

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 99-8364 Civ-Hurley/Lynch**

JUAN ROMAGOZA ARCE,  
NERIS GONZALEZ, and CARLOS  
MAURICIO,

Plaintiffs,

v.

JOSE GUILLERMO GARCIA, an individual,  
CARLOS EUGENIO VIDES CASANOVA,  
an individual, and DOES 1 through 50,  
inclusive,

Defendants.

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CLERK U.S. DIST. CT.  
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**PLAINTIFFS' POCKET MEMORANDUM OF LAW IN SUPPORT OF  
ADMISSIBILITY OF THE UNITED NATIONS TRUTH COMMISSION REPORT**

In order to facilitate the Pretrial Conference scheduled for May 21, 2002, Plaintiffs Juan Romagoza Arce, Neris Gonzalez, and Carlos Mauricio hereby submit this memorandum of law in support of the admissibility of the Report of the Commission on the Truth for El Salvador ("Truth Commission Report" or "Report"). The Truth Commission Report is admissible for all purposes because it is highly relevant, falls squarely within the public records exception to the hearsay bar (FRE 803(8)(C)), and is trustworthy.

<sup>1</sup> The parties will meet on Monday, May 20, 2002, in an effort to address outstanding objections to exhibits. In the event that the parties are unable to stipulate to the admissibility of the Truth Commission Report, Plaintiffs expect to present live testimony from Lauren Gilbert, professor of law at St. Thomas University, at the Pretrial Conference. Prof. Gilbert, formerly a staff member of the U.N. Commission that prepared the Truth Commission Report, will provide foundation for the admission of the Report.

## DISCUSSION

### I. THE UNITED NATION'S TRUTH COMMISSION REPORT IS ADMISSIBLE AT TRIAL FOR ALL PURPOSES

#### A. The Report Is Highly Relevant

Federal Rule of Evidence 402 provides that:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority.

The Report is relevant to this action. The Truth Commission was charged with investigating human rights abuses committed by all sides during the civil war in El Salvador. The Report accordingly documents numerous instances in which the Salvadoran Armed Forces, then under Defendants' command, engaged in human rights violations of which Defendants knew or should have known. In addition, the Report made factual findings regarding the conduct of Defendants themselves during the armed conflict in El Salvador. In particular, the Report shows that Defendants were aware of human rights violations committed by their forces, but either tried to cover them up or did nothing about them.<sup>2</sup>

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<sup>2</sup> For example, the Report found that Defendant Carlos Eugenio Vides Casanova, then Director-General of the National Guard, knew in 1980 that members of the National Guard murdered four American Churchwomen, pursuant to orders from a National Guard officer, but covered up these facts and hindered the judicial investigation process. See Notice of Filing Exhibits in Support of Plaintiffs' Pocket Memorandum of Law in Support of Admissibility of the United Nations Truth Commission Report ("Notice of Exhibits"), Ex. B (filed herewith) at 62, 65. Similarly, the Commission found that Defendant Garcia knew about extra-judicial killings carried out by armed forces under his command, including the massacres of over 800 peasants at the village of El Mozote and the Sumpul river, but denied that the massacres occurred (later recanting his story) and never investigated or took steps to prevent recurrences. *Id.* at 121, 123.

**B. The Report Is Admissible Under the Public Records Exception to the Hearsay Rule (Fed. R. Evid. 803(8)(C))**

Federal Rule of Evidence 803(8)(C) allows the admission into evidence of reports containing factual findings as an exception to the rule against hearsay as follows:

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . (C) in civil actions and proceedings . . . factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstance indicate lack of trustworthiness.

The United Nations is a public "agency" within the meaning of Rule 803. *See United States v. M'Biye*, 655 F.2d 1240, 1242 (D.C. Cir. 1981); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 505 F. Supp. 1125, 1187 (E.D. Pa. 1980) ("[W]e see nothing in the language of 803(8) and no hint in the Advisory Committee Note to indicate that the phrase 'public offices or agencies' cannot include an international governmental body such as the United Nations . . ."). Courts in the United States routinely admit reports by agencies operating pursuant to foreign law. *See Zenith Radio Corp.*, 505 F. Supp. at 1144 n.11 ("Obviously, 803(8)(C) also encompasses the findings of public offices or agencies of state and foreign governments.").

For example, in *In re Korean Airlines Disaster*, 932 F.2d 1475, 1481-82 (D.C. Cir. 1991), the district court, pursuant to Rule 803(8)(C), admitted in its entirety a report generated by a commission created by the International Civil Aviation Organization (ICAO) to investigate the events leading up to the Soviet Union's shooting down of a Korean Airlines commercial flight over Soviet air space. The Court of Appeal upheld the trial court's ruling that the ICAO report was admissible under Rule 803(8)(C), because it determined that the report was issued by a public agency under authority of law and defendants failed to show that the report was untrustworthy. *Id.*

Likewise, the Truth Commission Report contains factual findings of the nine-month investigation undertaken by the Truth Commission. The Truth Commission was appointed by the United Nations to investigate specific events in El Salvador pursuant to the peace treaties signed by the parties to the civil war in El Salvador. In addition, both parties to the peace accords agreed to be bound by the Commission's findings and recommendations.<sup>3</sup> As such, the factual findings and recommendations in the Report were made pursuant to authority granted by law, and the Report is admissible in its entirety under Rule 803(8)(C) unless Defendants demonstrate that it is untrustworthy.

### C. The Report Is Trustworthy

Public documents are presumed to be trustworthy, and the burden rests with the party opposing admission to demonstrate a lack of trustworthiness. Fed. R. Evid. 803(8), Advisory Committee Note; *Garcia v. Gloor*, 618 F.2d 264, 272 (5th Cir. 1980). The Supreme Court has held that so long as a report is trustworthy, all findings—including conclusions and opinions—based on the underlying factual investigation of the report are admissible under FRE 803(8)(C). *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 170 (1988).

This Court has discretion to determine the trustworthiness of the Report with reference to the following factors, no one of which is dispositive: (1) the timeliness of the investigation; (2)

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<sup>3</sup> The parties to the civil war—the government of El Salvador and the opposition represented by the FMLN—ended the civil war by signing peace accords at Mexico City on April 27, 1991 (the "Mexico Agreements"). The parties signed the Mexico Agreements under the auspices of the United Nations and the governments of Colombia, Mexico, Spain and Venezuela. Pursuant to the Mexico Agreements, the parties agreed to the establishment by the United Nations of the Truth Commission and the issuance of a report on the Commission's investigation. The parties also authorized the Commission to make general and specific recommendations about its findings, by which the parties agreed to be bound. See Notice of Exhibits, Ex. B at 18-19. The Mexico Agreements are attached as Exhibit A to the Report.

the investigator's skill or experience; (3) whether a hearing was held; and (4) possible bias when reports are prepared with a view to possible litigation. See Fed. R. Evid. 803(8) Advisory Committee Note; *Glados, Inc. v. Reliance Ins. Corp.*, 888 F.2d 1309, 1312 (11th Cir. 1987) (per curiam).

Here, the Commission's investigation was timely because it was made in the immediate aftermath of the war. Reports focusing on events prior to the start of an investigation are generally admissible where the delay in conducting the investigation was "reasonable." See, e.g., *Gentile v. County of Suffolk*, 129 F.R.D. 435, 450-51 (E.D.N.Y. 1990), *aff'd*, 926 F.2d 142 (2d Cir. 1991) (commission report on events that took place four years before the investigation admissible); *In re Complaint of Nautilus Motor Tanker Corp.*, 862 F. Supp. 1251, 1254-55 (D.N.J. 1994) (report admissible where delays in conducting investigation were not within investigators' control). The Commission's investigation was conducted by investigators of significant skill and experience, including lawyers, forensic and social scientists, and experts in the culture and history of El Salvador.<sup>4</sup> The Commission's findings were based on evidence gathered from those possessing first-hand knowledge, which was then verified and corroborated by secondary sources of established veracity.<sup>5</sup> Moreover, the Commission fully documented its

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<sup>4</sup> The research team included law professors, economists, human rights experts, foreign affairs experts, social anthropologists, forensic doctors, international law experts, public administrators, researchers, criminologists and history professors. *Id.* at 195-200.

<sup>5</sup> "In order to guarantee the reliability of the evidence it gathered, the Commission insisted on verifying, substantiating and reviewing all statements as to facts, checking them against a large number of sources whose veracity had already been established. It was decided that no single source or witness would be considered sufficiently reliable to establish the truth on any issue of fact needed for the Commission to arrive at a finding. It was also decided that secondary sources, for instance, reports from national or international governmental or private bodies and assertions by people without first-hand knowledge of the facts they reported, did not on their own constitute a sufficient basis for arriving at findings. However, these secondary

findings. Thus, circumstances surrounding the Report's creation overwhelmingly support a finding that it is trustworthy.

## II. CONCLUSION

For the foregoing reasons, the Report should be deemed admissible for all purposes at trial.

Dated: May 17<sup>th</sup> 2002

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sources were used, along with circumstantial evidence, to verify findings based on primary sources." *Id.* at 24.