

## El Salvador: Transitional Justice? Traditional Impunity?

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*In fact, the people who have lost their families  
shut themselves in a world of suffering  
and do not think it is important to express how they feel.*

*Or they do not trust anyone to say 'I want to talk about all this.'  
So, this is one of the things we are facing: there is no confidence in the system.  
Therefore, victims continue being victims.  
And something worse than being victims, they are the poorest and most humble people.  
(María Santos Miriam Rodríguez de Chicas)*

## Introduction

The disrespect for the popular majority,<sup>1</sup> materialized in the systematic violation of their dignity, was both a cause and a consequence of a war that for more than eleven years shattered lives and values, infrastructure, and assets; it also devastated a society that was not inclusive or balanced at all in different areas. That reality denied equity, justice, and a political participation to the majority of the population. A radical change of such a scenario was a widespread aspiration that settled inside and outside the country at the end of the long confrontation between the then-Government and the then-insurgent Farabundo Martí National Liberation Front (FMLN).

The human dimension of the Salvadoran conflict, due to its figures and characteristics, was attested by the Truth Commission report. Its suggestive title was a true reflection of the situation: “From Madness to Hope.” The structural causes that increased governmental repression, generated guerrilla violence, and sparked off the war conflict –with its most atrocious manifestations<sup>2</sup>– represent the highest expression of the former. In such a context and for long time,<sup>3</sup> the performance of the justice system remained “trapped with no way out” by factual powers.<sup>4</sup> After “the madness,” there was “hope” to build a different El Salvador. A “common house” where everybody, without any distinctions, will live in a home built with a few “planes”<sup>5</sup> where the foundations were clear<sup>5</sup>

The United Nations called the set of agreements between belligerent parties “the road to peace.” It was the master key to close the door to the armed conflict and open it to the legitimate desire to achieve a safe and harmonious collective coexistence. This was very different from the precarious situation prevailing twenty years after the end of hostilities because what they were seeking was a solid and long-lasting peace based on truth and justice for the popular majorities, in every aspect of the social relationships.

Truth and justice for the victims of the violations of the International Human Rights Law and International Humanitarian Law, which were very severe and numerous. The fatal victims of such a war between 1980 and 1992 were nearly 70,000. But also, truth and justice should be applied to the perpetrators and the country. Moreover, perpetrators should recover their status as people through the collective investigation of their accountability and an impartial lawsuit, with all the due guarantees, to be pardoned, if granted by their

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- 1 For Ignacio Ellacuría such a population “lives under circumstances in which they can hardly meet their basic fundamental needs” and is “marginalized with regard to the elitist minorities which, still accounting for the smallest portion of mankind, use most of the available resources for their own good.” Their destitute status does not come from “natural laws or personal or group negligence, but from historical social structures” that put it “in a strictly deprivation situation, and not a merely deficiency situation” regarding everything owed to this society as a result of its exploitation or because it is indirectly prevented from “using its labor force or its political initiative.”
- 2 Summary executions, illegal detentions, enforced disappearances, and massacres, among others.
- 3 Before the presidential, legislative, and municipal elections of 1972, the official repression was already severe. After said elections and a failed coup d'état, the situation worsened. Two important events help us understand the economic, social, and political climate which became “more and more heated”: the war against Honduras in July 1969, together with the abduction and murder in February 1971 of Ernesto Regalado –a member of the “fourteen most powerful families” in the country –perpetrated by an early guerrilla. See Cuéllar, B. (2007). El Salvador. In Due Process of Law Foundation. *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America: The Cases of Argentina, Guatemala, El Salvador, and Peru.* Mexico: Human Rights Commission of Mexico City. Pages 56-67. Available at <http://www.dplf.org/uploads/1202485080.pdf>.
- 4 “Many of these accusations of repression, intimidation, and imposition were very difficult to prove without the cooperation of the Government, the Legislative Assembly, and the Courts. Only through the calmness to be achieved over the years, we will be able to prove the level of response to such a reality.” (page 51). In Hernández-Pico, J., (et. al.). (1973). *El Salvador: Año político 1971-1972.* Publications of Universidad Centroamericana José Simeón Cañas. Guatemala: Editorial Piedra Santa.
- 5 First peace accord between the Government and the FMLN signed in Geneva on April 4, 1990. Some of the purposes of the process were: end war through political means in the short run, democratize the country, an unrestricted respect for human rights, and the reunification of society.

victims.<sup>6</sup> For El Salvador, the blood that continues to be shed by the popular majorities will not decrease until society and the governmental bodies propose –once and for all– a determined and final end to impunity. If political violence was overcome two decades ago, the great challenge now is to overcome a policy that generates more violence. We are talking about the lack of punishment of crimes.

What dear Luis “Lucho” Pérez Aguirre stated in 1996: “If it is impossible to prove that impunity has no place in society because it has been possible to access the truth of what happened and do justice to create the conditions of reconciliation, such a society is doing a political harakiri; it is moving on a cliff toward a fate of ethical and social suicide”<sup>7</sup> is “a perfect fit” for this irresponsible management of the “transition.”

## 1. The Magnitude of “Madness”

The Truth Commission<sup>8</sup> investigated a relevant number of atrocities, but not all. The daunting task, the allocated human resources and materials, the investigation restrictions<sup>9</sup> and their reporting period –six months after three of its members took office and<sup>10</sup> which later increased to eight - contributed to this situation. But moreover, something crucial that was not considered nor was it solved, to build trust and security for those who suffered gross violations was the fear of the surviving victims and their certainty that something inescapable was to continue coexisting with the perpetrators in their communities while the structural military power was threatening. They had to live under a situation of pain and fear; they also had to coexist with those who were responsible. María Santos Miriam Rodríguez de Chicas summarizes this: “I remember when we started to perform all the tasks related to The Mozote; there were no witnesses at that time. Of course, we were just ending a war; all the people feared that they would be also victims.”<sup>11</sup>

This condition of logical and understandable fear could have been overcome if there had been previous public manifestations among perpetrators acknowledging the facts or facilitating the search for the disappeared; however, nothing like this happened. Regarding the risks of a general pardon, exclusively social and political, Pérez Aguirre said that there should be: “... the means to overcome the vicious circle of revenge in their own hands, but never at the expense of incorporating the unrepentant enemies, with their

6 “[...] in order to achieve the goal of pardon, we must pause and weigh certain consequences which can be inferred from the knowledge of truth [...] One such consequence, perhaps the most difficult to address under the country’s current situation, is that of fulfilling the twofold requirement of justice: punishing the perpetrators and adequately compensating the victims and their families” (page 321). Betancur, B., (et. al.). (1993). From Madness to Hope. The 12-Year War in El Salvador. Report of the Truth Commission for El Salvador. In *Revista Estudios Centroamericanos* (ECA). XLVIII Year.

7 Pérez, L. (1996). *La impunidad impide la reconciliación nacional*. Intervention in an international seminar on impunity and its effects on democratic processes. Santiago.

8 The creation of the Truth Commission was defined on April 27, 1991, in the Mexico Agreements; in this city it was ratified on January 16, 1992, through the Final Peace Accord known as the Chapultepec Agreement.

9 Item IV of the Mexico Agreements determined that it would only investigate “serious acts of violence that have occurred since 1980 and whose impact on society urgently requires the public to know the truth.”

10 On July 12, 1992 at the United Nations, New York, before the recently appointed Secretary General: Boutros Boutros-Ghali.

11 Municipal Mayor of Perquín, Department of Morazán, from 2000 to 2012. She said, “I worked in the base ecclesial communities. I was part of the organization ‘Christian Mothers for Peace.’ We played the role of advocates of human rights of the population. We did a support work when there were detentions. We dared to talk to the military officers to see if it was possible to release them; we reported these incidents. We worked by helping communities through the International Committee of the Red Cross (ICRC), with the Archbishop; they gave us food and clothing. What was difficult was to take things there. We had to pass by the DM-4 (Military Detachment 4); we had to fight against them; we had to request authorizations. At that time, we had to find solutions. It was interesting to see how organized women were. Then, I also worked on health issues and then on literacy activities. Then, I was involved in politics in 1993. That’s why I am still here.”

hatred and injustice in the community, and doing without a serious and thorough analysis of the purposes. It would be like having a wolf in the middle of a flock of sheep.”<sup>12</sup>

Moreover and especially, strategic actions should have been taken to overcome the lack of confidence of the victims if they should have been reassured –because they are the most affected party with the least protagonist in the attempt to disclose the truth– that the next outcome would be justice. Second, this should have been demanded both by the United Nations –in the Human Rights Division of the ONUSAL<sup>13</sup>, with the strong support of the Secretary General– and by the Truth Commission, based on its mandate.<sup>14</sup>

Nevertheless, this Commission heard 2,000 direct testimonies that involved over 7,000 victims; the information from secondary sources produced over 20,000<sup>15</sup>. According to the type of facts, the result was as follows: homicides 54.71% of the total, enforced disappearances 20.67%, torture 20.70% and “others” 3.92%.<sup>16</sup> However, as pointed out above, the efforts by this institution, temporary but essential for the success of the process and aimed at the full restoration of the dignity of the victims, fell short in the face of the brutality recorded by national and international social human rights organizations and the inter-governmental protection systems.<sup>17</sup>

This was evident when the aforementioned Commission concluded its account of the devastation by warning that “the brief chronological overview is just part of the tragic events in the recent history of that country.”<sup>18</sup> Those “tragic events” were not the result of “rotten apples” in the military that spread panic, or “terrorist criminals” who “executed” their “enemies.” Their accountability must be quantified but, most of all, the quality of the accountability must be determined. After adding the accountability of the State agents and groups who acted with their consent and support, the balance surpassed 90% of the total. The importance of this must not be denied; however, there are still people who deny it.

Moreover, the Governments and the state institutions at that time carried the burden of having done quite the opposite of their constitutional mandate: guarantee the respect for human rights. Specifically, the Commission held the Armed Forces of El Salvador (FAES) accountable for 46.59% of the cases; the security groups 20.87%; the paramilitary organizations 16.62%; the death squadrons 7.18%; the groups of “unidentified armed men” 5.42%, and the FMLN 3.32%.

## 2. The Agony of “Hope”

The aforementioned “planes” that the country was planning to build started to be manipulated and distorted, especially as of March 20, 1993. There were signs pointing to that direction even though the United Nations verified the compliance with the commitments made by the parties to leave war behind and embark on a peace-making journey. But that day, five days after submitting the report of the Truth Commission in New York, the Legislative Assembly passed the General Amnesty Law for the Consolidation of Peace; on that day truth and justice were linked.<sup>19</sup> On March 14 of that year, supported by his presidential investiture,

12 Pérez, L. Op. cit.

13 UN Observer Mission in El Salvador.

14 “The need to create confidence in the positive changes which the peace process is promoting and to assist to the transition to national reconciliation.” Subparagraph b, item IV. Mexico Agreements.

15 Betancur, B. (et. al.). (Op. Cit.).

16 Severe injuries, extortive abduction, rape, and other gross acts of violence.

17 For a better understanding, see Cuéllar, B. (2010). El Salvador. In Due Process of Law Foundation. *Victims and Transitional Justice. Are Latin American States of Complying with International Standards?* Washington. Pages 130-134. Also available at <http://www.dplf.org/uploads/1285258696.pdf>.

18 Betancur, B. (et. al.). (Op. Cit.). P. 196.

19 Voted by the Nationalist Republican Alliance (ARENA), the National Reconciliation Party (PCN), and the Authentic Christian Movement (MAC).

## INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

Alfredo Cristiani asked for a comprehensive, general, and absolute amnesty for the offenders as set forth in the report. This request fell on fertile soil: Parliament responded without waiting for the population to know the contents of the report or hearing the victims.

As reinforcement of impunity and in tune with the way of conducting the alleged “depuration” of the FAES,<sup>20</sup> amnesty favored those who violated human rights, perpetrated crimes against humanity and crimes of war; it has also hindered the “path to peace.” It also closed the door to the conscious forgiveness by the victims, the acceptance of guilt by the perpetrators and dangerously kept judicial structures that, in an unsuitable use of their powers, tolerated and covered up practices of serious disrespect for individual and collective dignity.

Resorting to a specific amnesty to stop a criminal act for a specific case is possible within the framework of transitional justice provided it does not breach the International Human Rights Law and International Humanitarian Law, as it happens with “self-amnesties”<sup>21</sup> and the amnesties negotiated between criminals to guarantee their impunity. Therefore, the Inter-American Court of Human Rights warned the Salvadoran State that it had to avoid using those figures; and also about “... the prescription or the establishment of measures designed to eliminate responsibility, or measures intended to prevent criminal prosecution or suppress the effects of a conviction.”<sup>22</sup> Instead, its duty was to investigate and punish those responsible “... for gross violations of human rights such as torture, summary, extralegal, or arbitrary executions, and enforced disappearances, [...] forbidden because they contravene non-derogable rights [...]”<sup>23</sup>.

Since the amnesty of March 20, 1993 was an affront to the victims, the State resorted to Protocol II of the Geneva Agreements to “defend” it. Six days after its approval and before the expiration of the term that Cristiani had to pass, veto, or abide by it, the Inter-American Commission on Human Rights (IACtHR) tried to convince him to come to his senses and think in terms of the victims, but the decision was final from the perspective of the interest of the State and individual perpetrators.<sup>24</sup>

Therefore, there was a strengthening of impunity whose solution was defined as necessary by the signatory parties to the agreements, which had also accepted to prosecute the acts investigated by the Truth Commission regardless of their perpetrators.<sup>25</sup> They also agreed, voluntarily and sovereignly, to cooperate with the Commission and observe its recommendations.<sup>26</sup> But with the amnesty officially imposed by three political parties, the surviving victims and their families were denied the right to truth and the possibility to receive decent and complete reparation for the damages they suffered. On the other hand, perpetrators were not punished either.

20 Therefore, another transitional mechanism was created in 1992: the *ad hoc* Commission to depurate the military institution, whose members, unlike those of the Truth Commission, were Salvadoran.

21 “The laws of self-amnesty lead to the defenselessness of the victims and to the perpetuation of the impunity, whereby they are manifestly incompatible with the letter and the spirit of the American Convention. These laws hinder the identification of the individuals responsible for violations of human rights, as obstacles as created to the investigation and the access to justice, preventing the victims and their relatives from knowing the truth and receiving the corresponding reparation.” Inter-American Court of Human Rights. *Case of Barrios Altos vs. Perú*. Judgment of March 14, 2011. Merits, number 41.

22 Inter-American Court of Human Rights. *Case of the Serrano Cruz Sisters vs. El Salvador*. Judgment of March 1, 2005. Merits, reparations, and costs. Number 172.

23 Inter-American Court of Human Rights. (2005).

24 IACtHR. (1994). General Conclusions of the Report on the Situation of Human Rights in El Salvador. (Number 4, item II). Available at <http://www.cidh.oas.org/countryrep/ElSalvador94sp/indice.html>.

25 Chapultepec Agreement. (Number 5, chapter I).

26 They did it in the Mexico Agreement. Regarding the compliance with the conclusions and recommendations of the Truth Commission, see Cuéllar, B. (2005). *Los dos rostros de la sociedad salvadoreña*. In G., Pacheco, L., Acevedo. (Eds.). *Truth, Justice, and Reparation*. IIHR/IDEA. San José. Available at [http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD\\_395509089/IDEA-IIDH.pdf](http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_395509089/IDEA-IIDH.pdf).

The other side of the coin was the failure to comply with the recommendations of the Truth Commission aimed at reforming, essentially, a justice system trapped by intimidation and corruption within the framework of a State at the service of privileged groups. With such a battered “institutionalism” accessory to the brutality, the concerns of the Commission were valid.<sup>27</sup> But the formal and actual powers decided to keep it that way, for their own benefit. Therefore, Cristiani asked to “turn such a painful page of our history and seek a better future for our country.”<sup>28</sup> Both the military leadership<sup>29</sup> and the plenary Supreme Court of Justice (CSJ)<sup>30</sup> objected the Commission and its report. The party founded by Roberto D’Abuisson<sup>31</sup> also objected the Commission and defended its leader. The Nationalist Republican Alliance (ARENA), controlling the state apparatus, said that it was “turning [sic] this sad this sad page of violence and terror [...]”<sup>32</sup>. Period! So unilateral and arbitrary, with its usual prepotent and proud attitude.

Due to this attitude and particularly the opposition to justice, it did not undertake urgent substantial reforms to change the system for the sake of a peaceful El Salvador; therefore, there were cries for a reversal of amnesty and a return to the original “planes” of such a different country. Among others, four entities expressed their concerns: the Human Rights Commission of El Salvador, the Human Rights Department of the Lutheran Synod, the Human Rights Institute of the Central American University “José Simeón Cañas” (IDHUC), and the Christian Legal Aid.

In the report by the Truth Commission –as they stated– the most outstanding recommendations are:

a judicial system and the administration of justice, especially an urgent and immediate restructuring of the Supreme Court of Justice [...] After March 15, the main problem to solve –as pointed out by the Truth Commission– is not ‘whether or not to punish the perpetrators, but if justice can be done.’ The determination regarding the individual and social pardon for those responsible for the acts had to be delayed until the establishment of the minimal conditions so that the victims made a conscious decision and exercised their legitimate right upon knowing the truth and having fulfilled their demand for justice.<sup>33</sup>

Two small legislative factions at that time<sup>34</sup> opposed amnesty before it was approved, but they did not make a statement afterwards. The FMLN, upon becoming part of the system even though it fought against with it, through a brief communication on March 15, 1993 objected “the idea of an immediate amnesty;”<sup>35</sup> however, it conditioned its consent for the results of “the investigations about the death squadrons and [to] the compliance with all the recommendations”<sup>36</sup> of the Truth Commission. Then, it reiterated its rejection for the “hasty approval that was not based on a national consensus.”<sup>37</sup>

27 “How could we understand the modus operandi of the death squadrons? The disappearance of a large number of people, the attempts against important governmental officials, Church leaders, and judges, and the fact that the people responsible for those atrocities were rarely prosecuted? The irony is that such a tangle of corruption, shyness, and weakness of the Judiciary and its investigation units hindered the effective performance of the Judiciary, even in the cases of crimes attributed to the FMLN.” (page 312). Betancur, B. (*et. al.*). (*Op. cit.*).

28 Universidad Centroamericana José Simeón Cañas. (1993). Lic. Alfredo Cristiani, President of the Republic. Address to the nation, March 18, 1993. In *Revista Estudios Centroamericanos (ECA)*. XLVIII Year. Page 484.

29 Ibid. Armed Forces of El Salvador, position regarding the Report of the Truth Commission. Page 485.

30 Ibid. Supreme Court of Justice, official response to the report and recommendations of the Truth Commission. Page 490.

31 Mastermind of the assassination of Monsignor Óscar Arnulfo Romero, according to the Truth Commission.

32 Ibid. Nationalist Republic Alliance (ARENA). *A la conciencia nacional e internacional*. Pages 490-491.

33 Ibid. Human Rights Institute of the Central American University (IDHUC), Human Rights Commission of El Salvador, Christian Legal Aid “Monseñor Romero,” Human Rights Department of the Luther Synod. Pardon cannot be imposed by decree. Page 494.

34 Democratic Convergence (CD) and Nationalist Democratic Union (UDN).

35 Universidad Centroamericana José Simeón Cañas. (1993). *Comisión política del FMLN*. Communication. En *Revista Estudios Centroamericanos (ECA)*. (Año XLVIII). P. 491.

36 Ibid. FMLN political commission. Communication. Page 492.

37 Ibid.

The arrogant forceful position of the Government, the military officers, the leaders of the Judiciary and ARENA –in an alliance with two related political parties– was imposed on the shy stance of the FMLN, Democratic Convergence (CD), and Nationalist Democratic Union (UDN). The clearer and stronger opinion of the social organizations was not considered, and victims were not even cared for. Therefore, the situation had to be clear to those who had to be the protagonists of a transition in which the good or bad health of justice was undoubtedly at the core. The process that started in Geneva on April 4, 1990 was at a crucial stage: the decision by the signatory parties to the agreements about impunity. The clarity by one party and the hesitation by the other party relegated the victims and society even though it was definitely their responsibility.

In the end, it was a matter of power.<sup>38</sup> From that perspective, after a bad start, the following questions had to be answered and actions had to be taken: Which power would prevail in the future? The power of the so-far unpunished violating perpetrators, who had the reins in their hands or who were controlling those who had the reins? Or, the power of the victims who, regardless of their imposed marginalization, had to break in to defend their legitimate rights?

In such a scenario, at an early stage, building a different country was “uphill;” and it was a bad omen because the basic principles of the recommendations of the Truth Commission were violated, “democracy”: it was denied because the decision-making process did not include the popular majorities and because there was no dialogue or negotiation in such an exercise; “participation”: because these majorities were not considered, so the participation was neither respectful nor solidary; the “Rule of Law”: it was rejected because of the violation of the basic internal rules and evading the international duties because amnesty was approved; and the “respect for human rights”: they were the “raison d’être of these principles and the foundations of a society organized at the service of people, who were all considered free and decent.” Those four guarantees for a good implementation of the agreed-upon process were not fulfilled, so this explains what happened with such a process.<sup>39</sup>

A similar fate was experienced by the efforts by the *ad hoc* Commission to depurate the FAES and the group for the investigation of illegal armed groups that had a political motivation in El Salvador<sup>40</sup>, as the death squadrons were nicknamed. In both, recommendations were not properly followed and most were not followed at all, including the most important ones.

The *ad hoc* Commission started on May 19, 1992, based on certain criteria.<sup>41</sup> Within three months, it had to examine the performance of 2,203 military officers until May 22, 1992; then one more was added. Such a

38 “The power elite that control the economy, politics, and mass communications [...] show no signs of budging. Why should they? Why would they expose themselves by ending the impunity that shields some of them and many others who served them well, before and during the war? Genuine democratization of the Salvadoran society, unrestricted respect for human rights, and social reconciliation—the three overarching and as-yet unrealized objectives of the Salvadoran peace process born in Geneva in April 1990— constitutes too high a risk to the interests of this sector. The peace process came about because the power elite was confronted with a countervailing power that could compel them to sit down, negotiate, and reach agreements [...] Yet this confluence of forces was not potent enough to achieve more far-reaching goals, and it gradually broke apart without leaving behind a durable counterforce to ensure full compliance with all of the commitments made.” Cúellar, B. (2007). El Salvador. In: Due Process of Law Foundation. *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America: The Cases of Argentina, Guatemala, El Salvador, and Peru.* P. 94. Available at <http://www.dplf.org/uploads/1202485080.pdf>.

39 Betancur, B. (et. al.). (Op. Cit.).

40 The depuration was agreed in New York on September 25, 1991; the temporary entity that would investigate the death squadrons, following the recommendation of the Truth Commission in March 1992, was created until December 8 of that year.

41 According to item A, number 3, item I of the Chapultepec Agreement would consider “the past performance of each officer including, in particular: (1) his record of observance of the legal order, with particular emphasis on the respect for human rights;” “his professional competence,” and “his capacity to function in the new situation of peace, within the context of a democratic society, and to promote the democratization of the country, guarantee unrestricted respect for human rights and reunify the Salvadoran society.”

daunting task was performed in a very short time, without many possibilities of collecting official information, and social organizations composed of surviving victims, victims' families or activists and professionals who supported them were not able to provide accurate details of individual perpetrators. They were not in a position to contribute more due to the lack of information and resources, and due to the attitude of the formal and actual powers, among which the army remained immune and unpunished. Therefore, only 240 files were examined, that is, 10.89% of the total.

Its recommendations had to be implemented by October 22, 1992, a month after submitting the report. But this did not happen. The general Order of changes on December 31 only included routine relocations and three officers were dismissed after being accused for common crimes. Signed by the General Commander of the FAES, Cristiani, it had a "confidential addition" that proposed to Boutros-Ghali to phase the depuration until March 1994 to guarantee the "stability" of the process. Therefore, "honorable" retirements of military officers were guaranteed until the end of their service and also to guarantee an advantageous retirement.

Days after issuing the general Order of changes on April 30, 1993, also a routine order, the Minister of National Defense—General René Emilio Ponce, accused of ordering the execution of Julia Elba Ramos, her daughter Celina and six Jesuits on November 16, 1989— said that no civilian would replace him because his peers knew the military art and science. It was until July 1, 1993 that Cristiani followed some recommendations made by the *ad hoc* Commission. But the late changes in the FAES confirmed that their leaders continued to hold the power and disclosed how they would continue exercising power in the future to guarantee their impunity.

The investigation about the death squadrons was another lost opportunity in the attempt to overcome impunity. If its proposals would have been adopted with a country vision –if the Government would have adopted them and if the FMLN would have strongly required them, with the support of the ONUSAL— real progress towards peace would have been made. But, once again, the disdain for all its recommendations and the poor adoption of some of them paved the way to strengthening the different facets of criminality.<sup>42</sup> No sufficient attention was paid to the dangerous mutation of those groups.<sup>43</sup>

Armando Calderón Sol replaced Cristiani in 1994 and mismanaged the results of such an effort. He was succeeded by Francisco Flores in 1999 and Antonio Saca in 2004. Like Cristiani, they run for ARENA; the main opposing party was the FMLN. In the two decades during which ARENA controlled the Executive Branch and the rest of the state institutions, truth and justice remained linked by formal and factual powers. They declared so and to be coherent and consistent, they did it so. The development of the anthology was an idea of President Flores on October 18, 2002, in response to the ICHR that was demanding the compliance with the recommendations included in the reports on the merits of various cases: "The amnesty law –said– is the cornerstone of the peace accords, it is what allowed us to forgive [...] the prosecution of the war crimes would have led to another war; it would have closed the doors to the possibility of reconciliation [...] those who want to remove the cornerstone of the peace accords can take us to another severe conflict."<sup>44</sup>

42 "We would be in the face of a mutation into more decentralized entities essentially aimed at common criminals with a high degree of organization [...] those same structures would keep their capacities intact to play, if necessary, the role of perpetrators of criminal acts that were politically motivated. The political transition process seems to leave no room for structures that might be called "classical," but many of their members as well as individuals who have a hard time to adapt to the new conditions become a target of new and powerful organized criminal groups." Universidad Centroamericana José Simeón Cañas. (1994). Report by the Joint Group for the investigation of illegal armed groups with a political motivation in El Salvador, Second part. (Number 11, item V) Conclusions and Recommendations. In *Revista Estudios Centroamericanos*. (XLIX). San Salvador. Pages 992-998.

43 Ibid., page 994.

44 Available at <http://www.uca.edu.sv/publica/proceso/proc1021.html#Derechos Humanos>.

Since it is part of the same project, it was logical for those presidents to support the “Tandona.”<sup>45</sup> Therefore, Flores was a special guest at the first public appearance of the Association of Veterans of El Salvador (ASVEM), in September 2003. Saca, when he was a candidate, promised to General Ponce –founder of ASVEM– that amnesty will continue to be in force; Saca, when he was the president, said that he won “to manage the future, not to go back to the past.”<sup>46</sup> Therefore, the perpetrator remained untouchable and confident that this would not change ... provided that ARENA would not govern.

### 3. A New “Hope” or a New “Illusion”?

In the face of the presidential elections of 2009, there was a new actor known inside and outside the country due to his critical journalism track record during the four ARENA administrations: Mauricio Funes. The FMLN announced his candidacy during a multitudinous event on November 11, 2007,<sup>47</sup> with the new campaign slogan that had a positive impact on society: “Hope is born; change is coming!” Then, the campaign became heated with the propaganda of Funes and his closest opponent –Rodrigo Ávila, from ARENA– together with the statements and public appearances of other actors.

#### At the Service of Whom?

In mid-2008, a controversy was unleashed after the publication of a self-named “professional sector of the FMLN.” Before this publication, such a group expressed its opinion without any problem. But on August 7, it published a text about the FAES, which questioned its existence. The senior military officers, in service and retired, reacted. The retired military officers stated collectible phrases.<sup>48</sup> As expected, even though it announced the candidacy of someone who did not participate in the war nor was he a member of the party, the electoral triumph of his “enemy” made them be in panic. For their peace of mind, the leaders of the FMLN undermined the authority of those who caused the commotion.<sup>49</sup> Therefore, on September 2, General Ponce said that he did not believe in the change of the “efemelenist” position about the fate of the FAES. A confessed admirer of Colonel Domingo Monterrosa,<sup>50</sup> he said he did not understand why Cristiani –after the defeat of the so-called “real socialism”– negotiated “with a shell.”<sup>51</sup>

On the following day Funes said he would support the revocation of amnesty to avoid “a climate of ungovernability [...] that would prevent us from building a future.”<sup>52</sup> He said that human rights organizations would understand his position “because [...] far from contributing to reconciliation, it would rather open wounds.”<sup>53</sup>

45 Promotion of military officers who led the war during the Cristiani Administration.

46 Available at <http://spanish.peopledaily.com.cn/31617/2403563.html>.

47 Breaching the Constitution, whose article 81 sets forth: “The electoral propaganda will be only allowed, even without a previous summon, four months before the date set by law for the election of the President and the Vice-President of the Republic [...]”.

48 General Mauricio Vargas –a negotiator during the agreements– said that the “countries that have abolished [the army] in one way or another have become a protectorate of a larger power;” General Orlando Zepeda, another person accused for the massacre at the UCA, said that they ended up being “weak countries that shelter themselves under the umbrella of international treaties.”

49 “A person might be our follower, but this does not mean that the FMLN would embrace those positions. The Armed Forces have not only to keep their status, they have to be reinforced.” Roberto Lorenzana, deputy and director of the proselytistic campaign. Available at [http://www.elsalvador.com/mwedh/nota/nota\\_completa.asp?idCat=6351&idArt=2709963&opSM=0](http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6351&idArt=2709963&opSM=0).

50 Accused as the main perpetrator of the massacre of El Mozote. See Betancur, B., (*et. al.*). (Op. cit.). Page 264.

51 “The emerging threats we face in our current world due to international terrorism and drug trafficking require strong states and strong institutions, and strong states are the result of strong armed institutions.” Available at <http://mediolleno.com.sv/entrevistas/143/entrevista-al-general-rene-emilio-ponce>.

52 Available at [http://www.elsalvador.com/mwedh/nota/nota\\_completa.asp?idCat=6342&idArt=2784571](http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6342&idArt=2784571).

53 Ibid.

On September 7, Ponce said he had evidence to prosecute the main leaders of the FMLN. That day, thousands of war veterans, led by the “Tandonas” together with officers from other promotions, former officials and followers of ARENA, beat “drums of war” on the streets. The main event was attended by candidate Ávila, to please a passionate audience with a warlike speech against his opponent.<sup>54</sup> Those intimidating statements and attitudes have been recurring since the FMLN has participated in the elections, most of all in the presidential elections. But, this time, they were more evident and aggressive in view of the possibility of giving serious thought to a public policy of truth, justice, and reparation for the victims. There were people and people who blindly believed that Funes and the party who nominated him were promoting a “shrewd tactic” in order to achieve that, and after the triumph, people did not believe that the FMLN would impose it on the president.

Within that framework, Salvador Sánchez –Cerén–presidential candidate, signatory of the agreements and former coordinator of the party– scared away the “ghosts” who were distressing the military officers: “The FMLN –he said– like its presidential candidate will respect [sic] the Constitution of the Republic; we are going to work on the strengthening of professionalism and the permanent role of the Armed Forces and the guarantee of the defense of the country’s sovereignty.”<sup>55</sup> Moreover, they would follow the recommendations of the Truth Commission but without interfering with amnesty; but it made sure that it would not hinder the promotion of “a reconciliation policy by recognizing the moral and material damages to the victims.”<sup>56</sup>

The victims emerged out of this discussion. On September 10, the Working Commission on Human Rights in Favor of the Historical Memory of El Salvador said that no decree could heal the wounds and that every national historical page must be read. “Democracy, peace and reconciliation cannot be built on the innocent blood of so many victims, the hiding of the truth, and the impunity of Salvadoran genocide,” said the Commission<sup>57</sup>; it also rejected amnesty and the reasons why both sides were trying to keep it.<sup>58</sup>

This was what victims said and, as usual, they were not heard effectively or affectively. In spite of this, and by a small margin,<sup>59</sup> the people eager for a real and much-needed change elected Funes. Among those who voted, there were many who believed that he would promote this, even more during his speech on June 1, 2009 he said: “Reinventing our country does not mean abandoning what is good and eternal; it means improving what is good and do all the things that we never done.”<sup>60</sup> Regarding truth, justice, and reparation for the victims in the country, as of that date the only thing that was done was denying them the satisfaction of their legitimate demands.

It was valid that, at that point there was still hope. Nevertheless, he later said that the country had to “end with the last vestiges of our victim complex because its fuels hatred, self-pity, [sic] revenge, and

54 He said, “What the candidate said about communists is variable. [...] they said they were going to revoke the amnesty law [...] abolish the Armed Forces. But today they are saying something different. How could we believe in someone who says one thing in San Miguel, [...] when he is in San Salvador [...] he says something else, and when he is in an interview, he says something else [...]” Available at <http://archivo.elfaro.net/secciones/elecciones2009/20080915/DiscursoAvila.pdf>.

55 Available at [http://amfunes.org/index.php?option=com\\_content&task=view&id=29&Itemid=1](http://amfunes.org/index.php?option=com_content&task=view&id=29&Itemid=1).

56 Ibid.

57 Available at <http://chichicaste.blogcindario.com/2008/09/01212-comision-de-trabajo-en-derechos-humanos-posicionamiento-publico-sobre-la-ley-de-amnistia.html>.

58 “Insubstantial argumentations by senior governmental officers who have sought to give a political legitimacy to the Amnesty Law of 1993, among them four presidents of the Republic from ARENA and, recently, similar statements of new presidential candidates from Arena and the FMLN, have been recurrently added to this scenario.” Ibid.

59 The FMLN obtained 1,354,000 votes (51.32%) and ARENA 1,284,588 (48.68%). The difference was just 69,412 votes (2.64%).

60 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/95-discurso-toma-de-posesi%C3%B3n-sr-mauricio-funes-presidente-de-la-rep%C3%BAblica.html>.

easy excuses.”<sup>61</sup> He said this to those who are not obsessed with being victims, to those who are victims of gross violations of rights and of official impunity that sought to conceal them; to those who are not seeking revenge, but to complete and repairing truth, as well as a fair punishment of those who offended them and were not punished. Before this, Funes invoked Monsignor Óscar Arnulfo Romero as his teacher. A serious commitment and a clear contradiction because the martyr Archbishop was always in favor of the victims.<sup>62</sup>

### **Honduran Commotion, Salvadoran Confusion**

Almost at the end of Funes’ first month of administration, an event shocked the world: the overthrow of President Manuel Zelaya and his expulsion from the country. The shock waves of such political shake in the neighboring country reached El Salvador to make things worse, particularly regarding two key issues: bi-national trade and political pressures on the president. There were those who “justified” such backward movement in the difficult path towards Central American democratization.<sup>63</sup> With this kind of statements and the background of the electoral campaign, Funes was able to consider the risk of doing during his administration –which was just starting- something “inconvenient” for a country which officially protects criminals and corrupted people. Since the coup d’État in Honduras was not reversed, his only choice seemed to be to “govern” with a pistol pointed at his head by military officers and a straightjacket woven by capitals.

Under those circumstances, the victims of gross violations of human rights during the pre-war and post-war, of impunity during the post-war, and of its usual precarious economic and social conditions –within the framework of the world’s financial, energy, and food crises- they should continue “swimming against the tide.” However, they kept their hope for the promised “change.” Three anniversaries would be imminent. In chronological order: the twentieth anniversary of the massacre at the UCA, the eighteenth anniversary of the Chapultepec Agreement, and the thirteenth anniversary of the assassination of Monsignor Romero.

### **Dates and Pardon**

The first anniversary was celebrated on November 16, 2009 with the traditional vigil and other activities promoted by the Jesuit community. On that day when the families of the murdered priests received the highest state decoration, President Funes mentioned memory as a need of every country. He made something clear: he is not supposed to judge murders; he is just supposed to generate a climate of understanding and truth to “leave a past of tragedy and pain behind, to start building a fair, safe, and inclusive peace.”<sup>64</sup> In contrast, the President of the UCA –Jesuit José María Tojeira– offered a specific institutional commitment: “Count on us to promote this task for truth, transitional formulas of justice and victim reparation and fair development that will prevent us from thinking again of violence as a solution to the problems and conflicts that might eventually emerge in our society.”<sup>65</sup>

Two months after, eighteen years after the Chapultepec Agreement, Funes did something unprecedented in the country: asking for forgiveness for the State atrocities against the civilian population. He gave details

61 Ibid.

62 “We cannot –said Romero on July 15, 1979– work to please those at the top. Our word in the name of God, we have to say it by reporting so much injustice. There are so many ways to be an accomplice with criminal hands!” Available at <http://www.servicioskoinonia.org/romero/homilias/B/790715.html>.

63 “The coup d’État in Honduras yesterday is a clear message to those Latin American presidents who do not want to respect the constitutional order established in each country,” said economist Luis Membreño. General Humberto Corado, former Minister of National Defense, said that his Honduran peers “analyzed this with other authorities from the Honduran Government and decided that it was better to abort this process at this time than letting it to deepen [...]”.

64 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/175-condecoran-%E2%80%9Corden-jose-matias-delgado-grado-gran-cruz-plaza-de-oro%E2%80%9D-a-los-sacerdotes-jesuitas.html>.

65 Available at [http://www.uca.edu.sv/web\\_martires/media/archivo/656c70\\_discursorectorentrgaordenalmeritojosematiasdelgado1.pdf](http://www.uca.edu.sv/web_martires/media/archivo/656c70_discursorectorentrgaordenalmeritojosematiasdelgado1.pdf).

and acknowledged accountability. Cristiani, when questioning the report by the Truth Commission,<sup>66</sup> mentioned this not because victims should grant forgiveness, but to impose it together with an unacceptable and impossible oblivion. Funes said: “This forgiveness must dignify the victims, help them heal their pain and the wounds of the victims and those of the entire country. This gesture must contribute to strengthening peace, laying the foundations of national unity, and building a hopeful future.”<sup>67</sup> He said that reconciliation can be only achieved through justice and truth and that his intention was to read that page “to move towards the future with healed wounds, a solved past, and a peace that assumes that the spirit must leave such a painful and tragic stage behind.”<sup>68</sup>

Then, he honored another emblematic event. Thirty years ago, on March 24, 1980, Monsignor Romero was executed. Funes attributed the assassination to a death squadron; then he also admitted that those groups “exercised terror in such a generalized manner in the civilian population during those tragic years, leaving thousands of victims.”<sup>69</sup> He also admitted the direct involvement of State agents in those practices and their collaboration in the execution or concealment. After admitting the legal validity of the reports by the ICHR, he asked for the forgiveness of the priest’s family, the Salvadoran population, the Catholic congregation, and all the families affected by State violence. Moreover, he offered to collaborate with justice inside and outside the country by helping to clarify the crimes perpetrated by State agents. But at the end of the event, when interviewed by a journalist, he reaffirmed his decision not to do anything to repeal amnesty.<sup>70</sup>

The distance between the speech by Funes and his statements to the media and in light of his obligations towards the international systems of human rights was evident. As the Head of State and incumbent of the Executive Branch, he should have considered that his duties were clear in article 168 of the Constitution: enter into international treaties and conventions and submit them to the legislative approval and keep an eye on their compliance. His criticized position regarding an amnesty questioned by, among other organizations, the ICHR since 1994 was inserted in this framework.<sup>71</sup>

### From Smog Upwards<sup>72</sup>

During the post-war, victims had to face an unshakable official stance of resistance to demands. But in spite of the economic, logistic, and political hardships, society has been able to make progress in the litigation of some cases in the international protection systems. As an example, in the Inter-American

66 It He that it did not respond “to the desire of most Salvadorans, which is forgiveness and oblivion of every event of such a painful past.” Universidad Centroamericana José Simeón Cañas. (1993). Lic. Alfredo Cristiani, President of the Republic. Address to the Nation, March 18, 1993. In *Revista Estudios Centroamericanos (ECA)*. (Año XLVIII). San Salvador. P. 483.

67 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/92-18-aniversario-de-la-firma-de-los-acuerdos-de-paz.html>.

68 Ibid.

69 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/390-presidente-funes-pide-perd%C3%B3n-en-nombre-del-estado-salvadore%C3%B1o-por-crimen-de-monse%C3%B1or-romero.html>.

70 “[...] it is not up to me to repeal the law; it is not up to me as the Head of the Executive Branch to conduct [sic] an investigation [...] it is up to the Public Prosecutor’s Office, [...] the jurisdictional bodies, the judges of the Republic. The issue now and it is an exhortation I am making to the human rights organizations that are asking the President of the Republic to promote the repeal: such cases can be investigated even though the law has not been repealed [...] Go and ask the prosecutor why he is not filing a case and [...] the jurisdictional organizations why they are not conducting an investigation about those cases. And ask the deputies if they are thinking of repealing it or not, but do not exert such an undeserved pressure only on the Executive Branch.” Audio, Radio YSUCA.

71 The “[...] very sweeping dimensions [...] constitute a violation of the international obligations it accepted when it ratified the American Convention on Human Rights.” Available at <http://www.cidh.oas.org/countryrep/ElSalvador94sp/ii.d.compromisos.htm#La promulgaci%F3n de la Ley de Amnist%F3a y los compromisos internacionales>.

72 Paraphrasing Roberto Cuéllar, director of the Inter-American Institute of Human Rights (IIHR), who some years ago said that the Mexican governments of the Institutional Revolutionary Party (PRI) in the seventies defended human rights this way.

system, we have the massacre at the UCA.<sup>73</sup> In a hearing before the ICHR, on March 22, 2010, the State representatives admitted that for more than a decade its recommendations had not been followed. But, a disputed observation was then made: the victims could request a remedy for the protection of constitutional rights at the Constitutional Court, within the Supreme Court of Justice, due to its effectiveness to defend their right to a simple, expeditious, and effective legal remedy. Felipe González, presiding the ICHR at that time, stated that the promotion of such legal action is a duty of the State.<sup>74</sup>

It should be mentioned that on December 23, 2003 there was a rejection of this type of remedy due to a denial of justice in this case, which was filed on November 21, 2001 after using all the possibilities of the system. The victims waited for more than two years to find out that, according to the Constitutional Court, their arguments were “mere non conformities [...] that do not transcend into the constitutional sphere.”<sup>75</sup> That was the “reason” to dismiss those who did not investigate the facts and did not accuse or prosecute their indirect perpetrators. In anticipation of such a decision, on November 17, 2003, another complaint for the violation of the right to judicial guarantees was filed with the ICHR.

In the aforementioned hearing in March 2010, the State representatives alleged that the investigation was the duty of the Attorney General’s Office of the Republic (FGR) and entrusted the Legislative Assembly with the topic of amnesty, knowing that President Funes has the power to repeal or adjust it to the international human rights standards and that he stated his willingness to collaborate with the justice system. Therefore, victims had to face an impossible situation: not filing an international complaint against the entire State, but against separate State bodies in the same case. Moreover the State agent stated that the enforcement of amnesty had to be examined in each specific lawsuit by virtue of the decision issued on September 26, 2000,<sup>76</sup> which determined the constitutionality of amnesty, but with certain exceptions.

Another evidence of the distance between the official discourse abroad and its internal practice was when on June 19, 2010 the Salvadoran Ministry of Foreign Affairs informed that the United Nations Commission on Human Rights declared March 24 as the “International day for the right to truth concerning gross human rights violations and for the dignity of victims.”<sup>77</sup> Such a diplomatic “hard-working and intense” endeavor, according to the official communication, compromised the Government who claimed the universal stature of Romero since the beginning.<sup>78</sup> Endorsing such an initiative entailed a big risk: being “light of the street and darkness at home.”

“Politically correct” speeches and positions in international forums have always been a good State “presentation card;” even more for El Salvador due to its background of genocide, authoritarian, and

73 Available at  
[http://www.oas.org/en/media\\_center/videos.asp?sCodigo=100080&videotype=&sCollectionDetVideo=15](http://www.oas.org/en/media_center/videos.asp?sCodigo=100080&videotype=&sCollectionDetVideo=15)

74 González stated, “Here we are talking about the compliance with a resolution of the Commission. The petitioner made an internal attempt with a resulting decision, but the decision has not been implemented yet. Petitioners cannot be asked to carry the burden of internal proceedings once again [...]” Available at [http://www.oas.org/en/media\\_center/videos.asp?sCodigo=10-0080&videotype=&sCollectionDetVideo=15](http://www.oas.org/en/media_center/videos.asp?sCodigo=10-0080&videotype=&sCollectionDetVideo=15)

75 Available at <http://www.uca.edu.sv/publica/idhuca/jesuitas.html#amparo2>.

76 Amnesty was overcome during an initial hearing held at the Third Court of Peace of San Salvador on December 12, 2000. Judge Lorena Rodríguez did not grant amnesty to Cristiani and six officers of the FAES who were accused as indirect perpetrators of the massacre at the UCA for the exception of “self-amnesty,” but their case was finally dismissed due to invalidity, according to her.

77 Available at  
<http://www.rree.gob.sv/index.php?/Avisos-Ciudadano/homenaje-justo-e-historico-a-monsenor-oscar-arnulfo-romero.php>.

78 Two years before his execution, which occurred on the date claimed by the Salvadoran Government before the United Nations, Romero said, “In this historical evening when there are so many intrigues, so many shadows, and so many sins, so many crimes that seemed to be concealed, so many missing people whom nobody would give account of, the Church is lighting up with its little lamp at night. Truth will shine; the Lord will come back, and there will be justice for all.” Available at <http://www.servicioskoinonia.org/romero/homilias/A/780326.html>.

criminal-defending regimes. But this is not enough due to its incoherent internal practice. So, Funes was very daring when he talked about “the full validity of human rights,” as “one of the cornerstones of the path taken by this Government.” He said this one year after he took office. In the final observations of the United Nations Commission on Human Rights for El Salvador, on October 27, 2010, they mentioned the State debt with the Romero case and all the victims.<sup>79</sup> Regarding the merits, nothing has been achieved even though the State officially supported –in June of that year- the aforementioned commemoration. Therefore, the policy of Funes regarding truth, justice, and reparation for the victims rested upon this emblematic figure –repeatedly mentioned as their “spiritual guide”- when it should have relied upon an articulate and coherent proposal.

## Settling Debts?

Endorsing the preferential option for the poor of the martyr Archbishop,<sup>80</sup> on January 16, 2010, President Funes announced the creation of two national commissions: the search for the girls and boys who were victims of enforced disappearance during the internal armed conflict as a consequence of the titanic fight of the Association for the Search of Disappeared Boys and Girls (Pro-Búsqueda),<sup>81</sup> together with the proposal for the reparation of victims, but considering the State ability to pay.

The first commission started activities until March 14, 2011, chaired by the Ombudsman for Human Rights, Óscar Luna, and composed of two Catholic prelates: Monsignor Gregorio Rosa Chávez, assistant to Romero, and priest Manuel Acosta Bonilla, representing Pro-Búsqueda<sup>82</sup>. Therefore, almost sixteen months of its existence were wasted and that –according to the Executive Decree for its creation- were almost two years. To that long and worrying delay we have to add the fact that, until July of that year, it did not have enough budget to operate. Under these circumstances, how could it fulfill its mandate?<sup>83</sup>

Therefore, during the hearing held on May 17, 2011 at the Inter-American Court of Human Rights regarding the disappearance of four girls and two boys in the hands of the FAES, between 1981 and 1983, the victims –accompanied by Pro-Búsqueda together with the Center for Justice and International Law (CEJIL)– raised the need to reinforce such a Commission. Beyond its funding, which is also important, the complaint filed with the regional court sought to guarantee its permanence with the passing of a specific law.

Finally, for the analysis of the fight of the victims of such abhorrent practice and the obstacle of a State sensitive to words but irresponsible, we have to address the topic of information that its institutions had to provide. Ester Alvarenga, director of Pro-Búsqueda, on March 29, 2011 –within the framework of the

79 The Committee also reiterated its recommendation that the amnesty law be abrogated or amended to “make it entirely compatible with the provisions of the Convention. The State party must actively investigate all cases of human rights violations documented by the Truth Commission, particularly the assassination of Monsignor Oscar Romero.” United Nations. Human Rights Committee. 100th period of sessions. Geneva. October 11-29, 2010. Page 92. Available at [http://media.gestorsutil.com/OACDH\\_web/369/publicaciones/docs/0867173001293141274.pdf](http://media.gestorsutil.com/OACDH_web/369/publicaciones/docs/0867173001293141274.pdf).

80 Available at <http://www.presidencia.gob.sv/novedades/discursos/discursos/item/92-18-aniversario-de-la-firma-de-los-acuerdos-de-paz.html>.

81 Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters vs. El Salvador. Available at [http://www.corteidh.or.cr/pais.cfm?id\\_Pais=17](http://www.corteidh.or.cr/pais.cfm?id_Pais=17).

82 Available at <http://www.pddh.gob.sv/menupress/menunoti/192-comision-nacional-de-busqueda-de-ninos-y-ninas-desaparecidos-inicia-su-trabajo>.

83 It must –among other duties– investigate cases and promote the right to truth; preserve and defend the victims’ right to an identity; inspect documentary records or files of the Executive Branch, particularly those of the military, police, and penitentiary officers; promote the reestablishment of family relationships, the coordination with public institutions and the involvement of national and international social organizations to find the girls and boys who went missing in the hands of the State and the guerrilla; request precautionary measures to guarantee the rights of victims and preserve the relevant information at risk; promote awareness and educational campaigns; promote the right to justice; and develop conclusions and recommendations.

celebration of the day of missing children – mentioned the need to submit “the military files to the National Search Commission for investigation.”<sup>84</sup>

Such legitimate complaint can be contrasted with the statements made by General David Munguía Payés, Minister of National Defense, who said that he had received specific judicial requests that were addressed. However, he said that “the information that is not in our records cannot be provided [...] I cannot guarantee that all the expectations of some people, who believe they can find detailed records that are in our possession, are true. That is not true.”<sup>85</sup>

The National Commission for the Reparation for the Victims of Human Rights Violations, which occurred within the context of the internal armed conflict, was created on May 5 through Executive Decree 57,<sup>86</sup> to submit to Funes a proposal for a program aimed at settling such a huge social debt. The Commission met for the first time on July 16, 2010. Its final report must be submitted within 90 business days after the approval of its internal regulations. Leading this Commission, the Secretariat for Social Inclusion was created and whose Secretary was Vanda Pignato, Funes’ wife; the Ombudsman could attend the meetings, or the meetings of the technical team, as an observer with a voice, but not a vote.

Besides the first Lady, other members were General Munguía Payés and Foreign Minister Hugo Martínez, together with the Minister of Health and the Minister of Finance. And the victims? Would the initiative work without their participation, but with the participation of the Minister of National Defense? Other questions were: Who and how many victims were there? How would they be recorded? Would a list of the Truth Commission be used for this recording?<sup>87</sup> This was a complex scenario where the victims had to be analyzed one by one, not as a “mass” where the affected parties were human beings with a name, face, and history. These people left remembrances, memories, and gaps to be filled with something else than well-structured oratory, services to be provided by the State by constitutional mandate for the development of any community –not only the affected communities – and, maybe, with a little money that due to the economic and social condition of the families, this could generate disputes, differences, and even violence.

The State decision about these issues was enshrined in article five of the aforementioned Executive Decree. Among the “elements,” as it is in the text, to guide the activities of the Commission was the opinion of the social organizations “representing” the victims; who accompany the victims but do not represent them in their entire dimension. However, that is how their exclusion was “saved.” Another “element” was the “collective nature” of the reparations. How would this be done? Particularly, when some countries with big economies, which did not include El Salvador, were not able to overcome a deep financial crisis. Then, it would have been more suitable to settle other accounts first: truth and justice.

For example, the country could improve the search for missing people because there were not only parents asking for their children; there were also boys and girls who wanted to know what happened to their parents. Moreover, there are people like Santos Ventura Reyes who was looking for his brother Francisco, who was captured and went missing on January 22, 1980 together with his university classmate José Francisco Mejía.<sup>88</sup>

84 Available at <http://probusqueda.org.sv/2011/04/05/discurso-del-dia-de-la-ninez-desaparecida/>.

85 Statements by General Munguía Payés. Interview “Frente a frente.” November 19, 2009. Tele Corporación Salvadoreña (TCS). Channels 2, 4, and 6.

86 Official Gazette. (2010). Volume 387. May 12. Available at <http://www.diariooficial.gob.sv/diarios/do-2010/mayo/12-05-2010.pdf>.

87 Nearly 75,000 extrajudicial executions and 8,000 enforced disappearances. But, there are more victims, but based on these figures it is possible to know that about 1,7 % of the Salvadoran population was affected at that time. For example, in Mexico that percentage would account for nearly 2,000,000 inhabitants of its current population.

88 Both were detained by US marines; officials from that country declared that national Salvadoran guards surrendered them to armed civilians. Three decades after, Santos is still looking for this brother and has not forgiven or forgotten.

In December 2010, Foreign Minister Martínez admitted that it was difficult to settle the debt with the victims of gross human rights violations. A few months later, the coordinator of the Committee for the Rescue of the Historical Memory of Peace “Father Cosme Spessotto” (COREMHIPAZ), Hernán Rodríguez, said that patience ran out “because the victims are there, they are people with psychological traumas and mental illnesses, and nobody does anything to comply with the Decree and the other demands that we need as a Committee.”<sup>89</sup>

On July 14, 2011, Martínez informed about his two-year tenure to representatives of universities and social organizations; in a half an hour he addressed general and specific issues. He even answered questions and pointed out the creation of the Human Rights Directorate. Regarding the signing and ratification of the Rome Statute, it offered to review the results of the consultation conducted by the Ministry of Foreign Affairs and report to the head, but when it was sent to the Legislative Assembly, according to the words of the Ministry, “we know there is opposition.” Therefore, there are not more possibilities; however, Funes, at the beginning of 2010, declared that it was not within his jurisdiction. About the official efforts to search for boys and girls who disappeared during the war, the Minister said that he had the presidential support, but not the resources; about the other issue, i.e., victims reparation, he did not talk.

### **The Rest of a Deplorable State**

To this we can add the State obstacle to overcoming the impunity that protects criminals, offends victims, and deteriorates social interactions even more: the Legislative Assembly. Both amnesty and the opposition to the Rome Statute and the International Criminal Court are points of honor about which it does not change its position. Besides the president of this Body, Sigfrido Reyes, not even his party –the FMLN– endorses this fight.

Regarding the justice system, the situation is clear. At the beginning of the post-war, regardless of the agreements between the parties and the numerous recommendations, not a lot of progress was made in the radical transformation of its institutions; they remained “abducted” by the economic, military, political, and media powers that -in that order- generated the causes of the brutality, they executed it, were accomplices, and concealed it. To understand why this happened, in spite of certain advances, the victims are still excluded from such institutions, we have to evaluate the performance of the Attorney General’s Office (FGR) and of the Supreme Court of Justice and of the Office of the Ombudsman for Human Rights (PDDH).

### **The Role of the Attorney General of the Republic**

This official is essential to overcome impunity; a good performance of his powers would contribute to the progress towards peace, announced almost two decades ago, but still longed by the popular majorities that, on a daily basis, undergo situations of insecurity and violence. However, especially from 1999 on <sup>90</sup>, those who hold this office did not approve a serious evaluation due to the slow and poor investigation of the crimes, the abuse of the criteria of opportunity<sup>91</sup> and the scarce or non existent use of scientific evidence. Their inefficiency is drastically revealed in the high rates of homicides that place the country among the most violent countries in the world.

But moreover, the FGR is the guarantor of the main perpetrators of gross human rights violations, crimes of war, and crimes against humanity before and during the war. Belisario Artiga was a good example

89 Available at <http://www.migenteinforma.org/viewContent.php?id=WEB20110620194522>.

90 When new criminal and procedural criminal laws had just been enacted.

91 A prosecution recourse to request the suspension of the criminal prosecution of charges made against participants, under certain circumstances.

of this situation, while he was in this position –from November 1999 to November 2009– because he set the precedent of that practice that strengthened impunity due to his actions during the massacre at the UCA.<sup>92</sup>

In September 2009, amid strong criticism against his track record,<sup>93</sup> Romeo Barahona took office. The FMLN, in 2006, rejected his appointment; three years later changed its mind. Barahona did not investigate *ex officio* and on a timely basis the cases of corruption at the beginning of his mandate. Why, then, should perpetrators of atrocities be prosecuted? Therefore, the practice of the former prosecutors continued. This is evident in the initial data of an investigation:<sup>94</sup> of the 26 cases of gross human rights violations, none of them has made any progress. There are complaints in which not even a prosecutor has been appointed; in one case<sup>95</sup> the record went missing and the victims had to submit a copy. Two investigations instructed by the Inter-American Court of Human Rights<sup>96</sup> have not made any progress during his mandate.

### Change in the Judicial Leadership

The reform of the process to include the Supreme Court of Justice was essential to achieve its independence and impartiality. In that direction, by constitutional mandate, a proposal was made to incorporate the different trends of legal thinking in this Court.<sup>97</sup> But in practice, between 1994 and 2009, its members continued to be appointed through partisan negotiations and with the direct intervention of the Executive Branch. This action resulted in a “distribution” of quotas. The most coveted and marketed ones, obviously, have been those of the Constitutional Court. Consequently, little progress was made in the quality of the jurisprudence in this area during those three five-year periods and, thus, in the excellence of the justice done as well as in the guarantee of the respect for human rights.

But something happened and the scenario changed smoothly at the beginning. On July 16, 2009, in the Legislative Assembly, the new justice who was the president of the Supreme Court of Justice -Belarmino Jaime- and other three members of such Court<sup>98</sup> were sworn. Their nominations were negotiated within a framework of the usual “normality”: by the leaders of the party factions with the “facilitation” of the Presidential House.

However, since its beginnings and with its leadership, society started noticing a top collegiate entity, with the will and value of improving Salvadoran justice, both in form and substance. Gradually, it started to distance itself and make the Supreme Court distance itself from the privileges for its members and from

92 Cuéllar, B. (2010). *El Salvador*. In: Due Process of Law Foundation. *Victims and Transitional Justice. Are Latin American States of Complying with International Standards?* Washington. Pages 136-143. Also available at <http://www.dplf.org/uploads/1285258696.pdf>.

93 He was linked with the escape of Carlos Romero, a police detective accused and convicted for the homicide of a leader from the FMLN on October 25, 1993. The PDDH had serious doubts to this regard and mentioned Barahona –the then legal advisor of the National Civil Police– for having opposed to the capture of Romero. This was not investigated even though the FLMA was demanding it.

94 Human Rights Institute of University José Simeón Cañas. (2011). *Estado procesal de casos judicializados por violación a los derechos humanos relacionados con la guerra civil (1980-1992)*. Transitional Justice Program. El Salvador. An investigation under process until July 15, 2011.

95 The case of Mario Zamora, executed by a death squadron a month before Monsignor Romero. He was the Prosecutor General of the Poor and a senior leader of Christian Democracy when it was ruling together with the FAES.

96 Cases of the Serrano Cruz Sisters and Ramón Mauricio García Prieto.

97 Article 186 of the Constitution.

98 Florentín Meléndez, Sidney Blanco, and Rodolfo González. The President of the Supreme Court of Justice, Belarmino Jaime, could stop being the president and be transferred to another Court, according to article 174 of the Constitution: “The Constitutional Court shall be composed of five justices appointed by the Legislative Assembly. Its president shall be elected by said Court every time justices of the Supreme Court of Justice are to be elected [...]” The four justices end their mandate in 2018.

corrupt practices, in their different expressions and levels. It also made an exception become a rule: issue a decision based on the text of the fundamental law of the Republic and not based on private interests.

Therefore, through the exercise of its corresponding power, this Court issued rulings of unconstitutionality –without the vote of the justice inherited from its previous members – which affected the mean “certainty” and the perverse “state of affairs” in different areas of other branches. The mass media and the political parties, for example, they realized that something had been altered. Moreover, they upset other bodies of the Government. The “political class” suffered when it saw how –through the jurisprudence– open voting lists and individual candidates were established to make up the Legislative Assembly, how political parties that fraudulently and illegally were kept alive were cancelled and how arbitrary appointments of second-rank officials were also cancelled. It also decided to clarify the management of presidential funds.

To the passion and reactions generated by this real change, very far from the rhetorical change promised during the last political campaign, the evident fear of former President Cristiani was added in the light of the “threat” that the unconstitutionality of amnesty could be declared. This led to the passing of Executive Decree 743 and unleashed an institutional crisis that lasted two months. There is an “admission by a party,”<sup>99</sup> therefore, it is no coincidence that such decree was passed on June 2, 2011 (four days after judge Eloy Velasco –sixth of the National Hearing of Spain– decided to prosecute twenty military officers accused of the massacre at the UCA). Cristiani, ARENA, and other power groups might have become alarmed in view of the possible unconstitutionality of the Free Trade Agreement with the United States of America and of the “dollarization.”<sup>100</sup> If this is added to the fact those three issues were left “shielded” by candidate Funes, who promised not to address them as a President because the conditions were favorable to make them happen.

With the exception of the FMLN which abstained<sup>101</sup> and Democratic Change (CD) that voted against, the other parties –ARENA, PCN, and Christian Democracy – combined almost all their votes to amend a couple of articles of the Judicial Organic Law, through the aforementioned Decree 743. Specifically, with the excuse of “homogenizing” the voting in the plenary Supreme Court of Justice, an amendment was made to make the Constitutional Court decide about the unconstitutionality of any rule unanimously. Funes passed it on the same day. Due to its transitional nature and upon sending it immediately to the National Printing Office for publication, after having set apart the space necessary in the Official Gazette, it guaranteed the validity of Decree 743 on that same day. Undoubtedly, an agreement to neutralize those four justices, who also faced open criticism or the conspiratorial silence of the rest of their peers at the Supreme Court of Justice.

Then, ARENA publicly regretted this when it found out that amnesty would not be repealed. Funes’ response was a “drug” that was worse than the “illness”: it accused the four justices of “negotiating” with Cristiani to render amnesty null and void.<sup>102</sup> After the decree was passed, the FMLN expressed its “strong” opposition to said decree,<sup>103</sup> but it later changed its mind when ARENA also changed its mind and the ruling party refused to support the repeal by accusing the four justices who declared its inapplicability, of

99 Available at <http://arenaelsalvador.blogspot.com/2011/06/comunicado-oficial-coena-en-relacion-al.html>. The leadership of the FMLN, for obvious reasons, shared the same fear and opposed to reviewing and rendered amnesty null and void, but they did not declare this publicly.

100 Law on Monetary Integration or “bimonetaryism,” that entered into force on January 1, 2001.

101 Orlando Arévalo, independent deputy, said during a TV interview on Channel 21 on Monday June 6 that the Secretary General of the FMLN, Medardo González, told him during the voting that his party will abstain for this reason.

102 Available at <http://www.presidencia.gob.sv/novedades/noticias/item/1199-acuerdo-institucional-para-la-independencia-y-aramon%C3%ADA-de-los-%C3%B3rganos-del-estado.html>.

103 “The FMLN rejects such an amendment out of respect for the basic rules of law and to avoid submitting constitutional law to the opinion and convenience of a single person, of a single legal trend, and of the impact of the rightist faction over it. In any Constitutional Court in the world, the consent of a majority equal to 80% of the members is enough, according to the law.” Available at <http://www.contrapunto.com.sv/comunicados/el-fmln-frente-al-decreto-743>.

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“contempt.”<sup>104</sup> Afterwards, the crisis worsened. Only after negotiations and agreements under a shadow, the previous situation came back when the reason of the disagreement was repealed. The lesson of all this was the role of different organizations, unions, churches, and academic entities, together with several individual expressions that defended the violated institutionalism. Since the protests against the privatization of the health system in 2003, there has not been such citizen participation.

The passing of such decree on June 2, 2011 was a political act, instead of a legal act. Due to the accumulated dissatisfaction of the formal and factual powers, within the framework of an indictment issued in Spain against four Salvadoran military officers, the purpose was to limit the performance of four justices of the Constitutional Court, which has, among others, the power to render binding decisions of everybody null and void; this is the doctrine of the “negative lawmaker” who can affect political, social, and economic interests. This was what happened since such new judicial officials joined; with their performance they started to enforce the principles of independence and impartiality. Several of their rulings “touched” the “untouchable,” thus affecting the two branches of Government –Legislative and Executive– and the political parties and other lobbying groups. Moreover, they intervened for the sake of victims regarding criminal justice by giving priority to their role in the face of other actors such as the FGR and the mass media, just to mention some examples.

### Office of the Ombudsman for Human Rights

In the analysis, we cannot mention nor can we forget to mention a key entity to settle the debts regarding truth, justice, and reparation for victims: the Office of the Ombudsman for Human Rights (PDDH). Conceived within the framework of the peace accords, it was founded in 1992. It has issued reports and made recommendations to support the complaints filed by the victims during the post-war, without forgetting the victims of gross human rights violations, crimes of war, and crimes against humanity. Its outstanding role in reporting the perpetrators has not been consistent throughout its existence; it has changed according to the commitment and quality of management.

In the most crucial times of its history –when the incumbent has attempted to comply with the constitutional and legal mandate of the institution<sup>105</sup>– the Office of the Ombudsman for Human Rights has been harassed by budget cuts, attempts to delegitimize its authority, and threats against its staff, among others. In spite of this, it was able to secure a relevant role in the public opinion based on the confidence and credibility levels it was able to generate.

However, within the public administration there is a poor compliance with its recommendations that allows evading the requirements of truth, justice, and reparation at the PDDH, such as the cases of Monsignor Romero and of the UCA. But, besides these emblematic cases –whose direct victims have been honored in the country and around the world<sup>106</sup>– the institution has issued special reports about the anonymous population who died or survived different massacres in El Salvador, as well as the victims of enforced disappearance between 1980 and 1992.

104 “It is an act of contempt; it is attitude of contempt.” Medardo González. Available at <http://www.elfaro.net/es/201106/noticias/4544/>.

105 The Ombudsman for Human Rights must ensure the respect and guarantee of human rights, according to ordinal item one, section I of article 194 of the constitution; the PDDH must “ensure the protection, promotion, and education on Human Rights and their unrestricted validity,” according to article two of the Organic Law.

106 “I believe so. In some way, it has focused on, let’s say, strong cases, speaking in the sense that they are the most “symbolic” cases. But this has not really reached “the real people.” And this “real people” have not been listened to, even now,” as stated by María Santos Miriam Rodríguez de Chicas.

#### 4. Where are True Hope and Real Change?

In the bottom of and inside society, because outside society it was proven with pain and frustration. But the latter should not prevail over the popular majorities that, without any kind of bargaining, deserve more than what they have achieved so far. And this is not happening. As properly stated on November 18, 1979, by Monsignor Romero, “With these people, being a pastor is not difficult. They are people who push to their service those of us who have been called to defend their rights and be their voice.” He and his followers might have been numbed by the “siren call” of the peace signatories for some time, but society was not; he might have been felt hopeful because of the campaign promise of the candidate of the “first leftist Government,” and he might have been given his most legitimate causes and his delayed aspirations.

But he never stopped encouraging the fight for truth, justice, and reparation of victims in spite of the size of the obstacles he had to face. There are local examples of tributes, cultural events, and festivals by and for the victims. There have been exhumations, and unsuccessful attempts have been made to prosecute them because the FGR is the lock that prevents us from opening that door.<sup>107</sup>

Within this framework, the commendable task of Pro-Búsqueda has had a positive impact on a society that has seen how –without a lot of resources and most of all without any revenge desire– it has contributed to healing the Nation by lightening the heavy burden of the victims of forced separation from their children, siblings, and parents; of families who were dismembered and have reunited. Moreover, its generous tenacity has made the Salvadoran government create a commission to promote more reunions. Even though it does not have enough resources to do it, the efforts by an organization such as Pro-Búsqueda –made up of victims who act for themselves, without any “third-party involvement” in its cause– will continue to be an example of the ability of the victims to overcome any political or bureaucratic obstacles.<sup>108</sup>

This desire that emerges from the bottom and from within led to a document that was submitted to the Funes Administration and that is titled “Content of a Policy for the Guarantee of the Rights of the Victims of Human Rights Violations,” developed by the Human Rights Task Force in Favor of the Historical Memory of El Salvador, its general objective is to “Guarantee, pursuant to the governmental obligations derived from the Constitution of the Republic and the International Human Rights Law, the rights of the victims of human rights violations in El Salvador.”

The short, medium, and long term objective is to create administrative entities within the Executive Branch to achieve it; develop and implement a State policy on material, moral, and symbolic reparations for the victims; guarantee their rights to truth and access to justice; enter into and promote the ratification of international treaties on the protection of human rights in El Salvador to which is not a State party; and demand the adaptation of internal laws to the international framework established by the International Human Rights Law in force.

We also have the Court on the Administration of Restorative Justice in El Salvador, in charge of the complaints filed by victims and the recommendations made by its members.<sup>109</sup> Some of them are the repeal

<sup>107</sup> Available at Cuéllar, B. (2010). El Salvador. In: Due Process of Law Foundation. *Victims and Transitional Justice. Are Latin American States of Complying with International Standards?* Washington. P-p. 140-148. Also available at <http://www.dplf.org/uploads/1285258696.pdf>.

<sup>108</sup> “The State shall adopt the measures of reparation relating to the operation of a national commission to trace the young people who disappeared when they were children during the armed conflict, with the participation of civil society [...].” Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters vs. El Salvador. Judgment of March 1, 2005. Merits, reparations, and costs. (Item XII, Resolutions, number 7).

<sup>109</sup> Issued during its three consecutive meetings in March 2009, April 2010, and March 2011. The places where the court met were the Chapel of Jesus Christ the Liberator at the UCA, the convent located inside the Arts Center for Peace in Suchitoto,

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of amnesty, the psychosocial accompaniment of victims, their families, and communities; the creation of a scholarship program for the children who want a degree; the removal of any sign of tribute or recognition for the perpetrators of atrocities; the inclusion of the recent past of the country in the educational system; the construction of a National Memory Museum; the creation of a national fund of individual and collective reparation based expedite and accessible mechanisms without ignoring mediation and reconciliation procedures provided that they are reciprocally accepted; the verification of the compliance with the commitments made by the Salvadoran State to the UN Commission on Human Rights, the Inter-American Commission on Human Rights, and other international organizations.

Finally, as a token of so many efforts to defeat impunity and how its followers defend it, we should mention the process related to the massacre at the UCA in the National Hearing of Spain. Why is Judge Eloy Velasco judging a score of Salvadoran retired military officers? Because the internal justice system is colluding to protect those who directly implemented it. The so-called “fraudulent res judicata” or the “apparent res judicata” was the result of the failure to abide by the rules of due process and the lack of independence and impartiality of its operators.

Therefore, there is not a double trial in Spain because the principle of universality of justice is being applied, which is also recognized by the Salvadoran State in article 10 of the Criminal Code in force since 1998. El Salvador or Spain cannot apply such a principle when a justice system that does not belong to the country is judging the perpetrators of gross human rights violations as it should; otherwise, it is both a right and a duty of both States.

Judge Velasco requested the Supreme Court of Justice to send certified copies of all the court records filed in the country against those military offices; the Supreme Court was also asked to send their domiciles, notify them about the criminal complaint filed with the National Hearing, and summon them to appear before such a judicial authority. The plenary Supreme Court of Justice issued a ruling on June 17, 2010, stating that it would do anything alleging that “in case of accessing the judicial cooperation, its effects would have a negative impact on the peace making process that has been being built since the end of the internal armed conflict.” Therefore, only the addresses of the accused military officers were sent -through the president of the Supreme Court of Justice, Belarmino Jaime.

After this incident, which did not slow down the progress of universal justice, Judge Velasco said that he would prosecute them for being “responsible for eight crimes of terrorist murders and a crime against humanity or against the Law of Nations.” This was stipulated on May 30, 2011 in the indictment resulting from the aforementioned Legislative Decree 743 and the ensuing institutional crisis.

On August 7, 2011, at the end of the day, nine of those military officers sued by the universal justice ran and hid in the headquarters of Armed Forces of El Salvador. Why? Because of the panic of being arrested and extradited to Spain. Twelve days before -on July 26- Judge Velasco sent to the International Police (INTERPOL) in Spain the arrest warrants against them and proceeded to “introduce them in the corresponding System and disseminate this incident internationally for surrender/extradition.”

The Director General of the National Civil Police (PNC) –a branch of INTERPOL in El Salvador– said on July 27 of that year that he was not “in the position of saying ‘we are going to evaluate what we are going

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Department of Cuscatlán, and the church in Villa de Arcatao, Department of Chalatenango, respectively. This Court is promoted by the national Coordinator of committees of victims of human rights violations during the armed conflict (CONACOVIC) and the IDHUCA, with the participation of local human rights and cultural organizations. Available at <http://es.scribd.com/doc/27066791/BSJ-LE-MONDE>.

to do.’ The Police are going to do whatever it takes [...] When the red notice is effective through the official system of the International Police, the police institution will act according to the relevant rules.”<sup>110</sup>

Before that, what did the Supreme Court of Justice decide? On August 24, 2011, the plenary Court -with ten votes- said that the “activated red notice [...] only means a location notice.” For the highest Salvadoran court, it was simply a matter of finding out where they were and not of capturing them. Nevertheless, within the INTERPOL system, the red notice is used “to request the arrest with a view to extradition of wanted persons and is based on an arrest warrant.” Therefore, there is no way out. Consequently, the Supreme Court of Justice ignored article 327 of the Criminal Procedural Code which states that the Civil National Policy will “arrest any person, even without a court order,” if there is -among others- a red notice issued by international police institutions.”

Second, the Salvadoran Supreme Court of Justice also decided on Wednesday, August 24 that the Court did not receive from the Kingdom of Spain “a request for preventive detention with a view to extradition for the aforementioned individuals; therefore, this Court is unable to issue a ruling.” This was precisely what Judge Velasco sent to INTERPOL in Spain and then they referred it to the National Civil Police in El Salvador. Moreover, in the same ruling, the Supreme Court of Justice states that:

The ten certificates of red notice published in the automated search system of INTERPOL, which was sent to this Court by INTERPOL-El Salvador Division Head in charge of the INTERPOL-El Salvador Central National Office, through Official Communication 476/JR/BIFE/11. [...] which pursuant to the Treaty of Extradition there is no preventive detention with a view to extradition against the aforementioned individuals [...] or any other deprivation, restriction, or limitation of their ambulatory freedoms derived from the same proceeding.

Moreover, the Salvadoran court decided to be the “only competent [...] to hear and decide about extraditions in the main case as well as the accessory, subsidiary, or complementary matters and, therefore, is the only, highest, and inescapable legal-political filter in this matter.” Read carefully: legal and ... political! To end with the substance of this resolution of August 24, 2011, the Supreme Court of Justice said “that the National Civil Police cannot proceed with the arrest with a view to extradition without a court order, and no judge of the Republic can issue a preventive detention with a view to extradition without the express authorization of this Court.”

But the court order for the National Civil Police was issued by Judge Velasco; therefore, it could arrest the military officers and the Supreme Court of Justice did not have to decree a preventive detention with a view to extradition because they were being prosecuted by the legal system of that country and not by El Salvador. But the lots were cast well before. Therefore, due to their blatant disrespect for the country’s international commitments and regardless of the ways to do it, ten members of the plenary Court tried to “shield” the accused military officers to render any possibility of detention and extradition null and void. But they were not able to “disguise” their frauds with lies.

What was attitude of the Executive Branch? Its silence began to break until the second half of August even though strangers fired their guns at the Spanish Embassy early in the morning of July 30, 2011. But none of the officials explained why the National Civil Police did not capture the nine retired military officers or why the FAES protected them in the headquarters. The head of both entities, which did not do what they were supposed to do, is Mauricio Funes; he said that the Supreme Court of Justice was the entity in charge of “deciding and he, of course, would expect that it would consider all the evidence [...] So, the best final decision would be the decision adhering to the law, but especially the most suitable decision for the country and to keep the climate of political stability that we have built throughout these twenty years of validity of

<sup>110</sup> Available at <http://www.elmundo.com.sv/nacionales-/14511-pnc-arrestaria-militares-vinculados-caso-jesuitas.html>.

(sic) the peace accords.”<sup>111</sup> The “most suitable,” the “most convenient,” “the climate of stability”? How do you call this? “Coherence”? Why didn’t he say the best without so much demagogic and that they should be prosecuted without any traps or privileges?

One day after the ruling of the Supreme Court of Justice, Funes said, “There were those who said that the police was supposed to violently break into the houses of the military officers and arrest them; we could not do it because we did not have a court order, and the Court said we were right; the Court clearly said that there was no order, so the military officers had to be released [...]”<sup>112</sup> Did the Supreme Court of Justice agree with his false arguments? Before Wednesday, August 24, Funes said, “They are in a situation of arrest; they have never been refugees as it has been stated,”<sup>113</sup> but that day the Supreme Court of Justice decided that there was no “preventive detention with a view to extradition against the aforementioned individuals [...] or any other deprivation, restriction, or limitation of their ambulatory freedoms derived from the same proceeding.” Did the Court say he was right or did it disqualify him?

Based on the previous examples of a tenacious and constant fight in favor of the victims, there is hope and there must be a change. It has been proven that regardless of the resistance by the leftist sectors, both in the Government and in the FMLN, and the rightist sectors –powers that were confronted and then became allies around specific interests such as the “stability” of the country - the claimed truth and justice are coming closer as the deserved result of the uncompromising effort of the victims.

## Conclusion: From Indignation to Action

It is clear that the highest obstacle faced by the victims and the organizations that helped them achieve truth, justice, and reparation in the last two decades of the post-war is the governmental decision and attitudes towards their complaints: deny the facts and evade the compliance with its human rights obligations using different excuses and deceptive rhetorical statements. Throughout the eighteen years of existence of ARENA controlling the three branches of government, things were clear in the words and facts. During the first two years of the Funes Administration and his party, at least apparently, the former changed but in practice individual or collective victims and their supporting organizations have not changed: swimming against the tide, but swimming not drowning. But the truth is that they listened to the promises and participated in official events that were never held before, and in which the beating of breasts were present and -most of all- cynical; however, a look at reality reveals the same substance even though the form looks different.

The brief analysis included in this reflection about the key performance of the three institutions allows us to conclude that there are formal and real powers that are afraid of truth and justice. If they are unable to keep the key institutions kidnapped inside the system, as it continues to happen with the FGR, they try to neutralize them with laws and decrees –as they tried to do with the Constitutional Court– or disregard the rulings of the Ombudsman, even though they are based on one of the components of the Geneva Agreement and the cornerstone of the long awaited, but unmet so far, peace process in El Salvador: the unrestricted respect for human rights.

Settling for that would be like accepting that the sacrifice of so many good, well-intentioned, and idealistic people who devoted their life, property, and affection to building a new fair, inclusive, and harmonious El Salvador, failed. Therefore, it is worth rescuing the citizen participation in the defense of the Constitutional

111 Available at <http://www.contrapunto.com.sv/politica-nacionales/funes-se-desliga-de-caso-jesuitas>.

112 Available at

<http://www.presidencia.gob.sv/novedades/discursos/declaraciones/item/1388-sobre-reconocimiento-de-palestina-como-un-estado-libre-soberano-e-independiente.html>.

113 Available at <http://www.contrapunto.com.sv/politica-nacionales/funes-satisfecho-con-decision-de-csj>.

Court because it is essential to materialize such an aspiration. This, together with the achievements of the organized victims and social entities that accompany them, makes us believe that it is possible to advance along the “path of peace” and lead the way to be followed.

The national agenda includes important and inescapable challenges to change the course of the country. On the side of the vast universe of direct victims and their families, lacerated by gross violations of their human rights, crimes of war, crimes against humanity, and the impunity that still protects the perpetrators, there are challenges -but certainly they are not the only ones- such as:

- a. Adopt and demand the compliance with “the contents of a policy to guarantee the rights of the victims of violations of human rights.”
- b. Adopt and demand the compliance with the rulings of the Court on the Administration of Restorative Justice in El Salvador.
- c. The two previous initiatives call for a repeal of an amnesty that since 1992 and in 1993 –when amnesty was imposed on society without even asking– has been rejected by the majority.<sup>114</sup> The opinions at that time about the report of the Truth Commission, impunity, and the justice system are revealing.<sup>115</sup> When the University Institute of Public Opinion (IUDOP) of the UCA consulted in late 2009 if people agreed or not with the gross violations of human rights during the war, 80.9% of the people answered affirmatively.<sup>116</sup>

Since amnesty was the excuse for not satisfying the expectations of the majority and because it has been used by the different branches of government to blackmail the country by using the false trade-off between justice or peace, it has to be repealed or substituted with a law for the recognition of the dignity of the victims of gross violations of human rights before and after the war. This is necessary and inescapable even though there are exceptions - and in every case when the judicial authorities must decide whether to enforce it or not -, in the current situation of the institutions of the governmental system, it is still a high obstacle to truth and justice.

- d. The first two initiatives also claim for the return of the records of the Truth Commission that are under the custody of the United Nations; their confidentiality is indefinite, unlike the case of Guatemala whose confidentiality expires in 2050.<sup>117</sup> Why this difference even though the report proposed “the final return of these records to their legitimate owners?”<sup>118</sup> That is, the victims, their families, the communities, and the Salvadorans who need this documentation to achieve truth, justice, and reparation.
- e. Within the framework of the doctrine of “national security” and the policy of “swept land,” the ultimate perpetrators of the brutality also made a profit out of the public funds; it was something logical.<sup>119</sup> To

<sup>114</sup> The University Institute of Public Opinion (IUDOP) of the UCA consulted this almost one year before its approval and obtained the following results: 47.5% disagreed, 31.1% agreed, 15.4% does not know/does not respond. See University Institute of Public Opinion. (1992). *Los salvadoreños ante acuerdos finales de paz*. San Salvador: UCA. Available at <http://www.reside.org.sv/publica/iudop/informes1a100/informe31.pdf>.

<sup>115</sup> University Institute of Public Opinion. (1993). *La Comisión de la Verdad y el proceso electoral en la opinión pública salvadoreña*. San Salvador: (UCA). Available at <http://www.uca.edu.sv/publica/iudop/informes1a100/informe35.pdf>.

<sup>116</sup> University Institute of Public Opinion. *Los salvadoreños y salvadoreñas evalúan la situación del país a finales de 2009*. (Tabla 57). Press release. XXIV year, n.º 6. Available at [http://www.uca.edu.sv/publica/iudop/Web/2009/boletin6\\_2009.pdf](http://www.uca.edu.sv/publica/iudop/Web/2009/boletin6_2009.pdf).

<sup>117</sup> Peterson, T. (2005). *Final Acts: A Guide to Preserving the Records of Truth Commissions*. Woodrow Wilson Center Press. Baltimore: Johns Hopkins University Press.

<sup>118</sup> Betancur, B. (et. al.). (Op. cit.). Page 166.

<sup>119</sup> Alberto Fujimori and Augusto Pinochet were accused and convicted for violations of human rights and corruption.

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these two faces of organized crime we can add trafficking of drugs, people, human organs, vehicles, weapons, waste, and others. Where are those Salvadoran “capos”? None of the three facets of such high and well-structured crimes have been investigated; they remain unpunished and reassured, as facilitated by a kidnapped justice system. This is one of the deep causes that make the country one of the most violent countries in the world.

Therefore, we should establish the connection between impunity -strengthened by amnesty- and the current daily situation of insecurity and death largely caused by firearms and that affect particularly the popular majorities whose economic and social conditions are quite difficult. Having the entire society and the victims of the atrocities before and during the war and the post-war understand this and having them demand to overcome this is one of the most important challenges to face.<sup>120</sup>

- f. For those who suffered the consequences of political violence and of the armed conflict, also victims of a current state system of injustice,<sup>121</sup> it is essential to generate an organized social power capable of intervening in key issues to achieve, once and for all, the democratization and the respect for human rights. Among these matters, their key intervention in the election of suitable people to fill the positions of justices of the Supreme Court of Justice, the Attorney General of the Republic, and the Ombudsman for the Defense of Human Rights, are some of the most important ones. Moreover, there should be a regular accountability that should transcend the legal formalities, such as the case of the annual speeches before the Legislative Assembly by the incumbents of the State institutions.
- g. Because it is essential for the smooth operation of the country in general and because the aforementioned appointments depend on it, there should be a Parliament devoid of the vices that have always affected its performance such as corruption and the decisions made by the political factions based on individual interests and not on the nation’s interests. They are not doing what is set forth in article 125 of the Constitution: “Deputies represent the entire country and are not bound by any imperative mandate.” A smooth operation of the aforementioned institutions in the previous item would establish the conditions to settle the outstanding debts with truth, justice, and reparation for the victims. Therefore, another task is to demand and participate in a deep reform of the electoral system that will allow having representatives of true citizen interests in the Legislative Assembly.
- h. Finally, regarding the above, we should do a collective work that can be summarized in three words: inform, train, and transform. Inform the victims, their families, and society at large about their rights and obligations, about the mandates of State institutions at their service and about national history -especially recent history- to be aware of the lessons and learn them. Train the citizens in society and in the public administration to encourage attitudes and skills for dialogue, tolerance, peaceful conflict resolution, spirit and quality of service, fraternity, and solidarity. Transform, on this basis, a society that has been unfair and excluding so far. How? Through the most extensive dissemination possible of those values and knowledge that must be, in parallel, accompanied by another component: specific success

120 The Mayor of Perquín said that in her municipality “some families have remained quite complete. But there are many that have been disintegrated. So we can see this situation today, socially and politically speaking: a quite hard situation for people. And maybe people have been left with such an irreparable loss, with pain and suffering ... And even so, people keep on fighting to seek for justice, looking for someone who says, ‘We are here to support them, to follow that path, that process, together.’ And we also know that for those who administer justice, it is a topic they do not want to discuss; it is something they do not want to see. And what has happened is that it has been left untouched. We are experiencing the same thing: all the insecurity we experience in the country.”

121 Once again, the Mayor of Perquín said, “The justice system is not functional; but I have not seen it operate like that. Sometimes the people who administer the law are also people -not all of them because we cannot generalize- that are not there to do the job but because they fill a position or mainly because they are the best paid in the country. But there is no commitment or conviction to do really justice. They may not have whatever it takes to do justice. And, in a way they are threatened in certain small aspects. But in those facts (violations of human rights), because people are not demanding either as they should, they become complacent. And on the other hand, because the justice system does not have credibility.”

in the fight for the defense of human rights, especially those that have to do with the victims and their demands for truth, justice, and reparation.

This can only be achieved going from the indignation generated by the Salvadoran reality –that indignation in which, as stated by Miriam, the “victims are the most humble and poorest people”– the action filled with passion and imagination. Miriam herself states this clearly when she says that “Christian Mothers for Peace” she says “It continues. They are partners, women that have fought and do a job, but they have remained to look for new organized and economic alternatives; small initiatives for the development and active participation of Church, in the community and in politics of course. So, all those things are still done. And women are there working. I believe the organization has not been lost.”

Really changing reality is undoubtedly a marathon. But not the usual marathon but a relay marathon: it requires the involvement of the majority of young people whose current quality of life is deplorable due to violence, impunity, and exclusion; whose future does not foretell something good. But also, it is a future full of obstacles, and the main obstacle is a State whose institutions “operate” in favor the “high-flown” criminals regardless of the dignity of victims. Since they are kidnapped by the economic, military, partisan, and political powers, those institutions work for the common cause of amnesty and refuse to be part of the International Criminal Court.

With this formula, they protect those whom they control and kill, besides ensuring the impunity of those who tomorrow –if this situation continues– will continue controlling and killing. They were, are and –if they continue to be like that– will be accomplices of those who violate human rights, who are corrupt and traffick drugs, people, weapons, and others: the Legislative Assembly and the Executive Branch, together with the Attorney General’s Office of the Republic and the Supreme Court of Justice. Regarding the latter, Monsignor Romero made this claim, “What is the Supreme Court of Justice doing? Where is the transcendental role in a democracy of this branch of government which should be above all branches and claim justice from anybody who violates it? I believe that most of our country’s problems can find the solution there [...]”<sup>122</sup>.

But in spite of the perverse stubbornness of the branches of government, with their tenacious fight, victims take big steps towards the achievement of true change: the unrestricted respect for human rights, for a democratized country and a society gathered around the most legitimate aspirations. Before, country was afraid and hid; now perpetrators are the ones who are afraid of justice and hide. A day will come when that justice will not be like the snake biting the barefoot –as stated by a Salvadoran peasant to Monsignor Romero– but with death: that nobody will be able to avoid, as stated by Montesquieu.

With their pain, but especially with their dignity, victims claim to be heard. In a statement issued amid the maelstrom unleashed by the first arrest warrants against the military officers prosecuted in Spain in mid 2011, they said:

We have the right to know the truth of how and who perpetrated so many crimes against humanity, deeply injuring the dignity of countless Salvadoran surviving victims, their families, and the entire society. Thus why we demand it today! We have the right to the justice that has been denied to us for almost two decades and for those responsible for our suffering to be punished, to admit their crimes, to ask for our forgiveness so that we can decide whether or not to grant it, and that only we can grant. That’s why we are demanding this today! We have the right to reparation, which is not gift or a favor; it is an obligation of the State. That’s why we are demanding it today!

Only then we can talk about forgiveness, but never oblivion. They have tried to impose that on us but they haven’t been able to do it. It is impossible! This can be seen all the time and it is happening at present. It is

122 Available at <http://polycarpi.blogspot.com/2011/08/corte-suprema.html>.

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denied by those who inflicted those fresh injuries upon us. Healing them can be only achieved through a lot of collective effort to use the only healing medicine: truth, justice, and reparation. On top of such social and human unsettled debt, other wounds continue to open after the war against a criminal violence that does not stop and it mainly affects the most socially excluded sectors, including most of the victims.

They ended stating that “To honor the blood shed by the victims before and during the war, the blood that was still shed and to stop such an unstoppable stream, we should urgently eradicate the causes of violence, among which –especially– we have impunity.”

So there is no way to get lost along the path to peace pointed out Miriam and the victims. And when justice in the world reveals the clumsy and obsolete resistance by the Salvadoran branches of government to the claims of the victims of gross violations of their human rights and of a country scourged by the current violence. Therefore, we should consider an essential aspect to make progress in the process that started in Geneva and that got stuck due to its perverse management: there will never be a guarantor State without a demanding society.