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# **EL SALVADOR**

**ACCOUNTABILITY AND HUMAN RIGHTS:  
THE REPORT OF THE UNITED NATIONS  
COMMISSION ON THE TRUTH FOR EL SALVADOR**

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*"It would be good to keep in mind that, above all, what must be determined is the identity of those fundamentally responsible for these captures...those who gave the order, those who permitted them, even those who reveled — as in a Roman circus — in captures, disappearances, torture, murder. They must be made to hear the voice of justice."*

Monseñor Oscar Arnulfo Romero  
November 1, 1979<sup>1</sup>

## INTRODUCTION

The Salvadoran peace process, fostered and shepherded by the United Nations, has been unique in the central place afforded human rights. A comprehensive human rights accord signed

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<sup>1</sup> Cited in Religious Task Force on Central America, "El Salvador's Bitter Truth," *Central America Report*, Vol. 13, No. 2, April 1993, p. 1.

in July 1990 was a stepping-stone on the path to a broader agreement, and set the stage for United Nations verification of the peace process. The final peace accord itself signed in early 1992 included many provisions with a direct bearing on human rights. The agreement made provision for an Ad Hoc Commission to purge the armed forces of abusive and corrupt officers and established a Commission on the Truth to investigate past abuses. The accord abolished two repressive security forces, mandated the creation of a new National Civilian Police, and contained suggestions to reform and de-politicize the judicial system. While many aspects of implementation of the peace accord remain in question, the accord itself is a stunning document, addressing many of the root causes of the conflict and establishing concrete mechanisms for change.

On March 15, 1993, the United Nations Commission on the Truth for El Salvador issued its report documenting the human rights tragedy of the 1980-1991 period. The report, *From Madness to Hope: The Twelve-Year War in El Salvador*, examines 15 cases of extrajudicial assassination and disappearance and four massacres attributed to government forces, five cases of murder attributed to death squads, eight cases of murder and kidnapping ascribed to the Farabundo Martí National Liberation Front (FMLN), and two cases for which the Commission could not reach a conclusion as to responsibility. The report contains significant new information about some cases and confirmation of what was already known about others. But one contribution was completely unprecedented: that of giving *official* acknowledgment to the truth, a way of affirming, as the report's preamble states, that "all these things happened among us."<sup>2</sup>

The Truth Commission — and the Salvadorans who came forward to testify — confirmed what human rights organizations in and outside El Salvador had reported for a decade: that the Salvadoran armed forces and death squads bore principal responsibility for the murder, disappearance and torture of Salvadoran civilians. A full eighty-five percent of the cases denounced to the Truth Commission involved state agents, paramilitary groups, or death squads allied with official forces. Five percent of the cases were attributed to the FMLN.<sup>3</sup>

Unlike official investigative bodies that had reported on human rights violations in Argentina and Chile, the Truth Commission named the names of over forty military officers and eleven members of the FMLN responsible for ordering, carrying out, or covering up abuses. The Commission recommended that all those named in the report be banned from public office for ten years, and from public security functions for life. Citing the "tremendous responsibility which the judiciary bears for the impunity with which serious acts of violence...occurred," the Commission called on all members of the Supreme Court to resign.<sup>4</sup>

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<sup>2</sup> Comisión de la Verdad para El Salvador, *De la Locura a la Esperanza: La Guerra de 12 Años en El Salvador* (New York and San Salvador: United Nations, 1993), p. iii. (Hereafter cited as Truth Commission Report). See also, Aryeh Neier, "Watching Rights," *The Nation*, April 12, 1993, p. 475.

Translations used in this report come from the official UN translation of the Truth Commission report. Page references, however, refer to the original in Spanish.

<sup>3</sup> The Commission received direct testimony from 2000 Salvadorans on human rights cases involving a total of 7,312 victims, and indirect testimony from witnesses who gave statements to human rights groups. Indirect testimony from human rights groups and the Salvadoran and foreign governments provided the Commission with documentation of approximately 15,000 additional cases.

<sup>4</sup> Truth Commission Report, pp. 185-190.

The report's publication elicited a fierce reaction from Salvadoran government officials and particularly the military. Within days of the report's release, the governing ARENA party rammed a blanket amnesty through the National Assembly, thereby shielding perpetrators of abuse from the consequences of their actions. Defense Minister René Emilio Ponce, named in the report as having given the order to murder Jesuit priest Ignacio Ellacuría and "to leave no witnesses," defiantly appeared with other members of the army high command to denounce the report as biased and "insolent." The FMLN initially announced its acceptance of the report's findings and recommendations; it appears that the FMLN interpreted the ban on holding political office as applying to the most senior commander from all five guerrilla groups comprising the FMLN, and not just those specifically named in the Truth Commission's report.

Americas Watch believes that the report of the Truth Commission constitutes a major step forward in the search for accountability for human rights abuses in Latin America. El Salvador has now joined Argentina and Chile in sponsoring official commissions to examine human rights atrocities as part of a process of building and consolidating democracy. Thus far, Argentina is the only country to have combined the search for truth with government-initiated prosecutions of high-ranking military officers.

In several respects, however, the Salvadoran experience is unprecedented. The Truth Commission was established as part of a multi-faceted peace accord between the Salvadoran government and the FMLN. Elsewhere in Latin America, truth commissions had been established after the formal reins of governance passed from military to civilian hands, not as part of a process of ending an armed insurgency. In addition, the Truth Commission operated officially under United Nations auspices, the first time the international community had taken responsibility for such an endeavor. The United Nations continues, through the UN Observer Mission for El Salvador (ONUSAL), to oversee the implementation of the peace accord. Approximately 600 additional observers will be deployed in El Salvador to monitor the March 1994 presidential, legislative, and municipal elections.

Finally, El Salvador's Truth Commission represents the first time since the Nuremberg and Tokyo trials following World War II that foreign, rather than national figures, investigated past episodes of violence in a sovereign country.<sup>5</sup> The precedent suggests that, where political polarization has been so extreme as to preclude the convening of an impartial panel of national actors, the international community can play a vital role in seeking to establish accountability.

Precisely because so many aspects of the Salvadoran Truth Commission are unique, it has been discussed as a model for the resolution of other conflicts, including those in Guatemala, Haiti, Somalia, and Iraqi Kurdistan. This study is motivated by the hope that the experience of the Truth Commission in El Salvador can provide rich lessons for the future, and that a full airing of past human rights violations will be seen as an integral component of peacemaking and democratic transitions throughout the world.

## **The Origins of the Truth Commission: The Latin American and Salvadoran Experience**

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<sup>5</sup> The Nuremberg and Tokyo trials differed, however, in that the victors in an international, not internal, war examined the behavior of their defeated enemies.

The Latin American search for accountability for human rights abuses grew out of the experience of the Southern Cone. There military dictatorships from the late 1960s to early 1980s systematically tortured, "disappeared," and murdered thousands of civilians in the name of national security. Although urban guerrilla movements operated in several South American countries, most of those killed or disappeared met their fate as the "subversive" label was extended to broad swaths of civil society, encompassing many forms of dissent. Governments that emerged from these dictatorships faced demands from victims and their relatives for both truth and justice, an official accounting of the fate of victims as well as punishment of those responsible for the incarceration, disappearance, or death of civilians.

In Argentina, President Raúl Alfonsín took office after elections in 1983 following the military junta's disastrous defeat at the hands of Great Britain in the Falklands/Malvinas war. Alfonsín quickly moved to establish an official Argentine National Commission on the Disappearance of People (CONADEP) to investigate thousands of cases of disappearance.<sup>6</sup> The commission's findings served as the basis for criminal prosecutions of a number of the most senior military leaders, despite an amnesty passed by the military government in the twilight of its rule. By 1989, seven military leaders, including two former presidents, had been convicted of major crimes. Eighteen others faced prosecution and evidence had been gathered on hundreds more. But faced with a series of military revolts, the Alfonsín government endorsed legislative initiatives to limit prosecutions to all but a handful of military officers. All those convicted were subsequently pardoned in 1989 and 1990 by Alfonsín's successor, Carlos Saúl Menem.<sup>7</sup>

The Argentine experience suggested that the residual power of the armed forces was a key, if not the most important, factor in determining whether or not members of the military would stand trial for their crimes.<sup>8</sup>

In Chile, however, the military allowed civilian president Patricio Aylwin to take office in March 1990, following a series of elections that opened with a plebiscite on military rule. Aylwin's key advisers reckoned that the military would block or undermine the process of democratic transition if the new civilian government attempted prosecutions of military leaders for human rights crimes.

Aylwin appointed an eight-member National Commission on Truth and Reconciliation to investigate human rights violations during the 1973-1990 military dictatorship. After nine-months, the Commission issued a report on over 2,200 cases of extrajudicial executions and disappearances, the overwhelming majority carried out by state agents. President Aylwin released the report on March 4, 1991, during an emotional televised broadcast to the nation in which he asked pardon of the victims and asked all who had participated in excesses to "make gestures of recognition of the pain" they had caused.<sup>9</sup> But few human rights cases made their

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<sup>6</sup> In September 1984, CONADEP published *Nunca Más*, a report to President Alfonsín documenting 8,961 cases of disappearance carried out during the 1976-1983 period.

<sup>7</sup> Americas Watch, *Truth and Partial Justice: An Update* (New York: Human Rights Watch, 1991).

<sup>8</sup> Juan Méndez and Cynthia Brown, "Amnesty Laws in the Southern Cone: Argentina, Uruguay, Chile," in *Human Rights Watch Newsletter*, No. 4, December 1989, pp. 3-4.

<sup>9</sup> Americas Watch, *Human Rights and the "Politics of Agreements:" Chile during President Aylwin's First Year* (New York: Human Rights Watch, July 1991), pp. 17-35.

way through the courts. The Chilean experience demonstrated the difficulty of seeking justice in addition to truth when the power of the armed forces was undiminished.

The Argentine and Chilean experiences provided a backdrop to the Salvadoran peace negotiations, suggesting both prescriptive and proscriptive models. The Salvadoran government and FMLN had begun negotiations under UN sponsorship in April 1990, and soon thereafter agreed on an agenda that included the topic of military reform. From the beginning, the FMLN called for investigations of massacres and other important human rights cases, and called for prosecutions in a handful of exemplary cases: the 1980 murder of Archbishop Romero, the 1989 bombing of the FENASTRAS trade union headquarters, the 1989 murders of six Jesuit priests and two women, and the 1990 murder in Guatemala of social democratic leader Héctor Ouelí.<sup>10</sup>

The government insisted that the guerrillas had also enjoyed impunity and should face prosecution for notorious cases ascribed to them: the 1989 murders of presidency minister José Rodríguez Porth and conservative academic Francisco Peccorini, the 1985 Zona Rosa massacre of four US servicemen and nine civilians in a sidewalk cafe, and the murder of municipal mayors over a period of several years. Discussions over the issue of impunity continued even as the two sides came to agreement in July 1990 on a human rights accord. That accord, signed in San José, Costa Rica in July 1990, was the first concrete achievement of the negotiating process. It set the stage for UN monitoring of compliance with the entire peace agreement.<sup>11</sup>

Human rights issues became prominent in the early stages of the peace process not only because of the actions of the parties, but also because the UN officials involved recognized that a durable peace needed to address the most important root causes of the conflict, including human

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In Brazil and Uruguay, non-governmental organizations undertook to document extensive human rights abuses because of the lack of any action by the government. The Brazilian study, *Brasil: Nunca Mais* (Brazil: Never Again) was published in July 1985 under the auspices of the Catholic Archdiocese of São Paulo. The Uruguayan project was undertaken by the human rights group SERPAJ, the Peace and Justice Service, which published its findings in March 1989. See Lawrence Weschler, *A Miracle a Universe: Settling Accounts With Torturers* (New York: Viking Penguin, 1991); Latinamerica Press, "Southern Cone Human Rights Documents," January 16, 1992, p. 4.

<sup>10</sup> See the FMLN's April 30, 1990 document entitled "La Solución Negociada a la Guerra en El Salvador," published in INSISTEM, "El Salvador 1980-1991: El Largo Camino de la Negociación," San Salvador, 1991. The FMLN document noted that, after the four cases were resolved, a broad amnesty could be enacted.

Under criticism from its own ranks and from Salvadoran non-governmental organizations, the FMLN in August 1991 added the Rio Sumpul and El Mozote massacres to the cases that needed exemplary punishment, and proposed that all human rights crimes committed during the war be open for investigation and prosecution. The August 1991 document also omitted any reference to an amnesty. See "Posición del FMLN para Desmontar el Militarismo, Alcanzar el Cese de Fuego, y Avanzar a la Democracia Sin Armas," August 17, 1991.

<sup>11</sup> The FMLN's proposal was published in *El Mundo* on July 21, 1990; the government's proposal in *La Prensa Gráfica* on July 25, 1990. President Alfredo Cristiani accused the FMLN of leaking the documents in violation of agreements to keep the negotiations confidential. *El Rescate*, "El Salvador Chronology," Vol. V., No. 7, July 1990, pp. 1-2.

For background on the human rights accord and the United Nations role in the peace process see Americas Watch, *El Salvador and Human Rights: The Challenge of Reform* (New York: Human Rights Watch, March 1991); Americas Watch, "Peace and Human Rights: Successes and Shortcomings of the United Nations Observer Mission in El Salvador (ONUSAL)," September 2, 1992; and Human Rights Watch, *The Lost Agenda: Human Rights and UN Field Operations* (New York: Human Rights Watch, 1993), pp. 13-35.

rights violations. Outside experts from Latin America and the United States consulted by the United Nations stressed that mechanisms to enhance accountability and to reform the judicial system were crucial to establishing the rule of law.<sup>12</sup>

The UN itself proposed dealing with the issue of impunity by means of a truth commission.<sup>13</sup> During meetings subsequent to the July 1990 San José accord, discussion focused on the creation of a "special commission" to investigate past abuses, something akin to what had been undertaken in Chile. The Salvadoran government was willing to consider a panel based on the Chilean model, as it side-stepped the issue of military prosecutions while ensuring that FMLN behavior would also be subject to scrutiny. Avoiding prosecutions and subjecting FMLN behavior to investigation were both viewed as crucial to gaining the support of the armed forces for the accord. The FMLN, meanwhile, accepted that its practices would come under investigation because it viewed the vast majority of abuses as having been committed by government forces.

Once the idea of an investigative commission was accepted in principle by the two parties in late 1990 and early 1991, the Salvadoran government and FMLN debated whether it should be comprised of Salvadoran nationals or foreigners. The FMLN insisted that any Salvadoran delving into notorious human rights cases would face mortal danger and therefore would avoid investigating cases in depth. The Salvadoran government, citing reasons of national sovereignty, insisted that the past be examined only by Salvadoran citizens. Although it is not spelled out explicitly in the working documents being discussed, the UN also appeared to favor a panel of foreigners, for reasons of security, impartiality, and prestige of the Commission.

In the end, the Salvadoran government accepted the idea of a commission composed of foreigners, as long as the Ad Hoc Commission to review the records of military officers remained in Salvadoran hands (see below). The two parties also put forward lists of cases for the commission to consider. Both sides accepted the suggestion of the United Nations that it be left to the members of the proposed commission to decide which cases warranted further investigation.

The Salvadoran government and the FMLN formally agreed to form a Commission on the Truth as part of an interim accord signed in Mexico City on April 27, 1991. (The entire peace agreement was signed eight months later, in January 1992.) The Mexico agreement called for the Commission to investigate "grave acts of violence which have occurred since 1980 and whose impact on society demands most urgently public knowledge of the truth." The agreement specified that the Commission would be non-jurisdictional (that is, it would not have judicial powers) and that its three members would be designated by the UN Secretary General, with input from the parties.

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<sup>12</sup> The following account of the process leading to the formation of the Truth Commission comes from interviews with officials of the Salvadoran government, FMLN, and United Nations in August 1991, February, May, and June 1992, and March, April, and June 1993.

<sup>13</sup> During many aspects of the negotiations, the United Nations "formulated proposals of a substantive character on the various themes discussed. This, in good measure, was due to the distrust and the difficulty that the two sides had in working together, something which obliged [the United Nations] to draft the bulk of the texts that they agreed to." Interview with Alvaro de Soto reprinted from *Excelsior*, March 10, 1992, in *Diario Latino*, April 21, 1992.

The Commission was charged with issuing recommendations "destined to prevent the repetition" of violent acts and to foster "national reconciliation." The accord specified that the Truth Commission would present a final report six months after its installation, an astonishingly short period of time given the tens of thousands of non-combatant deaths over the course of the war.<sup>14</sup> (By contrast, the Chilean Commission on Truth and Reconciliation spent nine months investigating 2,279 cases.)

UN Secretary General Boutros Boutros-Ghali named the three commissioners on December 10, 1991. They were Belisario Betancur, former President of Colombia; Reinaldo Figueredo, former foreign minister of Venezuela; and Thomas Buergenthal, US professor of law and former president of the Inter-American Court for Human Rights of the Organization of American States.

### **Purging the Military: The Ad Hoc Commission**

Discussions over the establishment of a Truth Commission overlapped with debate over one of the most difficult issues in the peace negotiations: military reform. Initially, the FMLN proposed purging the entire group of officers known as the *tandona*, those who had graduated together from the Military Academy in 1966 and who, by the late 1980s occupied most of the important command positions in the army. That idea was completely unacceptable to the government, as was an FMLN proposal to negotiate with President Cristiani those individuals to be removed. Negotiators for the Salvadoran government were willing to accept the idea of a military review commission, but proposed that it be comprised of military officers who would carry out a form of "self-purging."<sup>15</sup>

After almost nine months of discussion, the two sides agreed in September 1991 to form a civilian "Ad Hoc Commission" composed of three individuals nominated by the UN Secretary General and appointed by President Cristiani. At the government's insistence, the Commission was to be composed of Salvadoran nationals, not foreigners, something that the FMLN agreed to only reluctantly. The military was permitted to send two officers as observers to the Commission's deliberations, but could not participate in its final decisionmaking.

The New York accord — the final intermediate agreement before the comprehensive peace settlement was signed in January 1992 — indicated that the Ad Hoc Commission's review of the officer corps would be based on three criteria: respect for human rights, professionalism, and democratic commitment. The Commission was to work for three months, after which it would present recommendations for the transfer or dismissal of individual officers to the Secretary General and to President Cristiani. The Salvadoran president was to carry out the recommendations within sixty days.

The members of the Ad Hoc Commission — Reynaldo Galindo Pohl, a prominent lawyer and statesman,<sup>16</sup> Eduardo Molina, a long-time member of the Christian Democratic Party (PDC), and

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<sup>14</sup> "Acuerdos de México," April 27, 1991, in Truth Commission Report, Anexos, Tomo I, "Textos de los Acuerdos de Paz," annex No. 4, pp. 13-33. For obvious reasons, the Commission was able to investigate only a tiny portion of the cases brought to its attention.

<sup>15</sup> Center for International Policy, "Salvadorans Nearing Agreement on Armed Forces," April 22, 1991, p. 2.

<sup>16</sup> Galindo Pohl had also served as the United Nations Special Rapporteur on Iran.

Abraham Rodríguez, a founder of the PDC and close adviser to former President José Napoleón Duarte — were named in January 1992. The military observers were two former Ministers of Defense, Generals Carlos Eugenio Vides Casanova and Rafael Humberto Larios.<sup>17</sup> The Ad Hoc Commission began its work in mid-May 1992.

It appears in retrospect that the government and armed forces agreed to form the Ad Hoc Commission having fairly low expectations of what the Commission would accomplish. "The 'sanitizing' of the Armed Forces was considered a serious concession by the Government to the FMLN," wrote conservative Salvadoran newspaper columnist Mario Rosenthal in May 1992. "When the names of the members of the Commission were announced, as well as the identity of the officers, all such fears vanished."<sup>18</sup> The FMLN also had low expectations, believing that a commission of Salvadoran nationals would be manipulated or intimidated, especially with military observers present during their deliberations.

The report of Ad Hoc Commission, delivered to the UN Secretary General and to President Cristiani on September 23, 1992, went far beyond the expectations of both sides. The commission called for the dismissal or transfer of 103 officers; and it soon became an open secret that heading the list of those to be removed was Minister of Defense René Emilio Ponce and Vice-Minister of Defense Juan Orlando Zepeda.<sup>19</sup>

Stunned by the scope of the Commission's recommendations, the military closed ranks and refused to comply. The peace accord had established an original deadline of October 31, 1992, for meeting the Ad Hoc Commission's recommendations. That date followed another landmark in compliance, the October 15, 1992, deadline by which the FMLN was to have demobilized the last of its troops. Disagreements over land and other issues affecting former combatants, however, led the FMLN to refuse to demobilize the last of its fighters. The United Nations negotiated a new timetable, postponing the demobilization and the army's purge until late in the year.

The FMLN did demobilize the last contingent of its fighters on December 15, 1992. Once the FMLN's demobilization was complete, however, senior officers refused to implement the purge by December 31, 1992. Cristiani informed the United Nations of the measures he had taken regarding 94 officers. But seven of these 94 officers were named as military attaches abroad, rather than being dismissed, a clear violation of the Ad Hoc Commission's recommendations. Eight others, including Ponce and Zepeda, retained their posts, illustrating that the military still had veto power over key decisions related to its future.

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<sup>17</sup> Vides Casanova was subsequently named in the Truth Commission report as having participated in the cover-up of the 1980 murders of four US churchwomen. Larios was mentioned as having participated in a November 15, 1989, meeting in which military officers decided to eliminate "ringleaders, trade unionists, and known leaders of the FMLN."

<sup>18</sup> Mario Rosenthal, "Sanitizing the Armed Forces," *El Salvador News-Gazette*, May 18-24, 1992, p. 12.

<sup>19</sup> Tim Golden, "Salvadoran Panel Calls for Purge of Defense Chief and 110 Officers," *New York Times*, October 25, 1992.

Ponce and Zepeda had been named by Representative Joe Moakley (D-MA) in November 1991 as having participated in the decision to murder the Jesuits. That conclusion was taken one step further by the Truth Commission, which found that Ponce had given the order and that Zepeda had participated in the conspiracy to murder the Jesuits.

The failure to carry out the purge was a serious breach of the peace accord.<sup>20</sup> In a rare public statement, Secretary General Boutros-Ghali declared on January 7, 1993, that the government's actions were "not in compliance" with the Ad Hoc Commission's proposals and therefore "not in conformity with the Peace Accords."<sup>21</sup> On February 9, 1993, the UN Security Council passed a resolution expressing its "concern" over the government's lack of compliance.<sup>22</sup> A final schedule for completing the purge was not completed until the Truth Commission named some of the same officers resisting dismissal as those involved in the 1989 Jesuit murders. On March 31, 1993, President Cristiani informed the United Nations through an emissary that all those named by the Ad Hoc Commission would be placed on leave with pay by June 1993, and retired by the end of the year.<sup>23</sup> While this timeline was absurdly behind schedule, it is doubtful that the fifteen officers resisting the purge would have been removed prior to the end of Cristiani's term in June 1994 without the Truth Commission report. Ponce and two other generals were removed from their posts on July 1, 1993.<sup>24</sup>

## The Truth Commission Begins Operations

Truth Commission staff arrived in El Salvador in June 1992. But the Commission's work officially got underway on July 14, 1992, when the three commissioners arrived in El Salvador for the first time, just as the Ad Hoc Commission was finalizing its own review of the military officer corps. In early August 1992, the Truth Commission carried out an extensive publicity campaign designed to advertise its presence and describe its purposes in the country. Advertisements placed in newspapers and on the television and radio invited private citizens to give written or oral testimony, under guarantees of strict confidentiality. "With everyone's contribution," the Commission's slogan went, "let us find the truth."<sup>25</sup>

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<sup>20</sup> In May 1993, a series of accidental explosions led to the discovery of major arms caches in Nicaragua maintained by the *Fuerzas Populares de Liberación* (FPL), one of the five groups making up the FMLN. UN Secretary General Boutros Boutros-Ghali called the discovery "the most serious violation to date" of the peace accord. United Nations, "Nuevo Informe del Secretario General Sobre la Misión de Observadores de las Naciones Unidas en El Salvador (ONUSAL)," S/26005, June 29, 1993, p. 1.

<sup>21</sup> United Nations, "Letter Dated 7 January 1993 from the Secretary-General Addressed to the President of the Security Council," S/25078, January 9, 1993, pp. 2-3.

<sup>22</sup> United Nations, "Security Council Welcomes El Salvador's Request to United Nations to Verify March 1994 General Elections," SC/5553, February 9, 1993, p. 1.

<sup>23</sup> United Nations, "Letter Dated 2 April 1993 from the Secretary General Addressed to the President of the Security Council," S/25516, April 2, 1993, p. 1.

<sup>24</sup> The other two officers were deputy chief of staff General Mauricio Vargas, a member of the government negotiating team, and army chief of staff General Gilberto Rubio, named in the Truth Commission report as having participated in the coverup of the Jesuit murders. Vice-Minister of Defense Juan Orlando Zepeda appeared at the July 1 ceremonies marking the stepping-down of the three other officers, but had actually left his post in March 1993.

<sup>25</sup> "Con el aporte de todos, encontremos la verdad." An ad placed in *Diario de Hoy*, for example, showed a woman (with her back to the camera) giving testimony to a Truth Commission official. A poster from the United Nations figured prominently in the background. "Now you can tell what happened," the text said, adding that the "absolute confidentiality" of testimony would be guaranteed. *Diario de Hoy*, July 21, 1992.

The Commission staff from South and North America included around 20 lawyers, social scientists, and other human rights professionals with a wide variety of experience in non-governmental organizations. The Commissioners and staff decided early on that it was important for the process of national reconciliation to provide an opportunity for any Salvadoran to come forward with testimony, not just to investigate select, well-known cases attributed to both sides.<sup>26</sup> The Salvadoran government, FMLN, and a broad range of local and international non-governmental organizations were also invited to provide documentation. The Commission began receiving direct testimony from victims of and participants in abuses in its San Salvador office on August 10, and subsequently opened regional offices in Santa Ana, Chalatenango, and San Miguel. The taking of testimonies ended on October 31, 1992. Although small at first, the number of those coming forward grew measurably in October, due largely to the work of non-governmental organizations in Chalatenango and to the Commission's well-publicized involvement in exhumations at El Mozote in Morazán (see below).<sup>27</sup> Many of those who came forward, particularly in rural areas, did so for the first time.

In addition to soliciting direct and indirect testimony, members and staff of the Commission visited areas in and outside the country in search of documentation. Between July and September, the commissioners visited three provinces to interview survivors of notorious army massacres at El Mozote (Morazán), Rio Sumpul (Chalatenango), and Calabozo (San Vicente). All three of these cases figured prominently in the Truth Commission's final report. The commissioners and staff also reviewed judicial records, requested copies of records of military orders and instructions, visited prisons, interviewed political leaders and government officials, and cited a number of witnesses, mostly military officers, to give testimony.<sup>28</sup>

## Pressures on the Commission

While the Truth Commission labored to build confidence among the general population, however, organizations of the far-right sought to undermine its work. Almost from the moment the Commission opened its doors, a shadowy "Civic Movement for a Free El Salvador" kept up a steady drumbeat of criticism, alleging in a series of newspaper advertisements that the Truth and Ad Hoc Commissions were "designed to destroy the armed forces" and urging Cristiani to reject their reports.<sup>29</sup> Echoing those sentiments, former Attorney General Mauricio Eduardo Colorado denounced the Commission as a "big international show to finish off what remains of the armed forces and to justify the replacement of the Supreme Court." The right-wing *Cruzada Pro Paz y*

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<sup>26</sup> Interview, April 27, 1993.

<sup>27</sup> Due largely to the efforts of Salvadoran NGO's, Chalatenango accounted for nearly one-third of the cases denounced to the Commission. Even though Chalatenango was a zone of intense conflict, the number of cases from there is disproportionate given its population. The department of San Salvador came in second, due to the office's accessibility and the fact that it remained open during the entire period of taking testimonies. Informe de la Comisión de la Verdad para El Salvador, *Anexos, Tomo 1*, No. 5, "Análisis Estadístico de los Testimonios Recibidos por la Comisión de la Verdad," p. 9, (hereafter cited as *Anexos, Tomo 1*).

<sup>28</sup> Truth Commission Report, p. 41, n. 125.

<sup>29</sup> *El Mundo*, July 27, 1992 and October 22, 1992, in El Rescate, "Report from El Salvador," July 13 - August 10, 1992, and October 19 - 26, 1992.

*Trabajo* (Crusade for Peace and Work) attacked both commissions for judging "patriotic citizens" and not, presumably, the FMLN.<sup>30</sup> Tensions increased notably in late October, when a notorious death squad, the Maximiliano Hernández Martínez Brigade, issued death threats against senior FMLN commanders and demanded that foreign journalists and the "white plague" represented by the United Nations leave the country.<sup>31</sup>

Despite promises of collaboration, moreover, the Salvadoran government provided less than full support to the Commission. The Ministry of Defense responded to questions with only partial answers in "a good number" of cases, alleging that it did not have records prior to 1984 due to a restructuring of the General Staff. The Armed Forces Press Office (COPREFA), meanwhile, claimed to have bulletins dating only from 1988.<sup>32</sup> These lapses interfered with the Commission's attempts to determine whether certain military operations had taken place and, if so, which officers and soldiers had been on duty at a particular time.<sup>33</sup> The Truth Commission report also cites numerous instances in which Salvadoran courts, and Supreme Court President Mauricio Gutiérrez Castro himself, delayed or refused access to court records or otherwise interfered with the Commission's investigations.<sup>34</sup>

According to the Commission, responses from the FMLN were also "in some cases, partial," something which the FMLN attributed to the irregular nature of the war and the consequent absence of archives.<sup>35</sup> In general, Truth Commission staff members maintain that FMLN cases were more difficult to investigate: the FMLN had kept few internal records and, except for high-profile cases, there were few court records to consult. The Salvadoran government provided newspaper clippings but no information of real value. Nor had non-governmental organizations carried out in-depth investigations of responsibility. FMLN commander Joaquín Villalobos of the *Ejército Revolucionario del Pueblo* (ERP) claimed that the more extensive cooperation provided the Commission by his group led to its being singled out disproportionately in the Commission's final report. It is not clear, however, that evidence of ERP abuses came only, or even primarily, from "confessions" by the group's senior leaders, or that the ERP came forward with more information than other groups.<sup>36</sup>

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<sup>30</sup> *Diario de Hoy*, July 25, 1992, and *El Mundo*, August 24, 1992, in *El Rescate*, "Report from El Salvador," July 13 - August 10, 1992, and August 24 - 31, 1992.

<sup>31</sup> "Comunicado de Comandos Martínez," October 22, 1992. "White plague" was a reference to the white vans and jeeps used by the United Nations Observer Mission for El Salvador (ONUSAL).

<sup>32</sup> Truth Commission Report, p. 41, note 125.

<sup>33</sup> Interview, April 8, 1993.

<sup>34</sup> Cases in which the courts obstructed or refused to cooperate with the Truth Commission's investigations include the churchwomen's case, the El Mozote case, and the case of four Dutch journalists. Truth Commission Report, pp. 64, 75, 118, 124-125.

<sup>35</sup> Truth Commission Report, p. 41, note 125.

<sup>36</sup> Interviews, April 8 and 9, 1993, New York and Washington, D.C. In testimony on March 16, 1993, before the House Foreign Affairs Committee Subcommittee on Western Hemisphere Affairs, Commissioner Reinaldo Figueredo said that the FMLN did provide cooperation, but he made no distinction among the FMLN's constituent groups.

Attempts to exert more direct pressure on the Commission accelerated in the late fall of 1992, as the direction of the Commission's investigations indicated that it would probably identify by name individuals responsible for abuses. At first, members of the Salvadoran government had been quite insistent that only individuals, and not the institutions they represented, be held responsible for abuses, a notion with which the Commissioners agreed.<sup>37</sup> Apparently, however, the scope of the work by the Ad Hoc Commission indicated to members of the army high command that their overall support for the peace process did not imply protection from the process of military review.<sup>38</sup>

In a November 18, 1992, letter to the Truth Commission, Minister of Defense General René Emilio Ponce and Minister of the Presidency Oscar Alfredo Santamaría wrote that it was "fundamental that names of people be omitted," because identifying individuals would have "an effect contrary to what is being pursued." Santamaría and Ponce argued that to name names "would violate fundamental rights such as that to due process..." The letter also recommended that the Commission propose a "Law of *Punto Final*" that would close the books on or limit prosecutions of state agents responsible for crimes.<sup>39</sup>

These efforts to influence the content of the Truth Commission report intensified as the date of publication drew closer. In early 1993, Cristiani sent two ministers and an army general to United Nations headquarters to request that the report's publication be delayed for five years, or at least until after the March 1994 elections, and that all names be omitted. UN diplomats also said that Cristiani had appealed to leaders in Mexico, Colombia, Venezuela, Spain, Guatemala, Honduras and Nicaragua to pressure UN officials on his behalf. Cristiani stated publicly on March 11, 1993, that "there will be violence" if the report named names, provoking "extremist sectors" on both sides to seek retaliation against individuals and their families.<sup>40</sup>

According to two reliable sources contacted by Americas Watch, FMLN leader Joaquín Villalobos also appealed to the Commission not to name names.<sup>41</sup> After references to such

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<sup>37</sup> Presentation of Carlos Chipoco at conference sponsored by the Washington Office on Latin America, April 2, 1993, Washington, D.C.

<sup>38</sup> According to a source knowledgeable about the armed forces, Defense Minister Ponce "felt the circle getting smaller around him" in August 1992. Ponce had a "false sense of security that was not guaranteed by the agreements." Interview, name withheld by request, April 23, 1992.

<sup>39</sup> Letter from Oscar Alfredo Santamaría and General René Emilio Ponce, November 18, 1992, pp. 2-3. Santamaría and Ponce were not explicit about what they meant by a *Punto Final* law, other than to describe its purpose as "to close a painful historical period." This could have meant an amnesty, which would absolve military personnel of responsibility for human rights violations, or a law, as in Argentina, that set stringent time limits on the ability to prosecute.

<sup>40</sup> ARENA Deputy Mario Valiente also maintained that "the publication of names is wrong. It's like trying to put out a smoldering fire with gasoline." Interpress Service, "Comisión de la Verdad Debe Omitir Nombres, Dice Cristiani," *Diario Latino*, March 11, 1993; Thomas Long, "El Salvador Edgy Over UN Report," *Miami Herald*, March 8, 1993; Howard French, "Salvadoran Official, Under UN Scrutiny Over Rights, Resigns," *New York Times*, March 13, 1993; Douglas Farah and Julia Preston, "Top General Resigns in El Salvador," *Washington Post*, March 13, 1993.

<sup>41</sup> Telephone interviews, March 16 and 30, 1993.

pressures were published in a *New York Times* op-ed, FMLN General Coordinator Schafik Handal vehemently denied to Americas Watch and to the *Times* that the FMLN had exerted pressures regarding the naming of names, and stated that the FMLN's formal position was that names should be included. This position was communicated to the Truth Commission in letters dated January 11 and February 4 and 25, 1993.<sup>42</sup>

In El Salvador, the days preceding the March 15 release of the Truth Commission's report were rife with tension and high drama. Although the Commission had operated with an almost paranoid attachment to secrecy, word was passed to Defense Minister Ponce that he would be named in the report in connection with the Jesuit case. On March 12, 1993, (the Friday before the report's Monday release), Ponce "place[d] the post of defense minister at the disposal of the president."<sup>43</sup> (Ponce, in fact, was identified as having ordered the November 1989 murders of Jesuit priest Ignacio Ellacuría and his colleagues.) The Clinton administration also appeared to have direct knowledge of the content of the report, making public the fact that the US had suspended \$11 million in military aid. Secretary of State Warren Christopher had notified President Cristiani on February 17, 1993, of the aid suspension, pending the army's compliance with the recommendations of the Ad Hoc Commission.

Despite Ponce's pro-forma offer of resignation (he reportedly told Cristiani behind-the-scenes not to accept it)<sup>44</sup>, his and Cristiani's actions on the eve of the report's release indicated the government's unwillingness to accept responsibility for the abuses ascribed to state forces. The day he announced his resignation, Ponce appeared at a press conference, flanked by other senior officers in full dress uniform. He bitterly denounced US pressures, and insisted that only the Salvadoran government and its laws had the right to "compare and judge the actions of the armed forces."<sup>45</sup> Ponce distributed a rabidly anti-communist pamphlet entitled "The Threat to Sovereignty and the Destruction of the State," which claimed that communism in El Salvador "had not disappeared" and sought as its "immediate objective" the "destruction of the armed forces." The pamphlet laid out a resounding defense of the armed forces' role in the war and, in anticipation of the Truth Commission report, signaled the need "to respond with firmness the lies that could be used maliciously to undermine the honor of the Institution and the dignity of its members."<sup>46</sup>

In order to blunt the report's impact, President Cristiani also went before the nation on March 14 to ask for an "immediate, general, and total amnesty that will end the temptation to seek revenge." Cristiani acknowledged the value of "allowing the truth to be made public," but,

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<sup>42</sup> See Cynthia Arnson, "Unburying El Salvador's Skeletons," *New York Times*, March 13, 1993; and Schafik Jorge Handal, letter (unpublished) to the *New York Times*, March 15, 1993.

<sup>43</sup> San Salvador Radio Cadena YSKL, in "Ponce Says Post at President's 'Disposal,'" *Foreign Broadcast Information Service*, March 15, 1993, p. 19.

<sup>44</sup> Douglas Farah, "Generals Retire in El Salvador," *Washington Post*, July 2, 1993.

<sup>45</sup> Douglas Farah, "Salvadoran's Fall Laid to US Pressure," *Washington Post*, March 14, 1993.

<sup>46</sup> Fuerza Armada de El Salvador, *La Amenaza a la Soberanía y la Destrucción del Estado* (San Salvador: Ministry of Defense, March 1993), pp. i-ii.

invoking the Lord's Prayer, insisted that "the time has come to forgive."<sup>47</sup> Cristiani's appeal for an amnesty even before the Truth Commission's recommendations were revealed represented an attempt to cut short any effort to face the truth and grapple with its implications.

## The Content of the Report

Released in New York by Secretary General of the United Nations Boutros Boutros-Ghali on March 15, the report of the Truth Commission set forth, at times in heartbreaking detail, the horror engulfing El Salvador during all stages of the war. The violence carried out by the government forces, according to the Commission, "originated in a political mindset that viewed political opponents as subversives and enemies." Violence in the countryside was "indiscriminate in the extreme" in the first years of the decade, and less so in urban areas. Rural deaths were part of a "deliberate strategy of eliminating or terrifying the peasant population in areas where the guerrillas were active, the purpose being to deprive the guerrilla forces of this source of supplies and information."<sup>48</sup>

As for the guerrillas, the Commission reported that "it was considered legitimate to physically eliminate people who were labelled military targets, traitors or 'orejas' (informers), and even political opponents." About half of the 800 complaints of FMLN abuses involved murder, and "executions were carried out without due process."<sup>49</sup>

The report identified cases illustrative of certain patterns of abuse, including the Jesuit case (by government agents), the El Mozote massacre (massacres of peasants by the armed forces), the assassination of Archbishop Romero (by death squads), and the summary execution of mayors (by the FMLN). A thick annex to the report included detailed statistical analyses of the violations denounced before the Commission, extensive documentation of the results of exhumations carried out at El Mozote by an international forensic team, and hundreds of pages of names of those who died, both victims of repression and combatants from the Salvadoran army and the FMLN.<sup>50</sup>

## Cases Ascribed to Government Forces

The Commission ascribed the following abuses, among others, to government forces:

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<sup>47</sup> San Salvador radio and television networks, in "Cristiani on Truth Commission Report," *Foreign Broadcast Information Service*, March 15, 1993, p. 17.

<sup>48</sup> Truth Commission Report, pp. 42, 131.

<sup>49</sup> *Ibid.*, pp. 42-43.

<sup>50</sup> The Commission defined serious acts of violence as involving murder, forced disappearance, torture and mistreatment, serious wounds, kidnapping, and rape. In analyzing the 7,312 cases for which it received direct testimony, the Commission found that over 75 percent involved murders or disappearances. Members of the state apparatus participated in 66.8 percent of the murders. Almost 1000 cases involved torture followed by execution or disappearance.

Men comprised over 70 percent of the victims of grave acts of violence, and women, 27.5 percent. The majority of victims were between 16 and 25 years of age. Over half of those killed were killed in groups of under 20 people, and 95 percent of all grave acts of violence occurred in towns or rural areas. Truth Commission Report, Anexos, Tomo 1, No. 5, pp. 1-13.

◆ then-Colonel René Emilio Ponce gave the order to kill Jesuit Father Ignacio Ellacuría and to leave no witnesses. Ponce gave the order to Colonel Guillermo Alfredo Benavides in the presence of General Juan Rafael Bustillo, head of the air force; then-Colonel Juan Orlando Zepeda and Colonel Inocente Orlando Montano, both Vice-ministers of Defense; and commander of the Army First Brigade Colonel Francisco Elena Fuentes.

After the murders, Benavides told the officer in charge of the investigation, Colonel Manuel Antonio Rivas Mejía, what had happened. Rivas Mejía recommended to Benavides that he destroy the barrels of the weapons used, in order to prevent their identification through ballistics tests. Several other senior officers participated in the cover-up.<sup>51</sup>

◆ a "large number of heavily armed men" from one or several security forces kidnapped, and then tortured and executed six leaders of the political opposition Democratic Revolutionary Front in November 1980. The six were taken from a press conference in a Jesuit high school, which had been surrounded by the Treasury Police, who "aided and abetted" the perpetrators. According to the Commission, the murders of the opposition political leaders "closed the door to any possibility of a negotiated solution to the political crisis at the end of 1980."<sup>52</sup>

◆ two senior military officers covered up the December 1980 murders of four US churchwomen. Then-head of the National Guard, Colonel Carlos Eugenio Vides Casanova, and Army Lieutenant Colonel Oscar Edgardo Casanova Vejar, commander of the military garrison in Zacatecoluca, knew that members of the National Guard, under orders from superiors, had abducted and murdered four US churchwomen in December 1980. The two officers participated in a cover-up that blocked the judicial investigation. Then-Minister of Defense General José Guillermo García made no serious effort to carry out an investigation. (In May 1984, a Salvadoran jury convicted five low-ranking National Guardsmen of the churchwomen's murders.)<sup>53</sup>

◆ Army and civil defense units attacked the town of El Junquillo, Morazán department, in March 1981, where the only residents were women, young children, and elderly people. At least fifty civilians were killed, and several women and young girls were raped. The soldiers then burned the houses and fields (milpas) of the inhabitants.<sup>54</sup>

◆ In March 1982, just before El Salvador's Constituent Assembly elections, commander of the Fourth Army Brigade, Colonel Mario A. Reyes Mena, and officers of the rapid-reaction Atonal Battalion deliberately ambushed four Dutch journalists travelling to Chalatenango to film the guerrillas. The four journalists were killed along with four guerrilla guides. Six years later, the judge investigating the case fled the country after receiving anonymous death

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<sup>51</sup> Ibid., pp. 44-50.

<sup>52</sup> Ibid., pp. 55-59.

<sup>53</sup> Ibid., pp. 60, 64-65.

<sup>54</sup> Ibid., pp. 66-67.

threats.<sup>55</sup>

◆ A Salvadoran Air Force unit bombed an FMLN mobile hospital in San Vicente in April 1989, and deliberately attacked medical personnel, in violation of international humanitarian law. Soldiers who parachuted to the ground captured French nurse Madeleine Lagadec, who had remained in the hospital to tend for the wounded. The soldiers then executed her. Five out of fifteen persons in the hospital were killed, including a Salvadoran nurse and an Argentine doctor, but autopsies had not been performed that could establish whether others besides Lagadec had been executed.<sup>56</sup>

◆ More than 500 civilians were "deliberately and systematically" executed by units of the Army's Atlacatl Battalion in El Mozote, Morazán and surrounding villages in December 1981. Exhumations carried out by foreign forensic anthropologists in one parish house alone yielded the remains of 143 people, of which 131 were children whose average age was six. Ballistics experts determined that at least twenty-four different rifles were used, indicating that a large number of soldiers took part in the killing. The vast majority of bullet casings found (184 out of 245) had discernible markings indicating that they had been manufactured in the United States.<sup>57</sup>

◆ Death squads operated in a "systematic and organized manner" between 1980 and 1991 and "members of State structures were actively involved" or "turned a blind eye...Many of the civilian and military authorities in power during the 1980s participated in, encouraged, and tolerated the activities of these groups." Members of the army, Treasury Police, National Guard, and National Police formed death squads to "do away with enemies," and private and semi-official groups formed their own squads or established links with those inside the armed forces. The "clandestine nature" of death squad activity allowed state responsibility to remain hidden and "created an atmosphere of complete impunity" for death squad assassins.

Death squads operating out of the intelligence section of the National Guard carried out the 1981 murders of the president of the land reform institute Rodolfo Viera and two US labor advisers. Ex-National Guard Major Roberto D'Aubuisson organized and ordered the assassination of Archbishop Oscar Arnulfo Romero in 1980.<sup>58</sup>

Americas Watch is aware that the Commission gathered more information on death squads than it published, and that the Commission's standards of evidence in order to name the names of individual participants were very exacting. (These standards have assured that what did make it into the Commission's final report has been unassailable.) We are not in a position to judge

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<sup>55</sup> Ibid., pp. 69-75.

<sup>56</sup> Ibid., p. 89.

<sup>57</sup> The annex to the Truth Commission report contains extensive details about the exhumations. The conclusion of forensic investigators was that "there is no evidence that supports the argument that the victims, almost all small children, had participated in combat or had been trapped in crossfire between combatant forces. On the contrary, the evidence decidedly supports the conclusion that they were intentional victims of a massive extrajudicial execution." Ibid., pp. 118-125 and Truth Commission Report, *Anexos*, Tomo 1, No. 1(A), pp. 1-55 and No. 1(B), pp. 1-9.

<sup>58</sup> Ibid., pp. 139-143.

whether or not the Commission's decision not to include certain information was a sound one, or whether the caution exercised was excessive. But we do believe that the credibility of the report would have been undermined by the inclusion of information that later proved to be erroneous. The fact that more information was gathered than was published makes all the more urgent a continuing investigation of death squad operations and their support structures.

## Cases Ascribed to the FMLN

The Truth Commission also investigated seven cases of murder and one kidnapping case ascribed to the FMLN, all of which constituted violations of international humanitarian law; in some cases, the Commission also found that the FMLN violated international human rights law, thereby extending its provisions to non-state actors:

◆ Between 1985 and 1988, the Ejército Revolucionario del Pueblo (ERP) executed eleven municipal mayors attempting to carry out their duties in conflict zones. The policy of assassinating mayors was "approved and adopted" by the FMLN General Command. Six ERP leaders, including Secretary General Joaquín Villalobos, took part in the decisions to carry out the murders in areas "under ERP control."<sup>59</sup>

◆ A commando unit of the Partido Revolucionario de Trabajadores de Centroamérica (PRTC) murdered four off-duty US Embassy Marine guards and a number of civilians, including a law professor, two students, and several foreign businessmen at a sidewalk café in San Salvador's Zona Rosa in June 1985. The attack was carried out in accordance with a 1985 decision by the FMLN General Command to consider US military personnel a "legitimate target." The US Marines were not in uniform at the time of the attack and "there is no evidence" that they carried arms.

Five people were detained in connection with the Zona Rosa attack. The Truth Commission found "substantial evidence" and "sufficient evidence" linking two of the accused to the planning of the attack.<sup>60</sup>

◆ At a meeting in Mexico in July 1989 between representatives of the FMLN and members of a US delegation, the FMLN took responsibility for the assassinations of Francisco Peccorini Lettona, university professor and conservative columnist (March 1989), and Attorney General José Roberto García Alvarado (April 1989). The Fuerzas Armadas de Liberación (FAL) took responsibility for the death of García Alvarado.<sup>61</sup>

◆ On January 2, 1991, an FMLN patrol downed a US helicopter; ERP combatants then executed two wounded US servicemen who survived the crash. The member of the guerrilla unit who gave the order (Severiano Fuentes Fuentes, "Aparicio") and the one who carried it out (Fernán Fernández Arévalo, "Porfirio") turned themselves in in March 1992. The Commission did not find evidence that the murders had been ordered by higher-ups, or that the execution

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<sup>59</sup> Ibid., pp. 156-160.

<sup>60</sup> The report names eight civilians, but nine were killed. Ibid., pp. 161-166.

<sup>61</sup> Ibid., p. 174.

of captured prisoners represented an FMLN policy.<sup>62</sup>

In the section on abuses carried out by the FMLN are two cases in which the Truth Commission could not establish definitive responsibility:

◆ Ex-President of the Supreme Court and prominent politician Francisco José "Chachi" Guerrero was assassinated in November 1989 when three assailants opened fire on his car. One of the assailants who was wounded, César Ernesto Erazo Cruz, initially admitted that he belonged to an urban commando unit of the Fuerzas Populares de Liberación (FPL). He later denied any such affiliation and was absolved by a civilian jury in mid-1992.

An eyewitness to the murder who testified before the Truth Commission (and who had never before come forward), however, identified Erazo Cruz as one of the attackers. The Commission stated that it had received "reliable evidence" that Erazo Cruz belonged to the FMLN at the time of the murder.

However, the Commission also stated that it had received information indicating that Guerrero may have been killed because he had incriminating evidence relating to the Jesuit murders. A few days before his death he had been warned by a friend that his life was in danger and that he should stop investigating the Jesuit case. According to Guerrero's daughter, on the day of his death he was carrying documents that revealed the identity of the murderers of the Jesuit priests.

Because of the conflicting versions, the Truth Commission stated that "the available evidence did not allow the Commission...to reach full agreement on this case."<sup>63</sup>

◆ Director of the non-governmental Human Rights Commission (CDHES) and ERP member Herbert Ernesto Anaya Sanabria was murdered in October 1987. Two months later, the National Police captured a young member of the ERP, Jorge Alberto Miranda Arévalo, who at first confessed to having participated in the assassination as a lookout. Miranda later retracted his confession, although still admitted to being a member of the ERP. He was convicted of the murder by a civilian jury in October 1991.

Apart from his confession, however, there was no other evidence of Miranda's participation. An eyewitness interviewed by the Truth Commission could not identify him as a participant. Yet Miranda appeared to know details about the planning of the assassination that had not come out before.

However, Anaya had previously been captured by the Treasury Police, and during his detention had been threatened with death. After his release, he had been followed continuously by unknown persons. The National Guard had arrested his father in March 1987 and had interrogated him about his son's activities. Anaya was the fourth senior CDHES official to have been killed during the 1980s.

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<sup>62</sup> Ibid., pp. 180-181. See also, Americas Watch, *El Salvador and Human Rights: The Challenge of Reform* (New York: Human Rights Watch, 1992), pp. 49-59.

<sup>63</sup> Ibid., pp. 175-179.

The Commission concluded that it had not had enough time to reconcile conflicting versions: those pointing to the responsibility of the security forces or death squads, and those pointing to the ERP.<sup>64</sup>

## **Recommendations of the Commission**

The Truth Commission report concludes with detailed recommendations stemming from its investigation, in accordance with its mandate to suggest measures to "prevent the repetition" of abuses and promote "national reconciliation." Major recommendations included that:

- 1) all those named in the report, be they members of the armed forces, FMLN, or civilians, be immediately removed from any position of authority, whether in the armed forces, the judiciary, or in public administration, and that the National Commission for the Consolidation of Peace (COPAZ) draft a law that would prevent those named from holding public office for a period of "not less than ten years;"
- 2) given the "tremendous responsibility" of the judicial branch in furthering impunity, all members of the Supreme Court should immediately resign;
- 3) given the risk that death squads could renew their activity, there should be a "thorough investigation" of private armed groups, with the assistance of friendly countries;
- 4) aspects of the peace accord dealing with reform of the armed forces and the judiciary should be carried out in full;
- 5) to increase the independence of the judiciary, judges should be named not by the Supreme Court but by an independent National Council on the Judiciary; and
- 6) a special fund should be created, with the support of the international community, to pay compensation to victims of political violence.<sup>65</sup>

The Truth Commission notably did not recommend immediate prosecution of individuals named in the report. In a lengthy discussion of the issue of punishment, the Commission argued that "the question is not whether the guilty should be punished, but whether justice can be done." The Commission stated that "public morality" demanded punishment, but noted scathingly that El Salvador "has no system for the administration of justice which meets the minimum requirements of objectivity and impartiality."<sup>66</sup> Because the "glaring inability" of the judicial system to investigate crimes or enforce the law remained unchanged, attempts at prosecutions could "revive old frustrations" and make the task of achieving reconciliation more difficult. It was up to a reformed judicial system as envisioned in the peace accords, concluded the Commission, to apply justice.

## **The Reaction to the Report in El Salvador**

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<sup>64</sup> Ibid., 167-172.

<sup>65</sup> Ibid., pp. 185-198.

<sup>66</sup> Ibid., p. 190.

The violent rejection of the report by senior executive branch officials, the military high command, the Supreme Court, and members of the ruling party reflected a complete unwillingness by representatives of the government to accept or grapple with the state's principal responsibility for human rights violations during the war. President Cristiani and Defense Minister Ponce bear prime responsibility for preventing a full reckoning with the report's findings and implications. This unwillingness to confront the past reflects poorly on the Salvadoran government's commitment to seek reconciliation on the basis of any sense of accountability.

Unlike President Patricio Aylwin, for example, who went before the Chilean people with the findings of the Commission on Truth and Reconciliation and asked forgiveness for abuses carried out by state agents, President Cristiani told the nation that "the Truth Commission report does not respond to the wishes of the majority of Salvadorans who seek to forgive and forget everything having to do with that very sorrowful past." Cristiani said that the report analyzed "only some of the acts of violence...we do not consider it fair, therefore, that certain legal or administrative measures be applied against some persons."

In his address to the nation, Cristiani reiterated his appeal "to all the forces of the country to support a general and absolute amnesty."<sup>67</sup> He later claimed that it was against the Constitution for the executive branch to dismiss the Supreme Court. This claim was spurious, however, as the Truth Commission called for members of the Court to resign, not for Cristiani to dismiss them.<sup>68</sup>

General Ponce continued the attack in a radio and television address on March 24, 1993. Accompanied by all but one of those named with him in the Jesuit case, Ponce insisted that the "conclusions and proposals of the report distort the historic reality and make accusations that are devoid of basis and objectivity." He alleged that it "surpassed the authority" conveyed in the peace agreements and "invaded the constitutional field, the authority of government institutions, and the fair administration of justice." At times thumping the table with his fist, Ponce concluded that the report was "unjust, incomplete, illegal, unethical, biased, and insolent."<sup>69</sup>

Ponce faulted the report for not taking up issues that were clearly outside its mandate, including recognizing the legitimacy of the armed forces' defense of nation in the face of terrorist attacks.<sup>70</sup> But his statements and those of other government ministers reflected a clear sense of affront that the Commission had issued a report so thorough in its investigation of government abuses and its recommendations for changes. "The Commission is going much further than we

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<sup>67</sup> *Diario Latino*, March 18, 1993; and Radio Cadena YSKL, "President Cristiani on Truth Commission Report," *Foreign Broadcast Information Service*, March 19, 1993, p. 14.

<sup>68</sup> "Salvadoran: I Can't Replace High Court," *Miami Herald*, March 23, 1993.

<sup>69</sup> "Categórico Rechazo Hizo Anoche la FA al Informe," *La Prensa Gráfica*, March 24, 1993; San Salvador radio and television, "Defense Minister on Truth Commission Report," *Foreign Broadcast Information Service*, March 24, 1993; and Thomas Long, "Salvadoran Military Scoffs at Truth Panel," *Miami Herald*, March 26, 1993.

<sup>70</sup> "Why are the armed forces being accused?" asked Vice-minister of Defense Zepeda in early March. "Because they have been the wall against communists." Kieran Murray, Reuters, "Atrocity Panel to List Salvador Military Chiefs," *Washington Times*, March 8, 1993.

ever intended," claimed government spokesman Oscar Santamaría, a member of Cristiani's team during the peace talks. "We did not want these gentlemen...to come and propose situations that would destabilize institutions and the system."<sup>71</sup>

The rejection of the report was equally strong from the Supreme Court, which was blamed for interference in numerous cases and called on to resign. Supreme Court President Mauricio Gutiérrez Castro insisted that "only God can remove me from my position — by taking my life."<sup>72</sup> A detailed statement signed by fifteen Court officials criticized the Commission for its "lack of objectivity" and for its "bias," and rebutted charges that the Court had interfered in four cases detailed in the Commission report. The Court statement ended with an "energetic rejection" of the report's conclusions and recommendations, including the "extreme and tendentious" proposal that the Supreme Court justices resign their posts.<sup>73</sup>

Accompanying these explicit statements of repudiation were numerous others bordering on the xenophobic. A "Committee to Rescue Salvadoran Sovereignty" charged that the Commission's recommendations "violate this sovereign country's Constitution," while the president of the Association of Judges and Magistrates of El Salvador alleged that the report's purpose was to "destabilize the system to justify a foreign presence or intervention."<sup>74</sup> The notion that the Truth Commission was meddling in Salvadoran affairs, an opinion expressed, among others, by Vice-president Francisco Merino, reflected an unfortunate disdain for the peace accord signed by the Salvadoran government. In the peace talks, the government had agreed to the formula by which foreigners would investigate past abuses, and the accord called explicitly for the Secretary-General of the United Nations to appoint those individuals, with input from the parties.

In a sign of utter contempt for the report's recommendations, the Salvadoran government nominated Supreme Court President Mauricio Gutiérrez Castro to serve on the OAS Inter-American Juridical Committee, an advisory body. The OAS General Assembly elected Gutiérrez Castro to the post in a little-noticed vote during its June 1993 meeting in Managua. Because the juridical committee advises the General Assembly on matters including human rights, Americas Watch considers the nomination and subsequent ratification of Gutiérrez Castro to be highly inappropriate and unfortunate.

In contrast to the attitude of the government and right-wing, the FMLN expressed a willingness to abide by the report's conclusions and recommendations. Yet it was not clear at the time, and still is not clear, whether the acceptance is unilateral or conditional on compliance by

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<sup>71</sup> Tracy Wilkinson, "A Matter of Justices," *Los Angeles Times*, March 23, 1993.

<sup>72</sup> Tracy Wilkinson, "Salvadoran Leader Blasts UN Report," *Los Angeles Times*, March 19, 1993.

<sup>73</sup> Corte Suprema de Justicia, San Salvador, March 22, 1993, pp. 1-12.

<sup>74</sup> Radio Farabundo Martí, "Judges, Magistrates Association Criticizes Truth Commission," *Foreign Broadcast Information Service*, March 30, 1993, p. 14.

A paid advertisement by ARENA denounced the "unfounded accusations" against party founder Roberto D'Aubuisson, named in the report as having masterminded the assassination of Archbishop Romero. "A la Conciencia Nacional e Internacional," *La Prensa Gráfica*, March 18, 1993.

the government with the report's recommendations.

The same day that the Truth Commission report was released, for example, senior members of the FMLN's Political Commission issued a statement saying that the FMLN "accepts its share of the recommendations made by the Commission." The statement also called for a rejection of the proposed amnesty law and criticized the Truth Commission for its failure to expose prominent business and political figures involved in the death squads.<sup>75</sup> Senior members of the ERP, the only guerrilla leaders to be named in the report, similarly expressed their acceptance of the report's findings and recommendations.<sup>76</sup>

In a subsequent statement, however, spokeswoman Norma Guevara said that the five members of the FMLN general command

have unanimously expressed their willingness to accept responsibility for the events reported by the Truth Commission...We reiterate our willingness to assume and comply with all the Truth Commission recommendations in regard to the FMLN. *We understand that our acceptance demands that all the people mentioned in the report accept their responsibilities and that all the Truth Commission recommendations must be met (emphasis added).*<sup>77</sup>

Similarly, ERP leader Villalobos said that "if others heed every one of the recommendations, so will we...We will not comply while everyone else continues to say no." Villalobos qualified as "absurd and ridiculous" the ten-year ban on holding public office.<sup>78</sup> Whatever moral high ground the FMLN might have gained by accepting the report was thus diminished by the suggestion of conditional compliance.

## The Amnesty

Just five days after the publication of the Truth Commission report, the ruling ARENA party and its allies in the Salvadoran Legislative Assembly moved to squelch any possibility for punishment of those guilty of human rights abuses. The Assembly voted on March 20, 1993, to approve a Law of General Amnesty for the Consolidation of Peace, granting "broad, absolute, and unconditional amnesty" for "all those who participated...in criminal acts which occurred before January 1, 1992." The law stated that such acts included "political crimes or any crime with political ramifications, or common crimes committed by no less than twenty people."<sup>79</sup> The law

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<sup>75</sup> Radio Farabundo Martí, "FMLN Communiqué on Truth Commission Report," *Foreign Broadcast Information Service*, March 15, 1993, p. 8.

<sup>76</sup> See statements of Jorge Meléndez and Joaquín Villalobos in *Diario Latino*, "Former FMLN Commander Willing to Stand Trial," *Foreign Broadcast Information Service*, March 19, 1993, p. 16; and Tracy Wilkinson, "Report Accuses Salvadoran Rebels of War Crimes," *Los Angeles Times*, March 18, 1993.

<sup>77</sup> Radio Cadena YSU, "Former FMLN General Command Accepts Joint Responsibility," *Foreign Broadcast Information Service*, March 23, 1993, p. 7.

<sup>78</sup> Radio Venceremos, "Villalobos Comments on Truth Commission Report," *Foreign Broadcast Information Service*, March 22, 1993, p. 14.

<sup>79</sup> Not included were crimes carried out "with a view to profit," or those related to kidnapping, extortion, and drug-trafficking. Text in AmEmbassy, San Salvador to SecState, WashDC, "Embassy Translation of Salvadoran Amnesty Law,"

passed 47-9, with 13 abstentions.

Within weeks of the Salvadoran peace accord and prior to the beginning of the formal cease-fire on February 1, 1992, the Salvadoran Assembly had passed a "Law of National Reconciliation." This permitted FMLN combatants to lay down their weapons without fear of punishment but exempted from amnesty those convicted pursuant to a jury trial (as in the Jesuit case), and those who, according to the Truth Commission report, "may have participated in grave acts of violence that occurred since January 1, 1980."<sup>80</sup> The law specifically mentioned that, six months after the publication of the Truth Commission report, the Assembly could take further steps regarding an amnesty. The January 1992 amnesty law had support from Salvadoran parties across the political spectrum, as well as from the military and the FMLN.

In enacting another amnesty so close on the heels of the Truth Commission report, however, the ruling ARENA party and its supporters in the Assembly seemed deliberately to want to undercut the report. Vice-president of the Assembly and opposition leader Rubén Zamora denounced the "hasty manner" in which the amnesty was approved and charged that it "open[ed] the doors for the government to escape fulfillment of the Truth Commission's recommendations."<sup>81</sup> UN Secretary General Boutros-Ghali similarly expressed regret over the amnesty, characterizing it as "an internal matter," but one, nevertheless, that had implications for the UN-sponsored peace process. He noted that "it would have been better if the amnesty had been taken after a broad degree of national consensus had been created in favour of it."<sup>82</sup> Several human rights groups challenged the amnesty law in court, but the Supreme Court ruled on May 20, 1993, that the decision to give amnesty was a political question not subject to judicial review.

As a result of the amnesty, many of those jailed in connection with notorious human rights cases were released from prison. These included Colonel Guillermo Alfredo Benavides and Lieutenant Yushy Mendoza, convicted of murder in the Jesuit case; Major Mauricio de Jesús Beltrán Granados, accused of ordering the 1988 San Sebastián murder of ten campesinos; Severiano Fuentes and Fernán Fernández, accused of murdering two US servicemen in January 1991; and César Vielman Joya Martínez, a death squad defector extradited from the United States in October 1992 to face murder charges.<sup>83</sup> Local judges refused to apply the amnesty to five National Guardsmen convicted of the murders of four US churchwomen, arguing that it was

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March 26, 1993, p. 1.

<sup>80</sup> San Salvador Radio Cadena, "'Text' of Reconciliation Law," in *Foreign Broadcast Information Service*, January 24, 1993, pp. 12-13.

<sup>81</sup> *ACAN-EFE*, "More Details on Amnesty Law Approved," *Foreign Broadcast Information Service*, March 22, 1993, p. 9.

Besides ARENA, other parties supporting the amnesty were the National Conciliation Party (PCN) and Authentic Christian Movement (MAC).

<sup>82</sup> United Nations press release, "Secretary-General Expresses Concern Over Amnesty Law Adopted by El Salvador Legislative Assembly," March 24, 1993, SG/SM 4950, p. 1.

<sup>83</sup> See Americas Watch, "El Salvador: Extradition Sought for Alleged Death Squad Participant," August 14, 1991. The release of the two men charged with the 1991 killings of the two US servicemen has been appealed by the Salvadoran Attorney General's office and a private prosecutor.

a common crime, and to William Celio Rivas Bolaños, convicted of murder in the Zona Rosa case. Another man awaiting trial in the Zona Rosa case, Juan Antonio Lucero Morales, has also not been released.

Secretary of State Warren Christopher also expressed dismay over the amnesty, telling a Senate subcommittee that he was "particularly not enthusiastic about it as it may affect American citizens."<sup>84</sup> Christopher later indicated that State Department lawyers were investigating avenues by which American citizens could proceed with cases "despite the amnesty."<sup>85</sup> The US government has sent diplomatic notes insisting that the government of El Salvador has an obligation under Article 3 of the Geneva Conventions to seek justice in the servicemen's case. Americas Watch shares Secretary Christopher's view that the amnesty is lamentable, but believes that recourse under international law to bring cases against perpetrators of abuse should be available to all victims, regardless of nationality.

## **An Evaluation of the Truth Commission Report**

The violent reaction of the Salvadoran government and military to the Truth Commission's findings is testimony to the thoroughness of its effort to document abuses by official forces. Americas Watch commends the Truth Commission's decision to identify individual perpetrators of abuse by name, and shares the conviction that such public identification was an important way of chiseling a crack in the wall of impunity around past abuses. The commissioners' own insistence as a general rule that names not be named unless an individual had had an opportunity to appear in person before the Commission (or had declined such an opportunity), and that no name be mentioned based on a single source, established certain guarantees of fairness as well as the credibility of the report's findings. The Commission is to be applauded for resisting pressures from important figures in both the government and FMLN not to name names.

The Truth Commission report is all the more remarkable given the time pressures under which it was completed, the scale of abuses that occurred during the period within its mandate, and the small size of its professional staff. With only six months to conclude its work (later extended to eight months), the Truth Commission easily could have succumbed to the temptation to investigate only a handful of the most prominent cases. This, in fact, was the expectation of many non-governmental organizations, and, apparently, of the Salvadorans who negotiated the peace treaty. The opening of "doors and windows" to hear testimony from any Salvadoran who wished to come forward provided a mechanism for victims as well as perpetrators of abuse to unburden themselves. It is clear from the Truth Commission report that in innumerable cases this was done for the first time. Anecdotal evidence collected by Americas Watch suggests that the opportunity to come forward was a meaningful one for many people. Over time, this catharsis may prove to be an important ingredient of healing and reconciliation.<sup>86</sup>

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<sup>84</sup> Transcript, testimony of Secretary of State Warren Christopher before the Senate Appropriations Committee Subcommittee on Foreign Operations, Federal News Service, March 30, 1993, p. 3.

<sup>85</sup> Transcript, testimony of Secretary of State Warren Christopher before the House Appropriations Committee Subcommittee on Foreign Operations, Federal News Service, March 25, 1993, p. 2.

<sup>86</sup> In releasing the Truth Commission report, Secretary General Boutros-Ghali noted that there is "no reconciliation without public knowledge of the truth." Similarly, commissioner Thomas Buergenthal has stated that "It's important for the survivors of people who died to know that...it wasn't because they were supposed to die. They were killed by criminals. That's important to the children who are growing up, to the spouses and parents of people. It goes to the national health of the

There exists the risk, of course, that people who came forward did so with the hope or expectation that there would be some further investigation of or action on their case, either by the Truth Commission or by governmental authorities. That expectation could lead to serious frustration, as the vast majority of cases could not be investigated further and were not included in the Truth Commission's final report (although the names of victims appear in an extensive annex). The inability to follow up on each case makes more urgent the government's responsibility to further the investigations begun by the Truth Commission, to provide an accounting of the "disappeared," and to compensate, morally and financially, the victims and survivors of abuse.

## FMLN Cases

We are also concerned that the impact of the report may have been diminished by the perception that the Truth Commission report was less severe on the FMLN than it was on the government. Americas Watch rejects the charge that the Truth Commission report is biased. On the contrary, it contains extensive information on FMLN abuses. The detailed chronology, for example (which has largely been ignored in commentary on the report) establishes that the FMLN "use[d] mines indiscriminately, causing many deaths among the civilian population;" engaged in an "intensive campaign for the destruction of economic targets" that caused "major property damage;" took hostages and assassinated municipal mayors and government officials; "carrie[d] out a campaign of abductions, summary executions and murders against civilians affiliated with or sympathetic to the Government and armed forces;" and shielded themselves among civilians in densely populated zones during the November 1989 military offensive, a clear violation of the laws of war.<sup>87</sup>

However, even though the overall number of cases attributed to the FMLN was small, we believe that the investigation of some of the cases attributed to them, including the assassinations of important political conservatives, could have been more extensive. The FMLN admitted responsibility for the murders of Francisco Peccorini and Attorney General José Roberto García Alvarado, for example, but these cases are described only in a few lines. There is no indication that the Truth Commission attempted an investigation to establish individual responsibility for these crimes. Moreover, cases of supreme importance to the government, such as that of Minister of the Presidency and ARENA founder José Antonio Rodríguez Porth, were included only as a reference in the chronology, an unfortunate lapse given the resonance of the case and the government's insistence on its inclusion from the outset.<sup>88</sup>

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country." Christopher Marquis, "Holocaust Survivor's Job is to Help El Salvador Heal," *Miami Herald*, September 13, 1992.

<sup>87</sup> Truth Commission report, pp. 26, 32, 35. The chronology failed to mention hundreds of "ajusticiamientos," summary executions, carried out in the early 1980s. In 1982, Jesuit priest Ignacio Ellacuría, writing under the pseudonym of Tomas R. Campos, estimated that the number of executions "could be several hundred." Tomas R. Campos, "Análisis Coyuntural Sobre la Situación del País," in Ignacio Ellacuría, *Veinte Años de Historia en El Salvador*, Tomo 1 (San Salvador: UCA Editores, 1991), pp. 365-432.

<sup>88</sup> Rodríguez Porth was killed with his driver in June 1989. The assassination came only nine days into the Cristiani government, and severely shook the administration. The FMLN publicly denied responsibility for the murder.

The chronology of the Truth Commission report states that Rodríguez Porth's murder "was probably committed" by the FMLN and that it was among the cases that caused "the most commotion" in 1989. See Truth Commission Report, p. 36; and Americas Watch, *A Year of Reckoning: El Salvador a Decade After the Assassination of Archbishop Romero* (New York:

Similarly, the identification by name of *comandantes* from only one of the FMLN's five constituent groups (the ERP) suggests, fairly or unfairly, that not enough was done to establish the responsibility of senior commanders from other groups for serious crimes. The Commission was correct to name those names that it had. We believe, however, that it could have done more to establish the identities of individuals or groups of individuals within the FMLN, given that the report establishes that several murders (the Zona Rosa case, and the assassination of mayors, for example) were carried out pursuant to decisions or orders of the entire *comandancia*.<sup>89</sup>

In other regards, however, the report was inconsistent regarding FMLN abuses: cases such as those of human rights worker Herbert Anaya Sanabria and Attorney General José Francisco Guerrero were included in the section on FMLN abuses, even though the report admits that the Commission could not come to a final conclusion regarding conflicting versions of responsibility.

Deficiencies in the treatment of FMLN cases appear to have led some in the military and business community who otherwise would have accepted the report's harshness on the government to have less confidence in the report. More importantly, a perceived imbalance has allowed government and military critics of the report to justify their rejection of its findings. We believe in the latter case that this is a convenient excuse, however. The most vocal rejection of the report appears more strongly rooted in the devastating coverage of the actions of official forces, and the fact that the Truth Commission, quite rightfully, refused to accept the military's argument that, because it was fighting a "just war," its abuses were justified.<sup>90</sup>

## Amnesty and Prosecutions

Americas Watch shares the Truth Commission's view that the "glaring inability" of the judicial system in El Salvador has furthered impunity and provided a context in which abuses have flourished.<sup>91</sup> Nonetheless, we are disappointed that the Truth Commission failed to articulate an important principle: that the Salvadoran government has an obligation, under domestic and international law, to prosecute those responsible for grave abuses.

We are sympathetic to the dilemma posed by the Truth Commission: that "a judicial debate in the current context, far from satisfying a legitimate desire for justice, could revive old

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Human Rights Watch, 1990), pp. 74-75.

<sup>89</sup> In the Zona Rosa case, the Commission found "full evidence" that "the attack on the United States marines was part of the FMLN policy of considering United States military personnel a legitimate target of war." The Commission ascribes responsibility for the attack to an urban commando unit of the PRTC, but does not state whether or not the specific attack in the Zona Rosa was carried out pursuant to higher orders. Truth Commission Report, p. 166.

<sup>90</sup> "There is a difference between fighting a just war and justice in war," said a source knowledgeable about the armed forces. "Just because the war was just doesn't mean that whatever you did was justified." Interview, April 23, 1993.

The military's sense that its role in defense of society was unappreciated and unacknowledged pervaded the military's public reactions to the report. In his last speech as Minister of Defense, for example, General Ponce complained that the armed forces were subjected to a "badly-intentioned Ad Hoc Commission for a so-called purging and to a prejudiced, unfair, and biased Truth Commission...We have made so many institutional sacrifices," Ponce said. "We hope our people value the true dimension of our contributions as warrior soldiers during the conflict and as patriotic soldiers in this period." Quoted in El Rescate, "Report from El Salvador," June 28-July 5, 1993, p. 4.

<sup>91</sup> Truth Commission Report, p. 190.

frustrations, thereby impeding the achievement of that cardinal objective, reconciliation."<sup>92</sup> Moreover, we are aware that one reason for not insisting on prosecutions was that the Commission feared, apparently with reason, that Salvadoran courts would hold superficial proceedings that would result in the sure acquittal of defendants. Nonetheless, we are still concerned that deferring the pursuit of justice until reforms specified under the peace accords are carried out unduly lets the Salvadoran government off the hook. The lack of an unequivocal statement about the government's duty to prosecute, now or in the future, is all the more glaring given that El Salvador's amnesty law of January 1992 specifically exempts cases in which there have already been convictions by jury trial, and states that "amnesty will not apply to persons who, according to the Commission of Truth report, may have participated in grave acts of violence."<sup>93</sup>

The reluctance to recommend prosecutions appears to have resulted in the alternative recommendation for punishment: that a law be drafted that would ban those named in the report from holding public office for ten years. We are sympathetic to the notion that those who were named in the report should be forced to pay a price for their actions in the absence of prosecutions. And we are aware that the UN Secretary General has affirmed that "such an approach would affect essential provisions of the Constitution relating to political rights."<sup>94</sup> This is because banning is a form of punishment which, if applied without a fair trial, would violate due process guarantees. Moreover, we feel that the ban on holding office would appear disproportionately to affect the FMLN, as most members of the military (with the notable exceptions of Generals Bustillo and, perhaps, Ponce<sup>95</sup>) may be more unlikely to seek political careers in the wake of their dismissal or retirement. Finally, the imposition of such a ban would appear to undercut a central purpose of the peace accord, which was to end the fighting and encourage the FMLN to participate in the political process.

However, there is nothing in the Salvadoran legal or constitutional framework that would prevent the legislature from adopting a law, or adopting any necessary modifications of the Constitution, in order to set requirements for holding public office that would preclude individuals who had participated in human rights abuses. For example, a special commission could be appointed by the Legislative Assembly that would review the human rights record of candidates for public office, while affording each individual the opportunity to defend himself against charges of abuses. In the absence of any modification of Salvadoran law regarding

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<sup>92</sup> Ibid., p. 190.

<sup>93</sup> San Salvador Radio Cadena, "'Text' of Reconciliation Law," in *Foreign Broadcast Information Service*, January 24, 1993, p. 13.

We are similarly struck by the Truth Commission's claim that it is "unjust" to imprison those convicted for human rights abuses when other accomplices or intellectual authors remain free. This clear reference to the Jesuit case has no basis in Salvadoran or international law, which maintains that individuals are responsible for their actions regardless of whether or not illegal acts were ordered by superiors.

<sup>94</sup> United Nations, "Report of the Secretary-General on the United Nations Observer Mission in El Salvador," S/25812/Add.3, May 25, 1993, p. 3.

<sup>95</sup> Former Air Force chief Juan Rafael Bustillo was nominated in July 1993 as the presidential candidate for the National Conciliation Party (PCN), and Ponce indicated when he stepped down as Minister of Defense that he might seek a political career.

qualifications for holding public office, those named in the report should voluntarily abstain from politics. Such as "self-ban" would make an important moral statement, and should be adopted by all those implicated in the commission or cover-up of human rights abuses.

The report's silence on the question of a further amnesty is also disappointing. Successive amnesties passed by the Salvadoran government have been important sources of impunity, as they have closed the door legally to prosecutions and even investigations of major human rights cases. We find no basis for the statement by one commissioner that the question of amnesty was "in the hands of Salvadorans" any more than we consider other human rights issues examined by the Truth Commission to have been internal matters for the Salvadoran government.<sup>96</sup>

It is clear that the Cristiani administration intended to pass an amnesty regardless of any recommendation by the Truth Commission. But we believe that the Commission missed an important opportunity to restate the principle that — whatever their utility in allowing those who have taken up arms against the government to re-enter civilian life — amnesties should not apply to members of government or insurgent forces who have committed crimes against humanity or their equivalent.

A stance against amnesties goes to the heart of the struggle against impunity. Punishment represents the most powerful way that society can demonstrate to the victims of abuse that their suffering is not taken lightly, and helps establish moral and legal norms important to the construction of a democratic society.

In two landmark decisions covering several cases, the OAS Inter-American Commission on Human Rights found in October 1992 that amnesty laws in Argentina and Uruguay violated basic provisions of the American Convention on Human Rights, to which both countries (as well as El Salvador) are parties. The Commission found that the amnesty laws had denied petitioners in several cases their right to obtain a judicial investigation to determine those responsible for the crimes committed and to punish them accordingly. The amnesties therefore violated the right to a fair trial (Article 8), the right to judicial protection (Article 25), and the states' obligation to guarantee rights recognized in the American Convention (Article 1.1).

The Commission's decisions in the Argentine and Uruguayan cases establish that states which are parties to the American Convention have a duty to investigate and prosecute state agents who violate Convention-based rights, and that amnesties which prevent or terminate such legal proceedings violate the Convention.<sup>97</sup>

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<sup>96</sup> Comments of Belisario Betancur, press conference of Commissioners Betancur, Reinaldo Figueredo, and Thomas Buergenthal, United Nations, New York, March 15, 1993.

<sup>97</sup> As noted by the Truth Commission, the Inter-American Commission on Human Rights, in a separate decision on September 24, 1992, found the government of El Salvador responsible for the 1983 Las Hojas massacre of sixteen peasants. The Inter-American Commission recommended that the Salvadoran government, despite a 1987 amnesty, investigate the massacre and bring those responsible to justice, in accordance with the government's legal obligations under the American Convention. For a discussion of the legal obligation to prosecute human rights violators, see Diane Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal*, Vol. 100, June 1991, pp. 2537-2618; and Robert Goldman, "Amnesty Laws, International Law, and the American Convention on Human Rights," *The Law Group Docket*, Vol. 6, 1989.

## The US Role

With several very notable exceptions, including the churchwomen's case and the death squads, the Truth Commission report is silent about the US role in El Salvador during the war.<sup>98</sup> The Truth Commission's decision not to discuss questions of overall US policy was appropriate, as such a discussion would undoubtedly have politicized the report; commissioner Thomas Buergenthal stated at the press conference to release the report that the US Congress could "more properly and effectively" examine the role of the United States. Nonetheless, the report appears to have unnecessarily omitted statements of fact regarding cases that the Truth Commission did investigate. Why for example, did the report include Secretary of State Haig's remarks about the US churchwomen and not include testimony by Assistant Secretaries of State Thomas Enders and Elliott Abrams denying that the massacre at El Mozote took place? Official statements, when juxtaposed (even without comment) with evidence gathered by the Truth Commission, offer powerful indications of the US indifference to human rights concerns during the period under study.

Moreover, the report appears overly cautious by not drawing conclusions based on the information it did have. In one case that has received little attention, US Embassy officials apparently collaborated with the death squad abduction of two law students in January 1980. National Guard troops arrested two youths, Francisco Ventura and José Humberto Mejía, following an anti-government demonstration. The National Guard received permission to bring the youths onto Embassy grounds. Shortly thereafter, a private car drove into the Embassy parking lot. Men in civilian dress put the students in the trunk of their car and drove away. Ventura and Mejía were never seen again.<sup>99</sup> Despite the shocking nature of the abduction (reflecting the clear collaboration of Salvadoran security forces with the death squads) the US government claimed not to have any official knowledge of the incident.<sup>100</sup> Yet the Truth Commission report is silent on this issue, and avoids making any statement, let alone judgment, about US complicity in the abduction, through omission or commission. While we agree that the Truth Commission's mandate did not encompass an examination of US policy, neither did it preclude a discussion of US statements and actions directly bearing on a case under investigation.

## The Reaction to the Report in the United States

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<sup>98</sup> The report states that "the United States Government tolerated, and apparently paid little official heed to the activities of Salvadorian exiles living in Miami, especially between 1979 and 1983. According to testimony received by the Commission, this group of exiles directly financed and indirectly helped run certain death squads." The Commission recommends further investigation of "this tragic story," to assure that the actions of "persons linked to terrorist acts in other countries are never tolerated again" in the United States.

The report also mentions the widely-reported remarks of Secretary of State Alexander Haig in 1981 that the US churchwomen might have been killed in an "exchange of fire" and the statement of UN Ambassador-designate Jeane Kirkpatrick in 1980 that the nuns were "political activists."

The report's chronology also mentions expansions of US aid and training in mid-January 1981, and the statements of US Ambassadors Devine, Hinton, and Pickering condemning right-wing and death squad violence. Truth Commission Report, pp. 144, 63, 20, 22, 27, 28.

<sup>99</sup> Truth Commission Report, pp. 105-106.

<sup>100</sup> Statement of Lauren Gilbert before the State Department El Salvador Panel, May 26, 1993, pp. 5-6.

Precisely because the US role in El Salvador was so extensive, the Truth Commission report has had an enormous impact in the United States. In Congress, liberals denounced the Reagan and Bush administrations for lying repeatedly about the human rights record of the Salvadoran government, and claimed vindication of their criticisms of Republican policy. Chairman of the House Western Hemisphere Subcommittee Robert Torricelli vowed to review "every word uttered by every Reagan administration official" so as to determine the "whole truth," while Chairman of the Speaker's Task Force on El Salvador, Rep. Joe Moakley, called for a "Truth Commission report on our own government."<sup>101</sup>

In order to address US policy questions raised by the Truth Commission report, seventeen members of the House and Senate wrote President Clinton on March 26, 1993, asking him to declassify "all US government documentary material relevant to the 32 human rights cases investigated by the Truth Commission."<sup>102</sup> Clinton responded positively to the request on June 7, 1993, indicating that the State and Defense Departments had set a September deadline for reviewing documents for declassification and that the CIA would assemble and review documents on an "expedited basis." Clinton promised "to provide the maximum possible material" while protecting intelligence sources and methods.<sup>103</sup> Reflecting the administration's desire to declassify as much as possible, Secretary of State Warren Christopher told a Senate subcommittee in late March that "embarrassment is not a national interest."<sup>104</sup>

The State Department took other steps to deal with the US implications of the Truth Commission report. Secretary of State Christopher noted that he was "deeply shocked" by the report, and proceeded to appoint a small panel to "examine the activities and conduct of the Department" during the period covered by the Truth Commission report.<sup>105</sup> One reason for the panel, Christopher said, was "to make sure that our human rights reporting was not in some way stifled by political considerations."<sup>106</sup> The panel, headed by retired foreign service officers George Vest and Richard Murphy, issued its report on July 15, 1993 (see below).

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<sup>101</sup> John Goshko, "Reagan Administration Accused of Lies on El Salvador," *Washington Post*, March 17, 1993; Michael Ross, "Probe is Sought of US-Salvador Ties," *Los Angeles Times*, March 19, 1993.

<sup>102</sup> Text, letter from Senator Claiborne Pell and Representative Lee Hamilton [chairs, respectively, of the Senate Foreign Relations Committee and the House Foreign Affairs Committee], et. al., to the Honorable William J. Clinton, March 26, 1993, p. 1.

<sup>103</sup> Text, letter to the Honorable John Joseph Moakley, The White House, June 7, 1993, pp. 1-2.

<sup>104</sup> Transcript, Testimony of Secretary of State Warren Christopher before the Senate Appropriations Committee Subcommittee on Foreign Operations, Federal News Service, March 30, 1993, p. 1.

<sup>105</sup> Ibid.; and Office of the Assistant Secretary/Spokesman, "Statement by Secretary Christopher," March 24, 1993, in US Department of State, *Dispatch*, Vol. 4, No. 13, March 29, 1993, p. 188.

The panel's review was to include "responsiveness to congressional and public inquiries, human rights reporting, and the degree to which we encouraged State Department officers to conduct a full and independent inquiry of abuses by both sides in the civil conflict."

<sup>106</sup> Transcript, Testimony of Secretary of State Warren Christopher before the House Appropriations Subcommittee on Foreign Operations, Federal News Service, March 25, 1993, p. 2.

A US effort to come to terms with the Truth Commission report is all the more important given that US cooperation with the Commission was at times extremely poor and overall only fair. The Congress provided \$1 million for the Commission and the Bush administration set up an inter-agency group chaired by the State Department to provide information from US files. But four months into the Commission's six-month investigation, Commissioner Thomas Buergenthal complained publicly that the Defense Department and CIA were restricting access to documents and individuals knowledgeable about the war.<sup>107</sup>

Although Buergenthal was given a limited security clearance to review State Department documents, the Bush administration refused to grant similar access to others (including US citizens), something which would have facilitated review of the thousands of documents that were made available. Other times, information provided through the inter-agency process was less than that already declassified and publicly made available by the US government.<sup>108</sup> In addition, dozens of written questions on specific cases were never answered. In short, despite important cooperation in some cases, the US agencies involved attempted to limit and control the Truth Commission's access to information from US sources.<sup>109</sup>

To the extent that the Truth Commission report did spark a renewed US debate over policy in El Salvador, it quickly brought to light new information on at least one old case. Responding to the charge that Reagan administration officials covered up evidence of the El Mozote massacre of 1981, for example, Thomas Enders admitted that he "was wrong" about "systematic violence by government units;" heavy fighting prevented US investigators from going back to the village, Enders wrote, but he nonetheless accepted "responsibility for not having been able to confirm" the massacre.<sup>110</sup>

Speaking on the record for the first time, however, one of the Embassy officials sent to investigate reports on the massacre in 1982 admitted to two reporters that he had concluded at the time that there "very possibly had been a massacre" which had involved "non-combatant casualties of a large number." The official, Todd Greentree, said that he had informed then-Ambassador Deane Hinton of his judgment.<sup>111</sup> Hinton's January 31, 1982 cable to Washington, however, appears devoid of Greentree's conclusions.<sup>112</sup>

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<sup>107</sup> Christopher Marquis, "US Accused of Hurting UN Probe into Salvador's Civil War Horrors," *Miami Herald*, November 6, 1993.

<sup>108</sup> Interviews, September 8, 1992, and May 6, 1993.

<sup>109</sup> Eduardo Molina, a member of the Ad Hoc Commission, stated following the completion of their inquiry that the Bush administration "did not give us all the information they had...they did not come through for us, they were not loyal with us." Remarks, Washington Office on Latin America, November 4, 1992.

<sup>110</sup> Thomas Enders, "Massacre at El Mozote," *Washington Post*, March 29, 1993.

<sup>111</sup> Transcript, CBS "60 Minutes," Vol. XXV, No. 25, March 14, 1993; and transcript, NPR, "All Things Considered," May 3, 1993.

<sup>112</sup> AmEmbassy San Salvador to SecState, Washington, D.C., "Subject: Report of Alleged Massacre," January 31, 1982, pp. 1-6 (declassified March 1983).

With the exception of the El Mozote case, the vast majority of Reagan and Bush administration officials have taken pains to avoid comment on the Truth Commission's report. There are two notable exceptions. Former Assistant Secretary of State Elliott Abrams has deemed US policy in El Salvador a "fabulous achievement" and denounced as "McCarthyite crap" efforts in the Congress to determine whether or not US officials distorted the human rights situation.<sup>113</sup> Abrams went so far as to denounce the report in El Salvador, saying that "it was not fair, it was biased," and that he agreed with those who said that "the report favored the left."<sup>114</sup>

Former Secretary of State Alexander Haig has attempted to rewrite history, denying in a letter to the *New York Times* that he had stated or implied that "there had been a roadblock or an exchange of fire" in the churchwomen's case. Rather, he said that he was reporting on the judgments of the Salvadoran government. Even so, Haig's remarks in the hearing record offer nothing to suggest that he differed from those judgments. He stated in 1981 that "some of the investigations would lead one to believe that perhaps the vehicle that the nuns were riding in may have tried to run a roadblock or may have accidentally been perceived to have been doing so, and there may have been an exchange of fire."<sup>115</sup> The US Federal Bureau of Investigation told the churchwomen's families at the time that the FBI had no reason to believe Haig's account and that they "did not know where Mr. Haig got his facts."<sup>116</sup>

## The Report of the State Department's El Salvador Panel

The sparking of renewed debate over El Salvador constitutes a major international achievement of the Truth Commission report. To the extent that that debate illuminates lessons for future US foreign policy, the Truth Commission report will have contributed to the advancement of human rights on a global scale.

The State Department's initial efforts, however, have been a major disappointment. The report of Secretary of State's Panel on El Salvador, issued in mid-July 1993, found that "the [State] Department and Foreign Service personnel performed creditably — and on occasion with personal bravery — in advancing human rights in El Salvador," that ambassadors "consistently pushed their staffs to prepare honest, detailed human rights reports for Washington," that reporting officers "pursued cases aggressively," and the US Embassy put "steady pressure" on the Salvadoran government and military to bring perpetrators of abuse to justice. All in all, the report said, embassy officials "devoted an extraordinary amount of attention to human rights cases."<sup>117</sup>

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<sup>113</sup> Guy Gugliotta and Douglas Farah, "12 Years of Tortured Truth on El Salvador," *Washington Post*, March 21, 1993.

<sup>114</sup> EFE, San Salvador, June 10, 1993.

<sup>115</sup> Alexander M. Haig, Jr., "Response to an Inquiry," letter to the editor, *New York Times*, March 31, 1993; US Congress, House, Committee on Foreign Affairs, *Foreign Assistance Legislation for 1982, Part I*, Hearings, March 13, 18, 19, and 23, 1981, 97th Cong., 1st Sess. (Washington, D.C.: US Government Printing Office, 1981), p. 163.

<sup>116</sup> William P. Ford [brother of slain Sister Ita Ford], "Film Preserves Haig's Words on Murders," *New York Times*, April 12, 1993. The FBI comments were as Mr. Ford recalled them.

<sup>117</sup> US Department of State, "Report of the Secretary of State's Panel on El Salvador," Washington, D.C., July 1993, pp. 1, 24 (hereafter cited as Report of the El Salvador Panel).

The report coupled the overall praise of Department conduct with a number of criticisms. "While much of the information provided Congress and the public was factual and straightforward," the Panel said, "certain egregious statements, especially early in the decade, conveyed a message of callousness that the public media magnified." Annual human rights reports to Congress "did tend to limit the scope of condemnations of rightist actions and to add details on abuses by the leftists to support the basic US policy framework." Although the panel found no instances of officials intentionally lying to Congress, "there were definitely occasions when policy advocacy spilled over into statements that were perceived as misleading Congress or conveying 'disinformation.'"<sup>118</sup>

The panel reserved its toughest criticism for the State Department's handling of the 1981 massacre at El Mozote. Administration officials drew selectively on embassy reporting in order to counter reports of the massacre. This "left the Department vulnerable when it did not have all the facts" and "undermined the Department's credibility with its critics — and probably with the Salvadorans." The 1992 exhumations at El Mozote showed that "the Department had been wrong."<sup>119</sup> The panel also found that Secretary of State Haig's March 1981 statement that four US churchwomen may have been killed in "an exchange of fire" when trying "to run a roadblock" was "a clear mistake which should have been labeled as such immediately."<sup>120</sup>

These specific criticisms aside, the report concludes overall that the State Department promoted human rights in El Salvador. This judgment is grossly flawed:

◆ Regardless of the human rights reporting by foreign service officers, the fact that public portrayals of Salvadoran government conduct diminished or denied reports of abuse by official forces sent a powerful message to the government that the United States would defend its actions no matter what. The admitted "pulling of punches to support the policy," and the efforts to "put a more positive gloss" on the human rights situation than was warranted, undercut private representations that human rights were central to US policy.<sup>121</sup> The administration's unwillingness "to halt or threaten the military assistance which was seen as necessary to successful conclusion of the war," and its constant emphasis on the national security dimensions of US policy, drastically undercut any message that the human rights situation had to improve.<sup>122</sup>

◆ The report too readily accepts the view of former State Department officials themselves that US policy was a multi-faceted effort to improve human rights, prosecute the war, and build Salvadoran institutions and democracy. The identification with those whose conduct it

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<sup>118</sup> Ibid., pp. 1-2.

<sup>119</sup> The panel notes that US Ambassador Deane Hinton complained on February 1, 1982, about a cable referring to his "denying" of the incident. Hinton cautioned that "additional evidence strongly suggests that something happened that should not have happened and that it is quite possible Salvadoran military did commit excesses." Ibid., pp. 21, 35, 57-60.

<sup>120</sup> Ibid., p. 9.

<sup>121</sup> Ibid., p. 29.

<sup>122</sup> Ibid., pp. 13-14.

was investigating led the panel to parrot certain misconceptions about the nature of political violence in El Salvador.<sup>123</sup> Appropriating the rhetoric of the Carter, Reagan, and Bush administrations, the panel describes political violence as coming from "both the left and the right," and emphasizes that "human rights violations by the right were particularly blatant" in the early 1980s.<sup>124</sup> Such locutions — incredible in light of the Truth Commission's findings — imply that the government was somehow disassociated from the abuses when, in fact, official forces were the principal perpetrators of abuse.

◆ The panel faults US officials for showing "as much interest in countering the arguments" of human rights organizations "as in finding ways to work together on human rights issues." But the panel makes no mention of the concerted effort throughout the 1980s to smear Salvadoran and international human rights groups as biased and as front groups for the guerrillas. These attacks, which further endangered the lives of Salvadoran human rights monitors, consumed significant embassy and State Department resources and constituted the dark underside of the effort to portray the Salvadoran government's record in glowing terms.

◆ The report implies that the State Department performed better on human rights matters than the Defense Department or intelligence agencies, which had "prosecution of the war (i.e. not human rights issues) as their primary mission."<sup>125</sup> The distinction between agencies of the US government tacitly admits that competing priorities diluted the emphasis on human rights, and sent multiple and contradictory signals.<sup>126</sup> Because the panel looked only at the State Department and not at the US government as a whole, it should have avoided characterizations of US policy altogether. The panel claimed that such assessments were outside its mandate, but characterizations were made nonetheless.<sup>127</sup>

Moreover, the panel fails to acknowledge the State Department's own responsibility for the "charged political atmosphere" in Washington or for the "overheated political rhetoric" that submerged human rights as a central concern of US policy.<sup>128</sup> The launching of a "white paper" portraying El Salvador as a "textbook case" of indirect communist aggression, Secretary of State Haig's insistence that "international terrorism" would replace human rights

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<sup>123</sup> Such lack of distance from the subject of its investigation led the panel to claim, as a positive example of US pressure on human rights cases, the fact that the US Embassy worked closely with the Salvadoran Special Investigative Unit (SIU) in the Jesuit case. The Truth Commission found that the head of the SIU, Col. Manuel Antonio Rivas, had participated in the coverup of the Jesuit murders and recommended that the barrels of the rifles used be destroyed in order to prevent their identification through ballistics tests. See discussion of the Jesuit case, above.

<sup>124</sup> *Ibid.*, pp. 7, 24.

<sup>125</sup> *Ibid.*, p. 24.

<sup>126</sup> As one example of mixed messages, the panel cites an incident in October 1982 in which a strongly-worded denunciation of government abuses by US Ambassador Deane Hinton was "undercut" by public White House criticism. *Ibid.*, pp. 12-13.

<sup>127</sup> The panel notes that an examination of US policy was outside its mandate, and then proceeds on several occasions to characterize policy as supportive of human rights and reform efforts.

<sup>128</sup> *Ibid.*, pp. 21, 9.

as a driving force of US foreign policy, Haig's distorted references to the murdered US churchwomen, and Assistant Secretaries of State Thomas Enders's and Elliott Abrams's denials of the massacre at El Mozote, were issues of substance as well as overall policy tone or context. It is ludicrous to maintain, as the panel does, that "despite this charged atmosphere," the lines of policy between Carter and Reagan were basically the same.<sup>129</sup>

◆ The panel blames the human rights certification process enacted by Congress in 1981 for compelling the administration to "emphasize the positive to such an extent that it undermined its credibility with the Congress."<sup>130</sup> But nothing in the certification required the kind of blatant misrepresentation put forward by Reagan administration officials. While it is true that Congress adopted the certification rather than cutting off military aid, Congress intended the administration to use the certification as leverage in seeking human rights improvements. The administration's attempts to whitewash the record undercut that leverage.

◆ The report soft-pedals Assistant Secretary of State for Human Rights and Humanitarian Affairs Elliott Abrams' role in publicly defending the Salvadoran government, and ignores, even though it was brought to the panel's attention, that Abrams denied outright that army troops had taken part in several well-known massacres in mid-decade. The report mentions only one incident in which Abrams was unwilling "to label opposition leader [Roberto] D'Aubuisson an extremist," (even though the State Department had information linking D'Aubuisson to the murder of Archbishop Romero). In an absurd understatement, the panel notes that Abrams "did not effectively cultivate" critics of US policy "as a constituency on El Salvador," suggesting that tensions were rooted in matters of style rather than in Abrams' central role in denying and covering up abuses by Salvadoran government troops.<sup>131</sup>

## Conclusions and Recommendations

The Truth Commission report represents a major advance in the process of seeking accountability for human rights violations. The Salvadoran government and the FMLN deserve great credit for including provisions for a Truth Commission in their peace treaty. The United Nations also deserves credit for establishing an extraordinary precedent, placing human rights and the search for accountability at the center of peacemaking efforts. Despite the short-term commotion caused by the report, we are confident that the long-term impact of airing the truth will prove beneficial to the consolidation of democracy in El Salvador, and that the model represented by the Truth Commission will prove helpful in resolving other conflict situations around the world.

The Truth Commission report has left, however, many unfinished tasks. Salvadoran society must continue to grapple with the report's findings and recommendations, both to heal from the trauma of war and to further compliance with the peace accords. Because the reaction of the Cristiani government has been so hostile to the report, we consider it all the more urgent that the debate in civil society continue. To that end, we urge greater efforts to disseminate the report

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<sup>129</sup> Ibid., p. 10.

<sup>130</sup> Ibid., p. 13.

<sup>131</sup> Ibid., pp. 35, 36.

and debate its contents, a project which has already enlisted the energies of non-governmental and grassroots groups.<sup>132</sup>

Similarly, the report should serve as a roadmap for further investigations of human rights cases. The Cristiani government, and whatever successor government is elected in March 1994, should view the report as the beginning, not the end, of the search for truth and justice. The report's recommendation for a deeper investigation into death squad violence should serve as the starting point for an ongoing effort to root out the sources of human rights violations and thereby prevent their repetition. The Salvadoran government should likewise heed the Commission's recommendation for an investigation into the fate of the disappeared.

We also specifically urge the Cristiani government to immediately:

- ◆ carry out the judicial reforms mandated in the peace accords and in the Truth Commission report, including the profound restructuring of the Supreme Court and existing investigative units;
- ◆ establish a fund for the payment of reparations to victims of abuse and their surviving relatives, and establish efficient procedures for the disbursal of such funds;
- ◆ fulfill its obligations under the American Convention on Human Rights by investigating and prosecuting human rights cases, notwithstanding the March 1993 and previous amnesties;
- ◆ accept the jurisdiction of the Inter-American Court on Human Rights, as recommended by the Truth Commission.

In addition, those identified in the Truth Commission report as having committed, ordered, or covered up serious abuses should impose a self-ban on their holding of public office, unless and until a law or reform is enacted that would mandate a review of the human rights records of candidates.

We also call on the international community, and the United States in particular, to:

- ◆ provide generous financial support for El Salvador's reconstruction and renewal, conditioned on the government's compliance with the peace accords. This aid should include, as the Truth Commission has recommended, the dedication of at least one percent of foreign aid to the payment of reparations to victims of political violence;
- ◆ declassify, in consultation with members of congressional intelligence committees and their staffs who have had access to intelligence information, all materials pertaining to cases mentioned in the Truth Commission report, including general information on death squad violence. Input from individuals outside relevant US agencies who have knowledge of what information might be available is important in assuring that the declassification process is as broad as possible. Declassification has been recommended by the Secretary of State's Panel on El Salvador, and is especially important given the limited US cooperation provided the Truth and Ad Hoc Commissions;

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<sup>132</sup> We note, in particular, the cartoon-style summary of the report produced by Equipo Maiz.

◆ initiate investigations in other branches of the US government beyond the State Department, of the actions of US personnel in El Salvador that had implications for human rights. This is critical in light of the State Department El Salvador Panel's finding that the Defense Department and intelligence agency personnel had as their "primary mission" not the promotion of human rights but the "prosecution of the war."

In addition, we call upon the United Nations, through ONUSAL or through another body designated by the Secretary General, to verify compliance with the recommendations of the Truth Commission.

Fulfillment of these recommendations represent small steps on the larger journey toward a more peaceful and tolerant future in El Salvador. It is toward that end that we hope to have made a modest contribution.

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This report was written by Cynthia Arnson, Associate Director of Americas Watch. It was edited by Americas Watch Executive Director Juan Méndez and by Americas Watch Representative for Central America David Holiday. David Holiday and Washington intern Lisa Edwards also provided additional research. We gratefully acknowledge the assistance of Americas Watch board member Robert Goldman.

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