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**Feasibility Study to Implement a Witness Protection
Program in El Salvador**

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ACRONYMS

DAN	División Anti-Narcóticos, Anti-Drug Division
FGR	Fiscalía General de la República, Attorney General of El Salvador
ICITAP	International Criminal Investigative Training Assistance Program
PNC	Policía Nacional Civil, National Police of El Salvador
PPI	Unidad de Protección a Personas Importantes, Unit for the Protection of Important Persons
UTE	Unidad Técnica Ejecutiva, Executive Technical Unit

I. Overview

- Methodology

II. Findings and Comments

- Executive Technical Unit
- Attorney General's Office
- Minister of Justice and Public Safety
- Attorney General's Office (Regional Supervisors)
- National Police
- Non-Criminal Justice (Universidad de Centroamérica)

III. Research Materials

- Constitution of the Republic of El Salvador
- Penal Code
- Penal Procedural Code
- "Victimology Guide" by John P. Dussich, Ph. D.
- Decree from the Ministry of Justice and Public Safety
- "Laws Pertaining to the Safety of Special Persons"
- Manual of Rights from the Procedural Penal Code
- The Organic Law of the National Police

IV. Related Issues and Concerns

- Funding sources
- Laws pertaining to the change of identity
- Laws pertaining to the disposition of unclaimed property
- Laws pertaining to the disposition of seized property and funds
- Specific legislation to protect witnesses, victims prosecutors, judges and police
- Expand Article 241, Section 11 (protection of witnesses/victims)
- Enforcing Article 13, Section 6b and 6c, on protecting the victim's privacy from the media, and extending protection to witnesses

V. Proposed Programs

- National Police program (presently in use)
- Recommended program

VI. Implementation and Follow-up

- Workshop
- Train the Trainers

Feasibility Study to Implement a Witness Protection Program in El Salvador Final Report

A. Overview

USAID/El Salvador requested Chemonics International to study alternative protective services for witnesses and victims on behalf of the Salvadoran government's Executive Technical Unit (UTE). Chemonics sent an expert criminal justice team comprised of Carlos Hevia of the United States and Luis Pagan of Puerto Rico to carry out the study from March 27 to March 31. Mr. Hevia led the team, which followed a three-step process involving individual and group interviews and documentary analysis. All activities were conducted in Spanish and an UTE project manager provided key administrative and technical support. The entire process was implemented in close coordination with USAID and the U.S. Department of Justice International Criminal Investigative Training Assistance Program.

In light of the complexity of witness and victim protection in El Salvador, Chemonics' approach encouraged broad justice sector support and ownership. After the presentation of a draft report to USAID and subsequent discussions, the team led a workshop May 11 and 12 with key justice sector operators and USAID and UTE personnel to review the draft's suggestions and recommendations. In a final meeting with criminal justice regional supervisors, participants incorporated suggestions and recommendations into the current National Police program.

B. Findings and Comments

B1. Interview with the Executive Technical Unit

A witness and victim protection program is needed to assist in curtailing a crime wave plaguing El Salvador. UTE representatives recounted a recent incident in which two cooperating witnesses from a gang of kidnapers were murdered a week after implicating co-conspirators. The representatives provided us with a "Victimology Guide," a research paper by John P. Dussich that discusses protection of victims and provides possible solutions and suggestions. We also received information on the National Police Unit for the Protection of Important Persons (PPI). The UTE director said this unit protects General Assembly members and other "VIPs," and, on occasion, provides protection to witnesses.

B2. Interview with the Minister of Justice and Public Safety

We heard similar information during this interview on the incident involving the murdered witnesses from the gang of kidnapers. The Minister of Justice and Public Safety was enthusiastic about implementing a witness protection program and requested information on similar programs in the United States. He expressed concern over abuse of programs in the event these were not monitored properly. Given the lack of resources, the minister likewise expressed

concern for program funding. On a more positive note, the Minister indicated that conditions were right to introduce legislative changes to implement an effective witness protection program.

B3. Interview with the Attorney General

The interview with the Attorney General and the Deputy Attorney General produced a few significant suggestions. The Attorney General indicated that his office should administer the witness protection program. Both suggested that the unit could be funded from funds presently assigned to the court system. The Attorney General indicated that 6 percent of the national budget goes to the court system since, under the new laws, the court system is responsible for the functional direction in the investigative process. Presently this function falls to the Attorney General, however, appropriate changes in funding have not yet occurred. The Attorney General suggested that legislative changes could be implemented to better allocate some of the seized funds awarded to the National Police Anti-Drug Division. A portion of the funds could be distributed among components of the criminal justice system, rather than place them into the country's general fund.

B4. Interview with the Attorney General's Regional Supervisors

Six regional supervisors from the Attorney General's Office provided us with an in-depth understanding of the magnitude of the problem of protecting witnesses and victims. These supervisors spoke of cases in which victims and witnesses were relocated throughout the country on the initiative of the attorneys from the Attorney General's Office, who at times used their own money to subsidize these relocations. The attorneys had expressed concerns about the police and correctional officers in some areas, as the officers themselves are sometimes suspect in the harassment and intimidation of victims and witnesses. The attorneys suggested that specific legislation be drafted to sanction those that harass or intimidate witnesses and victims.

Legislation should also be drafted regarding the disposition of abandoned properties for use in subsidizing the program. For example, when criminals seize property, and ownership can not be established, the property usually goes to waste, particularly in the case of food products and perishable items abandoned when suspects flee. The group made other suggestions:

- To better equip the police with the minimal personnel and equipment to reduce response time in rendering protection for a witness or victim
- To pass legislation to specifically protect witnesses and victims, and also to protect police and prosecutors threatened and intimidated by criminals
- To pass legislation to allow witnesses to testify in the judge's chambers away from the general public and the media, or allow for the witnesses and victims to testify hooded
- To establish guidelines for the media to provide better protection of the identity of witnesses and victims

- To allow part of the present budget for the court system to be transferred to the Attorney General's Office for the creation and administration of the witness protection program, and to address the Attorney General's investigative responsibility
- To establish better lines of communication with the police to build a much-needed level of trust
- To pass legislation awarding the criminal justice system with forfeited or abandoned property, and to establish a disposal mechanism to distribute the proceeds of its sale or disposition when it is not practical for use by the criminal justice system.

B5. Interviews with Judges

Judges from various courts said the general public should be educated about legislation obligating witnesses to testify, to be truthful, and to file complaints when victimized. They indicated that the system should instill confidence in citizens by purging itself of elements that create mistrust. The judges suggested legislative changes laws governing name changes, since the process of changing a name is cumbersome and requires the involvement of the mayor of the city where the citizen resides. Issuance of identification cards, which are required by law, is handled through city hall and the mayor is involved in identity changes.

B6. Interview with the National Police

We learned in our interview with the National Police about the witness protection program under the Unit for the Protection of Important Persons (PPI). This PPI, which came to our attention through the Executive Technical Unit, is mainly responsible for the protection and security of politicians, visiting dignitaries, and other "VIPs," and has been responsible for protecting witnesses and victims since 1996. Other criminal justice system entities in El Salvador know very little about the PPI's existence or its witness protection. The unit has a policy and system that, with very few improvements, could address the protection for witnesses and victims of crime. The unit is comprised of 1,200 officers who protect government figures. Specific details about this unit and its operation will be discussed later in this report.

B7. International Criminal Investigative Training Assistance Program

In an early interview with the International Criminal Investigative Training Assistance Program (ICITAP), we asked assistance in determining the existence of witness protection programs in neighboring countries. The Executive Technical Unit agreed to look into a possible program in Costa Rica; both ICITAP and the Executive Technical Unit informed us that witness and victim protection programs do not exist in neighboring countries.

B8. Interview with the Human Rights Section of the University of Central America

On USAID's suggestion we held this interview to explore non-criminal justice entities involved in relocating witnesses and victims. The university, through its relationship with the Catholic Church, has successfully hidden and protected individuals that have been witnesses or victims in cases with political overtones. Some individuals have been relocated to Canada and Australia.

C. Research Materials

Throughout the investigation, we familiarized ourselves with the Constitution of the Republic of El Salvador, the Penal Code, the Procedural Penal Code, the Manual of Rights from the Procedural Penal Code, a Decree from the Ministry of Justice and Security on the "Laws Pertaining to Protection and Safety of Important Persons," and a victimology study by John P. Dussich. Dr. Dussich's report of February 2000 makes specific reference to the need to create a witness and victim protection program in El Salvador.

Research revealed that witnesses and victims in El Salvador are obligated to testify truthfully and to appear when ordered to do so, except in those instances indicated by the law. These instances are when a conjugal relationship, or a blood relationship to the fourth degree, exists between the defendant and the witness. In these cases, the Attorney General or the judge determines a presumption of danger to the victim, and the police will provide special protection to the victim and relatives. Although Salvadoran law offers this protection, regulations on the type of protection afforded a witness is stated in one line of the code, and is indicated as a duty of the National Police, but without an in-depth explanation. The law also states that when witnesses, for fear of reprisal, make themselves unavailable for testimony, police may seize and obligate them to do so.

D. Related Issues and Concerns

All criminal justice entities interviewed expressed concern for the funding of a witness protection program. The Attorney General's Office suggested that changes in legislation can better address issues such as name changes, seizure laws, and protection for witnesses, victims, and operators. Better lines of communication between criminal justice operators in the protection of witnesses and victims and the media can create a greater sense of trust among all involved.

E. The National Police Program

The current National Police program, which has been in operation since 1996 and improved in 1998, was developed by the National Police in cooperation with the U.S. Marshall Service, and is operated and administered under the Unit for the Protection of Important Persons. The program is run as a project of the National Police and does not have any specific legislative support to operate, with the exception of a vague reference in Article 241, Section 11, of the Procedural Penal Code. This article states: "The officers and agents of the police have the obligation to help the victim and protect the witness." The Ministry of Justice's decree for the PPI, which governs this unit, in fact, contradicts the directives of the witness protection program under the PPI. The decree indicates that an individual who requires the National Police's protection, such as a witness, victim, or judge, must request this protection in writing to the National Police director. The director will respond within three days and, after assessing the degree of danger, will provide police protection for up to 90 days, as the director deems appropriate. Additional security, or any extension of time, will be the responsibility of the person requesting the protection.

The National Police's witness protection program requires that the individual requesting protection contact the National Police or the Attorney General's Office. Protection is granted for a period of 45 to 90 days if the danger is assessed as "high degree". Danger categorized as "medium degree" requires up to 45 days of protection. The officers are assigned to a protection detail for seven days, and it is the responsibility of the person being protected to house and feed the officer(s), since most officers are simply left at a location to protect an individual, and are usually without vehicles. In emergency situations, individuals, and sometimes their families, are placed in secured houses owned by the National Police. These houses serve in part as headquarters for the PPI, and partly as housing for witnesses. They are also used in emergency situations as temporary housing until a more permanent location can be found while witnesses wait for their safe return to their communities.

The National Police Program has witness and victim admission guidelines and requirements to enter the program. The type of crime is simply classified as a "relevant case," since by law the National Police is obligated to protect all witnesses and victims. The program defines high degree danger as based on a threat. The request for acceptance into the program must be made by the Attorney General's Office; the judge; the National Police; or the defense attorney in the case of a cooperating co-conspirator. The medium degree of protection is limited to those who do not fall within the criteria mentioned above. This medium level of National Police protection is limited to continuous police patrol and supervision as part of their regular functions and obligations described in Article 241, Section 11, of the Procedural Penal Code.

According to the National Police, since the program was improved in 1998, 189 witnesses have received protection. The Unit for the Protection of Important Persons has implemented a very secure system to maintain the integrity and confidentiality of records for witnesses and victims protected under the program. Unit directives also provide for the relocation of high-risk witnesses anywhere in the Republic of El Salvador, or abroad.

This program could solve the witness and victim protection problem in El Salvador if the following changes are implemented:

- The unit is supported by legislation to ensure its continuity.
- The unit is funded appropriately. Presently the lack of vehicles and communication equipment does not allow for the unit to operate efficiently and effectively in providing clients with the sense of security needed for the program to be successful.
- Better interaction among the various components of the criminal justice system.
- Active administrative participation from the Attorney General's Office, which is responsible for the investigative process in El Salvador.

F. Recommendations for a Program in El Salvador

These recommendations are guidelines for creating a witness and victim protection program. Establishing such a program requires administrative and operational policy changes within the Attorney General's Office and the National Police, but does not require any legislative changes. This program could be used to protect witnesses for short periods when they are needed for successful prosecution of certain crimes. Moreover, such a program could be used for witnesses for longer periods, given the notoriety of the crime's perpetrator, where danger to the witness and his/her family is highly probable after the trial is over.

This program would require coordination and cooperation between the National Police and the Attorney General's Office. The administrative portion of the program would come under the Attorney General's Office, while the operational portion would be under the National Police. All personnel assigned to the program would receive training to familiarize themselves with the program. To fulfill the program goals, members of the National Police would be required to receive tactical training at the Public Safety Academy. All participants in the administration or the operation of the program would be subjected to in-depth and periodic background checks, conducted by the appropriate division of the National Police. The Attorney General should name the director of the program; and the director of the National Police, with the agreement of the Attorney General, should name the operational coordinator. Minimal requirements will be established to fulfill these positions. The program would be operational 24 hours a day, seven days a week, with a witnesses' "hotline" available at all times so threats could be reported and addressed efficiently. Witnesses subject to threats or actions that negatively impact their ability to testify would notify the "hotline" for assistance, and steps would be taken immediately to protect the individual.

Witnesses might be referred to the program by the investigating officer; the prosecutor; the "hotline"; the Attorney General; or the defense attorney in cases involving co-conspirators. The director of the program and the operational coordinator would evaluate these referrals, and the program's assigned National Police personnel would investigate any threats to witnesses or victims. Appropriate police and prosecutorial action would be taken against anyone threatening or attempting to influence a witness or victim. The operational coordinator or its representative would determine the type of protection given to a witness or victim based on the nature of the threat. An appellate committee would evaluate the merits of those cases that would be rejected by the program director. The main criteria for participation in the program would be directly associated with importance of the testimony of the witness or victim to properly prosecute a perpetrator of a crime. The benefits of this program would be extended to witnesses and victims of relevant crimes, such as murder, kidnappings, drug trafficking and any other offense or case that, under the discretion of the program director, warrant incorporation into the program.

Participation in the program would be voluntary. Those participating would be asked to sign an agreement with the specific circumstances of their participation and the level of protection needed, as well as the transitional process at the completion of the program. Those declining to participate in the program would decline in writing. Those requesting to leave the program could do so after signing a release to that effect. Leaving the program, or declining to participate would not eliminate the obligation of a witness to testify.

Any blood relative or other relative to the witness or victim could also be accepted in the program if threatened, or if the potential exists, or if it were determined that not allowing them in the program would affect the testimony and participation of the actual witnesses. The program would offer medical and psychological assistance to its clients.

The director of the program and the operational coordinator should create a commission in which they would participate. This commission would be comprised of other government agencies to provide social, medical, educational, and any other professional services required by the witness or victim and their families. Members of the commission would be subject to a strict background check to maintain the integrity of the program, and to better protect the witnesses and victims. Residences to temporarily house program participants would be maintained, and efforts to relocate them would be the responsibility of the director. Relocation to other parts of the country or abroad would be evaluated on a case-by-case basis.

Any information on administration and operation is considered confidential. Those violating the program's confidentiality will be sanctioned accordingly. A special fund should be created within the Attorney General's budget to initiate this program.

Sugerencias y Recomendaciones para la Viabilidad de un Programa de Protección a Víctimas y Testigos

A. Sugerencias:

Los funcionarios entrevistados durante este estudio ofrecieron estas sugerencias:

- Establecer el programa de testigos bajo la administración de la Fiscalía General de la República.
- Implementar cambios legislativos para que parte del presupuesto actual de la corte sea trasladado a la Fiscalía General de la República para la creación y mantenimiento de este programa.
- Implementar cambios legislativos para que fondos confiscados por la División Anti-Narcóticos de la Policía Nacional Civil sean distribuidos dentro de los componentes del sistema de administración de justicia.
- Implementar cambios legislativos para que se sancionen específicamente a aquéllos que cometan crímenes contra testigos, víctimas y los participantes del sistema de administración de justicia.
- Implementar cambios legislativos para disponer de propiedad abandonada, para que cualquier bien desarrollado por este medio se utilice en el mantenimiento y uso del programa. También multas y otros bienes confiscados se otorgarían a este programa a través de un fondo especial.
- Equipar a la policía con el personal y equipo mínimo necesario para poder responder a las necesidades de víctimas y testigos de una manera más eficaz.
- Implementar cambios legislativos para que víctimas y testigos que estén bajo peligro puedan atestiguar en privado fuera del público general y la prensa.
- Establecer relación y criterio con los medios de comunicación para proteger a víctimas y testigos.
- Establecer mejores métodos de comunicación dentro de las agencias de sistema de administración de justicia para que exista más confianza entre los mismos.

- Implementar cambios legislativos con respecto a la Ley del Nombre para facilitar el cambio de identidad a víctimas y testigos. (Simplificar el proceso de obtener una cédula del ciudadano).
- Educar al pueblo para que reconozcan el valor y la obligación del testimonio y la denuncia. (Campaña publicitaria).
- Establecer enlaces oficiales con otras agencias públicas que puedan ser de uso para el programa.
- Crear el programa de protección de víctimas y testigos bajo una ley llamada "La Ley de Protección de Víctimas y Testigos" la cual incluirá todas las sugerencias relacionadas con este tema.

B. Programa Recomendado:

Estas recomendaciones son una guía para el establecimiento de un programa de protección de víctimas y testigos. Establecer un programa de esta índole requiere una reglamentación tanto en el aspecto administrativo como operacional.

- Coordinación entre la Fiscalía General de la República y la Policía Nacional Civil (basado en la dirección funcional de la Fiscalía en la investigación criminal).
- La responsabilidad administrativa del programa y la dirección del mismo bajo la Fiscalía General de la República.
- La responsabilidad logística operativa bajo la Policía Nacional Civil.
- Todo el personal asignado a este programa recibirá el entrenamiento apropiado en la Academia de Seguridad Pública para desarrollar sus respectivas funciones dentro del programa.
- Se ofrecerá capacitación de índole general a fiscales y policías y otro personal asignado al programa.
- Se ofrecerá capacitación táctica específica a los policías operativos del programa.
- Todo el personal antes de ser asignado deberá de ser sometido a una investigación de antecedentes de moral y profesional para mantener la integridad del programa. Se establecerán revisiones periódicas a estas investigaciones. Estas investigaciones serán realizadas por una sección especializada de la Policía Nacional Civil.
- El Fiscal General de la República nombrará al director del programa, mientras que el director de la Policía Nacional Civil, nombrará al sub-director o coordinador del mismo con la aprobación del fiscal general. Se establecerá requisitos mínimos para ocupar estas posiciones.

- El programa se operará 24 horas al día, 7 días por semana.
- El programa mantendrá un teléfono accesible todo el tiempo para el público afectado con el fin de poder responder eficazmente a cualquier amenaza u otro incidente. Testigos o víctimas que son amenazados o intimidados en relación con su habilidad de atestiguar podrán llamar a este número. Se le brindará asistencia inmediata a todo aquél que llame a notificar que fue amenazado.
- La Policía Nacional Civil investigará todas las amenazas y actos contra testigos y víctimas e informará al coordinador del programa de estos acontecimientos.
- Testigos y víctimas serán referidos y recomendados al programa por el investigador, por el fiscal, el juez, o por el abogado defensor. Ningunos de estos funcionarios tendrán autoridad de hacer ofertas o promesas con respecto al programa a aquéllos que recomienden al mismo. La determinación del tipo de beneficio, o servicios bajo el programa será hecha por el director del programa en representación del Fiscal General de la República. El director y el sub-director o coordinador evaluarán a todos estos referidos y recomendados y aceptarán al programa a aquéllos que ellos determinen. También determinarán el tipo de protección que se le dará a una víctima o testigo dentro del programa basado en la naturaleza del crimen y cualquier otro factor que interfiera con el testimonio de los mismos. Se creará una junta de apelación para evaluar los méritos de los casos que hayan sido rechazados por el director.
- Todo acto contra un testigo o una víctima será procesado a través de las acciones policíacas apropiadas. Con la dirección de la fiscalía, se sancionará a todo aquél que actúe contra un testigo o una víctima, o un operador del sistema de administración de justicia.
- El criterio principal para participación en el programa estará directamente asociado con la importancia del testimonio y la relevancia del caso.
- Los beneficios de este programa se extenderán a víctimas o testigos en caso de asesinatos, secuestros, tráfico de drogas, crimen de naturaleza organizado o cualquier otro crimen que, a juicio del director, tenga la relevancia para incorporarlo en el programa.
- La participación en el programa será voluntaria. Aquellos que participen en el programa tendrán que firmar un acuerdo de participación donde se especifican los términos del programa, la duración de mismo y el proceso de transición a la conclusión de este. También dirán por escrito aquéllos a quien se les recomiende el programa y opten por no participar y aquéllos que, después de estar en el programa, deciden dejar el mismo. Dejar el programa o no participar en el mismo no implica que la obligación de atestiguar disminuya.
- Cualquier persona relacionada al participante en el programa, ya sea por sangre u otro vínculo, será aceptada en el programa si existe una probabilidad de amenaza o peligro

hacia ellos, o si se determina que la falta de esta participación afectaría el testimonio negativamente.

- El programa brindará asistencia médica y psicológica a los participantes.
- El director y el sub-director o coordinador del programa, crearán una comisión en la cual ellos participarán. Esta comisión tendrá como miembros a funcionarios con autoridad de otras agencias gubernamentales que puedan proveer servicios sociales, médicos, psicológicos, educacionales y cualquier otro servicio que beneficie a los participantes del programa y sus familiares. Los miembros de esta comisión serán sometidos a una investigación de antecedentes de moral y profesional para mantener la integridad del programa y de la comisión.
- Se mantendrán residencias bajo este programa para la vivienda de los participantes en el programa y para sus familiares. Cualquier gestión para la relocalización de los participantes o sus familiares serán hecha por el director del programa y la ejecución de estas gestiones serán llevadas a cabo por el sub-director o coordinador, ya sean éstas dentro de la República de El Salvador o al extranjero.
- Cada relocalización de los participantes del programa será evaluada por los méritos de cada caso.

Toda información y aspectos relacionadas con la administración y operación de este programa serán de carácter confidencial y se sancionará a todo aquél que comprometa la confidencialidad de este programa.

Se creará un fondo especial dentro del presupuesto de la Fiscalía General de la República para dar inicio a este programa.