

EL SALVADOR

Peace can only be achieved with justice

INTRODUCTION

Impunity - *the failure to bring to justice and punish those responsible for human rights violations* - becomes a new violation of the human rights of the victims and their families. This cycle has to be broken so that El Salvador can really move ahead in peace and harmony, victims can see justice done and impunity does not become the norm for the present.

Impunity usually arises from a lack of political will. This often stems from the fact that the state itself, or an arm of the state such as the military, has committed or encouraged the violations. Impunity can also result from a government's failure to make the defence of human rights a central part of its domestic political agenda. Whatever the cause, impunity means a denial of justice for the victims and creates a climate where individuals can continue to commit violations without fear of arrest, prosecution or punishment.

Combatting impunity goes hand in hand with key human rights principles of fairness, accountability and justice. AI therefore opposes any measures which grant an amnesty to perpetrators of crimes against humanity and war crimes before the truth of the crimes has been established and is known; before the victims have been provided with reparation; or before the judicial process has been completed to international standards with a clear verdict of guilt or acquittal.

There is no definitive figure for the total number of victims of human rights violations in El Salvador during the 1980-1991 period. Seventy five thousand victims - extrajudicially executed, tortured, "disappeared" and - are estimated. But only a few perpetrators have been punished for these gross violations of human rights. Impunity has therefore prevailed so far.

The peace process and the Report of the Commission on the Truth for El Salvador published in March 1993 brought hope that something would be done to investigate the wrongdoings of the past. However, any such hopes were obliterated by the approval of the General Amnesty Law only days after the publication of the Truth Commission's report.

In the 1980s and early 1990s Amnesty International called repeatedly on the authorities to investigate the grave human rights violations which were taking place in El Salvador and to bring those responsible to justice. The organization continued its efforts after the armed conflict came to an end. Amnesty International is renewing its efforts to bring an end to impunity, as it is convinced that the impunity for the past creates impunity in the present, thus creating a never ending cycle.

Recent decisions and recommendations made by international human rights bodies have been dismissed and ignored on claims that justice for human rights violations will upset the peace of the country. Such claims are an insult to the suffering of the victims and their relatives.

The way to ensure the peace of the country is for justice to be done - independently and impartially - for the violations of human rights committed during the armed conflict in El Salvador.

BACKGROUND

Between 1980 and 1991 El Salvador experienced an armed conflict which led to gross and extensive human rights violations, including extrajudicial executions, other unlawful killings, “disappearances” and torture. Among the victims were human rights defenders, trade unionists, lawyers, journalists, opponents of the government (whether real or presumed) and, for the most part, innocent civilians who had no direct involvement in the conflict. Whole villages were targeted by the armed forces and their inhabitants massacred. Children were direct victims of extrajudicial executions (EJEs) or “disappearance”. Children whose parents were victims of EJEs or “disappearance” were adopted within El Salvador or abroad, or were kept as orphans in institutions, including military barracks. In many cases they were told that they had been abandoned by their parents to get involved in the guerrilla movement.

The Salvadorean army carried out human rights violations but “death squads” were also responsible for a significant number of the killings carried out in the period. The armed opposition, the Farabundo Martí National Liberation Front (*Frente Farabundo Martí para la Liberación Nacional*), FMLN, was also responsible for a lower number of human rights violations.

The peace process

The peace process for El Salvador started in 1987 with the Esquipulas II Agreement, signed by the Presidents of five Central American countries, in an attempt to bring peace to the region. It culminated with the Peace Accords in Mexico signed by the Government of El Salvador and the FMLN on 16 January 1992. The whole peace process was carried out under the auspices of the United Nations (UN) Secretary General.

On 26 July 1990, the government of El Salvador and the FMLN, signed the San José Accord (*Acuerdo de San José*). In the context of the efforts to bring the armed conflict to an end, this was the first agreement concentrating on the issue of respect for human rights including giving priority to the investigation of cases of human rights violations and the identification and punishment of those found guilty.

One important part of the process was the setting up of the Truth Commission, agreed in April 1991, to investigate human rights violations which had taken place from 1980 onwards and to make recommendations, which the two sides to the conflict agreed would be binding.

The *Report of the Truth Commission for El Salvador, From Madness to Hope: the 12-year war in El Salvador*¹ was published on 15 March 1993. It confirmed what many Salvadorean and international organizations had denounced throughout the course of the civil war - that the armed forces, security forces and paramilitary groups were responsible for massacres, killings, torture and "disappearances" on a massive scale. It concluded that "death squads" linked to state structures became "an instrument of terror used systematically for the physical elimination of political opponents", and cited the judiciary as bearing a great responsibility for the impunity with which the abuses had been committed. Ninety-five per cent of the abuses reported to the Commission were attributed to the military, security forces or "death squads" linked to them, but the FMLN was also held responsible for a number of killings and abductions.

The report made a series of recommendations including the removal from office of all military and judicial officials named in the report, extensive reforms to the judiciary, the police, the armed forces and the implementation of all the recommendations on human rights put forward by the UN Observer Mission in El Salvador (ONUSAL).² The Commission's recommendations have not been fully implemented up to now.

The 1993 Amnesty Law

Only days after the publication of the report by the Truth Commission, the National Assembly passed an amnesty law "to sweep 12 years of atrocities under the rug" (then Roman Catholic Archbishop of San Salvador, Monsignor Arturo Rivera Damas). The *Ley de Amnistía General para la Consolidación de la Paz*, General Amnesty Law for the Consolidation of Peace, was approved by a simple majority from the right-wing parties in the Assembly; on 22 March then President Alfredo Cristiani signed it into law. The FMLN was not a political party at the time and so it had no involvement in the approval of the law, which also benefitted FMLN members. The law provided, among others things, broad, absolute and unconditional amnesty to all those responsible for human rights abuses committed before January 1992, whether or not they had been sentenced or judicial proceedings had been initiated against them or not.

¹See www.derechos.org/nizkor/salvador/informes/truth for text

²ONUSAL was set up to monitor the observance of the peace accords and began its operations in El Salvador in July 1991. Its Human Rights Division was specifically mandated to verify implementation by both sides of the 1990 San José Agreement, which committed the two parties to eradicating human rights violations and other abuses. The Human Rights Division issued periodic reports documenting patterns and cases of human rights violations and the implementation of other agreements directly related to the protection of human rights in El Salvador. ONUSAL made numerous recommendations to the government on individual cases it investigated, on patterns of abuses and on institutional reforms; not all of them were implemented.

Until now, there have only been investigations into a few - prominent - cases but, in general, thorough and independent investigations have not been undertaken and, therefore, in the overwhelming majority of cases, no one has been brought to justice for those violations.

The amnesty law was unsuccessfully challenged before the Supreme Court of Justice soon after its enactment. One of the arguments used by the Court to deny the appeal was that this law was a political act and therefore beyond its sphere of review.

... so that the country moves along the right path, no to pardon and forget, but of truth and justice which will take us to forgiveness and reconciliation ...

Monsignor Gregorio Rosa Chávez, Deputy Bishop of San Salvador, on the need to debate whether to maintain the Amnesty Law in force or not. October 2000.

In December 1997 there was a fresh appeal to the Supreme Court of Justice alleging that the Amnesty Law was unconstitutional. In April 1998 the Court admitted the request that it review the matter. In October 2000 the Court finally issued its decision on the

appeal. It ruled that the law was constitutional but, that in cases related to military personnel or civil servants, involved in crimes contravening the Constitution, committed between 1989 and 1994, judicial officials should make the decision whether or not to prosecute. Although this ruling would allow some cases to be prosecuted, it excludes the majority of human rights violations committed during the armed conflict, including massacres in which hundreds of civilians were killed, as they took place before 1989.

Amnesty International has always argued that the Amnesty Law approved in 1993 acts as a shield for those responsible for the extrajudicial execution, “disappearance” or torture of thousands of Salvadoreans. Also, it contravenes provisions in the Salvadorean Constitution including:

- Article 1 which states that the organization of the state is aimed at achieving justice, judicial security and the common good.
- Article 2 which states that everyone has, among others, the right to life, freedom, security and to be protected in the preservation and defence of those rights. It also sets up the principle of compensation for moral damages.
- Article 17 which forbids any state institution, official or authority to take up pending judicial cases, open trials or lapsed proceedings.
- Article 194 which states that international instruments take precedence over national laws and that where a conflict arises between the two the international treaty will prevail.

The institutional framework

An important issue in combatting impunity, for both past and current violations, is a properly functioning judicial system. Amnesty International acknowledges that there have been advances in the changes and reforms to national institutions outlined in the Peace Accords and the recommendations from the Truth Commission. It is also aware of the process to rid the National Civil Police, the judicial system and the Attorney General's Office of officials who have been found to be involved in acts of corruption, other illegal actions or for poor performance. The political and institutional crisis which has affected the Office of the Procurator for Human Rights in the last three years is another drawback in the protection of human rights. It is of paramount importance that these processes are completed effectively and rapidly so that the institutions are fully functional as soon as possible. It is also imperative that an appropriate system of control is set up to prevent any repetition of such acts so that these institutions can perform their important functions in optimum conditions and in such a way that the people of El Salvador are able to fully trust them.

RENEWING EFFORTS AGAINST IMPUNITY: CASES

Ten years after the signing of the San José Accords and nearly eight years since the publication of the Truth Commission Report, impunity still reigns with regards to past human rights violations. It is aided and abetted by the Amnesty Law which exempted those responsible for human rights violations committed prior to 1992 from prosecution or from serving sentences already imposed, and by the unwillingness of the country's authorities to take steps to end it.

However, human rights organizations in El Salvador continue their efforts to deal with the violent past in order to bring justice and peace to victims and their relatives. In this document Amnesty International highlights some key cases and renews its efforts towards ending impunity in El Salvador.

● **Six Jesuit priests, Julia Elba Ramos, Celina Ramos**

Father Ignacio Ellacuría, Director of the Central American University "José Simeón Cañas", UCA

Father Ignacio Martín-Baró, Deputy Director

Father Segundo Montes, Director of the Institute of Human Rights of the UCA

Professor Armando López

Professor Joaquín López y López

Professor Juan Ramón Moreno

Julia Elba Ramos, their cook

Celina Mariceth Ramos, her 15 year-old daughter

In the early hours of 16 November 1989, six Jesuit priests, their cook and her daughter were murdered in the victims' residence located within the *Universidad Centro Americana "José Simeón Cañas"*, UCA (Central American University) in San Salvador, by military personnel.

Three photograph captions: © **Private**

The soldiers, members of the Atlacatl Battalion, went into the university campus and the priests' residence. They ordered the priests out of their bedrooms and made them lie face down on the ground in the back-garden. The lieutenant in charge gave the order to shoot the priests. Julia Elba Ramos and her 15 year-old daughter, Celina, were also shot.

Afterwards the soldiers simulated a confrontation between the army and rebel forces in front of the priests' residence, attempting to put the blame on the FMLN. They put a sign on a door of the UCA which read "We have executed the dirty informers. Victory or death. FLMN". Other army officers concealed the truth of the killings, altered statements or destroyed evidence.

A campaign against the Jesuits in general, and Fathers Ellacuría and Montes in particular, had started in 1986. The Jesuits were at the forefront of those advocating a peaceful end to the armed conflict, but government officials and members of the armed forces accused them of encouraging subversion. The University buildings were attacked on several occasions during 1989. Ominously, on 11 November after all radio broadcasts had been connected to the armed forces radio, various purportedly independent listeners called for the elimination of the Jesuits, especially father Ellacuría.

Three photograph captions: © **Private**

Nine members of the Commando Unit of the Atlacatl Counterinsurgency Battalion went on trial between 26 and 28 September 1991. Seven were acquitted. A Colonel was found guilty of all the murders and a Lieutenant of one, Celina's. Both were sentenced to 30 years imprisonment. Two of those acquitted of murder were sentenced to three years for lesser charges. On 24 March 1993 they were all released benefitting from the amnesty law approved two days before. However, those responsible for planning and ordering the murders, though identified in the Truth Commission Report, were not prosecuted.

On the same day as the killings, 16 November 1989, the Inter-American Commission on Human Rights, IACHR, received a petition from the human rights organization Americas Watch, denouncing them as breaches of the American Convention on Human Rights. The procedures, which span over a decade, culminated on 22 December 1999 when the IACHR issued its report on the case.

Two photograph captions: © **Private**

In its report³ the IACHR presents a detailed history of the processing of the submission. It details the steps since the petition was received on 16 November 1989; the submission of further documentation; replies from the Salvadorean State, which from the start requested that the IACHR set the case aside claiming it had “been duly processed, the persons guilty of the crime had been tried, and for the first time in the history of our country a high-ranking officer has been convicted”.⁴ The IACHR examined various aspects of that investigation, raising questions about the lack of reaction from the Army’s High Command on the day of the murders, the fact that they occurred in close proximity to the High Command headquarters in an area with a high level of military presence, and intense patrolling; the institutional policy of covering up the facts in order to protect those involved in planning and carrying out the murders. Having considered the investigation, trial and final verdict in the case, the IACHR concludes that “the investigation undertaken by the Salvadoran State ... was not conducted seriously or in good faith, but was rather intended to protect some of the material authors and all of the intellectual authors of the crime”.

The IACHR concluded, among other things, that the state had:

- violated the right to life;
- violated the right to judicial guarantees (Article 8.1 of the American Convention) in relation to the victims’ relatives;
- failed to fulfill its obligation to investigate seriously and in good faith, to identify those responsible for the violation and to punish them according to law (Article 1.1);
- violated the right to legal protection (Article 25).

³ Report No 136/99, Case 10.488. www.cidh.org/annualrep/99

⁴ Id, p10

It also concluded that the application of the Amnesty Law had breached the right to justice and obligations to investigate, prosecute and make reparation to the victims' relatives, as well as religious and labour communities to which they belonged.

The IACHR recommended that the state should:

- “1. conduct a full, impartial and effective investigation in an expeditious manner, consistent with international standards, in order to identify, prosecute and punish all the material and intellectual authors of the violations determined, without reference to the amnesty;
2. to make full reparations for the consequences of those violations, including the payment of fair compensation; and
3. to adjust its domestic legislation to the American Convention and thereby render the General Amnesty Law null and void.”

The report was sent to the authorities in November 1999 providing them with a period of one month to fulfill the recommendations, according to IACHR's procedures. In December the authorities replied, reiterating arguments presented to the IACHR during the examination of the case, among them:

“With respect to the second and third recommendations [see above], giving effect to them would imply the repeal of the amnesty law, and that would violate the precept of non-retroactivity of the law, enshrined in the national Constitution, besides which the amnesty decree is based in law and responded, as noted earlier, to the need to provide the civilian population with a form of national reconciliation, in order to support an enduring peace”.

The authorities' reaction to the report was to dismiss it on the grounds that it was “only a recommendation”.

- **New efforts to bring justice**

In March 2000 the Director of the UCA, José María Tojeira Pelayo, submitted a complaint to the Attorney General naming seven individuals as responsible, through their actions and omissions, for the killings.⁵ The seven, including high ranking army officers and a former president, had been identified in the Truth Commission report. The Attorney General's Office, AGO, citing the Amnesty Law and the pending appeal on its constitutionality, decided to abstain from acting on the petition, despite the insistence of the UCA Director.

⁵ See www.uca.sv for texts of documents in this case.

Following the Supreme Court decision on the amnesty law appeal, the AGO made some attempts to take action on the case. These did not prosper because, for example, the wrong procedure was invoked by the AGO. In December the AGO was reported to have conducted a study which concluded that it could proceed to seek the definitive dismissal of the charges against the seven suspects, because a period exceeding ten years had elapsed since the crime was committed and no evidence had been brought against them. The AGO then requested the Third Magistrate's Court of San Salvador *to effect the said dismissal*. On 12 December the judge ruled that those alleged to have been the intellectual authors of the killings would not face charges because the event had happened over 10 years before and therefore, according to El Salvador's law, criminal responsibility had lapsed. The judge did however recognize that the amnesty law did not apply to the suspects, following the October ruling of the Supreme Court. On 31 January 2001 an appeal court in San Salvador confirmed the December ruling and applied the statute of limitations thus barring further proceedings against the suspects.

However, the Jesuits appealed and further proceedings are pending.

- **Statutes of limitations do not apply to crimes against humanity**

The murder of the priests and the other two victims took place in the context of massive human rights violations, which constitute crimes against humanity. An early definition of the term was proffered by France's Prosecutor General, François de Menthon, at the Nuremberg trial, when he characterized them as crimes against the human condition and as a cardinal offence against humanity's conscience and awareness of their own condition. Subsequently, and in light of contemporary developments in international customary and treaty law, crimes against humanity include, among others, the systematic or large scale practice of murder, torture, enforced "disappearance", arbitrary detention, persecutions on political, racial, religious or ethnic grounds, rape and other sexual abuses. There is no doubt that human rights violations carried out in El Salvador during the period 1980 to 1992, including this case, constitute crimes against humanity.

Statutory limitations do not apply in these instances since the nature of those crimes is offensive to the inherent dignity of human beings, as recognized by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the U N General Assembly in Resolution 2391 (XXII) of 1968. This fundamental legal norm was reaffirmed in Article 29 of the Statute of the International Criminal Court adopted on 17 July 1998 by the Conference of Plenipotentiaries of the United Nations in Rome.

- **Application of the Amnesty Law**

Arguments supporting the applicability of amnesty laws are not valid either as from the perspective of international law crimes against humanity cannot be subject to amnesty. This is explained, for example, by the Inter-American Commission on Human Rights in its December 1999 decision on this case, and in previous cases. Amnesty International fully agrees with the Commission that amnesty laws such as those mentioned “remove the most effective measure for enforcing human rights, i.e., the prosecution and punishment of the violators”. The amnesty law breaches international instruments to which El Salvador is a party, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights, and must therefore be annulled.

The decision on 3 October 2000 by the Supreme Court of Justice on the 1993 General Amnesty Law was to leave it to the competent judicial official to decide whether or not to prosecute. This leaves open the possibility that there may be situations and persons for which neither amnesty, commutation nor reprieve shall be considered. Certainly this would be the case for those who masterminded the murders and consequently, the necessary legal proceedings should be initiated.

Considering that, according to international law and international standards, statutes of limitations and amnesty laws do not apply to crimes against humanity, Amnesty International has urged the Attorney General, Belisario Artiga, to initiate legal proceedings against “the people responsible for planning the murders and the person who gave the order [to kill]”.⁶ These persons have not been subjected to any sort of investigation or legal action, although the actual perpetrators were tried and sentenced to prison terms, and later freed as a result of the 1993 Amnesty Law.

- **Monsignor Oscar Arnulfo Romero y Galdámez**

Monsignor Oscar Romero, Archbishop of San Salvador, is one of the best known martyrs for the human rights cause in El Salvador. He was assassinated by a single shot from a hired killer while celebrating mass on 24 March 1980 in the chapel of the Divine Providence Hospital, San Salvador.

Photograph caption: Monsignor Oscar Arnulfo Romero y Galdámez © Iror, Holland

Archbishop Romero had become an outspoken critic of human rights violations and a leading defender of human rights. Earlier that month he had written to the then

⁶ Truth Commission Report, p 45

President of the United States of America (USA), Jimmy Carter, asking the USA not to provide military assistance to El Salvador which might be used to perpetrate human rights violations.

The killing of Archbishop Romero was investigated by the Truth Commission for El Salvador. The Commission concluded that there was full evidence that former Major Roberto D'Aubuisson (now deceased) had given the order to assassinate the Archbishop and precise instructions to members of his security service, acting as a "death squad", to organize and supervise the assassination. The Commission also found that there was full evidence that "the Supreme Court played an active role in preventing the extradition of former Captain Saravia [actively involved with others in planning and carrying out the assassination] from the United States and his subsequent imprisonment in El Salvador. In so doing it ensured, *inter alia*, impunity for those who planned the assassination."⁷

In September 1993 the Director of the *Oficina de Tutela Legal del Arzobispado*, Legal Aid Office of the Archbishopry, with a brother of Archbishop Romero, made a submission to the IACHR. They argued that the state had violated his right to life, judicial guarantees and judicial protection and had failed in its duty to respect and guarantee the human rights enshrined in the American Convention on Human Rights.

On 13 April 2000 the IACHR issued its report concluding that:

- the state had violated the right to life enshrined in Article 4 of the American Convention;
- due to the behaviour of authorities and institutions (identified in the report), the state had failed in its obligation to thoroughly investigate human rights violations under the Convention; to identify, bring to justice and punish those responsible; and to provide reparation;
- the state had breached the right of the victim's relatives to judicial guarantees and protection (Article 25)
- the state had failed in its duty to guarantee human rights (Article 1(1))

The IACHR recommended that the state:

- should carry out a full, impartial, effective and prompt investigation to identify and sanction those who planned and those who carried out the killing, regardless of the amnesty law;
- should provide reparation

⁷ Truth Commission Report, p131

- must bring national law into line with the American Convention on Human Rights in order to annul the amnesty law.

In these two decisions, and in previous ones on other cases, the IACHR has dealt with the question of compatibility of the Amnesty Law with the American Convention on Human Rights. In all cases it has concluded that “the application of the amnesty decree eliminated the possibility of undertaking any further judicial investigations through the courts to establish the truth and it denied the right of the victims, their relatives and society as a whole to know the truth”.⁸ No one has been brought to justice for the killing of Archbishop Romero.

● The massacre in El Mozote

· Background

The armed forces of El Salvador carried out a number of massacres during the war period; the victims were mostly peasants, caught up between the army and the guerrilla forces. On 10 December 1981 army units arrived in El Mozote, Department of Morazán. They proceeded to carry out body searches of all villagers and internally displaced people from the neighbouring villages. They were then made to lock themselves up in their homes. The following morning, 11 December, everyone was taken out into the square; soldiers separated men, women and children and locked them in different buildings. Men were interrogated, tortured and executed. Many women were taken to the nearby hills, raped and killed on the spot. The rest were killed in the buildings. Children were killed last. Finally, the soldiers set fire to the buildings. There was no burial for the dead; for weeks anyone passing by could see the bodies.

(Mummy, they are killing us...)

were the last words Rufina Amaya, a survivor of El Mozote, heard from her children.

The same troops also massacred the civilian populations of La Joya and Cerro Pando cantons and the villages La Ranchería, Jocote Amarillo and Los Toriles, just before and after the massacre in El Mozote. According to reports, at least 767 people were killed in these massacres, amounting in some cases to the whole population of the villages. The large majority of victims were children, elderly people and women including a three-month old girl, a 105-year-old man and a nine-months pregnant woman.

At the time these massacres took place the army was engaged in an anti-guerrilla operation, coded *Operación Rescate*, Operation Rescue, with the participation of the Atlacatl Battalion, units of the Third Infantry Brigade and San Francisco Gotera Training

⁸ Report No 37/00, Case 11481

Centre. The aim was to destroy the guerrilla presence in an area of northern Morazán, including a camp and a training centre.

The government flatly denied that the massacre had taken place, a view supported, if not encouraged, by the government of the United States, under Ronald Reagan. It was only in late January 1982 that more concrete reports and evidence of the massacre began to emerge mainly through reports from foreign journalists. Within El Salvador the massacre was kept out of public attention.

Developments between 1990 and 2000

In the aftermath of the massacres no investigation was instituted by the Salvadorean authorities.

Local human rights organizations continuously strived to get an investigation going but they faced the stern refusal of the authorities. In 1989 *Tutela Legal* and other organizations initiated an investigation and in 1990 *Tutela Legal* gave their support to survivors of the massacre in their attempts to file a case against the army. As part of this effort attempts were made to carry out exhumations in the area where the massacre had taken place. As there were no forensic experts in El Salvador itself the *Equipo Argentino de Antropología Forense*, Argentine Forensic Anthropology Team, was contacted and carried out a preliminary visit in 1991; however, the judicial authorities did not give permission to undertake the exhumations. A second attempt in 1992 also failed for the same reasons.

"There is no evidence to support the contention that these victims, almost all young children, were involved in combat or were caught in the crossfire of combat forces. Rather the evidence supports the conclusion that they were the intentional victims of a mass extra-judicial execution"

It was only in late 1992 that the team was allowed to carry out the exhumations this time in a process initiated by the Truth Commission.

Exhumations in a small building next to the church in El Mozote were carried out in November 1992 and 143 skeletons were recovered, 131 of them of children under twelve years of age. After thorough examination of the place, ballistic evidence and human remains the experts concluded that "All these facts tend to indicate the perpetration of a massive crime, there being no evidence to support the theory of a confrontation between two groups".⁹

Attempts by the Truth Commission to gather information about the participation of the armed forces in the massacre and to obtain records of relevant orders or reports were met by assertions by the Minister of Defence and the Chief of the Armed Forces Joint Staff that no

⁹Report of the Truth Commission, p 119

records existed for that period. The Truth Commission did, however, identify a number of officers who were in command positions in the Atlacatl Battalion at the time of the massacre.

The Commission found that the massacre “was a serious violation of international humanitarian law and international human rights law”. The Commission also recorded the interference of the President of the Supreme Court “for biased political reasons” in the judicial proceedings initiated in 1990.

In April 2000 the search for the remains of the victims of the massacre was resumed. The exhumations were requested by the investigating court in Morazán [Juzgado Segundo de Primera Instancia], organized by the *Oficina de Tutela Legal del Arzobispado* and carried out by the Argentine Forensic Anthropology Team. Further exhumations are expected to take place during 2001.

No one has been brought to justice for these extrajudicial executions, carried out nearly 20 years ago. The Amnesty Law provides protection to all those responsible for these crimes against humanity and the thousands upon thousands of cases of “disappearance”, extrajudicial executions and torture which took place between 1980 and 1991.

THE RIGHT TO REPARATION

Violations of human rights trigger the obligation of the state under international human rights law to provide reparation. This entails: compensation, restitution, rehabilitation and satisfaction (eg full and public disclosure of the truth and an apology, including public acknowledgment of the facts and acceptance of responsibility). The state should act promptly to fulfill these obligations, especially where state officials are suspected to be responsible for human rights violations. In the cases included in this document the first steps should be the verification of the facts and the determination of responsibility.

The Truth Commission recommended that the state should recognize the good name of the victims and the serious crimes committed against them. It also recommended the building of a national monument in San Salvador, bearing the names of all the victims of the conflict and the institution of a national holiday in memory of the victims of the conflict, and to serve as a symbol of national reconciliation.

Non-Governmental Organizations in El Salvador have been working for a number of years to have these recommendations implemented, but the authorities have not been responsive and very little progress has been achieved. The state should implement these recommendations to signal a willingness to acknowledge the suffering of the victims and their relatives.

As far as Amnesty International is aware nothing has been done with regard to material compensation for the victims and their families despite recommendations by the Truth Commission. In its report it suggested the setting up of a special fund, which would receive contributions from the state, to provide material compensation. Acknowledging the economic conditions prevailing in El Salvador at the time, the Commission made an appeal to the international community to contribute to the fund and suggested that “not less than one percent of all international assistance that reaches El Salvador be set aside for this purpose”. This would be of great help to, among others, victims of torture in need of rehabilitation.

Can we, in these circumstances, when hundreds of boys and girls were taken from their parents' arms, still not knowing what was their fate, talk about social reconciliation? I'm sure we can't; the possibility of reconciliation ... implies learning the truth about what really happened, by knowing where they are, who they live with, what kind of conditions life provided to them.

The clarification of the fate of hundreds of “disappeared” children is another important part of the healing process for Salvadorean society in the aftermath of the civil war. The *Asociación Pro-búsqueda de Niñas y Niños Desaparecidos*¹⁰, Association ‘Pro-Búsqueda’ for the Search of “Disappeared” Children, has been searching for those children for several years and its

efforts should be supported by the authorities.¹¹ Its efforts to engage the government in this process suffered a setback last September when their proposal for the Legislative Assembly to create a commission to investigate the whereabouts of these children was rejected.

¹⁰ See www.probusqueda.org.sv for information on work and cases.

CONCLUSIONS

Amnesty International is gravely concerned by the failure of Salvadorean authorities to comply with their obligations under international instruments to which El Salvador is a party. They have failed or refused to take the appropriate measures throughout the years to carry out investigations and bring to justice those responsible for the crimes against humanity committed between 1980 and 1991. It is further concerned by their refusal to implement the recommendations made by the Inter-American Commission of Human Rights, an action that could have a negative impact on the Interamerican system as a whole.

Amnesty International believes that, for El Salvador to - finally and truly - move forward in unity and peace, it is essential to erase impunity by delivering justice for victims and their families. Continued impunity will prevent true progress and reconciliation, and authorities should stop considering it an option. There are steps which can be taken which do not involve a financial cost or lengthy procedures but which could be seen as positive gestures of understanding and recognition of the suffering of the victims of human rights violations. Authorities should consider such steps instead of their outright refusal to take action and their, at times, insulting statements against the victims.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

If all states lived up to their obligations under international human rights law, the issue of impunity would not arise. However, considering that justice is lacking in all but a minimal number of the thousands of cases of human rights violations perpetrated in El Salvador between 1980 and 1991, Amnesty International calls on the Government of El Salvador to take the following steps:

- **Institutional framework**
 - ➔ Finalize speedily and thoroughly the process to bring the institutions of the state, including the judicial system, to a situation of competence, reliability and trustworthiness.
 - ➔ Ensure that the Office of the Procurator for Human Rights is fully functional, has the necessary resources and the personnel with the skills and training required to perform the tasks assigned to it in the Constitution.
 - ➔ Ensure that all laws and practices are compatible with the country's international legal duty to prosecute perpetrators of human rights violations and provide victims with reparations. A first step in this respect should be the annulment of the Amnesty Law.

- **Dealing with impunity**

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- ➔ Investigate all human rights violations and bring the perpetrators to justice according to international human rights standards.
 - ➔ Considering the scale of the human rights violations involved, the Government should set up a “Programme to end impunity”, including a timetable to bring forward investigations and prosecutions. Within this programme a first step should be to move ahead in those cases where some procedures have already taken place or action is pending, such as:
 - the case of Monsignor Romero, and that of the Jesuits priests, their cook and her daughter the recommendations made by the IACHR have not been implemented.
 - the cases investigated by the Truth Commission and included in the Commission’s final report
 - the relevant authorities should identify any other cases where procedures were initiated but not pursued for whatever reason and set them in motion again.
 - ➔ Guarantee all victims of human rights violations the right to judicial recourse and the right to know the truth.
 - ➔ Refrain from taking any measures which grant impunity, and revoke any such measures which already exist, especially the Amnesty Law.

• **Reparation**

- ➔ Take steps to comply with El Salvador’s obligations under international human rights law and with the recommendations of the Truth Commission.
- ➔ Provide help to victims of torture or other human rights violations who are in need of medical or other health assistance.
- ➔ Take steps to create and contribute to a fund to pay compensation to victims and their families.
- ➔ Put one percent of international assistance into this fund, as recommended by the Truth Commission.

IMPUNITY AND INTERNATIONAL STANDARDS

It has long been a principle of international law that all states are under an obligation to prosecute and punish individuals guilty of human rights violations and crimes against humanity.

The **International Covenant on Civil and Political Rights (ICCPR)** stipulates that victims of human rights violations “shall have an effective remedy” and that the state shall ensure that victims claiming such a remedy will have their “rights thereto determined by competent judicial, administrative or legislative authorities” and that it will “enforce such remedies when granted”. The Human Rights Committee (which monitors the implementation of the ICCPR) has repeatedly asserted that states have a responsibility to investigate violations of the ICCPR, bring those responsible to justice, and provide compensation to the victims. El Salvador is a party to the ICCPR.

The **American Convention on Human Rights (ACHR)** establishes the obligation of states to guarantee the free and full exercise of human rights. States must prevent, investigate and punish any violation of the rights recognized by the Convention, and must attempt to re-establish, if possible, the right that has been violated, and to make reparation for any damages produced by the violation of human rights. El Salvador is a party to the ACHR.

The **Convention against Genocide** and the **UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions** also stress the duty to bring perpetrators of these crimes to justice. In short, individuals must not be allowed to commit serious human rights violations with impunity. El Salvador is a party to the Convention against Genocide.

The **Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, stipulates that states must prosecute or extradite any alleged torturers found within their territory. El Salvador is party to the CAT.

The **United Nations World Conference on Human Rights in Vienna** in 1993 reaffirmed the need for states to “abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law” (UN Doc. A/CONF.157/23,para.60)

The recent adoption of a statute for an **International Criminal Court (ICC)** is perhaps the boldest attempt yet by the international community to address the issue of impunity by providing a permanent international forum for bringing perpetrators of crimes against humanity and war crimes to justice. The Court will be established as soon as 60 states ratify its statute.

In 1996, the **UN Sub-Commission on Prevention of Discrimination and Protection of Minorities** produced a report on the question of impunity of perpetrators of human rights violators. This analysed why it was so important for states to combat impunity and recommended practical measures for addressing the issue.

The **UN Commission on Human Rights** passed a resolution on impunity at its 1999 session. This referred to the above mentioned sub-commission report; emphasized the importance of combatting impunity; called on states to provide information on measures they have taken to do this; and encouraged them to ratify the statute of the ICC as soon as possible. The Commission is currently discussing a draft text of **Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law**.