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THE LEGAL CONTEXT
OF THE CAMPAIGN FOR THE
RELEASE OF THE PUERTO RICAN POLITICAL PRISONERS
AND PRISONERS OF WAR IN U.S. PRISONS

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Uncomfortable truths travel with difficulty.

Primo Levi
The Drowned and the Saved

They heard somebody say it was twelve o'clock already.
"It must be," Shukhov said. "The sun's right overhead."
"If it's right overhead," the Captain shot back, "that means it's one o'clock, not twelve."
"How come?" Shukhov asked. "Any old man can tell you the sun is highest at noon."
"That's what the old guys say!" the Captain snapped.
"But since then, there's been a law passed and now the sun's highest at one."
"Who passed the law?"
"The Soviet Government!"
The Captain went out with the hods. But Shukhov wouldn't have gone on arguing anyway. Did the sun come under their laws too?

Alexander Solzhenitsyn
One Day in the Life of Ivan Denisovich

Introduction

Fifteen Puerto Rican women and men are in U.S. prisons today serving the equivalent of life sentences for their actions to end U.S. colonial control over Puerto Rico. An examination of their case reflects how U.S. "justice" applies to the case of Puerto Rico. The U.S. not only ignores international law requiring decolonization and recognizing a people's right to exercise self-determination. It also ignores its own domestic law in the trials, sentencing, parole, and prison conditions of the Puerto Rican anti-colonial combatants in its custody. In so doing, it also violates its own "anti-terrorist" policy, to "treat terrorists as criminals

and apply the rule of law".

Perhaps the most significant aspect of the legal context is the fact that under international law, colonialism is a crime against humanity. Our prisoners have spent the past 15 years in prison for fighting this crime, for taking measures that are absolutely and expressly protected by international law.

The Prisoners

A. FALN

In 1974, continuing the long history of the Puerto Rican people's resistance to U.S. colonialism, the Fuerzas Armadas de Liberación Nacional (FALN) emerged, a clandestine formation which committed political-military actions inside the United States. Selecting its targets for their role in the continuing exploitation and oppression of the Puerto Rican people, the FALN explained its armed actions in communiques and called for the release of the Nationalist prisoners in U.S. custody.

In the early 1980's, many of its members came to be in the government's custody. Upon arrest, each declared s/he was a combatant in an anti-colonial war to free Puerto Rico from U.S. domination and invoked the status of prisoner of war. They asserted that the courts of the U.S. and its political subdivisions had no jurisdiction to try them as criminals, and asked to be remanded to an impartial international tribunal to have their status judged.

While their POW position has been recognized by international judicial bodies and other international fora, the state of Illinois

and the U.S. government refused to recognize their POW status and proceeded to try them for criminal offenses. The prisoners, however, persisted in their refusal to recognize the courts' jurisdiction. In one case, they did not participate at all in the trial; in another they minimized their participation. They presented no defense and prosecuted no appeals.

Thirteen currently in custody were arrested on three separate occasions. On April 4, 1980, Carlos Alberto Torres, Ida Luz Rodríguez, Dylcia Pagán, Ricardo Jiménez, Carmen Valentín, Elizam Escobar, and Adolfo Matos were arrested in Evanston, Illinois. The arrests were "accidental", occurring because an occupant of a house near where a van was parked reported "suspicious activity". Local police responded, with no idea who they were arresting. Alicia Rodríguez and Luis Rosa were arrested nearby the same day with rental trucks which were reported stolen.

The first seven were tried in state court for possession of weapons found in the van in which they were arrested, and for conspiracy to commit the armed robbery of the rental trucks. They were sentenced to eight years in the Illinois Department of Corrections. Alicia Rodríguez and Luis Rosa were tried for armed robbery of the rental trucks, armed violence, and possession of stolen vehicles, and sentenced to 30 years in the Illinois Department of Corrections. None of these men and women had previous criminal convictions.

After the state court trials, the federal government charged them with seditious conspiracy--conspiring to use force against the

"lawful" authority of the U.S. to oust it from Puerto Rico--of doing so by membership in the FALN, and of related charges of weapons possession and transporting stolen cars across state lines. Their actions were reminiscent of those undertaken by the founders of the United States, who, in their pursuit of independence and sovereignty, secretly and creatively developed armed groups to fight colonial oppression. The indictment accused them of conspiring to collect information about potential targets; accumulate weapons, ammunition, and "bombing paraphernalia"; obtain disguises and false identification, maintain "safe houses" in which to meet and store the materials; "portray themselves as members of a clandestine army"; and "plant[...] explosive and incendiary devices at banks, stores, office buildings and government buildings". They were sentenced to terms in prison ranging between 55 and 90 years--consecutive to their Illinois sentences--based mainly on the militancy of their statements in court on the day of sentencing. The judge stated his regret that he did not have the power to give them the death penalty.

In 1981, Oscar López-Rivera, who had been named in the above federal indictment, was arrested after a traffic stop, tried for the identical seditious conspiracy, convicted, and sentenced by the same judge to a prison term of 55 years. He received a consecutive 15 year term in 1987 for conspiracy to escape--a plot conceived and effectuated by government agents and informants.

On June 29, 1983, four independentists, including Alejandrina Torres, Edwin Cortés, Alberto Rodríguez were arrested. The FBI had

conducted extensive electronic surveillance, including the use of miniature video cameras with lenses the size of a dime hidden in private dwellings. The government charged them with the same basic seditious conspiracy. Each of the three received a sentence of 35 years in prison.

B. Hartford

On August 30, 1985, hundreds of FBI agents descended on Puerto Rico and staged a predawn raid in the homes and offices of independence activists, arrested 13 people, including Juan Segarra Palmer, and spirited them away from their country to the state of Connecticut. There they were charged along with three others later arrested, including Antonio Camacho Negrón, with conspiracy to take \$7.5 million in government insured money from a Wells Fargo armored car, an act for which the Puerto Rican clandestine organization, Los Macheteros, had taken responsibility. The charges included taking the money, transporting the money out of the U.S. and giving toys purchased with the proceeds to poor Puerto Rican children.

In preparing for trial the government revealed that it had conducted extensive, intrusive surveillance, in addition to having seized and analyzed belongings from homes, law offices and other places. Following years of litigation challenging the constitutionality and legality of such seizures, Juan Segarra Palmer was convicted and sentenced to 55 years in prison; Antonio Camacho Negrón to 15 years. Filiberto Ojeda Ríos, who reintegrated into clandestinity while the trial was pending, was sentenced to 55 years in prison in absentia.

The Trials

But when legal and constitutional protections have been lost or eroded, progress against torture is likely to be a contest between state power and aroused public opinion, a new and difficult campaign merely to recover what has been lost. People hear in fear, in horror, in dread. But not in outrage, not in sufficient numbers of effective anger. Not yet.

Kate Millett
The Politics of Cruelty

The various proceedings against the captured independentists shared in common a virtual hysteria on the part of the media, law enforcement and the courts. Many of the arrests were carried out in military regalia, replete with helicopters, snipers, and excessive numbers of FBI agents.

In the earlier arrests, the government sought, and the courts set, prohibitive bail. With the advent of "preventive detention", the government sought, and the courts ordered, no bail at all, and, in the case of Filiberto Ojeda, set the record for the longest preventive detention. Awaiting trial, all the prisoners were held in the most punitive, restrictive, often unprecedented isolation unless and until some outside intervention occurred--hunger strikes by the prisoners, protests by the independence movement and supporters, lawsuits by the attorneys, monitoring by Amnesty International.

Newspapers whipped the public--and potential jurors--into an anti-terrorist frenzy, aided by and assisting the Marshals' court "security", which not only sent a message to the judges and juries that the accused were guilty, but also sought to intimidate

supporters.

The courts, open as a forum for the government's political agenda, facilitated and cooperated in acts ranging from permitting the government's use of terms such as "terrorist" and banning the defense use of terms such as "colonialism", to convening anonymous juries, to cutting back on traditional limitations on state power, particularly on the right to be free from unreasonable searches and seizures.

The Sentences

A. Length of sentence

It is not a myth that independentists are punished for their beliefs and affiliations, for who they are, not for any act they committed. Government statistics prove that those who commit criminal offenses receive far lower sentences than do independence fighters. "According to the most recent Bureau of Justice report, the national average sentence for convicted violent felons was less than eight years, of which they served less than four in prison." Our prisoners are serving a collective sentence of 981 years, or an average of 65.4 years--about 6 times longer than the average murder sentence. Perhaps a concrete application of the sentences will provide insight. Luis Rosa was 19 years old when taken to prison. He will be 119--and the year will be 2088--if he is made to serve his entire sentence. Carmen will be 132; Adolfo, 108; Oscar, 113; Juan, 90; and so on. If the government followed its stated policy of treating "terrorists" like criminals, our prisoners would be home with their families.

Comparing our prisoners' sentences to those meted out to anti-independence forces likewise proves their politically punitive nature. Former Puerto Rican police colonel Alejo Maldonado, an admitted assassin, is soon to be paroled from prison after serving less time than most of the compañeros/as have, when, according to press reports, he participated in police death squads which kidnapped, robbed, extorted, trafficked in weapons, tortured and killed. The five Puerto Rican police who were convicted of the 1978 Cerro Maravilla murders of Carlos Soto Arrivi and Arnaldo Dario Rosado and received sentences of from 10 to 30 years. The commander of the intelligence unit responsible for the murders was released on parole after six years in prison.

Comparisons to recent police cases in the U.S. lead to the same conclusion. A white Chicago officer who recently killed a Black homeless man and fled from the scene, was initially not indicted. After the community came out in force, the prosecution still refused to charge him with murder. A New York police officer murdered a Latino youth whose football accidentally landed on the officer's car will serve no more than 4 years in prison. The white Detroit police officers who used their flashlights to club to death an African American citizen when he failed to follow orders to open his hand were sentenced to 12-25 years and 8-18 years, and will be eligible for release after 6 and 9 years. A border patrol officer who shot at 15 Mexicans will serve no more than 10 months in prison.

Sentences given to members of right wing paramilitary groups,

those who bomb abortion clinics and shoot at physicians, and government officials, likewise pale in comparison.

Comparisons to political cases in other countries only confirm the politically punitive nature of our prisoners' sentences. The former leaders of the Chilean DINA, or intelligence police, were recently sentenced to terms of 6 and 7 years in prison for the U.S. car bomb assassinations of Salvador Allende's former cabinet minister, Orlando Letelier, and his assistant, one of whom has refused to surrender to custody. Former East German officials responsible for the deaths of 7 people killed as they tried to cross to the west were sentenced to 5.5 and 7.5 years in prison, and are eligible for a 50% reduction of their sentences. In Peru, prosecutors sought a 15 year sentence for a guerilla fighter convicted of terrorism, homicide and kidnapping.

B. Time served

The longest time actually served for all prisoners in federal custody is for kidnapping--5.3 years. The average duration of imprisonment for those convicted of serious violent crimes in state courts is less than 4 years. The average time served in federal prison for murder is 5.4 years, in state prison, 8 years. Most of the prisoners have now served close to 16 years in prison--more than twice that average.

Not only are our prisoners held longer than social prisoners in the U.S.; they are held longer than many political prisoners in other countries.

Prison Conditions

It is a violation of human rights that those who have dedicated their lives to the freedom of their people, to self-determination--a right protected by international law--must endure prison, even for one day. But the Puerto Rican political prisoners and prisoners of war have endured conditions which are designed to break their commitment to independence and to break their human spirit, conditions which violate even minimum standards under international law.

Placement in prisons far from their families has meant long-term separation, contrary to Bureau of Prisons stated policy which encourages maintaining family and community ties. Adolfo Matos, in Lompoc, California, rarely sees his daughters who live in New York. Lucy Rodríguez' son Damián can afford to see her only infrequently. Elizam Escobar's mother, who lives in Puerto Rico, can travel to see him in Oklahoma only once a year.

In more than 15 years of imprisonment, many of the prisoners' parents have passed away. In spite of Bureau policy permitting bedside visits and attendance at funerals, and ignoring letters of support from ministers and elected officials, prison authorities have consistently refused to let the prisoners grieve with their families. Among others, they rejected requests that Ricardo Jiménez see his mother who died of cancer, that Adolfo Matos attend his mother's funeral, that Carmen Valentín attend her mother's memorial service, that Elizam Escobar be present at his father's bedside and burial.

While officials have classified every one of the prisoners as a special monitoring and high security case, over the years they have refined their techniques, through experimenting with special control units, including with Lucy Rodríguez at Alderson's Cardinal Unit; with Alejandrina Torres and other women political prisoners at the infamous Women's High Security Unit at Lexington; and with Oscar López Rivera, first at Marion and now at Florence's Administrative Maximum Unit. The government's restriction of sensory stimulation and human contact, designed to destroy human beings, has been widely condemned as violating international human rights standards, but continues in full force.

Parole

Parole, or conditional release from prison before the expiration of one's sentence, while available to those convicted of anti-social offenses, is not available to Puerto Rican political prisoners. Three of our prisoners have sought release on parole, approaching the process from various perspectives. The response from the government--oblivious to what approach was used--was to apply a higher standard than most prisoners must meet, by assigning them to a unique category to which only 1% of all prisoners are assigned, and then to deny parole. Alberto Rodríguez, after serving 12 years of his 35 year sentence, was told he will remain in prison until the expiration of his sentence. Dylcia Pagán and Carlos Alberto Torres, who at the time of their hearings had served more than 14 years of their 55 and 70 year federal sentences, were told to serve an additional 15 years before they would be

at the Justice Department.

There is rich precedent for the release of our prisoners. Throughout history, U.S. presidents have exercised the constitutional power of pardon to release those who acted or conspired to act against the government, including Confederate soldiers who had taken up arms in the Civil War and were convicted of treason, socialists convicted of organizing armed resistance to conscription during World War I, and Puerto Rican Nationalists who fired on Blair House in 1950 and on U.S. Congress in 1954. In the U.S., as in other countries, pardons and amnesties have been effective, often in post-war situations, in promoting harmony and healing national wounds.

Conclusion

In this historical moment we are marking the 50th anniversary of the United Nations, whose charter is based on the recognition of every nation's sovereignty. We are in the midst of a decade which the United Nations has declared to be the decade to end colonialism, after years of annual resolutions by the Decolonization Committee recognizing the colonial case of Puerto Rico. In the face of this mandate, we are approaching the 100th anniversary of the U.S. invasion and occupation of Puerto Rico. And we are witnessing throughout the world the resolution of long-standing armed conflicts, and the consequent release of hundreds, if not thousands, of political prisoners.

Whether or not the colonial status of Puerto Rico is resolved, this moment provides the U.S. with an opportunity to live up to its

own history of fighting colonialism, to live up to the human rights standards it imposes on the rest of the world, by releasing the Puerto Rican political prisoners. Whether it avails itself of this opportunity depends on us. The laws and legal process in the United States offer no justice to Puerto Ricans who fight the crime of colonialism. It is therefore up to freedom-loving people--in Puerto Rico, in the U.S., and throughout the world--to form and mobilize public opinion, to move people in our places of worship, our universities, our workplaces, our neighbors, to tell the president the time has come to release the 15 women and men in prison for the just cause of independence for Puerto Rico.

"[T]he knowledge of torture is itself a political act, just as silence or ignorance of it have political consequence. To speak of the unspeakable is the beginning of action....There is not merely saying, there is doing."

Kate Millett
The Politics of Cruelty

Jan Susler
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