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USAID/ES

JUDICIAL REFORM PROJECT

PROJECT No. 519-0296

PROJECT DESCRIPTION AND

REVISED IMPLEMENTATION PLAN

MARCH 1987

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JUDICIAL REFORM

I. Background

The Judicial Reform Project was signed on July 13, 1984. The original agreement consisted of two components, the Revisory Commission on Criminal Legislation and the Judicial Protection Unit (JPU). The Revisory Commission Component called for a series of comprehensive and critical studies of the Salvadoran system of criminal justice and the drafting of proposed new legislation for submission to the Legislative Assembly. The JPU was designed to provide protection to participants in highly sensitive trials, including judges, jurors, witnesses, prosecutors and defendants. The two components were agreed upon after months of negotiations and discussions between the USG and the GOES. They represented an understanding between the two governments of the need for major reforms and the improvement of the Salvadoran criminal justice system.

The Grant Agreement was amended on May 24, 1985, to add two new components, the Commission for Investigations and the Judicial Training and Management Component. Subsequently, on July 24, 1985, the Agreement was amended for the second time to obligate an additional $6 million in ESF funds and to make some revisions to Annex I reflecting the results of protracted negotiations.

The Agreement calls for a four Component three year $14,3 million (9.2 million in dollars and 5.1 million dollars in local currency counterpart) institutional development program including technical assistance, training, operating costs and commodity support for:

1. Assistance to the Revisory Commission to undertake necessary legal reforms to streamline the Salvadoran justice system with emphasis on criminal law, and to implement a comprehensive reform of judicial administration;

2. Support for the judicial protection function so as to assure the physical safety of participants in criminal proceedings;

3. Establishment of a professional qualified Commission for Investigations composed of an Investigative Unit and a Forensic Unit; and

4. Execution of comprehensive improvements in the system of judicial finance and administration, including measures necessary to implement the Salvadoran Constitution's provisions for the impartial selection of judges and to assure proper training, compensation and administrative support for Judiciary personnel in the execution of their functions.

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II. Project Status

Although Project start up was delayed, substantial progress has been attained in every area of implementation, including the resolution of highly sensitive political issues such as the creation of the Revisory and Investigative Commissions, and the organization and functioning of the JPU. A brief summary of the progress to date for each component follows:

Component I - The Revisory Commission has been in full operation since October 1985, having hired a 49-member staff with three separate groups working on revisions of the penal code, civil code and organic/administrative law. Revisions of the statutes involves two phases. First, an analysis of specific provisions of the Constitution as they apply to each of the three areas of statutory law and, second, the drafting and review of legislative proposals for revised or new statutes that conform to the Constitution. Analysis of the Constitution as it applies to the three areas of law has been completed, and the Commission has begun drafting legislative proposals for submission to the Legislative Assembly. The process used by the Commission includes providing an opportunity for comment through open forums by the public, the judiciary and legal and professional communities on the legislative proposals. Work has been completed on one high priority area, i.e., the drafting of a substitute law for Decree 50 which regulates the proceedings of persons arrested on suspicion of terrorism and subversion. The Commission is also working on immediate reforms to the criminal evidenciary and procedural codes to improve and speed-up the judicial process.

Component II - After considerable debate within the GOES and the Embassy the Judicial Protection Unit (JPU) is being re-configured under a revised concept described below. Hiring is expected to start in March 1987.

Component III - The Commission for Investigations which includes a Special Investigative Unit (SIU) and a Forensic Unit (FU), is pursuing its work with considerable success. The SIU is investigating several major cases, including a number of important human rights cases, (e.g., Sheraton murder case, Las Hojas, the Armenia well killings, Monsignor Romero, etc.). These cases are three to six years old, the evidence is stale and, consequently, their investigation is more difficult. Investigative work on newer cases has proceeded at a faster rate and, as expected, the evidence brought before the tribunals had more probative value and helped speed-up the judicial proceedings. Two of these later cases were successfully resolved within four months.

The first phase of the FU activity, consisting of six sections (ballistics, document examination, drafting, photography, fingerprinting and polygraphing), will be fully operational in March 1987. Training and equipment plans for

four additional sections: serology, hairs and fibers, chemistry/toxicology and mineralogy, have been completed and recruitment and selection of the specialized personnel will begin during the second quarter of CY87.

Component IV - Substantial improvements have been obtained in the area of Judicial Administration and Training. Four new first instance tribunals (two Decree 50 and two Mercantile) established under the Project began operations in September 1986. Three new A.I.D. funded law libraries shall be in operation by April 1987. A plan for procurement and distribution of urgently needed commodities and equipment to upgrade the judiciary is being implemented. Finally, continuous in-country and overseas training is being provided to Salvadoran judicial personnel.

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III. Problems and Prospects

Notwithstanding the progress attained to date, it should be noted that Project implementation was delayed over one full year after signing the original Project Agreement, until late Summer 1985 when enabling legislation establishing the needed commissions was finally passed by the GOES Legislative Assembly. Another factor that caused delays was that the Supreme Court, the Attorney General and the Solicitor General are not of the same political party as the Executive branch and the majority in the Assembly. As a consequence, a constant struggle exists within the GOES factions over the kind and amount of assistance to be provided to the Judiciary. This struggle, while generally manageable, has slowed implementation. Moreover, just as implementation was beginning to accelerate, and the many administrative obstacles were being resolved, the October 10, 1986 earthquake occurred and the GOES Judiciary was brought to a complete halt. The Judicial Center housing the 43 tribunals in San Salvador, the Ministry of Justice, and the buildings occupied by Attorney and Solicitor General Offices were destroyed by the earthquake. As a result, all efforts had to be temporarily redirected to the construction and conditioning of temporary quarters to relocate the judiciary. Within just three weeks the GOES Judiciary was able to begin partial operations, and, by the end of the seventh week the judiciary was fully operational again, functioning out of make-shift structures of thin sheeting and wood set-up in the parking lot of the damaged judicial center.

These structures are not only inadequate with regard to space and protection from theft and the elements, but also are a serious impediment to the operation of an efficient judicial system. Efforts are underway to find a suitable building or land for the construction of adequate temporary facilities. It is also probable that it may be necessary to re-build on the old court property once the damaged building have been demolished.

As the Project evolves within the context of El Salvador's emerging democracy, it will continue to be subjected to the strong tug and pull of political tensions. Moreover, innovations such as the Judicial Protection Unit or the Judicial Career System, merit selection of Judges and changes to some of the laws involve legal and philosophical concepts that cannot be easily engrafted on the Salvadoran society. In addition, the very nature of the Project (i.e., studies and extensive consultation and consensus-building on specific proposals prior to finalizing recommendations), contributes to a somewhat slower rate of disbursement when compared to other AID Projects. Nonetheless, although the relocation effort is expected to take-up a substantial portion of the Mission and GOES efforts, it is anticipated that implementation will accelerate and the rate of disbursements will increase.

IV. Description of Project Components and Implementation Plan

Component I - Revisory Commission

Purpose - To carry out a series of comprehensive and critical studies of the legal framework for the Salvadoran justice system and to develop and present to the Legislative Assembly draft legislation incorporating the findings of the studies.

Status/Activity Plans - The Revisory Commission was created by Decree No. 39 of June 13, 1985. The Commission is a ten member body, representing three ministries (Defense, Justice and the Public Ministry); the Supreme Court, law faculties, and the attorney associations. The Commission has a full-time staff of 49 persons which is supplemented as needed by contracting additional technical personnel. The Executive Secretary reports directly to the Commission and is responsible for day-to-day operations. The Commission's staff is divided into three major units: 1) Coordination, 2) Legal, and 3) Administrative.

The Coordination Unit, with a staff of four (4) professionals, functions as a staff support unit to the Secretary and is responsible for the planning, coordination and evaluation of the work of the Commission.

The Legal Unit is headed by a director and consists of three working groups: Penal Law (9 members), Civil Law (8 members) and Organic/Administrative Law (6 members). Each working group has a director and they, along with the Legal Unit's director, form a technical committee responsible for reviewing the legal work of each working group before it is submitted to the Commission for review. The Legal Unit is staffed with Salvadoran attorneys of recognized professional prestige in their areas of expertise.

The Administrative Unit reports directly to the Secretary and is responsible for providing the administrative and logistical support to the Commission. The unit consists of a financial section (14 members) responsible for all the financial management activities of the Commission; an administrative support section (13 members), which provides secretarial and administrative support services to the Commission; and a research and statistics unit (4 members) which provides statistical, bibliographical and research support services to all the legal working groups.

Law Reform: The Commission is pursuing law reform in two stages. The first stage consists of constitutional analyses in each of the three major subject areas - Penal, Civil, and Organic/Administrative law. The constitutional analyses are in two parts, empirical and theoretical. The empirical part is an analysis of what the constitution specifically stipulates

in each of the subject areas. The theoretical part considers what the constitution allows in each area, i.e. what limits the constitution puts on possible legislative reforms. Taken together, these empirical and theoretical constitutional analyses provide a basis for the development of legislative reforms.

The second stage consists of the development and review of legislative proposals for revised or new statutes that conform to the Constitution. The process for developing the legislative proposals that will be submitted to the Legislative Assembly is the following: Once the working group's draft is completed, it is sent to the Revisory Commission for review. After this review, the proposed draft legislation is then submitted to the public and legal community for review and comments. This consists in part, of holding a series of open forums on each particular proposal to obtain the views of the legal community, the judiciary, and other interested groups, as well as to build support for the proposal as it moves through the process of enactment. After the outside comments are received, the working group revises the proposed legislation to take into account any substantive comments and recommendations. The revised draft is then returned to the Commission for final revisions. The Commission will then formally submit the draft legislation to the Legislative Assembly for enactment. Adoption by the Legislative Assembly of the Commission's eventual proposed legislative reforms will be a sensitive and complicated political process, one whose success can by no means be assumed. The Commission is well aware of the problems of the legislative process and is working to facilitate the process of legislative approval through a series of meetings with members of the Assembly and other interested groups.

Of the Commission's three subject areas of law reform (Penal, Civil and Organic/Administrative law), Penal law is the most important. The Commission has set a series of priorities for its substantive work, including: (1) a substitute law for Decree 50; (2) immediate reforms to the penal procedural code, that include revisions to the rules of jurisdiction and of the General Code; (3) creation of the National Council on the Judiciary and the Judicial Career System; and (4) reforms to the Family Code. The Commission's priorities and timetable for achieving them were discussed in a public forum attended by over 200 jurists and other representatives of the legal profession, law schools and private sector.

The Commission has completed the Constitutional analyses for each of the three major subject areas (penal, civil and organic/administrative law) and the working groups are drafting and promoting recommended legislative reforms.

A brief summary of work accomplishments and plans for each of the three areas of law reform follows:

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Penal Area: Draft legislation for a substitute law for Decree 50 was submitted to the Legislative Assembly on February 23, 1987. Among the changes the new law proposes are: elimination of the instructional (investigative) military courts; reduction of the time for investigations before a suspect is formally arraigned; and provisions for legal counsel and prompt notification of relatives and/or human rights organizations. The Commission is currently reviewing a proposal for some immediate Reforms to the Penal Procedural Code that includes revisions of the rules of Jurisdiction and of the General Code. This proposal is important as it establishes the basis for other reforms needed to make the legal process more efficient.

The Penal area working group is finishing its work on a second phase of immediate reforms to the Penal Procedural Code. This package will include, among others, reforms concerning rules of evidence, procedures for the execution of sentences, and the jury system.

Other topics of priority in the Penal law area include:

a) An analysis and review of the laws regulating amnesty, pardons and commutations.

b) A proposal on the accused's right to legal defense. This proposal will conform secondary laws with Articles 12 and 194 of the Constitution, which provide for the right of defendants to legal counsel and defense, the obligations of the State to facilitate legal defense, and the role of the Public Ministry as a Public Defender.

c) A proposal to bring secondary laws into compliance with article 27 of the constitution, which limits the death penalty. This proposal will require reforms of the Penal Code, the Penal Procedural Code, and the Military Code; and

d) An in-depth analysis of administrative detention, the role of the auxiliary organs of the Court, preventive detention and the terms of inquiry.

e) - Review and analysis of habeas corpus.
f) - Immediate reforms to the Penal Code.
g) - Review and analysis of the penitentiary management system.
h) - Proposal on Prison Administration.
i) - Adaptation of penitentiary management system to the Penal and Penal Procedural Codes.
j) - Review of the Juvenile Code.
k) - Review of the Penal Code.
l) - Review of the Penal Procedural Code.
m) - Review of the Military Code.
n) - Special Procedural Code for Traffic Courts.

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JUDICIAL REFORM PROJECT
PROGRAM OF ACTIVITIES

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Component I: Revisory Commission												
Penal Area												
Decree 50	x											
Immediate Reforms to Penal												
Procedural Code, (rules												
of jurisdiction)	x----a----b											
Imm. Reforms to:												
- Jury System		x----a----b										
- Rules of Evidence		x----a----b										
- Death Penalty (Art. 27)			x----a----b-----									
Sentencing Procedures				x----a----b								
Amnesty Pardons and												
Commutations			x--------a----b									
Right to Legal Defense												
(Art. 12 and 194 of												
Constitution)			x---------a----b									
Administrative and												
Preventive Detention				x----------a----b								

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Program of Activities - Penal Area (Cont'd)

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                                  1 9 8 7                 1 9 8 8                 1 9 8 9
                                I   II   III  IV    I   II   III  IV    I   II   III  IV
Review of:
- Habeas Corpus                 !   !    !  x---------a----b  !    !    !    !    !    !
- Imm. Reforms to Penal Code    !   !    !    ! x----a----b    !    !    !    !    !    !
- Penitentiary Management       !   !    !    !    !    !    !    !    !    !    !    !
    System                      !   !    !    !    ! x----c    !    !    !    !    !    !
Proposal on Prison Administ'n   !   !    !    !    !  x----a----b    !    !    !    !    !
Adaptation of penitentiary      !   !    !    !    !    !    !    !    !    !    !    !
  system to Penal and           !   !    !    !    !    !    !    !    !    !    !    !
  Penal Procedural Codes        !   !    !    !    !    !    !    ! x----a----b    !    !
Review of the Penal Code        !   !    !    !    ! x---------x----a----b    !    !    !
Review of the Penal             !   !    !    !    !    !    !    !    !    !    !    !
  Procedural Code               !   !    !    !    !    ! x-------------a-----b    !    !
Review of Juvenile Code         !   !    !    !    !    !    ! x---------a   --b    !    !
Review of Military Code         !   !    !    !    !    !    !    !    ! x----a----b    !
Special Procedural Code         !   !    !    !    !    !    !    !    !    !    !    !
  for Traffic Courts            !   !    !    !    !    !    !    !    ! x----a----b    !
                                !   !    !    !    !    !    !    !    !    !    !    !
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a. Draft proposal completed (open forum and final revisions follow)

b. Proposal submitted to Assembly

c. Study/assessment report completed.

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Civil Law: The Civil area working group has also completed a proposal on "the use of the surname," which is being reviewed by the Commission before it is submitted for public discussion and review. This proposal is expected to fill a serious void in the family code and is designed to meet the requirements of article 36 of the Constitution and serve as the basis for reforms regarding rights of parents in informal marriages and the rights of children born out of wedlock.

In addition, the following proposals are being prepared by the Civil area's working group:

- immediate reforms to the adoption laws;
- the rights of illegitimate children;
- regulation of the personal and paternal relationships between parents and parents and their children
- administrative procedures to assess fines in all tribunals
- methods to investigate and establish paternity
- immediate reforms to Civil and Mercantile Procedural Codes
- reforms to appeal procedures
- reforms to laws regulating the practice of the notaries
- immediate reforms to the Civil Code
- proposal on double/multiple nationality
- reforms to Family Code
- proposal on Health/Environmental Code
- reforms to Civil and Mercantile Procedural Codes
- immediate reforms to the Commerce Code
- proposal on Agrarian Code
- proposal on Housing Code
- proposal on rights of authorship
- proposal on patent law.

JUDICIAL REFORM PROJECT
PROGRAM OF ACTIVITIES

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Component I: Revisory Commission												
Civil Law												
Regulation on the use of the Surname (Art.36 Const'n)	x----a----b											
Immediate reforms to Adoption Law	x----a----b											
Rights of Children Born Out of Wedlock	x----a----b											
Regulations of Relationships between Parents and their Children		x----a----b										
Reforms to Adoption Laws		x----a----b										
Regulations for Personal and Paternal Relationships			x----a----b									
Methods to investigate and establish Paternity		x----a----b										
Adm. Procedures to assess fines in all tribunals			x----a----b									
Immediate reforms to Civil Procedural Code		x----a----b										
Immediate reforms to Mercantile Procedural Code		x----a----b										

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Program of Activities - Civil Law (Cont'd)

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Reforms to appeals procedures		x----a----b										
Immediate reforms to the Commerce Code			x---------a----b									
Reforms to law regulating the practice of notaries				x----a----b								
Proposal on double or multiple nationality				x----a----b								
Immediate reforms to the Civil Code			x---------a----b									
Review of the Family Code						x----------a----b						
Review of the Civil and Mercantile Procedural Codes						x----------a----b						
Proposal Health/Environmental Code							x---------a----b					
Reforms to the Commerce Code							x----a----b					
Proposal on Agrarian Code								x----a---------b				
Proposal on Housing/Renters Code									x----a----b			
Proposal Rights of Authorship									x----a----b			
Proposal on Patents Law									x----a----b			

a. Draft proposal completed (open forum and final revisions follow)

b. Proposal submitted to Assembly

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Organic/Administrative Law: This area's working group is preparing the following proposals:

a) National Council on the Judiciary and the Judicial Career System: The working group is analyzing a survey taken of the Judicial employees and practicing attorneys which will be used as the basis for discussions of these areas. To facilitate discussion and development of a proposal on these subjects, the group also initiated a comparative analysis of similar initiatives in other countries. The results of the survey and the comparative legal analysis will be discussed at an open forum to be held in March or April 1987, with participation of international experts from various countries. The recommendations resulting from the forum will then be incorporated into a draft proposal. This area is key to a major reform in the judiciary which currently works only half days, is not appointed by merit and has no civil service standing.

b) The Public Defender Office and legal aid. Two three-day seminars on the issues of legal aid and the Public Defender's Office were held in December 1986. The Seminars attracted a large participation of representatives from the Government, the legal community, the Church, and Human Rights Organizations. Recommendations obtained in the seminars are being incorporated in a proposal being drafted by this area's working team.

c) Constitutional Procedures. This analysis will be part of an elaborate proposal on Constitutional Law which is being drafted in coordination with the other two technical areas.

d) Management Assessment of the Judicial System. This area's team will coordinate the work of a Florida International University team selected to conduct the management assessment of the GOES judiciary. Field work is expected to start in April 1987. Other topics of priority in the Organic Administrative area include:

- An study and proposal on the administration and management of the court system (including management of budget, staff, physical resources, and case backlog analysis). The study and proposed changes will follow the management assessment.

- Coordination of additional studies and proposals resulting from the management assessment of the judiciary.

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- A study and proposal to evaluate and get standards of performance of law schools.

- A proposal to regulate and strengthen the bar associations, inluding enforcement of ethical standards, the bar's role in advancing the legal profession and services to bar members.

JUDICIAL REFORM PROJECT
PROGRAM OF ACTIVITIES

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Component I: Revisory Commission												
Organic/Administrative Law												
Open forum on the Judicial Career System and the Council on the Judiciary	x											
Management Assessment of Judiciary		x----a										
National Council on the Judiciary/Proposal			x--------a----b									
Judicial Career Proposal			x---------a----b									
Public Defender and Legal Aid Proposal			x----a----b									
Study and Proposal on Constitutional Procedures			x--------a----b									
Admin. and Management of the Judiciary study/proposal				x----a----b								
Regulation of law schools study/proposal					x---------a----b							
Strengthening of the bar association study/proposal							x----a----b					
Additional studies/proposals resulting from Management Assessment				x---------- on going ----------								

a. Draft proposal completed (open forum and final revisions follow)
b. Proposal submitted to Assembly
c. Study/assessment report completed.

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Component II - Judicial Protection Unit (JPU)

Purpose - To maintain the integrity of the judicial process by providing improved security for participants in criminal justice cases.

Status/Activitiy Plans - In 1985, some time after the original deployment of the JPU in the Churchwomen's trial, a GOES interagency working group was formed to study possible changes in the configuration of the Unit. After considerable debate, agreement was finally reached in December, 1986 on a revised concept. As envisioned, the JPU will be formed as a civilian risk assessment-management team drawing on the public security forces personnel or private contractors to do the actual protection work. All of the members will be high school graduates whose psychological profiles and physical condition will be assessed prior to their being hired, and they will receive training in judicial protection methods, in El Salvador and abroad. The JPU will not act as an executive protection service, but rather will focus on assessing risk during criminal investigations and trials and assuring protection for witnesses, judges, prosecutors and investigators. As envisioned, the JPU will eventually develop a capacity to implement a witness protection program to relocate witnesses and their families. It is anticipated that the recruitment, testing and selection of personnel will get underway as early as March, 1987 with training scheduled to begin immediately.

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JUDICIAL REFORM PROJECT
PROGRAM OF ACTIVITIES

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Component II: Judicial Protection Unit												
Personnel Recruitment												
testing, selection	x											
Training		x---------- on going ----------										
Procurement of equipment		x----------										

a. Draft proposal completed (open forum and final revisions follow)

b. Proposal submitted to Assembly

c. Stuly/assessment report completed.

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Component III - Commission for Investigations

Purpose - To develop criminal investigation capabilities and forensic and crime laboratory facilities in order to provide the courts with the impartial evidentiary resources needed to apply the laws and impart justice.

Status/Activitiy Plans - The Commission for Investigations was created by Legislative Decree No. 58, July 1985. The Commission is chaired by the Minister of Justice, with the Vice-Minister of Interior and a representative of the President of the Republic as the other members. Reporting to the Commission is an Executive Unit responsible for managing a 27-member Special Investigative Unit (SIU); a 17-member Forensic Unit (FU); a 3-member legal unit, and a 21-member administrative support unit. Additional technical personnel are either detailed to the various units from the GOES or contracted by the Commission as needs arise.

The Special Investigative Unit (SIU) is fully equipped and has undergone extensive training. In addition, a full time advisor is assigned to the Unit to provide on-the-job training. The SIU is currently working on several high-profile cases assigned it to it by President Duarte, including the Romero, Sheraton, and Las Hojas cases. The Unit has also successfully investigated some more recent cases -- the murder of a leader of the postal workers union among others. The investigative work has gone well, in spite of the fact that most of these cases, in addition to being highly politically charged are four to seven years old and thus difficult to resolve. On the other hand, investigations of the newer cases has progressed at a faster pace and with positive results. The SIU will continue its work on the older cases, as well as new ones assigned to it. Additional equipment and training to improve the Unit's operations will also be provided.

The Forensic Unit: The polygraphing, drafting, ballistics and document examination sections of the Forensic Unit are equipped and operating, utilizing temporary space at the SIU, while the permanent facility is being finished. This permanent location will be ready in March, 1987, at which time two additional sections (photography and fingerprinting) will begin operating. A U.S. consulting team will review the qualifications of the technicians and identify further training needs of these six sections. Training and equipment plans for four additional sections (serology, hair and fibers, chemistry/toxicology, and mineralogy) have been completed and the Commission will begin recruitment and selection of the specialized personnel for these sections during the second quarter of CY87.

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JUDICIAL REFORM PROJECT
PROGRAM OF ACTIVITIES

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Component III: Commission for Investigations												
SIU:												
-Continue case investigations	x	----	----	----	----	----	----	----	----	----	----	----
-Training	x	----	----	----	----	----	----	----	----	----	----	----
-Procure addit'l equipment			x	----								
FORENSIC UNIT:												
-Selection and training of personnel for first six sections	x											
-Installation of equipment in permanent building	x											
-Training needs assessment	x											
-Implement training plan for six sections		x	----	----	----	----	----	----	----	----	----	----
-Select personnel for four new sections		x										
-Start specialized training for four new sections			x	----	----	----	----	----	----	----	----	----
-Procurement and installation of equipment for four new sections (*)				x	----	----	----	----	----	----		

(*) Installation of equipment will have to be done by section, subject to completion of specialized training.

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Component IV - Judicial Administration and Training

Purpose - To address weaknesses in the court system's human resources, administrative management capabilities, and physical conditions through the provision of resources for technical assistance, increased operating budgets, physical improvements and equipment, and short term technical training.

Status/Activity Plans:

A. Administration: Implementation of this Component was to have begun with a complete assessment of the management of the judicial system. Although a study was performed early in the life of the Project on the equipment needs for the system, implementation problems precluded the more comprehensive assessment envisioned. However, with these problems resolved (e.g., administrative and disbursement procedures, agreement to the dollar funding for the Supreme Court, etc.), an agreement was reached for a Florida International University team, supported by the Revisory Commission to conduct the comprehensive administration and management assessment envisioned. Field work is scheduled to begin in April 1987. In addition, based on the first equipment survey and the compelling need for equipment to replace that destroyed in the earthquake, USAID has agreed to initiate an emergency procurement of equipment during the first quarter of CY87. USAID will also request authority to amend the Project Authorization and Agreement to finance the construction of temporary facilities to replace those destroyed in the earthquake (estimated cost $1.5 million).

Notwithstanding the absence of the comprehensive assessment, progress is being made in improving the efficiency of the system of judicial administration. A new administrative unit, initially created to assist the Court with the implementation of the Project, i.e., preparation of action plans and procurement, has expanded its activities to take over the responsibility for some of the administrative tasks which until recently were performed by the Magistrates (e.g., time and attendance records, and budget preparation and control). Additional assistance will be provided to this unit to expand and institutionalize its function.

Four new First Instance Tribunals (two Decree 50 and two Mercantile) began operations in September 1986.

Decree 50 Courts: The two new Decree 50 First Instance Courts began operating in September 1986. Although their start-up operations were hampered by the earthquake, the distribution of the backlog of cases, in excess of 650, was completed in an orderly manner and a system for allocating new cases is in place. The tribunals are now operating from their temporary quarters. A speed-up in the processing of new cases is anticipated; a reduction in the backlog of cases is expected to start materializing by the end of the third quarter of CY87.

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Mercantile Courts: The first two Mercantile Courts in El Salvador began operations in September 1986. The most immediate impact from their establishment has been a substantial reduction in the backlog of cases before the Civil Courts and a speed-up in the processing of the cases. Another significant development related to the creation of these tribunals was the fact that the Supreme Court agreed to formally request the Law Schools, Attorney Associations, and Business Groups to nominate candidates to fill the two Judgeships. This development is viewed as a significant departure from the Court's current practices for selecting judges and one that may be used as a stepping-stone for instituting the merit selection of Judges.

Law Libraries: Agreement has been reached with the Supreme Court and ILANUD for the establishment of three law libraries in April 1987. Books are being purchased and cataloged by ILANUD. Work is being done to condition the buildings that will house the libraries; and an in-country training program for librarians to be conducted by ILANUD is scheduled to start by the end of March 1987.

B. Training: Continuous training is being provided to Salvadoran legal personnel and a training unit has been established within the Supreme Court. In recent months four Salvadorans attended a Criminal Statistics Workshop in the Dominican Republic, one attended a Thesaurus Workshop in Costa Rica, two went to a Court Management Workshop in Costa Rica, four attended a course for Prosecutors in Honduras, three attended a criminology course in the Dominican Republic, and four attended a criminal procedures workshop held in Santo Domingo. The Supreme Court's training unit started updating the procedural manual used by the Justices of the Peace and will select the participants and coordinate a training program for 50 Justices of the Peace in Lousiana in March 1987. The unit will also be working on the development of an in-country training program for Justices of the Peace. Additional training for the Judiciary will be provided and scheduled in accordance with needs identified in the comprehensive management assessment. Meanwhile, immediate training plans calls for the GOES judiciary personnel to participate in all the courses being scheduled by ILANUD.

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JUDICIAL REFORM PROJECT
PROGRAM OF ACTIVITIES

	1987				1988				1989			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Component IV: Judicial Administration and Training												
JUDICIAL ADMINISTRATION												
AND TRAINING:												
Law Libraries:												
- Site and personnel												
selection	x											
- Procurement	x											
- Training		x										
- Start operations			x----	----	----	----	x----	----	----	x----	----	----
JUDICIAL TRAINING:												
-Justice of the Peace		x	x	x----	----	x	x----	----	----	x	x	x
-Judges and Magistrates		x	x----	----	----	x----	----	x----	----	x	x	
-Attorney Genera's Staff			x----	----	x----	----	x----	----	x----	----	x	x
-Solicitor General's Staff			x----	----	x----	----	x----	----	x----	x----	----	x
-Other Judiciary Personnel		x	x----	----	x----	----	----	x	x----	----	x	x
-Regional Seminars		x	x	x	x	x	x			x		
-Scholarships	x----	----	----	----	----	----	----	----	----	----	----	----
COMMODITY AND EQUIPMENT												
-Assistance	x----	----	----	----	----	----	----	----	----	----	----	----

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V. Implementation Responsibilities and Administrative Arrangements

The $14.3 million Grant was obligated through a Grant Agreement with the GOES, signed by the Minister of Planning. The Agreement clearly specifies the roles, responsibilities and authorities of the various entities. Subsequent arrangements with MIPLAN outline how funds are to flow to the implementing units.

1. GOES Arrangements: The Revisory Commission through the Ministry of Justice will be responsible for administering and coordinating the activities contemplated under Components I and IV. The responsibilities of the Revisory Commission include coordination of technical assistance and training activities, studies and seminars coordination, and the review and analyses of the laws and procedures of the Salvadoran justice system. Training activities will be coordinated with the Supreme Court, the Ministry of Justice and the Public Ministry. Studies and seminars will be coordinated with the Supreme Court and the Ministry of Justice.

Implementation of the Judicial Protection Unit (JPU) is the responsibility of the Ministry of Justice (MOJ). The JPU initially will consist of a five member technical team (Agents) and an Administrator. The unit will report directly to the Minister of Justice.

The Commission for Investigations is the entity responsible for implementing Component III. The Commission is chaired by the Minister of Justice with the Vice Minister of Interior and a representative of the President of the Republic as the other members. The Commission reports directly to the President. Reporting to the Commission is as Executive Unit responsible for managing the Investigative Unit, the Forensic Unit, and the Legal and Administrative Support Units.

2. AID Arrangements: The USAID Office of Democratic Initiatives (ODI) has primary responsibilities for the supervision of the Project, a full time USDH serves as Project Manager. A contract advisor in ODI is responsible for providing technical assistance to the Commission for Investigations and the JPU. Other USAID offices provide backstopping and support as needed.

Implementation of the Project is monitored by USAID at monthly and quarterly reviews by the USAID Project Review Committee. This Committee consists of the Associate Mission Director for Operations and representatives from the Offices of Democratic Initiatives, Projects, Controller, Management, and Development Programs.

The USAID Project Review Committee meets periodically to: a) review existing and proposed resource allocations under the Project; b) discuss project status; and c) make recommendations to the Mission Director as required.

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3. AID/GOES Administrative Arrangements:

Local Currency Costs -- Project local currency costs are disbursed through the Ministry of Planning/SETEFE extraordinary budget mechanism. Disbursements are made based on annual action plans submitted by the implementing units and approved by SETEFE and the USAID.

Dollar Costs - Most of the offshore procurement and contracting is done directly by AID.

Each implementing unit has been required to adopt and establish an adequate accounting system, a separate bank account, and a system of administrative procedures. These systems are reviewed and approved by MIPLAN and AID.

Each implementing unit is required to submit to MIPLAN and AID for approval, detailed yearly budget and implementation plans. Once these plans and budgets are also approved by AID, disbursement to the units takes place.

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FROM THE ASHES:

A Report on the Effort to Rebuild El Salvador's System of Justice

A Report by the Lawyers Committee for Human Rights

Lawyers Committee for Human Rights

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The Lawyers Committee for Human Rights

Since 1978 the Lawyers Committee for Human Rights has served as a public interest law center. The Lawyers Committee works to promote international human rights and refugee law and legal procedures in the United States and abroad. The chairman of the Lawyers Committee is Marvin E. Frankel; Michael Posner is its Executive Director and Diane Orentlicher is its Deputy Director. Jemera Rone is the Committee's El Salvador Representative.

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PREFACE

This report is based on the findings of two delegations of lawyers who visited El Salvador on behalf of the Lawyers Committee for Human Rights, as well as the ongoing monitoring of the Committee's permanent representative in El Salvador.[1] The first mission visited El Salvador from October 15 to October 23, 1985; the second mission took place July 7-10, 1986. The delegations sought to examine how effectively the Salvadoran judicial system protected human rights and the role of the United States in addressing the problems of that system. In particular, the delegations focused on a judicial reform program funded by the United States Agency for International Development ("AID"), and on the progress, if any, in the investigation and prosecution of certain significant unresolved human rights cases of political killings and massacres in El Salvador during the past five years.[2]

In preparation for the first mission, one of the members of the principal delegation met in the United States with James Michel, Principal Deputy Assistant Secretary for Inter-American Affairs, Faye Armstrong of the State Department's Office of Central American Affairs, and Tom Geiger of AID.

In El Salvador the principal delegation met with the following Government officials: the President of the Supreme Court (Dr. Francisco Jose Guerrero), the then Attorney General

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1. The principal delegation consisted of three lawyers: Stewart Abercrombie Baker from Steptoe & Johnson (Washington, D.C.), Richard J. Hiller of Teitelbaum & Hiller, P.C. (New York, New York), and Jamera Rone, the Central American representative of the Lawyers Committee for Human Rights. The second delegation consisted of Ms. Rone and Michael Posner, Executive Director of the Lawyers Committee. References to the "delegation" in this report are to the principal delegation.

Since 1978 the Lawyers Committee for Human Rights has served as a public interest law center working to promote international human rights and refugee law in the United States and abroad. It has long been involved in monitoring the operation of the Salvadoran justice system. Its work in this area began when it became legal counsel to the relatives of four U.S. churchwomen murdered in El Salvador in 1980.

2. The unresolved cases are described in detail in Justice Denied (March 1985), a report by the Lawyers Committee for Human Rights, and in an updated report, El Salvador: Human Rights Dismissed (July 1986)(hereafter "El Salvador: Human Rights Dismissed").

(Dr. Santiago Mendoza Aguilar), the current Attorney General (Jose Francisco Guerrero), the Minister of Justice (Dr. Julio Alfredo Samayoa), the Vice-Minister of Interior (Lic. Carmen Amelia Barohona de Morales), the Vice-Minister of Public Security in the Ministry of Defense and Public Security (Col. Lopez Nuila), other representatives of the Ministry of Defense, the Chiefs of the Treasury Police (Col. Rinaldo Golcher), the National Police (Col. and Dr. Rodolfo Revelo) and the National Guard (Col. Aristides Montes), a representative of the legal section of the Ministry of Defense, the head of the Government's Human Rights Commission (and former head of President Duarte's original investigative commission) (Dr. Benjamin Cestoni), members of the Commission for Investigations, the Executive Secretary of the Revisory Commission (Dr. Jose Ernesto Criollo), other Revisory Commission members, the military judge of first instance (Dr. Jorge Alberto Serrano Panameno), and an ARENA National Assembly deputy and party leader (Dr. Armando Calderon Sol).

In addition, the principal delegation interviewed two private defense attorneys, the Director of the Tutela Legal (Legal Protection) Office of the Archdiocese of El Salvador (Lic. Maria Julia Hernandez), and several judges and law professors.

Others with whom the principal delegation met were: the United States Ambassador to El Salvador (Hon. Edwin Corr), the head of United States AID in El Salvador (Robin Gomez), other AID officials and other members of U.S. Embassy staff, the Director of the El Salvador office of the International Committee of the Red Cross, journalists, human rights advocates, and numerous prisoners in the political sections of Mariona (men's) and Ilopango (women's) prisons, including four political prisoners released as part of the exchange for President Duarte's kidnapped daughter.

Although many of the political prisoners interviewed were plainly and implacably hostile to the Duarte government, others were just as plainly bewildered peasants and unionists. Even the FMLN leaders seemed to take care to preserve their credibility by avoiding overstatements that could be disproved; they acknowledged, for example, a substantial decrease in the most violent forms of torture. While discounting some of the prisoners' statements, other aspects of the statements are so consistent from one to the next that the delegation believes a

credible picture of current interrogation practices can be drawn from them.

Finally, the delegations relied on meetings conducted by Lawyers Committee representatives before and after the mission. These meetings included interviews of other personnel in the Decree 50 system, as well as other political prisoners.

The delegations owe a particular debt of thanks to Margaret Popkin and the Instituto de Derechos Humanos of the Universidad Catolica Centroamericana.

Following the principal delegation's return to the United States, Stewart Abercrombie Baker reported its preliminary findings to the U.S. Assistant Secretary for Human Rights, Richard Schifter and to Deputy Assistant Secretary Michel. Mr. Baker also testified before the House Foreign Affairs Committee on November 19, 1985, concerning proposed legislation to provide several million dollars' worth of anti-terrorism aid to El Salvador. A preliminary report on the delegation's findings prepared by Richard J. Hiller formed the basis of a statement released in November 1985 by the Lawyers Committee.

This report was written by Richard J. Hiller and Stewart Abercrombie Baker, with the irreplaceable assistance of Jemera Rone, Michael Posner, Diane Orentlicher and Elliot Schrage.

New York
March, 1987

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INTRODUCTION

Five years ago, El Salvador seemed doomed to become a country where killers played the dominant political role. The country's already frail civilian institutions had been crippled by a civil war launched by a violent leftist insurgency, the Farabundo Marti Liberation National (commonly known as the "FMLN"). The devastating effects of that war were intensified by a murderous right, whose supporters function both inside and outside the government.

But in recent years a series of developments seemed to signal a change in El Salvador's apparent course of self-destruction. The insurgents have lost ground, the result, in part, of increased U.S. military assistance to the Salvadoran Armed Forces. At the same time, the extreme right, though still powerful, is less influential, its supporters distracted by internal divisions and isolated by strong international criticism. In June 1984 a Christian Democrat, Jose Napoleon Duarte, became President of El Salvador; in 1985, his party won control of the unicameral legislative assembly. While bodies maimed in the death-squad style are still to be found along El Salvador's roadsides, the monthly toll is down from hundreds to perhaps a dozen.

It now seems possible that a more active political center may survive, and that a more stable structure of government can evolve from the brutal experiences of the past. But El Salvador stands at a crossroads. As its political future is debated, one of many open questions is how human rights will fare as a new government is being built.

President Duarte speaks about human rights with the eloquence and credibility of a man who was himself the victim of physical abuse under an earlier regime. But little has been done to exorcise the past. Those who tolerated, and in some cases even led, the death squads may have lost control of the legislature but they remain influential in the security forces, in the judiciary, and in the economy. Whether to prosecute murderers remains -- remarkably -- a sensitive political issue in El Salvador.

In the effort to rebuild El Salvador, no task is more important than the creation of a functioning system of justice. Human rights will never be safe if the security forces remain beyond the reach of the courts or if the only way to punish criminals is to go outside the law. Yet only a few years ago, these were the hallmarks of Salvadoran justice. According to a

1983 report of the Association of the Bar of the City of New York:

> The collapse of El Salvador's criminal justice system is general and pervasive. Indeed, as best we can tell that system has never functioned effectively in the criminal justice field. The civil war in which the nation has been engulfed since 1980 has exacerbated and revealed the inadequacy of El Salvador's legal system, but even if the war were to end tomorrow, major changes would be required in Salvadoran society to create a modern justice system and to permit that system to function fairly and effectively.[1]

That is El Salvador's past. And to a tragic degree, it is El Salvador's present.

On March 12, 1986, the United Nations Human Rights Commission reported "that despite the laudable and serious plans for the reform of the administration of justice submitted by the Government of El Salvador, the capacity of judicial system in that country continues to be notoriously unsatisfactory."[2]

We agree. The current system seems tolerable only when compared to the horrors it has replaced. Coercive interrogation, sometimes including physical torture, continues to be standard operating procedure for the Salvadoran security forces. Relay questioning, deprivation of food and water, death threats, beatings, and sometimes worse are used to obtain false extrajudicial "confessions," and the confessions are used to justify extended pre-trial detention of political and nonpolitical prisoners.

Some signs of hope do exist. New attention is being paid throughout the country to ways of improving the justice

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1. DeWind & Kass, "Justice in El Salvador: A Report of a Mission of Inquiry of the Association of the Bar of the City of New York", 38 The Record of the Association of the Bar 1, 4-5 (1983) (hereafter "DeWind & Kass").

2. Final Text of Resolution on El Salvador, 42 U.N. Human Rights Commission (1986).

system. Thanks in part to U.S. aid, a new investigative unit has the potential to deter future human rights abuses. But these are small steps in what promises to be a long and difficult process.

Set against these hopeful signs are reminders that El Salvador's establishment has not convincingly repudiated the bloody tactics of the early 1980's. The security forces in El Salvador are slow to pursue crimes and human rights abuses on the part of the government.[3] Officers of the security forces--even those who participated in brutal political murders -- are virtually immune from successful prosecution. These crimes go unpunished even in the face of massive evidence, and efforts to investigate government and right-wing crimes from that period have been largely thwarted by indifference. Whether the past is a fair guide to the future of human rights in El Salvador depends on the will and the choices of those now trying to rebuild a Salvadoran center.

The Role of U.S. Assistance

The United States government plays a pervasive role in El Salvador. U.S. government assistance to El Salvador exceeds $400 million a year -- almost $100 for every man, woman, and child in a country whose per capita income is less than $875. That is the equivalent of a foreign government supplying $300 billion per year to the United States -- enough to turn the record-breaking U.S. deficit into a surplus of the same size.

When that influence is used to advance the cause of human rights it can be most effective. In December 1983 the

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3. The security forces are reported to number 12,500: National Police (5,000), National Guard (4,500), and Treasury Police (3,000). The army, air force and navy number about 40,000. Interview with Col. Revelo, Chief of the National Police, October 22, 1985.

In theory, the National Police is responsible for urban areas, the National Guard for rural areas, and the Treasury Police for "fiscal" abuses. In practice this division of areas of responsibility is not so neat, especially when subversives or suspects in political crimes are involved. For example, the National Guard coordinated the investigation of the Zona Rosa killings, surely an urban incident. Each of the three security forces have apparently been assigned prime responsibility for different factions within the FMLN.

Administration, under growing Congressional pressure, told El Salvador that U.S. aid would cease unless the wave of death squad killings was ended. Soon after, the number of deaths and disappearances at the hands of the security forces began a dramatic decline.

In addition to the leverage provided by threats of an aid cutoff, the United States government has funded two programs with a direct effect on the criminal justice system of El Salvador. First, it has supplied $9.2 million to fund improvements in the administration of justice in El Salvador. Second, it has begun an anti-terrorism program that for the first time provides significant direct U.S. assistance to the three security forces of El Salvador -- the National Police, the Treasury Police, and the National Guard.

The U.S. Agency for International Development ("AID") Administration of Justice Program is a response to the breakdown in the Salvadoran criminal justice system, the prevalence of death squads as the means of administering "justice," and the inability of El Salvador to successfully prosecute those responsible for even the most flagrant human rights violations, including the murders of several American citizens.

The AID project to improve the administration of justice in El Salvador is divided into four components: (1) a Legal Revisory Commission; (2) a Judicial Protection Unit; (3) a Commission for Investigations; and (4) a Judicial Training Program.[4]

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4. The Judicial Reform Project in El Salvador is part of a larger AID Judicial Reform Program which, in turn, is a part of the U.S. Government's Administration of Justice Initiative in Latin America and the Caribbean. The stated purposes of the Administration of Justice Initiative in Latin America is to strengthen and invigorate democratic institutions; to support indigenous efforts to improve administration of justice; to create a fair, independent, accessible and effective system of justice; and to infuse hemispheric legal systems with the will to fulfill their responsibilities.

In furtherance of these goals, Administration of Justice Initiative programs will generally focus on criminal law and procedure, where it is perceived that the need is most urgent, although reforms outside the criminal law area are part of the Program. As stated by AID, funding is provided:

(1) to establish legal reform commissions to update the law so as to eliminate impediments to speedy and fair justice;

The articulated goal of the project is to:

> build and sustain confidence in the Salvadoran Civil and Criminal Justice System by enhancing the ability of the system to ensure speedy and competent investigation of crime, arrest and trial of suspects, and protection of innocents from persecution and other punitive action, while maintaining guarantees of equal protection under the law.

The project is targeted on outmoded laws, ill-trained judges and investigators, inadequate material support, lack of sophisticated forensic equipment, an antiquated court administration, and lack of judicial protection. El Salvador's criminal justice system certainly suffers from these deficiencies -- problems which have been exacerbated by a massive earthquake -- and by addressing them the judicial reform project may well be a valuable step toward curbing human rights abuses. But it cannot be overemphasized that without the political will to ensure the fundamental integrity of the justice system of El Salvador, no amount of technical aid, training, revision of the laws, or special units will inspire confidence in that system.

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(2) to establish specialized training courses in regional centers for judges, lawyers, law enforcement officials and court officers;

(3) to promote the non-partisan recruitment and selection of judges on the basis of merit;

(4) to create judicial career development programs;

(5) to initiate programs to recruit, train, and develop qualified officers of the court (prosecutors, public defenders, investigative personnel and auxiliary organs);

(6) to provide for the physical security for the judiciary and judicial process;

(7) to improve court administration and operations;

(8) to enhance legal reporting systems and records management;

(9) to strengthen legal education and professional associations; and

(10) to provide for public information and education.

CONCLUSIONS AND RECOMMENDATIONS

Based on its ongoing review and monitoring of El Salvador's judicial system since 1980, the Lawyers Committee has the following observations, conclusions, and recommendations:

A. Reducing Violations of Human Rights

1. Replacing or Substantially Revising Decree 50--Handling of National Security Cases. First passed in February 1984, Decree 50 establishes special procedures for the handling of national security cases. Designed to ameliorate the harshest aspects of earlier provisions governing political crimes (specifically Decree 507), it has had the unfortunate effect of institutionalizing coerced confessions.

These coercive practices generally occur during the first fifteen days of administrative detention, during which period security forces are permitted to hold suspects without charge and without access to defense counsel. The current system provides little security for the judges, but ample opportunity for informal and questionable contacts between judges and the security forces. While some specialized tribunal may be needed to handle national security cases, Decree 50 should be replaced or substantially revised. Future handling of political crimes should no longer be part of the military judicial structure. The tribunal can and should function within the judicial branch.

2. Preventing Torture and Coercive Practices During Detention. In Decree 50 and other cases, security forces of El Salvador continue to use torture and coercion to obtain confessions or information. To reduce the opportunity and incentive for such abuses, the following measures should be incorporated into legislative and administrative procedures:

a. The International Committee of the Red Cross (ICRC) should be permitted to interview and determine the well-being of every prisoner held by the Salvadoran security forces no more than four days after the prisoner's arrest. This would cut by at least half the current eight-day period of unsupervised detention.

b. The security forces should adopt internal procedures to assure the physical well-being of prisoners. Specifically, prisoners should receive prompt medical examinations by trained personnel, and the records of the examinations held should be available to the ICRC. Similarly, procedures should be established for investigating and punishing rape and other mistreatment of prisoners.

c. Extrajudicial confessions obtained by the security forces from political prisoners should be inadmissible in judicial proceedings if they are not supported by independent evidence.

d. Political prisoners should be permitted access to legal counsel of their choice, and permitted to exercise legal remedies to guarantee basic due process protections.

3. Reducing extended pre-trial detention. Some 90 percent of the prisoners arrested for "political" crimes in El Salvador have never been tried for any crime. Pre-trial detention can last for years. This extended pre-trial detention is due in part to the current system's inability to process the hundreds of pending political prosecutions. The period of detention without trial can and should be reduced.

a. The Salvadoran government has recently increased from one to three the number of trial court judges responsible for handling Decree 50 cases, where the prisoner has been accused of a political crime. This is a step forward but the backlog of cases remains large. In March 1987,

these new judges will have been on the job for six months. At that point their progress in reducing the backlog of political cases should be reviewed. Additional steps should be taken if substantial progress has not been made in clearing up the backlog and putting an end to extended pre-trial detention.

b. As part of any revision or replacement of Decree 50, effective measures should be undertaken to enforce the time limits established for investigation and prosecution of political crimes, perhaps by releasing prisoners whose detentions have exceeded the limits without good cause or by taking administrative measures to discipline judges who do not process cases in a timely fashion.

B. Pursuing Violators of Human Rights

1. Improving the Commission for Investigations. The Commission for Investigations, established with U.S assistance, oversees a special investigative unit and forensic laboratory. The promise which the Commission and its staff hold for human rights progress in El Salvador has not yet been fulfilled. It if is not to be broken, three steps should be taken immediately.

a. The Commission should focus its investigative efforts on the human rights cases already identified as priorities, such as the March 1980 killing of Archbishop Oscar Romero. New investigations should be undertaken only when there is reason to believe that the military or security forces may have been involved in the crime.

b. The staff of the investigative unit and the forensic laboratory should be made fully independent of the security forces. This will likely require a legislative change making the Commission a separate "auxiliary organ" of the court and providing the unit with a permanent home within the Salvadoran government -- possibly as part of the Justice Ministry, the office of the Attorney General, or the

Supreme Court itself. It will also require that future recruits be obtained not from the security forces but by hiring and training competent civilians. Facilities for the investigators and the lab should be kept separate from the armed and security forces. The Lawyers Committee notes with concern that the United States government is now financing the establishment of a forensic laboratory that will be housed in a building run by the Ministry of Defense.

c. By virtue of the AID agreement that resulted in funding of the Commission, an evaluation of the Commission is required during its operation. An interim evaluation should be conducted promptly and its results announced publicly. It should include at least two elements:

i. A comparison of the time and resources the unit has devoted so far to the human rights cases designated by President Duarte and the time and resources it has devoted to other cases.

ii. An internal review of the behavior of the special investigative unit and of the security forces in the cases that the unit has handled so far. No one has accused any member of the unit of torture or abuse of human rights. But the unit has been deployed in cases that have produced allegations of wrongdoing by the security forces, including the Zona Rosa killings, the Ines Duarte kidnapping, and the kidnap-for-profit case involving former Lieutenant Lopez Sibrian. The procedure by which the unit was called into action and the extent to which its participation deterred abuses are questions that should be explored now.

2. Protecting the Participants in the Judicial Process. U.S. aid was also used to create a judicial protection unit that has been deployed in only two cases and then effectively

disbanded. The limited amount of money available, the caliber of the unit's original staff, and the numerous opportunities in El Salvador for intimidation of witnesses, jurors, court personnel, and the like -- all argue against the creation of a judicial protection unit. The funds currently earmarked for such a unit should instead be reprogrammed to protect witnesses and others involved in dangerous cases by permitting them to relocate temporarily outside of El Salvador.

3. Restoring a Functioning Judicial System.

a. A merit system for choosing new judges should be instituted. This might involve a civil service-style examination or nominations by panels representing the courts, the government, and bar leaders. Such "merit selection" does not mean the wholesale replacement of Duarte opponents in the judiciary with Duarte supporters. The focus should be on legal ability, not political connections.

b. Judicial pay should be increased at least for judges who are performing competently. A review of the performance of current judges and justices of the peace by an independent, impartial and professional commission should precede the decision to increase judicial pay.

c. The courts should be open full-time, and judges should be forbidden to hold jobs outside the judiciary while acting as judges. This would also reduce one opportunity for conflict of interest and corruption.

d. The disparity in pay between judges assigned to San Salvador and those assigned elsewhere should be re-examined. If the war requires that many judges commute from San Salvador to distant courthouses, it is difficult to justify paying them less than judges who live and work in San Salvador.

C. Improving the Monitoring of U.S. Assistance

1. Assuring Impartial Review of Human Rights Developments in El Salvador. U.S. assistance to El Salvador has entered a new and troubling stage, with substantial funds now being provided to the Salvadoran security forces, all of which have in the past been responsible for political killings and other human rights violations. Because the recent decline in human rights abuses may reflect more a change of policy than a change of heart, there is a real risk that aid to these forces will ultimately be used in another campaign of murder and torture. That risk demands heightened attention to human rights on the part of the U.S. government. Existing reports on El Salvador's human rights record by the U.S. Embassy and State Department officials are often tempered by the desire to promote Administration policy in the region and, therefore, to minimize serious ongoing problems. Future reports should be undertaken by an independent agency of the U.S. government, such as the General Accounting Office.

2. Terminate or Establish Conditions for Continued U.S. Support of Police Training Program. In 1986 the Reagan Administration began to channel U.S. police training funds directly to El Salvador's three security forces. In June of 1986, when the first training program was initiated in the U.S., several news articles revealed allegations that three of the program participants were implicated in prior human rights violations. It goes without saying that proper screening procedures must be developed to ensure that future participants in the training program are not themselves human rights violators. Future U.S. participation in this program should, at a minimum, also be conditioned on the Salvadoran government's taking concrete steps to institutionalize protection of human rights. In particular, these conditions should include steps to guarantee the independence and effectiveness of the special investigative unit and to assure the prosecution of human rights violators in the security forces.

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These recommendations are addressed to the government of El Salvador and its allies. The delegation studied only the justice system of the government of El Salvador. It did not study the justice system of the FMLN, in part because of the difficulty of traveling with the guerrillas, but principally because the delegation encountered no evidence to suggest that the armed left in El Salvador has a judicial system worthy of the name.

To take a simple example, this report criticizes the Salvadoran government's practice of holding political prisoners for at least eight days before permitting representatives of the International Committee of the Red Cross (ICRC) to visit them. The FMLN, however, has held prisoners and kidnap victims for far longer periods without permitting an ICRC visit; Col. Omar Napoleon Avalos was captured by the FMLN in late 1985 and held for more than fifteen months before his release in February 1987; he did not receive an ICRC visit until more than eight months after his capture. Similarly, several mayors captured by the left in May 1985 were held without ICRC visits until October 1985, when they were released as part of the prisoner exchange that freed President Duarte's daughter.

This report also criticizes the Salvadoran government for failing to fulfill its promise that it will notify a prisoner's relatives within 24 hours of his arrest. When the FMLN captures civilians, it may announce the kidnapping (or send notice to the relatives in the form of a ransom note), but it does not give notice in every case and not always within 24 hours. Lack of consistent notice allows the FMLN to hide the extent to which it is killing noncombatants; in the wake of the Ines Duarte kidnapping, the FMLN belatedly admitted killing eight civilian government employees that it had kidnapped the year before.

In other instances, the FMLN has publicly announced the summary execution of noncombatants whom it believes are informers. Although characterized as the workings of "revolutionary justice," such executions are the very reverse of a system of justice.

SECTION I: PURSUING HUMAN RIGHTS VIOLATORS IN EL SALVADOR

El Salvador is haunted by a terror that must be exorcised. In the early 1980's officers of the security forces unleashed a campaign of political murder whose bloodthirstiness is unmatched in the Western Hemisphere.[5] While there has been a change of policy at the top of the security forces, the campaign of political murder has never been conclusively repudiated, nor have those who led the campaign been punished. Until they are prosecuted and convicted, political murder will always remain an option in El Salvador's public life, and the Salvadoran justice system will always be suspect.

Chapter 1: Investigatory Practices

The history of investigations into human rights violations committed in El Salvador is a chronicle of failures. The number of prominent unresolved human rights cases is long and growing.[6] Only two convictions have been yielded by El Salvador's courts, and then only in cases involving U.S. victims. No officers of El Salvador's security forces have ever been convicted of human rights abuses since the fighting began.

A. The Cestoni Commission

President Duarte assumed office in June 1984 giving assurances that his Government would investigate and prosecute those responsible for the most flagrant past human rights

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5. Although never formally acknowledged, the participation of the army and security forces in the murders of hundreds of civilians each month was widely assumed in the early 1980's. Since late 1983, the number of death squad killings has declined to less than a dozen a month.

6. For a review of these cases, see El Salvador: Human Rights Dismissed.

violations. In August 1984, with much publicity, he established the Investigative Commission of the President, soon dubbed the "Cestoni Commission" after Dr. Benjamin Cestoni, head of the Government's Human Rights Commission, who was to direct the Commission.

The Cestoni Commission, at the specific direction of President Duarte, was to investigate certain human rights cases. These included the murder of Archbishop Romero, the murders of the three land reform workers at the Sheraton, the massacres at Las Hojas and Armenia, and the disappearance of John Sullivan in 1980.

The only case which the Cestoni Commission actually investigated before it was replaced by the Commission for Investigation, in August 1985, was the Armenia well case.[7] The principal reason offered for the failure of the Cestoni Commission even to investigate any of the other human rights cases under its mandate was that it had limited funds. But, political pressures just as surely accounted for its paralysis.[8] Lacking funds and, more importantly, the political backing to effectively investigate, the Cestoni Commission must be judged a failure.

B. The Commission for Investigations

Responding in part to the claim that the Cestoni Commission failed for lack of funds, the United States instituted a grant program designed to build up the Salvadoran system of justice, with special emphasis on reducing and punishing human rights abuses. One major element of the project was a commission to carry out the duties originally delegated to the Cestoni Commission.

The new "Commission for Investigations," as it has come to be called, is the most expensive ($3.5 million in U.S. funding plus $1.8 million from the Salvadoran government) and

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7. See infra, pp. 20-22.

8. Lawyers Committee interviews with Dr. Benjamin Cestoni, October 21, 1985 and Hon. Edwin Corr, October 21, 1985.

potentially the most important element of the project. It was created by executive and legislative decree. The Commission was expected to investigate human rights cases of symbolic importance. As the funding agreement which established the Commission stated:

> The primary function of the Commission will be to carry out the investigation of all crimes that, due to their gravity and "transcendental" nature, constitute a serious threat to the integrity and security of Salvadoran society.[9]

The Commission is officially under the jurisdiction of the Ministry of Justice. The three-member governing council consists of the Minister of Justice, Dr. Julio Alfredo Samayoa, the Vice-minister of Interior, Lic. Carmen Amalia Barahona Pantoja de Morales, and a special representative of the President, Lic. Ricardo Perdomo.

There are two operational components of the Commission: the special investigative unit and the forensic unit.[10] Both are directed by and report to a military official, Major Lopez y Lopez, the Deputy Director of the Commission's staff. The civilian Director of the staff, Dr. Luis Dominguez Parada, reports to and implements the directives of the Commission's governing council. A legal advisory component is available to assist the Commission in its activities, two of its lawyers having previously worked with the Cestoni Commission.

Initially, about two dozen investigators were assigned to the special investigative unit, all coming from one of the three branches of the security forces. Each investigator received specialized law enforcement investigative training by the F.B.I.

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9. Grant Agreement Amendment No. 1, Judicial Reform Project, between the Republic of El Salvador and the United States of America, September 28, 1984, (hereafter "Grant Agreement Amendment No. 1") p. 10.

10. The ARENA party opposed legislation establishing the special investigative unit under the authority of the President, arguing that the Constitution required that the unit be under the Attorney General (then and now a former ARENA party member). When President Duarte's Christian Democratic party gained control of the National Assembly in March 1985, the way was cleared to give legal status to the special unit.

in Puerto Rico in 1984, and continues to receive follow-up training in El Salvador from an F.B.I. consultant contracted for under the judicial reform project.

The members of the security forces assigned to work in the Commission are said to be the "best and the brightest," so much so that the security forces agreed to give up those selected for the Commission only after a tug-of-war between the Commission and the chiefs of the security forces.

If human rights cases are to be investigated effectively, the Commission must meet two criteria. First, it must be independent of the security forces, for the security forces and their members are often prime suspects in human rights cases. Second, it must have the courage to pursue such cases single-mindedly, for there will be many excuses in El Salvador for doing something safer than antagonizing those responsible for human rights abuses. The record of the Commission on these two points is disappointing.

1. Lack of Independent Staffing

By a quirk of law, all members of the special investigative unit must be drawn from the security forces. El Salvador's Constitution requires that evidence introduced in Salvadoran courts be produced by judges or by auxiliary organs of the judiciary. The auxiliary organs listed in the current law are the security forces: the National Police, the Treasury Police, and the National Guard. Because the National Assembly did not designate the Commission as an "auxiliary organ," evidence produced by the Commission's special investigative unit will be admissible only so long as the investigators remain salaried employees of the security forces. This gerrybuilt method of solving an otherwise minor legal problem guarantees the security forces a role and probably a veto in every investigation undertaken by the special unit.

In addition, it is generally recognized that the investigators' long-term hopes of advancement lie within the security forces. Because of the special unit's size and the investigators' status as security forces employees, it is almost certain that the investigators will eventually return to the main security forces to advance up a career ladder. In keeping with this expectation, the security forces continue to pay the

investigators' base salary and preserve their retirement and advancement rights.

Not surprisingly, the special investigative unit has functioned virtually as a part of the security forces in each of its major cases. The initial investigations by the specially trained recruits were apparently not conducted under the auspices or control of the Commission's governing council.[11] Instead, the investigators performed in tandem with the regular security forces in the two most publicized cases that they undertook during the early stages of the special unit.

The special unit first performed a supporting role during the investigation of the Zona Rosa case in which left-wing guerrillas gunned down four U.S. marines and nine civilians at a sidewalk cafe in the fashionable Zona Rosa (Pink Zone) district of San Salvador on June 19, 1985.[12] The killings and the subsequent investigations received widespread publicity. The special unit performed its work under the direction of the National Guard which took responsibility for coordinating all investigative efforts.

After the Commission was legally constituted in August 1985, the special unit began work almost immediately to investigate the kidnapping of President Duarte's daughter; once again they were integrated with the established security forces. One member of the governing council recalled how the Commission was meeting for the purpose of establishing its internal procedures and setting priorities when news of the kidnapping was reported over the radio. "Everything was

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11. The first of the 22 investigators, as previously noted, were trained in the summer of 1984 in Puerto Rico by the F.B.I. But the Commission did not legally come into existence until August 13, 1985, one month after legislation approving the Judicial Reform Project passed.

12. New York Times, May 24, 1985; New York Times, June 27, 1985; Christian Science Monitor, July 2, 1985; New York Times, August 31, 1985; Los Angeles Times August 29, 1985. Interview with Col. Aristides Montes, Chief of the National Guard, October 21, 1985. President Reagan promised to "immediately provide whatever assistance is necessary" to the Government of El Salvador in pursuing the killers. Direct aid provided by the U.S. reportedly included a team of agents to assist the investigation.

dropped," this official remembered, and the special unit "was placed at the disposal of the security forces."[13]

2. Failure to Concentrate on Investigating Past Human Rights Violations

a. Priorities

Progress on the human rights cases identified by President Duarte has come slowly, if at all. The Commission has identified the cases it intends to investigate and established a priority of case investigation. The human rights cases originally identified by President Duarte have been supplemented with other notorious human rights crimes, and all of these cases have been classified for purposes of investigation.[14]

Despite this air of activity, human rights cases seem to have been relegated to the lowest rung on the Commission's priority ladder. Since the special unit was trained, it has played a major role in investigating four additional cases including the Zona Rosa killings, the guerrillas' kidnapping of the President's daughter, Ines Duarte, a kidnap-for-profit ring and a conspiracy to sell children for adoption. The special unit has apparently achieved some success in these cases.

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13. Lawyers Committee interview with Lic. Carmen Amelia Barahona de Morales, Vice-President of the Institute, October 21, 1985.

14. Cases are categorized as either "symbolic" or "significant," although the distinction between the categories is elusive. The "significant" cases include the Armenia massacre, the murder of the daughter of the Mayor of Quetzaltepeque, and the attempted murder of the head of the post office.

The "symbolic" cases are the AIFLD/Sheraton murders the assassination of Archbishop Romero, the Sullivan disappearance and the Las Hojas massacre. The Commission designated these as "symbolic," the delegation was told, because they involved either "national honor" and constant pressure from outside the country (the AIFLD/Sheraton case), embarrassment, (the Sullivan disappearance), native Indians (the Las Hojas massacre), or a martyred cleric of national stature (the assassination of Archbishop Romero). Those who have supervised the unit have indicated to the Lawyers Committee that the unit has played at least some role in the investigation of each of the symbolic cases identified by President Duarte.

Investigators have analyzed fabric and hair samples at the crime scenes, generated portraits of suspects, and performed ballistics tests on weapons. Suspects have been arrested and charged in all but the Duarte kidnapping.

But what do these successes have to do with the original purpose of the special unit? While it is true that the first two cases represents human rights abuses perpetrated by the FMLN, the Salvadoran government already has more than 50,000 armed employees devoted to ending FMLN human rights violations. By contrast, there are only a handful of employees in the special unit and they are the only government entity suited to investigate abuses thought to be committed by the security forces.

The special unit's pursuit of the kidnap-for-profit and adoption cases represent an even greater departure from its legislative mandate. No doubt such investigations may occasionally turn up members or former members of the security forces (such as Lieutenant Lopez Sibrian in the kidnap-for-profit case) whose crimes have evolved from politics to profits. The apprehension and successful prosecution of such offenders does indeed serve valuable purposes, but it should not be the special unit's principal priority.

It is troubling to see so much activity on these cases while little or nothing has been done on human rights cases that have lingered in the courts for years and that may soon be dismissed because no new evidence has been produced.

The speed with which the security forces, aided by the special unit, completed their investigation into the Zona Rosa case was unparalleled. The killings occurred on June 19, 1985, and the police had the suspects in custody and their confessions on file by August 30. This stands in sharp contrast to the lengthy delays surrounding the investigations of right-wing death squad activities and other human rights violations of the right. And it demonstrates how quickly the government can act when it has both the political will and sufficient resources.

b. The Armenia Massacre

On numerous occasions, the delegation was told by Salvadoran authorities that much was being done quietly behind the scenes to pursue investigations in the human rights cases

assigned to the Commission. Aware of how easy it is to make such a claim, the delegation focused on one of the Commission's cases, in which an investigative task was unquestionably necessary and could only be accomplished publicly. The case was the Armenia massacre. In that case, members of the Salvadoran civil defense forces reportedly executed a number of civilians in Armenia on July 30, 1981. They were reported to have dumped some of their victims' bodies into a dry well.[15] This was the only case which the Cestoni Commission actually investigated before it withered away in 1985, and was taken up by the Commission for Investigations as one of its priority cases.

Experts close to the case confirmed that if prosecutions were to be successful exhumation would be required by law. To proceed with the prosecution, sources close to the case told the delegation, the well must be excavated and the bodies of the murder victims examined to confirm their deaths and determine the cause of death. The first attempt to excavate the well and exhume the bodies was made in October 1984 by the Cestoni Commission. According to eyewitnesses, it was a complete failure. The timing of the attempt is significant. It took place just before President Duarte came to the United States to address the United Nations and lobby for massive military assistance from the United States. One of the investigators went directly from the well site to the airport to brief President Duarte as he left for the United States. A videotape of the attempt was given to the President's press office, but no one seems to know where that videotape is, and no report was prepared on the steps necessary for a more successful excavation.

When the delegation asked about current efforts to exhume the bodies, it heard excuse after excuse for inaction. Many turned out to have no basis in fact. The delegation was told during its October 1985 visit that October is too rainy for exploration of a well. Since the first attempt was made during October one year earlier, this justification is difficult to credit.

The delegation was then told that technical equipment not available in El Salvador would be required to conduct the excavation. However, no government official could identify

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15. See El Salvador: Human Rights Dismissed, at p. 59.

precisely what equipment was necessary, nor had anyone made any effort to determine this information. In fact, those most closely involved in the Cestoni Commission's investigation offered the view that no particularly sophisticated equipment was necessary to excavate the well.

The delegation asked increasingly pointed questions about the Armenia excavation in meetings with members of the Commission for Investigations, with the AID team that oversees the special investigative unit with the United States Ambassador, and with El Salvador's Minister of Justice.

After much questioning, the delegation was informed that a team was being dispatched by the special unit to determine what was necessary to conduct the excavation. In fact, the delegation later learned that this team did nothing more than visit the courthouse to look at the files in the Armenia case. This may have been the first time the special investigative unit had done even that.

The delegation is convinced that as late as the fall of 1985 little or nothing had been done to investigate the Armenia case. (Indeed, the cases against several Armenia-well defendants were in fact dismissed not long after the principal delegation returned to the U.S., but the dismissals were reversed on appeal.) The delegation concluded on its return to the U.S. that there was little reason to think that the special investigative unit or any other Salvadoran agency would ever do a thorough investigation into the perpetrators of the human rights abuses of the past. In November 1985, delegation member Stewart Abercrombie Baker testified to this effect before the House Foreign Affairs Committee.

Since then, more strenuous efforts have been taken to identify the victims. In May 1986, the well was excavated, and the remains of four victims were found. By all accounts, the excavation was done in a professional manner by the forensic unit of the Commission for Investigations in coordination with many other Salvadoran governmental agencies, including the Fire Department (which lowered the excavators down into the very deep dry well), the military Sanitary Unit (which inoculated those handling the remains), and the National Guard (which secured the site of the four-day dig to prevent families of the accused from sabotaging it). The excavation site was open to the press and human rights organizations and received wide coverage on local television, radio and newspapers.

A crowd of over 50 residents from the area was present each day of the excavation, standing up next to the roped-off site, observing the proceedings. Many were there to see if the bodies of their missing relatives were among those exhumed. Even when these relatives could not identify the exhumed bodies, many provided testimony about the disappearances of their family members.

Most of those interviewed by a Lawyers Committee representative believed that their loved ones disappeared at the hands of the same members of the civil defense charged with killing the victims found in the Armenia well. If followed up, this testimony may form the basis of further charges against the Armenia defendants.

This effect of the Armenia exhumation demonstrates that when the special investigation unit goes to the scene of a crime, even a crime several years old such as that of Armenia, it may well be able to gather useful new testimony of victims' relatives. Salvadorans have not forgotten their dead and missing relatives. Once the unit shows its willingness to go after the evidence, as it did with the spectators in Armenia, it will find people who will give evidence.

3. Deterring Abuses

If the special unit were in fact perceived as an independent body particularly concerned with detecting and prosecuting abuses by the security forces, one would expect the security forces to have been on their best behavior when working beside the unit's investigators. Unfortunately, this has not been the case.

No direct accusations of human rights abuses have been made against the special unit's investigators themselves. In part, this may be the result of the unit's special training in the U.S. and in part the careful selection of the unit's staff. Other steps have also been taken to avoid abuses by the special unit's investigators.[16] At the same time, the

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16. A handbook on the rights of the accused and the proper procedures to be followed by security force members was prepared by the Ministry of Defense in 1983-4. This handbook has been updated since, and the Vice-Minister of Defense, head of the three security force branches, expressed hope that use of this manual will make

investigations in which the special unit's investigators have worked alongside the regular security forces have been marked by charges of human rights violations. Suspects interrogated during the Zona Rosa and Ines Duarte cases, for example, frequently reported use of psychological (and sometimes physical) coercion.[17]

In the kidnap-for-profit case, which the special unit also helped to solve, two suspects died violently after their arrest. Ramon Erasmo Oporto Terezon, the brother-in-law of Lopez Sibrian and a former National Police detective, was found hanged in his cell two days after his detention.[18]

Another ex-National Police detective sought as a suspect in the kidnapping case, Edgar Sigfredo Perez Linares, died in the hospital in Santa Tecla, where he had been admitted while still alive under a false name. Hospital personnel said that the men who left him there went away immediately without giving their names or any other details.[19] The National Police later stated that he was taken into custody for presenting false documents and was shot trying to escape.[20] An earlier local newspaper account quoted an anonymous caller saying that, on the road to Santa Ana, he found the body of a man who had

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human rights violations less likely. In the context of El Salvador, however, it would be naive to expect that merely revising this handbook and calling for its use by security force members will alter their conduct, especially when abuses committed by them go unpunished.

A more prudent course would be for members of the special investigative unit to come not from the ranks of the security forces, but from hiring and training competent civilians. Even so, it is doubtful that such recruitment alone will be enough to overcome history, particularly when security force members continue to enjoy de facto immunity from prosecution for human rights abuses.

17. See description of coercive techniques used on a female union leader accused of participating in the planning of the Zona Rosa murders, infra at p. 45 and an FMLN leader suspected of having information about the Zona Rosa killings, infra, p. 48.

18. "El Salvador Prosecutes Abduction Ring," The Miami Herald, April 6, 1986.

19. La Prensa Grafica, May 21, 1986.

20. Id.

been machine-gunned because he belonged to the kidnapping band.[21]

A third suspect, Moises Lopez Arriols, was shot outside his own home by a watchman who said he thought the suspect and his two friends were guerrillas. According to public statements by the mayor of San Salvador, the suspect was a former bodyguard for Roberto D'Aubuisson.

On May 21, 1986, the U.S. Embassy issued a statement that concluded:

> The Embassy of the United States is disappointed that three people who were suspects have died violent deaths since the first person was detained in the kidnapping case. We feel that they very well may have had valuable information that could have thrown more light on this case. Unfortunately some information could be permanently lost.[22]

In addition to the deaths, the case also produced allegations of torture. Lopez Sibrian's father-in-law, also arrested as a suspect, later repudiated his confession on the grounds that he had been tortured.

The victims of violence in this case are not the left-leaning activists that suffered so severely at the hands of the death squads in the past. At the same time, their killings have the air of summary executions committed by men who lack the patience to wait for El Salvador's justice system to function--or who doubt that it can. These are, of course, the same justifications now offered for the wholesale summary executions that occurred in the early 1980's. Simply changing the political color of the victims does not demonstrate progress in the respect for human rights in El Salvador. For the special unit to stand by, idle, while such deaths occur suggests that it has a doubtful future as an institutional defender of human rights.

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21. Diario de Hoy, May 19, 1986.

22. El Mundo, May 21, 1986.

C. The Forensic Laboratory

The second component of the Commission for Investigations is a mobile forensic laboratory. The forensic laboratory provides the Commission with the capacity to investigate ballistics, forensic pathology and other specialties. Such a laboratory could also be a step towards ending human rights violations. But it will not be the panacea that some Salvadorans envision.

Police investigative laboratories that can evaluate evidence of crime are undoubtedly essential parts of a modern police force. The delegation was advised that even such standard investigative technology as a fingerprint register and blood sampling and analysis did not exist in El Salvador. The lack of computers, it was told, remains another obstacle to maintaining and sharing needed information.

The forensic laboratory was apparently used with some effect in the kidnap-for-profit case to match victims' hair and clothing with microscopic samples recovered from the clandestine jail used to hold victims during ransom negotiations. Its effective use in human rights cases, however, requires that it be housed separately from the security forces for the same reason that the investigators themselves should remain independent of the security forces. The United States Government has provided 300,000 colons (approximately $60,000) to build a new forensic laboratory in a building owned by the Ministry of Defense. The location of the lab will further complicate the task of assuring the independence of the work of the forensic unit.

The relationship between improved forensics and human rights is easy to overstate. Some Salvadorans believe that the existence of the Forensic Laboratory will provide an alternative to coercive interrogation, but the lab will rarely be the easier of the two alternatives to use and in most cases forensics alone will not prove a case. The temptation to use torture will remain unless it is made clear that such abuses will not be tolerated. Although a positive step toward a better system of justice, the forensic laboratory by itself cannot improve human rights in El Salvador.

Chapter 2: A Failed Prosecution

The days are not long past in El Salvador when men and women picked up by plainclothes members of the security forces were found the next day dead along the roadside. That the perpetrators of these murders were members of the army and security forces is widely acknowledged. The perpetrators of the vast majority of these crimes have never been brought to justice. The rule of law will never successfully be reestablished in El Salvador until such behavior can be effectively prevented and, if not prevented, punished by the Salvadoran judiciary. The difficulty of that task is illustrated by the failure of one recent effort to do so.

A. Factual Background

Eduardo Ernesto Alfonso Avila was a Captain in the Salvadoran National Guard. On January 3, 1981, two National Guardsmen under his command burst into the dining room of the posh San Salvador Sheraton. They walked to a table where two Americans who had been working on land reform issues were eating dinner with a Salvadoran colleague. The Guardsmen carried .45 caliber submachineguns equipped with silencers. When they reached the table, they gunned down the three diners in cold blood.

In September 1982, the two Guardsmen confessed their part in the killings, claiming they had acted on the orders of two men: Lieutenant Lopez Sibrian and Captain Avila. Despite these statements, Captain Avila was not arrested for more than one year -- until December 1983. Even then, he was charged only with a minor offense and was released within a few months. One of the difficulties for the prosecution was that under Salvadoran law, the confessions of a co-conspirator cannot be used as evidence against others who participated in the crime.

The U.S. government did not give up, however; it discovered that Avila had confessed his role in the killings to at least two other people. One was Patsy Walker, the wife of a former U.S. military attache to El Salvador. Avila told Mrs.

Walker that he was "a man who had participated only in things that brought pain to his family and disgraced him with his son."

He then told the story of the Sheraton killings and said that he dreamed constantly of the shootings that he had ordered and witnessed. In his dreams, he remembered "one of the men shot in the Hotel Sheraton who did not die immediately, but, clenched hands filled with blood, laboriously tried to crawl away from where he had been hit."[23] Avila told Patsy Walker never to repeat what he had said, warning her, "You know I have killed, and at any moment I know where your children are, and it would be no problem to kill again."

In an entirely unrelated conversation, Avila told a Costa Rican citizen, Carlos Aguilar, that he had planned the killings with Lieutenant Lopez Sibrian and another man. Avila said he had provided the submachineguns used to carry out the crime.[24] With this new evidence, the United States government evidently persuaded the Salvadoran authorities to pursue Avila in court.

B. Judicial Maneuvering

As the case made its way to court, the Salvadoran Supreme Court, which has authority for assigning judges to trials, engaged in some highly unusual assignment-juggling that had the effect of putting the Avila case before a judge who turned out to be highly sympathetic to the captain.

As explained by Dr. Guerrero, the President of the Salvadoran Supreme Court, the remarkable changes were pure coincidence. The Avila case, he said, was to be tried by the judge who presided in San Salvador's Fifth District. This judge had not done a particularly good job in that position. When his three-year term was over, Dr. Guerrero explained, the judge

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23. James Le Moyne, "No Salvador Action Yet on Officer Tied to Killings," New York Times, June 28, 1985.

24. James Le Moyne, "Salvadoran Officer Linked to Killings," New York Times, June 27, 1985.

was not reappointed to the Fifth District. Instead, he was moved to the Court of Minors.

This left one extra judge in the Court of Minors. Instead of moving this judge to the Fifth District, the Supreme Court moved this judge into the Seventh District. The judge who was in charge of the Seventh District, the conservative Judge Rolando Calderon, was then moved to fill the vacancy in the Fifth District.

It was happenstance, states Dr. Guerrero, that Judge Calderon thereby became the presiding judge in the Avila case. "No one was thinking of the Avila case at the time," he told the delegation. "No proof had been offered" against Avila when these changes were made.[25] Other observers of the Salvadoran legal scene call the changes "exceptional." Captain Avila's uncle, Dr. Ricardo Avila Morera, sits on the Supreme Court. He is a founding member of the right-wing ARENA party and was characterized by one Salvadoran lawyer as the man who "really runs the Court, although other observers believe that his influence has diminished substantially since 1983."[26] At all events, Judge Calderon played a striking role in the Avila case from that point on.

C. The Judge's Ruling

On July 3, 1985, a few days after hearing Patsy Walker and Carlos Aguilar testify about Captain Avila's confessions, Judge Calderon ruled that the testimony of these two witnesses was not sufficient even to justify the arrest of Captain Avila. The new evidence, he declared, was "not clear and conclusive."[27] In November 1985, an appellate court affirmed his ruling.

The grounds given by the Salvadoran courts for refusing to accept this testimony are astonishing. As reported by a

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25. Lawyers Committee interview with Dr. Francisco Jose Guerrero, October 19, 1985.

26. Lawyers Committee interview, October 17, 1985.

27. "Salvador Judge Won't Indict Officers," New York Times, July 4, 1985.

U.S. embassy representative, the appeals court found that Patsy Walker's testimony was "inherently incredible" and "failed to satisfy the requirements for a valid extrajudicial confession." Because this was not a prosecution under military law,[28] the court ruled an extrajudicial confession to witnesses who are not members of the security forces must meet several criteria: 1) the confession must be coherent and internally consistent, and consistent with other evidence in the case; 2) it must be given free of coercion or fear; and 3) it must be material, relevant, and timely.

According to this representative, the court ruled that Patsy Walker's testimony failed all of these tests. First, it was "untimely" because the prosecutors knew of Avila's statements to Patsy Walker shortly after they were made in 1982. By waiting three years, the prosecutor had made the evidence untimely.

The court's ruling ignored the fact that this three-year delay was the logical result of Salvadoran law, which requires that evidence of an extra-judicial confession be supported by the testimony of two witnesses. Not until Carlos Aguilar came forward in 1985 did the prosecution have two witnesses who could testify to a confession by Captain Avila. Because Aguilar came forward late, evidence of the confession to Patsy Walker could not be presented earlier.

Second, the court found the Walker testimony "inconsistent" because on direct examination she testified that Captain Avila had stated that he was an eyewitness to the murders. On examination by the attorney for the families of the victims, however, she elaborated on this point, making it clear that Avila was a participant. The court evidently found it inconsistent to characterize the Captain first as an "eyewitness" and then as a "participant."

Third, the court held that the extrajudicial confession was not "given free of coercion and fear." The court rather remarkably focused not on whether Captain Avila had been coerced into confessing to Patsy Walker but on whether Patsy Walker was testifying in an atmosphere of fear and coercion. Since the Walker family was the object of anonymous threats

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28. For a discussion of what procedures would be followed under Decree 50 of military law, see infra, pp. 39-42.

designed to prevent her from testifying, the court concluded her testimony was inadmissible because of the climate of fear that the threats had generated.

Even among an assortment of remarkable statements, this ruling stands out. There is no doubt that Mrs. Walker was the object of intimidation on the part of Avila's supporters. That she had the courage to testify despite this is a reason to treat her testimony as more credible, not less.

With respect to Carlos Aguilar's testimony, the court indicated only that it was vague and imprecise and that there was too much deduction required for the confession to be considered valid.

Most striking about the Avila case is the overwhelming nature of the evidence presented against Captain Avila and the extraordinarily technical grounds on which it has been deemed insufficient to justify even an arrest. Captain Avila has been implicated in the Sheraton murders by four separate witnesses. Two of the witnesses are the men to whom he supplied the guns, and whom he ordered to commit murder. The two other witnesses provided independent testimony of separate conversations in which Avila admitted his role in the killing.

The rejection of the Walker and Aguilar testimony in the Avila case was at best formalistic. Criminals rarely confess their crimes to law-abiding citizens, as Captain Avila did in this case, and they certainly do not do so in the style of police-dictated extrajudicial confessions. Normal confessions to persons outside the security forces will invariably be fragmentary, elusive, and ambiguous. Only a judicial system dependent on false confessions extorted by the police could reject an extrajudicial confession because it requires too much deduction.

The testimony of the two Guardsmen was excluded on the basis of a long-standing but equally formalistic evidentiary rule excluding testimony of co-conspirators. One Salvadoran legal scholar sought to justify the exclusion on the ground that the moral capacity of admitted criminals is weak, so their statements about the wrongdoing of others should be given no weight. Moreover, he said, co-conspirators can always be expected to try to shift the blame for their crimes to others. These arguments are undoubtedly true, but neither justifies the total exclusion of co-conspirator evidence. The statements of co-conspirators are frequently the only evidence that can be

obtained against their accomplices. While they must often be taken with a grain of salt, when they are credible they should be accepted.

D. Subsequent Developments

The special protection still extended to men like Captain Avila is illustrated by the swift Salvadoran response when a later prosecution unrelated to human rights was also threatened by the co-conspirator testimony exclusion. One of Captain Avila's accomplices in the Sheraton killings, Lieutenant Lopez Sibrian, was arrested in 1986 for kidnapping wealthy citizens--not for their politics, but for their money. When it appeared that the rule against admitting co-conspirators' confessions might prevent the successful prosecution of kidnappers-for-profit, a bill was introduced into the National Assembly to make co-conspirator evidence admissible in certain circumstances. Co-conspirators who cooperated with the prosecution could have their sentences lowered under this provision, but the testimony of such conspirators would have to be consistent with other proof in the case, and the judge would have the discretion to find the witness credible or not credible.

This is a salutary proposal. It puts the focus of the question of the admissibility of evidence where it belongs -- on the question of truth. Nevertheless, ARENA and other conservative parties objected. At their request, the ruling Christian Democrats agreed that the reform would be limited to cases of kidnapping, extortion, and drug trafficking. Murder would not be included.

This legislative history suggests that, unfortunately, whether to punish murderers is still considered a political issue in El Salvador. As the Archbishop of San Salvador, Monsignor Rivera Damas, stated in his homily of April 20, 1986:

> We also think that the approval of the legal reforms is positive although it preoccupies us that to get unanimous approval they remove the word "murder" from the draft law, since this will make more difficult the investigation and punishment of the

crimes which are most numerous and most deserving of punishment.

Chapter 3: Efforts to Improve the Quality of Judicial Proceedings

A portion of U.S. aid is aimed at strengthening the Salvadoran judiciary. An underlying assumption of such aid is that a strong judiciary will heighten respect for the rule of law in El Salvador. The U.S. aid programs have focused on such matters as improved training, facilities, and protection for judges. The programs' defenders do not argue that such improvements are the changes most needed to produce a strong judiciary, but that such programs have some value, although there are not a complete solution to the problems of the Salvadoran justice system.
The Lawyers Committee agrees. Some parts of the U.S. aid project are likely to be valuable; others are not. What cannot be forgotten, however, is that actions such as the Avila ruling reflect not a lack of training or resources but a deep politicization of the judicial system.

A. Judicial Administration and Training

The least controversial component of the AID project of U.S. assistance to El Salvador is approximately $1.8 million in U.S. funding (and a matching Salvadoran contribution) earmarked for programs to improve judicial administration and training. This component will be largely administered through the Supreme Court of El Salvador. It is a worthwhile undertaking, but as the lack of controversy suggests, it also has little capacity for promoting major changes in the justice system of El Salvador.

1. Training Judges

A major part of this program is aimed at providing training to Salvadoran judges. Some training will take place in El Salvador; other sessions have already been conducted in Costa Rica under the auspices of ILANUD.

Such training undoubtedly addresses a real need. There is a widespread view among legal scholars that many Salvadoran judges are not well-trained in Salvadoran law. Providing additional training may improve the consistency of Salvadoran justice.

But inadequate training of judges is not the principal factor underlying El Salvador's poor record of prosecuting human rights cases.

a. Depoliticizing the Judiciary

The judiciary, together with the office of the Attorney General, are the only branches of government still dominated by appointees of right-wing and conservative parties who have consistently opposed human rights initiatives of the current government. Their influence has found expression in such developments as the unusual judge-switching in the Avila case. This is not the only questionable transfer in a human rights case. The judge who presided over the convictions of several National Guardsmen for the murders of four American churchwomen was transferred shortly after the trial from San Salvador to Chalatenango, a distant province; his trip to work now takes more than two hours each way along a road that is from time to time the scene of armed clashes and sabotage.

Among the highest priorities for any reform of the Salvadoran judiciary must be to reduce the political coloration of the Supreme Court and the lower courts. This does not mean the wholesale substitution of Duarte supporters for Duarte opponents. What is needed are reforms that would ensure that judicial candidates are evaluated on their merits rather than their political connections.

One proposal which has merit is that the law school, bar associations, and other organizations combine to make recommendations for the judiciary. One plan proposed by the Duarte government was invalidated by the Supreme Court. This issue should be revisited. The joint recommendations need not

be mandatory if they are generally perceived as nonpartisan; the original Duarte proposal was not so perceived. Another possible reform mentioned favorably by Salvadorans interviewed by the delegation would be a civil service competition for judicial openings. Any number of reforms could be instituted to reduce the political tone of the judiciary; what is important is that such reforms occur.

b. Improving Judicial Compensation

A second pressing issue concerns the method of compensating Salvadoran judges. Judicial independence requires a full-time judiciary. Currently, Salvadoran judges work part-time, from eight in the morning until one in the afternoon. They are poorly paid. In consequence, they must spend their afternoons in private practice. This system plainly lends itself to influence, if not outright corruption.

The first step toward greater judicial authority and independence is to raise judicial pay and require full-time work from all judges. Whether all of the current incumbents should be given substantial raises is a more difficult question. One possibility that deserves more scrutiny is a nonpartisan review of current judicial performance by leaders of the bar of the performance of the current judiciary. These leaders could recommend, jointly with representatives of the judicial and executive branches, improving the compensation of judges whose superior performance justifies paying them higher salaries for full-time work.

A related pay issue is the illogical disparity in pay between the judges of first instance assigned to San Salvador and those assigned elsewhere. There is a substantial pay premium for service in San Salvador. In theory, this may reflect lower living costs in rural areas. In fact, many judges assigned to rural areas live in San Salvador and commute to work, for reasons of security as well as preference. They therefore commute farther, are exposed to more danger, incur higher expenses, and receive less pay than judges in San Salvador.

2. Improving Court Facilities

From its examination of several courts throughout the country, the Lawyers Committee recognizes that the Salvadoran courts need additional equipment desperately. The delegation visited several courts. The typical court building consists of a few overcrowded rooms with handwritten files piled on bookcase, desks, windowsills, and floors. These files are critical in securing convictions in criminal cases, yet no copies are maintained.

The risk of this information being misplaced, stolen, or destroyed is substantial. Supplying filing cabinets, typewriters and office furniture to El Salvador's judiciary will not radically change the Salvadoran justice system, but it clearly needs to be done.

B. The Judicial Protection Unit

Another element of the AID program is the Judicial Protection Unit. Its price tag is $2.1 million -- $1.2 million in U.S. funding and $900,000 in Salvadoran funds. In theory, the unit will help control political violence by protecting jurors, judges, and witnesses in controversial human rights cases. In fact, the Lawyers Committee believes the unit will be almost useless.

The idea for such a unit grew out of preparations for the trial of the National Guardsmen who murdered four U.S. churchwomen. In an independent investigation of the murders of the four American churchwomen, former federal judge Harold R. Tyler, Jr., concluded that intimidation and corruption of judges and juries was a serious problem in El Salvador. "Unless the jury can be safeguarded," his report concluded, "we would be foolhardy to predict the conviction" of members of the security forces.

In response to that direct warning, the United States embassy and the Salvadoran government cooperated to create a 60-man unit to provide security on the day the killers of the four churchwomen were tried. Members of the unit were selected from the force of guards at Mariona prison, trained in Georgia, and deployed on the day of the trial.

The performance of the unit was hardly distinguished. The trial was hours old and an undisciplined crowd of hundreds of reporters and others had already packed the courthouse and the surrounding streets before the unit even arrived at the scene.

The caliber of the unit's members was widely criticized. As one high-ranking government official told the delegation,

> "a good Judicial Protection Unit would need members (1) who are not poorly educated, (2) who are not already practiced in the past abuses of the security forces, and (3) who are not psychopaths. Unfortunately, most of the original 60 failed one of those tests, and some failed all three."[29]

Another suggested to us that the use of prison guards to make up the unit was part of the problem. Prison guards, he said, are men who could not make it in the Salvadoran armed forces.

In any event, the unit has never been activated again. No legislation or decree has given it any legal status. It has no budget and no internal rules. The prison guards deployed at the churchwomen's trial have not been activated again. They were not used, for example, to protect the witnesses testifying against Captain Avila, despite the fact that the witnesses had been explicitly threatened with retaliation.

The Judicial Protection Unit, even if it is staffed with excellent people and properly equipped and trained, could at best provide protection in only one or two courts during a handful of particularly controversial trials. The protection would not include family members and it would not last long. The unit could not assure that those responsible for intimidating jurors, judges and witnesses would ever be successfully prosecuted, even if apprehended. In the past, those who have intimidated jurors, judges, and witnesses through word and deed, have acted with total impunity. So far as the delegation could determine, no security force members or persons linked to them has ever been successfully prosecuted for such conduct.

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29. Lawyers Committee interview, October 16, 1985.

The delegation found little support among Salvadorans for the unit. Even U.S. authorities are lukewarm in its defense. U.S. Ambassador Corr said, "On a scale of 10 even if it's a 2, it's worthwhile."[30] One of his staff was more blunt, calling the program "a crock of s--t," but one that the U.S. Congress demanded, largely because of Judge Tyler's recommendation in the churchwomen's case. Given the confusion and lack of enthusiasm for this program, there is an obvious risk that the resources provided by the United States will be diverted to other purposes.[31] On the recommendation of U.S. advisers, an alternative plan is now under consideration. A smaller and more select group of twenty may be trained in protecting trial participants.

The fact is that 20 or even 60 people, no matter how well-trained or how well-armed, cannot guarantee the security of the participants in a single criminal trial. The opportunities and targets for intimidation are virtually unlimited in El Salvador. The judge, the jury, the witnesses all have extended families who can be threatened. No one has forgotten the judge who woke up one morning in 1981 to find the heads of five relatives on his doorstep.[32]

El Salvador is a tiny country. There is nowhere to run. Salvadoran after Salvadoran expressed the view that if the death squads or the armed left decided to kill them, they are as good as dead unless they flee the country.

Rather than spend up to $2.1 million buying guns and cars for prison guards who may or may not be deployed in the manner originally contemplated, the Lawyers Committee recommends that a new strategy be devised for protecting witnesses and jurors in controversial cases. It is plain that witnesses cannot be fully protected within El Salvador.

The United States (and other countries in Europe and Latin America) could play a positive role by establishing

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30. Lawyers Committee interview with Hon. Edwin Corr, October 21, 1985.

31. Although the Minister of Justice denied it, representatives of the Lawyers Committee were told by one source that the Minister had suggested using the unit to protect him and perhaps the other politicians who serve on the Commission.

32. DeWind & Kass, p. 2, n. 1.

procedures for relocating, even on a temporary basis, Salvadorans who have endangered themselves by serving as jurors or witnesses in human rights cases. This would be far more effective -- and less expensive -- than creating a Judicial Protection Unit.

SECTION II: REDUCING INSTITUTIONAL VIOLATIONS OF HUMAN RIGHTS

Chapter 1: Decree 50 Proceedings

The laxity of the Salvadoran justice system when confronting violence committed by the security forces stands in contrast to the system's vigorous pursuit of leftist subversion. In contrast to the procedures used for ordinary, or "common" crimes,[33] the authorities are granted wide latitude to arrest, interrogate and try those accused of subversive activities,[34] a loosely defined category essentially covering all crimes that could affect the stability of the Government or favor the armed opposition.[35]

Such activities are prosecuted under Decree 50, the "Law of Proceedings Applicable upon the Suspension of Constitutional

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33. "Common" crimes are prosecuted in the traditional Salvadoran court system. The security forces may arrest those suspected of a common crime, but the suspects must be turned over to the jurisdiction of an "instructional" judge within three days. Any confession to the security forces is called an "extrajudicial confession" to distinguish it from a confession made to a judge. Such confessions must later be ratified before the judge of first instance.

34. Decree 50, Article 1, provides that those under 16 accused under the Code of Minors of committing subversive acts are to continue to be judged under the Code of Minors. In practice, while the Code of Minors is applied to such minors, they are judged by the same authorities as the adults, rather than by the judges customarily applying the Code of Minors. "Study of Decree 50," Office of Tutela Legal of the Archbishop, El Mundo, January 21, 1986. Thus, Decree 50 indirectly affects the rights of minors as well.

35. Article 1 of Decree 50 defines these offenses against the State as: "Crimes against the Juridical Personality of the State and of International Scope . . . and those of treason, espionage, the right of agents, devastation, pillage, sabotage, rebellion and sedition, typified in the Code of Military Justice."

Guarantees." Decree 50 was approved by the Salvadoran National Assembly on February 24, 1984.[36]

A. The Institutional Incentives for Coerced Confessions

Although designed to ameliorate the harshest aspects of earlier decrees governing political crimes,[37] Decree 50 has had

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36. The law comes into force only when constitutional guarantees are suspended or during the existence of a state of siege. But many constitutional guarantees have been suspended since March 6, 1980. The state of siege declared at that time has been in effect almost continually ever since, renewed every thirty days except for brief periods when it has lapsed. The most recent lapse began on January 17, 1987, when the 60-member National Assembly failed to obtain the necessary two-thirds majority to continue the state of siege. Opposition legislators, as part of a general refusal to participate in legislative matters, refused to vote to extend the measure.

37. Although it abridges many important constitutional rights, Decree 50 is an improvement in many respects over its predecessor, Decree 507. Decree 507 was enacted on December 3, 1980, and amended by Decree 943 on January 5, 1982. Under Decree 507:

1. Security forces were authorized to detain persons suspected of subversive activities (terrorist, treasonous, or seditious activities).

2. Those detained could be held incommunicado for an initial 15-day period by the security forces.

3. During the initial 15-day period a military judge was to determine, in an ex parte proceeding in which neither the accused nor defense counsel could participate, whether sufficient evidence existed to continue the administrative detention; if so, the detainee was transferred to prison and the case passed to a judge of military instruction.

4. An extrajudicial confession given to one security force member was sufficient to warrant continued detention.

5. The judge of military instruction had 180 days to determine, again in an ex parte proceeding, whether the accused should be freed or held for further prosecution.

6. All participation by defense counsel was barred. Decree 507, already draconian as written, was even harsher in practice. The initial period of incommunicado detention often extended well beyond the 15-day and even the 180-day limits. Grounds for continued detention beyond this initial period were routinely

the ironic effect of helping to institutionalize coerced confessions. It gives the security forces an essentially unsupervised right to detain suspects but requires that they produce evidence against those suspects after 15 days of largely incommunicado detention. The combined effect of these provisions is that the temptation to meet the 15-day deadline by coercing confessions has proven irresistible.

As a practical matter, it takes very little to be arrested in El Salvador, especially for political crimes. The files of political prisoners often lack information about how or why a particular detainee was arrested, but rumor, anonymous denunciations, guilt by association, informants, and information given under torture all seem to play a role in deciding whom to arrest. Judging from the accounts of the detainees themselves, to reside in a zone controlled by the guerrillas, to be a union activist or officer, to be a potential source of intelligence information, or simply to be a relative or acquaintance of a political prisoner -- all these markedly increase one's chances of being arrested fo. political crimes.

Decree 50 allows the security forces -- the National Guard, the National Police, and the Treasury Police -- to hold those accused of offenses against the State in "administrative detention" for a period of 15 days (Article 7), during which time the accused can be denied access to defense counsel and need not be apprised of the charges against him (Article 1). After the 15 days of administrative detention, the accused is to be brought before a military judge of instruction who has 72 hours to investigate and determine whether there is sufficient cause to order a second 15-day period of "provisional detention." At this time, the prisoner is ordinarily transferred from the custody of the security forces to the main prisons (Mariona and Ilopango) administered by the Ministry of Justice.

Within 15 days of making an arrest, therefore, the security forces must produce evidence against the accused or run the risk that he will go free. If the detainee was arrested because of his political views or on the off-chance that he might provide useful intelligence, the security forces have no

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found to exist. The military judges were not identified, and few cases were ever transferred from military to civilian jurisdiction.

See generally, DeWind & Kass at 16-24.

acceptable evidence to present a court to justify continued detention. If they want to hold the suspect longer, the authorities must have something else; ideally something neat and conclusive. Nothing could be neater or more conclusive than a confession. And by far the easiest way to get a confession is to coerce one.

The Lawyers Committee believes that a substantial portion of the abuse aimed at detainees during their first 15 days of confinement is designed to provide the documentation necessary to keep suspected guerrillas and guerrilla sympathizers in prison after the period of administrative detention permitted by Decree 50.

B. Methods Used by Security Forces to Coerce Confessions

In El Salvador, the head of the National Police said, "30% of police work goes into the capture, and 70% of the work is what you do with the prisoner once you have him."[38] All too often, the 70% consists of highly coercive questioning, including some forms of physical torture.

1. Intimidating Arrests

Beatings, blindfolding, and death threats are not uncommon at the moment of arrest. For example, one prisoner captured in September 1985 reported being picked up and blindfolded, and beaten. His captors played the radio at top volume and placed a hood over his head while they were still driving the car. He was struck in the back and kicked several times. His captors put a lasso around his neck and tightened it, causing him to lose consciousness two or three times. He was then taken to National Police headquarters.

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38. Lawyers Committee interview with Col. and Dr. Revelo, October 22, 1985. Although many of the interviews cited in this report occurred in late 1985 and early 1986, representatives of the Lawyers Committee conducted a number of similar inquiries throughout 1986 and early 1987. These interviews confirm that there has been little substantive change in the pattern of the violations described in the pages that follow.

The brutal arrest tactics of many plainclothes security agents are bad enough by themselves. In El Salvador, though, they evoke special terror. The delegation asked the head of the National Guard, Col. Aristides Montes, why and when it was necessary for members of the National Guard to make some arrests in civilian clothes. "Subversives don't wear uniforms," he responded.[39] Col. Montes added that the ease of identifying uniformed National Guard forces would alert the subversives and permit them to escape.

When making an arrest, the security forces, whether uniformed or in civilian dress, are supposed to display identification. This is often not done. Arrests continue to be made by security officials in civilian dress whose names and security force affiliation are not disclosed. Col. Montes acknowledged that there might be some cases where the Guardsmen forgot to show their identification. Even in these cases, he contended, National Guard troops in uniform would generally be in the vicinity to provide backup to the plainclothes Guardsmen. Their arrival on the scene soon after the arrest would permit friends and relatives of the detained person to identify, if not the arresting officer himself, then at least the branch of the security forces responsible for the arrest.

This account does not conform to the reports of detainees themselves, who often did not know the identities of their captors. The delegation believes that some elements of the security forces still make brutal arrests in the "death-squad" style precisely because of the terror it produces; they then build on this terror by days of incommunicado questioning, during which the detainee never knows whether he will live or die.

2. Psychological Abuse

a. Death Threats and Arrests of Relatives

For the first one to two weeks after arrest, prisoners are cut off from the outside world. During this period of incommunicado detention, detainees often receive direct and

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39. Lawyers Committee interview with Col. Aristides Montes, October 21, 1985.

explicit death threats. These threats are aimed not only at the prisoner but at his family. One female unionist told of being threatened with the decapitation of her children. Death threats against the prisoner and his family are especially effective because they are so believable, particularly after an arrest in the death-squad style.

Another female prisoner, obviously a committed FMLN member, said her father and her brother, who had nothing to do with her actions, were arrested. Her father has a serious medical condition, and the police told her that if she did not cooperate they would deny her father his medicine. He ended up spending five days in jail without his medication, she told the delegation, and when he was released he spent a week in the hospital. Her brother was held for 48 hours.

b. Coercive Questioning

Prisoners are often interrogated by relay teams for an extended period. Some prisoners reported being interrogated without sleep until they began hallucinating. Almost all prisoners reported being kept blindfolded during the interrogation, and many reported that they were deprived of their clothing for a substantial period. The head of the Treasury Police did not deny that prisoners are sometimes deprived of their clothes and the lights kept on in their cells, but sought to justify this practice by claiming it was to prevent suicides, .[40]

A female FMLN prisoner stated that "people are now being tortured in more sophisticated ways." The authorities, she said, treat high-ranking FMLN prisoners better than ordinary guerrillas who cannot provide useful publicity if they change sides. She described a fairly typical interrogation:

> She was seized during an army sweep of a suspected zone. She was a former medical student who had very little identification. She was suspected of having provided medical assistance to the FMLN.

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40. Lawyers Committee interview with Col. Rinaldo Golcher, October 21, 1985.

> She was kept naked and handcuffed to the wall during the early part of her incarceration. She received no food and very little water for seven days. She was hit on the head and knuckles. Her shoulder was pinched. She was made to listen to loud music with an automobile tire around her neck.
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> She fainted several times and received several bruises from her treatment. Her circulatory system did not function properly and she began to have trouble breathing. She did not receive medical assistance.

Another woman, a union leader without any apparent FMLN sympathies, described a similar experience during the two weeks following her arrest:

> She was held in administrative detention for 13 days, and was accused of participating in the Zona Rosa killings. During her detention she had little sleep, little water and no food. She was forced to remain nude for many of the days.
>
> One night during administrative detention, she was locked in a bathroom nude, and resisted an attempted rape by a security official.
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> Her place of confinement was cold and dark. Officials threatened to kill her children and rob her house, and in fact did search her house subsequent to the detention.

Some of the same techniques were reported by Jose Salomon Sanchez Martir, a leader of the National Transport Workers Union arrested in April 1986:

> He was taken by the National Guard. They kept him in a cell until evening, when they took him out and interrogated him. He was returned to his cell. He was interrogated again on the second day. He was handcuffed and blindfolded. Another

interrogator covered the same ground, this time more brusquely.

On the third day he received nothing to eat for lunch and was taken again to interrogation that night, blindfolded and handcuffed. He was ordered to remain standing. From that time on, they did not allow him food, water, or rest.

He has several medical problems that made his confinement particularly uncomfortable. He is required to use eye drops because of several eye operations and he has a near ulcerous condition that causes great pain. He did not have any medicine during the interrogation. This caused him much pain. He also has back problems that make prolonged standing difficult. He was not allowed to move around to ease his back.

From the third day through the eleventh day, he was not allowed to go back to the cell and was given only a few mouthfuls of food and a few swallows of water from time to time. The interrogation cubicle was extremely hot. The fan was put on only when the interrogators were inside asking questions. He was not permitted to wash for days.

He lost all notion of time. He was not beaten up, and the security forces were careful not to make the handcuffs so tight that they would leave marks. He was hit four times, twice in the chest and twice in the rear end. His captors seemed concerned not to leave marks.

On the twelfth day, he was told to sign a document. He was not allowed to read it. His captors took photos of him signing the declaration.

Another prisoner, age 33, was placed in a cell and was interrogated there while blindfolded:

His interrogators threatened him with death and torture, and then tried to persuade him to collaborate. After several hours of questions, he was told to take off his clothes. He was offered three alternatives: being submerged in a washstand full of excrement, electric shocks, or death. When he refused to choose, they told him he would be submerged in excrement and then killed. In fact,they did nothing to him during this session.

He was kept blindfolded until the next morning. He was interrogated and offered economic assistance if he would collaborate. He was interrogated by waves of interrogators for hours on end. He was forbidden to move during the interrogations. If he started to nod off they shouted at him to keep awake.

After nine days, he was sent to the jail section of the National Police headquarters. In all, he spent 17 days at the National Police facility. He saw the ICRC about a week after his capture. He was taken out of the interrogation room to see the ICRC and then returned to interrogation. He signed a document that he was not allowed to read.

A male doctor and FMLN militant stated that there has been a change in torture techniques -- the security forces no longer torture indiscriminately. "The degree of torture depends on the level of resistance." He added, "Most people see the Red Cross on the eighth day. I have been in prison for the past six months and have only seen one person who did not see the Red Cross on the eighth day. Usually, torture ends before the Red Cross visit and does not resume once the Red Cross has seen the prisoner." He said he was not systematically abused:

He was asked to sign a confession without being permitted to read it. The police threatened to beat him if he did not sign, but they finally permitted him to read it. It was exaggerated. He refused to sign it. He was hit a few times and

watched all night, but he was finally sent to Mariona prison despite his refusal to cooperate.

Another high-ranking FMLN leader described his detention by the National Police in considerable detail:

> He was interrogated about his identity. He gave a false name. He was hit in the stomach and thorax, kicked in the hip, and slapped with an open hand. He was required to sit on a metal chair in a room, despite the pain this caused him due to his arthritis.
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> During the first three or four days, questioning was continuous. New questioners came in every three or four hours. He was asked many questions about the Zona Rosa killings. From the third day to the seventh day, he was allowed half-hour breaks to recuperate, but he was not permitted to sleep. He suffered from hallucinations and Dostoevskian despair. The interrogators pretended to befriend him during his periods of despair. The lack of sleep also made him extraordinarily sensitive to loud sounds and even relatively gentle touches.
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> The police refused to supply him with antacid tablets during the first week, despite his suffering from acidosis. The police also offered him financing and an opportunity to live abroad if he would name contacts.
>
> From the seventh day to the tenth day, he was allowed two or three hours of sleep each night. The only threats made against him during his detention were a threat to kill him when he was first captured and a second threat on the 22nd day. The second death threat "may have been a joke."

Remarkably, these practices mark a substantial improvement in the human rights record of the Salvadoran security forces. In the past, the victims of death squad killings were often mutilated by their torturers before being

executed. Execution of prisoners now appears to be against security forces policy, and physical torture has been greatly reduced.

3. Physical Abuse

This is not to say that physical abuse has disappeared. Torture was reported by many, but by no means all, of the prisoners interviewed, and the most dramatic forms of abuse such as electric shock and the "hood" (as described below) were even less common. Several forms of continuing physical abuse were described by prisoners.

a. Electric shocks

A 23 year-old FMLN supporter offered the following account of electric-shock treatment during his administrative detention:

> He was interrogated by men who first used bad language and then made threats that he would disappear, and his family too. They told him that if he did not talk he would die. He was given electric shocks once. They pulled him out of the cell by the hair with his hands tied and his blindfold on. They put a shock under his right arm. He felt as though he were going to faint. He thought his heart would stop.
>
> When he was taken back to his cell, he was told that this treatment would continue until he cooperated. He was beaten frequently on the body and head. Shortly after his electric shock treatment, he was taken to another small cell where he was forced to do a handstand with his feet against the wall for about an hour. When he fell down, he was kicked and made to put his feet up on the wall again.
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> After that, he was forced to stand blindfolded and with his hands tied behind him for four hours.

Another prisoner, who had recently been released from interrogation, was able to show the delegation marks consistent with his description of extensive shock torture.

b. Physical beatings and the "hood"

Occasional kicks and cuffs are commonplace during interrogations. In a typical account, one prisoner reported that on three different nights, at about 1:00 or 2:00 in the morning, he was taken out of his cell, punched and threatened. He was hit on the head. They then threw lukewarm and cold water on him.

Detainees are sometimes forced to wear the "hood." The "hood" is an airtight bag that is fastened around the prisoner's neck until the prisoner blacks out. Reports of such torture were sporadic but persistent. For example, one community organizer who said he had no ties to the armed left told us that during 19 days in the Treasury Police headquarters he was asphyxiated with a plastic bag for a hood on two occasions. He also reported eight sessions of electrical shock.

c. Deprivation of food and water

Limitation or deprivation of food and water was often reported. The account of Antonio Campos Mendoza, a 54 year-old union activist, is not atypical:

> In the headquarters of the National Guard he was kept in a small cubicle with a mirror for eight days without water or food, from April 4 to April 11, 1986. He was kept standing the whole time, and his feet swelled up painfully and turned almost black. He still has a hard time walking.
>
> His interrogation began when an interrogator came up behind him and said, "Now we will begin to work," and hit him hard on both ears with the palms of his hands. His ears still are ringing. His interrogation was conducted while he was blindfolded and under a hot light. He sweated but was permitted no water.

> They told him that he could have water and anything else he wanted, including money, if he confessed to certain crimes. They accused him of the kidnapping of Ines Duarte and of planning a bank robbery. He said he was innocent of everything.

d. Rape

Virtually every female political prisoner and detainee reported a rape or rape attempt shortly after arrest. Although the rapes do not appear to be a deliberate part of any interrogation technique, the frequency of the reports suggests that there are few safeguards against such treatment.

4. The Government's Response

Officers of the security forces do not deny that certain coercive questioning techniques, such as sleep deprivation and relay questioning, are widespread. The head of the National Police did not "exclude the possibility" of hallucinations as a result of sleep deprivation during interrogation.[41] He said that sleep deprivation is a "very specialized area" and that the police have "psychologists who oversee this."[42] As for physical abuse, the head of the Treasury Police admitted that it may not have been entirely eliminated, although he asserted that "99.5% of the prisoners" were not physically harmed.[43]

U.S. Ambassador Corr put it much the same way. When the delegation reported continuing torture by Salvadoran authorities, he replied, "I'm not a fool. [I know] torture happens in Latin America."[44] "Maybe some [detainees] have been tortured," Ambassador Corr conceded, but he questioned whether this was the reason for the large number of

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41. Lawyers Committee interview with Col. and Dr. Rodolfo Revelo, October 22, 1985.

42. Id.

43. Lawyers Committee interview with Col. Rinaldo Golcher, October 21, 1985.

44. Lawyers Committee interview with Hon. Edwin Corr, October 21, 1985.

confessions obtained by the security forces: "Latins talk a lot when they're caught," he told the delegation.[45] He also emphasized his opposition to torture and his confidence that U.S. advisers would not condone such behavior.

In general, prisoners say, their interrogators seem careful to avoid torture that would leave marks. This suggests either that the highest ranks of the security forces have generally forbidden physical torture or that discovery of the signs of torture by the International Commission of the Red Cross (ICRC)[46] or human rights observers is considered a potential problem for the interrogator or the security forces. Col. Golcher of the Treasury Police stated that "drastic measures" are taken against those who engage in torture.[47] When asked what those measures were, he said that they include expulsion from the service. The security forces have not publicized any cases in which members of the security forces were disciplined for torture.

Several officials in the security forces defended coercive psychological techniques by pointing out that guerrilla cells have standing instructions to disband within 48 to 72 hours after a member of the cell is captured. It is critical, these officials stated, to obtain useful intelligence during the first two to three days after arrest, and this requires harsh interrogation techniques. "We've tried to improve the behavior of the security forces," the delegation was told by Col. Lopez Nuila, Vice Minister of Defense, but "this is not a normal situation. These are terrorists without moral principles. If these people were POWs they would get worse treatment."[48]

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45. Id.

46. See infra., pp. 60-63.

47. Lawyers Committee interview with Col. Rinaldo Golcher, October 21, 1985.

48. Lawyers Committee interview with Col. Lopez Nuila, October 21, 1985.

C. Deterioration of the Rule of Law

One of the ironies of the current judicial system's encouragement of coerced confessions is that it works too well. Once swept up by the security forces, virtually everyone--guilty and innocent alike -- confesses to a crime. Yet sooner or later some of those arrested must be freed, perhaps to please foreign public opinion, or perhaps because the detainee's innocence has become plain to all.

Everyone in El Salvador knows how the police obtain extrajudicial confessions. This leads to a widespread assumption that most confessions are meaningless; but because such confessions are admissible evidence, they cannot be ignored. In order to free innocent persons who have been coerced into confessing, the courts resort to hypertechnical readings of extrajudicial confessions.

The President of the Supreme Court gave examples of recent decisions in which extrajudicial confessions were thrown out as insufficient. The law, he noted, requires that the confession be "spontaneous." If the extrajudicial confession signed by the prisoner does not contain the word "spontaneous," he said, it is insufficient.[49] The prisoner may be released.

The extrajudicial confession may also be rejected if it is inconsistent with the judicial confession. He gave as an example a case in which the prisoner's extrajudicial confessions said that he was not under pressure when he made his confession. Because he did not repeat these words in the judicial confession, the President said, he may be freed; the two confessions were deemed "inconsistent."[50]

In another example, a defense lawyer told the delegation that the promulgation of Decree 50 resulted in a windfall to certain political prisoners. Decree 50 requires that two members of the security forces witness the confession. Its predecessor, Decree 507 had required only one such witness. Case files prepared under Decree 507 ordinarily did not contain

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49. Lawyers Committee interview with Dr. Francisco Jose Guerrero, October 19, 1985.

50. Id.

the signature of a second witness. The absence of two witnesses rendered the files inadequate, the Supreme Court ruled, so the prisoners must be freed.

If extrajudicial confessions were entirely voluntary, every one of the rulings described above would be a gross miscarriage of justice. In fact, such rulings are the only method by which rough justice can be done for the many prisoners who have been coerced into confessing to crimes they did not commit.

Yet doing rough justice in this way has a corrosive effect on the judicial system. It fosters the dangerous but widely held view in El Salvador that the legal system is a morass of technicalities having little relation to truth-finding. The best that can be done, this view holds, is to manipulate the technicalities so as to achieve a result derived from external considerations. In some cases, of course, the desired result is to convict the guilty and free the innocent, using external evidence to decide who is guilty and who is not.

But just as often the external considerations are entirely illegitimate. The delegation heard frequent allegations that all but the most notorious prisoners are able to bribe their way out of jail. These allegations were consistent even as to the size of the bribe required. In this atmosphere it is no surprise that other external considerations are also taken into account, that many judicial rulings are widely attributed not to the merits of the case but to the influence of the security forces, or of the President of the Supreme Court, or of political party obligations.

Once a legal system accepts the principle that law must be manipulated to achieve justice, manipulating the law to achieve political ends loses its air of illegitimacy and becomes commonplace. One example of its effects, discussed above[51], is the Avila case, in which an officer in the security forces was acquitted of murder despite the evidence of four witnesses, two who conspired with Avila to commit the crime and two who heard Avila admit his participation afterward.

D. Reducing the Likelihood of Coerced Confessions

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51. See infra, pp. 26-32.

1. Reforming the Law

The problem of coerced confessions is one that ultimately must be addressed by Salvadorans and the Salvadoran judicial system. Confessions will cease to be coerced when the judicial system refuses to accept them. The question of how to control such coercion through the Salvadoran legal system is one of the most pressing that will be faced by the Legal Revisory Commission empaneled with U.S. assistance to review and revise El Salvador's justice system.

a. The Legal Revisory Commission

The Revisory Commission's mandate is extraordinarily broad, and perhaps overly ambitious, including the review of the Penal, Civil, Military Justice and Juvenile codes, and other laws and decrees which define crimes and misdemeanors and their penalties. Its budget -- $2.7 million in AID funds and $580,000 in Salvadoran government assistance -- is also substantial.

The stated purpose of the Revisory Commission is:

> To carry out a series of comprehensive and critical studies of the legal framework for the Salvadoran justice system and to develop and present to the legislative assembly new draft legislation incorporating the findings of the studies . . . and to establish a new system which guarantees prompt and effective justice and which guarantees the integrity of judicial and other officers who participate in trials.[52]

The Revisory Commission's charge extends to reviewing the effectiveness of current criminal procedures in contributing to the resolution of crimes and the identification of criminals, insuring due process of law, delivering prompt and efficient

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52. Grant Agreement Amendment No. 1, Annex I, pp. 1-6; see also Amendment dated May 14, 1985.

justice, and assessing the effectiveness of current evidentiary rules. In addition to all this the Revisory Commission is expected to act as the coordinating body for all of the judicial reform project's activities.[53]

The members of the Revisory Commission were appointed by President Duarte in September 1985.[54] The Revisory Commission is now apparently beyond the planning stages, and some technical working groups have been established to conduct the contemplated studies and to recommend changes.

This is not the first time that comprehensive reforms in the laws have been undertaken. Interim President Alvaro Mangana established a commission to reform the judiciary in 1983; it proposed Decree 50 as a substitute for Decree 507. A comprehensive revision of the Penal Code was performed in 1973 and took effect the following year.

There is general agreement that the Penal Code, recently revised in 1973, and the Code of Criminal Procedure will require only modest changes. Criminal defense attorneys, prosecutors, judges, and even the head of the National Police expressed the view that the Penal Code and the Code of Criminal Procedure were basically sound and that the modifications required were minor.

Col. and Dr. Revelo stated that there was no major problem with the "secondary laws," the laws other than the Constitution. The changes to be made in the Penal Code and the Code of Criminal Procedure, according to him, should be easy to do. "They only have to be written down. What is more important and more difficult, is to create a strong judiciary."[55]

This is not to say that the Revisory Commission has no work to do. The Constitution was adopted in 1983, but many of El Salvador's laws still have not been brought into

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53. Id., Annex I, p. 1.

54. Id., Annex I, p. 7.

55. Lawyers Committee interview with Col. and Dr. Rodolfo Revelo, October 22, 1985.

conformance with it, including the Penal Code and the Code of Criminal Procedure.[56]

b. Limiting Admissibility of Extrajudicial Confessions

The Revisory Commission understands that modifying the laws will not alone do much to improve human rights. It is apparently looking closely at the structure of the judicial system as well. In this connection, reform of the Decree 50 system is said to be a priority of the Revisory Commission's penal section. Among the most pressing concerns about Decree 50 should be the incentives that it provides for coercion of confessions.

The history of El Salvador contains multiple examples of reformers seeking to abolish or limit extrajudicial confessions in order to abolish or limit the torture that is used to produce the confessions and the detention that follows them. Each of these attempts has failed. Reformers succeeded in prohibiting the use of extrajudicial confessions in the late 1950's, but the security forces claimed that they were unable to obtain convictions without this tool. It was quickly reinstated.

Then, in 1974, the new penal code limited its use, forbidding its introduction as evidence in political crimes and setting limits on its use in other cases. But the growing civil war soon undercut the 1974 change, first by encouraging the security forces to charge political prisoners with common crimes and then by provoking a state of siege that lifted the ban on extrajudicial confessions in political crimes.

The Lawyers Committee is strongly tempted to recommend that extrajudicial confessions made to the security forces be made entirely inadmissible. Certainly, judges should be expressly authorized to disregard a confession if they conclude that it was coerced. That is the standard required by international law.[57]

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56. For example, the Constitution abolished the death penalty, but the Penal Code continues to prescribe death as the maximum penalty for some crimes.

57. See, e.g. American Convention on Human Rights, art. 8 ("A confession of guilt by the accused shall be valid only if it is made without coercion of any kind."); U.N. General Assembly Res. No. 3452, Declaration on Protection from Torture, art. 12 ("Any

Three serious considerations argue against the automatic exclusion of all extrajudicial confessions. First, the exclusion of reliable evidence from a criminal trial in order to deter police misconduct is controversial almost everywhere it has been tried. Second, experience in other nations, including the United States, suggests that suspects sometimes do make incriminating statements to the police even in an atmosphere free of unlawful coercion. To exclude such probative evidence would be to further remove the Salvadoran legal system from the search for truth. Third, just such a reform failed during the relatively peaceful 1950's; it is unlikely to succeed in the middle of a bitter civil war.

Nonetheless, the system's love-hate relationship with extrajudicial confessions is so corrosive that something must be done to break the perception that criminal justice consists of putting paperwork in order and then scrutinizing it for bureaucratic flaws. One reform could be implemented immediately and would represent a substantial first step in this direction. The security forces should be required to present objective, probative evidence in addition to the extrajudicial confession introduced at the end of the period of provisional detention. If the investigations conducted by the security forces and the military judge of instruction turn up no corroboration for the confession, the confession should be excluded.

No doubt the security forces will find this requirement onerous. "The extrajudicial confession may be the only evidence" that can be obtained, Col. Lopez Nuila told the delegation, "because the witnesses are afraid."[58] For many of the prisoners, however, especially those who are in fact guilty, evidence may grow out of the circumstances of the arrest. A man captured carrying a weapon in a war zone is likely to be part of the FMLN. Yet the current system of justice puts no premium on keeping a record of the evidence that led the security forces to perform the arrest in the first place.

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statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence . . .").

58. Lawyers Committee interview with Col. Lopez Nuila, October 21, 1985.

In other cases, it may be possible to verify details in the extrajudicial confession. If the prisoner's confession identifies an FMLN arms cache, and arms are in fact found there, the evidentiary value of the confession is substantially greater.

Requiring such independent evidence would be a step toward teaching the security forces to do their job without relying on coercion. It would also be a step toward teaching judges to do the hard job of sifting evidence to find the truth, rather than relying on the police to present them with a perfect -- and perfectly phony -- file.

2. Improved Monitoring of Detainees' Condition

Another obvious way to reduce torture and coercive questioning is to let the outside world see the prisoner and his condition as early as possible. Political detainees have no right to see defense counsel or family during the initial 15-day period of administrative detention.

Under an agreement entered into with the Government of El Salvador in 1982, the International Committee of the Red Cross (ICRC)[59] has the right to interview political detainees eight days after arrest.[60] A representative of the ICRC is thus usually the first person seen by the detainee after arrest. For

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59. The International Committee of the Red Cross has its headquarters in Geneva, Switzerland. Its principal mission is to assure the proper treatment of prisoners in armed conflicts. It has a self-perpetuating board of directors made up entirely of Swiss citizens. The ICRC has approximately 100 employees in El Salvador, of whom about one-third are Swiss and the balance Salvadorans. There is a Red Cross of El Salvador, which provides a variety of emergency medical services in the country, but it is wholly distinct and separate from the ICRC.

60. A book of suspects ("libro de reos") is maintained by each of the security forces. That book contains the date of arrest, among other data. ICRC representatives use the book of suspects to determine how many detainees have been held in custody for eight or more days. Most of the detainees are seen by an ICRC representative within ten days of arrest. Still, interviews with political prisoners incarcerated in Mariona and Ilopango prisoners suggest that in some cases political prisoners do not see a representative within the prescribed eight day period, or even within ten days of their arrest. Given the ICRC's frequent visits to the detention centers, it is reasonable to assume that prisoners who did not see the ICRC were hidden by the authorities.

seven days then, political detainees are held totally incommunicado, without even the protection of ICRC supervision. During this period, detainees may be abused without the knowledge of anyone outside the security forces.

a. The Role of the ICRC

The ICRC is a singularly effective guardian of human rights in El Salvador. Certainly it seems to inspire respect and even a measure of apprehension of the lower ranks of the security forces, perhaps because of its access to top government officials. If the ICRC learns that detainees have been tortured or otherwise mistreated, it first makes an oral protest to the officials in charge. This may be followed by a confidential written report. The ICRC provides summary reports on a periodic basis (previously every three months and now every four months).[61]

Both defense counsel and political prisoners point out that once the ICRC determines the presence and condition of the detainee, the detainee is far less likely to die, disappear, or be tortured. This is in part because injuries inflicted after the first ICRC visit cannot be attributed to "resisting arrest." It is also because, once a prisoner is on the books, standard procedures must be followed. This includes transfer within 15 days of arrest from the headquarters of the security forces to the far less dangerous political sections of the main prison.

In the main prison, detainees are free from official torture.[62] Detainees are well aware of these facts, and it is likely that the ICRC visit deprives interrogators of a psychological advantage. Of course, detainees who expect to be transferred soon to a political prison also know that their conduct during interrogation will soon be scrutinized by other prisoners, many of them FMLN militants. This too may affect

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61. This summary is confidential. However, under standard ICRC procedure, if the Government of El Salvador releases any part of an ICRC report, then the Red Cross is free of its obligations to maintain confidentiality and may then release any part or all of its report or reports. Thus far, the confidentiality of these reports has not been breached by El Salvador.

62. See infra., p. 66-68.

a prisoner's willingness to cooperate further with the security forces.

b. Reducing Unsupervised Detention

If the visits of the ICRC were made earlier than the eighth day following arrest, the period of unsupervised detention would be shorter, and the risk of torture would be reduced. But permitting visits by the ICRC before the eighth day, it is said, runs the risk that the security forces will simply revert to their old ways, that more political detainees will be killed, held in clandestine jails, or "disappeared." These arguments cannot be treated lightly.

The heads of the security forces defend the eight-day waiting period by noting that, after the ICRC representative visits a detained political prisoner, most detainees stop talking. (Some security forces officers at times have apparently accused the ICRC representative of giving prisoners legal advice or telling them to stop talking. The ICRC has denied these accusations.)

The security forces believe that a shorter period would not give them sufficient time to interrogate detainees. In their view, it is essential to get information about FMLN members associated with the detainee at the beginning of the interrogation -- within the first 48 to 72 hours of detention-- in order to apprehend them. Otherwise, upon learning that one of their associates has been apprehended, members of the cell disperse and flee.[63]

One defense attorney representing detainees charged with committing political crimes suggested that the security forces were opposed to advancing the time of the Red Cross visit because from their first two days of torture, time was needed for prisoners to recuperate before they were seen by the ICRC representative.

In contrast to the position of the Salvadoran security forces, U.S. Ambassador Corr told the delegation that moving up the ICRC visit was "a great idea." He pointed out that the

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63. Lawyers Committee Interview with Col. Montes, October 21, 1985, and Lawyers Committee interview with Col. and Dr. Revelo, October 22, 1985.

FMLN had not allowed the ICRC to visit the kidnapped Ines Duarte for over 30 days.[64]

The Lawyers Committee believes that permitting an ICRC visit on the fourth day could substantially reduce the abuses suffered by prisoners without so hamstringing the security forces that they return to the barbaric practices of the past; we note, however, that the idea was opposed by the chiefs of every one of the three security forces.

The Lawyers Committee believes that most useful intelligence will have been obtained from detainees during the first three to four days of detention. A longer period without an ICRC inspection invites abuse, including physical torture whose signs may disappear during an eight-day recuperation. Reducing the period to four days should serve most legitimate intelligence needs while discouraging human rights violations.

Chapter 2. Extended Pre-trial Detention

Once a detainee has been coerced into confessing to a political crime, he usually moves to new facilities not controlled by the security forces. By far the bulk of all political detainees are housed in the political sections of two large prisons -- Mariona prison for men and Ilopango prison for women. These prisons are administered by the Ministry of Justice. Both contain numerous common criminals, but each has a segregated section reserved for political prisoners.

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64. Lawyers Committee interview with Hon. Edwin Corr, October 21, 1985.

A. Waiting for Trial

El Salvador's political prisons, indeed all its prisons, are almost entirely filled with men and women who have never been tried. In 1982, more than 80% of those in El Salvador's prisons were awaiting trial.[65] In the political sections today, the delegation was told, the figure may exceed 90%. In the ordinary criminal courts, delay is the norm, and bail may not be posted in any crime punishable by more than three years in prison. While this does not include many crimes against the person, it does include thefts of property valued at more than about $4.[66]

In the political section, this extended detention of prisoners reflects the general view of judges that it is unwise and perhaps unsafe to free too many political prisoners without the approval of the military. Indeed, this reluctance to order the release of political prisoners has in some cases resulted in political prisoners staying in jail for up to a year after the completion of their sentence. To the government's credit, most of these "postsentence detainees" were apparently freed during 1985, after the Ministry of Defense indicated it had no objection.

A major change in the handling of political cases seemed to occur at this time. According to statistics supplied by the military judge of first instance, the rate at which cases against political prisoners were dismissed increased substantially between 1984 and 1985. Although the Decree 50 system now appears capable of dismissing cases against prisoners when no crime has been proved, there are still long delays in the processing of cases. Moreover, dismissal of the case against a prisoner does not mean that the prisoner will be immediately released. Instead, he stays in jail while the dismissal is appealed to the court martial.

This can mean four years or more of pre-trial detention for political prisoners. Several cases that were opened in 1981

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65. AID Study, pp. 12-13.

66. Id. at 13.

remained open in 1985. Since the defendants almost always await trial in prison, these delays are extremely onerous.

The military judge of first instance estimates that most cases could be resolved within three months if other cases were not already backed up in the pipeline. He supplied figures to indicate the extent of the backlog. In August 1985, the Decree 50 system had 813 military and political cases pending. Seventeen cases were decided in that month. Sixteen more were ready for decision. In September, the court disposed of 30 cases, but the backlog continued to grow as new cases were added. At the end of the month there were 886 cases pending. By the middle of 1986, the backlog of cases had risen to more than 1300.

While the Lawyers Committee is not in a position to verify these statistics, the figures illustrate clearly the inability of the current Decree 50 system to clean up the Decree 50 backlog and reduce pre-trial detention. Until the fall of 1986, there was only one military judge of first instance. His support staff consisted of four secretaries and auxiliaries. There were not even enough typewriters for the judge's staff to keep current with the paperwork. Filing space was also inadequate. Shortly before the October, 1986 earthquake, two additional military judges were appointed; the combination of the historically inadequate facilities and the natural disaster have prevented significant reduction in the backlog.

Statistics also suggest that, once cases are processed, a majority of the prisoners are acquitted. Of the 47 cases concluded in August and September 1985, for example, 34 defendants were acquitted. It appears that reducing the backlog of cases would therefore result in a substantially smaller prison population.

The U.S. government has played an active role in encouraging the courts and security forces to eliminate the backlog and free those political prisoners against whom no case can be made. Ambassador Corr was instrumental in urging the appointment of two new military judges of first instance.

Unfortunately, extended pre-trial detention is not solely the result of a backlog caused by too few trial judges. The Decree 50 system has been used so as to institutionalize prolonged detention, based on coerced confession, without trial. The use of the Decree 50 in this way may not end with the addition of two more judges.

The court system for handling political crimes should no longer be a part of the military judicial structure. The current Decree 50 system provides little security for the judges while it provides ample opportunity for informal and questionable contacts between judges and the security forces. While some specialized tribunal may well be needed to handle crimes in which intimidation is a real risk, the tribunal can and should function within the judicial branch.

B. The Availability of Habeas Corpus

Habeas corpus, or amparo, is available in El Salvador to persons who have been deprived of their liberty without justification. As described by the President of the Supreme Court, Dr. Guerrero, the process is relatively simple. A petition must be filed, he said, but even a telegram is sufficient to provoke the court to action. When a habeas corpus petition is received, the Supreme Court names a "judge executor" (juez executor), usually within 24 hours. The judge executor may be anyone from a law student to an eminent practitioner with many years of experience.

The judge executor's function is to inquire within five days into the reasons for the prisoner's detention. If the prisoner's case is still pending, the judge executor reviews the file to see whether there is legal proof in the file. If there is no proof, the judge executor is required to report to the Court that the detention should end.

After receiving the report of the judge executor, the Supreme Court may ask that the case file be sent directly to it from the lower court. Although the Decree 50 courts are not subject to the direct supervision of the Supreme Court, the Supreme Court does grant habeas corpus to political prisoners (although not during their first 15 days of detention by the security forces). Asked whether the security forces and the authorities at Mariona and Ilopango prisons respected orders to release political prisoners, Dr. Guerrero said that "they have always released people in response to such orders.[67]

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67. Id.

The security forces do appear to cooperate when the court orders a prisoner released, although this may reflect as much the Court's delicate sense of when it is wise to issue such orders as it does a deep seated respect for the judiciary. (Amparo decisions are not published, ostensibly because they do not make much law; "we want to move quickly" in such cases, Dr. Guerrero stated.[68])

Certainly the Court has become bolder in granting such orders recently. According to statistics released by the Supreme Court in March 1985, 20 out of 23 political prisoners petitioning for amparo before June 30, 1984, had been released. Between July 1984 and March 1985, 56 amparo cases were appealed to the Supreme Court, and the prisoners were successful in 41 of them. Other courts were reported to have freed 84 prisoners, for a total of 145 prisoners freed by the judicial system.[69]

C. Life in the Prisons

In most respects, Salvadoran prisons are an improvement over the jails of the security forces. Remarkably little restraint is imposed on prisoners at Mariona and Ilopango. During the day, the Ministry of Justice spends almost all of its time and attention guarding the entrances and exits. Once inside, one rarely encounters prison guards. The guards do enter at 6:00 each evening to lock the prisoners in their cells, but otherwise order is maintained largely by the prisoners themselves.

This is particularly true in the political section, where the task is made easier by the fact that many prisoners have long been subject to the discipline of the FMLN. (One prominent

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68. Lawyers Committee interview with Dr. Francisco Jose Guerrero, October 19, 1985.

69. Many of the amparo petitions were granted because Decree 50 required that extrajudicial confessions be witnessed by two members of the security forces; Decree 507 had required only one. Retroactive application of Decree 50 to files prepared under Decree 507 has apparently resulted in findings of insufficient evidence in numerous cases.

political prisoner indicated that, of the 600 political prisoners at Mariona, "about 100 are militants," i.e., avowed members or supporters of the FMLN. Another estimated that "15% were active in the FMLN; others were collaborators in minor ways."[70])

The lack of regimentation or indeed control exercised by the Salvadoran government inside Mariona is plain from a glance at the walls of the political section. They are covered with revolutionary posters, murals, and slogans proclaiming the imminent victory of the FMLN. The Committee of Political Prisoners of El Salvador (COPPES), which is responsible for maintaining order, sells food and soft drinks from a concession stand in one cell. Elsewhere, visitors may purchase hand-made necklaces and silk-screened T-shirts with the COPPES logo and a likeness of the murdered Archbishop Romero.

At Ilopango, the slogans are equally in evidence, but the prison's most remarkable feature is the number of children that it houses. Women prisoners are permitted to bring their children under age 6 to the prison to live with them; many have no alternative but to do so.

The lack of government control means that the left provides the day-to-day discipline that would otherwise be missing. One high COPPES official who was later released in exchange for President Duarte's daughter described the internal organization of the Mariona political section in the following terms:

> Discipline is maintained in the political section because prisoners are not common criminals. Political prisoners submit voluntarily to the disciplinary system of COPPES. Cells (which hold ten to twelve prisoners each) are organized into collectives. Each collective has a disciplinary member who mediates disputes and enforces rules such as the prohibition on drugs.

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70. Lawyers Committee interview, October 20, 1985. Lawyers Committee representatives have also heard lower estimates of the number of militants in the political section at Mariona.

COPPES has a set of written rules. If someone violates the rules, he must be reoriented. The disciplinary member explains the problem and seeks the voluntary cooperation of the prisoner. There are a set of standard punishments. For example, if a prisoner fails to clean the cell on his appointed day he must clean the cell for two days in a row. If violations continue, the prisoner is denied the medical services provided through COPPES. He may also be excluded from the political section.

In addition to disciplinary members, each collective has coordinators for financial affairs and for social work. Any problems that cannot be resolved in the cell block are raised to an assembly of all COPPES coordinators. If a solution cannot be achieved at the assembly, matters are referred to the highest level of COPPES, a "junta" of prison leaders.[71]

Government investigators seem rarely to interrogate, let alone torture, prisoners who are being held at Mariona or Ilopango. There are too many well-established lines of communication between COPPES and the outside world for the results of torture to be covered up, and the support and encouragement of like-minded prisoners apparently make other forms of interrogation easier to resist.

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71. Lawyers Committee interview, October 20, 1985.

SECTION III: MONITORING U.S. COUNTERTERRORISM ASSISTANCE TO EL SALVADOR'S SECURITY FORCES

The role of the United States in El Salvador is of course not limited to funding improvements in the justice system. Other U.S. aid programs also have implications for human rights in El Salvador. Perhaps the most troubling program is the "counterterrorism" assistance now being provided to the El Salvador's security forces.

The United States provides massive amounts of financial aid to the Salvadoran armed forces. But Section 660 of the Foreign Assistance Act of 1961 has until recently prevented the United States from providing most forms of direct assistance to El Salvador's National Police, Treasury Police, and National Guard. These units function largely in the role of police forces, and Section 660 bars the use of U.S. aid "to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces of any foreign government . . . ."

Section 660 was added to the Foreign Assistance Act on the initiative of Senator Abourezk in 1974. The prohibition was a reaction to the Public Safety Program, begun in the 1950's by President Eisenhower, which provided aid to foreign police agencies. The program was expanded by the Kennedy Administration in the early 1960's as a counterinsurgency program, providing American advisers and police training programs to foreign police agencies, particularly in countries threatened by leftist guerrillas. It also transferred to foreign police forces substantial amounts of police equipment, primarily telecommunications gear, vehicles and weapons. Training was carried out both by sending U.S. advisers abroad and by sending foreign policemen to other countries to attend police academies.

By far the most active participant in the program was the government of South Vietnam, and criticism of the Vietnam war soon focused attention on that country's Public Safety Program. U.S. aid and advice to the South Vietnamese police were said to identify the United States as the sponsor of such practices as the torture of suspects and the imprisonment of criminals in the "tiger cages" of Con Son Island. A popular film of the

early 1970's made the Public Safety Program the chief villain in a tale of oppression in Latin America.

Congressional investigations of the program turned up no evidence that American advisers had participated in human rights abuses, but many police forces that had received equipment under the program and indeed many police officers who had been trained in the program were implicated in human rights abuses. For this reason, Congress decided in 1974 that it was too risky for the United States to associate itself closely with foreign police forces. It enacted Section 660, barring U.S. aid to police forces and prisons in foreign countries. That broad policy was largely followed in El Salvador until 1985, although some exceptions were apparently made in order to provide "military" training and assistance to help Salvadoran security forces perform military (rather than police) functions.

In July 1985, however, Congress amended Section 660, allowing assistance to the police and prisons of Honduras and El Salvador, provided certain conditions are met. Before providing such aid, the President must:

> send Congress a notification that he has determined that the government of the recipient country has made significant progress, during the preceding six months, in eliminating any human rights violations including torture, incommunicado detention, detention of persons solely for the non violent expression of their political views, or prolonged detention without trial. Any such notification shall include a full description of the assistance which is proposed to be provided and the purposes to which it is to be directed.[72]

On October 29, 1985, the Secretary of State sent such a notification with respect to El Salvador.[73] After certifying

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72. Congressional Record H. 6718 (July 29, 1985).

73. The second notification, which took place in November 1986, repeated earlier claims of progress on human rights reform. Addressing the issue of torture, for example, the State Department report stressed the security forces' "inadequate

that El Salvador had made progress toward ending torture, incommunicado detention, prolonged detention without trial, and detention for non-violent political expression, the State Department described a program of proposed assistance that would provide training in military and police tactics, as well as a variety of equipment, including weapons, ammunition, vehicles, and communications gear. The notification stated that the Administration would use existing military appropriations to begin supplying the security forces.

At the same time, the Administration proposed and Congress approved a more elaborate version of the same assistance as part of its 1986 Central American counter-terrorism assistance program. Under this legislation, the Salvadoran security forces and army received some $4.5 million in training and equipment. U.S. military advisors in El Salvador are teaching the security forces how to set up roadblocks and search suspects. Antiterrorist funds are also to be used to provide courses in searches, patrols, and internal discipline. Unlike the military training, these courses will be taught in the United States by police officers from urban U.S. police forces.

The bulk of the money, however, is being spent on equipment. More than 100 trucks and patrol cars will be supplied to the security forces, along with more than 200 walkie talkies and a large number of patrol car radios. It appears that none of the $4.5 million is currently earmarked for weapons or ammunition. For Fiscal 1987, the Administration has requested $6.8 million, including $5.6 million for vehicles, radio equipment and weapons, and $1.2 million for training.

One year after this program began, the same concern that motivated the enactment of Section 660 has been raised again in El Salvador.[74] In June and July, the Office of Counter

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investigative skills and facilities" which, it concluded, led to "prolonged detention before trial, and, in some cases, to abuse of prisoners to obtain confessions."

74. The U.S. has already trained a 50-man antiterrorist unit of the Treasury Police which will apparently receive additional assistance under the Administration counterterrorism proposal. The unit was first used in an urban situation, when it was used at the order of President Duarte to break an illegal hospital strike. This

Terrorism in the State Department sponsored the first training program for Salvadoran Police in the United States. Authorized by the Anti-Terrorism Assistance Act, 76 Salvadoran officers were trained under this program. It was subsequently reported in the press that at least three of the participants in that program, Colonel Jose Dionisio Hernandez, Lt. Col. Jose Adolfo Medrano and Major Baltazar Lopez Contez had participated in death squad activities.[75]

In August, the Miami Herald reported that a fourth participant, Captain Victor Efrain Cartagena, the Intelligence Chief of the National Police, was alleged to have tortured a group of Salvadoran prisoners. One of those prisoners, Adilito Escobar, charged that following his capture in the fall of 1985, Captain Cartagena had beaten him and applied electric shocks to his body.[76] As a result of these revelations, both the City of Phoenix and Northwestern University withdrew their participation in the training program.[77]

While the government and security forces of El Salvador may no longer use death-squads as instruments of state policy, the continuing handful of death-squad-style killings each month and the identification of death squad participants with the security forces receiving training in the United States gives

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incident, in which the U.S.-trained forces killed four other policemen and so disrupted hospital operation that one woman patient died, was but an earlier indication of the inability of U.S. training to transform El Salvador's security forces into a thoroughly professional force.

75. See McManus, Doyle, "Death-Squad Salvadorans said to Train in U.S.", Los Angeles Times, August 7, 1986; Polk, Leslie, "3 Salvadoran trainees 'killers'".The Phoenix Gazette, July 19, 1986. The CBS Evening News reported during its broadcast on August 5, 1986 that "two intelligence officials -- one Salvadoran, the other American -- have told CBS News that despite State Department denials the death squad accusations are in fact true."

76. As cited in El Salvador: Update Counterterrorism in Action, El Rescate Human Rights Department, January 1987, p. 14.

77. "Phoenix abruptly stops training of 16 Salvadoran police officers", The Arizona Daily Star, July 18, 1986; McManus, Doyle, "Death-Squad Salvadorans said to Train in U.S.", Los Angeles Times, August 7, 1986.

force to the fear that such tactics could be revived. If the United States provides direct assistance to the security forces, and in particular to those who have participated in death squad activity or torture, it will be seen by some as having endorsed their behavior. And if the security forces do return to the massive abuses of the past, the U.S. will be able to do no more than cut off future assistance. Nothing in the law can stop the security forces from using U.S.-supplied trucks, patrol cars, and radios to enhance the efficiency of their abuses.

There are of course arguments to be made in favor of such aid. The United States is clearly so heavily identified with the Duarte government and its military forces that it would take a fine-tuned symbolic sense to see this aid program as changing the nature of the U.S. relationship with that government. U.S. aid has been used by Congress and two Administrations to lever changes in human rights policies from the Salvadoran government and its security forces. Having produced substantial changes, it may be argued, the United States should no longer adopt a policy toward the security forces that is all stick and no carrot.

This is evidently the Administration's view. Those who take this approach must, however, recognize the profound responsibility that goes with it. For the legitimacy of U.S. aid to El Salvador's security forces rests on the premise that such aid will make those forces more responsive to human rights concerns. That premise remains unproven. At a minimum, such aid should be conditioned on taking concrete steps to institutionalize protections for human rights. In particular, these conditions should include steps to guarantee the independence and effectiveness of the special investigative unit and to assure the prosecution of human rights violators in the security forces. But even with those conditions, only constant, unrelenting vigilance by Congress and the Executive will produce continuing improvements in the security forces' record on human rights. Whether Congress has the necessary attention span -- or the Executive the necessary will-- remains to be seen.