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Teaching Notes: Rights and Rebuilding in El Salvador

by Elaine K. Denny

and Susan Waltz

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Elaine K. Denny is on the Organizing, Membership, and Campaigns staff at Amnesty International USA. Susan Waltz is Professor of Public Policy at the University of Michigan. The authors' views and analysis are their own and should not be attributed to Amnesty International or any other organization.

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Teaching Notes: *Rights and Rebuilding in El Salvador*
-- Elaine Denny and Susan Waltz

We have prepared this two-part case study with two pedagogical purposes in mind:

- (1) To develop an understanding of the concept (and political meaning) of *human rights*.
- (2) To facilitate discussion about processes of reconciliation and reconstruction and the importance of holistic conceptions of rights and security for future stability.

Instructor notes are organized around these two themes. For each theme, we have provided some background commentary and discussion questions that can accompany both parts of the case study.

We have divided the case study into two parts with the expectation that discussion will be enhanced if students are able to develop an understanding of El Salvador's civil war and human rights crisis of the 1980s before considering the country's current events and circumstances. Part I of the case study focuses on the crisis years and relies on a "classic" understanding of human rights (see below). 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. Taken together, the two parts invite discussion of the extent to which current challenges are linked to unfinished business of El Salvador's human rights crisis and civil war.

Theme 1: Defining Human Rights

This case study provides opportunity to discuss several human rights concepts and points out the evolving understanding of human rights.

Background Notes for Instructors

The 1948 Universal Declaration of Human Rights is today commonly seen as the most authoritative, and acceptable, representation of the concept of human rights. Collectively, its 30 articles set parameters for discussion about what is (and might not be) a human *right*. (At very least, this premise is a good starting point for discussion.)

In the 1980s – i.e., during the height of El Salvador's civil war—human rights groups and other political actors tended to focus their attention on a subset of the rights posited by the UDHR, sometimes described as "civil and political rights." In fact, much human rights advocacy in the 1980s was oriented around grave violations of these human rights, including torture, long-term imprisonment, or death. We think of this as the "classic approach" to human rights. It assumes that states (and their proxies) are both the protectors of human rights and the potential perpetrators of human rights violations, and the most serious abuses threaten life itself. The victims of such abuse have often been social critics or political opponents, many of whom have systematically eschewed violence.

By 1993, the approach to human rights had begun to shift. In June that year, UN member states met in Vienna to reconsider the UDHR and its implications. Their concluding document reflects a growing international consensus: "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in fair and equal manner, on the same footing, and with the same emphasis." The veiled reference in that statement is to the second-class status theretofore accorded a series of rights known as "socio-economic rights." *Inter alia*, these articles of the UDHR provide for education, health, social security, food and housing.

Over the past decade and a half, human rights groups and others have increased their attention to such concerns, and virtually all human rights organizations today are careful to include them in their analyses. The consideration of responsibility for human rights protection, and human rights offense, has also expanded in several ways. Today, individuals and other non-state actors are in some circumstances also seen as directly responsible for human rights offenses, and states may be held accountable for their failure to exercise due diligence as well as for direct commission of human rights violations.

The changing nature of injustice and abuse in El Salvador provides context for discussion of this evolving understanding of human rights. Part I reflects a “classic analysis,” with socio-economic considerations in the background. It can stand alone – but it also lays a foundation for discussing a more integrated approach to human rights, one that includes socio-economic rights as well as the broad concern for human security. This may be useful because the nature of politics, violence and abuse is more complicated in Part II of our case study.

Whereas in the 1980s the vast majority of violence and human rights abuse was attributed to government forces and their paramilitary extensions, in recent years the picture has been complicated by the emergence of gangs and vigilante groups whose ties to government seem less straightforward. Some victims of recent violence and abuse have been political figures, but in other cases they are (or may be) associated with gangs. Should such abuses be classified as human rights violations, or crimes? From a public relations standpoint, the difference is crucial: Does El Salvador have a crime problem or a human rights problem? If the answer is both, how are they distinguished?

In addition to the issues outlined above, this case study can be used to draw attention to human rights problems and terms that may not be familiar to students. Asking pointed questions about the terms and their meaning can be an effective way to prompt a discussion about human rights and international law. Words that appear as jargon in the context of a political narrative may be otherwise appreciated when understood as technical terms embedded in human rights law and the international machinery of human rights reporting, investigation, and advocacy. The web pages listed below provide useful information about several human rights concepts that are used in the case study.

Enforced disappearances – see <http://www.amnesty.org/en/enforced-disappearances>

Extrajudicial executions – see <http://www.extrajudicialexecutions.org/about/mandate.html>
and <http://www.extrajudicialexecutions.org/>

Torture (as legally distinct from cruel, inhuman and degrading treatment) – see Articles 1 and 16 of the UN Convention Against Torture, <http://www2.ohchr.org/english/law/cat.htm>

Impunity – see <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JQHJ>

Humanitarian Law (of War), including Geneva Conventions – see ICRC Fact Sheet, [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/\\$File/What_is_IHL.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is_IHL.pdf)

Also see the Human Rights Lexicon, <http://www.internationalhumanrightsllexicon.org/>

Discussion/Analysis Questions related to Human Rights, Part I of Case Study

- Review the human rights violations that appear in Part I. [*torture, killings, mutilations, repression of speech?*] What are common features, what is the nature of these abuses? [*widespread, systematic, arbitrary, designed to spread fear, identity of victims?*]
- Who were the perpetrators of these abuses? [*Government forces – relation to paramilitary? Insurgent forces?*]
- 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?
- Summary thoughts about the nature of human rights violations?

Discussion/Analysis Questions related to Human Rights, Part II of Case Study

- 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?

Theme 2: Developing a Long View of Transitions to Peace

El Salvador's peace process was noteworthy in several ways. As the timeline in Part I indicates, it went through many phases and involved domestic, regional, and global actors. Final negotiations were overseen by the UN, and – as noted in the case study narrative – it was the first series of negotiations that sought to incorporate human rights promotion and police reform in addition to military demobilization. The Salvadoran Truth Commission was also the first to be sponsored by, paid for, and staffed by the United Nations. Its report broke new ground by actually naming the individual perpetrators of abuse. It received considerable press attention and sparked interest in truth commissions as an element of political transition.

For an overview of Truth Commissions in relation to political transition, see the website of the International Center for Transitional Justice, <http://www.ictj.org/en/index.html>

For a comparative analysis of the early experience of truth commissions (prior to the creation of South Africa's Truth and Reconciliation Commission), see Priscilla Hayner's study, "Fifteen Truth Commissions—1974-1994: A Comparative Study." *Human Rights Quarterly* , 16 (No. 4, 1994): 597-655.

Part I of the case study reviews the general provisions of the Peace Accords, including the framework and findings of the Truth Commission. Part II of the case study shifts attention to the current period, raising questions about the nature of the violence that wracks contemporary El Salvador and its roots in the transition to peace.

The inclusion of present-day information helps students engage with the difficult questions and real-world trade-offs inherent in the promotion of peace, stability and rights. In this regard, instructors should be aware that human rights organizations have strongly criticized the El Salvador amnesty laws. They have argued that the government's failure to prosecute past perpetrators sends a message of tolerance to those who, today, commit crimes and human rights violations with impunity. Discussion of such enduring tensions includes a range of issues:

- Ending conflict / providing justice / protecting rights
- Redressing past rights abuses / preventing future rights abuses / achieving national healing
- How to (re)build structures and institutions to address underlying tensions and immediate demands of the negotiating process (and its participants)
- Immediate political demands vs. country's long-term needs for stability (in terms of the issues enumerated above)
- Individual, group, and national interests, how they are manifested during the peace process, and what trade-offs are made as a result

- How these dynamics contribute to the protection and/or erosion of human rights (however conceived) in the mid- to long-term

In one sense, this case study is focused on human rights; in another sense it is about peace-building. The case can be presented in such a way that it encourages a discussion exploring how these two themes are interrelated.

It is not possible for El Salvador to turn back the clock and make different post-conflict policy decisions with the aid of hindsight. However, a holistic approach to human rights that acknowledges the impact of both civil/political and socio-economic rights on human and state security may offer a constructive tool for identifying the most productive and effective ways of promoting human security and human dignity given the current reality.

Discussion/Analysis Questions on Transitioning to Peace, Part 1 of Case Study

- 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?

Discussion/Analysis Questions on Transitioning to Peace, Part 2 of Case Study

- 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?