taken to the Division de Inteligencia Militar on Thursday morning. On Friday, January 14, [2005] I was presented before the military tribunal. At that moment I had not named my defense attorney, so they postponed the hearing to the following Monday, January 17. . I arrived at the

DIM in the afternoon and at around 5:00 p.m., they called me out of my cell and handcuffed me. I thought that I was going to be interrogated in the same manner as the others who were involved in this case.... I first saw an officer, with Cuerpo de Investigaciones Científicas, Penales y Criminalísticas C[ICPC (the civilian judiciary police)] identification... I was taken to the basement and I see a second officer of the CICPC and I see a van in CICPC colors without a license plate. They handcuffed me and wrapped a sweater around my face and put me in the back seat of the SUV.... I was sitting among other people and they told me to look at the floor.... I think there were six people in the van. From the DIM to where they took me, I estimate it was 45 minutes. When the vehicle stopped, I raised my head and took off the sweater that I had on my face.... The moment they realized I had taken off the sweater, they started beating me. They were telling me to lower my head and to look at the floor and they put brown tape on my wrists. They also put a brown tape at the level of my eyes and put the sweater back on, over my face.... [After arriving at an undisclosed location] they sat me on a chair and I heard a recording device being used. They started asking me questions.... The people who were questioning me knew what was in the case file at the DIM. They were asking me questions, but I would not answer anything. As a result of my refusal to comply, they started getting upset, so they incapacitated me by holding down my arms and legs and then put a bag over my head, in an effort to choke me. Obviously, I was desperate to breath and I struggled, but they were holding on to me tightly. I pushed them to the sides and it was the only way I could get oxygen again. They decided to do it again, but they first hit me from behind and then on the stomach, knocking the wind out of me, and then they placed a plastic bag over my head. This worked because I was beginning to lose consciousness, I was fainting. There were several of these sessions. In these sessions they kept asking me questions... Later, they changed their methods; they placed me face down with my hands cuffed behind me and they climbed on top of me.... They would get on top of me so that I could not defend myself.... Later, they told me that if they were going to resort to using other types of torture and that if they still did not get the information they wanted, they said, “we are going to kidnap your wife and son. Given that they have been visiting the DIM every day, it would be easy for us to kidnap them.”.... Because I feared that they could act against my family at that point I agreed to tell them what they wanted They began asking me the questions and I began to respond to these questions as they wanted.... They would tell me what I needed to say.... For example, they would say, “We know you were paid.” When my answers did not satisfy them, they would start the tortures again. They would place the plastic bag and go through the same asphyxiation until they realized that there was no other answer, that there was absolutely no money and so they changed questions. That was the way the interrogation went. After I had answered all their questions, they took off the bag, they took off the blindfold, they took off the handcuffs and they told me that they were going to do an audiovisual recording.... They asked me the same questions. I was answering knowing that if I did not say something that pleased them, they were going to continue torturing and mistreating me. Once that was

over, they put a brown bag on my wrists and handcuffs, they covered my eyes and they took me back to the DIM.

Quintero stated that the officers from military intelligence that detained and tortured him were trying to get him to say that Colombian and United States intelligence had actively participated in Granda's capture. They also wanted Quintero to confess that he had received, as reward, 1.5 million dollars. Quintero has repeatedly denied both accusations. Furthermore, the government has not proven the existence of the funds.

According to Quintero, after the interrogation he was confined to Basement 1 of the DIM, where he had to remain in a 7 x 8 foot cell for seven days. His cell had no illumination except for a one-foot window into the hallway. He was stripped of all of his clothing except for shorts and sandals. When he had basic needs such as using the bathroom or drinking water, he had to stick his hand through the window and wait for a guard to notice and to agree to answer his request. Furthermore, he was deprived of his watch, thus losing all sense of time.. At the beginning of his incarceration, he would try to keep track of time in relation to when his food was brought in, but the government officials became aware of this and would arbitrarily alter when they brought him food. Furthermore, whenever he would fall asleep, they would wake him up and take him out for long hours of interrogation. He was only able to see his wife in a room of mirrors for five minutes. Quintero also claims that these interrogation sessions were authorized by the chief of the DIM investigation department.¹⁴

Quintero's tortures have had lasting physical and psychological effects on him. Four months after the interrogation, Quintero developed an internal hematoma for which he had to be treated.¹⁵ He also said that "there are times at night in which the pain in my vertebral column does not allow me to sleep."¹⁶ Magnetic resonance imaging (MRI) revealed that "there is an injury on his thorax, due to the mistreatment carried out in the DIM."¹⁷ It was only weeks after the torture started that the Ramo Verde authorities allowed Quintero to undergo needed medical examinations (lumbar and pulmonary resonance imaging). David Terán, Quintero's lawyer at that moment, believed that "they wanted to erase evidence of torture, but they had to permit this [medical examination] because on Sunday, January 30 [2005], he suffered pains that had him virtually bedridden."¹⁸

Terán requested police protection for Mrs. Quintero, since she received threats. She stated that "a suspicious person was prowling around my residence, trying to locate the house, and asking for me."¹⁹ Additionally, Quintero's home and office were raided and all the documentation that he had on armed movements operating in Venezuela was confiscated.²⁰

Quintero wrote a letter detailing the torture by the DIM,²¹ the lack of adequate medical treatment,²² the restrictions and humiliations imposed on his family members, the permanent surveillance, and the lack of control and order at the DIM.

Despite Quintero's claim that he can recognize two of his aggressors, no measures have been taken to investigate his accusations or take any action.

International Law provisions violated in Humberto Quintero Aguilar's Case

1. Right to be free from torture:

Article 1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 7. International Covenant on Civil and Political Rights

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 5. American Convention on Human Rights

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

(...)

2. Due process:

Article 8. Universal Declaration of Human Rights

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Artículo 10. Universal Declaration of Human Rights

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Artículo 14. Pacto Internacional de Derechos Civiles y Políticos

Article 14. International Covenant on Civil and Political Rights

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article XXVI. American Declaration of the Rights and Duties of Man

Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Artículo 8. American Convention on Human Rights

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

3. State responsibility

Article 2. International Covenant on Civil and Political Rights

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 1. American Convention on Human Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Media Reports

El Universal

- “Militares puestos al límite”:
http://archivo.eluniversal.com/2005/10/02/pol_art_02162A.shtml
- “Fiscalía Militar acusará por caso Granda el 2 de marzo”:
http://english.eluniversal.com/2005/02/16/pol_art_16104A.shtml
- “Denuncian que oficial detenido por caso Granda fue maltratado”:
http://tiempolibre.eluniversal.com/2005/08/19/imp_pol_art_19108F2.shtml
- http://www.eluniversal.com/2006/10/26/imp_opi_4807_art_44671.shtml
- “Presidente no puede interferir justicia militar”:
http://opinion.eluniversal.com/2006/04/08/imp_pol_art_08108J.shtml
- “Exigen investigar a superiores de comandante Quintero”:
http://english.eluniversal.com/2005/02/08/imp_pol_art_08103F.shtml

Union Radio

- “AD denuncia maltrato contra guardia detenido por caso del guerrillero Granda”:
<http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=143752>

Radio Nacional de Venezuela

- “Chacón: Efectivos de Colombia y Venezuela efectuaron secuestro de Granda”:
<http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=12462>

El Nacional

- “Piden que se obligue a tribunal ordinario garantizar derechos de comandante del GAES”:

http://www.uru.org/papers/DDHH/PresosPoliticos/2005_PP_varios/20040206_Granda_GAES.htm

Diario La Voz

- “AD denuncia maltratos contra detenido por el caso Granda”

Aporrea

- “Quien recibió a Rodrigo Granda en Colombia?”:
http://www.aporrea.org/imprimir_noticia.php?docid=55163

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- ¹ “Chacón: Efectivos de Colombia y Venezuela efectuaron secuestro de Granda,” *Venpres / ElUniversal.com / Union Radio*, 13 Jan. 2005
<<http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=12462>>; Juan Francisco Alonso, “Fiscalía Militar acusará por caso Granda el 2 de marzo,” *El Universal*, 10 Feb. 2005
<http://english.eluniversal.com/2005/02/16/pol_art_16104A.shtml>, and Policía colombiana desmiente que jefe del Gaula de Cúcuta haya coordinado 'secuestro' de Granda, *Radio Caracol*, 13 Jan. 2005,
<http://www.caracol.com.co/nota.aspx?id=138762>
- ² HRF interview with José Quintero in Ramo Verde.
- ³ Francisco Olivares, “Militares puestos al límite,” *El Universal*, 2 Oct. 2005
<http://archivo.eluniversal.com/2005/10/02/pol_art_02162A.shtml>.
- ⁴ Colombia Admits It Hired Agents to Abduct Rebel in Venezuela, The Associated Press, 13 Jan 2005
<http://www.nytimes.com/2005/01/13/international/americas/13colombia.html>.
- ⁵ The GAES specialized in fighting against guerilla groups that were operating near the Venezuelan-Colombian border, including Colombian guerillas and paramilitaries and armed Venezuelan groups, such as the Frente Bolivariano de Liberación. More on Quintero’s professional achievements is available from Olivares, “Militares puestos al límite,” and Alonso, “Fiscalía Militar acusará por caso Granda el 2 de marzo.”
- ⁶ Venezuela: Clarify Relationship with Colombian Guerrilla, *Human Rights Watch*, Washington, DC, 3 Jun. 2008
<http://www.hrw.org/english/docs/2008/06/03/venezu19014.htm>
- ⁷ “Chacón: Efectivos de Colombia y Venezuela efectuaron secuestro de Granda.”
- ⁸ Venezuela sabía de circular de Interpol: Bogota, Colombia, 16 Ene, 2005,
<http://www.esmas.com/noticierostelevisa/internacionales/419055.html>.
- ⁹ Alonso, “Exigen investigar a superiores de comandante Quintero.”
- ¹⁰ Olivares, “Militares puestos al límite.”
- ¹¹ See Articles 464, 509, and 565 in Venezuela, Gaceta Oficial No. 5.263, *Código Orgánico de Justicia, Militar*, 17 Sept. 1998 <<http://www.leyesvenezolanas.com/lv02.htm>>.
- ¹² See Article 175 in Venezuela, Gaceta Oficial No. 5.494, *Código Penal de Venezuela*, 20 Oct. 2000,
<http://www.mintra.gov.ve/legal/codigos/penaldevenezuela.html>
- ¹³ Caso Rodrigo Granda, Veneconomía. <http://veneconomia.com/site/?ids=44&idt=9955&idc=1>
- ¹⁴ Olivares, “Militares puestos al límite,” and HRF interview with Quintero.
- ¹⁵ Olivares, “Militares puestos al límite,” and HRF interview with Quintero.
- ¹⁶ HRF interview with Quintero.
- ¹⁷ Alonso, “Fiscalía Militar acusará por caso Granda el 2 de marzo.”
- ¹⁸ Juan Francisco Alonso, “Exigen investigar a superiores de comandante Quintero,” *El Universal*, 8 Feb. 2005 <http://english.eluniversal.com/2005/02/08/imp_pol_art_08103F.shtml>.
- ¹⁹ Alonso, “Fiscalía Militar acusará por caso Granda el 2 de marzo.”
- ²⁰ Olivares, “Militares puestos al límite.”
- ²¹ “Denuncian que oficial detenido por caso Granda fue maltratado.”
- ²² “AD denuncia maltrato contra guardia detenido por caso del guerrillero Granda,” *Union Radio*, 18 Aug. 2005 <<http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=143752>>.