

## **I. Introduction and Overview**

**For the first time in a decade, El Salvador's brutal civil conflict showed some sign of attenuating in the last half of 1990. Human rights violations in several major categories declined, at the same time that the Salvadoran government and representatives of the Farabundo Martí National Liberation Front (FMLN) opened peace talks under the auspices of the United Nations. However, a guerrilla offensive in late 1990 led to an increase in combat-related deaths, even if some of them could not properly be categorized as violations of the laws of war. Moreover, early 1991 saw a discouraging upsurge in political violence and killings prior to the March 10, 1991 legislative and municipal elections.**

**Recent violence makes it clear that any progress in the overall human rights situation will be tenuous unless accompanied by an end to military impunity. Punishment of those guilty of human rights violations is a moral and legal obligation not only of the Salvadoran government under international and domestic law; the FMLN is also bound by international humanitarian law governing internal armed conflict, and has acknowledged that since 1982. Moreover, as a practical matter, the impunity of the armed forces must end if the government expects to win the confidence of the opposition and provide adequate safeguards for the armed left to re-enter civilian life as part of a negotiated settlement to the war.**

**The peace negotiations conducted under U.N. auspices began in April 1990; numerous rounds of talks since then have produced one concrete achievement – a human rights accord signed in July – and appear to reflect a widening consensus in El Salvador that peace must be secured through political bargains and not on the battlefield.<sup>1</sup> The difficulties of securing agreement on such transcendent issues as the nature and composition of the armed forces and the structure of the post-conflict political and economic order are legion. But the process of talking itself appears to have put pressure on both sides in the conflict to exercise greater restraint and to adjust intransigent positions that stand in the way of reconciliation.**

**From the time the U.N.-mediated talks began through the end of the year, there was a noticeable change in the observance of human rights in El Salvador. In the last six months of 1990, reported violations including disappearances, death squad killings, and deaths attributed to the armed and security forces**

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<sup>1</sup> The government's commitment to the San José agreement is called into question, however, by an August 15 communique which views all but the first two points of the accord as "being subject to a final agreement on a cessation of the armed conflict." The text of the agreement appears in Appendix I.

declined as compared to the first six months of the year, sometimes falling by as much as one-half. Much of this decline was relative, however, as human rights violations by government forces and death squads in the first six months of 1990 represented an increase over rates in the previous year. Guerrilla violations, including kidnappings and assassinations, remained at a constant level throughout 1990, but were fewer than in 1989. While reported violations surely constitute only a tiny portion of abuses by both sides, many independent observers inside El Salvador noted a significant relaxation of tensions in the second half of 1990. This trend was reversed in early 1991, and is reflected in the killing by FMLN combatants of two wounded U.S. servicemen after their helicopter was shot down; the murder of 15 men, women, and children in the town of El Zapote; the destruction of the offices and printing presses of a left-of-center daily, *Diario Latino*; a grenade attack on the offices of the opposition Democratic Convergence in Usulután; and the assassination of a Nationalist Democratic Union (UDN) candidate and his pregnant wife in San Salvador.

Thus, despite the reductions in abuses in some categories in the second half of 1990, the human rights situation in El Salvador remains precarious. Indiscriminate attacks by the armed forces and the FMLN during the course of the war have continued to risk the lives and safety of the civilian population. During a guerrilla offensive in November and December 1990, both sides appeared to have taken greater care to avoid civilian casualties than in the 1989 offensive, but there were major instances in which such care was not taken and civilians died as a result. Moreover, there are persistent reports of mistreatment of those detained by the Army and security forces, and detention itself continues to be a form of harassment of those the armed forces view as suspect. This has been particularly true of communities of former refugees who in recent years have moved back to their places of origin in El Salvador. Hopes that the trends of late 1990 could be sustained are diminished by the ongoing incapacity of the judicial system to provide justice even in those major human rights cases that have received international attention. 1990 saw major setbacks in the San Sebastián case involving the Army's murder of 10 peasants in 1988 (See Special Cases), which the United States had identified as a key test for the judicial system. And although a trial of nine defendants for the November 1989 murder of six Jesuit priests, their housekeeper and her daughter may take place this year, it is unlikely that those who ordered the crime will ever be brought to justice. In January 1991, the two prosecutors most involved in the case resigned, charging the Attorney General with being "passive" in the prosecution and blaming the armed forces for preventing a broad investigation of the murders. (See Special Cases)

The FMLN was also under intense pressure to bring to justice those responsible for the murder of two U.S. servicemen after their helicopter was downed in early January. According to eyewitnesses, and by the FMLN's own admission, two of three servicemen survived the crash and were subsequently

**executed by FMLN combatants. The Salvadoran government demanded that the FMLN turn over those responsible to government authorities; the U.S. government hinted that it would bring charges against the FMLN under an anti-terrorism law governing the murder of U.S. citizens abroad. Americas Watch called on the FMLN to conduct a thorough and impartial investigation of the crime and to punish those responsible, and requested the opportunity to observe the FMLN's proceedings. (See Special Cases)**

**In attempting to explain why the human rights situation in late 1990 was different than perhaps any other time in the last decade, government officials, opposition politicians, human rights workers, and others with whom we spoke offered several possible explanations:**

**First, the involvement and prestige of the United Nations in the peace talks had a moderating role on the behavior of both sides, leading both to fear accusations that their actions were sabotaging the peace process.**

**Second, the human rights accord signed by the government and the FMLN in San José, Costa Rica in July 1990 represented a series of commitments, not just a statement of principles, and provided a yardstick by which to measure the behavior of both sides. The San José Accord prescribed that both sides "take all actions and measures necessary to avoid all kinds of acts or practices that attack life, integrity, security and the freedom of persons," included specific prohibitions on night captures, incommunicado detention, and torture, and guaranteed wide political rights including the freedom of association and expression. (See Appendix I)**

**Third, the Salvadoran armed forces paid, and continue to pay, a tremendous price for the November 1989 murder of the Jesuits, in terms of prestige, credibility, and political support in the United States and El Salvador. The defects in the Salvadoran government's investigation of the case, and the widespread belief that the high command of the armed forces engaged in at least a coverup of the murders, led Congress to cut military aid by 50 percent in 1990. Despite a judge's decision to take the case to trial, the Salvadoran Army has not rid itself of the suspicion that senior officers other than those indicted helped mastermind the plot.**

**While we find all these explanations for the reduction in human rights violations credible, the continued impunity of the armed forces for human rights violations virtually ensures that any decline will be tenuous. A February 1, 1991 speech by Defense Minister René Emilio Ponce reflects on the Salvadoran military leadership's unwillingness to face up to the death toll left behind by its own forces. Ponce stated that between January 1981 and January 1991, 37,907 people had died as a direct result of the war. That total included 9,140 soldiers, 23,480 FMLN combatants, and 5,287 civilians. Any other figures, Ponce said, were "purely speculative". By contrast, in October 1982, then-U.S. Ambassador to El Salvador Deane Hinton stated that "perhaps as many as 30,000 Salvadorans have been**

**MURDERED, not killed in battle, MURDERED" in three years of war.**

**The United Nations and the parties to the peace negotiations have rightly placed the issue of the military at the top of their agenda. The reform of the armed forces is both the challenge and the hope of 1991.**

#### **Major Observations and Concerns**

\* Although an impressively broad range of political parties are participating in the Legislative Assembly and municipal elections on March 10, 1991, election-related political violence is actually greater than it was immediately prior to the March 1989 presidential elections. This is true despite the fact that the FMLN has pledged to refrain from military actions that would impede the election. Recent incidents such as the assassination of a UDN candidate and the burning of *Diario Latina*, the only left-of-center newspaper, underscore the tremendous difficulties still faced by opposition political groups.

\* International humanitarian law governing internal armed conflicts provides that all parties to the conflict take care so as to avoid civilian casualties. During the "limited military campaign" launched by the FMLN on November 20, 1990, both sides' behavior was a marked improvement over that of late 1989, when the guerrillas launched their largest offensive of the war. The rebels more clearly directed their attacks against military targets, while the armed forces showed greater restraint in responding to those attacks. Although exact numbers are difficult to determine, estimates of civilian deaths during the offensive range between 16 and 25, with wounded being over 100.<sup>2</sup> While most civilian casualties appear to have been the result of crossfire, there is also evidence that imprecise guerrilla mortars may have caused several civilian deaths.

\* Indiscriminate strafing, rocketing and mortaring by the Salvadoran Air Force and Army have resulted in a number of civilian casualties which could have been avoided. In recent months, indiscriminate attacks on military installations in urban areas by the FMLN, in which both manufactured and homemade mortars

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<sup>2</sup> The Archdiocesan human rights office, Tutela Legal, reported approximately 20 civilian deaths related to the offensive, without being able to ascribe responsibility for the majority of them to either side. Preliminary reports from the State Department placed the number of civilians killed at 16, and the number of wounded at 108. Figures are compiled from Tutela Legal's weekly reports for the period covering the offensive; the State Department figures are reported in "Report on El Salvador Required Under the Foreign Assistance Appropriations Act of 1991," January 1991, p. 5.

have fallen short of their targets, have also raised the number of civilian casualties.

\* Apart from the problem of the armed forces' impunity for human rights crimes, the FMLN needs to develop a fair system of punishment for its own forces that commit abuses. Efforts to bring to trial those who murdered two U.S. servicemen in January 1991 are positive, but there are many cases of serious FMLN abuse that have gone undisciplined.

\* The number of arrests by government forces declined markedly in the second half of 1990; but night captures, proscribed by the San José Accord, continue to occur, albeit at a reduced rate. Preliminary statistics compiled by the Salvadoran government Human Rights Commission show 5194 captures in 1989 and 2529, approximately half, in 1990. Nonetheless, reports of serious mistreatment in detention continue, particularly at the hands of the security forces. The abuses reported include the deprivation of food, water and sleep, prolonged standing and interrogation while blindfolded, as well as heavier methods such as severe beatings, electric shock, the use of a hood or *capucha* to simulate asphyxiation, and near drownings. In addition, the requirement that detainees be presented to a judge within 72 hours of their arrest is honored in the breach.

\* Members of civil defense units continue to be involved in serious human rights violations. In July 1990, the governmental Human Rights Commission wrote the armed forces high command that "with truly alarming frequency, members of civil defense units in various parts of the country have been involved in serious acts of murder, robbery, assault, rape and abuse of authority, keeping the population in a permanent state of fear and insecurity."<sup>3</sup> While members of the civil defense were sentenced to 30 years in prison for three separate incidents occurring in 1982 and 1984 the number of prosecutions in no way begins to approach the number of serious violations attributed to these forces.

\* Both Salvadoran government forces and the FMLN have executed prisoners as well as those placed *hors de combat* by their wounds. While we do not have sufficient evidence to say that either side has a policy of carrying out such executions, the number of documented cases of this particular violation of the laws of war causes serious alarm.

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<sup>3</sup> Quoted in United Nations, Report of the Economic and Social Council, "Situation of Human Rights in El Salvador, Note by the Secretary General," October 22, 1990, p. 11.

**\* Although death squad killings dropped off markedly in late 1990, for the first six months of the year they were occurring at approximately double the rate of the year before.<sup>4</sup> In October, Amnesty International reported that the total number of death squad killings from January to August 1990 had already exceeded the total reported for all of 1989. Amnesty noted that "the manner in which those responsible operate, the extent of their activities and the absolute impunity with which their operations have been carried out, has left little doubt of their links with the Armed Forces."<sup>5</sup>**

**In early 1991, death squad killings again began to rise. In January alone, Tutela Legal recorded 7 death squad killings, almost half the total for the entire last six months of 1990.**

**Other categories in which the figures of Tutela Legal register a decline between the first and second half of 1990 include: disappearances following arrest (from 29 in the first six months to 13 in the last); and deaths attributed to the Army, security forces, and civil defense (from 34 to 28).**

**\* The creation of an Army human rights office in April 1990, which began to function in July, represents a potentially important step in the armed forces' acceptance of institutional responsibility for the investigation of human rights abuses and the punishment of those guilty. Thus far, however, the Army human rights office has limited itself to denouncing only FMLN abuses, and includes acts of economic sabotage which are not properly categorized as human rights violations. If the office is to gain credibility, its focus must broaden to include the actions of government forces.**

**Because of the current limitations of the army human rights office, we are chagrined that the Salvadoran governmental Human Rights Commission has decided to narrow its focus to providing human rights education for government troops, leaving the task of denunciation to the Army office. Unless and until the armed forces assume responsibility for their own behavior, such a transfer of duties removes a source of pressure in human rights cases.**

**\* The United Nations has decided to open an office in El Salvador for the purpose of monitoring and verifying compliance with the human rights provisions of the San José Accord, even though the Accord did not envision the functioning of such an**

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<sup>4</sup> Tutela Legal documented 30 death squad killings from January-June 1990, and 16 from July to December.

<sup>5</sup> Amnesty International, "El Salvador: Killings, Torture, and 'Disappearances,'" October 1990, p. 4.

**office until after a ceasefire had been reached. We applaud this courageous decision by the United Nations, which can only have positive consequences for El Salvador.**