

# NICARAGUA

## SEPARATING FACTS FROM FICTION

### The Work of the Tripartite Commission in Nicaragua



Since the inauguration of President Violeta Chamorro in April 1990, Nicaragua has been the scene of significant political turmoil and political violence. Sharp polarization following the close of the *contra* war in June 1990, the introduction of economic reforms dismantling the semi-socialist economy of the Sandinista period, attempts by former property owners to recover holdings confiscated by the Sandinistas, and a serious scarcity of budgetary resources to deal with security and social problems have combined to generate a situation of episodic unrest and pervasive insecurity among much of the citizenry in the face of political and criminal activity.

Political violence in post-Sandinista Nicaragua has included violent strikes, destruction of property, politically-inspired kidnappings and the assassination of political figures such as former *contra* chief Enrique Bermúdez and private sector leader Arges Sequeira. Bermúdez, the top military commander of the *contras*, was murdered in the parking lot of Managua's Intercontinental

Hotel on February 17, 1991, shortly after his return to Nicaragua. The police investigation was marked by irregularities, and no suspects have been identified or detained. Arges Sequeira, a property rights activist who headed the Nicaraguan

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Association of Confiscated Property Owners, was murdered on November 23, 1992, near his cattle ranch in northwestern Nicaragua. A group known as the Leftist Punitive Forces (*Fuerzas Punitivas de Izquierda*, or FPI) claimed credit for Sequeira's murder, as well as for several prior bomb attacks in Managua. In January 1993, the police ordered the arrests of three alleged FPI members, all former members of the Nicaraguan army or state security force, but no arrests were carried out. The highest-ranking, Frank Ibarra Silva, was a former lieutenant colonel in state security. All three were found guilty *in absentia*, but pardoned in a late 1993 amnesty. Although the government claimed it could not apprehend Ibarra, he was interviewed by television journalists while ostensibly a fugitive.

However, the most dramatic development has been a wave of uprisings against the government by former members of the armed opposition or *contras* ("*recontras*") and by groups of former Sandinista army officers ("*recompas*") alleging the government's failure to deliver on promises of land, credit, housing, and other benefits promised at the time of these groups' demobilizations. Security for the demobilized *contras* has also been an overriding concern, and in one case, that of the *recontra* "3-80 Northern Front," political demands for the removal of ministers of state were part of the insurgents' agenda. In general, these uprisings have been settled through negotiations leading to the promise of economic and social benefits in exchange for demobilization. In a controversial move which undoubtedly has aggravated violence, such benefits have been accompanied by amnesties; not until September 1993 did the Chamorro government announce it would contemplate no further pardons for crimes committed by rearmed groups.

Three amnesties have been passed since the end of the *contra* war in early 1990, in the name of "reconciliation." The first was approved by the Sandinista-dominated legislature in March 1990, after Chamorro's election but before she took power. Another was decreed by the Chamorro government on December 22, 1991, prior to the opening of a national dialogue between her National Opposition Union (UNO) coalition and the Sandinistas. The third amnesty was passed by the Nicaraguan Assembly (after most UNO deputies walked out in protest), ostensibly to pave the way for the demobilization of several hundred re-armed rebels. The amnesties, which have been roundly condemned by Nicaraguan human rights groups, have applied to political and related common crimes, thereby extending the mantle of impunity to those who have committed human rights abuses.

The government responded with the immediate and massive use of force in just one instance, resulting in the deaths of more than twenty people in July 1993. *Recompas* of the Workers and Peasants Revolutionary Front (FROC), under the command of former Sandinista army major Víctor Manuel Gallego (alias "Pedrito el Hondureño"), had attacked the northern city of Estelí on July 21, 1993. Nicaraguan human rights groups criticized the armed assault, including an incident in which FROC guerrillas took up positions in a local hospital. But the groups also criticized the ferocity of the army's counterattack, saying it endangered civilian lives. Other sources alleged that the army had prior knowledge of the attack and did nothing to stop it.<sup>1</sup>

The post-war cycle of polarization and violence appears to have peaked in August 1993, when a pair of back-to-back kidnappings of political figures by *recontras* and former Sandinista officers held the nation in suspense for several weeks. Since that time, moderate politicians have taken the lead in attempting to defuse Nicaragua's overall political crisis through a series of constitutional reforms which were finally introduced in the National Assembly on September 5, 1994. In addition, the demobilization of the last major *recontra* group, that of the 3-80 Northern Front in February 1994, has left only small bands of ex-*contra* and Sandinista military operating in areas of the northern countryside in actions that, although at times politically-tinged, have been defined by the government and independent human rights observers as "delinquency." Despite the drop-off in the numbers of rearmed former soldiers, the weakness shown by the police and army in dealing with the kidnappings, robberies, and extortion in which these groups now mainly engage continues to provoke insecurity in significant areas of the country.

Post-1990 political turmoil in Nicaragua has served as a backdrop not only for political violence, but also for serious human rights abuses. The most controversial human rights issue has been that of the violent deaths of former

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<sup>1</sup> See Human Rights Watch, *World Report* (New York: Human Rights Watch, 1994), p. 123; Howard W. French, "Nicaraguans Say the Army Had a Hand in Attack," *New York Times*, July 26, 1993; Tim Johnson, "Army Assault Hints at Split in Sandinistas," *Miami Herald*, July 24, 1993; and Tim Johnson, "Nicaragua Authorities Thought They'd Prevented Estelí Attack," *Miami Herald*, July 27, 1993.

members of the armed opposition (*Resistencia Nicaragüense*, Nicaraguan Resistance, or *contras*), some 20,000 of whom laid down their arms in June 1990 following the inauguration of Violeta Chamorro as president in April of that year. According to data from the Commission for Support and Verification (*Comisión de Verificación y Apoyo*, or CIAV) of the Organization of American States, from the end of June 1990, to July 31, 1994, a total of 245 former *contras* have been killed in various circumstances. The frequency of these killings became alarming during the last quarter of 1990 (thirty-four deaths), continued at a high level over 1991–1992 (128 total deaths), decreased somewhat in 1993 (fifty deaths), and has fallen off sharply in the first half of 1994, during which only thirteen new killings have been reported.

Associations of former *contras*, conservative U.S. and Nicaraguan politicians, and some human rights groups have asserted that the Sandinista party-dominated security apparatus has systematically targeted and murdered former *contra* leaders and the rank-and-file. According to the Nicaraguan Association for Human Rights (ANPDH), for example, "there is evidence of a plan to exterminate members of the Nicaraguan Resistance...the majority of these crimes have been treacherous and premeditated."<sup>2</sup> The most highly publicized charges were laid out in a report issued by Senator Jesse Helms (R-NC) in August 1992. That report alleged that some 217 former *contras* had been assassinated in a "systematic campaign" since their 1990 demobilization, and cited an interview with Nicaraguan Cardinal Obando y Bravo concerning "evidence that there is a campaign to eliminate members of the Nicaraguan Resistance."<sup>3</sup>

Concurrently with, and probably as a result of the heightened public controversy over violence against former *contras* in mid- to late-1992, the Chamorro government established a Tripartite Commission in October to investigate homicides of both former *contras* and other Nicaraguans involved in collective conflicts, as well as killings in which former *Resistencia* members were suspected as perpetrators. Implicitly, the latter two categories cover a range of persons identified as "Sandinistas," be they members of the Sandinista National Liberation Front (FSLN), members of Sandinista cooperatives, or former members of the Sandinista army and security forces.

The Commission is composed of high-level representatives from the Government (formerly Interior) and Foreign Ministries of the Nicaraguan government, the Verification Commission (*Comisión de Verificación* or simply, *Verificación Obando*) headed by Cardinal Miguel Obando y Bravo, and the International Commission of Support and Verification (CIAV) of the Organization of American States. The CIAV first oversaw the demobilization of *contra* forces in 1990 and has continued to monitor their security and subsistence needs.

Though the Tripartite Commission has been functioning now for two years (it began operations almost immediately after its inauguration on October 2, 1992), its work is still little known in Nicaragua or abroad. Human Rights Watch/Americas has monitored the work of the commission through several visits to Nicaragua during this two-year period, interviewing representatives of the Commission's three component groups as well as representatives of Nicaraguan human rights non-governmental organizations. The three reports issued by the Tripartite Commission (on February 15, June 3, and December 13, 1993, with a fourth report expected in late 1994) provide a detailed, troubling, and complex picture of the security situation of the former *contras*. The reports have also begun to shed light on the security concerns of Sandinista party members in the countryside.

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<sup>2</sup> Asociación Nicaragüense Pro Derechos Humanos, "Exposición de la Asociación Nicaragüense ante la Honorable Comisión Tripartita," January 15, 1993.

<sup>3</sup> U.S. Congress, Senate, Committee on Foreign Relations, *Nicaragua Today*, Republican Staff Report, 102d Cong., 2d Sess. (Washington, D.C.: U.S. Government Printing Office, 1992), p. 57. For a critique, see Washington Office on Latin America, "Nicaragua Issue Brief #1: The Helms Report on Nicaragua," September 22, 1992.

## CONCLUSIONS AND RECOMMENDATIONS

The findings of the Tripartite Commission on cases dealt with through December 1993 (forty-two involving demobilized contras and eight involving Sandinistas), as well as other information Human Rights Watch has received about cases investigated during that period and in 1994, paint a far more nuanced picture of responsibility for the killings of ex-contras than has been popularly portrayed. Military and police officials have indeed been responsible for numerous brutal murders of former contras, as have civilians and other ex-contras themselves. While investigations into the deaths of Sandinistas have generally been more adequate than the investigations of the deaths of former contras, the state appears equally negligent in the prosecution of cases of violent deaths that occur in the Nicaraguan countryside. Impunity for violence against contras and Sandinistas alike remains the norm. Most importantly, the Commission's findings point to the urgent need for structural changes in the judicial system and security apparatus.

◆ The responsibility of the Nicaraguan government for human rights abuses lies in the areas of both commission and omission regarding human rights abuses, but its overall responsibility for the commission of abuses has been less than its critics allege. Of forty-two cases of deaths involving former contras, their relatives or sympathizers examined by the Tripartite Commission as of December 1993 (these forty-two cases involved seventy-five victims), less than half were attributable to current members of the army or police. That proportion has declined in 1994, and, according to the CIAV, a greater share of murders of ex-contras has occurred at the hands of other ex-contras now active as recontras. Civilians were responsible for over forty percent of the killings examined through the end of 1993, and people identified as recontras for twelve percent.

Sandinistas in the countryside also have legitimate security concerns. Of the cases of Sandinista deaths, over half were said to have been the responsibility of ex-contras or former contras, a trend that has continued into 1994.

◆ Investigations into the deaths of former contras were characterized by negligence or coverup seventy-six percent of the time. Negligence or coverup was present in all of the cases involving the army or police. By contrast, investigations into the deaths of Sandinistas were considered "normal" or adequate in over half of the cases examined. The judicial system has remained incapable, however, of bringing to justice the killers of Nicaraguan civilians, whatever their political orientation.

◆ Many of the killings of ex-contras ascribed to Sandinista security forces have occurred as a result of the excessive use of force, something which may reflect overall disdain for the ex-rebels, and therefore the failure to control levels of violence even when murders are not premeditated.

◆ The army, and to a lesser extent the police, have failed to implement detailed recommendations of the Tripartite Commission for actions in specific cases. The response of the *Auditoria Militar*, the military justice body with authority over crimes committed by members of the armed forces, has been glaringly deficient in its response to the Tripartite Commission. The police have performed more credibly in at least opening investigations of cases reported to them.

◆ The CIAV's mandate, limited to monitoring the situation of demobilized fighters, their families, and repatriated Nicaraguans, compromised from the outset its ability to be seen as a neutral arbiter of conflicts that have erupted in post-war Nicaragua. At times, its advocacy on behalf of the former rebels has led to the over-zealous acceptance and presentation of ex-rebel charges at face value, when a more balanced and impartial approach would have been more appropriate. The findings of the Tripartite Commission have contradicted the CIAV's in a number of cases concerning the party responsible (agent of the state or not), as well as the existence or absence of a political motive for the crime. The findings of the Tripartite Commission have caused the CIAV to revise a number of its earlier conclusions, and, perhaps, to be more prudent in its methodology. Now that the CIAV's mandate has expanded to cover the wider universe of cases involving killings of Sandinistas, such care and impartiality is essential.

- ◆ The pace of the Tripartite Commission's work has slowed considerably in 1994, as no new report has been issued since December 1993. This delay — perhaps understandable in that the Commission is revisiting some of the most controversial cases from the 1990-1991 period — nonetheless has mitigated the impact the Commission could have in pressing for an end to impunity.
- ◆ The passage in August 1994 of a new Military Code represents a step forward in that crimes committed by members of the armed forces are now to be referred to the civilian courts, and the military court system no longer has the authority to judge civilians. A bill defining military crimes and infractions has yet to be drafted, and should require that all crimes by the armed forces committed against civilians, regardless of the presence or absence of political motive, be sent to the civilian courts.
- ◆ We urge the Nicaraguan government to implement the recommendations of the Tripartite Commission for prosecutions of those responsible for the murder of ex-contras and Sandinistas. In cases against military officers that have already been closed or dismissed by the Auditoría Militar, we urge that the cases be reviewed and that administrative sanctions be contemplated even if retrial is not an option.
- ◆ To assure implementation of the Tripartite Commission's recommendations following the fourth report, we urge that the Nicaraguan government either extend its mandate or appoint a follow-up commission which could issue regular and timely reports as to findings and actions taken in the cases identified by the Tripartite Commission.
- ◆ We urge that the Nicaraguan government devote greater state resources to reform of the judicial system, and that the international community support judicial reform projects, especially now that the civilian courts have expanded jurisdiction over members of the armed forces alleged to have committed human rights abuses.
- ◆ We urge that U.S. aid continue to be conditioned on improvements in the human rights situation, and that these pressures be de-coupled from the interests of any particular political faction within Nicaragua or the United States.

## **THE ORIGINS OF THE TRIPARTITE COMMISSION**

In the post-war context, both former contras and Sandinistas and their allies have waged a polarized and emotionally-charged debate over whether contras or Sandinistas have been more victimized, both by agents of the state and partisans of the opposing side. Both sides claim that the majority of the post-war victims from their side have been killed for "political" reasons, although ex-contras have more often alleged a direct state role. In fact, characterizing deaths on one side or another as "political" tends to deflect attention from the variety of motives lying behind violent deaths and the variety of roles that the state has or has not played. In addition, military authorities have seen bias in those who have criticized police or army abuses more fervently than they have violence by rearmed groups.

The International Commission for Support and Verification (CIAV) has overseen the entire process of contra demobilization and supported the "reinsertion" of former opposition combatants since June 1990. Unlike in El Salvador, where the human rights division of the United Nations Observer Mission (ONUSAL) monitored the situation of all the parties to the conflict as well as non-combatant civilians, until the end of June 1993, the CIAV was charged with monitoring the human rights situation only of the demobilized fighters, their families, and other repatriated Nicaraguans, a universe estimated at some 112,000 persons. Not until three years after the war's end did the mandate of the CIAV change to include that of investigating abuses against people labelled as Sandinistas in the countryside and assisting in the reintegration into civil society of former government military personnel.

In retrospect, this original mandate led the CIAV to become a forceful advocate of the rights of one party to the war. On numerous occasions, Human Rights Watch/Americas praised the CIAV for helping to defuse tensions when demonstrations and sit-ins by former contras threatened to erupt into violence. But the CIAV's ability to be *perceived* as an impartial arbiter of the numerous conflicts that erupted in the post-war period was limited by its initial mandate. At

times, in our view, the CIAV's advocacy on behalf of the demobilized rebels has led to the over-zealous acceptance and presentation of ex-rebel charges at face value, when a more balanced and impartial approach would have been more appropriate.

The Tripartite Commission itself is testimony to both the need for an impartial body to judge the complaints of abuse against all sides, and to the lack of a swift governmental response to those complaints presented by the CIAV. Americas Watch noted in its July 1991 report that the Chamorro government had largely failed to comply with Government Ministry Order No. 002/90, issued on May 21, 1990, in which the government was to investigate all complaints passed on to it by the CIAV regarding abuses against former contras.<sup>4</sup>

On July 31, 1991, this Government Ministry directive was revised to provide for the centralization of complaints in the office of the Civil Inspectorate of the Government Ministry. Two years later, the CIAV-government relationship had improved somewhat, but the two entities maintained different interpretations of the nature and extent of political violence in the country and the government response to complaints, when there was a response at all, remained slow and incomplete.<sup>5</sup>

In late August 1992, undoubtedly in response to the public controversy provoked by the Helms report, representatives of the Nicaraguan Foreign Ministry along with the country's ambassador to the OAS held two meetings with officials of the CIAV aimed at improving the working relationship with respect to violence against the ex-contras. In the minutes of the second meeting, the two parties noted that in respect to the deaths of some 147 contras registered since June 1990, there did not exist a "plan of extermination, nor planned actions directed against former members of the Nicaraguan Resistance."<sup>6</sup> The government and the CIAV also agreed to meet on a monthly basis to share information on violence against the ex-contras and to devise a strategy for following up on cases.

Following these meetings, President Violeta Chamorro sent letters on September 16, 1992, to Cardinal Miguel Obando y Bravo and the CIAV inviting them to participate in a joint commission that would investigate the violence of the previous two years. Both parties accepted. On October 2, the Tripartite Commission was established, with the Vice-Ministers of Foreign Relations and Government empowered to represent the government.

### THE TRIPARTITE COMMISSION'S MANDATE

The Tripartite Commission was intended not only to bring about a greater consensus as to the nature and extent of political violence among and against former belligerent parties, but also to design recommendations that would prevent such violence from occurring and end impunity. The Verification Protocol signed by the parties on October 2, 1992, states the purpose of the Commission as the following:

- ◆ to analyze and review, given the political and social scenario in Nicaragua in the postwar period that began on June 26, 1990, the cases of violence against former members of the Nicaraguan Resistance and sectors of the

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<sup>4</sup> Americas Watch, "Fitful Peace: Human Rights and Reconciliation in Nicaragua under the Chamorro Government," July 1991, p. 32.

<sup>5</sup> Between June 1990 and November 1993, the government had responded in some fashion to 146 denunciations of homicides of ex-contras presented by the CIAV, failing to respond to fifty-six cases, mostly in the northern, conflictive Region VI. CIAV/OEA, Programa de Seguimiento y Verificación de Derechos y Garantías, "Informe Estadístico de Homicidios Junio '90–Noviembre '93," December 1993, Managua, Nicaragua.

<sup>6</sup> Minutes of a meeting between the CIAV and the Nicaraguan government, August 31, 1992, signed by Dr. José Bernard Pallais (Vice-Minister of Foreign Relations) and Dr. Sergio Caramagna (CIAV), p. 2. This joint statement contrasted with later statements by members of the CIAV to Americas Watch in December 1992 and March 1993, to the effect that there was such a campaign.

population beset by collective conflicts, and those cases wherein the authors of the facts denounced are alleged to be former members of the Nicaraguan Resistance; and

◆ to facilitate an exchange of views on the causes of the violence and to make recommendations to improve coordination and the mechanisms to prevent and eradicate the problems examined for the sake of Nicaragua's stability and peace; and to strengthen the system for protecting the rights and guarantees of those sectors of the population adversely affected by the war.

In the first of its meetings, the Commission established several subcommittees with representatives from its three constituent parts: the CIAV, Verificación Obando, and the government. These subcommittees were placed in charge of field investigations of selected cases. The process of arriving at agreement as to the facts was less problematic given that everyone heard the same testimonies. Following the subcommittee investigation, the full Commission would meet to discuss the quality of the police and judicial investigations, as well as the motives behind the killings.

The initial intention of the Commission was to hold weekly meetings. This proved impossible, however, largely due to the heavy responsibilities of the government representatives. Nevertheless, by the end of 1993, some fifty-eight meetings of the Commission had taken place in fifteen months. In 1994, the pace of full Commission meetings has slackened: as of August 31, only five meetings have been held, though subcommissions continue to meet more frequently). Many individual cases have required numerous hours of deliberation and discussion because the Commission has sought to reach consensus on the cases under investigation.

From the beginning, identifying cases of former contras who had been killed was a relatively simple task, given that all demobilized contras had been identified and assisted by both the CIAV and Verificación Obando. The CIAV presented for consideration nineteen cases that it considered especially important and controversial. The Commission also looked at victims whose supposed killers were former contras, although in practice this was interpreted as meaning Sandinistas who were killed by ex-contras. Establishing a list of Sandinistas killed by ex-contras proved difficult, however, as no state or non-governmental organization had closely monitored such killings, and the group encompassed by the term was less distinct.<sup>7</sup> Defining who was a Sandinista was a problem, as the label included those who had once fought with the army, lived on a Sandinista-organized rural cooperative, or otherwise benefitted from or was thought to have sympathized with the FSLN. As a result, the government, through Vice-minister Pallais, did not provide a working list of Sandinista cases to investigate until mid-1993.<sup>8</sup>

The Commission thus first took up cases of former contras, turning to Sandinista cases only in June 1993. Although the final number may change, the Commission settled on approximately 120 cases evenly divided between these two major categories.

The Commission's work has entered the overlapping and yet separate worlds of human rights violations and political violence. Many of the killings investigated by the Commission have not been carried out by agents of the state. Killings carried out either by civilians associated with the Sandinista movement or by demobilized contra fighters — however reprehensible — do not in and of themselves constitute violations of human rights law, even though the motivation behind the killings may have been political in nature. The state is responsible for such crimes when its agents are the direct perpetrators or acquiesce in killings, or when state entities or institutions expressly tolerate the continuation of abuses by failing to investigate, prosecute, and punish such crimes. As the work of the Tripartite Commission has illustrated, responsibility of the Nicaraguan government lies in the areas of both commission and

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<sup>7</sup> See, for example, Nicaraguan Center for Human Rights (CENIDH), *Informe de Asesinatos, Septiembre de 1991 al 31 de Diciembre de 1992*. CENIDH's reports in 1991–1993 were largely taken from press accounts, and thus reflect the biases and inaccuracies of the Nicaraguan press.

<sup>8</sup> An example of the difficulties in compiling this list was evident in the Commission's third report: one of the cases of a Sandinista turned out actually to be a sympathizer of opposition UNO coalition.

omission regarding human rights abuses, but the responsibility of agents of the state for the commission of murders is less than has been frequently alleged by its critics.

### THE COMMISSION'S FINDINGS

In 1993, the Tripartite Commission issued three reports (in February, June, and December) covering fifty cases, forty of which involved homicides of former contras or their family members, eight of which involved others affected by the post-war context (mainly Sandinistas or ex-members of the Popular Sandinista Army, or EPS), and two special cases which occurred during 1993. At the beginning of 1994, a decision was made to emphasize the investigation of homicides against Sandinistas in order to achieve a better numerical balance between the two groups of victims. According to Commission participants, a fourth report expected in late 1994 will deal with at least thirty and perhaps as many as forty additional cases.<sup>9</sup>

The findings of the Tripartite Commission, although still incomplete, merit careful consideration, since they paint a more nuanced portrait of the security situation of former contras than has previously been presented by either human rights groups or the CIAV. In addition, the Commission's findings tend to challenge the notion that ex-contra deaths are less vigorously prosecuted than are those of Sandinistas: the state, rather, appears generally negligent in prosecuting cases of violent deaths that occur in the Nicaraguan countryside, even though the initial investigations into Sandinista deaths appear more thorough.

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<sup>9</sup> Though in general the new cases involve more recent homicides than those already elucidated, the fourth report will also examine a number of controversial cases dating from 1990, including the events in Jalapa (in which twelve people were killed following the takeover of a police station), Yolaina and Nueva Guinea (in which six protesters were killed during a demonstration), and Corinto Finca (in which five persons were killed by armed workers at an agrarian cooperative).



As of December 1993, the Commission had examined forty-two cases of deaths involving former contras, their relatives, or sympathizers.<sup>10</sup> Of the seventy-five victims involved in these forty-two cases, killings in roughly equal proportions were attributable to civilians and to the army and police. (Approximately thirty-one deaths, or 43.2 percent, were attributable to each group.) Recompas — demobilized Sandinista soldiers who once again took up arms — were responsible for nine of the seventy-five deaths (12.3 percent), and unknown authors for three deaths (four percent).<sup>11</sup> Although the universe of Sandinista deaths taken up by the Commission thus far is much smaller (only twelve),<sup>12</sup> the numbers may nevertheless be suggestive of the final overall results. In the Sandinista cases, re-armed former contras (recontras) and ex-contras themselves were found to be responsible for seven deaths (58.3 percent), while in one case the author was unknown. In two other cases involving four deaths, civilians were responsible.<sup>13</sup>

In addition to assigning responsibility for deaths, the Tripartite Commission has also examined the murder investigations carried out by police or military authorities. In its presentation of the cases, the Commission grouped together cases involving negligence and those involving explicit coverups, even though these are quite different phenomena and the latter represents a more serious failure on the part of state authorities.<sup>14</sup> Negligence or coverup characterized the investigations of seventy-six percent of the seventy-five deaths of former contras; there was no investigation whatsoever of twenty-five of the killings. Strikingly, the Commission found negligence or coverup in one hundred percent of the cases in which the perpetrator was a member of the police or army. Only in the cases of eleven deaths were investigations by the authorities deemed "normal."<sup>15</sup>

By contrast, with regard to the twelve deaths of Sandinistas or ex-members of the EPS, the Commission found a significantly lower percentage of cases of negligence or coverup (only seventeen percent); investigations into over half (fifty-eight percent) of the deaths were carried out in a "normal" fashion, while in one death there was no investigation at all.<sup>16</sup> It remains to be seen how reflective this handful of cases is of the larger set of cases involving Sandinista deaths.

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<sup>10</sup> These include two "special" cases which occurred after the Tripartite Commission began functioning, one involving the murder of an ex-contras during a quarrel with policemen in La Trinidad, and one case involving a sympathizer of President Chamorro's United Nicaraguan Opposition (UNO), who was originally thought to have been a Sandinista.

<sup>11</sup> Where both the army and civilians were held accountable for deaths, responsibility is divided between the two. Thus, a single death with shared responsibility is counted here as 0.5 to each responsible party.

<sup>12</sup> This includes seven cases plus one "special" case, that of peasant Juan Dávila and two of his daughters near Waslala in February 1993. The Commission concluded that the death of Dávila and his children was due to an internal dispute within the cooperative, even though local Sandinista leaders had pressed his widow to falsely accuse the recontras of the killings.

<sup>13</sup> As above, the numbers are weighted if there is shared responsibility. In one case involving two Sandinista deaths, both ex-contras and civilians were found responsible, so one death is tallied under each category.

<sup>14</sup> The Commission sought to determine the reason behind deficiencies in each police investigation. The decision not to distinguish between cases involving negligence and those involving coverup probably has to do with the difficulty of arriving at a consensus position.

<sup>15</sup> When measured in terms of cases rather than deaths (that is, forty-two cases rather than seventy-five deaths), eighty-one percent involved negligence or coverup. There was no investigation whatsoever in seventeen percent of the cases. In only seventeen percent of the cases were investigations by the authorities deemed "normal."

<sup>16</sup> When the deaths of Sandinistas or ex-EPS cases are measured in terms of cases rather than deaths, the percentage for negligence or coverup is twenty-five percent, while investigations were normal in sixty-three percent of the cases. In one case there was no investigation.

The lack of adequate investigations is related to a third area of analysis by the Commission: whether judicial proceedings were initiated in any of the cases, and whether those proceedings led to detentions and prosecutions of those deemed responsible. In cases of contra deaths, judicial proceedings were launched in less than half of the incidents examined by the Commission (nineteen cases, or forty-five percent). Contrary to what might have been expected, judicial cases were opened just as infrequently when the suspected perpetrators were army or police as when they were civilians. In only three cases were accused persons still in detention at the time of the Commission's investigation, while in five other cases, individuals had been arrested but found not guilty.

As dismal as these figures seem, they are even worse when it comes to Sandinista deaths. In only three of the eight cases were judicial proceedings initiated and in no case had there had been any arrests.<sup>17</sup> The slightly lower percentage of cases involving Sandinista deaths in which judicial proceedings had been initiated can be explained in part by the lack of organized pressure on the authorities: while both the CIAV and Cardinal Obando's Verification Commission routinely followed up on all cases involving ex-contra deaths, virtually no organization has taken responsibility for advocating on behalf of Sandinista cases.

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<sup>17</sup> In one case the presumed author was supposedly dead. Judicial proceedings involving the killing of peasant Juan Dávila and his two young daughters in Zinica, Waslala, in February 1993, were initiated probably due to the increased spotlight on the case stemming from the prompt investigation by the Tripartite Commission.

The Commission has also sought to determine the motives behind the killings it investigated. This is the most subjective of the judgments the Commission has had to make and the one which has involved the most internal discussion.<sup>18</sup> In addition, while the question of motive is important in preventing future violence, it is a less important human rights indicator than the Commission's other areas of inquiry. Of the contra cases, less than half (forty-three percent) were determined to be motivated by "political" factors, while nineteen percent were deemed to be motivated by agrarian disputes with underlying political factors. In about a quarter of the cases (twenty-four percent), a motive could not be determined (or a consensus could not be reached), while the motivations in four cases (ten percent) were determined to be "common." Of the Sandinista cases, an equal number (forty-three percent) were said to be "political," while two were "common" and the motives behind the other two were unclear.

### A PREVIEW OF THE FOURTH REPORT

As noted above, a new report of the Tripartite Commission is expected sometime late in 1994. In addition to examining fresh cases, the fourth report will reopen five controversial cases from 1990 which occurred soon after the contras' demobilization and at a moment when tensions between ex-contras and Sandinistas were at their height. Inclusion of these two sets of cases makes difficult any generalization about the overall trends likely to appear in the report. Nevertheless, Commission members indicated to Human Rights Watch/Americas in interviews in August 1994 that, in general terms, the findings of the upcoming fourth report will confirm the patterns displayed in the first three reports, with some variation. In the main, the deaths of ex-contras covered in the report continued to occur at the hands of a mix of individuals including EPS and police personnel on active duty, ex-Sandinista military, cooperativists, and others. Except for the 1990 cases, however, a considerably lower proportion will involve current agents of the state as perpetrators. In addition, some of these are judged to have acted with excessive force in the line of duty, underlying the earlier finding of a lack of premeditation. The motives behind the crimes continue to be classified as mostly "political," covering a variety of motives ranging from a desire for personal vengeance against a former enemy, the flaring of political passions during quarrels, and conflicts over land. Simple criminal intent is present in a few cases.

As for Sandinista deaths, the fourth report will confirm that Sandinistas in the countryside also have legitimate security concerns. As before, the perpetrators continue to be very largely ex-contras and recontras, with the motives for the killings ranging from vengeance-seeking (particularly against former EPS and state security agents), the flaring of political passions during arguments, and a few conflicts over land.

If these preliminary characterizations are borne out, there is a basic stability in the trends noted in the cases dealt with by the Commission. Although the cases selected are a small subset of total homicides, they may constitute a representative sample in that all sides took pains to submit their "best" cases, or those they thought most representative of a pattern. However, the cases dealt with in the new report are in general those committed before the beginning of 1994. When more recent cases (through August 1994) are taken into account, the CIAV claims to detect a significant change in the overall pattern of political violence in the Nicaraguan countryside since the last half of 1993. According to CIAV director Dr. Sergio Caramagna, an increasing share of ex-contra deaths have been the responsibility of recontras, particularly since the February 1994 demobilization agreement with the 3-80 Northern Front; *ipso facto*, a lesser share has occurred at the hands of state agents. In the main, these killings do not involve what the CIAV defines as "political" motivations, but rather are the result of common crime. However, at least one death has resulted from harassment by remaining recontra bands (led by figures known as "El Charro" and "Nortiel") against demobilized members of the 3-80 Northern Front in the Quilalí area, the motive for which may be to punish former comrades-in-arms who have laid down their weapons.

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<sup>18</sup> HRW/Americas interview, Santiago Murray, CIAV, March 18, 1993. A representative of Obando's Verification Commission told HRW/Americas on February 3, 1994, that the most discussion was generated as to the quality and availability of the evidence in this regard.

In addition, CIAV foresees a trend toward a greater incidence of violence involving conflicts over land in various regions (León, Chinandega, and Chontales). This will not be, as heretofore, between ex-contras and Sandinistas but between both of these (in some cases banded together) and former property owners trying to recover their holdings.

In terms of investigations and prosecutions, the Commission members interviewed by Human Rights Watch/Americas concur that these continue to be marred by serious weaknesses. An improvement mentioned by all is that the National Police more regularly open investigations into cases reported to them and remit these cases to local courts, which issue detention orders. The Commission's earlier finding of greater police negligence in the cases of ex-contras deaths may also not hold up in the fourth report, except for the holdover cases from 1990. Nevertheless, the police investigations continue to be perceived as largely superficial and few suspects have been detained and put on trial. In addition, those interviewed agreed that the performance of the Auditoría Militar in investigating crimes allegedly committed by active-duty members of the EPS against ex-contras has not improved.

### CRITIQUE AND COMMENTARY ON THE COMMISSION'S FINDINGS

Human Rights Watch/Americas has investigated independently several of the cases covered by the Commission and, with minor exceptions, has arrived at similar conclusions.

The preliminary findings of the Tripartite Commission contradict the notion that agents of the state, or more particularly members of the Sandinista-dominated army and police, are uniquely responsible for the murders of ex-contras. The Commission has found thus far that civilians unassociated with the security services are just as likely to be responsible for contra deaths. Of the nineteen cases submitted to the Commission by the CIAV as being especially controversial, conclusions were reached in eighteen; of those, the authors in ten cases were from either the military or the police.<sup>19</sup>

Furthermore, the Commission's inquiry has demonstrated that even of the deaths ascribed to the police or EPS, few were carried out as premeditated killings of former contras. Many of the deaths occurred as the result of what appeared to have been excessive use of force by authorities facing real or perceived threats or in the pursuit of legitimate law enforcement duties. While such excessive use of force does constitute a human rights violation, the evidence does not suggest a kind of master plan to eliminate members of the former armed opposition, as alleged by some of the government's most outspoken critics.

Three cases investigated by the Tripartite Commission involving the police or military illustrate this point.

◆ In one case examined independently by Americas Watch, which occurred in Waslala, Matagalpa, on March 7, 1992, the police and EPS pursued a group of demobilized recontras after they had had an altercation in a bar with a policeman; the policeman had tried and failed to disarm members of the group, and they, in turn, took his weapon.<sup>20</sup> Omar Andrés Olivas Acuña ("El Pinto") fled the bar with three others. A gunfight ensued as the ex-recontras tried to evade the authorities. Olivas Acuña himself was unarmed and was killed in the pursuit.

The Commission found that the authorities had engaged in a disproportionate use of force in chasing the group and also criticized the soldiers for "disrespecting" the body of Olivas Acuña (they tried to steal the gold from his teeth). The Commission did not find that the killing was a premeditated act of violence.

The findings of Americas Watch differed in some important details from those of the Tripartite Commission. Contrary to the Commission's findings that Olivas Acuña had been an innocent bystander who fled when he heard

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<sup>19</sup> The last case was that of Jalapa, around which a consensus had not been formed as of mid-September 1994.

<sup>20</sup> See Case 119, Comisión Tripartita, *Memoria de Trabajo 1992-1993* (Managua: Impresiones COPROSA, 1993), p. 67; and Americas Watch interviews in Waslala, December 20, 1992.

shots, Americas Watch spoke with a friend of his (Olivas Acuña's wake had been held in this person's house) who said that Olivas Acuña had run into her house during the incident and had taken an AK-47 rifle; he returned the rifle after finding that it lacked ammunition.

◆ Another case investigated by the Commission and by Americas Watch in Waslala involved Miguel Angel Centeno Valenzuela, who was extrajudicially executed on December 25, 1991, after being captured by the police.<sup>21</sup> The execution-style killing of Centeno Valenzuela, who had been captured and then shot while lying on the ground, constituted a serious human rights violation. The police were pursuing Centeno Valenzuela after he had exchanged fire with and killed a policeman at a local party.

◆ A third case, described in the July 1991 Americas Watch report on Nicaragua, is that of Francisco Luis Cano Chavarría ("Chapulín"), who was killed in Jinotega by a joint EPS/Police patrol on April 13, 1991. The patrol was searching for recontras who had kidnapped an ex-EPS lieutenant, although Chapulín was not a member of the recontra group, according to the CIAV.<sup>22</sup> The evidence available suggests that Cano was killed when he refused to hand over his pistol to the patrol. There are legitimate questions as to whether Cano Chavarría had his pistol drawn or whether members of the patrol opened fire in the absence of a threat to their personal security. Soldiers on the patrol opened fire, Cano Chavarría fell to the ground firing his weapon, wounding a soldier and a policeman. Members of the patrol then killed Cano Chavarría in a burst of gunfire; soldiers proceeded to mutilate his body after he had been killed. The Commission concluded that Cano Chavarría died as a result of "excess in the exercise of authority."

The Commission found much more systematic violations by state authorities, both police and judicial, when it came to the investigation and prosecution of murder cases. The Commission identified responses that were inadequate regardless of whether the victim was an ex-contra or a Sandinista. Although there is a higher incidence of irregularities in police investigations in cases involving contras, the preliminary evidence has indicated that even fewer cases have been brought into the judicial system when the victims are Sandinistas.<sup>23</sup>

The failure of the state to prosecute violent crimes and human rights abuses has caused a kind of "frontier justice" to prevail in some areas of Nicaragua, where civilians and re-armed groups — seeing no remedy to their grievances from the authorities and with little fear of official reprisal — take justice into their own hands. Recontra groups have carried out murderous acts of vengeance and thievery in formerly conflictive areas of northern Nicaragua, and have done so with impunity.

Such a vengeance killing took place following the murder while in custody of former contra Centeno Valenzuela, described above. When the authorities refused to hold accountable members of the security forces responsible for killing Centeno Valenzuela, a group of recontras took matters into its own hands. Centeno had fled to the local hospital in Waslala after being wounded in the initial shootout with the police. There, recontras alleged, a doctor refused to attend to Centeno (presumably because he was a demobilized member of the armed opposition). He was then captured and killed.<sup>24</sup>

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<sup>21</sup> Case 113, Comisión Tripartita, *Memoria de Trabajo 1992-1993*, p. 59; and Americas Watch interviews in Waslala, December 20, 1992.

<sup>22</sup> Case 84, Comisión Tripartita, *Memoria de Trabajo 1992-1993*, pp. 97-98; and Americas Watch, "Fitful Peace," pp. 42-43. The police patrol included six members of the demobilized contra forces.

<sup>23</sup> The Commission's fourth report should indicate whether this characterization is still valid, as the set of Sandinista cases reported on thus far is so small.

<sup>24</sup> Americas Watch interviews with police and judge. Waslala, December 20, 1992.

On January 25, 1992, more than a dozen recontras descended on the hospital in Waslala to avenge Centeno's death. Not finding the doctor they were looking for, they abducted and brutally murdered the doctor who happened to be on duty, Dr. Martín Condega Villareal.<sup>25</sup> Four recontras were charged with the murder and one briefly detained. Only after the Tripartite Commission began functioning in late 1992 was a lower-level policeman arrested for the murder of Centeno Valenzuela.<sup>26</sup> It is possible that the vengeance killing of Dr. Condega Villareal could have been prevented by swifter action from the Nicaraguan authorities to prosecute the killers of Centeno Valenzuela. What is clear is that the deep embitterment caused by the failure to enforce justice has led to further cycles of violence.

At least one case described by the Tripartite Commission gives credence to the charge that the military has aided and abetted rearmed groups of Sandinistas known as *recompas*. On December 20, 1991, a group of *recompas* took over the town of Wamblán in Wiwilí, Matagalpa. The chief of police of Wiwilí, Heliodoro Splinger Varela (a former *contra*), and several other policemen went to meet with the group of *recompas*. After Splinger Varela had established contact and had been disarmed, he was murdered by the *recompas* while the other policemen were held hostage.<sup>27</sup>

Officials of the CIAV and the Red Cross who were present during the hostage crisis observed that members of the EPS also collaborated with the *recompas* in the holding of the hostages.<sup>28</sup> The Commission asked that the role of EPS officers in a coverup be investigated, but this was not carried out.

Another issue raised by the work of the Tripartite Commission — and not resolved satisfactorily — is the use of the term "political" to characterize murders and/or human rights violations. The Commission arrived at a lower number of cases that are strictly "political" (that is, politically-motivated or occurring in the context of a political dispute) than did the CIAV. This point is important because the label "political" has often been construed to imply state involvement, when many times that is clearly not the case.<sup>29</sup>

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<sup>25</sup> The day after his abduction, the body of Dr. Condega Villareal was found; his tongue and part of his cheek had been cut out and his genitals mutilated.

<sup>26</sup> According to CIAV head Sergio Caramagna, one police perpetrator was convicted and is serving his sentence.

<sup>27</sup> Case No. 112, Comisión Tripartita, *Memoria de Trabajo 1992-1993*, pp. 65-66. See also the "Evaluación General de la Implementación de las Recomendaciones," pp. 165-171.

<sup>28</sup> A request by Splinger Varela to EPS officers in Wiwilí that they accompany him in his attempt to make contact with the group of *recompas* was refused, supposedly for lack of gasoline.

<sup>29</sup> In a December 17, 1992, Americas Watch interview with Santiago Murray and Sergio Caramagna of the CIAV, they stated that the motive in virtually all cases of ex-*contra* killings was political; that is, that the individual was killed for having belonged to the National Resistance organization. In a March 29, 1993, meeting with Caramagna, Americas Watch was told that about eighty percent of the killings were politically-motivated.

In at least six cases, the Tripartite Commission differed with the CIAV's conclusions as to the presence or absence of political motivation; cases which the CIAV originally designated as "political" were determined to be "common" or "unknown."<sup>30</sup> In eight other cases, the Commission found that deaths were a result of agrarian conflicts that had a "political undercurrent" or "personal grudges with political animosity."<sup>31</sup> The Commission has not only thus come up with a more nuanced approach to the assessment of motivation, but has also directly contradicted the CIAV's initial designation in a number of cases. Accurately defining the motivation behind homicides of ex-contras in Nicaragua is important if the goal is to stop them.

Even the cases characterized by the Tripartite Commission as "political" have occurred in a wide variety of circumstances. For example, if a heated political discussion leads to an exchange of gunfire, the Commission has considered it "political." An example which, in our view, represents a misuse of the label "political" is the case of Jesús Palacios Moreno, examined in the second report of the Tripartite Commission.<sup>32</sup> Moreno was killed when caught in crossfire, after arriving on the scene of a heated political discussion that had evolved into an exchange of gunshots. The Commission characterized Moreno's death as "political," something that appears to over-broaden the use of the term.

The CIAV has made a more serious error, in our view, by also on occasion erroneously attributing killings of ex-contras to former or current agents of the state.<sup>33</sup> The findings of the Tripartite Commission have contradicted those of the CIAV in several cases. The example of Jesús Palacios Moreno noted above points to just such a contradiction. Following its investigation, the Commission identified a civilian as responsible for Palacios Moreno's death. Yet the CIAV had listed the perpetrator as an active-duty EPS lieutenant. Elsewhere, the CIAV listed the killer of Daniel Mercado Troche as an ex-DGSE agent; the Commission listed the killer as a civilian. The discrepancies reinforce the fact that neither of the commissions can substitute for due process of law in establishing individual responsibilities for criminal acts.<sup>34</sup>

The discrepancies are especially noteworthy because the CIAV is represented on the Tripartite Commission and the Commission draws its conclusions about cases based on consensus. The discrepancies suggest that some of the CIAV's earlier work was overdrawn. Assuming that the determination of whether someone is an active-duty military officer or not is a rather straightforward procedure, the CIAV's mischaracterization of authorship in these and others cases calls into question the overall quality of its verification work, including in those cases that have not been re-visited by the Tripartite Commission.

Human Rights Watch/Americas has investigated an additional case in which the CIAV had identified the authors as former members of State Security (DGSE), but our conclusions did not indicate involvement by state or former state

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<sup>30</sup> The cases were those of José Daniel Hernández López, Francisco Herrera Troche, Miguel Angel Rugama Ruiz, Levis López Rayo, Tomás Reynerio Gutiérrez Calderón, and Rufino Escoto and two others.

<sup>31</sup> The cases were those of Tomás Jarquín García, Francisco Rivera Herrera, Rodolfo Calero Espinoza, Calixto Hernández and others, Lázaro Peralta Rodríguez and others, Elías and José Adán Rivera Torres, Elvin Melgara and Justo Salgado Rodríguez, and Evelio Pérez and José Antonio Romero.

<sup>32</sup> See Case 82, Comisión Tripartita, *Memoria de Trabajo 1992-1993*, p. 100.

<sup>33</sup> The CIAV records of contra deaths include the name of the alleged author (when possible) and their affiliation (EPS, police, FSLN, etc.). In early 1994, the CIAV also started listing a motive behind the killing.

<sup>34</sup> CIAV listed the killer of Calixto Hernández and three others in a land dispute as recompas; the Commission found those responsible to be members of a family who benefitted from agrarian reform under the Sandinistas, whose land had been taken away to give to ex-contras. The CIAV reported that the killers of Julio César Velázquez Obregón were FSLN, but changed its characterization to "unknown" after the Commission found that the killers were civilians. Comisión Tripartita, *Memoria de Trabajo 1992-1993*, pp. 80, 84-5, 100, 102; CIAV homicide lists, January 28, 1994 and October 28, 1993, Revisado No. 22.

agents. The CIAV was unable to provide convincing evidence of responsibility to the members of the Tripartite Commission, which subsequently deemed the authors "civilians."

One such case was that of José Hernández Rugama ("Giovanni Negro"), who was killed in February 21, 1991. The CIAV had long reported that his killer, who it identified as Lorenzo Rodríguez, was a former State Security agent.<sup>35</sup> However, sometime in mid-1993, the CIAV changed its assessment of responsibility to "unknown," and said that the motive was also unknown.<sup>36</sup> An Americas Watch investigation in 1991 reached a similarly unsensational conclusion, finding that Hernández Rugama had apparently been killed by his brother-in-law during a drunken dispute and while Hernández Rugama himself was armed.<sup>37</sup> In its second report, the Tripartite Commission concluded that the brother-in-law was responsible for the killing, but did not identify him as ex-DGSE and could not identify a motive in the case.<sup>38</sup>

A case that remains extremely controversial — and on which the Tripartite Commission has yet to establish a consensus — concerns the killing of eleven ex-contras and sympathizers and one FSLN militant in Jalapa in December 1990. The Tripartite Commission investigated this case in late 1993, approximately three years after the events themselves.

CIAV officials have consistently referred to this case as perhaps the worst incident of violence against the ex-contras. The CIAV listed eleven persons killed in Jalapa, indicating that the police and EPS were responsible and that the motive was "political."<sup>39</sup>

Americas Watch investigated the Jalapa case in 1991. In large part based on information provided at the time by the CIAV, we concluded that many of those killed and wounded (around twenty persons) were armed and actively participated in a takeover of the local police station. We stated our belief that, in the course of recovering control of the station and establishing order, the police and military, or civilians working with them, murdered at least three, and possibly more, unarmed persons and threatened the lives of others.<sup>40</sup>

The Tripartite Commission sub-commission investigating the killings in Jalapa appears to disagree over whether those who assaulted the police station were armed, and whether the EPS and police contingents that entered the town opened fire on the police station to dislodge the occupants without having initiated a dialogue to obtain their peaceful exit.<sup>41</sup> All seem to agree that army and police forces, assisted by civilians, proceeded to hunt down and summarily murder a number of ex-contras. The Auditoría Militar initiated proceedings against an EPS captain, but the case was dismissed.

The clear lesson to be taken from all the examples noted above is that the security situation of former contras cannot be grasped by simple reference to the numbers killed, by characterizing their deaths as "political," or by presuming that current or former Sandinista military and police forces are guilty of the murders. This lesson has become

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<sup>35</sup> See CIAV's listing of homicides provided to the Organization of American States, Revisado No. 11, March 26, 1993.

<sup>36</sup> See CIAV's listing of homicides provided to the OAS, Revisado No. 25, December 13, 1993.

<sup>37</sup> Americas Watch, "Fitful Peace," p. 33.

<sup>38</sup> See Case 74, Comisión Tripartita, *Memoria de Trabajo 1992-1993*, p. 101.

<sup>39</sup> See CIAV lists of homicides presented in progress reports sent to the OAS.

<sup>40</sup> Americas Watch, "Fitful Peace," pp. 19-22.

<sup>41</sup> HRW/Americas interviews, CIAV and Verificación Obando, September 2, 1994.



increasingly clear over time, as the number of ex-contras killed by recontras now appears to exceed the number of killings attributed to state actors.<sup>42</sup>

### CASES TREATED IN THE FOURTH REPORT

In addition to reopening the files on the Jalapa case, in which the great majority of the victims were ex-contras, the yet-to-be-published fourth report of the Tripartite Commission will deal with a number of cases involving multiple deaths of Sandinistas. The Tripartite Commission hopes to complete investigations of twenty Sandinista cases in the fourth report, although only twelve had been completed in late August 1994.

The most important of these cases are:

◆ "Unión Labú," also referred to as "Nueva Unión Labú," a Sandinista cooperative located near Siuna in the North Atlantic region: On November 8, 1993, an armed group of approximately thirty to thirty-five recontras attacked the cooperative. They disguised themselves with red and black bandannas, using Sandinista colors in order to thwart the cooperative's armed security. The group killed four coop members, ransacked the coop store, and kidnapped several others who were gradually released as security forces pursued the attackers. Several months later, other members of the cooperative were killed in a separate attack by unidentified gunmen. Only two of the attackers in the November 1993 attack have been identified by name, and there has been no judicial action. No one has been detained.

◆ The September 19, 1993, killing of seven members, all males, of the Armas family in Parpar, an extremely remote hamlet near the Honduran border, north of Wiwilí: This case involves two local families of opposing political sympathies and between whom there exists a longstanding rivalry. The presumed perpetrators of the killings are recontras belonging to the band of "El Charro." The recontras apparently acted after a denunciation by the rival Rizo family, considered to be sympathizers of the ex-contras, that the Armases were responsible for burning down the house of another person (oddly, a Sandinista). In the provisional interpretation of this case, the recontras were effectively arrogating to themselves the right to mete out local justice in the absence of any government presence in the area. Reaching Parpar requires a five-hour journey by boat, so that the case had not been investigated by the police or judicial authorities prior to the arrival of the Tripartite Commission. A detention order against eight members of the Rizo family for being accomplices to murder has been issued in Wiwilí, although as of early September 1994, no one had been detained.

◆ Wilikito: This case is complicated because it involves two separate attacks on the "Ernesto Cabrera" cooperative in Wilikito, near Rio Blanco, Matagalpa. In one attack, the perpetrators are presumed to have been recontras, in the other, recontras. In the first attack, on April 11, 1993, five members of the Sandinista cooperative were killed by a like number of *rearmados* for reasons that are not clear, but appear to be due to longstanding personal enmities. There has been a police investigation, which the Obando Verification Commission deemed adequate. Four presumed perpetrators of the attack have been detained, one of whom identified the attackers as recontras.

The second attack occurred on December 16, 1993, when two presumed recontras killed two other coop members. The police investigation into the case was again apparently adequate and a court issued detention orders. One of the two recontras, known as "Aguila Negra" (Black Eagle), is still at large while the other has been captured and is awaiting trial. The motive for the attack appears to have been a settling of old political scores. The attackers were apparently also seeking an arms cache on the cooperative.

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<sup>42</sup> In 1993, according to CIAV information, the EPS and police were responsible for eight deaths of ex-contras, while recontras were responsible for eleven deaths of ex-contras. This was out of a total of fifty deaths of ex-contras. In addition, the CIAV was investigating a number of killings of peasants (some of them multiple) by recontra units in early 1994.

◆ The August 22, 1994, murder of recompa leader "Agateyte" (Marlon García Blandón) and three other former EPS officers on a farm called "La Carlota" near San Ramón, Matagalpa: Although this case is recent, the CIAV indicated that the Commission will make an attempt to include it in the fourth report; in addition to being a multiple homicide, the case is distinguished by mutilation of the bodies of the victims. "Agateyte" was a leader of and negotiator for the principal group of recompas known as the National Armed Self-Defense Movement (MADNA), which laid down its arms in February 1992 after a deal with the government. The Sandinista army, after pursuing and apprehending some of the attackers, claims that the perpetrators are a mixed group of recompas and recontras. Though six assailants participated in the murders, a larger group of eight was supposedly involved in the planning. One recontra and one recompa have apparently been killed in clashes with the army, while four other members of the group have been arrested. According to the CIAV, the presumed motive for the slayings is a dispute between the assailants and "Agateyte" over division of the benefits granted by the government in exchange for the recompas' demobilization. The *revueltos* — literally, scrambled, a term used to describe mixed groups of recontras and recompas — were also seeking an arms cache presumed to be located near the site where the victims were killed.<sup>43</sup>

### GOVERNMENT COMPLIANCE WITH THE RECOMMENDATIONS OF THE TRIPARTITE COMMISSION

In late 1993, the Commission produced an evaluation of the government's implementations of the recommendations from the Commission's first report, fulfilling its responsibilities to provide follow-up to cases.<sup>44</sup> The Commission undertook this evaluation based on the Protocol forming the commission, which stipulated that the recommendations would become mandatory once accepted by the government. The Commission found the implementation of its recommendations "insufficient," citing the "lack of collaboration of the National Police," the "lack of means in the judicial system," and a "negative attitude on the part of the EPS."<sup>45</sup>

Two recommendations made by the Commission in order to alleviate tensions in the countryside between members of Sandinista cooperatives and former contras were not implemented. With respect to the recommendation that cooperativists be disarmed, the government informed the Commission about general disarmament efforts nationwide. In one case, the government did make an effort, but claimed that no arms could be found.<sup>46</sup> In only one case did the Tripartite Commission ask the government to review land claims stemming from an agrarian conflict in which a former contra had died. That recommendation was not implemented.

The Commission praised the Ministry of Government's Special Investigative Commission, composed of two civilians and one police officer, for trying to fulfill the recommendations governing police conduct. Nonetheless, the Commission criticized the fact that three members of the National Police who had supposedly been suspended from the force for "abuse, negligence, or complicity" were still on active duty.<sup>47</sup> Only two cases of homicide that were referred to

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<sup>43</sup> In two other cases which officials discussed with HRW/Americas, the victims, both from Jinotega, were supposedly former state security agents who were presumably killed by recontras in attacks of vengeance.

<sup>44</sup> See the "Evaluación General de la Implementación de las Recomendaciones, Primer Informe de Avance," October 12, 1993, in Comisión Tripartita, *Memoria de Trabajo 1992-1993*, pp. 165-171. Although dated October 12, the evaluation was not presented to President Chamorro until December.

<sup>45</sup> *Ibid.*, p. 171.

<sup>46</sup> The Tripartite Commission noted that the government did not provide information as to the date of the operation or as to the procedures used. *Ibid.*, p. 165.

<sup>47</sup> *Ibid.*, pp. 166-67.

the Auditoría Militar resulted in guilty sentences, and then, only of members of the police, not the army.<sup>48</sup> The Commission found that the Auditoría had performed satisfactorily only with respect to recommendations governing police who were material authors of crimes.<sup>49</sup>

In addition, the police managed to detain only six of the eighteen civilians identified in the report as material authors of crimes or accomplices; all six were released or acquitted by the respective judges. The Commission noted that the lack of judicial authorities in rural areas, the inability to get key witnesses to testify, the unwillingness of the police in some cases to carry out the detentions, and the lack of material resources by judges and prosecutors, all contributed to this situation of impunity.

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<sup>48</sup> A third case was dismissed.

<sup>49</sup> Comisión Tripartita, *Memoria de Trabajo 1992-1993*, pp. 167-68.

The Commission's harshest criticisms were reserved for the army (EPS). Counterintelligence was the body that had been designated to investigate charges of negligence and cover-up, but its reports to the Commission were "insufficient" and "unacceptable" and did not respond to the recommendations.<sup>50</sup> Although the Auditoría Militar tried three cases involving the police, in general it disregarded the information provided by the Tripartite Commission's investigators. In three cases, the Auditoría did not even initiate proceedings for cover-up as recommended by the Commission, after counterintelligence deemed that those mentioned by the Commission were not involved. No proceedings were initiated against senior officers, as recommended by the Commission, for presumed coverup, negligence, permissiveness toward fraternization of soldiers with recompas, and orders involving excessive use of force. In addition, the Commission noted that no effort was made to retrieve military weapons from civilians.<sup>51</sup> In short, the Commission accused the military, including the Auditoría Militar of "a lack of implementation of the substantive aspects [of the recommendations]" and of "a negative attitude."<sup>52</sup>

When the Commission's findings were released in December 1993, the EPS issued a stinging attack. Army commander General Humberto Ortega wrote an open letter to the members of the military in which he criticized the "negative and biased" attitude of the Tripartite Commission. He said that their attitude was due "fundamentally to the fact that its members had not been able to distance themselves either from the political climate of polarization and revenge" or from "the constant pressures of functionaries of the U.S. government against the Nicaraguan army." Ortega singled out the government's representative on the Commission, Vice-Minister of Foreign Relations José Pallais, for submitting to foreign pressures.<sup>53</sup>

Since the issuance of the Tripartite Commission's evaluation report in December 1993, no further evaluations of implementation of Commission recommendations have been released. Human Rights Watch/Americas, however, was told in late August 1994 that the Government Ministry was preparing a comprehensive evaluation covering all three of the original Commission reports for submission to a meeting of the Commission in early September. According to Dr. Francisco Avilés, the Government official charged with drawing up the evaluation, the new document would demonstrate substantial improvement in the response of the National Police to the Commission's recommendations, leading to a larger number of persons detained along with more frequent investigations of accusations of police negligence and sanctions against those found negligent in fact. However, Avilés indicated that no such improvement had been detected in the response of the EPS (Auditoría Militar).

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<sup>50</sup> Ibid., p. 166.

<sup>51</sup> Ibid., pp. 168-70.

<sup>52</sup> Ibid., pp. 169- 171.

<sup>53</sup> Text of letter published in "EPS Rechaza Informe Tripartito," *El Nuevo Diario*, December 20, 1993, p. 8.

Although they were willing to give the Government Ministry the benefit of the doubt, representatives of the CIAV, the Obando Verification Commission, and the Civil Inspectorate (itself part of the Government Ministry) reacted with skepticism upon hearing of these alleged improvements. Uniformly, their perception, as relayed to Human Rights Watch/Americas in interviews conducted in late August 1994, was that save in one area, no significant improvements in the state's response to cases of homicides in the countryside or to the recommendations of the Tripartite Commission had taken place. The one improvement acknowledged was that the National Police was now regularly opening investigations of the cases reported to it and then sending the cases to the local courts, leading to the issue of detention orders. However, the perception of non-governmental representatives on the Tripartite Commission was that the police investigations continued to be deficient along the lines noted in the earlier evaluation, and that the number of detentions was practically nil. Dr. José Pallais, Vice-minister of Foreign Relations and a Commission member, concurred with this general portrayal.<sup>54</sup>

Another who concurred was Luis Fley, Secretary General of the Party of the Nicaraguan Resistance (PRN), who maintained that the ex-contras have become disillusioned with the whole work of the Tripartite Commission due to its inability to goad the state into action to punish offenses against the former armed opposition.<sup>55</sup> Fley indicated further that his party is preparing to introduce a suit asking the Inter-American Commission on Human Rights (IACHR) of the Organization of American States to examine ten cases of abuse against former contras. Of these, nine are cases that have already been investigated by the Tripartite Commission, and the other is the case of Enrique Bermúdez. This impending action, plus Fley's perception of the Tripartite Commission as currently inoperative, indicate that the Commission's credibility among former contras is low.

In an attempt to buttress its contention that no improvement has occurred in state response, Verificación Obando furnished Human Rights Watch/Americas with a copy of a document from the Government Ministry dated March 10, 1994, which Verificación Obando said was the latest communication it had received from that ministry on the subject of implementation. The document in question is a brief, six-page progress report on implementation of the recommendations contained in the second Tripartite report of June 3, 1993. The description of the "actions taken" is often terse and at times non-existent. In addition, dates for the actions mentioned are frequently lacking, and those that are given are generally no later than mid-1993, suggesting that no real updating of this information had been undertaken in some time.

The following represents a summary of the actions reflected in the Government Ministry's report.<sup>56</sup> "Cases" refer to specific actions in response to recommendations, not numbers of people involved:

1. Capture and prosecution of perpetrators:

- ◆ pending action by Procurator or awaiting judge's ruling: six cases
- ◆ detention order issued, not yet detained: three cases
- ◆ suspect captured: one case
- ◆ captured, tried, but released by court: two cases
- ◆ suspects benefitted by amnesty: two cases
- ◆ suspect condemned, appeal pending: one case

2. Charges of police negligence

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<sup>54</sup> HRW/Americas interview, August 19, 1994.

<sup>55</sup> HRW/Americas interview, September 1994.

<sup>56</sup> Human Rights Watch/Americas was told that the document was prepared just prior to a March 1994 visit to Nicaragua by U.S. Assistant Secretary of State for Inter-American Affairs Alexander Watson.

- ◆ negligence under investigation: two cases
- ◆ negligence charges dismissed as unfounded: five cases
- ◆ administrative sanctions against policemen for negligence: five cases

### 3. Actions by Auditoría Militar/Army Counterintelligence

- ◆ pending resolution: two cases
- ◆ charges dismissed provisionally or definitively: two cases
- ◆ action taken unclear: one case

### 4. Action taken is unclear: four cases

## AN INTERPRETATION OF THE REPORT

In a substantial minority of cases (five out of twelve), the Government Ministry determined that police had been negligent in investigating the homicides and had applied some kind of sanction. The administrative sanction meted out to offending officers generally consisted of a *restricción* (being confined to barracks) for a period of fifteen days.

In two of the four cases involving members of the EPS as presumed perpetrators, the Auditoría Militar reopened investigations, as urged by the Tripartite Commission, but both cases were still pending resolution as of November 3, 1993. In a third case, charges against one officer and one soldier were dismissed on June 11, 1993. In a fourth case, the action taken by Auditoría is not specified. In the two of the cases that involve charges of coverup by higher officers, there is no clear action listed in one, and the case was dismissed in another. In two cases in which the Tripartite Commission urged investigation into prior actions of the Auditoría Militar at the regional level, action was "pending."

One of the cases in which action is unclear involves a recommendation to disarm a cooperative, another a recommendation to provide police protection to a Commission informant, and the others are recommendations for "capture and prosecution." Drawing conclusions from these data is tricky: information provided by the Government Ministry is terse and incomplete, and the Commission as a whole has not verified the compliance asserted in the document. In addition, much of the information is out-of-date, something which is striking in light of assurances by Dr. Francisco Avilés of the Government Ministry that he receives monthly updates on implementation measures from the National Police, the Procurator General, and Auditoría Militar. Also striking is the irregularity of communication between the Government Ministry and the members of the Tripartite Commission on actions taken in response to the Commission's recommendations. Whereas the Special Investigative Commission in charge of implementing the recommendations of the first report was in touch with the Commission on a monthly basis (and was publicly praised by the Commission in its first evaluation of compliance), no such body was formed to deal with the second and third reports, and communication has evidently been much spottier.<sup>57</sup>

Nonetheless, the data do suggest several things. First, although it is difficult to determine with certainty how many suspects were detained, the number appears not to be very high, perhaps no higher a proportion than in the first evaluation. In the majority of cases of alleged police negligence, some investigation was apparently carried out; however, in three instances, "presumption of negligence" is denied with no reason provided and in one other the reason given is apparently spurious. Moreover, only in a minority of cases was any sanction undertaken, and all of these were of the "administrative" kind. Finally, though the Auditoría Militar has apparently shown a willingness to reopen cases at the Commission's request, its failure to sanction anyone is suspect in light of the Commission's earlier finding that its responses to the recommendations of the first report had been shallow and insufficient.

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<sup>57</sup> HRW/Americas interview, Verificación Obando, September 2, 1994.

Although once again the National Police appears to have performed somewhat better than the army, it would be difficult to conclude that a substantial improvement in the overall pattern of state response to Tripartite Commission recommendations had taken place by the date of the report.

## The Case of Jean Paul Genie Lacayo

The staggering weight of impunity has fallen even on those cases which have received wide publicity in and outside of Nicaragua.<sup>58</sup> A case illustrative of the denial of justice, and of the failure of the military court system to adjudicate human rights abuses, involves the death of sixteen-year-old Jean Paul Genie Lacayo in late 1990. This case is described in some detail in order to illustrate the substantial obstacles to obtaining justice when those accused have been powerful members of the military establishment.

Genie was killed on October 28, 1990, when the car he was driving was raked with bullets as he attempted to pass a military caravan on the road between Managua and Masaya. Numerous Nicaraguan and international bodies pinned responsibility for Genie's death on army soldiers escorting armed forces commander Gen. Humberto Ortega back to his residence. An investigation by a civilian judge in Nicaragua in July 1992 ordered that Ortega and two others be investigated for their role in a possible coverup. Nonetheless, nearly four years after the crime, no one is in jail for the killing of Genie and a military court in July 1994 absolved all military personnel, including Ortega, of any involvement in the crime.

A concerted campaign by Genie's parents, Raymond and Gloria Genie, and by non-governmental human rights organizations (particularly the Permanent Commission for Human Rights (*Comisión Permanente de Derechos Humanos*, CPDH)) has kept the case before Nicaraguan and international opinion. Deficiencies in the initial police investigation<sup>59</sup> led the Nicaraguan Assembly to appoint a special legislative commission in November 1990 to investigate the murder. That commission, in turn, asked for technical assistance from the Venezuelan government. The Venezuelan Technical Judicial Police concluded in mid-1991 that Humberto Ortega's escorts were the "principal suspects" in the case.<sup>60</sup>

Efforts to bring the killers to justice moved forward slightly in July 1992, when civilian Judge Boanerges Ojeda of the Seventh Criminal Court of Managua ordered eight of Ortega's bodyguards to stand trial for "*homicidio*" (homicide).<sup>61</sup> Ojeda also ruled that Ortega and two others be investigated for participating in a possible cover-up. The judge then passed the case to the Auditoría Militar which, under Nicaraguan law, has jurisdiction over crimes committed by members of the armed forces.

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<sup>58</sup> For a description of this case and the initial investigation see "Fitful Peace," pp. 43-45.

<sup>59</sup> In our July 1991 report, and in subsequent correspondence with the government of Nicaragua, HRW/Americas noted the death in suspicious circumstances of Police Subcommander Mauricio Aguilar Somarriba, reportedly in charge of the Genie murder investigation. Aguilar was killed by a fellow police officer in what authorities claimed was an accident. However, his mother testified that Aguilar was murdered to silence him about the case.

Subsequently, during the investigation carried out by a civilian judge, two senior army officers confirmed that the military logbook recording entries and exits of vehicles and weapons from Gen. Ortega's residence had been burned in January 1991. The Attorney General's office in October 1991 denounced the destruction of evidence, including the burning of the shirt Genie was wearing the day that he died. "Fitful Peace," p. 44; Americas Watch, "Letter to President Chamorro," August 20, 1992; Raymond and Gloria Genie, "Letter to Robert G. Torricelli, Chairman, Subcommittee on Western Hemisphere Affairs," October 6, 1993, pp. 5-6; author unspecified, "Chronology of Jean Paul Genie L. Murder," undated, pp. 1-5 (provided to Americas Watch by the Genie family).

<sup>60</sup> The Venezuelan team, which included the chief of investigations of the homicide division, also concluded that at least four persons were involved in the killing, that the shots came from more than one vehicle, and that the killers used military weapons. Raymond and Gloria Genie, "Letter to Robert G. Torricelli," pp. 4-6.

<sup>61</sup> Even though the judge issued an arrest warrant for the eight bodyguards, they refused to appear in a civilian court.



Lawyers for the Genie family immediately appealed the transfer of jurisdiction, arguing — rightfully, in our view — that the system of military justice would prove incapable of ruling impartially in such a politically-charged case involving the most senior echelons of the army.<sup>62</sup> On February 15, 1993, the Tripartite Commission also recommended that the case remain in the ordinary courts.<sup>63</sup> Nonetheless, in December 1993, the Supreme Court ruled that the Auditoría Militar had sole jurisdiction over the case.

Military Prosecutor Lt. Lester Gallo briefly detained the bodyguards in February 1994 and ordered that Ortega be temporarily restricted to Managua. Ortega took the stand in his own defense the following month, claiming in testimony and in a public letter that the case had become a tool of "political hatred and revenge," used as a "shameless weapon to escalate the campaigns directed at destroying the EPS."<sup>64</sup> As could have been predicted, the Auditoría Militar absolved Gen. Ortega and his eight bodyguards in late June 1994, finding that they neither perpetrated nor covered up Genie's murder.

As the slow process of seeking a domestic remedy in Nicaragua unfolded, the Genie family and the CPDH simultaneously sought remedies within the international system of human rights protection. Genie and the CPDH brought a petition to the Inter-American Commission on Human Rights of the Organization of American States in February 1991. Following its own investigation, the Commission issued a finding on March 10, 1993, that "the Government of Nicaragua is responsible for the violation of the right to life, personal integrity, judicial guarantees, equality before the law, and judicial protection of Jean Paul Genie Lacayo." The IACHR recommended that the government of Nicaragua punish the perpetrators, pay a just compensation to the Genie family, and accept the jurisdiction of the Inter-American Court of Human Rights in the case.<sup>65</sup> Following an unsatisfactory response of the Nicaraguan government, the Commission referred the Genie case to the Inter-American Court on January 6, 1994, albeit only for the denial of justice following the actual murder.

A serious legal obstacle restricted the IACHR's ability to refer the entire case to the Inter-American Court. Nicaragua had formally accepted the jurisdiction of the Inter-American Court in February 1991, but had included a reservation stipulating that jurisdiction did not apply for cases prior to that date. Recognizing the Court's jurisdiction in the Genie case, which occurred in October 1990, required special consent from the Nicaraguan government.<sup>66</sup> The Nicaraguan Ministry of Foreign Affairs announced on March 10, 1994, that such consent would be granted, but the government limited the Court's competence to the issue of the denial of justice (events which continued to occur after February 1991), rather than to the events surrounding the murder itself. A Court hearing is scheduled for November 1994.

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<sup>62</sup> Americas Watch, "Letter to President Chamorro," August 20, 1992; and Americas Watch, letter to Orlando Trejos Somarriba, President of the Supreme Court of Justice, February 24, 1993.

<sup>63</sup> José Bernard Pallais, Santiago M. Murray, and Roberto Rivas Reyes, "Letter to Raymond Genie Peñalba," February 15, 1993. The letter stated that the Commission had arrived at the consensus position that "to achieve an effective application of justice, ordinary tribunals should have jurisdiction" over the case.

<sup>64</sup> Oscar Merlo, "Precautionary Measure Against Humberto," *El Nuevo Diario*, March 22, 1994; and "Public Letter by General Humberto Ortega Saavedra," *El Nuevo Diario*, March 22, 1994, in *Foreign Broadcast Information Services*, LAT-94-056, March 23, 1994, p. 26.

<sup>65</sup> Organización de los Estados Americanos, Comisión Interamericana de Derechos Humanos, *Informe No. 2/93*, Caso 10.792, Nicaragua, March 10, 1993, pp. 27-28.

<sup>66</sup> Americas Watch wrote President Chamorro on May 28, 1993, recommending that the case be transferred to the Inter-American Court, despite the reservation expressed at the time of Nicaragua's declaration of acceptance of the jurisdiction of the Court.

## CHANGES IN THE MILITARY JUSTICE SYSTEM

Following its evaluation of the government's compliance with the Tripartite Commission's first set of recommendations, the Commission presented President Chamorro with a document (initially prepared by CIAV lawyers) arguing for the revisions in the law defining military crimes. The objective was to revise and limit the jurisdiction of the Auditoría Militar and remove any ordinary crimes from its scope of authority.<sup>67</sup> The EPS reacted somewhat more diplomatically to the Tripartite Commission's recommendations for a reform of the military penal code. Lt. Col. Denis Moncada reportedly admitted that the existing laws should be reformed and modernized, a process which he said was already underway.<sup>68</sup> However, Moncada defended the military court's decisions in the various cases referred by the Tripartite Commission, saying they had been reopened at the Commission's request and that all of the original decisions had been confirmed. In fact, however, several cases reviewed by Human Rights Watch/Americas had not even been opened until after the Tripartite Commission began functioning.

There is reason now to expect some improvement in the state's response to some of the killings examined by the Tripartite Commission, given recent changes in the laws governing Nicaragua's military justice system. On August 23, 1994, the National Assembly approved Law 181, the "Code of Military Organization, Jurisdiction and Social Insurance;" Section Two of the Code deals with military jurisdiction. The Code mandates a series of reforms whose content may be grouped under the following headings:

1. A series of articles contained in the Code appear to respond to the Commission's recommendation that ordinary penal law have supremacy over military penal law. Article 35 expressly defines the Auditoría Militar, the organ charged with administering military justice, as "an integral part of the judicial power of the state and subject to [*con arreglo a*] the principles of the Constitution and the laws." Article 44 further states that jurisdictional disputes between civil and military tribunals will be handled in accord with the Code of Civil Procedure, while Article 45 stipulates that whenever an impending ruling in an ordinary court bears on a case being heard by a military court, the latter will suspend its proceedings until the civil court renders its verdict.
2. According to Article 42, military courts will henceforth be limited to trying cases of "military crimes and infractions committed by members of the Army." This implicitly abrogates an existing prerogative of the military justice system to try civilians involved in crimes against members of the armed forces.<sup>69</sup>
3. Again according to Article 42, crimes committed by members of the armed forces against civilians will henceforth be tried in civilian courts. This is the most significant reform and the one most positively received by a wide spectrum of political factions as well as human rights groups. Approval of this plank is particularly significant in light of the army's initial attitude during the bargaining over the draft Code; while the army was willing to give up its power to judge civilians, it did not accept that members of the armed forces would be judged by the civilian courts. Ultimately, the army was forced to yield. In order to allay fears that top officers would be plagued by a host of nuisance suits introduced in the courts for political reasons, the government (and later the Legislative Assembly) agreed to the stipulation that the right to initiate proceedings against military personnel for crimes against civilians would be limited to the Procurator General. This means that aggrieved parties may not, as is now the case, simply initiate a suit in court on their own account. However, the Procurator must rule on a complaint within five days, and a negative ruling can be appealed to higher courts (including the Supreme Court).

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<sup>67</sup> Two decrees approved in 1980 (the first full year of Sandinista rule), the *Ley de Auditoría Militar y Procedimiento Penal Militar* and the *Ley Provisional de Delitos Militares*, gave the Auditoría power to try civilians in certain circumstances and to try all crimes committed by members of the armed forces and police, including ordinary crimes against civilians.

<sup>68</sup> Jorge Katín, "Ejército Refuta Tripartita," *Barricada*, December 18, 1993, p. 10.

<sup>69</sup> This provision embodies Tripartite Commission recommendations II.2 and II.7, Comisión Tripartita, *Memoria de Trabajo 1992-1993*, pp. 182-83.

4. Other provisions speak to Commission recommendations urging a strengthening of the autonomy of military judges from the high command of the armed forces. Article 38 stipulates the obligation of all officers (regardless of rank) to "respect the independence of the organs that exercise the military jurisdiction," while Article 39 states that military judges "will be exempt from loyalty and obedience to superiors" in the exercise of their functions. The same article also states that justices to the military court system will henceforth be appointed by the Supreme Court from lists proposed by the Military Council (an assemblage of top officers which also proposes the army commander to the President), rather than be named by the military itself.

5. Finally, transitory Article 87 of the Military Code stipulates that within a year, the President will send draft bills on military crimes and infractions, military judicial procedure, and the organization of military tribunals to the Legislative Assembly for consideration. The first of these bills will be charged with defining clearly what constitutes a military crime, subject to the proviso that "in no case shall this code contain crimes or infractions whose nature is already defined (*tipificada*) in ordinary law." This article would appear to limit the definition of military crimes to behavior such as desertion or insubordination, which, by definition, can only be committed by members of the armed forces. Limiting the definition of military crimes in such a manner would constitute a major advance in the search for accountability in Nicaragua.

While the provisions of the recently-adopted Code do not yet respond to all of the Commission's suggestions, they appear to have been conceived within the spirit of those recommendations. However, the principal change relevant to the cases dealt with by the Tripartite Commission — the transfer of crimes by the armed forces against civilians to ordinary courts — will only serve to replace the weaknesses of the current military justice system with those of the civil justice system. Unless there are simultaneous efforts to bolster the functioning of the judicial system overall, the promise of the new Military Code will remain a theoretical one only.

Response to the passage of the Military Code by members of the Tripartite Commission has been mixed. Vice-Minister Pallais, a strong critic of military impunity, spoke enthusiastically of the new law as "a very important qualitative leap" without parallel in the legislation of other Central American countries in respect of the military jurisdiction. Felipe Sánchez and Winston Betanco of Verificación Obando, though conceding that the legislation contains some advances, expressed reservations about the lack of definition of "military crimes" and about the nomination of military judges by the Supreme Court, which they felt would be a merely formal change in that the judges would still be military men. CIAV head Sergio Caramagna noted that the provisions for trying military men in civilian courts and for denying the army the right to judge civilians represented important advances.

Concurrently with the legislative debate over the military code, Caramagna noted a new attitude on the part of the EPS toward the work of the CIAV. This was especially evident during and after the two bodies cooperated in the demobilization of the 3-80 Northern Front in February 1994 (cooperation that he described as "very professional"). Though the relationship between the CIAV and the army has on the whole been strained, it has varied from region to region within Nicaragua. In Region V (Chontales), relations have generally been good; they have recently improved in Region I (Estelí, the Segovias) as a result of changes in army leadership there; but Region 6 (Matagalpa- Jinotega) continues to be the sore spot. Nevertheless, Caramagna is encouraged by a recent meeting in which Col. Javier Carrión, a member of the army high command, expressed a willingness to act on cases of military abuses reported to it by CIAV. The CIAV official ascribes this change in posture to the more general desire of the Sandinista army to improve its acceptance as an institution in society.

## U.S. POLICY

While both the Clinton and Bush administrations have offered political and financial support to the Chamorro government, both administrations have been roundly critical of a number of government policies. The fact that Chamorro permitted the Sandinistas to retain control of the military and security apparatus, and the government's failure to move swiftly in returning private property confiscated during the Sandinista years, have splintered the coalition that elected Chamorro and galvanized opposition from conservative forces in the U.S. Such opposition in and outside Nicaragua has limited and shaped administration policy.

Both administrations, at times obliged by congressional restrictions on foreign aid, pressured the Nicaraguan government for improvements in human rights and for reforms of the military and security apparatus. Unlike the Bush administration, however, the Clinton State Department has decoupled such pressure from a stridently anti-Sandinista campaign. "Our message to the FSLN," Assistant Secretary of State Alexander Watson told a congressional subcommittee in October 1993, "is that we will accept the Sandinistas as a legitimate political force to the extent that they follow the democratic rules of the game."<sup>70</sup> Moreover, the Clinton administration has urged opposing factions in Nicaragua to overcome policy differences through internal dialogue and compromise, rather than pushing their agendas by appealing to policy actors in Washington.<sup>71</sup> This has been a consistent theme of Ambassador John Maisto, who arrived in Nicaragua in September 1993 after close to two years in which the post was vacant. In the policy's most explicit articulation, Assistant Secretary Watson told Congress in his October 1993 testimony that "[t]his Administration has one simple message to the parties in contention in Nicaragua: seek a national accord through dialogue and compromise among yourselves; do not seek the answers to your problems in Washington." While this new approach has had some salutary effects on the level of polarization within Nicaragua, its impact on the overall human rights situation has been less discernible.

Shortly after taking office, President Clinton released \$50 million in economic aid suspended during the Bush administration.<sup>72</sup> State Department spokesman Richard Boucher announced "significant steps," such as the creation of the Tripartite Commission, the suspension of police officers named by the Commission for human rights violations, and the request for a two-year extension of the mandate of the CIAV.<sup>73</sup>

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<sup>70</sup> Statement of Alexander F. Watson before the House Foreign Affairs Subcommittee on Western Hemisphere Affairs, October 6, 1993, p. 8. Watson later told a business group in Miami in March 1994 that "the Clinton administration accepts the Sandinistas as a legitimate political force in Nicaragua with all the rights and obligations of any party in a democracy." "Sandinistas Granted Recognition by U.S.," *Miami Herald*, March 16, 1994.

<sup>71</sup> Statement of Alexander F. Watson, p. 7.

<sup>72</sup> In May 1992, the Bush administration allowed Sen. Jesse Helms (R-NC) to block the disbursement of \$104 million in economic aid. The White House was reluctant to alienate a powerful senator in an election year. The State Department used the "hold" on funds to press the Chamorro government to institute a number of reforms. In September 1992, the Chamorro government replaced police chief René Vivas and announced the creation of the Tripartite Commission. The Bush administration released \$54 million of the blocked funds in December 1992.

<sup>73</sup> The aid included \$5 million to support the work of the CIAV and \$5 million for "democratic institutions such as municipalities, labor groups, and the justice system." Statement of State Department spokesman Richard Boucher, *Federal News Service transcript*, April 2, 1993.

Support for the Chamorro government was soon undermined by the discovery in May 1993 of arms caches belonging to the Salvadoran guerrillas which contained thousands of weapons, fake passports, and references to an international kidnapping ring aimed at wealthy Latin American businessmen. The caches aroused wide suspicion that members of the Nicaraguan military and intelligence apparatus were directly involved in aiding and abetting international terrorism.<sup>74</sup> In late July, the Senate overwhelmingly approved an amendment offered by Sen. Helms to ban aid to Nicaragua due to alleged links to international terrorism.<sup>75</sup> Clinton administration officials strongly suspected that senior Sandinista officials had at least knowledge of the arms caches, but no evidence was subsequently found linking the caches to Nicaraguan security force personnel.<sup>76</sup>

The Helms amendment was eventually dropped in House-Senate conference on the foreign aid appropriations bill, but Congress required that the administration withhold aid unless it reported to Congress that "significant and tangible" progress was being made in bringing to justice those responsible for the arms caches, resolving expropriation claims, implementing the recommendations of the Tripartite Commission, and exerting civilian control over the security forces.<sup>77</sup>

The move in Congress to cut off aid to Nicaragua spurred the administration to step up its pressure on the government for significant reforms. In August Assistant Secretary of State Watson met with President Chamorro and with Minister of the Presidency Antonio Lacayo in Washington and Miami, respectively, reportedly stepping up pressure for the retirement of armed forces commander Humberto Ortega, for progress in investigating several prominent human rights cases (including the Genie case), and for progress in resolving property claims.<sup>78</sup>

"We want [the Chamorro] government to succeed in consolidating democracy," State Department spokesman Mike McCurry told reporters on August 23. "But we are concerned that unless Nicaragua's civilian government establishes control over the security services, further progress will be very difficult to achieve."<sup>79</sup>

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<sup>74</sup> Earlier concerns were raised when Nicaraguan passports and other forged documents were found in the possession of a suspect in the bombing of New York's World Trade Center in February 1993. "U.S. Aid Threatened," *Central America Report*, August 6, 1993, p. 227.

<sup>75</sup> Liberals Christopher Dodd (D-CT) and Edward Kennedy (D-MA) supported the amendment, which passed 77 to 23.

<sup>76</sup> At the invitation of the Nicaraguan government, the FBI participated in the effort to investigate the arms caches and their contents.

<sup>77</sup> *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994*, Public Law 103-87, September 30, 1993, Section 562.

<sup>78</sup> Christopher Marquis, "U.S. Demands Nicaraguan Reforms as Condition to Aid," *Miami Herald*, August 13, 1993; Daniel Williams, "U.S. Presses Managua for Removal of Sandinista Officials," *Washington Post*, August 22, 1993.

<sup>79</sup> Statement of Mike McCurry, State Department Regular Briefing, Federal News Service, August 23, 1993.

Chamorro responded to the increased pressure by announcing several moves in early September which greatly angered the armed forces. Addressing the army on the fourteenth anniversary of its founding, Chamorro announced that she would replace army commander Humberto Ortega in 1994 and would move the military intelligence force (Defense Information Directorate, or DID)<sup>80</sup> under her direct control and replace its director, Col. Lenín Cerna. The announcement provoked a bitter public confrontation between Chamorro and Humberto and Daniel Ortega, and prompted the army's Military Council to issue a terse communiqué insisting that it, not the president, had the power to appoint the next commander-in-chief.<sup>81</sup>

Subsequent events showed the limited, albeit increasing civilian authority over the armed forces, as well as the limited utility of U.S. pressure for specific military changes. Lenín Cerna was removed as intelligence chief in October 1993; but he was appointed Inspector General of the army, its third highest-ranking position. Meanwhile, the date for Humberto Ortega's retirement (February 1985) was set in the context of the passage of the new military code. If army leaders refused to bend to specific political pressures, they were willing to accept change in the context of overall institutional reform and professionalization.

Congress enacted conditions on foreign aid in 1994 that mirrored its earlier concerns for the resolution of expropriations claims, human rights issues, and military and police reform; the conditions were renewed for fiscal year 1995. But overall economic aid levels are declining: from \$106 million in fiscal year 1993, to \$58 million in fiscal year 1994, to an estimated \$55 million in fiscal year 1995.<sup>82</sup> Congress, and the administration, will have to adjust to the declining influence that accompanies the shrinking foreign aid budget.

In 1994, moreover, the Clinton administration had to grapple with the consequences of a Helms amendment to the State Department authorization bill, signed in April 1994, which requires the United States to vote against loans in international financial institutions to countries that have expropriated the property of U.S. citizens, unless the president "determines and so notifies Congress that it is in the national interest to do so."<sup>83</sup> Secretary of State Warren Christopher signed such a waiver on July 29, 1994, claiming that "a total prohibition on all U.S. assistance . . . would increase political and economic instability in Nicaragua."<sup>84</sup> The significance of the waiver was to signal the far-right that the United States would not jeopardize the stability of the Nicaraguan government in order to promote the property issue alone.

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<sup>80</sup> In 1990 the DID, under army command, replaced the dreaded DGSE (General Directorate for State Security) which had operated under the Ministry of Interior. The number of personnel in the DID dramatically declined, but critics charged that it continued to carry out its repressive internal functions.

<sup>81</sup> Radio Nicaragua, "President Chamorro Army Day Speech," *Foreign Broadcast Information Services*, LAT-93-170, September 3, 1993, pp. 12-14; and Radio Corporación, "EPS Military Council Communiqué," September 3, 1993, p. 16. The text of the decree transforming the DID appears in *Foreign Broadcast Information Services*, LAT-93-171, September 7, 1993, p. 15.

<sup>82</sup> This contrasts with the total of \$541 million in economic aid in fiscal years 1990 and 1991, the first year of the Chamorro presidency.

<sup>83</sup> Section 527 of Public Law 103-236, signed on April 30, 1994, requires the executive directors of multilateral development banks "to vote against any loan or other utilization of the funds of such bank or institution" for countries which have not returned or provided "adequate and effective compensation" to U.S. citizens who had property expropriated. The bill allows for a waiver in the event that "such assistance is directed specifically to programs which serve the basic human needs of the citizens of that country." The provision is a revision of the Hickenlooper amendment governing foreign aid to countries where the property of U.S. citizens has been confiscated.

<sup>84</sup> Department of State, "Justification for Determination to Waive Section 527 of the State Department Authorization Act Relating to Nicaragua," July 29, 1994.

Human Rights Watch/Americas was pleased to learn of ongoing administration pressure on the government of Nicaragua for progress in many of the areas outlined by Congress in the foreign aid bill. We urge the administration to report fully and accurately to Congress on the Nicaraguan government's fulfillment of human rights and military reform-related conditions, despite the July 1994 waiver governing issues of private property.

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***Human Rights Watch/Americas (formerly Americas Watch)***

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