

# EL SALVADOR @Peace without justice

*"The parties recognise the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution. All of this shall be without prejudice to the principle, which the parties also recognise, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible."*  
- extract from the peace accords signed by the government and the FMLN in New York January 1992.

It is now three months since the UN-appointed Truth Commission published its report, **From Madness to Hope**, documenting massive human rights violations by Salvadorian government forces during the civil war between 1980 and 1992, as well as a smaller number of abuses by the Farabundo Martí Liberation Front (FMLN), **Frente Farabundo Martí para la Liberación Nacional**. Even though the recommendations contained in the report are binding, the government has given no public indication of how and when it intends to implement them. Indeed, the main official response to the report has been the promulgation of a sweeping amnesty law, promulgated on 22 March 1993, which shields the perpetrators of massacres, killings, torture and "disappearances" from prosecution.

An analysis of the Truth Commission's recommendations published by the United Nations in May<sup>2</sup> shows that steps could be taken immediately by the Executive, Legislature or the National Commission for the Consolidation of Peace (COPAZ), **Comisión Nacional**

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<sup>1</sup>Se conoce la necesidad de esclarecer y superar todo señalamiento de impunidad de oficiales de la Fuerza Armada, especialmente en casos donde esté comprometido el respeto a los derechos humanos. A tal fin, las Partes remiten la consideración y resolución de este punto a la Comisión de la Verdad. Todo ello sin perjuicio del principio, que las Partes igualmente reconocen, de que hechos de esa naturaleza, independientemente del sector al que pertenecieren sus autores, deben ser objeto de la actuación ejemplarizante de los tribunales de justicia, a fin de que se aplique a quienes resulten responsables las sanciones contempladas por la ley.

<sup>2</sup>See S/25812/Add.3: Report of The Secretary General on the United Nations Observer Mission in El Salvador, 25 May 1993

para la Consolidación de la Paz,<sup>3</sup> as appropriate to begin implementation of the recommendations. Many do not need any legal reforms to be enacted, some require the drafting of secondary legislation, a small number require a constitutional amendment. All could be implemented if there is the political will to do so.

Amnesty International is calling on the Salvadorian government to repeal the March 1993 General Amnesty Law for the Consolidation of Peace, **Ley de Amnistía General para la Consolidación de la Paz**, and implement as soon as possible the recommendations put forward by the Truth Commission in its report, as well as others which are essential to satisfy the right to truth and justice of those who suffered human rights violations during the course of the civil war. Such measures are not only imperative to come to terms with the past, but also to overcome continuing serious obstacles which have perpetuated the pattern of impunity in El Salvador since the peace accords.

### **The Truth Commission**

The setting up of a Truth Commission as a result of the peace accords was an unprecedented initiative, the first time that a national government and opposition group has mandated a body made up of international personnel to carry out investigations into past human rights abuses. Made up of former president of Colombia Belisario Betancur, former Venezuelan foreign minister Reinaldo Figueredo Planchart and US law professor Thomas Buergenthal together with a team of support staff and advisors, the commission was to clarify the most serious human rights abuses committed by both sides in the context of the civil war. Its tasks also included examining the pattern of impunity with which abuses by government forces were committed and to make legal, political or administrative recommendations to prevent a repetition of past abuses and to stimulate reconciliation. Both the government and the FMLN formally agreed in the accords that they would abide by the Commission's recommendations.

The Commission's report, published in March 1993, confirmed what many Salvadorian 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. Many of the killings, it said, were preceded by torture, "disappearance" and/or rape. It concluded that "death squads" linked to state structures became "an instrument of terror responsible for the systematic physical elimination of political opponents"<sup>4</sup>, and cited the judiciary as bearing a great

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<sup>3</sup> COPAZ is made up of representatives of the government, FMLN and the political parties represented in the Legislative Assembly. It was set up as a supervisory body to oversee the implementation of all the political agreements reached by the two parties to the peace accords and its role includes drafting preliminary legislation related to the peace accords.

<sup>4</sup>"instrumento de terror y de práctica sistemática de eliminación física de opositores políticos".

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 Commission had collected information -through direct testimony or from other sources- about some 22,000 victims of human rights abuses, many witnesses coming forward for the first time.<sup>5</sup> Because of time limitations<sup>6</sup>, however, it selected only 30 cases for in-depth investigations. These were chosen either because they "reflected the most shocking events of the conflict or formed part of a broader, systematic pattern of abuse". Where appropriate those responsible were named because "it is not possible to tell the whole truth omitting names....[The Commission] was entrusted with the task of investigating and describing acts of violence of singular importance and of recommending measures intended to prevent a repetition of such acts in the future. This task cannot be fulfilled in the abstract, suppressing information (for example the names of those responsible) when there is faithful testimony ...., especially when those identified are high-ranking officials and carrying out official tasks directly related to the violations or covering them up. Not to mention names would reinforce the very cloak of impunity which the Parties charged the Commission with removing."<sup>7, 8</sup>

The Truth Commission's report concludes with a series of recommendations, including:

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<sup>5</sup>Amnesty International submitted information about the many cases of killings, torture and "disappearances" which it had documented during the period under investigation to the commission.

<sup>6</sup>The Commission, which began its work in July 1992, had six months to carry out and complete its tasks, but was eventually given a two-month extension to finalise the report.

<sup>7</sup>The decision to name those responsible in the report caused considerable controversy and the government had tried to delay the publication until after the 1994 elections. President Cristiani warned that he could not guarantee the safety of witnesses if the report was published with the names.

<sup>8</sup>No se puede decir toda la verdad omitiendo nombres...A la Comisión... se le pidió investigar y describir hechos de violencia de singular trascendencia y recomendar medidas destinadas a prevenir la repetición de tales hechos en el futuro. Este comitativo no se puede lograr en abstracto, suprimiendo información (como por ejemplo los nombres de los responsables de estos hechos) cuando se cuenta con testimonio fidedigno sobre la misma, sobre todo cuando las personas identificadas ocupan altos cargos y desempeñan funciones oficiales que guardan relación directa con las violaciones o su encubrimiento. El dejar de mencionar nombres reforzaría ese mismo manto de impunidad que las Partes encargaron a la Comisión levantar."

- ◆ removal from office of all military and judicial officials named in the report;
- ◆ banning from public office for ten years of the above, and also FMLN members held responsible for abuses;
- ◆ a fund to be set up to provide financial compensation for the victims of past human rights abuses;
- ◆ an urgent investigation into "death squads", including individual cases, as it perceived these groups as still posing a threat to society;
- ◆ extensive reforms to the judiciary;
- ◆ the setting up of a special legislative commission to ensure that the Armed Forces fulfill their new roles and remains subordinated to civilian control;
- ◆ derogation of article 173 of the **Ordenanza del Ejército** (Army Regulations) which obliges a subordinate to obey an order from a superior officer at all times;
- ◆ implementation of all recommendations put forward by the UN Observer Mission in El Salvador (ONUSAL).<sup>9</sup>

The Commission stated, however, that it could not recommend prosecutions of those responsible for abuses it had investigated because of serious deficiencies in the current judicial system: "The Commission believes that full and timely justice can only be accomplished by a judicial administration renewed in the light of the peace accords".<sup>10</sup> The report also did not make any recommendations as to what should be done with the thousands of cases which it did not have time to investigate, nor did it state a position on a possible amnesty.

### **Official response**

The Truth Commission's report sparked off a storm of protest amongst the military and judiciary. Far from recognising responsibility for the patterns of abuses and the individual cases referred to, military and judicial officials launched a vitriolic attack and threatened court action. The Defence Minister, General Emilio Ponce, who was named in the Truth Commission's report, described it as "unjust, incomplete, illegal, unethical, biased and insolent". The head of the Supreme Court, Dr Mauricio Gutiérrez Castro, announced that only God could remove him from office before his term was completed. The Supreme

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<sup>9</sup>ONUSAL began its operations in El Salvador in July 1991 and was set up to monitor the observance of the peace accords. 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. Since it began its work, the Human Rights Division has issued six 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 has made numerous recommendations to the government on individual cases it has investigated, on patterns of abuses and on institutional reforms, many of which have not so far been implemented.

<sup>10</sup> La Comisión solo confía en una administración judicial renovada a la luz de los Acuerdos de Paz, para que sea ella la que aplique cumplida y oportuna justicia."

Court itself issued a statement on 26 March accusing the Commission of acting with partiality, and refusing to resign as the Commission had called for. Other judges and the Salvadorian Lawyers' Association issued statements in support of the court. Not all the attacks were so overt. The clandestine Secret Anticommunist Army, **Ejército Secreto Anti-Comunista**, denounced the report and warned that its Justice Commission would "carry out de facto justice..against those institutions or individuals who want to harm El Salvador."

The government is obliged by the peace accords to implement the recommendations but President Cristiani has repeatedly stated that only those "which do not violate the constitution" will be implemented and without specifying which ones. COPAZ is also examining the Truth Commission's recommendations but has not, to date, reached consensus on how to deal with them.

In spite of strong international pressure, and from Salvadorian bodies such as the **Procurador para la defensa de los derechos humanos**, National Counsel for the Defence of Human Rights,<sup>11</sup> the authorities have so far given no indications of any specific plans or timetable for implementation of the recommendations. Indeed, the authorities' real intentions regarding the Truth Commission's report were probably best reflected in the General Amnesty Law for the Consolidation of Peace, **Ley de Amnistía General para la Consolidación de la Paz**.

### **The General Amnesty Law for the Consolidation of Peace**

Within hours of the issuing of the report on 15 March 1993, a draft amnesty law had been presented by a pro-government party to the Legislative Assembly. Seven days later, before the country had had time to digest the contents of the Truth Commission's report and in spite of widespread protests and attempts by opposition parties to prevent the law from going through, the General Amnesty Law for the Consolidation of Peace had been passed by majority vote (exclusively of right-wing parties) in the Assembly and had been ratified by the President of the Republic.

In spite of official statements that the law was a necessary step towards national reconciliation, the speed and contents of the law showed that the main objective was clearly to protect from prosecution all those responsible, including judicial officials, for carrying out or covering up human rights abuses committed in the context of the civil war, and specifically those mentioned by name in the Truth Commission's report. A previous amnesty law, the National Reconciliation Law, **Ley de Reconciliación Nacional**, passed in January 1992, had excluded such individuals from amnesty. This law was specifically superseded by the new

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<sup>11</sup> The office of the **Procurador para la defensa de los derechos humanos** was set up in 1992 as a result of the peace accords. Its functions include monitoring respect for human rights, investigating complaints of human rights violations, and making recommendations as to measures needed to protect human rights.

law. The law has provoked widespread criticism, including from the Secretary General of the United Nations, who expressed his concern at the haste with which the step had been taken and his view that "it would have been preferable if the amnesty had been promulgated after creating a broad degree of national consensus in its favour."<sup>12</sup>

On 23 March, Amnesty International wrote to President Cristiani expressing its "dismay and indignation" that the Legislative Assembly had passed the law and calling on him not to sanction a law which showed a blatant disregard for the rights of victims of human rights violations and their relatives, and which would violate well-established principles of international law.

Since the law came into force, after being ratified by the president, it has resulted in the release of two military officials accused of being involved in the killing of six Jesuit priests, their cook and her daughter in 1989, a major accused of ordering the killing of ten peasants in San Sebastián in 1988, and of former soldier César Joya Martínez, detained for his alleged participation in the killing of two peasants during an army operation in 1989 and who subsequently gave testimony about army involvement in "death squads."

Political prisoner Jorge Miranda, and two FMLN members whom the party acknowledged executed two US advisors in 1991 after shooting down their helicopter have also now been released. Two FMLN members accused of taking part in the killing of four US marines in the Zona Rosa area of San Salvador in 1988 have not been released on the grounds that under the Vienna Conventions those found responsible for killing individuals with diplomatic status cannot be amnestied. In this case, the judge turned down a petition for their release under the new amnesty law reportedly on the grounds that the provisions of international treaties take precedence over domestic law. The Truth Commission recorded serious irregularities in their trial. In June, a court also refused to release five former National Guardsmen convicted of killing four US nuns in 1980. The judge argued that the crimes were not political and that there was no evidence of instructions from the guardsmen's superiors to carry out the killing.

The General Amnesty Law for the Consolidation of Peace does not prevent preliminary investigations such as the exhumation of bodies, and some investigations were started at two sites where mass killings had occurred (the Rio Sumpul massacres, Chalatenango, where hundreds of fleeing peasants were killed by the Salvadorian and Honduran armies in 1980, and Nueva Trinidad, where it is alleged that up to 200 villagers, many of them civil patrol members, were killed by the FMLN.) However, the law will prevent any investigation to establish who was responsible for these and other human rights abuses committed in the context of the internal conflict and to bring them to justice.

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<sup>12</sup> Report of the Secretary-General on the United Nations Observer Mission in El Salvador, 21 May 1993

At least two petitions were presented to the Supreme Court challenging the legality of the law, one by the non-governmental Human Rights Commission (CDHES), **Comisión de Derechos Humanos de El Salvador**, the other a joint petition by the Human Rights Institute at the University of Central America, IDHUCA, **Instituto de Derechos Humanos de la Universidad Centroamericana**, and the church sponsored Legal Aid office, **Socorro Jurídico**. The petitions argued that the law violates the Salvadorian Constitution, including article 244, which relates to the applicability of amnesties to crimes by officials during the same period of presidential office they were committed under, and article 144, regarding the obligation of the State to abide by international human rights standards which it has ratified.<sup>13</sup>

The Salvadorian **Procurador para la defensa de los Derechos Humanos** has also criticised the amnesty law and urged that the petitions before the Supreme Court be heard "fully respecting all guarantees of due process". However, on 20 May 1993, the Supreme Court declared that the petitions were inadmissible arguing inter-alia that certain political matters of the Executive and the Legislature cannot be subject to judicial review. The three human rights bodies who presented the petitions were not informed officially about the ruling but learnt about it from the press.

#### **International response to the Truth Commission's report and the amnesty law**

The Truth Commission's report received widespread support from foreign governments and international bodies, and the Salvadorian government has been under strong pressure to implement the recommendations. The United Nations Security Council and the European Parliament both issued resolutions to that effect, as well as commenting on the amnesty law. For example, in resolution 832 dated 27 May 1993, the UN Security Council urged the Government and the FMLN to "respect and implement fully all the commitments they assumed under the Peace Accords, including, **inter-alia**,...the recommendations of...the Commission on the Truth". In April, the European Parliament, in Resolution B3-0526, stated that "the General Amnesty Act should under no circumstances be interpreted or used to hinder the full implementation of the recommendations contained in the report by the Truth Commission, which should be implemented in full as soon as possible", and called on the government to "implement immediately all the recommendations contained in the report... particularly the rapid and urgent reform of the judiciary, a detailed inquiry into the "death squads", the end of impunity and a programme of moral and material rehabilitation for victims of human rights violations and their families."

In addition, Salvadorian government representatives were repeatedly questioned about the amnesty law and about their intentions regarding implementation of the recommendations at a World Bank Consultative Group meeting in Paris at the beginning of

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<sup>13</sup>Salvador has ratified the American Convention on Human Rights and the International Covenant on Civil and Political Rights.

April. The World Bank had called together 11 multilateral institutions and representatives of 17 countries to discuss the financing of El Salvador's reconstruction plan. The Dutch government, which is demanding that those responsible for the murder of four Dutch journalists in El Salvador be prosecuted, reportedly withheld 4 million dollars of aid until the Truth Commission's recommendations are implemented.

In the US, where the Bush and Reagan administration approved millions of dollars of military aid throughout the 1980's as well as providing military training and advisors, the Truth Commission's report provoked renewed public debate about how much the state administration at the time knew about and covered up human rights violations in order to allow the military aid to be approved by Congress. A State Department-appointed panel is currently conducting an inquiry into State Department activities on El Salvador at the time, including "an examination of the Department's and the embassy's human rights reporting, the degree to which full and objective inquiries into abuses by both sides in the conflict in El Salvador were conducted and the approach taken by the Department to Congressional and public inquiries on these issues." There is concern, however, that the inquiry will not be broad enough and that it should be extended to cover all agencies of the state which had dealings with El Salvador at the time, including the Department of Defence.

### **AI's Concerns and Recommendations**

The publication of the Truth Commission's report is an unprecedented and important first step towards uncovering the truth about past human rights violations. In addition to the report, numerous other measures are being or have been carried out in the context of the peace accords, which, if fully and properly implemented, could lead to lasting improvements in the human rights situation. However, the organization believes that the legacy of the past cannot be properly addressed unless those responsible for human rights violations in the past are held fully accountable for their actions, and the structures responsible for the repression identified and fully dismantled or purged. Repeated setbacks to the reform programme agreed in the peace accords<sup>14</sup> and on-going serious human rights violations, which have taken place against a backdrop of high levels of violent crime, show how that there is still much progress to be made until human rights are fully protected. Although there is no longer a pattern of widespread politically motivated extrajudicial executions, for example, and no "disappearances" have been reported for some time, killings which could amount to extrajudicial or summary executions, whether or not politically motivated, have been reported, and the courts are still failing, for the most part, to carry out full investigations and

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<sup>14</sup> Some units which had been accused of systematic gross human rights violations in the past, such as the Atlacatl Battalion, Civil Defence patrols, the Treasury Police and the National Guard have already been dismantled, and a new National Civil Police force is currently being set up. The National Police was to be gradually dismantled as the National Civil Police moved towards becoming fully operational. However, in May 1993, UN Secretary General Boutros Boutros Ghali criticised the government for boosting the ranks of the National Police with members of other security forces, which it had abolished, and with demobilized soldiers, instead of taking steps to reduce it in size.



identify those responsible. Although torture is no longer systematic, there have been reports of cruel, inhuman and degrading treatment, mostly of criminal suspects, and at least two detainees reportedly died in police custody in 1992.

Amnesty International is calling on the government to implement the recommendations contained in the Truth Commission's report and in reports by ONUSAL and the UN Independent Expert on El Salvador, Pedro Nikken, as well as others such as the repeal of the General Amnesty Law for the Consolidation of Peace. These measures are essential in order for the government to fulfill its obligations regarding the rights of victims of human rights violations and their relatives, to end the pattern of impunity which persists to this day, to eradicate abuses and prevent a repetition of such violations in the future. The measures outlined below are not exhaustive, but are of particular importance in relation to Amnesty International's concerns regarding impunity.

**1. Immediate repeal of the General Amnesty Law for the Consolidation of Peace** on the grounds that it is unacceptable, under the principles of international law, that such a law should be passed before investigations have been carried out to identify and bring to justice those responsible for gross human rights violations which occurred between 1980 and January 1992. The Salvadorian Government has ratified both the American Convention on Human Rights and the International Covenant on Civil and Political Rights, the provisions of which, according to article 144 of the Constitution, are incorporated into domestic law. In addition, the amnesty law appears to violate article 244 of the Constitution which states that public, civil or military officials cannot benefit from an amnesty during the presidential period during which they committed a crime.

**2. Full investigations into past human rights abuses and the bringing to justice of those responsible.** All victims of human rights abuses and their relatives have the right to seek the truth and justice. The Truth Commission's report investigated only a handful of the thousands of cases which were reported. Steps need to be taken to continue to investigate the many cases of abuses which the Truth Commission was not able to look into, or which may come to light in the future - given that the persisting fear of reprisals, may have prevented witnesses from coming forward.<sup>15</sup> Statements by President Cristiani have expressed scepticism about the need for investigations and that it is a matter of either "investigating actions that occurred in the past or preventing the existence of those groups at present and preventing violence of that nature". However, identifying the structures and individuals responsible for gross human rights violations is an essential step towards preventing future human rights violations. This is particularly true of clandestine structures termed "death squads" (see below).

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<sup>15</sup> Many of the witnesses who testified to the Commission did so on the understanding that they would not be identified because of fears for their safety and the Commission itself stated that, as far as possible, it had taken precautions to prevent witnesses from being identified.

It is of particular importance, too, that investigations are initiated into the several thousand cases of "disappearances" which were included in the appendix to the Truth Commission's report. Their relatives have at minimum the right to know where their loved ones are and to bury their dead with dignity.

**3. Removal from office of all military and judicial personnel named in the Truth Commission's report**, as well as any others suspected of carrying out or covering up serious human rights violations, as a first step towards bringing to justice those responsible for these abuses. Some army officers accused of human rights violations have already been purged from the army as a result of the recommendations made by the Ad Hoc Commission<sup>16</sup> in October 1992. According to the UN, once the Ad Hoc recommendations have been implemented, ten of the approximately 40 military officers named in the Truth Commission's report will still be on active duty. One senior military official named in the Truth Commission's report, deputy Defence minister General Juan Orlando Zepeda, retired at the beginning of April 1993. Two more were retired on 1 May. General Emilio Ponce, Minister of Defence, believed to have been named in both reports, is due to leave office at the end of June. At least three judicial officials are named in the Truth Commission report.

#### **4. Compensation for victims**

The Truth Commission recommended that a fund be set up to provide financial compensation for the victims of past human rights abuses. The Commission recommended that the state contribute to the fund but given the resources needed it called on the international community to provide additional funds. It also suggested that a minimum of one per cent of any international aid to El Salvador should be earmarked for the fund and that the fund should be managed by a directorate of three members, one named by the government of El Salvador, one by the Secretary General of the UN and a third by mutual agreement of the two parties. Amnesty International supports the recommendation for providing compensation for victims of human rights abuses and their families. Such a principle is enshrined in international standards. The organization believes that provisions for compensation should include access to appropriate medical treatment or other rehabilitation programmes.

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<sup>16</sup> The Ad Hoc Commission, also created as a result of the peace accords, had been given the task of examining the professional performances, including human rights record, of army officers and to identify those to be removed from office. In the short time available to it, however, it was only able to examine the records of some 230 officers (10 per cent) and finally drew up a list of 102 officers, who should have been removed from office by October 1992. Although some of the officers were removed in early 1993, the government repeatedly balked against fully implementing the Ad Hoc Commission's recommendations. After strong international pressure, including the suspension of non-lethal US military aid, the government finally presented proposals in March 1993, accepted by the UN Secretary General, to place on leave with pay by 30 June, the fifteen senior officers whom it had refused to dismiss in previous rounds of negotiations.

**5. An immediate investigation into "death squads"** and other illegal armed groups to identify the structures and individuals involved. The Truth Commission's report confirms allegations which have been made repeatedly over the years by Amnesty International and other organizations<sup>17</sup> that "death squads" were inextricably linked to state structures and responsible for the systematic secret murder, torture and "disappearance" of suspected government opponents. It gave examples of different types of "death squads", including one led by the deceased ARENA party founder Roberto D'Aubuisson - accused of masterminding the killing of the Archbishop of San Salvador, Monseñor Romero, in 1980 - and also "death squads" which operated from the S-II or CII intelligence structures within army brigades, allegations which had been made by a number of army deserters in the past and supported by other information collected over the years. The Commission also reported on the "close relations between the military, hired assassins and extremists within the Salvadorian business community and some affluent families, who resorted to killing to settle disputes" and stated that "this practice must end." In addition, the Commission reported that the US Government "tolerated" the activities of a number of Salvadorian exiles living in Miami who "directly financed or indirectly helped to lead some of the "death squads".

The Commission, which received 800 complaints of "death squad" abuses, said it was unable to investigate the issue of "death squads" thoroughly but said that the problem was so serious as to warrant a special inquiry because of the threat that such groups still posed to society. Amnesty International endorses the Truth Commission's recommendation to set up a special inquiry, including case by case investigations to establish the identity of those responsible and bring them to justice, in order to identify "death squad" structures and ensure that they are dismantled, recommendations which the organization has made repeatedly in the past. Such an inquiry should include investigations into the extent of links with state institutions, including intelligence bodies such as S-II or C-II. In this respect, Amnesty International also supports the Commission's recommendation that "it is highly necessary, for the future of El Salvador, that the state pays attention to the role of the intelligence services and the way this branch of government was exploited to identify individuals for "disappearance" or execution."<sup>18</sup> It said that an investigation was necessary to clean up the intelligence services and identify those responsible for "this aberrant practice".

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<sup>17</sup> See for example **El Salvador: 'Death Squads' - A Government Strategy** published by Amnesty International in 1988.

<sup>18</sup> "Es altamente necesario para el futuro de El Salvador, que el estado ponga atención al uso del servicio de inteligencia y la explotación de este brazo de gobierno para identificar personas para matarlas o desaparecerlas. Una investigación debe llevar tanto a un saneamiento institucional del servicio de inteligencia como a la identificación de los responsables de esta práctica aberrante".

Following the publication of the Truth Commission's report, President Cristiani stated, in response to press questions about "death squads" on 29 March, that since the ARENA party had come to power, it had been investigating all groups that may be involved in this type of crime. He said that the government would continue trying to prevent activities of this nature and that investigations have always been, and will continue to be carried out "to eradicate such groups". Similar statements have, however, been made in the past but there has never been any evidence to suggest that such investigations were ever carried out. In mid-May President Cristiani reportedly told Reuters press agency that he had no plans to set up a special investigation into "death squads" on the grounds that it would be difficult to investigate events which happened in "the early 1980s."

The need for a special inquiry into "death squads" is urgent. Even though there has not been a pattern of widespread politically motivated executions by "death squads" since the signing of peace accords in January 1992, death threats by clandestine groups against political and other activists remain common, some of the threats being published in newspapers. Some killings have also occurred in circumstances suggesting the victims may have been executed for political reasons and which bear the hallmarks of the "death squads". In addition there have been a number of other assassinations also in "death squad" style where the victim was clearly selected for execution even though the motive may not be clear. (Characteristics of such killings include the mutilation of bodies, often with the hands tied by the back, and the removal of identity papers to prevent identification.) In a recent homily, for example, the Auxiliary Bishop of San Salvador warned about continuing "death squad" activities, citing the case of the body of a young woman found on a main road in a known dumping ground for corpses. The **Procurador para la defensa de los derechos humanos**, in his second report published in April 1993, also expressed concern that "violations of the right to life have continued and in some cases present characteristics and elements which give reasonable grounds to believe there were political motives"<sup>19</sup>. He also expressed his concern that killings had increased in recent days, and that corpses had appeared with signs of torture and violence prior to execution.

One of the most recent cases reported to Amnesty International is that of the attempted assassination of Gregorio Mejía Espinoza, member of the Democratic Convergence, **Convergencia Democrática**, who was allegedly captured in May 1993 by armed civilians in a manner reminiscent of "death squad" style abductions commonly documented in the past. After interrogation and torture, his captors reportedly attempted to shoot him but he managed to escape when the gun failed to go off.

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<sup>19</sup> "Las violaciones al derecho a la vida persisten y en determinados casos presentan modalidades y elementos que razonablemente puedan reputar la existencia de móviles políticos."

Pinpointing responsibility for these killings and threats is difficult because of the clandestinity with which the perpetrators operate. Because of this secrecy and the fact that such groups have never been investigated, it is also difficult to determine to what extent those responsible are linked to the "death squads" which operated in the past. It is clear, however, that, as in the past, the perpetrators are able to operate with impunity as the authorities have consistently failed to fulfill their obligations to investigate the full circumstances of each killing, identify and prosecute those responsible. They must therefore bear at minimum some responsibility by omission for the activities of these groups.

**6. Much stricter control must be exercised over the possession and use of weapons by active military and police personnel.** In addition, the recall of all military weaponry in the hands of civilians, including former members of the military and security forces, agreed in the peace accords, should be carried out as a matter of urgency. In his May 1993 report, the UN Secretary General expressed his grave concern that the process, which should have been completed by December 1992, was at a virtual standstill. He pointed out that "only 40 per cent of the arms included on the lists provided by FAES [the Armed Forces] have been recovered and the number of weapons that [ONUSAL] has been able to verify is even smaller. Even more disturbing is the likelihood that the FAES inventory does not include all the weapons that were distributed by FAES during the years of conflict.." The Truth Commission also expressed its concern about the fact that hundreds of former Civil Defence members remain armed in rural areas, warning that "these people could easily mobilise themselves to carry out new acts of violence in the future if they are not clearly identified and disarmed."<sup>20</sup>

The drawing up and promulgation of legislation to regulate private security groups is another element of the peace accords still to be implemented and which was reiterated in the Truth Commission's recommendations. In drafting new legislation to control private armed groups, the government must ensure that a supervisory body is set up to ensure that any group authorised to carry arms operates strictly within legal requirements. COPAZ is reported to be currently considering the preliminary draft of this law.

**7. Steps should be taken to ensure that the judiciary is reformed into an independent and impartial body which carries out full and effective investigations into human rights violations and brings to justice those responsible.** These steps should include measures agreed in the peace accords, together with others recommended by the Truth Commission, ONUSAL, the UN Independent Expert on El Salvador, and the **Procurador para la defensa de los derechos humanos** both regarding structural reforms and specific case investigations. All have been particularly critical of the lack of independence of the

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<sup>20</sup> "Esta gente, fácilmente podría movilizarse para nuevos actos de violencia en el futuro, si no están claramente identificados y desarmados"

judiciary, its failure to investigate human rights violations and the continuing pattern of impunity.<sup>21</sup>

In its April 1993 report, ONUSAL summed up some of the persisting problems regarding case investigations, including: "...the absence of any policy governing the preservation of evidence relating to deaths or the taking of minimum care to preserve such evidence; the absence of any measures to ensure the safety of witnesses, and the improper handling of testimony; the failure to use the proper technical means to establish the cause manner and time of death; the failure to perform autopsies in a significant number of cases, notwithstanding the commendable efforts of the Institute of Forensic medicine, and the inefficiency of the judicial system and its auxiliary organs in identifying those responsible for deaths. This inability to investigate crimes is reflected in the failure of judges to show any initiative in taking the requisite legal steps in the early stages of the investigations; in the slow and delayed participation of the Office of the Attorney-General; in the meagre or invalid evidence gathered for the purpose of establishing criminal liability; and in lenience in investigating cases involving military personnel or agents of the security forces, the direct result of which is impunity."

Some structural reforms, such as the setting up of a reformed National Council of the Judiciary, **Consejo Nacional de la Judicatura**, and changes to the procedures and conditions for electing Supreme Court judges have taken place, but legal experts have stated that there is still a need for other measures, including steps to reduce further the vertical powers of the Supreme Court and increase the independence of judges. Amnesty International believes the newly elected National Council of the Judiciary should carry out as soon as possible its proposed investigation into the competence of all judges and that the investigation should include an inquiry into how effectively the judges investigated human rights violations.

Amnesty International also recommends that the Legislative Assembly, in accordance with its constitutional powers, conducts an inquiry into the conduct of the Supreme Court, in order to establish to what extent judges failed to carry out their statutory obligations in the handling of investigations into human rights abuses and to initiate administrative and legal proceedings as appropriate.<sup>22</sup>

## **8. The government should recognize the jurisdiction of the Inter-American Court of Human Rights, and ratify the UN Convention against Torture and Other Cruel, Inhuman or**

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<sup>21</sup> See UN documents E/CN.4/1993/11: Report of the Independent Expert on El Salvador, Mr. Pedro Nikken, 9 February 1993 and S/25521: Report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador to the UN Secretary General, 5 April 1993.

<sup>22</sup> The Truth Commission called on all members of the Supreme Court to resign but the UN has concluded that the recommendation was not worded in such a way as to make it binding.

Degrading Treatment or Punishment, the American Convention to Prevent and Punish Torture and other human rights instruments as appropriate.