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Rights and Rebuilding in El Salvador
A case study in two parts

*-Elaine K. Denny and Susan Waltz **

Outline:

Synopsis

Part I: Human rights and civil war in El Salvador: 1980-1992

- A. Background**
- B. Civil war**
- C. Peace negotiations**
- D. Implementation of the Peace Accords**
 - 1. Ending impunity*
 - 2. Political reforms and law-enforcement issues*
 - 3. Process objectives: Socio-economic issues*
- E. Conclusion: Looking back while looking forward**
- F. Questions for reflection**
 - 1. The nature of human rights*
 - 2. Transitioning to peace*

Part II: Reality seventeen years after the peace accords

- A. Background**
- B. The Peace Accords: Promise unfulfilled?**
 - 1. Rights and reality: Justice and ending impunity*
 - 2. Rights and reality: a political and law-enforcement perspective*
 - 3. Rights and reality: Social and economic issues*
- C. Government responses to violence: Addressing or creating human rights problems?**
- D. Civil liberties and security, protest and repression**
- E. Conclusion: Looking back while looking forward, again**
- F. Questions for reflection**
 - 1. The nature of human rights*
 - 2. Transitioning to peace*

Appendix: Political Parties and the El Salvadoran Presidency

References

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Synopsis

In January 2007, on the 15th anniversary of the signing of the peace accords that ended 12 years of civil war and grave human rights violations in El Salvador, UN Secretary General Ban Ki-moon praised El Salvador as a model for other countries emerging from conflict:

“The groundbreaking accords signed in Mexico City in January 1992 not only set El Salvador on a new course. They also provided precedents and experiences that continue to inspire others who are striving to rebuild their societies following conflict. And they continue to be a point of reference for the United Nations, as we assist others on their path to peace.”¹

Yet, a decade and a half after the civil war concluded, many Salvadorans observe that while their country is no longer at war, it is also not at peace – there has been little closure to civil war human rights violations, and a new wave of human rights concerns has emerged.² In 2006, the year before Ban Ki-moon’s address, El Salvador was plagued by gang violence and alleged death squad activity³ and had one of the highest per-capita murder rates in the world⁴: 63.8 per 100,000 individuals.⁵ This statistic is higher than the per-capita homicide rate of 33 per 100,000 individuals observed in El Salvador during the early 1980s, the period of highest violence during the civil war.⁶

El Salvador’s experience over the past three decades raises a number of troubling questions. What social and political conditions – and contradictions – allow human rights concerns and democracy to coexist? How might greater human security and respect for human rights be achieved in El Salvador? The following case in two parts explores El Salvador’s interwoven legacy of civil war, human rights abuse, and political violence, and it informs questions of how this legacy may be contributing to current problems of physical violence, structural violence, and crime.

Part I outlines the events leading up to and surrounding El Salvador’s peace accords and provides an overview of the socio-economic and political factors at play. It provides a context for identifying and understanding gaps in a process intended to bring stability and political reconciliation, as well as the implications for human rights concerns, both past and present.

Part II builds on this information thematically and chronologically, directing attention toward the mid- to long-term difficulties of promoting peace in a politically-charged environment and questioning the classic conception of rights. It explores the emergence of new forms of violence, crime, and political repression over the past fifteen years, and it considers the success and shortcomings of the 1992 peace process.

Taken together, they invite discussion of the extent to which current challenges are linked to unfinished business of El Salvador’s human rights crisis and civil war.

Part I. Human rights and civil war in El Salvador: 1980-1992

A. Background

During the 1960s and 1970s, extreme poverty, severe inequality, and a lack of access to democratic processes fueled a growing sense of frustration among Salvadorans. Social protest gained momentum in rural areas, where poverty was more extreme and conditions were most difficult. However, organizing efforts – including non-violent campaigns for greater literacy and political participation – were met with severe repression. Organizers were continuously threatened, and some were disappeared or executed by security forces.

While these events played a direct role in the escalation of violence leading up to El Salvador's civil war in the 1980s, the roots of the conflict run much deeper. The text box below outlines the conflict's historical context, which colored not only the civil war itself, but also its aftermath.

The Roots of Social Conflict

Legal and political processes begun in the late nineteenth century concentrated land, resources, and wealth in the hands of a small elite while forcing peasants off land and employing them as cheap seasonal labor.⁷ As a result, by the 1970s El Salvador was one of Latin America's poorest and most unequal countries,⁸ as reflected in the distribution of both income and assets.

- In the late 1970s, the wealthiest 5% of the country's families received 38% of the national income, while 40% of families received only a cumulative 7.5% of the national income⁹ -- among the most unequal income distributions in Latin America.
- In 1971 a handful of very large farms claimed more than a third of the country's arable land, while small holdings (under 2.5 acres) accounted for half of the farms and were squeezed onto 4% of the land. The landless fraction of the rural population had grown from 40% in 1961 to 51.5% in 1971.¹⁰

Such dramatic inequalities spurred popular organizing in the 1960s and 1970s, strengthening resistance to the Salvadoran government among peasants, religious leaders working with the rural and urban poor, labor leaders, and students.¹¹

Socio-economic discontents were exacerbated by deeply rooted connections between the oligarchy, military commanders, and government.¹² Periodic, controversial elections occurred in which military officers usually won the presidency,¹³ while the economic elite often held cabinet positions.¹⁴ The widespread fraud in the 1972 presidential election dramatically increased political discontent and catalyzed the formation and growth of guerrilla movements among youth and intellectuals.¹⁵

As the government countered largely peaceful movements with violence, armed resistance groups gained support, and the situation became increasingly tense. Beginning in 1970, a number of leftist groups formed as offshoots of the Salvadoran Communist party and adopted strategies of armed and political struggle, although these groups were divided over the relative effectiveness of these two strategies. After the 1979 Sandinista revolution in Nicaragua, these leftist forces began a process of forming a unified coalition to realize more effectively common objectives of nationwide reform.

In the late 1970s, government-sponsored repression continued to escalate: student protesters were disappeared, church organizers were assassinated, and death squads operated with impunity. In an environment where most people feared the repercussions of publicly denouncing such acts, Archbishop Oscar Romero – nominated for the Nobel Peace Prize in 1979 – emerged as an advocate for justice and reconciliation. Not only did he urge the government to seek an end to the violence, but he also collected testimony of rights abuses and publicized them in his nationally-broadcast homilies each week. Romero also sought international attention for El Salvador's plight, and in February 1980 he urged U.S. President Jimmy Carter to end military funding to El Salvador.

Archbishop Romero's efforts to negotiate a civil peace were abruptly ended in March 1980 by an assassin's bullet. Right-wing paramilitaries acting under the orders of Major Roberto d'Aubuisson – head of army intelligence and founder of the conservative ARENA party – arranged to have him killed while he was celebrating mass. The public brutality of Romero's death shocked observers at home and abroad. It helped catalyze the unification of El Salvador's five guerrilla groups under the Frente Farabundo Marti para la Liberación Nacional (FMLN) and ultimately marked a transition from what had been high levels of social unrest, during the 1970s, to all-out civil war.

B. Civil war

Over the next 12 years, guerrilla forces fought government forces and right-wing paramilitary groups. As many as 400,000 Salvadorans were internally displaced by the terror waged on rural communities.¹⁶ A scorched earth policy adopted by the government was designed to eliminate support for guerrillas by burning villages, destroying crops, and emptying areas of its inhabitants. The conflict left approximately 75,000 dead – about 1.4% of the national population. Tens of thousands sought refuge in neighboring countries, while some 500,000 reached the United States.¹⁷ Overall, approximately one out of every 10 Salvadorans fled the country, but those who did so were not always safe either. For example, in the early years of the war, hundreds of men, women, and children were gunned down by military helicopters as they tried to cross the Sumpul River into Honduras.¹⁸

While both sides committed serious human rights abuses, Salvadoran security forces achieved international notoriety for the brutal tactics they used in the name of counterinsurgency.¹⁹ Approximately 95% of the wartime atrocities would eventually be attributed to government forces and the paramilitary units associated with them, while less than 5% were attributed to FMLN forces.²⁰ The high level of state involvement in these abuses is particularly problematic considering that El Salvador was one of the first countries to sign the International Covenant on Civil and Political Rights (in 1967), and it had completed the ratification process just months before social unrest escalated to civil war. In spite of its international position acknowledging civil and political rights, El Salvador's government and the paramilitary organizations it supported flagrantly violated the Covenant's provisions throughout the conflict.

A wide range of military and police units were involved in the war, including the Salvadoran Army, National Guard, Treasury Police, and National Police – all of which have been linked to human rights abuses, particularly in the early 1980s. However, the greatest terror arguably was spread by paramilitary groups commonly known as death squads. In the 1970s it had been common for security forces and large landowners to employ and arm paramilitary groups to crack down on peasant organizers, churchworkers, trade unionists and others they considered “subversives.”²¹ For many years, ORDENⁱ was the most notorious such group, organized in 1967 by the head of the National Guard specifically to “identify and eliminate” alleged communists among the rural population.²²

Although ORDEN ostensibly was disbanded in 1979, its members were not disarmed and no effort was made to dissolve their network. Consequently, the ORDEN network continued its intelligence and paramilitary efforts, often under the guise of civil defense.²³ The existence of these nominally independent paramilitary groups initially allowed government officials to deny responsibility for some of the most heinous deeds, which President Duarte in 1984 attributed to “criminals.”²⁴

As time went on, however, government responsibility and complicity became more obvious and could not be denied. Army troops and members of the National Guard were often spotted, out of uniform, among the death squads,²⁵ and human rights groups cited government forces for “massive human rights violations, including arbitrary arrest and prolonged detention without trial, torture, ‘disappearances,’ and individual and mass extrajudicial killings.”²⁶

During the war, thousands of individuals suspected of resisting the government were detained without trial and subjected to torture that included severe psychological pressure, lasting physical harm, rape, and electric shock.²⁷ Enforced disappearances were commonplace in the cities and rural areas alike, and victims included university lecturers and law faculty, priests and lay workers (both Salvadoran and US citizens), politicians and prominent human rights activists. Sometimes the “disappeared” were taken to secret prisons where they were held incommunicado and tortured; in other cases they were executed, their mutilated bodies left by the side of the road.²⁸

ⁱ Democratic Nationalist Organization; in Spanish the acronym means “order.”

Ultimately, El Salvador's Truth Commission would hear direct testimony about 877 death squad victims, soberly noting that "there is no question that what have been classified as murders committed by the death squads in rural areas account for a significant proportion of all killings in El Salvador between 1980 and 1991."²⁹ Of the 22,000 complaints about serious acts of violence registered by Truth Commission, 60% concerned political killings ("extrajudicial executions"), and more than 25% concerned enforced disappearances.³⁰ Although the Truth Commission attributed responsibility for these deeds to the military and their accomplices, only a handful of convictions have been secured, with the highest ranking official a colonel.³¹ Furthermore, military officials convicted in the early 1990s were released a few years later when a nation-wide amnesty was enacted for crimes committed during the civil war.³²

The Salvadoran conflict was in many ways exacerbated by international considerations. El Salvador's civil war took shape in the geo-political context of the Cold War, and like many other local conflicts it was seen as a battleground for global power and influence.³³ After the popular revolution which toppled Nicaragua's dictator in 1979, both the Soviet Union and the United States realized that El Salvador politically was at a similar tipping point. The superpowers' subsequent involvement was an important conditioning factor in the Salvadoran saga.

Beginning in 1979, the Soviet Union – in cooperation with Cuba – increased its support for insurgency movements in El Salvador and other Central American nations. Such support included military training, funding, and propaganda networks, but the extent of this support was heavily debated – a 1981 U.S. State Department report on Soviet arms shipments and political involvement in El Salvador was cited almost immediately for errors and distortions.³⁴ Regardless, by the mid 1980s the Soviet Union had begun to scale back its media attacks on the Salvadoran government, and it withheld advanced military capabilities from insurgent groups. The international political climate was shifting, and the Soviet Union sought a more conciliatory regional strategy that would allow the Sandinista government in neighboring Nicaragua to protect and consolidate power.³⁵

Conversely, after Nicaragua's 1979 revolution the United States actively sought to prevent a similar political shift in El Salvador. During the 1980s, the U.S. provided the Salvadoran government with over 5.5 billion dollars in economic and military aid.³⁶ Legislation passed during the Carter Administration made aid to El Salvador contingent on the U.S. administration's certification to Congress that the Salvadoran government was "making a concerted and significant effort to comply with internationally recognized human rights."³⁷ The Reagan Administration provided such certification four times, even though overwhelming evidence existed of continuing serious violations and a complete lack of investigation of past violations.³⁸

The United States also provided training to Salvadoran military and intelligence personnel at the School of the Americas – of the more than 6800 Salvadoran graduates,³⁹ many have been implicated in high-profile human rights cases, including assassinations and massacres. For example, in a 2008 case brought before the Spanish High Court, eight of the 14 officers implicated in the assassination of six Jesuit priests had attended classes at the School of the Americas.⁴⁰

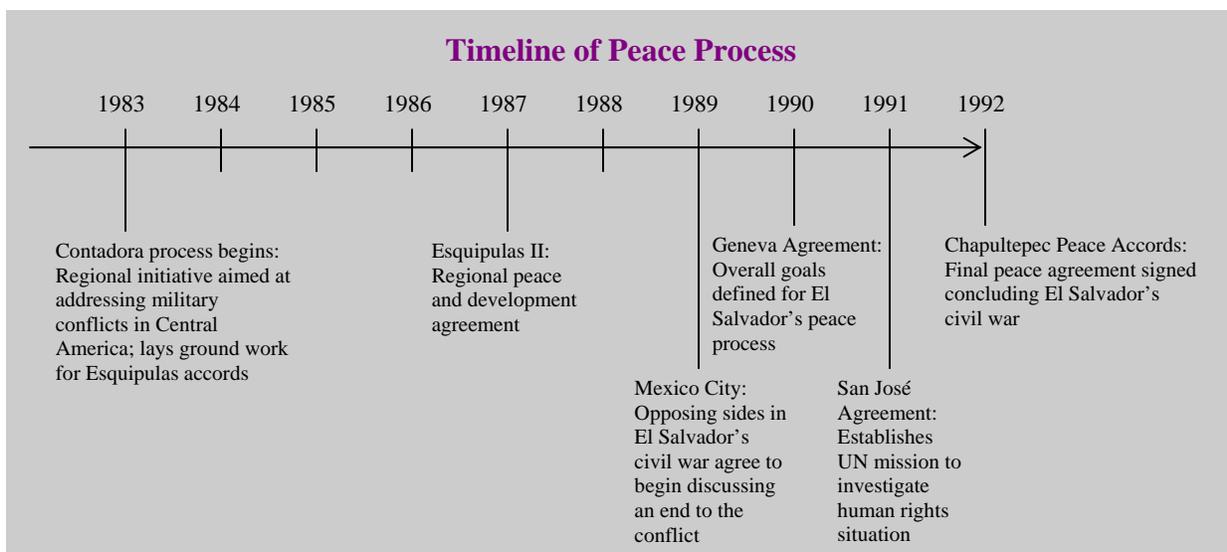
By the end of the 1980s, U.S. policy toward El Salvador also had begun to shift. After the killing of the six Jesuit priests in 1989 and the subsequent implication of the Salvadoran government's special forces Atlacatl Battalion, the U.S. Congress became increasingly hesitant to approve funding for the Salvadoran government.ⁱⁱ The end of the Cold War further altered U.S. interests in El Salvador. The Salvadoran government was extremely dependent on U.S. funding, so the shift in U.S. policy—combined with continued demonstrations of strength by guerrilla forces—provided strong incentives so the Salvadoran government to resolve the conflict through negotiation rather than a continuation of hostilities.ⁱⁱⁱ At the same time, moderates in the anti-government forces had gained influence; the combination of these factors helped impel both parties toward a peace agreement.⁴¹

ⁱⁱ Recently declassified documents indicate that the U.S. Central Intelligence Agency and the U.S. State Department had foreknowledge of plans within the Salvadoran military leadership to kill the Jesuit priests. See Edgardo Alaya, "El Salvador: Declassified Docs Shed Light on Jesuits' Murders," Inter-Press Service. November 27, 2009 at <http://www.ipsnews.net/news.asp?idnews=49447>. (12/20/09)

ⁱⁱⁱ For the Salvadoran elite, the prospect of increased business opportunities through investments and free trade agreements provided incentives push for a resolution to the civil war before lucrative investment opportunities were lost to other countries.

C. Peace negotiations

The El Salvadoran civil war was brought to an end with the Chapultepec Peace Accords of 1992, but the road to that final peace agreement was a long and bumpy one. Although the factors mentioned in the previous section were instrumental in bringing warring factions to the negotiating table, international and regional interventions also helped catalyze negotiations between the government and the armed opposition, encouraging democratic opening within the country.⁴² Central American state leaders had been holding high-level discussions for a number of years on how to achieve regional peace and development. In 1984 José Napoleón Duarte of the Christian Democrat Party defeated ARENA's Roberto D'Aubuisson in free elections to become the first civilian president elected in fifty years. Duarte's election did not bring an end to state violence, but it did open up possibilities for negotiations. A major breakthrough came in 1987, when President Duarte and four other Central American heads of state signed the Esquipulas II Accord, designed by Costa Rican President Oscar Arias. The document aimed to promote regional peace and security through national reconciliation, international verification of peace processes, and an implementation timetable.⁴³ Esquipulas II laid a foundation regionally that would support El Salvador's peace process when it began two years later.



In July 1989, the United Nations Security Council endorsed efforts to bring peace to the Central American region through Resolution 637. Earlier that year, Alfredo Cristiani had become El Salvador's president after his ARENA party soundly defeated the Christian Democrats in the general election. Responding to the various domestic and international factors mentioned above, the new government and FMLN forces reached an agreement in Mexico City to begin a dialogue to end the conflict in El Salvador through political channels. Both sides independently requested that the UN Secretary General assist them in designing and implementing the peace process.⁴⁴

Though political violence and acts of severe repression continued, over the next three years government and FMLN representatives signed a series of agreements that moved the parties toward the final peace accords in what was described by the UN as a perfect negotiation process.⁴⁵ This process of transitioning to peacetime democracy was unique in Latin America in that it did not call for a change in government, but rather produced a negotiated agreement between an undefeated insurgency and a government which continued to be led by the same authorities as during the war.⁴⁶ The peace agreements were also groundbreaking in terms of the role of humanitarian law; El Salvador presented the first case in which the 1977 Additional Protocol II to the Geneva Conventions was applied to a non-international armed conflict.⁴⁷

Significant challenges in the negotiations included what would become of the armed forces and how to ensure that FMLN soldiers would be reintegrated into civilian society. Another major controversy – both between negotiating parties and among the country's population generally – involved a constitutional amendment to the minimum size of

landholdings, highlighting the strong connections between political and economic interests in ongoing domestic tensions.⁴⁸

The overarching framework for the UN-mediated peace talks was outlined in the Geneva Agreement of April 4, 1990,⁴⁹ and it outlined four objectives for the peace process. These objectives were to end the armed conflict by political means as speedily as possible, promote the democratization of the country, guarantee unrestricted respect for human rights, and reunify Salvadoran society. Notably, the first and fourth goals pertained to the armed conflict, while the second and third goals related to underlying concerns perceived to be barriers to the conflict's resolution.

More detailed agreements were elaborated as the talks continued. The 1991 San José Agreement on Human Rights was the first substantive agreement in the process, and it paved the way for the establishment of the United Nations Observer Mission in El Salvador (ONUSAL). Originally, the UN mission was only intended to begin after the end of the armed conflict, but both parties requested that the mission begin without waiting for a cease-fire. The San José Agreement outlined the UN's mission to be the following:

*“The purpose of the Mission shall be to investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights.”*⁵⁰

This UN mission was the first in the world to use a three-pronged approach toward monitoring political agreements reached under UN-moderated negotiations, integrating human rights, the military, and the police.⁵¹ In retrospect, the human rights verification and monitoring^{iv} carried out by ONUSAL in the absence of a cease-fire acted as a deterrent of further violence, improved El Salvador's internal situation, and helped move the country towards peace.⁵²

The final peace agreement between the Salvadoran government and the FMLN was signed on January 16, 1992. The document included specific objectives designed to end impunity within the armed forces for crimes committed during the war, achieve political and law-enforcement reforms, and address lingering socio-economic questions.⁵³

D. Implementation of the Peace Accords

The Salvadoran government did not implement the peace agreement's objectives uniformly or with equal levels of success. The following sections highlight three areas of the agreement's objectives and consider how well their implementation adhered to peace accord intentions.

1. Ending impunity

The peace process set up both an Ad Hoc Commission to review military officers' human rights records and a Truth Commission facilitated by the UN to investigate human rights abuses more generally. In the Salvadoran peace agreements, these bodies were given the mandate of investigating “serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know that truth.”⁵⁴

The Ad Hoc Commission was created in response to demands to purge the military of officers who had violated human rights – a priority for FMLN negotiators. “Ending impunity for military officers” meant holding them accountable for human rights violations committed during the war. This was seen as a critical element of building a reliable and effective system of peacetime law enforcement. To this end, the Ad Hoc Commission was given the task of evaluating the records of over 2,200 army officers. The Commission consisted of three civilians: attorney and professor Reynaldo Galindo Pohl, attorney and Christian Democratic Party founder Abraham Rodriguez, and human rights defender Eduardo Molina Olivares.⁵⁵ Retired military officers General Carlos E. Vides Casanova and General Rafael Humberto Larios were appointed to the commission as well; they were excluded from investigations and decision-making but were allowed to review and interpret the information.⁵⁶

^{iv} Rights specifically delineated in the agreement include the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression, and to freedom of association.

The Commission's report boldly called for the removal of the vast majority of the Salvadoran military's high command including Minister of Defense Rene Emilio Ponce. President Cristiani delayed the implementation of the commission's recommendation, citing fears of instability. However, in 1993 under pressure from the U.S., the government finally took action on the Ad Hoc Commission's recommendations for purge or removal.⁵⁷

For its part, the UN-moderated Truth Commission aimed to "seek, find and publicize the truth about the acts of violence committed by both sides during the war."⁵⁸ More specifically, three UN-appointed Commissioners – from Colombia, Venezuela, and the U.S. – were given six months to collect information and testimony for the following purposes:

- to ascertain the facts of what happened in certain high profile cases
- to end military impunity
- to strengthen judicial institutions⁵⁹

During the latter half of 1992, the Commission collected direct testimony from 2,000 primary sources about 7,000 victims, and it also reviewed secondary sources relating to more than 20,000 victims. However, the Commission's decision to focus on a select number of high-profile cases limited the attention given to thousands of extrajudicial executions and kidnappings.⁶⁰ Significantly, the report relied on voluntary testimony and confessions of those who chose to come before the Commission, thereby in a sense punishing perpetrators who came forward while providing a defacto immunity for those who did not.⁶¹

The Commission's final report implicated sixty-two military officers, six FMLN leaders, and several civilians in the perpetration or cover-up of some of the country's most serious wartime human rights violations.⁶² Recommendations included the removal of these individuals from positions of authority, the resignation of all Supreme Court members, the investigation into private armed groups that could give rise to new death squads, and the creation of a fund to compensate victims.⁶³

Additionally, the Truth Commission called for an investigation of "the structural connection...between death squads and state bodies," particularly in light of the threat such groups could pose to the newly created democracy.⁶⁴ ONUSAL also urged an investigation into death squad activities, especially in light of the number of extrajudicial killings occurring *after* the signing of the peace accords – as well as the government's failure to investigate them.⁶⁵ The recommended investigations were never conducted.

Although the Truth Commission called for reparations and other steps toward reconciliation, its recommendations were not followed. In fact, five days after the Commission released its report in 1993, the Salvadoran legislature – under the urging of President Cristiani – passed a sweeping general amnesty that prevented criminal prosecutions, civil suits, and judicial investigations into the fate of victims.⁶⁶ During the peace negotiations, both parties had understood that there would be some form of amnesty; the FMLN did not actively oppose the amnesty law due to concerns for building stability and protecting its own members from prosecution.⁶⁷ It has been suggested that the inability of survivors and victims' family members to hold perpetrators responsible for their crimes had complicated efforts to build the rule of law.^v

2. *Political reforms and law-enforcement issues*

Major objectives of the peace process included transitioning the country's governance structure from wartime to a time of peace. This implied significant reforms to the military, law enforcement, and judicial sectors of government.

^v Two earlier, less comprehensive amnesty laws were passed in 1987 and 1992. The Inter-American Commission on Human Rights issued a resolution in October 1992 concluding that the "Amnesty Law [of 1987] constitutes a violation of the right to ensure and respect the fundamental rights of Article 1, 8, and 25 of the American Convention on Human Rights and related principles of international law binding El Salvador." The IACHR did not directly comment on the 1992 amnesty law, titled the Law of National Reconciliation, passed seven days after the Chapultepec Peace Accords were signed. See Todd Howland, "How El Rescate, A Small Non-Governmental Organization, Contributed to the Transformation of Human Rights in El Salvador," *Human Rights Quarterly* 30 (2008), 721-23.

Following the peace accords, the Treasury Police, National Guard, and National Police were disbanded, and a National Civilian Police force (PNC) was created. The peace accords stressed that the PNC would be comprised of a majority of civilian non-combatants, but this stipulation was not adhered to. For example, the government initially transferred 1000 members from the National Guard and Treasury Police into the PNC.⁶⁸

Creation of a civilian police force was cited at the time by outside experts as one of the most troubled aspects of the peace process and most serious threats to the process's success.⁶⁹ Problematic aspects of the transition included delays in PNC deployment, a reluctance by National Police to cooperate with the PNC during the transition period, and a lack of funding for program implementation. Crime rose during the transition period, and extrajudicial killings continued.⁷⁰ A 1994 UN report criticized the PNC for its inability to adequately enforce the rule of law – of the 75 most serious violations of the right to life occurring after 1992, none resulted in trial and over half of the cases had no police investigation at all. These violations included arbitrary executions, attempted arbitrary executions, and death threats.⁷¹

Military intelligence passed to civilian control, and by 1993 the military had cut its personnel by half. Reductions continued until by 1999 the entire armed forces consisted of less than 15,000 uniformed and non-uniformed personnel. However, the peace accord mandate to create a new armed forces was complicated by military attempts to move units directly into the new armed forces rather than dissolving them.⁷²

Legal reforms were also a key priority within the judicial system. Legislation was passed guaranteeing detainees the right to counsel in 1992, and a new Criminal Procedure Code passed in 1996. A new Supreme Court was inaugurated in 1995. Its unprecedented, broad political representation offered hope of serious judicial reform in the future.⁷³ These desired reforms included making the Supreme Court structure less vertical so as not to compromise judges' independence of judgment, and insulating the Court from external political pressures.⁷⁴

3. Process objectives: Socio-economic issues

In many ways, the “social and economic questions” discussed in the peace accords were subsumed in the following years by the adoption of broad economic reforms promoted by the International Monetary Fund and World Bank. To promote growth, El Salvador was encouraged to abolish trade barriers, privatize major state holdings, and liberalize inflows of foreign direct investment to promote growth and reduce national debt.⁷⁵

El Salvador's economic growth observed in the years directly after the war did little to reduce extreme poverty.⁷⁶ Government policies prioritized growth in ways that did not address distributional concerns, asserting that more equal distribution would come with time.⁷⁷ Major economic challenges included an overvalued exchange rate and low investment, and it was predicted that if such conditions were not changed, the economy would remain highly dependent on remittances from family members in the U.S.⁷⁸

The new financial elite in El Salvador were active in directing state policies toward economic restructuring and globalization, thereby expanding their own opportunities and influence. This trend was exemplified by President Cristiani's use of executive power for personal gain in the early 1990s. When the banking system was privatized between 1991 and 1994, President Cristiani and his wife became principle owners of Banco Cuscatlán, the second largest bank in the country.

A post-war financial system developed in which essentially every powerful economic group had major influence in a major Salvadoran bank. The Cristiani family became the principal investor in Banco Cuscatlán. Families Simán, Zablah, and Salume – all former coffee magnates – together have obtained a controlling interest in the Banco Salvadoreño.⁷⁹ The Belismelis family is recognized as the most influential of a small group of families – many of whom were particularly affected by agrarian reform in the 1980s – with major business interests in the financial powerhouse Scotiabank, formerly the Bank of Commerce.⁸⁰ Among other factors (an overvalued exchange rate, insufficient investment, etc.), the oligopolistic nature of the banking sector was criticized as early as 1996 for stifling diversification and sustainable growth.⁸¹

The peace process did result in land reform, which had been a major objective of marginalized Salvadorans for decades. However, while the land transfer affected over 35,000 eligible individuals including former guerrillas and

soldiers,⁸² it was a hollow victory. By the end of the war, agriculture was no longer the profit-generating enterprise it was prior to the 1980s. Export agriculture had fallen from 25% of GDP in 1978 to 3% in 1992. The inflow of US dollars (both as government support and remittances from a growing number of Salvadorans abroad) distorted prices and made other sectors relatively much more profitable.⁸³ As a result of economy's structural shift, by the late 1980s the economic elite in El Salvador were already drawing much more substantial portion of their income from commercial rather than agricultural enterprises.⁸⁴

Both parties to the peace accords acknowledged that the land transfer program was intended primarily to aid in the reintegration of ex-combatants into economic and social life, rather than to address concerns about distributional inequality in El Salvador. Indeed, the peace accords' section on socio-economic reform "was in places vague and ambiguous" – it provided no agreements on issues such as wage increases or the right to unionize. Perhaps most significantly, it included no redistributive agenda to address the economic inequalities that were acknowledged to have been contributing factors to the civil war's outbreak.⁸⁵

E. Conclusion: Looking back while looking forward

As the UN mission drew to a close in mid-1995, outside observers were generally pleased by the smoothness of El Salvador's transition from war to peace. In a UN article from June 1995 entitled "ONUSAL: Mission Accomplished," Secretary General Boutros Boutros-Ghali was quoted as stating that El Salvador had "moved decisively away from the violence and divisions of the past, towards a society based on peace, democracy and human rights".⁸⁶ However, despite short-term victories, the road to peace would prove a challenging one – lingering weaknesses in the judiciary and law enforcement, combined with persisting inequality and marginalization were to create fertile ground for the spread of new violence and instability.

F. Questions for reflection

Two main themes underlie this case study: the shifting definition of "human right" and the role these rights play in reconstruction and reconciliation processes. The questions that follow highlight these themes, which also will be readdressed at the end of Part II.

1. The nature of human rights

- Review the human rights violations that appear in Part I. What are common features, what is the nature of these abuses?
- Who were the perpetrators of these abuses?
- What background circumstances/factors set the context and facilitated abuse?
- When the Peace Accords were drafted, which (if any) provisions related to human rights violations?
- What are your summary thoughts about the nature of human rights violations?

2. Transitioning to peace

- Review: When the peace accords finally came what were their main elements? Which of these seem most important to you? (Which elements—if any—related to human rights violations?)
- Thinking about these circumstances historically, if you could have been present back in 1992, was there good cause to be concerned about how fully the peace accords would be implemented? If so, what concerns, and why?

Part II. Reality seventeen years after the peace accords

A. Background

As the UN mission in El Salvador was wrapping up its work in 1995, Secretary General Boutros Boutros-Ghali reflected that ONUSAL's mission had been to bring "peace ... through justice, human rights, democracy and development" in El Salvador, allowing people to "realize their own potential in freedom."⁸⁷ The passage of time allows for a longer-term analysis of the relative successes and shortcomings of El Salvador's peace process.

Certainly some successes appear durable. The initial peace talks had emphasized the importance of ending the armed conflict by political means "as speedily as possible", and the achievement of this objective has been widely celebrated. There has been no break of the ceasefire since the peace accords were signed in 1992, and the demilitarized FMLN has emerged as one of the two major Salvadoran political parties. (See Appendix A for a brief overview of El Salvador's political system, including the succession of presidents since 1984.) The erstwhile antagonists of the civil war have both been integrated into the democratic electoral system, and international observers consider El Salvador "among the most successful instances of implementation of a negotiated peace agreement in the post-Cold War period."⁸⁸

Nevertheless, many Salvadorans are not so sanguine. Although the civil war ended over fifteen years ago, the current high level of violence is not characteristic of a country "at peace." Salvadorans are frustrated by the government's apparent inability to provide security and justice, particularly as gangs and gang-related violence have escalated dramatically over the past decade.⁸⁹ The situation raises questions about the peace process's success in achieving the latter two of its initial four objectives ("to guarantee unrestricted respect for human rights" and "to reunify Salvadoran society").

Violence and crime continued to threaten citizen security and social stability in the aftermath of the civil war, although the ways they manifested themselves shifted as time passed. Directly after the peace accords, extrajudicial political killings continued and crime in general rose. By some counts, El Salvador passed Colombia to rival South Africa as the homicide capital of the world. As gangs took root, the nature of violence began to change – both in terms of gang-perpetrated crimes and responses by government and citizen groups. A poll in 1998 indicated that the majority of Salvadorans believed that "people have the right to take justice in their own hands because the government does not provide justice and security." This belief was more widespread in 1998 than two years earlier.⁹⁰

Beginning in 2003, the Salvadoran government adopted controversial law enforcement measures to crack down on gang problems. Proposals were accompanied by strong rhetoric from President Francisco Flores, arguing for the need to give broad powers to the police and armed forces to combat gang violence.⁹¹ Since then, however, gang-related violence has actually escalated, to the point where most Salvadorans are affected in some way by the violence (see box). The homicide rate soared between 2003 and 2005, increasing from 36 homicides per 100,000 to 55.5 per 100,000.⁹²

El Salvador's Gangs

The exact number of gang members in El Salvador is unknown, but 2007 estimates range from approximately 10,500 to 39,000.⁹³ Gang membership is highest among marginalized populations with youth joining as young as age eight.⁹⁴

The two most prominent gangs in El Salvador – the 18th Street and Mara Salvatrucha (MS-13) gangs – began in the United States as street gangs formed by Salvadorans displaced by the civil war. The gang phenomenon spread to El Salvador in the 1990s when U.S. immigration policy resulted in a large-scale deportation of Central American gang members to their homelands. Many arrived in Central America with few skills and even an inability to speak Spanish, so they reverted to crime and began recruiting youth.⁹⁵

The growth of gangs and gang-related violence also has been fueled by easy access to small arms. Small-caliber weapons generally are readily available to gangs due to little state control over weapons, easy access to trafficking routes, and large weapons caches from the 1980s civil war.⁹⁶

Gang-perpetrated violence falls into two categories: gang-gang violence and violence targeting non-gang members. Intra-gang violence includes violent initiation rights, possible killings of individuals who seek to leave the gang, and killings of rival gang members. As for crimes targeting non-gang individuals, extortion is a widespread problem, and individuals or businesses that refuse to pay “protection money” run real risks of having their property damaged or even being killed. Serious threats are also made against individuals who refuse to join gangs.

Central American gangs should not be conflated with the organized crime networks associated with international drug trafficking. Few direct connections have as yet been found between street gang hierarchies and organized crime; however, some analysts expect such links to strengthen as a survival response to repressive anti-gang policies. In El Salvador, gangs have responded to repressive anti-gang legislation since 2003 by becoming more specialized, more organized, and more adept at going unnoticed.⁹⁷ Gangs that before offered mutual support for members and engaged in local-level delinquency are transforming into sophisticated organizations seeking wealth and power through more violent crime and the drug trade.⁹⁸

Importantly, these transformations are taking place predominantly at the higher levels of the gang hierarchy; lower-level gang members continue to live in conditions of extreme vulnerability, both in terms of security and socio-economic needs.⁹⁹

These homicide rates are one indication of the magnitude of continued obstacles to peace – in an analysis of over 94 countries, El Salvador was one of three specifically cited for its extremely high level of homicides, which equates to “more deaths each year than in many contemporary wars.”¹⁰⁰ Another report revealed that El Salvador’s homicide rate is especially striking among youth ages 15-24: 92.3 deaths per 100,000 people, the highest of the 83 countries studied.¹⁰¹ The global average homicide rate in 2004 was 7.6 individuals per 100,000.¹⁰²

National Civilian Police (PNC) director José Luis Tobar estimates that 70% of the homicides in El Salvador are linked to gangs,¹⁰³ but other sources have suggested that this figure may discount extrajudicial killings and death squad-like activity.¹⁰⁴ Along with the high homicide rate stand concerns about the integrity of the judicial and police forces, as well as human rights abuses sanctioned or overlooked by the Salvadoran government.

The surge of gang violence in El Salvador is a problem in its own right; however, it also is linked to a number of post-war policies which further affect the country’s security and stability. These include state-perpetuated violence, an inability to prevent extrajudicial killings, wide-scale arrests, and abbreviated due process – all of which raise questions about the government’s commitment to promoting human rights and peace.

B. The Peace Accords: Promise Unfulfilled?

Three areas addressed by the 1992 Peace Accords point to the contradictions between peace objectives and current reality, shedding light on possible strategies for more effectively promoting human security and rights in El Salvador.

1. Rights and reality: Justice and ending impunity

A major goal of the peace accords was to end impunity within the armed forces, meaning that officers would be held accountable for human rights violations committed during the war with the goal of purging them from the military and preventing future rights abuses. Even after the Salvadoran assembly passed a general amnesty law in 1993 providing “broad, absolute, and unconditional amnesty” (or exemption from prosecution) for crimes during the war, national and international actors sought to build a system of accountability in the post-war era. The goal was to prevent individuals both within and outside government from acting with impunity in the future – they would not be able to violate peacetime laws without being prosecuted for their crimes. Unfortunately, realizing this objective would prove to be one of the most challenging aspects of the peace accords’ implementation.

By 1994, a new paramilitary group calling itself the *Sombra Negra* (“Black Shadow”) had emerged in El Salvador, purportedly to combat crime in what it viewed as the absence of adequate law enforcement. “Combating crime,” however, meant that suspected criminals were targeted for extrajudicial killings. The *Sombra Negra* likely consisted of former soldiers and operated with unofficial approval from the PNC.¹⁰⁵ Although a number of members – including a city mayor – were arrested and charged with homicides linked to this group, none were convicted. The rise of the *Sombra Negra* is representative of both a persistence of death squad activity and its shift after the peace accords from politically-motivated violence to acts of “social cleansing” which predominantly target gang members or suspected gang members.

There are strong indications that the “social cleansing” observed during the 1990s has increased in frequency, especially since repressive anti-gang policies were implemented in 2003. A number of experts have suggested that these repressive laws sent a message of “ideological and rhetorical support” to groups conducting social cleansing.¹⁰⁶

There is evidence of state complicity in these extrajudicial killings. Not only have law enforcement and intelligence authorities failed to investigate new death squad activity, they themselves have been directly linked to such violence. For example, in one poor neighborhood outside San Salvador, weapons used in recent death squad killings were found to match weapons that had disappeared from the police station. Government human rights officials also have

publicized cases in which death squad activity has been coordinated from within police departments or has used police members to help target the suspected gang population.¹⁰⁷

The manner in which these extrajudicial executions have been carried out since 2003 also bears a striking resemblance to death squad killings during the civil war. The trend that has been identified includes: “...shots fired to the head at point blank range, bodies [left] face down, with hands and feet tied behind backs, sometimes bound with shoestrings or barbed wire... Generally [the victims] have been executed by armed men wearing ski masks, and their bodies are left in creeks, rivers, highways...”¹⁰⁸

The similarity between this form of summary execution and that commonly used by death squads in the 1980s has led human rights observers to suggest that the same individuals or institutions active in death squads in the 1980s may be involved in the current social cleansings.¹⁰⁹ Although after the peace accords there appeared to be a shift in who was targeted for extrajudicial killings and why, similarities with summary executions during the 1980s suggest that the new violence was in part used as a way to augment fear to maintain control over the population.¹¹⁰

While the most common victims of this modern death squad activity are gang members or suspected gang members, social activists have been targeted in recent years as well. For example, the elderly parents of long-standing political activist Marina Manzanares were brutally murdered in 2006 after she and her mother had received death threats. Amnesty International cited this case as contributing to concern “at the possible re-emergence of death squads.”¹¹¹ In another high-profile case, community activist Marcelo Rivera was found dead on July 1, 2009, after years of work opposing local government corruption and proposed international mining projects that threatened to contaminate the community’s environment. Rivera’s body – discovered at the bottom of a thirty-meter-deep well – showed signs of torture; he had no fingernails, scalp, nose, or mouth.¹¹² Other local activists opposing mining activities continue to receive death threats.¹¹³

Impunity for past and present crimes underscores broader problems with a justice system that has not fulfilled peace process objectives. A weak judiciary has hampered law enforcement efforts, and despite limited reforms, the judicial system has been unable to overcome the institutional incapacity and politicization that were problematic during the civil war.¹¹⁴ The Institute for Human Rights at the University of Central America recently reported that “incompetence and a lack of ethics have undermined the heart of the justice sector” in El Salvador.¹¹⁵

A major concern in light of the current upswing in violence is the justice system’s apparent inability to investigate, prosecute, and punish murders. A 2007 study by the United Nations Development Program assessed a subset of the homicides from 2005, and it found that 96.1% went unpunished while only 39 out of the 1,020 cases (3.9%) resulted in some sort of punishment. Lack of will, institutional incapacity, and poor coordination between police and prosecutors were cited as contributing factors in El Salvador’s worrisome law enforcement record.¹¹⁶

2. *Rights and reality: a political and law-enforcement perspective*

The UN deemed El Salvador’s police reforms to be “the most far-reaching and important public security reform in Latin America” of the 1990s, and ten years after the peace accords, the U.S. Agency for International Development was working to model other programs on El Salvador’s experience.¹¹⁷ By a 2-to-1 margin, Salvadorans in 2001 indicated that the PNC was more efficient, professional, and rights-respecting than five years earlier.¹¹⁸

Yet, public confidence in the PNC generally remains lukewarm at best,¹¹⁹ and there is evidence of members’ involvement in organized crime.¹²⁰ Even more seriously, a 2007 report on human rights and gang violence cited institutional weaknesses and politicization of the PNC as central obstacles to ensuring human rights and establishing the rule of law. Reasons cited for this include a lack of transparency, professionalism, and competency related in part to the organization’s initial composition.¹²¹

Instead of building a police force comprised of a majority of civilian non-combatants as stipulated by the peace accords, military units slated to be disbanded were liberally incorporated into the PNC. Although the strong presence of high-ranking members of the government’s wartime public security system is not as visible as it may

have been in the 1990s, the PNC is still perceived to be an organization that responds to political and economic forces above the mandates of the rule of law.¹²²

In addition, particularly since the anti-gang legislation of 2003, police forces have engaged in significant acts of repression targeting Salvadoran youth. These acts include arbitrary stops and arrests,¹²³ severe physical abuse, and even killings.¹²⁴

International groups have expressed concerns about the human rights problems raised by the militarization of Salvadoran police. New joint patrols using military and police forces undermine the intentional separation of the two bodies created by the peace accords due to the poor human rights record of the Armed Forces. New developments increase the risk that incorporating the military into police operations will once again heighten civilians' risk of being subjected to human rights violations by security forces.¹²⁵

At the most basic level, the Salvadoran government has been unable to guarantee its citizens basic rights to life and security of person. Its inefficacy at controlling the spread of gangs has affected the security of all Salvadorans. Groups particularly affected by the lack of protection include witnesses,¹²⁶ people being extorted or receiving pressure to join a gang, and individuals who want to leave a gang but cannot for fear of being killed by the gang's own members. The government's failure to address death squad-related homicides means marginalized youth from poor areas remain at high risk for being targeted. Outside researchers have suggested that even if death squads and state authorities do not explicitly collaborate, they reinforce each other to generate an overall climate of fear and insecurity that may serve the interests of powerful political forces in El Salvador.¹²⁷

3. Rights and reality: Social and economic issues

In discussing reasons for the growth of gangs within El Salvador, experts cite the government's failure in the aftermath of the civil war to address structural problems and inequalities seen as sources of the conflict.¹²⁸ The gap between the rich and poor in El Salvador has actually grown since the end of the civil war. According to the UNDP, the richest 20% of households had 54.5% of the national income in 1992 and the poorest 20% had just 3.2%. Ten years later, the proportions were 58.3% and 2.4%, respectively.¹²⁹ El Salvador is still one of the 20 most unequal countries in the world in terms of wealth distribution.¹³⁰

The way in which the banking sector was privatized in the 1990s contributed to economic and social polarization.¹³¹ Policies in the last fifteen years have benefited an influential upper class, enabling it to form a powerful network of interests. The economic elite's ability to strategically position themselves in the postwar period has enabled them to develop oligopolies (and in some cases monopolies) in sectors including industry, commerce, service, agribusiness, real estate, pensions, and insurance.¹³²

Although the mainstays of El Salvador's economy shifted in the aftermath of the civil war, there was little change in the families in control of the country's main sources of wealth and power. Furthermore, this elite group continues to exercise high levels of influence within the ARENA party. For example, the Poma group, founded by Bartolomé Poma y Genova in 1919, continues to wield influence in a wide variety of sectors, owning major malls, supermarket chains, luxury hotels, and many businesses in manufacturing and retail. Poma y Genova's grandson is active in the ARENA party and was considered as a possible presidential candidate for the 2004 election. Another illustrative case is the Simán family and its business affiliates, whose initial wealth in the coffee industry has shifted and expanded since the civil war to encompass major banking, insurance, and retail industries. Members recently have held influential positions such as the presidency of the National Association of Private Companies (ANEP) and have worked at high levels of the ARENA party.¹³³

While a small group of Salvadorans successfully used their capital and influence to expand their assets, national economic policy in the 1990s did not benefit everyone. Initial double-digit growth in GDP at the conclusion of the civil war was followed by a gradual stagnation of El Salvador's economy.¹³⁴ The negative effects of economic liberalization policies on the country's most poor were felt more seriously and for a longer period than was

anticipated, and the economic choices made by the Salvadoran government were linked to an increase in crime and a lack of state resources to address the problem.¹³⁵

Unemployment and underemployment remain high. In 2005, unemployment stood at 7.2%, underemployment was over 35%, and 50% of the urban population was estimated to work in the informal sector.¹³⁶ Furthermore, wage increases have not kept pace with the basic cost of living. The estimated cost of basic foodstuffs for an individual living in an urban area was \$128.19 per month in 2004, while the monthly minimum wage was \$151.25; by 2008 basic foodstuffs cost \$159.90, and the minimum wage was \$162.¹³⁷ Families' inability to cover basic living costs on a minimum (or even substantially higher than minimum) wage has been cited as a contributing factor to both high crime and emigration rates.

About 25% of Salvadorans (approximately 2 million people) depend on remittances sent home by family members working in the United States. Immigrants living abroad represent 14% of the Salvadoran population, and even after the global financial crisis, remittances received during 2008-2009 represented 18% of GDP.¹³⁸ This infusion of financial resources in some ways has helped temper what otherwise would be even greater socio-economic challenges for El Salvador's poor.

At the same time, though, extensive immigration has had destabilizing effects at the family and community levels. Prior to the financial crisis of 2008, an estimated 500-700 Salvadorans were leaving the country daily, mostly in an attempt to immigrate to the United States.¹³⁹ In 2000, Mexico expelled 33,960 Salvadorans (an average of 93 per day) found to have illegally crossed its southern border,¹⁴⁰ and more recent statistics indicate that this number at times has exceeded 200 per day.¹⁴¹ Significantly, the family fragmentation caused by large-scale immigration has been cited as a contributing factor to the growing gang phenomenon – as parents and other key family members leave to find jobs abroad, youth left behind look elsewhere for role models, support, and a sense of belonging.

The privatization of many social services, as well as the growth of new private facilities alongside less well-funded public ones, has further stratified Salvadoran society. High quality services in sectors such as health are available for the better-off, but services are deteriorating for the majority of the population.¹⁴² In terms of education, more children are completing school than before,¹⁴³ but the quality of schooling available to families differs vastly based on their economic resources.

Government reductions in expenditures on social services have particularly impacted marginalized communities. A USAID report on gangs in Mexico and Central America states that challenges faced by youth are exacerbated by high income inequality, and that the majority of youth ages 14-25 face social exclusion and a lack of basic social services.¹⁴⁴ The rising cost of living combined with the fragmentation of families, widespread underemployment, and limited social services greatly restricts the opportunities available for young Salvadorans to pursue dignified lives.¹⁴⁵

In this context, gangs present young people with an alluring opportunity for familial and financial security. Gangs serve as family in the absence of adequate support at home, and they offer the opportunity to acquire otherwise scarce financial resources.¹⁴⁶ Thus, the gang phenomenon can be viewed as a symptom of more systemic problems of violence, instability, and injustice.

Recently, gang leaders themselves publicly emphasized what they consider to be fundamental socio-economic factors driving gang growth. Just days before the inauguration of President Mauricio Funes in 2009, gang leaders released a statement to the media, saying, "We grew up without hope of having the minimal living conditions necessary for a child's development – accustomed to violence and without education, healthcare, or economic stability in the home." In the communiqué, gang leaders expressed willingness to dialogue with the new president over how to address these critical societal problems and to explore productive policy alternatives to jailing gang members and "sweeping the problem under the rug."¹⁴⁷ Since then, however, more violence has shed light on leadership changes within the Salvadoran gangs, suggesting that political-minded leaders have been replaced with individuals less inclined to dialogue or to temper the gangs' criminal actions, further complicating reform efforts.¹⁴⁸

C. Government responses to violence: Addressing or creating human rights problems?

In promoting his 2003 anti-gang agenda, President Flores stated publicly, “What matters to me is the Salvadoran citizenry. I am not concerned about the well-being of criminals.” He suggested that he would be willing to use “exceptional measures” to suspend constitutional guarantees if anti-gang legislation did not pass.¹⁴⁹

The first anti-gang initiative enacted was the Mano Dura (“hard hand”) plan, approved amid strong criticisms nationally and internationally that the law violated El Salvador’s constitution, international treaties and norms, and basic principles of criminal law. Mano Dura criminalized gang membership (rather than the commission of specific crimes), allowed for prosecution of juveniles as adults, and permitted fines for any person found “wandering around without an identity document . . . , without justified cause or who is not known by the inhabitants.”¹⁵⁰

El Salvador’s Supreme Court found the law unconstitutional on multiple counts ten days before it was set to expire. The law, the Court said, violated the right to equality before the law, freedom of assembly, and freedom to self-expression by authorizing punishment based on physical appearance or membership in a group, penalizing individuals’ lifestyles and overriding the presumption of innocence.

On the day of the Supreme Court ruling, President Flores submitted another temporary law to Congress that critics argued contained many of essentially the same provisions as the original Mano Dura plan. The major difference was that the new law would target gangs’ “delinquent activities,” not the gangs themselves. However, it still criminalized gang association and allowed for the use of tattoos or usage of gang signs to identify members. Belonging to a gang was punishable by three to six years in prison. Judges still were given the power to decide whether youth between the ages of twelve and eighteen would be tried as juveniles or adults.¹⁵¹

These laws were debated against the backdrop of El Salvador’s 2004 presidential campaign, in which public security played a significant roll. Newly-elected President Antonio Saca promised to continue the hard-handed policies of his predecessor, and five months after the election he proposed a new Súper Mano Dura plan. This plan, at least on paper, espoused the importance of a comprehensive anti-gang strategy that included reinsertion and prevention mechanisms. However, the government in practice continued to emphasize police repression and increased collaboration between police and military forces – its prevention and rehabilitation programs have been underfunded and ineffective.¹⁵²

As a result of the Mano Dura laws, police have engaged in high levels of profiling, arresting individuals because of their appearance, clothing, or tattoos rather than on evidence linking individuals to actual crimes. Between July 2003 and August 2004, 19,275 people were detained by the PNC for supposed affiliation with gangs. However, 84% were released due to insufficient grounds for arrest and 7% due to lack of evidence. Under Súper Mano Dura young men in poor areas of San Salvador have reported a continuation of stops and searches by police on a weekly or even daily basis.¹⁵³

Profiling based on age, socio-economic status, location, appearance, clothing, and tattoos is used as the basis for arbitrary arrests and detention without just cause, and it has in effect resulted in the criminalization of Salvadoran youth. As members of one community youth group reflected, “For the police, every group of young people is an illicit group.”¹⁵⁴

One young man described how he was detained by police on his way to a wake. The police arrested him and his friends for “illicit association,” but they were released five days later and never given a court date. A different youth recounted being arrested for illicit association eleven times even though he was hanging out with friends who were not gang members.¹⁵⁵ Salvadoran youth are also subject to mass arrests, such as the raid in July 2006 at a wake of three gang members where police arrested 195 young people.¹⁵⁶

The dramatic increase in homicide rates since 2003 has led outside observers and some law enforcement officials to determine that the Mano Dura laws – particularly in the absence of well-funded prevention programs – have been ineffective, if not counter-productive.¹⁵⁷ Furthermore, as stated above, independent investigators have suggested

that the repressive anti-gang strategy adopted by the Salvadoran government actually has promoted the professionalization of gangs.

The government has also been criticized for condoning or perpetuating violence itself. The PNC has been cited by outside observers for troubling patterns of arbitrary stops, searches, and arrests. Members of the police force have been accused of carrying out threats, beatings, and sometimes even killings of suspected gang members.¹⁵⁸

Additionally, the increase in arrests has severely taxed El Salvador's prison system. In 2005, an estimated 12,500 individuals were being held in a prison network estimated to have a capacity of 6000-8000 prisoners.¹⁵⁹ Severe overcrowding not only creates inhumane and dangerous living conditions (for example, 21 inmates were killed in a riot in early 2007¹⁶⁰), but it also creates an environment that allows gang members to consolidate power. Rather than rehabilitating suspected criminals, the prison system's toxic environment actually is fueling the gang problem.

During this period, the Office of the Human Rights Ombudswoman consistently advocated a controversial position that suspected gang members' rights needed to be respected. Human Rights Ombudswoman Beatrice Alamanni de Carrillo vocally denounced police brutality, unwarranted arrests, and prison conditions,¹⁶¹ and she publicized potential links between death squads and the police.¹⁶² Taking this position came at a price; Alamanni de Carrillo began receiving death threats at the end of 2002,¹⁶³ and the threats continued until the end of her term five years later.¹⁶⁴

D. Civil liberties and security, protest and repression

In September 2006, the Salvadoran legislature approved the Law against Acts of Terrorism (modeled after the U.S. Patriot Act). The legislation includes an extremely broad definition of "terrorist", which includes someone found "destroying or damaging the belongings of government officials or their physical person." Human Rights Watch has declared this does not fall within any reasonable definition of terrorism,¹⁶⁵ and rights groups have expressed concern that the law could potentially be used to stifle political dissent. The law also allows for anonymous witnesses, judges, and undercover agents.¹⁶⁶

Discussion of the legislation exposed deep political and ideological divides that continue seventeen years after the civil war. The debate sparked heated exchanges between the major parties – the left called its opposition "death squad members" while the right called the left "terrorists, kidnappers, and murderers."¹⁶⁷

The anti-terrorism law was proposed after a violent confrontation between protestors and police in July 2006 left two police officers dead. Although there was doubt as to who fired the shots,¹⁶⁸ the government used the incident to as a catalyst for the passage of its bill. The maneuver helped divert public attention from the initial causes of the July 5th protest, an expression of broad discontent among the Salvadoran population with current socio-economic policies and realities. The first half of 2006 had seen frequent protests by transportation workers, students, and other sectors in reaction to trade liberalization, rising transportation costs, and rising costs of living.¹⁶⁹

Concerns that the law would be used to stifle protest were realized in mid-2007 when it was invoked in the arrest of fourteen Salvadoran activists in the town of Suchitoto. The activists, who were on their way to a protest the privatization of national water services, claim they were stopped along the road by police and detained without explanation, any reading of rights, or request for ID.¹⁷⁰ The government alleged that the activists were throwing stones at an official's car. The activists were released after seven months in detention and heavy international criticism;¹⁷¹ under the anti-terrorism law, they could have faced up to sixty years in prison.¹⁷²

E. Conclusion: Looking back while looking forward, again

Government policies and funding priorities – both historically and currently – have created a structure in which the majority of Salvadorans are struggling to attain, as the Universal Declaration of Human Rights states, "a standard of living adequate for the health and well-being of himself and of his family." Salvadorans' frustration in this struggle is manifesting itself in numerous ways, from escalating crime to escalating protests.

In 1992, President Cristiani reflected that the causes of El Salvador’s civil war were rooted in a combination of deep social and cultural divisions and an absence of democratic political space.¹⁷³ While El Salvador is no longer at war, similar sources of discontent and division are perpetuating violence in the country today, raising questions about the country’s commitment to human rights and its future prospects of peace.

F. Questions for Reflection

The inclusion of present-day information highlights difficult questions and real-world trade-offs inherent in the promotion of peace, stability and rights. In one sense, this case study is focused on human rights; in another sense it is about peace-building – in discussing the following questions, you are encouraged to explore how these two themes are interrelated.

1. *The nature of human rights*

- How are different actors (national and international) defining human rights in El Salvador? How do you define human rights in this country’s context?
- How should different kinds of rights be weighted (civil-political vs. socio-economic, rights violated by state and non-state groups, violations as experienced by activists or potential criminals, etc) in a dynamic political environment?

2. *Transitioning to peace*

- What are the major challenges currently facing El Salvador?
- What is the interplay between human rights and human security in El Salvador, and for whom?
- Consider El Salvador’s history. In addressing ongoing problems of violence, what are the pressure points (actors, structures, etc.) that could be most effective in promoting greater peace? How do human rights fit into this discussion?
- Overall, what do you suggest as the most productive and effective means of promoting human security and human dignity given the current reality?

Appendix: Political Parties and the El Salvadoran Presidency

El Salvador’s president is elected by universal suffrage and governs for a single five-year term. From the end of the civil war until 2009, the presidency was controlled by the ARENA party, although the FMLN maintained a strong opposition presence in the legislature and frequently won San Salvador’s mayoral elections. The election of FMLN presidential candidate Mauricio Funes in March 2009 – and his subsequent installation as president in June – represented the peaceful first transition of national leadership between parties since the civil war.

| President | Political Party | Term |
|----------------------|-----------------|----------------|
| José Napoleón Duarte | PDC | 1984-1989 |
| Alfredo Cristiani | ARENA | 1989 – 1994 |
| Armando Calderón Sol | ARENA | 1994 – 1999 |
| Francisco Flores | ARENA | 1999 – 2004 |
| Antonio Saca | ARENA | 2004 – 2009 |
| Mauricio Funes | FMLN | 2009 – present |

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- ⁶ Habopian, Frances. *The Third Wave of Democratization in Latin America: Advances and Setbacks*. New York: Cambridge University Press, 2005.
- ⁷ Popkin, Margaret. *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador*. University Park: Pennsylvania State University Press, 2000. p. 13
- ⁸ International Human Rights Clinic. *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*. Human Rights Program, Harvard Law School, February 2007. p. 3
- ⁹ Popkin, Margaret. *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador*. University Park: Pennsylvania State University Press, 2000. p. 13
- ¹⁰ Habopian, Frances. *The Third Wave of Democratization in Latin America: Advances and Setbacks*. New York: Cambridge University Press, 2005. p. 182
- ¹¹ Popkin, Margaret. *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador*. University Park: Pennsylvania State University Press, 2000. p. 43
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