



# From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador<sup>1</sup>

## The Commission on the Truth for El Salvador

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## **E. Violence Against Opponents by the Frente Farabundo Marti Para La Liberacion Nacional**

This section deals with the use of violence by FMLN against real or alleged opponents in violation of the rules of international humanitarian law and international human rights law. It covers the use of violence against non-combatants and also the execution of alleged criminals without due process.

The section begins with a representative case, the execution of mayors in conflict zones. Then, after an explanation of the pattern observed in this type of violence, an account follows of some of the cases attributed to FMLN which had a major impact on Salvadorian society. In some cases, it has not been possible to prove who planned the attacks, in others it is impossible to determine, or to determine with certainty, who carried them out.

Lastly, this section includes a case which, in the Commission's view, is an isolated incident which does not conform to any pattern of unlawful use of violence. The section concludes with the Commission's findings.

### **1. Illustrative Case: Summary Execution of Mayors** <sup>469</sup>

#### **Summary of the Case**

Between 1985 and 1988, a large number of mayors of towns situated in conflict zones were executed, without any kind of a trial, by the Ejército Revolucionario del Pueblo (ERP), one of the organizations in FMLN. These executions were carried out pursuant to a policy which FMLN has openly acknowledged.

The present report describes 11 executions, but there were more than that.

The Commission finds the following:

1. The FMLN General Command approved and adopted a policy of murdering mayors whom it considered to be working against it.
2. The ERP leadership carried out the policy and ordered its local commanders to murder mayors whom it considered to be working against FMLN.
3. The following persons, among others, were part of the ERP leadership at various times when mayors within territory under ERP control were murdered, and they were parties to the decisions to carry out - and are therefore responsible for - those summary executions: Joaquín Villalobos ("Atilio"), Jorge Meléndez ("Jonas"), Ana Sonia Medina ("Mariana"), Mercedes del Carmen Letona ("Luisa"), Ana Guadalupe Martínez ("María") and Marisol Galindo.
4. Joaquín Villalobos, as General-Secretary of ERP, held the highest position in that organization and bears special responsibility for the murders of mayors by ERP.

5. Local ERP commanders, either under orders from the leadership or with its approval and backing, murdered the mayors listed in this summary.

6. The murders of mayors José Alberto López, Francisco Israel Díaz Vásquez, Pedro Ventura, María Ovidia Graciela Mónico Vargas, José Domingo Avilés Vargas, Dolores Molina, Napoleón Villafuerte, Edgar Mauricio Valenzuela and Terencio Rodríguez were part of an established pattern, based on a deliberate FMLN policy, and were carried out by local ERP commanders on orders from and with the express approval of members of the ERP leadership.

7. The mayor of Guatajiagua, José Alberto López, was murdered in October 1988, while in the power of commander "Amadeo".

8. The execution of mayors by FMLN was a violation of the rules of international humanitarian law and international human rights law.

## **Description of the Facts**

### **Execution of José Alberto López, mayor of Guatajiagua**

Mr. José Alberto López was elected mayor of the town of Guatajiagua, Department of Morazán, in March 1988. According to an FMLN source after his election, López received a letter from FMLN warning him to resign and stating that it was FMLN policy to execute any mayor in the area. López replied that he would not resign.

The mayor was summoned three times by FMLN to go to the guerrilla camp in San Bartolo canton, but López never went. Out of fear, he did not stay in Guatajiagua, but usually worked in San Francisco Gotera. In any case, the mayor's office in Guatajiagua had been destroyed by the guerrillas.

On Saturday, 25 October 1988, López was at home with his wife, Leticia Canales, and their four minor children. The house was in the El Calvario district of the town of Guatajiagua. An FMLN combatant whom López knew came to the house that morning and told the mayor that his commander wanted to speak to him. Fearing what would happen if he refused a fourth time, López agreed to go. Leticia, his wife, decided to go with him and the three left for San Bartolo canton on foot.

When they reached the Gualavo river, a man in uniform carrying a rifle was waiting for them. The combatant who had brought them told the man in uniform that he had the mayor with him and handed him over. The man in uniform told the mayor's wife that she could not cross the river or go to the guerrilla camp. He told her to go home, saying that her husband would be sent back that afternoon.

On arriving at the camp, the mayor was taken to the commander, who went by the name of "Amadeo". There is sufficient proof that, after speaking to the mayor, "Amadeo" ordered his execution.

That same night, Radio Venceremos announced that FMLN had summarily executed the mayor of Guatajiagua, José Alberto López.

Execution of Francisco Israel Díaz Vásquez, mayor of Lolotique

On 2 May 1985, Francisco Israel Díaz Vásquez took office as mayor, after being elected by popular vote. There is full evidence that on 2 June that year, he was abducted by FMLN and kept hostage until 24 October, when he was released along with other mayors who had also been abducted by FMLN. He was released following negotiations in Panama between FMLN and the Government.

On 2 June 1986, Díaz resumed office as mayor. In December of that year, he received death threats from the guerrillas and resigned. However, the guerrillas believed that he was still working for the Government.

On 5 December 1988, an unknown man went to Francisco Israel Díaz's home and handed his wife a note ordering him to go the next day to the place known as "la Entrada de Tempisque", near Santa Bárbara.

Díaz left on the morning of 6 December with a neighbour. They passed the place known as "la Entrada de Tempisque" and continued on to Santa Bárbara canton, arriving around noon. Three uniformed combatants with rifles suddenly appeared and arrested Mr. Díaz. Five minutes later one of them returned and told Mr. Díaz's companion to go home because they were going to hold the mayor for several days.

The next afternoon, 7 December, two unknown men went to Lolotique church and reported that Díaz was dead and handed over his wallet containing his identity papers.

That same night, several relatives and friends of Díaz went looking for his body. When they found it, they saw that "he had been shot once, behind the ear, and that the bullet, in exiting, had shot out one eye and his teeth. On one calf there was a piece of paper saying 'summarily executed by FMLN' and, on the other, a piece of paper saying 'as a traitor'."

In October 1992, FMLN informed the Commission officially that ERP, pursuant to a policy approved by FMLN, had executed mayor Díaz.

### **Executions of other mayors**

In its communication dated 18 October 1992, replying to a request for information from the Commission on the Truth, FMLN said that ERP, pursuant to a policy approved by FMLN, had also executed the following mayors:

Pedro Ventura, mayor of San Isidro, Department of Morazán, on 15 April 1988.

María Ovidia Graciela Mónico Vargas, mayor of San Jorge, Department of San Miguel, on 18 January 1985.

José Domingo Avilés Vargas, mayor of Santa Elena, Department of Usulután, on 8 January 1985.

Dolores Molina, mayor of Lolotiquillo, Department of Morazán, 19 August 1988.

Napoleón Villafuerte, mayor of Sesorí, Department of San Miguel, 25 November 1988.

Edgar Mauricio Valenzuela, mayor of San Jorge, Department of San Miguel, 4 March 1985.

The communication contained the text of two FMLN communiqués, dated 22 August and 26 November 1988, announcing the execution of Napoleón Villafuerte and Dolores [Molina] respectively.

Furthermore, there is sufficient evidence that on 11 May 1988, Mr. Terencio Rodríguez, mayor of Perquín, Department of Morazán, was executed without trial.

### **Applicable law**

In considering the facts in the light of international humanitarian law and international human rights law, the Commission examined the arguments put forward by FMLN to justify its policy of executing mayors.

FMLN justified these executions on the grounds that "mayors and mayors' offices had come to engage in what were clearly counter-insurgency activities. The mayors, in close coordination with the commanders of the garrisons of the various towns, had embarked on the task of creating paramilitary forces (civil defence units) and direct repressive activity against the civilian population and had developed spy networks to detect FMLN members and supporters, or simply people opposed to the regime among the population and to obtain information about members of popular organizations and their plans; this information was then passed on to the army." It also stated that the mayors' activities affected supply lines.

FMLN went on to say that "when mass arrests of villagers, murders, repression by civil defence forces and operations by the armed forces of El Salvador based on information supplied by the mayors' spy networks began to occur, the mayors joined the ranks of those whom FMLN, since 1980, had considered military targets whose summary execution was hence legitimate: spies, paramilitary personnel, those who collaborated with the death squads and anyone whose actions triggered repression or murder of the civilian population".

The Commission does not accept these arguments. If by calling the mayors "military targets", FMLN is trying to say that they were combatants, it must be pointed out that there is nothing to support the claim that the executed mayors were combatants according to the provisions of humanitarian law.

However, whether the executed mayors might or might not at some point have been considered "military targets" is irrelevant, since there is no evidence that any of them lost their lives as a result of any combat operation by FMLN. The execution of an

individual, whether a combatant or a non-combatant, who is in the power of a guerrilla force and who does not put up any resistance is not a combat operation.

There is nothing in international humanitarian law or international human rights law to prohibit belligerents from punishing, in areas under their control, individuals who commit acts that, according to the applicable laws, are criminal in nature. In the aforesaid document, FMLN says that it considered the summary execution of "spies, paramilitary personnel, those who collaborated with the death squads and anyone whose actions triggered repression or murder of the civilian population" a legitimate action.<sup>470</sup>

The Commission recalls that, when punishing persons accused of crimes, it is necessary to observe the basic elements of due process. International humanitarian law does not in any way exempt the parties to a conflict from that obligation, and international human rights law does not exempt the party which has effective control of a territory from that obligation with respect to persons within its jurisdiction. On the contrary, those two sources of law expressly prohibit the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted independent and impartial tribunal attaching all the judicial guarantees generally recognized as indispensable.

In none of the cases mentioned above is there any evidence that a proper trial was held prior to the execution. Nor is there any evidence that any of the individuals died in a combat operation or that they resisted their executioners.

## Findings

The Commission finds the following:

1. There is full evidence that the FMLN General Command approved and adopted a policy of murdering mayors whom it considered to be working against it.
2. There is full evidence that members of the ERP leadership, among others, carried out the policy and ordered their local commanders to murder mayors whom they considered to be working against FMLN.
3. There is full evidence that the following persons, among others, were part of the ERP leadership at various times when mayors within territory under ERP control were murdered, and that they were parties to the decisions to carry out - and are therefore responsible for - those summary executions: Joaquín Villalobos ("Atilio"), Jorge Meléndez ("Jonas"), Ana Sonia Medina ("Mariana"), Mercedes del Carmen Letona ("Luisa"), Ana Guadalupe Martínez ("María") and Marisol Galindo.
4. There is full evidence that Joaquín Villalobos, as General Secretary of ERP, held the highest position in that organization and bears special responsibility for the murders of mayors by ERP.

5. There is full evidence that local ERP commanders, either under orders from the leadership or with its approval and backing, murdered the mayors listed in this summary.

6. There is full evidence that the murders of mayors José Alberto López, Francisco Israel Díaz Vásquez, Pedro Ventura, María Ovidia Graciela Mónico Vargas, José Domingo Avilés Vargas, Dolores Molina, Edgar Mauricio Valenzuela, Napoleón Villafuerte, and Terencio Rodríguez were part of an established pattern, based on a deliberate FMLN policy, and were carried out by local ERP commanders on orders from and with the express approval of members of the ERP leadership.

7. There is full evidence that the mayor of Guatajigua, José Alberto López, was murdered in October 1988, while in the power of commander "Amadeo".

8. The execution of mayors by FMLN was a violation of the rules of international humanitarian law and international human rights law.

## **2. Extrajudicial Executions**

### **(a) Zona Rosa**

#### **Summary of the Case**

At around 9 p.m. on 19 June 1985, in an area of San Salvador known as the "Zona Rosa" where there are many restaurants, a group of armed men opened fire on a group of United States marines. The assailants were members of the Partido Revolucionario de Trabajadores Centroamericanos (PRTC), one of the organizations in FMLN. The marines, who were serving as security guards at the United States Embassy in San Salvador, were in civilian clothing and were unarmed. Four marines, nine civilians and one of the assailants died in the shoot-out. The "Mardoqueo Cruz" urban commando of PRTC claimed responsibility for the killings; FMLN defended the attack in a communiqué. In a subsequent trial, three people were tried and convicted. Two other trials were instituted for the same attack. One of them did not reach the sentencing stage, since the accused was amnestied; in the other, sentence has yet to be passed on the accused.

The Commission finds the following:

1. The attack on the United States marines was part of the FMLN policy of considering United States military personnel a legitimate target.
2. A PRTC commando carried out the attack.
3. Ismael Dimas Aguila and José Roberto Salazar Mendoza were involved in planning and carrying out the attack.
4. Pedro Antonio Andrade was also involved in planning the attack.

5. The attack on the marines in the Zona Rosa was a violation of the rules of international humanitarian law.

## **Description of the Facts** <sup>471</sup>

### **Background**

In 1985, the General Command of the Frente Farabundo Martí para la Liberación Nacional took the decision to consider United States military personnel in El Salvador legitimate military targets. It gave its members broad and sweeping orders to implement the decision. <sup>472</sup>

### **Planning the attack**

In early June 1985, some members of the Partido Revolucionario de Trabajadores Centroamericanos (PRTC), one of the five political-military organizations in FMLN, planned an attack which they called "Yankee aggressor in El Salvador, another Viet Nam awaits you". The aim was to execute United States military personnel assigned to El Salvador and responded to the general directive to that effect issued earlier by the General Command. The attack was to be carried out by members of the "Mardoqueo Cruz" urban commando.

The commando operated from an auto repair shop in which Ismael Dimas Aguilar and his brother José Abraham were partners and from the "La Estrella" upholstery shop in which William Celio Rivas Bolaños and Juan Miguel García Meléndez were partners. The main planning meetings were therefore held in those places. <sup>473</sup>

### **The attack**

At around 8.30 p.m. on 19 June 1985, six United States marines who were responsible for security at the United States Embassy sat down at an outside table at Chili's restaurant in the area known as the "Zona Rosa" in the San Benito district. They were regular customers known to the owners of restaurants and cafes in the area and to those who worked there. They used to go there in groups whenever they were off duty. <sup>474</sup> After a while, two of them left the group and went to sit down at a table in the Flashback restaurant a few yards away from their companions at Chili's. <sup>475</sup>

At around 9 p.m., a white pick-up truck with dark stripes parked outside the La Hola restaurant; a group of some seven individuals got out and walked over to Chili's and, without warning, fired a volley of shots at United States marines <sup>476</sup> Thomas Handwork, Patrick R. Kwiatkoski, Bobbie J. Dickson and Gregory H. Weber. The marines were in civilian clothing. There is no evidence that they were carrying weapons.

While the attackers were firing at the United States marines, someone returned their fire from inside Chili's and the Mediterranée restaurant. <sup>477</sup>

A member of the commando was wounded in the cross-fire. <sup>478</sup> The following people were also shot and died at the scene: Humberto Sáenz Cevallos, lawyer, Secretary of

the Faculty of Law at José Matías Delgado University; Humberto Antonio Rosales Pineda, Executive Director of Inter Data Corporation; Arturo Alonso Silva Hoff, student; José Elmer Vidal Peñalva, university student; Oswaldo González Zambroni, Guatemalan businessman; Richard Ernest Mac Ardie Venturino, Chilean executive of the WANG corporation; George Viney, United States citizen, Regional Director of WANG; and Roberto Alvidrez, United States citizen and WANG executive. Some of these people had been sitting in Chile's, others in the Méditerranée. <sup>479</sup> There is no evidence that any of the civilians who died were armed. <sup>480</sup> Other people at the scene were wounded.

A few minutes after the commando withdrew, staff from the United States Embassy arrived on the scene and drove the four marines to a first aid post.

At 9.30 p.m., members of the National Police arrived on the scene but, according to their report, were unable to make a satisfactory inspection because only eight of the bodies were there and the scene of the incident had already been disturbed. <sup>481</sup>

That same night, the other members of the commando took José Roberto Salazar Mendoza, who had been seriously wounded in the attack, to a Salvadorian Red Cross post. He died from his wound. <sup>482</sup>

### **Subsequent statements**

Three days later, on 22 June 1985, the Partido Revolucionario de Trabajadores Centroamericanos (PRTC) claimed responsibility for the operation in a communiqué signed by "Fernando Gallardo" of the political and military headquarters of the "Mardoqueo Cruz" urban guerrilla commando of PRTC.

On 25 June 1985, the FMLN General Command issued a communiqué supporting the operation and asserting that the four marines were a legitimate military target. <sup>483</sup> The Commission has full evidence, however, that the United States marines were not combatants. Their function was to guard the United States Embassy and there is no indication whatsoever that they took part in combat actions in El Salvador. Furthermore, international humanitarian law defines the category of "combatant" restrictively. The allegation that they were performing "intelligence functions" has not been substantiated. In any event, carrying out intelligence functions does not, in itself, automatically place an individual in the category of combatant.

In a subsequent broadcast on Radio Venceremos, Ismael Dimas Aguilar acknowledged that, as one of the military chiefs of the "Mardoqueo Cruz" urban commando responsible for the operation, he had participated in its planning and in the execution of the marines. <sup>484</sup>

On 28 August 1985, then President of the Republic José Napoleón Duarte held a press conference to report on the results of the investigation into what he called the "Zona Rosa Massacre". He said that three of the people responsible for the operation had been arrested. José Abraham Dimas Aguilar and Juan Miguel García Meléndez, who had planned the operation, and William Celio Rivas Bolaños, who had helped carry it out.

## The judicial proceedings

On 27 August 1985, the National Guard placed the three accused at the disposal of the military court and handed over the results of the investigation, including the confession of the three defendants.<sup>485</sup> Rivas and García later said that their confessions had been obtained under torture. The documents of the investigation were incomplete, since they did not include autopsy or ballistic reports, a reconstruction of events, or other reports customary in the investigation of a case of this kind.<sup>486</sup>

Sentence was passed only five years later, on 30 April 1991, in the court of first instance. Although it appears from the dossier that the extrajudicial confessions were generally confirmed, there is no record that the defendants ever appeared in court, that any statement was taken from them or that any effort whatsoever was made to clarify the facts.

Two years after the trial began, the defendants' lawyer requested the dismissal of proceedings against them under the 1987 Amnesty Act.<sup>487</sup> On 12 November 1987, the court granted the request and dismissed all charges against the three defendants.<sup>488</sup>

The United States Consul General in San Salvador representing the family of one of the dead United States marines went to court to file an appeal against the amnesty.<sup>489</sup> On 4 December 1987, the military court confirmed the dismissal on grounds that the offences had been political.<sup>490</sup>

On 22 February 1988, President Napoleón Duarte, to whom, as Commander-in-Chief of the Armed Forces, the decision of the military court was referred, overturned it on the grounds<sup>491</sup> that the Zona Rosa killings were ordinary crimes of international significance and, as such, not subject to amnesty. The Supreme Court of Justice, before which the matter was brought by means of a remedy of habeas corpus, confirmed the decision.

On 30 April 1991, sentence was passed in the court of the first instance and the three defendants were found guilty; the sentence was confirmed, almost in its entirety, on 5 March by the relevant court.

On 25 September 1992, the military judge decided to wait until he had seen the report of the Commission on the Truth before ruling on the request from the defendants' lawyer that the National Reconciliation Act be applied to the defendants, saying that the report was indispensable in order to determine whether the amnesty provided for in that Act was applicable.<sup>492</sup>

While this trial was going on, two other defendants went on trial for the same incident.

One trial, that of Juan Antonio Morales, began in 1988. Morales confessed to the Treasury Police that he had been part of the commando that had carried out the Zona Rosa operation and he confirmed his statement to the judge of the Fifth Criminal Court. Although his version of events is substantially the same as the one given by Rivas, García and Dimas, he did not name them as having been among the

participants. There was no joinder of the two trials, and he has still not been sentenced. After a number of procedural vicissitudes, those implicated were denied the benefit of amnesty. Morales is still being held.<sup>493</sup>

The other trial, for complicity, was instituted in 1989 before the Third Criminal Court against Pedro Antonio Andrade, nom de guerre "Mario González".<sup>494</sup> This trial too was not joined to the earlier one. Unlike the other defendants, Andrade benefited from the 1987 amnesty.

The Commission has received sufficient evidence that Andrade was one of the people who planned the attack. Andrade was head of the "Mardoqueo Cruz" urban commando at the time the incident occurred and he confessed in court to having had prior knowledge of an attack planned against "los cheles" (foreigners) and having made arrangements for a safe house and for medical care in case anyone was wounded in the operation. However, the Commission has received credible information that Andrade had a wider role in the selection of specific targets and in other aspects of the attack.

## **Findings**

The Commission finds the following:

1. There is full evidence that the attack on the United States marines was part of the FMLN policy of considering United States military personnel a legitimate target of war.
2. There is full evidence that the "Mardoqueo Cruz" urban commando of PRTC carried out the attack and that PRTC, as the organization to which this commando belongs, bears responsibility for the incident.
3. There is substantial evidence that Ismael Dimas Aguilar planned the attack and that he himself fired on the marines.
4. There is sufficient evidence that Pedro Antonio Andrade was involved in planning the attack.
5. The attack on the marines in the Zona Rosa was a violation by FMLN of the rules of international humanitarian law.

### **(b) Anaya Sanabria**

## **Summary of the Case**

Herbert Ernesto Anaya Sanabria, leader of the Human Rights Commission (non-governmental), was shot and killed on the morning of 26 October 1987 in the parking lot outside his home in San Salvador.

Two months later, National Police arrested a young man, Jorge Alberto Miranda Arévalo, a member of ERP, who initially stated that he had taken part in the murder as the look-out. He later retracted his confession. In 1991, a jury found him guilty and he was sentenced to the maximum penalty of 30 years in prison.

The Commission finds that:

1. For this case, it did not have sufficient time to resolve the following dilemma: the fact that there was evidence that a State security force or a death squad might have been responsible, and also evidence that the Ejército Revolucionario del Pueblo (ERP) might have been responsible for the murder of Herbert Ernesto Anaya Sanabria.
2. Miranda's trial and his treatment by the police violated his basic rights.
3. The State failed in its duty under international law to protect human rights, properly investigate the murder of Herbert Anaya and bring to trial and punish the culprits.

## **Description of the Facts** <sup>495</sup>

### **The murder**

On 26 October 1987, Herbert Anaya was shot to death in the parking lot of his home in the Zacamil district. According to witnesses, three men took a direct part in the murder: one fired the shots, another acted as look out for the first and the third <sup>496</sup> drove the vehicle. <sup>497</sup> The murderers escaped in an old, yellow pick-up truck.

Ballistic tests showed that the six cartridges had been fired from the same weapon, <sup>498</sup> and also that the six bullets found had been fired from the same weapon. <sup>499</sup> The Commission for the Investigation of Criminal Acts (CIHD) maintained that the bullets were not typical of the ammunition available to the armed forces of El Salvador. <sup>500</sup>

### **Background**

At the time he was murdered, Herbert Anaya was general coordinator of the Human Rights Commission (non-governmental) (CDHES-NG) <sup>501</sup> and used to speak out regularly against human rights violations. He was also a member of the Ejército Revolucionario del Pueblo. <sup>502</sup> Before his death, he apparently advocated a peaceful solution to the armed conflict in his country. <sup>503</sup>

On 26 May 1986, he was arrested by members of the Treasury Police who were dressed in civilian clothing and heavily armed. <sup>504</sup> He was interrogated and imprisoned <sup>505</sup> until 2 February 1987, when he was released in an exchange of prisoners.

### **Reaction to the murder**

The murder triggered a strong reaction both within El Salvador and abroad. There were demonstrations in the capital and national and international human rights groups and civilian associations expressed their concern.<sup>506</sup>

President Duarte asked CIHD to investigate the case and also offered a reward of 50,000 colones (US\$ 10,000).<sup>507</sup> The investigation did not produce any significant results, and the possibility that Anaya might have been murdered by Government forces or right-wing sectors was not seriously investigated.

#### Arrest and detention of Jorge Alberto Miranda Arévalo

On 23 December 1987, National Police arrested Jorge Alberto Miranda Arévalo, a member of a union of the ERP urban commandos.<sup>508</sup> Miranda and a companion had attacked a truck carrying soft drinks. His companion "Carlos", who, according to Miranda's first statement, shot at Anaya, managed to escape.

Miranda was interrogated<sup>509</sup> and, according to the National Police, made an extrajudicial statement confessing to having participated as look out in Anaya's murder. According to the court dossier, that same day he led members of the National Police to arms caches.

During the first weeks of his detention, Miranda said that he had been subjected to psychological pressure.<sup>510</sup> He said he had been injected with an unknown substance,<sup>511</sup> and also that he had been subjected to sleep deprivation.

The Government concluded that Miranda was guilty. When the Government paid Miranda 12,000 colones on 4 January 1988, saying that the payment was being made under a programme announced in December 1987, the Minister of Justice denied that Miranda was being rewarded for taking the blame for the murder.<sup>512</sup>

During the first weeks of his imprisonment, Miranda received special treatment: he was interviewed on camera and visited alone by foreign reporters<sup>513</sup> and also by senior officials. Miranda says he was also visited by members of the National Police and by some Venezuelans who offered him comforts if he stuck to his original statement.<sup>514</sup>

For its part, CIHD concluded its investigation shortly after Miranda's arrest. According to the dossier, CIHD did not pursue leads or update important information, spoke to few witnesses and did not compare the results of ballistic tests of the ammunition used in the murder with ammunition handed over by Miranda.

#### Judicial proceedings against Miranda

When he had been held nine days longer than the maximum time allowed by the Salvadorian Constitution without being brought before a judge,<sup>515</sup> Miranda was brought before the judge of the First Criminal Court of San Salvador<sup>516</sup> [on 4 January 1988], the day he received his payment from the Government. That same day, Miranda confirmed his extrajudicial statement before the judge. Nevertheless, one month later,

he retracted his statement about the assassination, although he reaffirmed that he was a member of ERP.<sup>517</sup>

After two years during which little headway was made, the judge ordered a partial stay of proceedings in Miranda's favour in April 1990, "... because of the absence of the necessary evidence of his participation".<sup>518</sup> Subsequently, the First Criminal Chamber of the First Central Section revoked the stay<sup>519</sup> and brought the case to trial.

In October 1991, a jury of five persons found Jorge Miranda guilty of murder and acts of terrorism.<sup>520</sup>

In March 1992, the judge applied the National Reconciliation Act to Miranda in respect of the offence of acts of terrorism and subversive association, but not in respect of the murder, and gave Miranda the maximum sentence of 30 years in prison.<sup>521</sup>

## **The evidence<sup>522</sup>**

### **ERP**

No ERP member interviewed by the Commission has claimed responsibility for Anaya's murder, nor has any witness identified Miranda as a participant. One eyewitness who claimed to have seen the murderers from close up was unable to identify Miranda when shown a series of photographs of young men, including Miranda.<sup>523</sup>

Nonetheless, there is evidence that ERP and Miranda may have participated in the murder, and there are even credible motives. There were disagreements between Anaya and ERP. There is evidence that Anaya already wanted to see an end to the violence, whereas ERP had embarked on an initiative which would require violence in San Salvador.

Moreover, in his first two statements, Miranda put the blame on himself and on ERP. He had, and continues to have, a grasp of the facts.<sup>524</sup>

To the Commission, Miranda continued to deny his involvement. He even claimed that he had made up everything he had said about the murder and its planning. Nevertheless, he gave details of the murder and the way in which it was apparently planned that tally with other facts and that, according to our investigations, he had not given before. He provided information on: the time of a meeting held the night before the murder, where the pick-up truck came from, who obtained it and how he got to Anaya's parking lot in order to be able to act as look-out before the murder.

### **The Government**

Salvadorian and international human rights organizations have expressed concern that the armed forces or a death squad may have killed Anaya in order to put an end to his criticisms of human rights violations.<sup>525</sup>

There is evidence that this could be true. According to his colleagues, Anaya received a number of direct and indirect threats from the Government throughout 1987.<sup>526</sup> According to a leader of CDHES-NG, two weeks before his murder a woman who worked for the Commission was arrested by the National Police, who informed her that they knew that Anaya was the leader of the organization and that "they were going to disrupt the entire work" of the organization.<sup>527</sup>

Throughout the 1980s, there were constant acts of violence against CDHES-NG and Anaya was the fourth leader of the Commission to be murdered or to disappear. Not one of these cases has been satisfactorily resolved.<sup>528</sup>

Moreover, according to Anaya's widow, at 6.10 a.m on the day of the murder, neighbours saw a group of National Police some 200 metres from the family's house.<sup>529</sup> She argues that since the police were so close by, the murders could not have been from FMLN.

## Findings

The Commission finds that:

1. For this case, it did not have sufficient time to resolve the following dilemma: the fact that there was evidence showing that a State security force or a death squad might have been responsible, and also evidence that the Ejército Revolucionario del Pueblo (ERP) might have been responsible for the murder of Herbert Ernesto Anaya Sanabria.
2. Miranda's trial and his treatment by the police violated his basic rights.
3. The State failed in its duty under international law to protect human rights, properly investigate the murder of Herbert Anaya and bring to trial and punish the culprits.

### **(c) Romero Garcia, "Miguel Castellanos"**

#### **Summary of the Case**

Miguel Castellanos, whose real name was Napoleón Romero García, was murdered at 6.30 p.m. on 16 February 1989, shortly after leaving his office in the Centro para Estudios de la Realidad Nacional (CEREN) in the Flor Blanca district of San Salvador. FMLN urban commandos machine-gunned the vehicle in which Castellanos was travelling with his bodyguard, Rafael Quijada López, on the 43 Avenida Sur and Sexta Décima calle PONENTE. Castellanos was taken to the military hospital, where he died soon after. Quijada López received three bullet wounds, two in the legs and one in the stomach, but he survived the attack.

The attackers were not identified.

In a Radio Venceremos broadcast and in statements to the press, FMLN took responsibility for the attack.

## **Background**

Castellanos, aged 39, had been a member of the Political Commission of the Fuerzas Populares de Liberación (FPL), one of the member organizations of FMLN, until mid-April 1985, when he was arrested by members of the National Guard. During the first days of his detention, he agreed to change his position and to collaborate with the authorities.

Before his arrest, Castellanos had been a member of the Political Commission of FPL and, in that capacity, the political and military official in charge of the special metropolitan area, as well as a member of the FMLN Joint Command in San Salvador. According to a report submitted to the Commission on the Truth by FMLN, Castellanos handled a great deal of secret information and, after his arrest in 1985, advised the National Guard and other intelligence bodies of the armed forces on matters relating to the campaign against FPL in particular and FMLN in general.

After changing his position, Miguel Castellanos started working at CEREN. He was also editor of the magazine Análisis.

## **Action by the Commission**

The facts of the case are not in dispute. Nevertheless, the Commission examined the available evidence and sought information from FMLN, which is obtained.

The position of FMLN is that the death of Miguel Castellanos was a legitimate execution, since he was a traitor who was contributing in a direct and effective manner to repression against FMLN.

## **Findings**

Notwithstanding the arguments put forward by FMLN, international humanitarian law does not permit the execution of civilians without a proper trial.

### **(d) Peccorini Lettona**

Francisco Peccorini Lettona, aged 73, a doctor of philosophy and university lecturer, was a contributor to El Diario de Hoy, a morning newspaper in El Salvador, in which he had written a number of articles opposing the activities of FMLN.

Mr. Peccorini took an active and public part in a group dedicated to what it termed "winning back" the University of El Salvador, which, in its view, had been infiltrated by guerrillas.

On 15 March 1989 in San Salvador, while driving his car, Mr. Peccorini was the target of an attack in which he was shot. He was taken to the military hospital, where he died.

At the Cocoyoc meeting, held in Mexico from 21 to 24 July 1989 between prominent persons from the United States of America and representatives of FMLN, FMLN acknowledged responsibility for Mr. Peccorini's death.

#### **(e) Garcia Alvarado**

On 19 April 1989, Mr. José Roberto García Alvarado, Attorney General of the Republic, was killed when a bomb planted in the car he was driving exploded. The incident occurred in the San Miguelito area of San Salvador and the two passengers in the car were injured.

At the Cocoyoc meeting in Mexico in July 1989, FMLN took responsibility for Mr. García Alvarado's death, which it attributed to the Fuerzas Armadas de Liberación (FAL), one of its member organizations.

#### **(f) Guerrero**

#### **Summary of the Case**

On 28 November 1989, Mr. Francisco José Guerrero, former President of the Supreme Court of El Salvador, was assassinated in his car at the intersection of Boulevard de los Héroes and Alameda Juan Pablo II in San Salvador. One of the attackers was killed, another escaped and the third, César Ernesto Erazo Cruz, was wounded.

In the hospital, Erazo Cruz said he had killed Guerrero on orders from FMLN. He later changed his story and finally denied participating at all. When he came to trial, the jury acquitted him.

At the time of his death, Mr. Guerrero was investigating the assassination of the Jesuit priests and apparently had found evidence. One of the possible motives for his murder may have been precisely to conceal that evidence.

Mr. Guerrero died as a result of deliberate action aimed at killing him. Although César Ernesto Erazo Cruz was acquitted at the trial, there is every evidence that he participated in the assassination. The Commission tried unsuccessfully to obtain significant information both within and outside El Salvador to confirm or disprove its investigating hypotheses. Although there is sufficient evidence that Erazo Cruz was at the time an active FMLN member, a fact which suggests that a more thorough investigation of FMLN responsibility for the assassination is called for, the available evidence did not allow the Commission, on completion of its work, to reach full agreement on this case.

Mr. Francisco José Guerrero, a prominent conservative politician, was active in public life for more than three decades.<sup>531</sup> He was President of the Supreme Court, worked as an adviser to President Cristiani to promote the dialogue with FMLN and was also a member of the Ministry of Foreign Affairs advisory council.<sup>532</sup>

Mr. Guerrero was investigating the assassination of the Jesuit priests, which took place 12 days before he was killed. He had contacted the Jesuits immediately after the crime occurred and offered to cooperate in solving it.

#### The death of Mr. Guerrero

On the morning of 28 November 1989, Mr. Guerrero left his house in the Escalón district with his daughter-in-law to drive her to the San Salvador judicial centre, where she worked. Mr. Guerrero was driving, his daughter-in-law was sitting in the front passenger seat, and his bodyguard, Víctor Manuel Rivera Monterrosa, was sitting in the back seat. Mr. Guerrero was usually accompanied by two bodyguards, but that morning one of them did not show up.

They reached the intersection of Boulevard de los Héroes and Alameda Juan Pablo II without incident, and there they stopped at a traffic light near the "Biggest" restaurant. A man - later identified as Angel Aníbal Álvarez Martínez - ran up along the pavement and stationed himself behind Mr. Guerrero's car. Another unidentified man stationed himself to the left of the car and a third, later identified as César Ernesto Erazo Cruz, stood on the right side. Without addressing a word to the occupants of the car, they opened fire with their weapons.<sup>533</sup> Mr. Guerrero's bodyguard noticed the men before they aimed their first shots at him, but only had time to react and counter-attack.<sup>534</sup>

According to witnesses, the attackers had followed Mr. Guerrero to the intersection in a yellow Volkswagen, from which they emerged and surrounded him. Other witnesses asserted that the attackers arrived on foot.<sup>535</sup>

The vehicle was hit from three sides by nine bullets.<sup>536</sup> Apparently, the attackers fired first at Mr. Rivera Monterrosa, who was wounded, lost control for a few seconds, then managed to fire back at his attackers with a 357 calibre revolver and an M-16 rifle. At that moment, he was hit again and emptied the entire magazine at the attackers.<sup>537</sup>

Mr. Guerrero was hit by five bullets.<sup>538</sup> All the bullets extracted from his body were 45 calibre,<sup>539</sup> three of them having been fired from a revolver which, according to the person who handed it over to the police two days later, was found on the body of Álvarez Martínez.<sup>540</sup> The other two bullets had been fired from another weapon that was never recovered.

Erazo Cruz and Álvarez Martínez were standing on the pavement in front of the "Biggest" restaurant when on-the-spot witnesses saw at least one man get out of a Cherokee-type vehicle two or three cars behind that of Mr. Guerrero, and fire a rifle, apparently an M-16, at Erazo Cruz and Álvarez Martínez.<sup>541</sup> Álvarez Martínez was killed instantly.<sup>542</sup> Erazo Cruz was wounded.<sup>543</sup> The calibre of the bullet extracted from the body of Álvarez Martínez was 5.56 mm,<sup>544</sup> which is the calibre used in the M-16.

The third attacker fled the scene and has never been identified. The Cherokee picked up the man with the M-16 and likewise left the scene for an unknown destination.<sup>545</sup>

Mr. Guerrero and his bodyguard were taken to the Medical Surgical Hospital, where Mr. Guerrero died the same day. His daughter-in-law survived the attack unharmed.

### **Subsequent events**

The paraffin tests performed on Alvarez Martínez and Erazo Cruz the following day by officers of the National Police were positive.<sup>546</sup>

Erazo Cruz stated at the National Police medical clinic that he was a member of the FPL urban commandos and had participated in the assassination on the orders of the FMLN command, transmitted through another member of the organization. According to this statement, all he knew was that an important politician was to be assassinated. On further questioning, he changed his story and said that a certain "Manuel" had simply told him they were going to commandeer a vehicle.<sup>547</sup>

In his second statement, made to the judge of the Sixth Criminal Court, Erazo Cruz confirmed his first statement, with some changes. According to this version, "Manuel" had told him they were going to commandeer a vehicle with tinted glass windows. They had gone up and down the boulevard several times without finding the vehicle. When they came to the corner where the "Biggest" restaurant is situated, his two companions suddenly started running towards a vehicle. "Manuel" took up position behind the vehicle and shot into the back of it, while "Efraín" stood in front and shot into the front of it.

According to Erazo Cruz, when this happened he ran to the pavement in front of the "Biggest" restaurant. From there he saw a man with a rifle get out of a car behind the vehicle at which "Manuel" and "Efraín" were firing and shoot at "Manuel". At that moment he himself felt an impact and fell to the ground. He did not know where "Efraín" went or whether he had been wounded.<sup>548</sup>

On the basis of these statements, the trial judge ordered that Erazo Cruz be detained pending trial.<sup>549</sup> After recovering from his wounds, he was held in the Mariona prison. This prison was attacked by FAL members; Erazo Cruz escaped with other prisoners and reached an FMLN camp.<sup>550</sup>

In September 1991, troops of the Atlacatl Battalion wounded and captured Erazo Cruz. The soldiers took him to hospital and he was subsequently committed to prison.

The public hearing was held on 21 July 1992 in the Sixth Criminal Court. Erazo Cruz was accused of aggravated homicide,<sup>551</sup> causing grievous bodily harm,<sup>552</sup> being a member of a subversive association,<sup>553</sup> and escape involving the use of violence.<sup>554</sup> During the trial, Erazo Cruz denied participating in the crime, despite his judicial confession. He claimed that he was passing by the scene of the crime when he found himself caught in the gunfire; he was wounded and was, he alleged, forced to confess that he was responsible.

The jury acquitted Erazo Cruz of the charges of homicide and causing grievous bodily harm.<sup>555</sup> He was freed in mid-August 1992.

### **Responsibility of the guerrillas and participation of Erazo Cruz**

FMLN admitted a certain degree of responsibility for the assassination of Mr. Guerrero. Shortly after the crime, FMLN spokesmen said he had been killed when the members of the urban commandos tried to steal his car. This version coincides with parts of the original statements by Erazo Cruz, including his judicial confession.

Furthermore, the 45 calibre and 9 mm revolvers used in the assassination were typical of the weapons used by the urban commandos. Moreover, although Erazo Cruz was acquitted and denied any participation when he appeared before the Commission, there is substantial evidence that he took part in the crime. An eyewitness who had not spoken before identified him as one of the attackers. The paraffin test was positive, showing he had fired a gun. There are also contradictions in parts of his testimony to CIHD.<sup>556</sup>

The FMLN members interviewed by the Commission said that they did not know Erazo Cruz before the assassination and did not have any information on Alvarez Martínez and the other participants, nor did they know anything about the crime. Nevertheless, the Commission received reliable evidence indicating that Erazo Cruz belonged to the guerrilla forces at the time when Mr. Guerrero was assassinated.

On the other hand, the Commission received information to the effect that Mr. Guerrero was assassinated because he had obtained incriminating evidence on those allegedly responsible in the Jesuit case. This version was made public in January 1992, when Marta Aracely Guerrero de Paredes, Mr. Guerrero's daughter, said that on the day he died her father had been carrying documents revealing the identity of those who had killed the six Jesuit priests.<sup>557</sup>

Mr. Guerrero had used his political influence to obtain information. A few days before he died, at least one friend warned him that his life was in danger and that he should stop investigating the Jesuit case.

The attack on Mr. Guerrero certainly did not occur as a result of an attempt to steal his car. The attackers never addressed a word to the occupants of the car, which was, moreover, hit by so many bullets that it could not be used again.

The role which the Cherokee-type vehicle played in the incident casts further doubts on the identity of those responsible for planning the assassination. Generally speaking, Cherokee vehicles were used in official circles and, similarly, M-16 rifles were used by members of the armed forces and bodyguards. The whereabouts of the Cherokee and its occupants is unknown.

### **Findings**

Taking into account its consideration of the available documents and the direct testimony received, including the new evidence, the Commission finds that there is

full evidence that Mr. Guerrero's death resulted not from an attempt to steal his car but from an intention to kill the driver of the car, i.e. Mr. Guerrero.

Mr. Guerrero died as a result of deliberate action aimed at killing him. Although César Ernesto Erazo Cruz was acquitted at the trial, there is every evidence that he participated in the assassination. The Commission tried unsuccessfully to obtain significant information both within and outside El Salvador to confirm or disprove its investigating hypotheses. Although there is sufficient evidence that Erazo Cruz was at the time an active FMLN member, a fact which suggests that a more thorough investigation of FMLN responsibility for the assassination is called for, the available evidence did not allow the Commission, on completion of its work, to reach full agreement on this case.

### **(g) United States Soldiers who Survived the Shooting Down of a Helicopter**

#### **Summary of the Case**

On 2 January 1991, a United States helicopter gunship was shot down by an FMLN patrol in San Francisco canton, Lolotique district, Department of San Miguel, while flying at low altitude towards its base at Soto Cano, Honduras.

The pilot, Daniel F. Scott, was killed and in the crash and Lt. Colonel David H. Pickett and Corporal Earnest G. Dawson were wounded; all were United States nationals. Members of the patrol approached the helicopter and fired at the survivors from a certain distance. The patrol left the dead United States soldier and the two wounded soldiers at the scene and departed, carrying off weapons and equipment from the helicopter. Shortly afterwards, a member of the patrol was sent back to the scene and killed the two wounded men.

#### **Description of the Facts**

At about 1.40 p.m. on 2 January 1991, a United States armed forces UH-1H helicopter took off from the Ilopango airport, San Salvador, with a crew consisting of the following United States military personnel: Lt. Colonel David H. Pickett, Corporal Earnest G. Dawson and the pilot, Daniel F. Scott. Pickett was Commander of the Fourth Battalion of the 22nd Airborne Regiment, based in Soto Cano, Honduras, where they expected to arrive shortly after 5 p.m.

At about 2 p.m., the helicopter was flying over San Francisco canton at an altitude of between 30 and 50 metres. It was flying low in order to be less vulnerable to possible guerrilla missile attacks, and also because, if it was shot down, there would be more likelihood of the occupants surviving.

That day, seven armed combatants of the Ejército Revolucionario del Pueblo (ERP) an FMLN member organization, were on patrol in San Francisco canton, Lolotique district, Department of San Miguel. Severiano Fuentes Fuentes, "Aparicio", a political leader of that organization in the area, was in command of the patrol, which in addition consisted of Antonio Bonilla Rivas, "Ulises", Daniel Alvarado Guevara, "Macaco",

Digna Chicas, "Doris", and María Lita Fernández, "Carmen". They were accompanied by Santos Guevara Portillo, "Domínguez", and Fernán Fernández Arévalo, "Porfirio".

On sighting the helicopter, the patrol fired their M-16 and AK-47 rifles at it. The helicopter crashed some 500 metres away.

As the autopsy subsequently showed, the pilot, Scott, was killed when the helicopter crashed. The ERP patrol approached firing and wounded the two survivors.

One member of the patrol went to San Francisco canton, some 500 metres away, and came back with about 10 of the inhabitants. They placed the two wounded men and Scott's body some metres away from the helicopter and took back to San Francisco the articles which the combatants pointed out to them. The latter then set fire to the helicopter.

There is sufficient proof that Severiano Fuentes Fuentes, "Aparicio", ordered Daniel Alvarado Guevara, "Macaco", to kill the two wounded men and that "Macaco" refused to obey. When the patrol had moved about 100 metres away, Fernán Fernández Arévalo, "Porfirio", on the orders of Fuentes, came back and killed the wounded men.

### **Subsequent events**

Some inhabitants of San Francisco told the authorities what had happened. The same night, the bodies were found and transferred by helicopter to Third Brigade headquarters, where they were examined by a justice of the peace. They were subsequently transferred to Ilopango airport, in San Salvador, where they were handed over to the United States authorities.

The following day, 3 January, a group of United States military personnel, accompanied by Salvadorian officers, inspected the remains of the helicopter and interviewed a number of local inhabitants.

The news of the shooting down of the helicopter and the execution of the wounded soldiers was disseminated the same day.

FMLN, via Radio Venceremos, began by denying that any wounded men had been executed. On 7 January, it acknowledged that this might have happened and announced that an investigation would be undertaken. On 9 January, it admitted that the wounded men had been executed and on 18 January it announced that "Domínguez" and "Porfirio" would be tried for the offence. A correction was subsequently issued to the effect that "Aparicio" and not "Domínguez" was involved.

On 17 March 1992, Fuentes ("Aparicio") and Fernández ("Porfirio") voluntarily appeared before the Cinameca Court of First Instance and were sent to the Mariona Prison, where they remain.

### **Action by the Commission**

The Commission on the Truth examined the materials in the judicial dossier, the results of the investigations carried out by United States experts and the documentation relating to the investigation made by FMLN, which was supplied by the latter. It interviewed five of the seven combatants who participated in the incident, together with a number of inhabitants of San Francisco canton and other people who could provide relevant information.

## **Findings**

The Commission considers that there is sufficient proof that United States soldiers Lt. Colonel David H. Pickett and Corporal Earnest G. Dawson, who survived the shooting down of the helicopter by an ERP unit, but were wounded and defenceless, were executed, in violation of international humanitarian law, by Fernán Fernández Arévalo, acting on the orders of Severiano Fuentes Fuentes. The Commission has found no evidence that other members of the unit participated in the execution.

The Commission has likewise found no evidence that the executions were ordered by higher levels of command, or that they were carried out in accordance with an ERP or FMLN policy of killing prisoners. FMLN acknowledged the criminal nature of the incident and detained and tried the accused.

### **3. Abductions**

#### **Duarte and Villeda**

On 10 September 1985, Inés Guadalupe Duarte Durán, daughter of President José Napoleón Duarte, and her friend, Ana Cecilia Villeda, arrived by car at the gates of a private university in San Salvador. They were followed in a van by two bodyguards assigned to protect them. As the two vehicles came to a stop, other vehicles positioned themselves so as to block traffic, while a number of armed individuals killed the bodyguards and forced the two women into a truck.<sup>558</sup> The two women were taken to a guerrilla camp.

Four days after the incident, the self-styled Pedro Pablo Castillo commando of FMLN publicly announced that it was responsible.

On 24 October, after several weeks of negotiations in which the Salvadorian church and diplomats from the region acted as mediators in secret talks, Inés Duarte and her friend were released in exchange for 22 political prisoners.<sup>559</sup> The operation also included the release of 25 mayors and local officials abducted by FMLN in exchange for 101 war wounded guerrillas, whom the Government allowed to leave the country. The entire process of exchanging prisoners, which took place in various parts of the country, was carried out through the International Committee of the Red Cross.

In a communiqué from the FMLN General Command broadcast by Radio Venceremos on the day Inés Duarte was released, the General Command assumed full responsibility for the operation and described the actions of the commando, including the killing of the bodyguards, as "impeccable".

The abduction of Inés Duarte and Ana Cecilia Villeda constitutes a taking of hostages and is therefore a violation of international humanitarian law.<sup>560</sup>

## **F. Murders of Judges**

In the 1980s, it was dangerous to be a judge in El Salvador. As can be seen from the reports in this chapter concerning the murders of Monsignor Romero and the Dutch journalists, some judges, after being threatened or attacked, were forced to resign and even to flee the country.

What is more, according to a report given to the Commission on the Truth by the Supreme Court of Justice, 28 judges were murdered in El Salvador in the 1980s.<sup>561</sup>

One of them, Mr. Francisco José Guerrero, was assassinated after completing his term of office as President of the Supreme Court. Three others murdered were judges of courts of first instance and the remaining 24 were justices of the peace; of the latter, 20 were murdered during the period 1980-1982.

The Commission received complaints and testimony from independent sources regarding some of the cases referred to it by the Supreme Court and was able to investigate two of them. As to the other murders, there was evidence that some had been perpetrated by FMLN and others by the death squads and in two cases the judges appear to have died in combat.

The case investigated in depth was the assassination of Mr. Francisco José Guerrero, the report of which is contained in this chapter. The results of the investigation of the murder of a justice of the peace are given below.

### **Justice of the Peace of Carolina**

José Apolinar Martínez, justice of the peace of the town of Carolina in the Department of San Miguel, was shot to death at his home on 14 June 1988. His three-year-old daughter was also wounded in the attack and subsequently underwent weeks of medical treatment.

There is strong evidence that FMLN was responsible. About one year previously, the judge had received threatening letters from the Ejército Revolucionario del Pueblo, one of the armed groups in FMLN. The murder took place in an area at least partially controlled by FMLN. The killers subsequently fled towards an area under greater FMLN control. They were wearing military uniforms and carrying rifles. A piece of paper indicating that FMLN assumed responsibility for the murder was found at the scene of the crime.

On the other hand, a long time elapsed between the threats and the murder. Furthermore, there was no pattern of executing justices of the peace at that time. Although many justices of the peace were murdered in the period 1980-1982, only two such murders, including this one, occurred between 1986 and 1988.

Nevertheless, taking into account all the circumstances and all the evidence, the Commission finds that there is sufficient evidence to attribute this murder to FMLN members. The murder of justice of the peace José Apolinar Martínez violated international humanitarian law.

## **V. Recommendations**

### **Introduction**

As part of its mandate, the Commission is called upon to make recommendations. Indeed, under the terms of its mandate,

"The mandate of the Commission shall include recommending the legal, political or administrative measures which can be inferred from the results of the investigation. Such recommendations may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation".

The Commission decided to first comment generally on the results of its investigations, the principles on which these investigations and its recommendations are based and the persons and institutions to whom they are addressed, before making specific recommendations.

### **1. General conclusions**

The causes and conditions which generated the large number of serious acts of violence in El Salvador derive from very complex circumstances. The country's history and its deeply rooted relations of injustice cannot be attributed simply to one sector of the population or one group of persons. This or that Government institution, certain historical traditions, even the ideological struggle between East and West which went on until only recently, and of which El Salvador was a victim and an episode, are mere components. All these factors help to explain the complex situation in El Salvador during the 12-year period which concerns us. The Commission was not called upon to deal with all these factors, nor could it do so. Instead, it focused on certain considerations which prompted it to formulate its basic recommendations in such a way that this situation might be fully understood.

The lack of human rights guarantees in El Salvador and the fact that a society has operated outside the principles of a State subject to the rule of law imposes a serious responsibility on the Salvadorian State itself, rather than on one or other of its Governments. The political, legislative and institutional mechanisms required to ensure the existence of a society subject to the rule of law existed in theory, at least in part, but the reality was not what it should have been, perhaps as a consequence of excessive pragmatism. With the passage of time, the military establishment and, more specifically, some elements within the armed forces, having embarked upon a course from which they found it difficult to extricate themselves, ended up totally controlling the civilian authorities, frequently in collusion with some influential civilians.