How El Rescate, a Small Nongovernmental Organization, Contributed to the Transformation of the Human Rights Situation in El Salvador

ABSTRACT

How the balance is struck between accountability for past human rights violations, structural changes that can contribute to a better human rights future, and achieving peace is examined in this article. The article describes the efforts of El Rescate, a small NGO, and how through the projects it developed and implemented facilitated measurable improvement in the
human rights situation in El Salvador. By analyzing its efforts, this article hopes to contribute to an understanding of how change agents can develop unique and innovative tools during transitions toward peace that maximize the transformative potential to benefit the human rights situation.

I. INTRODUCTION

During El Salvador’s long transition from more than a decade of civil war to a negotiated peace agreement, El Rescate, a small nongovernmental organization (NGO), created and implemented a multi-faceted approach to address past human rights abuses perpetrated by military and paramilitary forces. This article analyzes El Rescate’s work, exploring how a well-developed, integrated strategy enabled a small NGO to facilitate major transformations and significant measurable change. In particular, El Rescate’s practice of grounding its strategy in El Salvador’s unique history and particular pressure points for change, maximized the potential for leveraging positive human rights change by tactically confronting past abuses.

This article provides an historical context for El Rescate’s contributions to the Salvadoran peace process and for the organization’s efforts to challenge institutionalized impunity. El Rescate’s strategies integrated traditional approaches to promoting and protecting human rights including: theoretical analysis of specific human rights and humanitarian law issues, litigation, and individual and coalition advocacy. In addition, El Rescate used contemporary social science and informatics applications to develop an innovative “Index to Accountability.” The Index is a relational database that, in the context of the jurisprudence of command responsibility, facilitates identification of patterns of human rights violations. By developing two separate sets of data, one on human rights abuses and one on the command structure of the Salvadoran military over the course of the civil war, the Index connects abuses to individual components of the Salvadoran military, police, and paramilitary forces, as well as to the military High Command.

Ultimately, the Index to Accountability, beyond its use in the Salvadoran transition, stimulated the use and improvement of relational databases and information management as an important human rights tool. As this analysis
indicates, El Rescate’s success was built and depended on substantial work by diverse NGOs, sometimes working together strategically and other times working separately toward a similar goal. Rather than providing a comprehensive overview of the spectrum of NGO efforts and their impacts, this article focuses on ways that one small NGO made a significant impact in addressing past human rights abuses in El Salvador.

El Salvador’s transition from civil war to peace engendered significant and positive human rights change, though this transition was far from perfect. Many individuals from NGOs (Salvadoran and international), the United Nations, and national governments contributed to the success of the Salvadoran transition. These individuals helped to foster the use of similar strategies to address past human rights abuses in various global regions. Since the Salvadoran peace process, these individuals have built upon the legal and informatics lessons learned and applied them elsewhere. By analyzing El Rescate’s efforts, this article contributes to an understanding of how change agents such as El Rescate can develop innovative responses critical to transitions in post-conflict areas to maximize the transformative potential.

II. BACKGROUND: EL SALVADOR AND EL RESCATE FROM WAR TO PEACE

A. El Salvador’s Civil War

From the era of colonization, when the Salvadoran military used repression to control rebellious rural peasants, until the outbreak of civil war in 1980, Salvadoran armed forces and a small elite controlled El Salvador both economically and politically. The civil war engendered one of the bloodiest periods in El Salvador’s history. The war pitted Salvadoran government forces against five guerilla factions that united as the Frente Farabundo Martí Para La Liberación Nacional (FMLN, Farabundo Martí National Liberation Front). During the war, military and paramilitary forces, including the notorious death squads, were responsible for close to 95 percent of human rights abuses. At the same time, successive government regimes officially sanctioned impunity for human rights violations. The civil war uprooted tens of thousands of people, resulting in a major migration to the United States and elsewhere.3

3. For a case study that provides an overall review of the civil war and peace process and examines the national and international historical contexts that impacted them, see Mayra Gomez, Human Rights in Cuba, El Salvador and Nicaragua: A Sociological Perspective on Human Rights Abuse (2003). See also Tommie Sue Montgomery, Revolution in El Salvador: From Civil Strife to Civil Peace (1995); Elzabeth Jean Wood, Insurgent Collective Action and Civil War in El Salvador (2003).
During this period, El Salvador and the United States were closely allied, and US policymakers viewed prevention of a leftist or communist takeover as particularly important. Accordingly, El Salvador received significant aid from the United States, including weapons and military training. The US influence continues to be significant.4

The level of human rights abuses in El Salvador was similar to that in other countries in Latin America, where a phenomenon of a “culture of silence” based on a climate of terror and impunity developed. This phenomenon was reinforced by an ineffective judicial system that discouraged denouncing abuses to the authorities, as it was perceived to be useless and dangerous.

B. The Progression to Peace

During transitions from conflict to peace, perpetrators of human rights violations always place pressure on forgetting the past and moving on. In many ways, the easiest route to a peace agreement is to avoid the thorny path of dealing with past abuses.5 For the most part, prosecutions for past abuses have been the rare exception,6 and normally such prosecutions only take place after a military victory against an abusive regime or a major political change.7 In this reality, countries like Argentina, Chile, and Brazil have led the way in addressing the past without prosecuting those responsible. Many informative studies discuss alternative means of combating impunity without prosecutions.8 This article focuses on ways to leverage and maximize positive change when prosecutions are impossible.

In El Salvador, widespread abuses and official impunity meant that the government and military had good reason to want to avoid prosecution. For the FMLN, the issues were more complex. Each faction was singular, and its operations varied in size and nature. Although the FMLN accounted for a small fraction of total human rights abuses, the abuses were not spread evenly throughout the five factions. Accordingly, the factions not implicated

5. There are a number of interesting works on grappling with past abuses. See Naomi Roht-Ariaza, IMPUNITY AND HUMAN RIGHTS IN INTERNATIONAL LAW AND PRACTICE (1995).
as frequently in human rights violations envisioned dealing with past human rights abuses as an opportunity to leverage substantial change, while other factions hesitated because of their own implication.

Moreover, Salvadorans were frightened by years of political violence. Civil war and differences among those who supported the FMLN or the government also created differences of opinion, competition, and distrust at many levels, including within political parties, NGOs, and human rights groups. Due to the very real dangers of publicly supporting the FMLN or even expressing a desire for change, there was always a lack of cohesiveness, and alliances constantly shifted.

At the same time, even as the international community pushed for peace in Central America, an ideology of a continuous Cold War permeated the White House during most of the Salvadoran civil war, even after the Berlin Wall collapsed in 1989. Moreover, entities such as the United Nations and countries within the Group of Friends maintained agendas distinct from that of the United States.

In this context, it was hard to imagine that a tiny NGO with limited funding could make a difference, but such is the role of an activist organization. One reason for El Rescate’s influence was that it was staffed heavily with Salvadorans linked to an array of organizations and social movements. Thus the NGO was able to factor many of the complexities into its work to provoke and facilitate change. Based on this understanding, El Rescate began to develop a cohesive strategy to address past human rights abuses and to push at necessary pressure points.

C. EL RESCATE

El Rescate was established in 1981 in Los Angeles in response to a Central American refugee crisis that stemmed from extreme political instability and violence plaguing the region. The organization, which was the first of its kind in the United States, addressed the needs of the Central American refugee community in the Los Angeles area by providing such services as a homeless shelter, deportation defense, and representation of refugees seek-
ing political asylum. However, unlike many other service organizations, El Rescate developed a strategy to address the root causes of refugee flow, namely, systemic human rights abuses and impunity in refugees’ countries of origin.

In Los Angeles, El Rescate serviced the immediate needs of Central Americans and initiated human rights work focused directly on El Salvador. A Human Rights Department monitored human rights conditions in El Salvador, maintained a database of violations, and beginning in 1985, published reports on the country’s human rights situation. In addition, by 1987, El Rescate’s Legal Department began to collaborate actively with El Salvador-based NGOs to bring petitions to international bodies such as the Inter-American Commission on Human Rights (IACHR) and the International Labour Organization (ILO).

In the years before the signing of the 1992 Peace Agreement between the FMLN and the Salvadoran Government, El Rescate’s goals shifted from

14. During the final stages of the implementation of the Salvadoran Peace Accords, there was a significant internal debate at El Rescate as to whether its human rights work should be shifted to another Central American country such as Guatemala. As the vast majority of Central Americans on the Board of Directors and on the staff were Salvadoran, the organization decided its work should continue to support El Salvador. As the reality in El Salvador began to change however, the human rights work that had been done became less and less important. Eventually, the organization became much smaller and focused on domestic concerns of Central American refugees and immigrants in Los Angeles in general.
16. The International Labour Organization (ILO) is a UN Specialized Agency, which seeks the promotion of social justice and internationally recognized human and labor rights. Founded in 1919, it is the only surviving major creation of the Treaty of Versailles, which was the founding document for the League of Nations. The ILO formulates international labor standards in the form of Conventions and Recommendations, which set minimum standards for basic labor rights such as freedom of association, the right to organize, collective bargaining, abolition of forced labor, equality of opportunity and treatment, among other standards regulating work related issues. See International Labour Organization, available at http://www.ilo.org.
 documenting and denouncing human rights abuses to defining a strategy for facilitating positive social change in El Salvador based on human rights law. The organization identified the problem of institutionalized impunity for past human rights abuses in El Salvador as its priority.

El Rescate developed an ambitious, precedent-setting, multi-pronged strategy to contribute to the process of accountability that was absent during the civil war and through the peace process. Over the span of four years, and with the participation of more than a hundred people, El Rescate considered the theoretical foundations for combating institutionalized impunity, established a legal basis for prosecuting past human rights violations, defined ways to utilize command responsibility for holding commanding officers accountable in the context of systematic human rights abuses, and created a strong factual basis to deal effectively with past human rights violations.

The strategy was built on limited precedent. In other contexts, large church-related NGOs had either dealt with the past themselves (Brazil) or contributed to an official process dealing with past human rights abuses (Chile). El Rescate’s use of contemporary social science and informatics and its diverse attempts to facilitate measurable change in the context of a peace process was an ambitious endeavor. Specifically, El Rescate pushed for structural changes in the Salvadoran police and military and for the creation of two entities: one empowered to remove active security officers for human rights abuses and the other to identify specific human rights abuses and responsibility for them. These changes came to fruition through aspects of the Salvadoran Peace Accords, which mandated significant structural changes in the Salvadoran security forces, the creation of an Ad-Hoc Commission to “purify” the security forces of human rights abusers, and a Truth Commission designed to create an official human rights history.

18. Throughout the era of civil war, the deep divisions and distortions in Salvadoran society and its economy were reflected in the country’s system of justice. The formal legal system was based on written constitutions and civil law codes similar to those found in other [Latin American] countries. However, constitutional provisions were often left unimplemented. The judiciary was politicized and lacking in the most basic resources and management capacities. Formal training was unavailable to justice system operators. Corruption and intimidation were widespread. Extra-judicial executions were commonplace. Political and economic elites and the military were not held accountable under the law. By contrast, the vast majority of the prison population consisted of poor individuals accused of crimes and awaiting trial [for periods well in excess of the period provided by law].

D. The Peace Accords

The Salvadoran Peace Accords included a series of four agreements brokered under the auspices of the United Nations.\(^\text{19}\) Negotiations began in April 1990 and lasted until January 1992. The agreements are commonly referred to by the place in which the negotiations took place: Geneva (agreement to negotiate—4 April 1990); Caracas (agenda established—21 May 1990); San Jose (agreement on human rights—26 July 1990); Mexico (agreement—27 April 1991); New York (agreement—23 September 1991); and Chapultepec (final agreement—6 January 1992).\(^\text{20}\) These agreements covered a wide range of issues, including economic and social problems (for example, land reform), demobilization and integration of FMLN and government soldiers back into civilian society, and confronting the country’s tragic past, including its systemic violation of human rights.\(^\text{21}\) In addressing El Salvador’s history of human rights violations, the accords established three mechanisms: mandating structural reforms, creating a quasi-judicial Ad Hoc Commission to remove from military service those implicated in human rights violations and corruption, and creating a Truth Commission to compile an official public accounting of El Salvador’s history of human rights abuses.

1. Structural Reforms

One structural reform agreed to by the FMLN and the Salvadoran government included the formation of a new civilian national police force,\(^\text{22}\) including both FMLN and military combatants, in which an understanding of and compliance with human rights norms was mandatory.\(^\text{23}\) Other structural reforms included legislative, constitutional, and practical changes in

\(^{19}\) The Secretary General took on this work at the request of the Central American presidents and with the authorization of Security Council Resolution 637 of 27 July 1989. Under traditional international legal principles only states can make treaties, but both the definition of state and what type of entity is needed to have international legal personality have been evolving. There is precedent for an insurgent movement, especially one like the FMLN that held territory and conducted “foreign relations,” to be considered to have the requisite characteristics to enter into a binding treaty. The role of the United Nations was unprecedented in the Salvadoran process. Its role supports the view that the Peace Accords is a treaty between two international actors. What is interesting is that the FMLN was treated as having treaty making powers when they entered into the Peace Accords, but thereafter did not have the same resources available to it as a traditional State when the treaty was violated. For example, the FMLN would most likely not be able to file a complaint with the International Court of Justice when the Peace Accords were violated, although such a case would have interesting legal ramifications.


\(^{21}\) Chapultepec Peace Accords, supra note 17.

\(^{22}\) Id. ch. 2, § 7(D).

\(^{23}\) Id.
the judicial and electoral systems aimed at creating some level of integrity and independence from the political and military forces. As part of the Accords, the FMLN agreed to demobilize, and governmental military and security units like the Treasury Police and the National Guard, both linked to systematic abuses, were to disband. The parties also agreed to remove internal security jurisdiction from the military.

Significantly, the Peace Accords called for a UN mission to observe and report on the progress of the Accords’ implementation. For instance, the mission would monitor compliance with structural reforms designed to improve the human rights situation. The United Nations Observer Mission in El Salvador (ONUSAL) was established by the UN Security Council on 20 May 1991 and was working and publishing reports before the final Accord was signed. Throughout its life, ONUSAL played an important role in bringing human rights issues to the forefront and addressing the question of institutionalized immunity. For example, ONUSAL noted in its report that:

In general, viewing the institutional order as a whole, the Mission cannot ignore the fact that many reports by the United Nations and by national and international human rights organizations have testified to the practical ineffectiveness of existing mechanisms in El Salvador for the defense, protection and promotion of human rights. This is especially important when we observe that, despite the high incidence of violations of human rights and humanitarian law, the investigation, prosecution and punishment of those responsible has been virtually non-existent, creating a perception of widespread impunity.

2. Ad Hoc Commission

The Chapultepec Accord mandated that the Ad Hoc Commission evaluate each officer in the Salvadoran military and consider:

[his record on observance of the law, with a special emphasis on respect for human rights, both in his personal conduct as well as the strictness with which he may have ordered the correction and punishment of human rights violations or abuses which may have occurred under his supervision, particularly if serious or systematic omissions are observed in this regard.]
The Chapultepec Accord did not specifically define “human rights.” Instead, it built upon other accords, specifically the San Jose Agreement on Human Rights of 27 July 1990, which defined human rights as: “[T]hose rights recognized by the Salvadoran legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States.”

The implicit integration of the contemporary understanding of command responsibility was critical to the Ad Hoc Commission’s potential for effectiveness. Taken together, the Peace Accords made it clear that responsibility for human rights violations arises in three ways: (1) when a military officer issues direct orders, (2) when an officer fails to punish violations he was or should have been aware of, and (3) when a systemic pattern and practice of violations occurs under the officer’s command indicating that he knew, or should have known about and corrected these violations.

Eventually, the Ad Hoc Commission’s conclusions ranged from taking no action to changing command to discharging the serviceman under review.

3. Truth Commission

Both the Chapultepec and Mexico Accords discussed the creation of the Truth Commission. The mandate of the Commission was to address the historical problem of impunity:

The parties [the FMLN and the Salvadoran Government] recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution. All of this shall be without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the courts of law so that the punishment prescribed by law is meted out to those found responsible.

The Truth Commission had the authority to make a spectrum of recommendations to put El Salvador in compliance with its international legal obligations, end impunity, and give El Salvador the foundation necessary to start anew, solidly based on the rule of law.

33. Throughout the Peace Accords references are made to the respect for human rights and international law in general. Thus, international law provides the framework for the Accords to be interpreted. See Chapultepec Peace Accords, supra note 17; Peace Agreements Digital Collection, supra note 20.
34. Chapultepec Peace Accords, supra note 17, ch. 1, § 5.
35. Id. ch. 1, § 3.
The annex to the Mexico Agreements, signed 27 April 1991, explains the relationship of the courts and the Truth Commission: “The provisions of the Agreement shall not impede the normal investigation of any situation or case, regardless of whether the Commission investigates them or not, or the application of legal provisions pertaining to any act that is contrary to law” and are “without prejudice to the obligations incumbent on the Salvadoran courts to solve such cases and impose the appropriate sanctions on those responsible.” The Accords placed certain other limitations on the Truth Commission. First, the Commission had only six months to carry out its ambitious mandate. Second, it had no jurisdiction to investigate incidents occurring before January 1980. Further, the Parties instructed the Commission to take into account:

- a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and social upheaval to which theygive rise;
- b) The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation.

These provisions indicated a certain reticence to deal fully with the past and warned the Commissioners of the possible volatile impact of their findings. The Parties wanted to stabilize the country, not to engulf it again in conflict, so the goal was not a full accounting, but a means forward that included dealing delicately with the past.

III. EL RESCATE’S STRATEGY AND CONTRIBUTION TO HUMAN RIGHTS CHANGE

El Rescate’s strategies were aimed at the pervasive problem of institutionalized impunity. They assisted in creating and maximizing the potential for human rights change by employing the mechanisms explained below. Although El Rescate developed its strategies simultaneously, this section organizes them sequentially to highlight the distinct types of work involved.

A. Theoretical Foundations for Eradicating Impunity and Political Efforts to Create a Viable Policy Response to Past Human Rights Violations

In establishing a foundation to address impunity in the Salvadoran context, El Rescate began by researching other efforts to deal with past human rights
abuses. Because of the dearth of relevant publications at that time, El Rescate staff members traveled to Brazil, Uruguay, Argentina, and Chile to meet with individuals, NGOs, and officials involved in these countries’ recent, and at that time ongoing, efforts to deal with the past and to leverage positive human rights change. These trips created ongoing communication with those most active in this process in Latin America and allowed El Rescate to develop ideas for how to maximize change in El Salvador.

Then in April 1990, El Rescate published “Amnesty Impunity and the Need for a Negotiated Solution” in El Salvador’s leading scholarly publication, Estudios Centroamericanos (ECA). The article articulated three essential aspects to a successful anti-impunity campaign: (1) creating a social consciousness about the fundamental impropriety of any act in violation of international law, (2) removing perpetrators of human rights abuses from positions of authority, and (3) demobilizing or restructuring entities responsible for international law violations. The organization hoped that the publication would actively contribute to the discourse and understanding of the need to respond to institutionalized impunity as part of the peace process.

By publishing the article, El Rescate aimed to expose these ideas to current and future policymakers with whom the organization’s staff was meeting and to others who could potentially influence the peace process. These included a broad swath of civil society: factions of the FMLN; Salvadoran human rights groups, legal associations, and influential members of the Bar; think tanks and leading academic, religious, and political leaders; UN officials; and diplomats and politicians from countries involved in the peace process such as leaders of Central American nations and the Group of Friends.

“Amnesty, Impunity, and the Need for a Negotiated Solution” was published in the early stages of negotiations between the FMLN and the Salvadoran government. After its publication, several discussion papers were prepared in Spanish and distributed to those involved in the negotiations and the peace process in general. The papers addressed questions or concerns expressed by relevant individuals in response to the original article. On numerous occasions, El Rescate staff personally met with UN person-
nel and FMLN representatives to advocate for mechanisms to deal with the past. Salvadoran, European, and US-based human rights groups, as well as church, labor, and religious groups, were also recruited to emphasize the need to include accountability measures in a peace agreement. El Rescate pushed hard for a body like the Ad Hoc Commission and contributed concretely to its creation.

With the progress of negotiations and the Parties’ eventual agreement to include mechanisms to deal with the past, El Rescate turned its attention to particular aspects of these mechanisms. For example, standards regarding the Ad Hoc Commission’s burden of proof were ambiguous at best, and it was unclear how theories of command responsibility would help overcome this ambiguity. There was also little clarity as to whether human rights violations included violations of humanitarian law.44

1. Command Responsibility and Its Relation to the Ad Hoc Commission

El Rescate’s position papers centered on ways to use international law to influence change and, specifically, on how to address impunity through the doctrine of command responsibility. This doctrine, developed in the Nuremberg trials, holds a commander responsible for the conduct of his troops if (1) he affirmatively ordered any violation of human rights obligations and/or (2) troops under his command committed misconduct that the officer could, or should, have prevented. In other words, the absence of a direct order to take actions that breach human rights standards could not absolve an officer of responsibility for a subordinate’s actions if the officer knew, or had reason to know, that troops were committing or planning to commit actions violating international standards and the officer failed to take all feasible measures to repress or prevent these violations.

The fact that a breach . . . was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility . . . if they knew or had information which should have enabled them to conclude in the circumstances at the time, that [the subordinate] was committing or was going to commit such a breach, and if they did not take feasible measures within their power to prevent or repress the breach.45

44. There are many areas of overlap among human rights, humanitarian, and refugee law. For an interesting treatment of how common this overlap is, see Donna E. Arzt, Three Degrees of Separation: The Evolving Convergence of Human Rights Law, Humanitarian Law, and Refugee Law, in WAR IN THE TWENTIETH CENTURY: REFLECTIONS AT CENTURY’S END 165 (Michael A. Hennessy & B.J.C. McKercher eds., 2003).

45. The principle is considered to be a formulation of command responsibility derived from the Nuremberg Tribunals and currently a declaration of customary international law. See High Command Case (U.S. v. von Leeb) (Case No. 12, 1948), reprinted in 11 TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, at 512 (1951). See also TELFORD TAYLOR, NUREMBERG AND VIETNAM: AN AMERICAN TRAGEDY 52–53 (1970).
The *Nuremberg High Command* case further held that:

No legal opinion was necessary to determine the illegality of such orders. By any standard of civilized nations they were contrary to the . . . accepted standard of humanity . . . Any participation in the implementing of such orders, tacit or otherwise, any silent acquiescence in their enforcement . . . constitutes a criminal act on [the officer’s] part.\(^{46}\)

In El Salvador, there were not extensive records of commanders ordering violations, but substantial factual evidence supported the existence of patterns of systematic abuses. Thus, it was important to examine command responsibility in the context of patterns and practices of human rights violations. The European Court of Human Rights\(^ {47}\) defines a practice of human rights abuses as including the following two elements: (1) an accumulation of incidents of the same or similar nature sufficiently numerous and related, which do not constitute isolated incidents or exceptions, to form a pattern, and (2) tolerance of high-ranking officials.\(^ {48}\)

Prosecutions of Argentine junta members reiterated the doctrine of command responsibility for recurrent violations of human rights.\(^ {49}\) In its closing statement, the prosecution successfully argued that the physical perpetrator does not bear the sole responsibility; instead, any person who controls “a structure” that obviates the will of individual perpetrators is also responsible.\(^ {50}\) It is important to note that Articles 44 and 46 of the Salvadoran Penal Code integrate the doctrine of command responsibility into domestic Salvadoran law.\(^ {51}\)

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47. The European Convention for the Protection of Human Rights and Fundamental Freedoms represented the first step of collective enforcement of certain rights set out in the Universal Declaration of Human Rights. As part of its enforcement objective, the Convention set up three institutions that were entrusted with this responsibility, one of which was the European Court of Human Rights set up in 1959. European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. 5 (entered into force 3 Sept. 1953).


49. From 1976 to 1983, Argentina was governed by a military dictatorship that committed horrendous human rights crimes, including torture, extrajudicial executions, and the imprisonment of thousands without trial. The hallmark of political repression in Argentina, however, was the practice of enforced disappearance. During what Argentines call the “years of lead” (años de plomo), military task forces in unmarked cars (usually Ford Falcons) snatched defenseless men and women (sometimes with their children) from their homes or places of work, took them to clandestine camps, tortured them mercilessly, murdered them, and disposed secretly of their bodies.


El Rescate argued that the Peace Accords reiterated a dual obligation imposed by contemporary human rights law on all states and persons: to respect (not to personally violate or order a person to violate) human rights and to protect and promote human rights actively (to guarantee respect for the human rights of individuals under one’s jurisdiction). Using the doctrine of command responsibility, El Rescate translated this dual obligation into the following three areas of inquiry:

1. Did an officer direct or participate in human rights violations?
2. Did violations occur under a particular officer’s command, either by personnel within his unit or within the geographic area of his jurisdiction? If so, were any actions taken to prevent or correct those abuses?
3. Were violations under a particular officer’s command, either in his unit or in the geographic area of his jurisdiction, recurrent?

Moreover, El Rescate’s position was that, in the Salvadoran context, command responsibility for repeated violations not only implicated officers in command of a particular unit or region, but also members of the military “High Command.” They knew, or reasonably should have known, of systematic abuses occurring in the military entities that they commanded and should have taken steps to prevent further abuses. Even though those in the High Command were one step removed from the unit committing the abuse, El Rescate argued that the pattern of abuse was so pervasive that officers in the High Command should not escape accountability. In many ways, this theory of command responsibility defined the scope of the Ad Hoc Commissioners’ actions. Although a burden of proof was never defined, past applications regarding command responsibility guided the Ad Hoc Commission.

The High Command’s responsibility became most clear when a pattern of violations existed over time. The existence of these patterns was critical in advocating for structural reforms, such as disbanding units continually implicated in abuses and creating the Ad Hoc and Truth Commissions.

2. The Truth Commission’s Role

El Rescate also focused on the Truth Commission’s role and mandate, a subject of intense debate from the signing of the 27 April 1991 Accord, which created the Commission, until its first report issued in March 1993. First, many understood the Truth Commission as a body that would temporarily replace and compensate for the shortcomings of domestic institutions, especially the Salvadoran judicial system, which had failed miserably to protect Salvadoran citizens from the excesses of their own government. El Rescate argued strongly against this position, positing that the Truth Commission should be the architect of a plan to overcome El Salvador’s tragic history by creating new institutions and reviving others. Ultimately, El Rescate
envisioned that the Truth Commission would assist in the transformation of Salvadoran society.

Second, the Truth Commission’s mandate to investigate “grave incidents of violence” was controversial: was the Commission limited to investigating only “grave incidents,” and how was the phrase to be interpreted? El Rescate insisted that “grave incidents of violence” was not a term of art under international law and was ambiguous. Most likely, the phrase was chosen to deal with the lack of clarity about how to treat human rights abuses by the FMLN. El Rescate argued that a “grave act of violence” is sufficiently broad to include violations of international human rights agreements, humanitarian law, and Salvadoran criminal law. It also argued that the use of these particular words should not be construed as a limitation on the Commission. El Rescate proposed that the Truth Commission’s mandate obliged it to investigate all violations of human rights and recommend sanctions against the perpetrators.

Whether the Truth Commission would, in the end, fulfill its mandate depended entirely on its ability to make recommendations that actually would be carried out. For instance, it would be impossible to fulfill a recommendation to prosecute without the assurance of a radical change in the judicial system. Rather, the Truth Commission would need a series of other recommendations to assure that the adjudication and, if necessary, punishment were carried out consistent with El Salvador’s international legal obligations.

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52. While the term “gross human rights violations” would have been clearer, its use would have had important legal and political ramifications. Under traditional international law, an insurgent group is bound by a sub-set of the rules of international law or humanitarian law, but it is not necessarily bound by human rights law. The laws applicable to the FMLN can be distinguished from those applicable to other insurgent groups. The FMLN claimed that one of its major motivations for resorting to armed conflict was the systematic violation of human rights by the Salvadoran government. On various occasions, the FMLN stated that it considers itself to be bound by human rights norms and, in fact, signed an agreement on human rights where the Parties recognize that “the FMLN has the capacity and the will and assumes the commitment to respect the inherent attributes of the human person.” Agreement on Human Rights, supra note 32. The FMLN’s ability to unilaterally assume liability under human rights law is supported by arguments made by the school of thought that sees rights as flowing from the individual. This school believes that the individual is a proper subject of international law. Accordingly, the individuals comprising the FMLN would be bound by human rights law. See Julio Barberis, La personalidad jurídica internacional, in Volkerrecht als Rechtsordnung—Internationale Gerichtsbarkeit—Menschenrechte: Festschrift für Hermann Mosler 383 (Rudolf Bernhardt, Wilhelm Karl Geck, Gunther Jaenicke, Helmut Steinberger eds., 1983).

B. Establishing a Legal Basis—Demonstrating that Amnesty Laws Passed by the Salvadoran Government Violate the American Convention on Human Rights

El Rescate’s efforts to support an end to impunity in El Salvador also were boosted by international legal developments. In the late 1980s, the IACHR received three separate cases from Argentina, Uruguay, and El Salvador addressing whether national governments could officially “forget” past gross human rights violations. In all these cases, the IACHR held that this was

54. In 1987, the IACHR began to receive petitions against the government of the Argentine Republic that denounced the legislature’s passage of Law No. 23,492, enacted on 24 December 1986, and Law No. 23,521, enacted on 8 June 1987. On 7 October 1989, the Argentinean president issued Presidential Decree No. 1002, which ordered any proceedings discontinued against individuals who were charged with human rights violations and had not already benefited by the earlier laws. The original petitions received by the IACHR that challenged the first two laws were soon amended to reflect the Presidential Decree. Petitioners alleged that both laws and the Presidential Decree violated the petitioners’ right to judicial protection as stated under the American Convention on Human Rights, supra note 15, art. 25, and their right to a fair trial as recognized by Article 8 of that same Convention. The Commission found that Law No. 23,492 and Law No. 23,521 and Presidential Decree No. 1002/89 were incompatible with Article 18 (right to a fair trial) of the American Declaration on the Rights and Duties of Man, signed 2 May 1948, OEA/Ser.L/V/II.71, at 17 (1988), and Articles 1, 8, 25 of the American Convention on Human Rights, supra note 15. The Commission stated that it:

2. Recommends that the Argentine Government pay the petitioners just compensation for the violations referred to in the preceding paragraph.
3. Recommends to the Argentine Government that it adopt the measures necessary to clarify the facts and identify those responsible for the human rights violations that occurred during the past military dictatorship.


55. On 4 October 1991, the IACHR was petitioned to examine another impunity law, this time from Uruguay. Petitioners denounced the legal effects of Law No. 15,848, which petitioners alleged violated rights upheld in the American Convention—the right to judicial protection (Article 25) and the right to a fair trial (Article 8). Because the Executive Branch was entrusted with investigating the military, doubts were raised regarding the seriousness and impartiality of the investigative proceedings and the judicial process. The Uruguayan Supreme Court held that the law was constitutional. The IACHR disagreed and held that Law No. 15,848 was incompatible with Article 18 (right to a fair trial) of the American Declaration of the Rights and Duties of Man, supra note 54, and Articles 1, 8, and 25 of the American Convention on Human Rights, supra note 15. As part of its decision, the Commission stated that it:

2. Recommends to the Government of Uruguay that it give the applicant victims or their rightful claimants just compensation for the violations to which the preceding paragraph refers.
3. Recommends to the Government of Uruguay that it adopt the measures necessary to clarify the facts and identify those responsible for the human rights violations that occurred during the de facto period.

El Salvador is an ethnically homogeneous country, though a small segment of the population claims to have descended solely from indigenous peoples. The last census of Indians in El Salvador showed 80,000 in 1930, or 5.6 percent of the population. In 1932, approximately 30,000 were killed by government forces following an abortive uprising. In the face of such repression, most remaining indigenous people adopted local customs and successfully assimilated into the general population. There remain a few very small communities of indigenous people who still wear traditional dress, speak their native language, and maintain traditional customs without repression or interference. The Salvadoran National Indigenous Association (ANIS), headquartered in Sonsonate, promotes indigenous culture and language.

Las Hojas is part of the Municipality of San Antonio del Monte of the Sonsonate Department. This Department is one of fourteen and is located along the western coast of the country.

The nationwide Civil Defense network had its origins in 1) the patrullas cantonales, village patrols, established in the early 1900s and consisting of army reserve units and local peasants carrying out police-type patrols, and 2) ORDEN, Organización Democrática Nacionalista, Nationalist Democratic Organization, a national paramilitary network and rural vigilante force with tens of thousands of members established by the military in the late 1960s.

A petition was filed in January 1989 with the Inter-American Commission on Human Rights. The attack was most likely motivated by offended wealthy landowners who had lost control of lands that ANIS members had only recently acquired title over even though they had traditionally resided upon them. Masacre Las Hojas v. El Salvador, Case 10.287, Report No. 26/92, Inter-Am. C.H.R., OEA/Ser.L/V/II.83, doc. 14, at 83 (1993), available at http://www1.umn.edu/humanrts/cases/26-92-EL-SALVADOR.htm.

In 1979, General Romero was ousted in a coup by reformist officers. The officers installed a military-civilian junta that failed to curtail army-backed political violence. In 1980, Jose Napoleon Duarte, a civilian reformer who enjoyed support from the United States and from some sectors of the populace, became the first civilian president since 1931. See BBC News, Timeline: El Salvador, A Chronology of Key Events (UK Version), available at http://news.bbc.co.uk/1/hi/world/americas/country_profiles/1220818.stm.
first time any high-ranking Salvadoran military officer stood accused of a human rights violation in a Salvadoran court.\textsuperscript{61} The case, however, never went to trial. It languished in the preliminary stages until 1988 when the Salvadoran Supreme Court terminated the prosecutions based on a November 1987 amnesty law.\textsuperscript{62}

In 1988, ANIS contacted El Rescate, which in January 1989 filed a petition to the IACHR on behalf of ANIS. The petition not only challenged the massacre as a violation of El Salvador’s international legal obligations, but it also attacked the Salvadoran court’s application of an amnesty law to block the prosecution of those responsible for the massacre. The IACHR petition was a coalition effort: El Rescate served as lead counsel, joined by the non-governmental Human Rights Commission of El Salvador\textsuperscript{63} and Jack Tobin of the Harvard Law School’s Human Rights Program\textsuperscript{64} as co-counsel. The Minnesota Advocates for Human Rights\textsuperscript{65} also joined the effort as amicus curiae.

\begin{itemize}
\item \textsuperscript{62} On 28 October 1987, the Legislative Assembly approved Decree Law No. 805, known as the Law of Amnesty to Achieve National Reconciliation. It was approved by the votes of 33 deputies from the government party, the Christian Democrats, after twenty-seven deputies from opposition parties refused to vote because they did not agree with the law’s provisions. The amnesty law took effect on 5 November 1987. It benefited 1,000 political prisoners and nearly 4,000 rebels who turned themselves over to the army and were released. Almost 120 political prisoners were freed. Law No. 805 granted absolute amnesty to all persons, national and foreign, who acted as the immediate or proximate perpetrators or accomplices in the commission of political crimes or common crimes prior to 22 October 1987 in which no fewer than twenty persons were involved. Amnesty was also extended to those who had taken up arms but later came forward to declare their total renunciation of violence within fifteen days of the law entering into force. The scope of El Salvador’s amnesty law did not extend to include those who took part in the assassination of Monsignor Romero, committed kidnappings for the purpose of personal gain, engaged in clandestine or fraudulent drug trafficking, or took part in the assassination of Herbert Anaya, head of the non-governmental Human Rights Commission. See \textit{Annual Report of the Inter-American Commission on Human Rights 1987–1988: El Salvador}, Inter-Am. C.H.R., OEA/Ser.L/V/II.74, doc. 10 rev. 1, ¶¶ 29–31 (1988), available at http://www.cidh.oas.org/annualrep/87.88eng/chap4a.htm.
\item \textsuperscript{64} The Harvard Human Rights Program is a research center with the Harvard Law School. For more information on this program, see Harvard Human Rights Program at Harvard Law School, available at http://www.law.harvard.edu/programs/hrp/about_us.html.
\item \textsuperscript{65} The Advocates for Human Rights (formerly the Minnesota Advocates for Human Rights) is a volunteer-based, nongovernmental and nonprofit organization dedicated to the promotion and protection of internationally recognized human rights. For more information on this organization, see The Advocates for Human Rights, available at http://www.mnadvocates.org.
\end{itemize}
On 12 October 1992, the IACHR publicly released a resolution on the Salvadoran case that dealt separately with the issue of amnesty for human rights violations. The Commission held:

That the passage of the Amnesty Law shortly after the issuance of an arrest warrant for an official of the Armed Forces legally eliminated the possibility of an effective investigation and prosecution of those responsible for the massacre.

That despite the weight of the evidence and the importance of the case, the Government of El Salvador has not made the effort incumbent upon it to thoroughly investigate the incident and prosecute all those responsible.\(^66\)

That the Government of El Salvador’s failure to investigate and prosecute demonstrates the existence of a deliberate policy of ignoring crimes committed by the Armed Forces.

That Article 29 of the American Convention on Human Rights (ACHR) prohibits a State from unilaterally invoking the provisions of its domestic laws as a justification for non-compliance with a legal obligation imposed by the Convention.\(^67\)

That Article 144, 2nd clause, of the Salvadoran Constitution states: “The law cannot modify or revoke what has been agreed to in a treaty presently in force in El Salvador. In case of conflict between the treaty and the law, the treaty will prevail.”\(^68\)

The IACHR’s resolution concluded that the “Amnesty Law constitutes a violation of the right to ensure and respect the fundamental rights of Article 1,”\(^69\)

\(^{66}\) American Convention on Human Rights, supra note 15, art. 1, demands that state parties ensure the rights in the Convention. The obligation is clarified by the Inter-American Court of Human Rights’ interpretation in the Velasquez-Rodriguez case: The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely with impunity to the detriment of the rights recognized by the Convention.

These obligations are not fulfilled in an investigation as a “mere formality preordained to be ineffective.” In the Court’s view, either a failure to investigate, or an investigation not undertaken in a “serious manner” resulting in a lack of punishment or compensation for the victim, violates the state’s duty to “ensure” the full and free exercise of the affected right. Velasquez-Rodriguez Case, 1989 Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 166, 176, 177 (29 July 1988), available at http://www1.umn.edu/humanrts/iachr/b_11_12d.htm (finding Honduras responsible for the disappearance of Manfred Velasquez-Rodriguez).

\(^{67}\) American Convention on Human Rights, supra note 15, art. 29.


\(^{69}\) The American Convention on Human Rights states:

The State Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

8,70 and 2571 of the American Convention on Human Rights and related principles of international law binding on El Salvador.772

Before the IACHR’s 1992 decision invalidating the 1987 amnesty law, the Salvadoran government passed another amnesty law, “the Law of National Reconciliation,” earlier in 1992.73 The IACHR decision did not directly address the 1992 law, as its legality was not in front of the Commission. Importantly, the rationale utilized by the IACHR threw into question the validity of the 1992 amnesty law.

The IACHR issued its decision while the Truth Commission was in the middle of its deliberations. The Truth Commission’s report, released in March 1993,74 used the Inter-American Commission’s decision and rationale.

C. Creating a Solid Factual Basis for Combating Impunity: The Index to Accountability

The theoretical and legal work was progressing. The remaining challenge to effectively combating impunity, as highlighted by El Rescate’s discussion with a member of the IACHR secretariat, was the lack of a tool that could organize available information and create an understanding of patterns of

70. *Id.* art. 8 states:

   Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

71. *Id.* art. 25 states:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake: a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b) to develop the possibilities of judicial remedy; and c) to ensure that the competent authorities shall enforce such remedies when granted.


73. On 23 January 1992, the Salvadoran Assembly enacted the Law of National Reconciliation, which was an amnesty law covering most political crimes. Exempted from the law were only the handful of cases decided by jury trial (the Jesuit case, the US churchwomen’s case, and the Zona Rosa massacre, for example), cases of kidnapping, and cases in which the Truth Commission might recommend prosecution. However, the law specified that the Assembly could ‘adopt the resolutions it considers appropriate’ six months after the Truth Commission issued its findings, either extending the amnesty to all cases or preserving certain exemptions.

IV. INDEX TO ACCOUNTABILITY: FACTUAL POWER BEHIND THE ADVOCACY

Before the signing of the Geneva Agreement in April 1990\textsuperscript{76} between the FMLN and the Salvadoran government, which marked the beginning of the peace process, El Rescate initiated the arduous task of developing an Index to Accountability. The Index provided an accessible tool to illuminate global patterns of abuses during the Salvadoran civil war, and to relate those patterns to individual perpetrators and to those culpable according to principles of command responsibility. The Index also provided a more rigorous understanding of the kinds of abuses that had taken place and an accessible way to locate the victims’ identities. Finally, it demonstrated the sheer magnitude of violations of human rights in El Salvador over the course of the civil war.

The Index to Accountability was just that: an index. It did not demonstrate accountability; rather, it was a tool to be used in the process of arriving at accountability. Effectively designing the project to bring results took the combined efforts of many individuals, some experimentation, and a good deal of creativity and persistence.\textsuperscript{77}

Two aspects of the early stages of the project are worth noting. First, in addition to advocating for creating mechanisms to deal with past violations, El Rescate staff members traveled to the Southern Cone countries to consult with human rights organizations involved in efforts to end impunity and

\begin{itemize}
  \item Luis Jimenez, of the Inter-American Commission on Human Rights, should be specifically mentioned as being helpful in the conceptualization stage of the Index project.
  \item Those deserving special mention include the following: Alberto Aguilar, Oscar Andrade, Sonia Baires, William Bollinger, Elizabeth Cooper, Kay Eckhoff, Bernie Eisenberg, Alba Escobar, Linda Garrett, Deirdre Hill, Susan Kandel, Oscar Lopez, Salvador Lopez, Mayron Paves, Tania Podliska, Haydee Sanchez, and many others on the staff of the Index project, the staff and Board of Directors of El Rescate, as well as numerous individuals who served as advisors in an official and unofficial capacity.
\end{itemize}
establish a basis for reconciliation. Specifically, staff members studied how to process information in a systematic way after it had been collected in a less than systematic fashion. Additionally, they looked at other examples of ways to structurally link human rights violations to actual perpetrators of human rights abuses. The efforts of Centro Estudios Legales (CELS) in Buenos Aires were especially illuminating.78

Second, consultations were held with NGO human rights organizations in El Salvador,79 various factions of the FMLN, members of the UN mediation team, and international human rights professionals in Europe80 and the United States81 to establish which information sources were available and who was willing to cooperate. These meetings were necessary because of the political complexity of such projects. Bringing together enough relevant actors to realize the compilation of sensitive information required the cooperation and political clout of a wide range of actors.

Originally, El Rescate planned to digitize all reports on the human rights situation in El Salvador, including unpublished ones, and to collect more information. However, achieving a consensus on the best way to do this was difficult and resources were limited. El Rescate eventually settled for digitizing the most complete and credible set of human rights reports: those of Tutela Legal, the human rights organization of the Archdiocese of San Salvador.82

The Index covers the entire civil war period, between January 1980 and January 1992. It is based upon principles of contemporary international human rights law, materials published by Tutela Legal, and a two-year study of the Salvadoran military done by El Rescate.83 This study was essential to

78. Daniel Fontalini of CELS had done some of the first work in the area of linking a database of violations or incidents to a database with information on military hierarchy, structure, and its members.
79. For example, Tutela Legal, Socorro Juridico Cristiano, the non-governmental Human Rights Commission of El Salvador, the human rights program at the Lutheran Church.
80. For example, experts in Germany like Werner Lottje, as well as experts in Scandinavia.
82. Tutela Legal del Arzobispado was created on 31 May 1982 in an administrative restructuring carried out by the Archdiocese and was the most important private human rights monitoring group in El Salvador. Prior to 31 May 1992, the Legal Aid Office of the Archdiocese of San Salvador (Socorro Juridico Arzobispado) documented human rights violations for the Catholic Church. America's Watch, US REPORTING ON HUMAN RIGHTS IN El Salvador: METHODOLOGY AT ODDS WITH KNOWLEDGE (June 1982). After 31 May 1982, Tutela Legal carried on and expanded the work previously conducted by Socorro Juridico related to receiving denunciations of human rights violations. Tutela was recognized by the international human rights community as the foremost human rights monitor in El Salvador.
83. This study forms an integral part of the Index project.
establishing command responsibility because it shows where particular officers served and when, as well as whether the unit which they commanded had geographical responsibility. The study’s innovation and digitized results provided the ability to cross-reference it with the violations database to create individual dossiers of abuses linked to each officer.

Thus the Index included two databases. One database contained all the incidents published by Tutela Legal, classified according to categories of violations of international human rights law as defined by ONUSAL. The other contained extensive data on Salvadoran military structure and personnel. The interrelation of the two databases in the Index to Accountability gave El Rescate a unique capacity to describe El Salvador’s tragic human rights past.

A. Incident Database

Tutela Legal’s human rights reports served as the source for the incident database. To understand the data entered, one must understand Tutela’s approach to human rights reporting. First, Tutela did not establish rigid categories of human rights violations. In fact, Tutela’s materials, especially in the early years, indicated an unwillingness to overly categorize and classify. Its terminology often was descriptive and found in a textual format.

Second, of the many denunciations Tutela received, it only published information pertinent to those denunciations that it believed involved a violation of human rights. Tutela’s staff investigated all denunciations before publishing them as human rights violations, according to its own conception of that term. Tutela’s conception of a human rights violation was, like that of other Salvadoran human rights organizations, grounded in the reality it confronted: armed conflict, a high level of politically-motivated violence, and a judiciary that simply did not function to protect human rights. Implicit in Tutela Legal’s reports is the conclusion that legal protections, including investigations of abuses, were by and large ignored. Tutela’s position was


85. Interview with Lic. Hernandez, Executive Director of Tutela Legal, San Salvador, El Sal. (Aug. 1990). According to Hernandez, during the early years it was particularly difficult to carry out on-site investigations, thereby limiting what it could publish in its reports.
that the state apparatus, taken as a whole, was involved in creating the climate of impunity.\textsuperscript{86}

Tutela’s materials were limited mainly because the staff only reported on an incident once. However, in the absence of a judicial response or remedy, the violation actually continued and changed in character, thus implicating rights related to the lack of access to justice as well. Logistical problems, including the difficulty and danger of traveling and limited resources, hindered Tutela’s ability to investigate all abuses denounced.

Even if Tutela’s published information was only a fraction of the universe of abuses, one should still consider that fraction significant. It included 15,212 violation records or “cases,” of which 71 percent had only one victim.\textsuperscript{87} Almost 98 percent had ten or fewer reported victims.\textsuperscript{88} A small proportion of the violation records contained large and possibly speculative victim estimates.\textsuperscript{89} A total of 42,367 victims were reported in all violation records.\textsuperscript{90}

B. Military Database

The information contained in the incident database was an important first step to compiling a comprehensive record of the systemic violence that occurred during El Salvador’s civil war. The extensive military database and the ability to cross-reference the incident and military databases made the Index particularly useful and innovative. These features helped account for human rights abuses at the commanding and individual officer levels in accordance with the principles of command responsibility.

\textsuperscript{86} Id.
\textsuperscript{87} Tutela Legal began publishing monthly reports in May 1982. Violations cited during January 1980 through April 1982 reflect denunciations made in later publications. Consequently, information on human rights violations for the years 1980 and 1981 is underrepresented. It is widely accepted that the greatest number of abuses took place in those two years. For more information about the organization, see Tutela Legal del Arzobispado, available at http://www.tutelalegal.org/.
\textsuperscript{88} See El Rescate report to Ad Hoc Commission (on file with author); El Rescate Report to Truth Commission (on file with author). Both reports were based on information produced by the Index to Accountability, described in the introduction of this article and infra note 102. For more on this subject, see Bill Bollinger & Deirdre A. Hill, The Index to Accountability: An Overview of Perpetrators Implicated in Human Rights Violations in El Salvador, 1980–1990 (July 1992) (unpublished manuscript, on file with author). The Commission on the Truth for El Salvador registered more than 22,000 complaints of serious acts of violence that occurred in El Salvador between January 1980 and July 1991. Those giving testimony attributed almost 85 percent of cases to agents of the state, paramilitary groups allied to them, and the death squads. \textit{From Madness to Hope}, supra note 74, at 43–45.
\textsuperscript{89} Id.
\textsuperscript{90} Id.
The military database drew from the following sources: Salvadoran Military General Orders;\(^91\) Diario Oficial of El Salvador;\(^92\) US Defense Intelligence Agency (DIA)\(^93\) (obtained via Freedom of Information Act\(^94\) requests); Foreign Broadcast Index Service (FBIS);\(^95\) Centro de Información, Documentación y Apoyo a la Investigación (CIDAI) of the Universidad Centroamericana (UCA) (University of Central America);\(^96\) Report of Arms Control and Foreign Policy Caucus of the US Congress;\(^97\) Max G. Manwaring's *El Salvador at War: an Oral History*;\(^98\) and the FMLN and Salvadoran political parties (i.e., confidential sources). The occasional contradictions in the obtained information were resolved in favor of the most credible or “official” documents. The sources above are ordered from most credible to least credible according to El Rescate’s evaluation.

The information gathered on jurisdiction and position of particular officers was assembled and integrated into the Salvadoran military structure and the chain of command. The database clearly delineated the jurisdiction of the High Command, the various specialized forces, and geographically based divisions.

Creating this database involved a substantial amount of work. A graduate of the Salvadoran Military Academy worked on this project for well over a year.\(^99\) Several hundred Freedom of Information Act requests were made.

\(^{91}\) The organic or basic law of the Salvadoran armed forces defines a general order. See Ley Orgánica de la Fuerza Armada de El Salvador, available at http://www.asamblea.gob.sv/leyes/19980353.htm.

\(^{92}\) The Diario Oficial of El Salvador is an official compilation of El Salvador legislation.

\(^{93}\) The Defense Intelligence Agency (DIA) is a Department of Defense combat support agency and a member of the United States Intelligence Community. DIA employs over 7500 military and civilian employees worldwide and is a major producer and manager of foreign military intelligence. For more information, see Defense Intelligence Agency, available at http://www.dia.mil/.


\(^{95}\) The Foreign Broadcast Information Service (FBIS) Daily Reports consist of translated broadcasts, news agency transmissions, newspapers, periodicals and government statements from nations around the globe. These media sources were monitored in their original language, translated into English, and issued by an agency of the US government. The Index to the FBIS Daily Reports allows users can trace a story over time, examine perspectives on an issue from a single country, or compare views from several countries on the same issue.

\(^{96}\) Centro de Información, Documentación y Apoyo a la Investigación (CIDAI) (Information, Documentation and Research Support) of the Universidad Centroamericana “José Simeón Cañas” de El Salvador (University of Central American, or the Jesuit University). CIDAI publishes a weekly called Proceso, available at http://www.uca.edu.sv/publica/proceso/proci1131.html.

\(^{97}\) One of Congress’ oldest member organizations, the Arms Control and Foreign Policy Caucus.


\(^{99}\) For a more complete treatment of this subject, see El Rescate, El Salvador—Estructura Militar Cadena de Mandos (Jan. 1992) (unpublished policy paper, on file with author.)
The National Security Archive\textsuperscript{100} and Patton, Boggs & Blow\textsuperscript{101} provided follow-up and assistance with this aspect of the work on a pro bono basis. At that time, this effort was perhaps the most extensive study by an NGO of the military within the framework of command responsibility done for the purposes of accountability for past human rights abuses. Its ability to help link military officers to violations was a substantial innovation.

An example of the “resume report” created for each high-ranking military officer is reproduced below, in this case for Juan Carlos Carrillo Schlenker.\textsuperscript{102}

\begin{center}
\textbf{Resume Report for Military Officer}
Juan Carlos Carrillo Schlenker
Graduating Class: 1986
\end{center}

\begin{center}
\begin{tabular}{|c|c|c|}
\hline
Date & Rank (R), Unit (U), or Training (T) & Source \\
\hline
11-11-1966 & (R) 2Nd Lieutenant (graduated from Sub Lieutenant Military School) & Defense Intelligence Agency \\
01-01-1968 & (U) Military School “Gerardo Barrios” (Chief Squad) & Defense Intelligence Agency \\
07-01-1968 to 09-01-1968 & (T) Panama (U.S. School) (Tactical Officer, Fort Oglethorpe (USARSA)) & Defense Intelligence Agency: Confidential \\
01-01-1969 to 12-20-1969 & (U) Other (graduated from “Ranger”, Command school) & Defense Intelligence Agency \\
01-01-1970 & (U) National Guard (Chief Squad, 7th Company) & Defense Intelligence Agency \\
04-01-1970 & (U) National Guard (Chief Squad, Training Company) & Defense Intelligence Agency \\
01-01-1971 & (U) Calvary Regiment (Chief of Section, 1st Squadron) & Defense Intelligence Agency \\
12-31-1973 & (R) Captain & Defense Intelligence Agency \\
01-01-1976 & (U) Calvary Regiment (Commander Squadron Mounted Mixed) & Defense Intelligence Agency \\
05-03-1975 to 01-01-1977 & (U) Calvary Regiment (Instructor, Mounted Section) & Defense Intelligence Agency \\
02-02-1979 & (R) Major & Defense Intelligence Agency \\
11-01-1980 to 01-01-1982 & (U) Treasury Police (S-2 Intelligence) & Defense Intelligence Agency: Other local business not specified: Confidential \\
01-01-1982 to 05-01-1983 & (U) Military Party No. 5 & Defense Intelligence Agency: Confidential, Confidential \\
12-31-1982 & (R) Lt. Colonel & Defense Intelligence Agency \\
06-01-1983 to 01-01-1984 & (U) Treasury Police & Defense Intelligence Agency: Confidential \\
02-01-1984 to 10-01-1984 & (U) Military Party No. 1 & Defense Intelligence Agency: Confidential, Other local business not specified \\
12-31-1988 & (R) Colonel & Defense Intelligence Agency \\
\hline
\end{tabular}
\end{center}

100. The National Security Archive is an independent nongovernmental research institute and library located at The George Washington University in Washington, D.C. The Archive collects and publishes declassified documents acquired through the Freedom of Information Act (FOIA). For more information, see the NSA official website, available at http://www.gwu.edu/~nsarchiv/nsa/the_archive.html.

101. Patton, Boggs & Blow is a Washington, D.C. based law firm. For more than forty years, the firm has worked closely with Congress and regulatory agencies in Washington, litigated in courts across the country, and negotiated business transactions around the world.

102. The Index to Accountability project is, in essence, a database. It can be searched and can create multiple types of reports using various software programs. When El Rescate made its submissions to the Ad Hoc Commission and the Truth Commission, it provided hardcopies of the reports that it thought were most useful to the Commissions. El Rescate generated fifteen volumes of material, much of it in Spanish. There are only a couple of these hardcopies in existence at present. Of the hardcopy reports, the officer resumes are found in volume 8. The reports are found in alphabetical order. The report is a translated version of volume 8.
C. Issues Confronted in Constructing the Index to Accountability

El Rescate struggled with how to classify an incident, how to avoid errors in data transfer, and whether it was possible to have multiple human rights violations related to a single case. In general, these issues were resolved based on what other groups had used either successfully or unsuccessfully. El Rescate’s decisions contributed to the future development of this area of human rights practice.

1. Reliability of Source Materials

ONUSAL’s first report pointed out that human rights organizations do not use uniform criteria for classifying violations. To a large degree, the Index avoided this problem by utilizing only one source.

Tutela Legal collected information on human rights violations in the following manner: individuals came to the office in San Salvador to make denunciations, which were recorded in written form when one of Tutela Legal’s technicians interviewed each individual making a denunciation. Through the interviewing process, the technicians checked the credibility of the testimony (e.g., verifying its consistency). They also reviewed the information against existing records for the same year to eliminate duplication of violation records. If information was already documented on the incident, they added the new information to the file. Tutela Legal attempted to carry out separate on-site investigations of each of the cases it published, although these investigations were not carried out when there were military operations or other restrictions in the area. Because such restrictions happened frequently, there was an indeterminate but significant undercounting of violations in its published reports considering that, to be published, the denunciation had to be investigated.

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2. Inter-rater Reliability

At El Rescate, data collectors converted the reports of human rights abuses into usable information for the incident database. The process of transferring data from Tutela’s reports posed certain problems. El Rescate instituted specific procedures to ensure consistency of coding among data collectors. It prepared a detailed manual with step-by-step instructions on how to code the data. The organization also conducted a mandatory training course for collectors that included a test on difficult and ambiguous cases. Finally, it insisted on frequent cross-checking. El Rescate also conducted an inter-rater reliability test, a statistical method to measure the degree of agreement among judges or raters (i.e., those who transferred the data from the text of the Tutela report to the data entry sheets). For instance, each data collector was given the same data to rate, consisting of one month’s reports, and the resulting judgments were compared using statistical analysis. The analysis demonstrated a very high degree of agreement among the data collectors, well above any level of agreement that could be attributed to chance.

3. Accuracy

El Rescate conducted random reviews of data collectors’ work and corrected all work found to be incorrect in order to ensure accuracy and faithfulness to the source materials. Records were maintained charting the frequency and type of errors, so as to provide an analysis of frequent errors that could be corrected. To eliminate arbitrary interpretations or judgments, data entry personnel utilized only the information that appeared on the data collections sheet.

4. Integration of Human Rights Law into the Index

The Index included all of the cases reported by Tutela that had sufficient detail, regardless of the political affiliation of the victim. After collecting and entering all of Tutela Legal’s reported information into the Index database, the abuse activity was synthesized into defined categories of violations of international law.

In this database, the Index reproduced the human rights abuse activity contained in Tutela’s reports including: dates, places, descriptive category (type of incident), victim, and perpetrator. The perpetrator category was divided further into four groups: government forces, death squads, unknown, and the FMLN.

104. Special methods exist for measuring reliability among raters who are assigning data into categories (violation and perpetrator types) rather than making numerical meaningful judgments. See J. L. Fleiss, Measuring nominal scale agreement among raters, 76 PSYCHOL. BULL. 372 (1971).
The categories of violations used in the Index were borrowed primarily from those utilized by ONUSAL. The following explains the content and basis of the categories. The first six categories were based on the right to life and personal integrity and security\textsuperscript{105} (Summary Executions, Enforced or Involuntary Disappearance, Disproportionate or Arbitrary Use of Force, Death Threats, Disproportionate or Indiscriminate Attacks, Mine Explosion), and the seventh category was based on the right to personal liberty (Arbitrary Arrest or Unlawful Deprivation of Personal Liberty).\textsuperscript{106} Each incident could include more than one violation. For example, if a person was arrested without a warrant by a plainclothes police officer, not told why he or she was arrested, and was taken to a government detention facility and tortured, two violations would result: the arbitrary arrest or unlawful deprivation of personal liberty and torture. Each was included in the database as a separate violation.

D. Reports Generated by the Index to Accountability

Below are examples of the types of reports the Index could produce.\textsuperscript{107} The reports connected incidents of violations with particular units to show omissions and recurrent violations. Connections were established by two methods. First, if the denunciation included information about the perpetrator, that information provided the link to the unit. Second, when no particular perpetrator was mentioned other than “the military” or “the police,” violations were connected by geographic area to the unit controlling the area where the violation occurred, thus establishing the jurisdictional responsibility. These reports were generated through Paradox.\textsuperscript{108}

The Paradox software was used to generate three groups of reports: (1) reports based on individual military officers, (2) reports based on violations, and (3) reports based on names of victims.\textsuperscript{109} The first two groups of

\begin{enumerate}
\item \textsuperscript{105} “Every person has the right to life, liberty and the security of his person.” American Declaration of the Rights and Duties of Man, \textit{supra} note 54, ch. 1, art. 1.
\item \textsuperscript{106} American Convention on Human Rights, \textit{supra} note 15, arts. 4, 5, 7. While the right to personal liberty (Article 7) is arguably derogable, “arbitrary arrest or unlawful imprisonment” was included in the Index for three principal reasons: (1) El Salvador did not comply with the requirements to suspend the application of the article; (2) even if Article 7 was suspended, procedural protections in regard to arrest cannot be ignored in all circumstances; (3) the San Jose Accord highlights the importance of the right to personal liberty.
\item \textsuperscript{107} The raw data is still held by El Rescate, the National Security Archives, the U.S. Department of Justice, and a couple of individuals. It is not easily accessed.
\item \textsuperscript{108} Paradox is database software that was commercially available when the Index was being developed.
\item \textsuperscript{109} The total number of victims is larger than the total of named victims due to lack of information. In many cases the names of the victims were not known and reported as “nombre indeterminado” by the Tutela Legal publications and, therefore, do not appear on the victims list but will appear on other reports. Additionally, in many cases the total
reports also contained information on the number of victims reported in the incident and details about the perpetrator. All of the reports included the following information: the date of violation (and notation as to whether the date was exact), the type of violation (based on definitions established by international law), the source of the incident (volume and page number of incident as originally published by Tutela Legal), and the department where the violation occurred (if known).

In addition, the Index to Accountability data was used to develop reports using the statistical program SAS. These reports helped to describe the reality through graphic devices. Reports generated through SAS included: (1) pie charts demonstrating the violations distributed by perpetrator, (2) the distribution of violations within the security forces, (3) a comparison of perpetrators by violations type, (4) frequency of violation by perpetrators, and (5) distribution of violations by Department for each perpetrator. Finally, a report was generated to describe the frequency and intensity of massacres.

Group 1: Individual Officer Reports

To provide some understanding of the number of officers in active service during the reporting period, and therefore relevant to the Index project, on 1 July 1992, there were 2,013 officers on active duty. Of this number, only 179 had the rank of General, Colonel, or Lieutenant Colonel. Since 1980, well over 3,000 officers have served in the Salvadoran armed forces.

These reports were designed to track the human rights records of individual officers by following the officer from one military unit or command post to another and noting violations attributable to the relevant unit or jurisdiction. In particular, there was hope that the reports would trace particular military leaders’ movements and tie them to patterns of human rights abuses. The doctrine of command responsibility made it possible to connect individual military leaders with human rights abuses occurring in areas under their command.

The purpose of Group 1 Reports was to produce complete human rights dossiers on all military officers for whom the Index contains a biography. To do this, the following four different types of reports were created:

(1) A report on violations committed while an officer served in the command position of a major unit. Below is a report related to Juan Orlando Zepeda. El Rescate only had information regarding his time as second and

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number of victims was undetermined. In these cases the information on victim count was entered as “0” in the database, as opposed to assigning an arbitrary number.

110. Statistical Analysis System (SAS System) is an integrated system of software products provided by SAS Institute that enables the programmer to perform various statistic functions. See http://www.sas.com/.

111. See El Rescate, El Salvador—Estructura Military Cadena de Mandos, supra note 99.
first in command of the First Infantry Battalion. This report related to Col. Zepeda is eighteen pages long and outlines the human rights violations specifically attributed to his unit while under his command. Two pages are reproduced below.\textsuperscript{112}

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Date & Violation Type & Department & No. of Victims & Book & Page \\
\hline
08-07-1982 & Arbitrary Deprivation of Liberty & San Salvador & 1 & 1INFO & 4 \\
06-10-1982 & Arbitrary Deprivation of Liberty & Santa Ana & 1 & 5INFO & 10 \\
07-13-1982 & Torture & San Salvador & 1 & 5INFO & 10 \\
07-17-1982 & Arbitrary Deprivation of Liberty & San Salvador & 1 & 6INFO & lii, liii \\
07-21-1982 & Arbitrary Deprivation of Liberty & San Salvador & 12 & 6INFO & lii, liii \\
08-22-1982 & Arbitrary Deprivation of Liberty & San Salvador & 1 & 4INFO & 5 \\
08-23-1982 & Torture & San Salvador & 1 & 4INFO & 5 \\
09-03-1982 & Summary Execution & San Salvador & 3 & 4INFO & 5 \\
\hline
\end{tabular}
\end{table}

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Date & Violation Type & Department & No. of Victims & Book & Page \\
\hline
08-10-1983 & Arbitrary Deprivation of Liberty & San Salvador & 1 & 22INF & 30 \\
07-10-1983 & Arbitrary Deprivation of Liberty & San Salvador & 1 & 22INF & 30 \\
07-02-1983 & Arbitrary Deprivation of Liberty & San Salvador & 1 & 34INF & lii \\
\hline
\end{tabular}
\end{table}

\textsuperscript{112} This report can be generated by the Index to Accountability database with Paradox software [hereinafter Index with Paradox]. For an explanation of the Index to Accountability and Paradox, see \textit{supra} notes 102 and 108 and accompanying text. This report is the English language translation of part of the report for Col. Zepeda contained in volume 7 of the materials presented to the Ad Hoc Commission.
El Salvador is divided into fourteen distinct administrative divisions known as “Departments.” These Departments are Ahuachapan, Cabanas, Chalatenango, Cuscatlan, La Libertad, La Paz, La Union, Morazan, San Miguel, San Salvador, Santa Ana, San Vicente, Sonsonate, and Usulutan.

A report on violations committed while an officer served in a command position that had responsibility for a department. Again, Col. Zepeda’s report is included as an example. The First Infantry Battalion had jurisdiction over the department of San Salvador. This report is thirteen pages long, and page 13 is produced below.

113. El Salvador is divided into fourteen distinct administrative divisions known as “Departments.” These Departments are Ahuachapan, Cabanas, Chalatenango, Cuscatlan, La Libertad, La Paz, La Union, Morazan, San Miguel, San Salvador, Santa Ana, San Vicente, Sonsonate, and Usulutan.

114. Index with Paradox, supra note 112. Depicted is the English language translation of part of the violation report for Col. Zepeda. It is contained in volume 6 of the materials presented to the Ad Hoc Commission.
(3) A report on violations committed while an officer served in a command position that had responsibility for a military zone (typically a number of departments). This report related to Col. Zepeda is eighteen pages long, and page 18 is produced below.\textsuperscript{115}

\begin{table}
\begin{tabular}{|c|c|c|c|c|}
\hline
Date & Violation Type & Department & No. of Victims & Book & Page \\
\hline
03-31-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 43-44 \\
03-31-1989 & Torture & San Salvador & 0 & 86 INF & 43-44 \\
03-31-1989 & Torture & San Salvador & 0 & 86 INF & 43-44 \\
03-31-1989 & Summary Execution & San Salvador & 2 & 86 INF & 34-57 \\
03-31-1989 & Summary Execution & San Salvador & 2 & 86 INF & 34-57 \\
03-31-1989 & Arbitrary or indiscriminate attacks on civilians & San Salvador & 1 & 86 INF & 54-57 \\
03-31-1989 & Arbitrary or indiscriminate attacks on civilians & San Salvador & 1 & 86 INF & 54-57 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 59 INF & 7.8 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 59 INF & 7.8 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 59 INF & 7.8 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 59 INF & 7.8 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 2 & 86 INF & 8-10 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 2 & 86 INF & 8-10 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 2 & 86 INF & 8-10 \\
06-01-1989 & Torture & San Salvador & 0 & 86 INF & 8-10 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 8.9 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 11.12 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 86 INF & 11.12 \\
06-01-1989 & Torture & San Salvador & 1 & 86 INF & 11.12 \\
06-01-1989 & Arbitrary deprivation of liberty & San Salvador & 1 & 87 INF & 56 \\
06-01-1989 & Disappearance & San Salvador & 1 & 87 INF & 56 \\
\hline
\end{tabular}
\end{table}

\textsuperscript{115} \textit{Id.}
(4) A report on all violations committed throughout the entire country while an officer served in the High Command.\(^{116}\)

Repeated violations accordingly implicated both unit commanders and the members of the High Command, as they either had, or reasonably should have had, knowledge of the “practice” of violations, and were required to take steps to prevent further abuses. Specific legal responsibility for the High Command is seen clearly when a pattern of violations exists over time.

\(^{116}\) Unfortunately, El Rescate rarely had complete military information to produce all four reports on each officer for whom the Index contained information. Thus, most reports are based on incomplete military histories, which tend to show only a fraction of the abuses linked to a particular officer.
Group 2: Reports by Violation Type

Each report in this group was based on one of the following specific types of violations of human rights law:

- summary execution;
- forced or involuntary disappearance;
- torture and all methods of cruel, inhuman, and degrading treatment or punishment;
- disproportionate or arbitrary use of force;
- death threat;
- disproportionate or indiscriminate attacks on civilians;
- mine explosion; or
- arbitrary arrest or unlawful deprivation of personal liberty.

Each report was designed to illuminate the systematic practice of one violation. These reports are produced for the period between January 1980 and December 1990. Reports showing repeated instances of a certain violation type indicated the existence of a policy or practice.

Pages 1 and 2 of the report related to torture are reproduced below. The data used to produce these reports were limited to those violations specifically attributed to a unit (e.g., Group 1a) and were grouped by perpetrating unit. This example shows torture attributed to the Air Force and the first two cases attributed to the Artillery Brigade.\footnote{117}

\footnote{117. Index with Paradox, supra note 112. Depicted is the English language translation of part of the report on torture. It is contained in volume 8 of the materials presented to the Ad Hoc Commission.}
## El Rescate’s Contribution to Human Rights in El Salvador

### 2008

**Index to Accountability:**

Right to Life and Personal Integrity Violations
Attributed to Specific Government Forces
as Indicated by Reports to Tutela Legal
July 22, 1992

**Government Force:** Air Force

**Violation:** Torture

For the period: 01-01-1983 to 06-30-1983

<table>
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<th>Date</th>
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<th>Names</th>
<th>Department</th>
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<td>1</td>
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<td>San Salvador</td>
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<th>No. of Victims</th>
<th>Book</th>
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Page 2

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<tr>
<th>Date</th>
<th>Command</th>
<th>Names</th>
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<th>No. of Victims</th>
<th>Book</th>
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For the period: 01-01-1983 to 06-30-1983
118. Some experts argue that even a single violation of human rights law may trigger command responsibility when, for example, knowledge of acquiescence existed. Others assert that command responsibility is generated only when violations have occurred on a systematic basis or as a matter of state policy. See Theodore Meron, Human Rights and Humanitarian Norms as Customary Law 103 (1989).

119. Index with Paradox, supra note 112. Depicted is the English language translation of part of the report on individual victims that had been disappeared. It is contained in volume 2 of the materials presented to the Ad Hoc Commission.
The reports of massacres are similar to Group 2 reports, but they were designed to show the pattern and volume of the incidents of summary execution with more than five victims over time and by geographic area. Page 1 of the report is reproduced below; it implicated the Air Force, Artillery Brigade, and First Infantry Brigade.

120. Id. (for victims who were massacred).
The following describes the reports generated from the Index to Accountability through SAS. There are a significant number of these types of reports; examples are produced below.

Pie chart of all violations by perpetrator.\textsuperscript{121}

\textsuperscript{121} This graph can be generated by the Index to Accountability database with SAS software. Depicted is the English language translation of the graph related to all violations by all perpetrators. It is contained in volume 12 of the materials presented to the Ad Hoc Commission.
This chart demonstrates the distribution of human rights violations among four perpetrators: (1) government forces, (2) death squad[s], (3) unknown, and (4) the FMLN. Pie charts were developed for all violations and also individually for the eight types of violations included in the Index. The charts demonstrate the disparity between the violations committed by the government and those committed by the FMLN.

Pie chart showing the distribution of violations within government forces.122
This pie chart demonstrates the distribution of human rights abuses by government forces. These charts were created to show the total number of violations and also for each year included in the Index (1980–1990).

Scatter graph of all violations comparing perpetrators over time.\textsuperscript{123}

This graphic display also demonstrates the disparity between violations of the government and the FMLN. The graphs compare the frequency of one type of violation for each of the four perpetrators: (1) government forces, (2) death squads, (3) unknown, and (4) the FMLN. These graphs were developed both countrywide and by department and also for all violations and for the eight types of violations individually.

\textsuperscript{123} Id. (for comparison of perpetrators over time).
Scatter graph demonstrating perpetrator’s frequency and propensity to commit violations.¹²⁴

This graph set includes Torture, Disproportionate/Arbitrary Use of Force, and Arbitrary Deprivation of Personal Liberty attributed to the First Infantry Battalion. These graphs were developed for each of the eight violation types, for the four types of perpetrators, and for each of the major military units (i.e., six brigades, eight detachments, three security forces, Air Force, Navy, Civil Defense, and the five Immediate Reaction Battalions). These graphs assisted in determining changes in the global pattern of violations of human rights and in demonstrating the consistent violation or the Salvadoran military’s administrative practice of violating the rights to life, personal integrity, and personal liberty.

Bar chart demonstrating distribution of violations by department.

Below are examples of reports related to disappearances during January to June 1990 and June to December 1990.

¹²⁴. *Id.* (for perpetrators’ propensity to commit a particular violation over time).
Bar charts were produced for each of the eight types of violations featured in the Index. This report was based upon the total number of violations, except those attributed to the FMLN, and was categorized by department and violation type for every six-month period between January 1980 and December 1990. Although some variation existed among the departments, the figures were high and sufficiently distributed to provide strong support for the supposition that violations occurred as an administrative practice.

125. *Id.* (for geographic distribution of a particular violation over time).
In terms of government forces, these bar charts demonstrated that a number of violations occurred throughout the country over the ten-year period. Thus, the violations could not be considered as isolated incidents but as a pattern of abuse.

V. OUTCOMES AND IMPACT OF EL RESCATE’S EFFORTS

The High Command’s responsibility became most clear when a pattern of violations existed over time. The existence of these patterns was critical to advocating for structural reforms, such as disbanding units continually implicated in abuses and realizing the potential of the Ad Hoc and Truth Commissions. El Rescate’s ability to bring both the law and facts together helped to make these mechanisms effective.

A. Structural Reforms

El Rescate played a limited role in affecting structural reforms of the peace process. Certainly, its articles and position papers, as well as its legal work, contributed to a growing understanding and momentum for the type of changes found in the Peace Accords. At the same time, the Index to Accountability supported the idea that units like the National Guard, which were disbanded in the peace process, were involved in systematic human rights violations. In this particular case, El Rescate was one of many organizations contributing to this area of change. It is important to acknowledge the cooperative nature of advocacy when attempting to analyze its impact on structural reforms.\(^{126}\) However, El Rescate’s strategy for pushing these reforms was not nearly as elaborate as its strategy relative to the Ad Hoc and Truth Commissions.

Though El Rescate was in a position to contribute to the implementation of structural reforms, it was unable to maximize its potential in this area. A proposal was developed and circulated for El Rescate’s office in San Salvador to hire a few Salvadoran lawyers to actively work toward realizing the reforms included in the Peace Accords. This work would have included lobbying and legal actions. Unfortunately, this proposal was rejected, and El Rescate’s role was limited to observing and reporting, as opposed to being proactive.

Structural reforms agreed to in the Peace Accords have not been efficiently or fully implemented. Although problems existed in almost every area, the creation of the National Civilian Police Force and the demobilization of the old security forces have been especially problematic. Some believe the slow implementation of reforms facilitated the continuation of political killings in El Salvador during the transitional period. The positive human rights impact of the Accords related to economic reform has been less clear than in the reform of the National Police and the disbanding of the National Guard. The economic related reforms, such as land reform, were designed to help end the fighting by giving soldiers a new occupation and to address the underlying economic inequities between the majority and the economic elite.

It is important to note that ONUSAL originated as a body to monitor compliance with the terms of the Human Rights Agreement—the San Jose Accord. This Mission kept pressure on the Salvadoran government and military to comply with the structural reforms related to human rights.

Shortly before ONUSAL’s mandate was to expire on 30 April 1995, the Secretary-General of the United Nations stated that work regarding the implementation of the Peace Accords was still needed. For example, he cited the following issues as those in need of attention: land transfer, reintegration programs, implementation of the recommendations of the Truth Commission, strengthening the National Civilian Police, the National Counsel of the Defense of Human Rights, the judiciary, and the electoral system.

Describing a “somewhat disquieting situation” in El Salvador, the Secretary-General pushed for the creation of a follow-up mission. In light of a request to the United Nations from both parties to the Peace Accords, the Mission of the UN in El Salvador (MINUSAL) took over from the larger ONUSAL mission on 1 May 1995. MINUSAL was deactivated in April 1996. As the mission wound down so too did its influence and its ability to closely monitor issues related to human rights.

The UN presence continued because the Peace Accords had not been fully implemented. In large part, this was due to the inefficiency and divisions

131. Id.
within the FMLN and the organizations that supported the peace process. Its presence partly related to the less than proactive role played by the international community since the publishing of the Truth Commission’s report.

El Rescate was no exception. It worked hard to create mechanisms for change and to compile data to maximize the mechanisms’ potential, but it failed to continue the same kind of advocacy to ensure implementation of the recommendations and decisions produced by these mechanisms. The area of structural reforms highlights El Rescate’s lack of sufficient follow-through to maximize the potential for change.

To some degree, groups like El Rescate deferred to the United Nations and Member States to push for the implementation of structural reforms. Even if this scenario was not perfect, eventually, many of the reforms were fully or partially implemented and had a positive impact on the human rights situation.133

B. Ad Hoc Commission

El Rescate provided quality materials based on contemporary social science methods in bulk, handing over fifteen volumes of computer-generated reports and graphics to the Ad Hoc Commission. El Rescate’s submission also contained an overview of the legal theory, including command responsibility, supporting its work and an analysis and guide to the reports produced.

El Rescate closely monitored the Commission’s work, identified difficult legal and political issues, and acted in concert with many other human rights groups to advocate for the Ad Hoc Commission to resolve these issues based upon international law. This effort translated to advocacy by important international human rights groups at key moments.134 In addition, El Rescate assisted in organizing a symposium with the Salvadoran NGO Casa de Amistad, which was designed to reinforce the importance and legitimacy of the Ad Hoc Commission. The symposium brought together all Salvadoran human rights groups and representatives of a number of prominent international groups including Americas Watch,135 DePaul University’s

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133. See, e.g., Human Rights Watch, World Report 1996 (1996). It should be noted that El Salvador was dropped from Human Rights Watch’s annual report in 1997 and has not been featured since.


135. Americas Watch, now known as Human Rights Watch: Americas, is part of the international human rights organization that protects and promotes human rights around the globe. For more information on the organization’s work in the Americas, see Human Rights Watch: Americas, available at http://www.hrw.org/doc/?t=americas.
International Human Rights Institute,\textsuperscript{136} the Lawyers Committee for Human Rights,\textsuperscript{137} and the American Association for the Advancement of Science and Human Rights Program.\textsuperscript{138}

These efforts contributed to the Ad Hoc Commission’s work. The Ad Hoc Commission recommended the removal of 110 officers linked to human rights violations. The President of El Salvador had until 31 December 1992 to implement these recommendations. Although the 110 officers slated for removal by the Ad Hoc Commission comprised only about 5 percent of the officer corps—a paltry number for the volume of violations committed by the military over the last decade—the Salvadoran military ferociously resisted the report’s implementation. This resistance was primarily due to the fact that a vast majority of those removed by the Ad Hoc Commission held the rank of General, Colonel, or Lieutenant Colonel and represented over 65 percent of the top-ranking officers. This percentage was impressive and was supported by the findings of the Index to Accountability.\textsuperscript{139}

In the end, the Ad Hoc Commission did much more than most people had expected. Even without a definite burden of proof, the Ad Hoc Commission, armed with the information provided to them, could be confident that its decisions were well grounded in fact. In particular, the Commission knew that all the removed officers either held a policy position when systematic human rights abuses were being committed throughout the country or commanded a unit linked to such violations. The facts demonstrated that the commanding officers of the relevant units and those within the High Command knew, or should have known, that widespread abuses were taking place but did not stop the practice, either individually or collectively.

The Ad Hoc Commission’s report shook a military long accustomed to impunity. Both the Defense Minister\textsuperscript{140} and the Vice Defense

\textsuperscript{136} The International Human Rights Law Institute works to develop and promote international human rights law and international criminal justice through fieldwork, research and documentation, publications, and advocacy. For more information on the Institute, see International Human Rights Law Institute, \textit{available at} http://www.law.depaul.edu/centers_institutes/ihrli/about_us/.

\textsuperscript{137} The Lawyers Committee for Human Rights has been renamed and is now known as Human Rights First. For more information on this organization, see Human Rights First, \textit{available at} http://www.humanrightsfirst.org/index.asp.

\textsuperscript{138} The AAAS Science and Human Rights Program was established in 1977 to give scientists a way to help their colleagues around the world whose human rights are threatened or violated. Mobilizing effective assistance to protect the human rights of scientists around the world remains central to its mission, as well as making the tools and knowledge of science available to benefit the field of human rights. For more information, see AAAS Science and Human Rights Program, \textit{available at} http://shr.aaas.org.

\textsuperscript{139} \textit{Human Rights Watch, World Report 1993, supra note} 73.

\textsuperscript{140} General René Emilio Ponce was the Defense Minister of El Salvador from 1988 to 1993. He was involved in death squad activities in the early 1980s. During the 1980s, both the CIA and the State Department identified Ponce as a death squad member and one of a dozen right-wing officers with links to terrorist activities. Ponce rose through the
Minister\textsuperscript{141} publicly defied the Commission’s report by stating that they would not be removed from service.\textsuperscript{142} Their intransigence and rumors of a military coup contributed to a crisis in the peace process shortly after the decisions of the Ad Hoc Commission were made public. This crisis motivated visits to El Salvador by UN peace negotiator Alvaro de Soto\textsuperscript{143} and US Army Chief of Staff Colin Powell.\textsuperscript{144} Finally, a compromise designed to remove all those named in the report was reached, but under a more ample timeframe that
coincided with the normal end-of-year appointments and retirements for 1992. However, many of those named in the report remained in service well after the end of 1992.145

The inability of the FMLN and the United Nations to facilitate prompt implementation of the Ad Hoc Commission’s decisions diminished the impact of its report, but did not negate it. The Commission followed its mandate exactly, but many observers expected much less from it. It had only three months to work, and all three Commissioners were Salvadoran nationals who were fairly senior in age and had an extremely limited secretariat. Accordingly, many thought the Commission would be too apprehensive to take on the military establishment. In the end, the Commissioners’ age apparently emboldened them to help leave a legacy of change for the future of El Salvador. At the same time, the lack of secretariat also created an opportunity for El Rescate and other organizations to provide information that would be taken seriously.

In many ways, the creation of and decisions by the Ad Hoc Commission represent El Rescate’s most important contribution to the peace process in El Salvador. El Rescate was one of the main advocates for the creation of a body, like the Ad Hoc Commission, with a mandate to remove those linked to human rights abuses from active service. While a number of groups advocated along the same lines, El Rescate showed leadership in terms of legal theory, factual research, and advocacy, which is why its impact was as large as it was. El Rescate had the most complete information on the military. Importantly, it shared much of this information with the non-governmental Human Rights Commission of El Salvador (CDHES), which digitized its own human rights reports. The Ad Hoc Commissioners should have gained confidence that CDHES’s report to the Ad Hoc Commission, based on a different set of violations, corroborated those produced by El Rescate’s Index to Accountability project. The fact that the task was to empower the Commissioners to act will always make it difficult to measure impact exactly.146

The reports generated through the Index to Accountability were voluminous. In light of the significant correlation between the information provided and the decisions made by the Ad Hoc Commission, the reports apparently were useful. Rather than a full public report, the Ad Hoc Commission issued only a list of conclusions. Thus, it is impossible to measure scientifically El

145. Various factors explained these delays: military resistance to the loss of control over the institutions and resources of public security, the left’s distrust of efforts to incorporate ex-soldiers and members of the old security forces into the PNC [National Civilian Police], and the government’s difficulty in amassing sufficient internal funds and external assistance to deploy the PNC nationwide. A. Douglas Kincaid, Demilitarization and Security in El Salvador and Guatemala: Convergences of Success and Crisis, 42 J. INTERAM. STUD. & WORLD AFFS. 39, 44 (2000).
146. For more on the importance of leadership in human rights work, see Raine, supra 126, at 14.
Rescate’s true impact, but the conclusion and anecdotal feedback from the Commissioners confirmed the importance of the Index.

If El Rescate had digitized other human rights reports perpetrated in El Salvador and had even more complete information on the military command structure, through the Index to Accountability, it would have been able to facilitate even greater change through the Ad Hoc Commission. In this particular case, the limitation on impact was not political or legal or due to a lack of follow-through, but simply was a reflection of the limits of the data assembled and available. Regardless, facilitating the removal of more than 65 percent of the top-ranking officers of the Salvadoran military was no small feat. It is a testament to how a small NGO can make a big difference when it creates a coherent strategy, knows the pressure points, and solves problems effectively to keep the project moving. How this change transformed the Salvadoran Armed Forces in a positive way in the long-run remains an unfolding, but mainly encouraging, saga.

C. Truth Commission

El Rescate actively facilitated the Truth Commission’s work. In its official submission, in addition to supplying volumes of computer-generated reports and numerous graphs, El Rescate advocated for the Truth Commission to fulfill its mandate in accordance with international legal standards. Specifically, El Rescate’s submission reminded the Commission of the IACHR decision holding the 1987 amnesty law contrary to El Salvador’s obligations under the American Convention on Human Rights and how that holding should also apply to El Salvador’s 1992 amnesty law. In addition, El Rescate provided detailed reports regarding cases it presented in different legal forums such as the bombing of the FENASTRAS headquarters, the Las Hojas massacre, and the murders of four churchwomen.

147. During the afternoon of 31 October 1989, unknown individuals placed a bomb in the headquarters of the National Trade Union Federation of Salvadoran Workers (Federación Nacional Sindical de Trabajadores Salvadoreños, FENASTRAS) located in San Salvador, the nation’s capital. Nine people were killed as a result of the bombing and more than forty more were injured. Caso FENASTRAS y COMADRES, Ejecuciones Extra-Judiciales (Extra-Judicial Executions), ¶2, 2000-2003, Universidad de El Salvador (El Salvador University), available at http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_casesB2hk.html#j. El Rescate worked with FENASTRAS to bring this claim to the Committee on Freedom of Association of the International Labour Organization.

148. See supra notes 57–72 and accompanying text.

149. Two Maryknoll nuns, Maura Clarke and Ita C. Ford; an Ursuline Nun, Dorothy Kazel; and a lay missionary, Jean Donovan, were abducted shortly after they had left El Salvador International Airport in Comalapa for San Salvador on 2 December 1980. The women were then raped and murdered. In 1984, five enlisted members of the El Salvador National Guard were convicted in El Salvador and sentenced to thirty years in jail for the
Released in early 1993, the Truth Commission’s report contributed to the end of impunity and to the construction of democratic institutions needed to prevent the recurrence of state-sponsored violence. The report did so by covering major human rights cases and by examining patterns of abuses over the period the Commission was mandated to investigate. Importantly, the Truth Commission gave names of those it believed were responsible for the violations, which was not a widely used tactic in previous efforts of this type. In addition, the Truth Commission made a wide range of recommendations including removing the Justices of the Supreme Court, initiating prosecutorial investigations, and providing civil compensation to the victims of abuses.

In an attempt to undercut the impact of the Truth Commission’s report, the ruling government and the military subjected the report to criticisms and stonewalling. These criticisms somewhat managed to undermine the report’s potential impact. For example, some of the Truth Commission’s recommendations, such as initiating prosecutorial investigations, were ignored. The Commission’s recommendations were grounded in international law and squarely within the framework established in the Peace Accords—the Accords indicated that the Truth Commission’s decisions did not replace the system of justice and that criminal investigations were still needed in specific cases. Nevertheless, no prosecutions were brought.

Perhaps the Commission thought that no prosecutions would be brought, so it published the names of those it believed to be implicated in egregious or systemic violations. The Commission may also have expected more follow-up from the international and local community to ensure that its recommendations would be implemented. For instance, the Commission recommended that ONUSAL be empowered to observe the implementation of its recommendations as well as the Peace Accords. Little or no pressure was forthcoming to ensure implementation of these recommendations, and one commentator noted that most of the Truth Commission’s recommendations were not implemented.150

Nonetheless, the Truth Commission was catalytic for El Salvador. It produced an official public report on El Salvador’s tragic past and interesting reports on various cases, and it accurately depicted trends and patterns of abuses. El Rescate’s efforts, and specifically its Index to Accountability, facilitated this aspect of the Commission’s work. The Truth Commission’s recommendations were well thought out and essential, but in the end, they lacked the political support necessary for full implementation. Groups like

women’s murders. Four of the men later stated that they had been ordered by superiors to abduct and kill the women. David Gonzalez, 2 Salvador Generals Cleared by U.S. Jury in Nun’s Death, N.Y. TIMES, 4 Nov. 2000, at A3. El Rescate worked on developing an Alien Tort Claims Act case related to this violation.

El Rescate did not follow through with projects and programs to ensure full implementation of the recommendations. However, that does not mean that none of its recommendations have been implemented. For example, on 30 March 1995, the Salvadoran Legislative Assembly approved El Salvador becoming a State Party to the Optional Protocol on Civil and Political Rights and accepted jurisdiction of the Inter-American Court of Human Rights.151

Importantly, the Law of National Reconciliation (the amnesty law of 1992) was fully implemented despite the Truth Commission’s report and recommendations. In fact, shortly after the release of the Truth Commission’s report, the only military official to be prosecuted, convicted, and sentenced for human rights violations in El Salvador was released under this amnesty law. Consequently, other prosecutions for human rights crimes would not even be considered.152

The Truth Commission was comprised of international experts and had a good sized professional secretariat, but El Rescate’s work in many ways pushed the Commission. The data and analysis provided by El Rescate, from the Truth Commission’s report and anecdotal feedback from members of the Commission’s secretariat, was useful. Though El Rescate’s work was influential, it was one of many groups working to create and support a Truth Commission. The Truth Commission likely would have been created without El Rescate’s efforts, but it is unclear whether it would have done the same level of data compilation and analysis without being pushed by El Rescate’s Index to Accountability project or whether it would have been as confident to call for prosecutions without the IACHR decision. Similar to the Ad Hoc Commission, there was a collective effort to empower the Truth Commissioners to act, so it is difficult to distill the exact impact.153 Considering anecdotal accounts and inference based on correlation of results and El Rescate’s work, it substantially contributed to the Truth Commission’s work.

VI. CONCLUSION

On the day the final agreement in the Salvadoran peace process was signed, Boutros Boutros-Ghali, then the new UN Secretary-General, stated that what was being signed was a “revolution by negotiation.”154

In the end, structural reforms, the Ad Hoc Commission, and the Truth Commission were critical to transforming the Salvadoran human rights situ-
ation and to building a new human rights foundation for the future. Most academic treatment has focused on the Truth Commission, rather than on the Ad Hoc Commission and structural changes. Interestingly, some observers have argued that the Ad Hoc Commission and structural changes facilitated more tangible change than the Truth Commission. Perhaps this is because truth commissions have become a somewhat standard approach to past human rights abuses, whereas the other two vehicles were somewhat unique to El Salvador. Their impact in El Salvador indicates that creating mechanisms for change grounded in a particular country’s reality needs greater attention during transitions, given their potential for contributing to positive human rights change.

In terms of dealing with past human rights violations, the Salvadoran solution set precedent. This solution included:

- tying specific structural reforms needed to improve the human rights situation to a UN observer mission to help facilitate the implementation of those reforms;
- the creation of the Ad Hoc Commission, which removed from military service those implicated in human rights abuses and transformed the institution most responsible for past human rights violations—the Salvadoran military; and
- the Truth Commission, which not only established an official record of past violations, but also attempted to lay a foundation for additional changes by providing names and making critical recommendations.

The contribution of NGOs to this process, and notably that of El Rescate, was also precedent-setting. El Rescate worked for years to advocate for a peace process that would measurably improve the human rights situation in El Salvador. Admittedly, it is difficult to isolate the precise impact of El Rescate’s work on the overall goal of improving the human rights situation or its particular impact on the processes that contributed to that change. In the end, El Rescate successfully advocated for mechanisms to deal with the past, in large part because the organization grounded its work in the concrete reality of the Salvadoran situation. El Rescate used all available tools and developed new ones to implement a multi-faceted approach to past human rights abuses. The strategy integrated human rights and humani-


tarian law, litigation, theory, scholarly publication, shoe-leather advocacy, coalition advocacy, modern social science, and informatics applications. El Rescate facilitated the work of the negotiators, as well as the Ad Hoc and Truth Commissioners, so that they took concrete steps to improve the human rights situation in El Salvador.

Although El Rescate’s work built upon the experience of others, it was a unique effort that attempted to leverage maximum positive human rights change from past human rights abuses. It was far from an off-the-shelf approach. El Rescate’s experience, especially its leadership in developing the Index to Accountability and its use of modern information technology, needed to be told. Many individuals involved in this transitional process have gone on to contribute to others. More than fourteen years after leaving El Rescate, the author still found himself speaking about the effort to NGOs, UN staffers, and government officials engaged in a transition process or grappling with the question of how to cope with past human rights abuses. This article is designed to make the lessons from El Rescate’s efforts more easily accessible and to contribute to developing the institutional knowledge of how to maximize positive human rights change in the context of a transition.