El Salvador: Methods Use to Document Human Rights Violations

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El Salvador: Methods Used to Document Human Rights Violations

Gloria Valencia-Weber and Robert J. Weber *

I. INTRODUCTION: FOCUS OF STUDY

This study describes and analyzes the methods used to document human rights abuses in El Salvador, focusing on the methods used by the United States Government through its Embassy in San Salvador, and by Tutela Legal, a nongovernmental monitoring agency in San Salvador. Many aspects of U.S. foreign policy, especially in regard to El Salvador, are based on conclusions drawn from U.S. documentation of human rights violations. Accordingly, such policy is subject to criticism by persons who find fault with the documentation.

Methodology lies at the core of the disagreements which frequently emerge in the U.S. Congress, in the United Nations, and in the international community. "[C]onsiderable controversy exists as to the reliability and impartiality of human-rights information collected in fact-finding reports. In order to increase the reliability, statistics can be included in reports, in support of findings. It is, however, equally important to consider where those figures come from, what they are based upon, and what they mean."1 El Salvador is a country in which the controversy is most apparent.

El Salvador was chosen because the internationally recognized standards for human rights congressionally require certification by the State Department and the president as a prerequisite to authorization of U.S. aid.

* The authors received invaluable assistance from: Deborah Anker, Jack Tobin, and Frederick Edward Snyder of Harvard Law School; the C. Clyde Ferguson International Human Rights Fellowship and the Public Interest Fellowship Programs of Harvard Law School; the Stanfield Scholarship in Law, Unitarian-Universalist Association; and Aryeh Neier and the staff of the Americas Watch Committee.

The U.S. instituted the certification requirement in 1981,² and, in making a decision regarding certification, the president and the State Department rely on the documentation of abuses collected by the U.S. Embassy. In this article the U.S. method is compared to the method of Tutela Legal, a Catholic Church-affiliated organization. Tutela’s reports present a detailed, evolving view of its method. Neither the Tutela nor the U.S. method is unique: the conditions under which data are collected are appropriate in other international contexts. The authors examined Tutela and U.S. records which were relevant and available for 1980 through 1984 and used post-1984 official statements which relate to methods.

The focus is on the method used for the documentation of the murder or disappearance of civilians. Killing and “disappearing” civilians are only part of a standing list of abuses which are included in the international instruments of human rights, although these two abuses are the ones most easily documented, the most reported, and the most often cited in the popular debate about El Salvador.

El Salvador is a country in civil war. For a small country of only five million people, the destruction in human life and national resources is staggering. Human rights organizations state that over 40,000 civilians have died in political murders and 3,000 more are disappeared victims.³ Internal refugees, in camps and dislocated throughout the countryside, number over 500,000. On this latter figure the human rights groups and the State Department are in accord.⁴ The external refugees include 750,000 in exile in other


countries in Latin America and the United States where they are often illegal residents. These numbers cannot tell the entire story of individuals brutally deprived of life, family members, friends, property, and a sense of community. They can only indicate a part of the reality in which parties collect data and report on human rights violations.

This paper begins with an examination of the current international human rights standards as they relate to documentation in El Salvador and the U.S. perspective on the issues. Then the history and methods of data collection on human rights violations, as practiced by Tutela and the U.S. State Department, are discussed. A section follows on factors of reliability and accuracy for data on violations of human rights, data that are often collected under conditions of great hardship and risk. Next, a general picture is drawn of how well the Tutela and U.S. methods take into account reliability and accuracy criteria. Finally, in an Appendix, several possible quantitative indices of human rights violations are discussed.

II. HUMAN RIGHTS STANDARDS

A. International Standards

Two critical issues arise with respect to documentation in El Salvador; first, what should be counted as a “human rights violation,” and second, how victims and perpetrators should be classified. The legal standards most relevant to these issues are the four Geneva Conventions of 1949 and Protocols I and II to these Conventions. Both El Salvador and the United States are members of the international conventions and have ratified or recognized the major international instruments.6

5. C. Brown, supra note 3, at 135.
These documents indicate that a government is responsible for protecting the human rights of its civilian citizens. A government fails to meet its responsibility when it, officially or otherwise, perpetrates abuses or when its justice system fails to apprehend and prosecute violators. Thus, under a perspective gleaned from the international standards, only government-related abuses (that is, abuses in which a government played either an active or passive role) are to be denoted as human rights abuses. The exclusion of wrongs perpetrated by insurgents or guerrillas upon civilians who are not involved with the conflict between such groups and the government in no way is meant to condone such activity.

The question of who should be counted as civilian victims and who as perpetrators is more difficult, and has been answered in different ways. A key distinction in documentation and in the ensuing disagreements concerns the definitions of "civilian" and "combatant." There are disparities between U.S. State Department reports and those of Tutela on how to count the civilian noncombatants who live in close proximity to the guerrillas. Article 13 of Protocol II states that civilians, persons who take no direct part in hostilities, are to be protected and cannot be objects of attack nor of acts or threats of violence undertaken for purpose of spreading terror among the civilian population. Civilians in the proximity of guerrillas, including those who support the guerrillas with supplies and services, cannot be subjected to direct attacks. When civilians actually take part in the armed combat, they lose their immunity from attack.

The Conventions and Protocols are applicable to El Salvador where there is a sustained non-international conflict. Protocol I, Relating to the Protections of Victims of International Armed Conflicts, defines a civilian as anyone who is not a member of the armed forces or of an organized armed group. The particulars of protecting the civilian in a civil war are articulated

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9. Protocol II, supra note 6, art. 13(1), (2), (3).
in Article 3 which is common to the four Geneva Conventions and by Protocol II, Relating to the Protection of Victims on Non-International Armed Conflicts. These instruments impose on each party in the armed conflict the responsibility to respect the rights of persons having no active part in the hostilities.

The armed parties are prohibited at any time and any place whatsoever from subjecting civilians to violence, including murder, mutilation, cruel treatment and torture; taking of hostages; outrages upon dignity, in particular humiliating and degrading treatment; and punishment or executions without a court with civilized judicial guarantees. The parties should also collect and care for the wounded and sick. The parties should endeavor to bring into force the provisions of the Geneva Conventions through means such as agreements with the International Committee of the Red Cross (I.C.R.C.).

To classify the parties and situation to which Protocol II applies, some objective standards are provided. A state's armed forces must participate in the conflict and the dissident armed forces or organized insurgents must exercise control over territory in the country. The dissidents' control should enable them to carry out sustained and concerted military operations and to implement the protocol.

The jurisdiction of Protocol II is not dependent upon the acceptance of the conflicting parties. The primary interests of victims are not to be sacrificed to other interests. Neither the government of El Salvador nor the Farabundo Martí National Liberation Front and its coalition (F.M.L.N.) have officially recognized that Protocol II applies to them. Their behaviors indicate that the requisite objective conditions have been met, however. For some time the F.M.L.N. has controlled approximately one-third of the country, approximately five of the country's fourteen departments or units. The F.M.L.N. takes prisoners and arranges for their release through the I.C.R.C. The government and the F.M.L.N. permit relief assistance to refugees by the I.C.R.C. Finally, the Salvadoran Government officially requests U.S. aid to fight an ongoing civil war.

B. The United States Human Rights Standards and El Salvador

The State Department Country Reports and statements from administration spokespersons argue that because international standards do not include

11. Geneva Conventions, supra note 6, common art. 3.
12. Id., art. 3(1), (2).
13. Protocol II, supra note 6, art. 1(1).
terrorists and nongovernment perpetrators a “flexible” approach is necessary.\textsuperscript{15} This approach is used to define and to identify human rights violations according to the facts and circumstances in the country being evaluated, since human rights is but one of many elements in relations between countries. In 1981 U.N. Ambassador Jeane Kirkpatrick, in response to a United Nations resolution condemning the Salvadoran Government for human rights violations, stated the position:

Because human rights can be violated by individuals and groups as well as governments, the protection of human rights should necessarily have a double focus. It should take account of all major sources of abuse: violations by government and violations by private violence, including organized private violence. . . . [I]t is not reasonable to judge peaceful countries with a long experience of self-government by the same standards as strife-torn countries with weak legal and political institutions.\textsuperscript{16}

In U.S. foreign policy the Kirkpatrick standard produces different evaluations of comparable situations. Thus practices by some governments, especially those friendly to the United States, are not violations, while similar conduct by other countries is condemned. In Nicaragua and Afghanistan human rights violations are attributed by the United States solely to the governments.

The State Department also uses different standards in evaluating the reports of human rights organizations or nongovernmental organizations. In Nicaragua only government-perpetrated abuse is tabulated by a nongovernment human rights agency. The Country Reports have not acknowledged abuses by the Contras, nor is that term used to identify the U.S.-supported insurgents.\textsuperscript{17} The Nicaraguan N.G.O. was praised; it “continues to maintain careful records of human rights violations.”\textsuperscript{18} However, administration spokespersons and reports criticized Socorro Jurídico, Tutela’s predecessor in El Salvador, because it insisted on reporting only government violations in keeping with the international standards. When Tutela was created by the Catholic Church in May 1982, it expanded the reporting method to include all deaths by all perpetrators whenever verification was available. The increased reportage on guerrilla-perpetrated abuses has not spared Tutela from the State Department’s criticism.\textsuperscript{19} In addition, the administration

\textsuperscript{16} Ambassador Jeane Kirkpatrick, statement to the U.N. Third Committee, November 1981, 2 U.N. Press Release USUN 130 (81). See also Country Reports 1985, supra note 7, at 1427 for discussion of “differing political realities.”
\textsuperscript{17} Country Reports 1985, supra note 7, at 616–619, 635–636.
\textsuperscript{18} Country Reports 1982, supra note 15, at 587.
\textsuperscript{19} U.S. Department of State, Report on the Situation in El Salvador, Appendix F, “Comparison Between Tutela Legal and Press Reports” (12 July 1984); see also Country Reports 1985, supra note 7, at 519, 530.
lauded the human rights commission established by the Salvadoran Government and discounted the one established by the Nicaraguan Government whose "accomplishments are few." 20 It is difficult to find methodological reasons why comparably operated agencies in different countries warrant such opposite evaluations. 21

The congressional view of standards for human rights violation is not in accord with that of the Reagan administration; the U.S. certification requirements imposed on El Salvador incorporate the "full observance of internationally recognized human rights." 22 Also important is the perpetrator class which most concerns Congress: the government's armed forces. Continued economic and military aid is subject to being suspended if El Salvador is not certified by the president as (1) "making a concerted and significant effort to comply with internationally recognized human rights"; and (2) "achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces." 23

The extreme conditions in El Salvador prompted the adoption of certification requirements; Congress could not ignore the quantity and the nature of human rights abuses which had become commonplace in El Salvador. In October 1979 a "reform" coup replaced the repressive government headed by General Carlos Homberto Romero. The reform was shortlived, so that by 1980 open warfare was a daily reality. In March 1980, the Archbishop of San Salvador, Oscar Arnulfo Romero, was assassinated while saying mass at the national cathedral. The progressive forces in the coup and in the military were driven out of the government. By December 1980 political murder was common. Incidents included the abduction and killing of six top opposition leaders of the Democratic Revolutionary Front, a broad-based political coalition (November), and the killing of four churchwomen from the United States (December). 24

The post–1979 history is primarily one of a state of siege, with wholesale suspension of basic rights, including the due process of law and a right to a fair trial. Various decrees eviscerated the constitution and its guarantees. Decree No. 114 (February 1980) stated that the constitution applies "insofar

23. Id. at § 728(d)(1)(2).
as it is compatible with the nature of the present regime." 25 Decree No. 507 (December 1980) allowed detention, without a charge or access to a lawyer, for up to 180 days (an "investigative" period). In the same decree, the military courts were given extensive jurisdiction, further weakening the civil judicial system. This decree also suspended the constitutional rights of freedom of speech and press. 26 Decree No. 50 succeeded 507 in February 1984. 27 The new decree was heralded as an improvement that would clear up the enormous backlog of 507 cases. Incommunicado pretrial detention was limited to eighteen days. Except for the brief suspension of some siege laws during the March 1982 election, the citizens of El Salvador have lived with a legal system which is conducive to abuses by government forces.

III. TUTELA LEGAL: HISTORY AND METHODOLOGY

Tutela Legal is one of five Salvadoran nongovernment human rights organizations. 28 Its functions and authority within the Catholic church make it distinct. Tutela evolved from Socorro Juridico which was established in 1975 as a voluntary legal aid organization. Socorro and other voluntary human rights groups were provided the shelter of the Archbishop of San Salvador and they operated out of the Archdiocese building. The protection did not always work, as the agencies had their office or records destroyed, and their workers were arrested, abducted, tortured, and killed. After the 1979 coup and its ensuing repression, Socorro found its primary work transformed into aiding victims of human rights abuses and of documenting those violations.

Socorro became the primary source of information for the critical statements made by the late Archbishop of San Salvador, Oscar Arnulfo Romero. The documentation method used by Socorro included testimony under oath by individuals and the practice of submitting *habeas corpus* on all disappearances; this established legal records of the Salvadoran Government's violations. The U.S. State Department and the Salvadoran Government regularly attacked the credibility of Socorro, calling the government focus of its reporting unreliable and biased because of an alleged relationship with the guerrillas. According to the State Department, "[u]ntil Socorro Juridico

28. The other nongovernment organizations include the El Salvador Human Rights Commission, Socorro Juridico Cristiano, and the Committee of Mothers and other Relatives of Political Prisoners and Disappeared. These collect data from victims and informants and have some differentiated functions; e.g., the Mothers demonstrate publicly as a primary method of focusing attention on human rights abuses. Another organization, the University of Central America, operates as a clearinghouse (rather than as an intervenor), receiving information from all sources. See Elsen and Verstappen, *supra* note 1.
publishes its sources and methodology its total figures remain suspect, however competent the organization may be in documenting individual cases of disappearance and the unquestionably savage acts of the security forces.\textsuperscript{29} It is contrary to international practice, however, to require the disclosure of the names of individual sources; the demand for disclosure by the State Department would have denied protection to individuals and placed them in jeopardy.\textsuperscript{30}

Pressure by the Salvadoran and U.S. Governments contributed to the May 1982 reorganization within the church of its Commission on Peace and Justice. Archbishop Arturo Rivera Damas announced that Tutela Legal would become the human rights agency of the Commission and would be part of the structure of the Catholic Church of the Archdiocese. Socorro continued as an independent volunteer agency (Socorro Jurídico Cristiano). Tutela was authorized to collect, document, and publish information on all perpetrators.

The mandate of the Church and the expanded information base did not insulate Tutela from attack. It became necessary in August 1984 for the Archbishop to issue a statement to correct the impression prompted by the Salvadoran and U.S. Governments that Tutela was not authorized as a church agency.\textsuperscript{31} The Archbishop was responding to frequent mischaracterization of Tutela's relation to the Church, plus assertions that Tutela does not report on guerrilla perpetrated abuses. The mischaracterizations included newspaper accounts that Archbishop Rivera bestowed no authority or confidence in Tutela. In August 1984 the State Department responded to a congressional inquiry about Tutela with, "Once again, it should be recalled that TL [Tutela Legal] is not synonymous with the Archdiocese. It does not document anything; it gathers reports...[I]t does not seek to verify or investigate for accuracy."\textsuperscript{32} Clearly, the State Department was wrong about this relation to the Church; the most recent Country Report recognizes the Church authorization of Tutela.\textsuperscript{33} Also, by acceptable legal procedures, Tutela does both document and verify its reports, as discussed in Sections III and IV of this article.


\textsuperscript{31} Statement on behalf of Archbishop Arturo Rivera Damas, 19 August 1984, Homily of Monsignor Ricardo Urioste, Metropolitan Cathedral, San Salvador.


\textsuperscript{33} Country Reports 1983, supra note 7, at 518.
A. Method

For this study information about Tutela is largely based on the monthly summaries of Tutela from May 1982 (its first report) to December 1984. The records provide a view of the evolution of Tutela's method and the changes in the types of violations as the Salvadoran Government and its opponents changed their activities.

Tutela operates in an urban setting in the Archdiocese building in San Salvador. This location, and the requirement that informants must personally report the information, inherently limits the information that Tutela receives. Tutela collects data on individually identified victims, on individuals not identifiable because of mutilation, and on group victims where circumstances do not permit individual identification.

The agency's sources and procedures include:

1. In-person report by a witness and/or immediately involved informant (family member or friend of victim).

2. Detailed testimony with up to twenty-two categories of information, infra.

3. Signed and sworn written statements, a legal standard of testimony (the procedure used by judges under El Salvadoran law to determine whether there is a basis for an investigation).

4. Habeas corpus which Tutela files on "disappearances." A disappeared person is not a voluntarily missing person. The relatives, friends, or lawyers of a missing individual must have good reason to believe that the individual has been apprehended by government agents or by people acting in some form of collusion with the government. Though not subject to habeas corpus procedures, the abductions by guerrillas are tabulated separately by Tutela.

In general, Tutela's procedures follow a conservative approach. In determining counts where group killings occur, Tutela uses the lowest number. Information is tabulated according to the week and month in which it was reported. Tutela also indicates when disappearances and deaths occurred prior to the month in which they were reported.

Corroboration is possible to a limited degree, including through the use of records filed in court houses by Justices of Peace on persons reported as

34. Tutela Legal records and related documents were provided 15–16 November 1984 by the Americas Watch Committee office in New York. The cooperation of Aryeh Neier and his staff were essential for the study and that generosity is appreciated. The Central American Research Institute in Berkeley, California also provided Tutela documents. Documents were in Spanish and translated by the authors. Errors in the study are the authors' and should not be attributed to others.
disappeared. Informants, in addition to the friends or relatives of victims, include journalists, human rights workers, and others who have observed when area sweeps or attacks have occurred. Such informants also comply with the sworn testimony requirement if the victims reported are to be included in the category of civilian victims of human rights violations. Combatant deaths (guerrillas or government forces) are reported separately and do not fit in the human rights category.

B. Victim and Perpetrator Categories

Each monthly report includes tables for the basic categories of victim and perpetrator (Table 1), and which indicate specific characteristics (Table 2). Civilians who were caught in combat or military operations are counted as noncombatants where observer reports indicate that “possibly the majority” were civilians. The lowest, most conservative number is used for these group deaths when individualized identification is impossible. Tutela also lists separately civilian deaths where “possibly the majority” were combatants. These latter fatalities, though reported, are not counted as human rights deaths.

Nontabulated information covers military actions in which there was no determination made of any type of victims, or where circumstances prevented such information from being verified. Where possible this listing includes: sector, site, and department (country units similar to provinces) in which action occurred, type of action (bombardment, military action with combat, etc.), date, and government unit responsible for the action.

When targets of political death were individuals primarily in the urban areas (May 1982 through May 1984), Tutela summarized the method used to murder. The particular forms of mutilation, decapitation, type of weapon or ammunition, and so forth were part of the signature of death squad and paramilitary groups. Method of abuse is still reported in individualized testimonies.

The individual affidavits or testimonies are the sources for the summary tables. The testimonies, reproduced in detail, are included in the monthly summaries. Earlier, when individualized killings were at their peak (e.g., sixty-eight disappearances, 270 deaths in May 1982), those testimonies were summarized in charts.

35. In El Salvador, the Justice of the Peace has the duty to receive ‘denuncias’ or affidavits about offenses and has the authority and duty to initiate investigations through state agencies of the suspected perpetrators. Revista Judicial: Organo de la Corte Suprema de Justicia, arts. 125, 130, 147, 148 (Official Journal No. 208, Vol. 241, 9 November 1973). Since the investigatory agencies are the Security Police and the Treasury Police, current implementation of the law is problematic.

36. Tutela Legal continuously reported the victims, generally unidentifiable, of military operation and confrontations. In June 1984 it separated more distinctly those victims more likely to be civilians and those more likely to be combatants.
A review of the testimonies in August 1984 provided the following twenty-two categories of information which may be obtained from an informant:

1. Date of testimony.
8.-11. Victim: name (8), age (9), sex (10), occupation (11).
12.-13. Date (12) and hour (13) of disappearance or murder.
14. Site and city of disappearance or murder.
15. Presence of other witnesses to the incident.
16. Number of perpetrators carrying out the taking, arrest, or other incident.
17. Uniformed (which government branch) or nonuniformed perpetrators.
18. Armed perpetrators (visibly armed; use of weapons).
19. Vehicle description, including type of license plate and number.
TABLE 2
Tutela Legal: Victim/Perpetrator Characteristics in Monthly Summaries

<table>
<thead>
<tr>
<th></th>
<th>Circumstances:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Disappearances: removed from home, work, other known site, undetermined site.</td>
</tr>
<tr>
<td></td>
<td>Deaths: above categories, plus removal from previously disappeared category, indiscriminate bomb attack, bomb attack on home, individualized grenade attack, unknown circumstances.</td>
</tr>
</tbody>
</table>

2. Sex  
3. Age  
4. Occupation  
5. Residency Site/City/Department  
6. Military rank of government combatants

1The monthly report also individually describes by name and characteristics all identified victims.

20. Proximity/presence of other government officials or police when victim was removed.  
21. Victim’s resistance to being taken.  
22. Identity of the perpetrator(s), if recognized.

Not all of these categories can be filled for each testimonial, but the testimonials on individual victims generally provide categories 1 through 12. Recent reports focus on rural, group-attack victims. Often there are gaps in the basic information about name, sex, and age which result in increased use of the “unknown” category.

IV. U.S. EMBASSY: HISTORY AND METHOD

The U.S. Embassy is responsible for the collection of data which are used by the U.S. State Department for its country and certification reports. Since September 1980, the Embassy in San Salvador has based its data collection on reports published in El Salvadoran newspapers.37 The data are used for weekly “grim-grams” or cable reports and for “framework summaries” which

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TABLE 3
U.S. Embassy Victim/Perpetrator Categories

<table>
<thead>
<tr>
<th>Victim</th>
<th>Perpetrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Pre-August 1981</td>
<td></td>
</tr>
<tr>
<td>1. Civilian (noncombatants)</td>
<td>1a. Security Forces and Civil Guard¹</td>
</tr>
<tr>
<td></td>
<td>b. Leftist Terrorists/Guerrillas</td>
</tr>
<tr>
<td></td>
<td>c. Rightist Terrorists/Death Squads</td>
</tr>
<tr>
<td></td>
<td>d. Unknown Assailants</td>
</tr>
<tr>
<td>2. Combatants</td>
<td></td>
</tr>
<tr>
<td>Government Forces</td>
<td></td>
</tr>
<tr>
<td>Guerrillas</td>
<td></td>
</tr>
<tr>
<td>B. By April 1982</td>
<td></td>
</tr>
<tr>
<td>1. Civilian (noncombatants)</td>
<td>1a. Security Forces and Civil Guard¹</td>
</tr>
<tr>
<td></td>
<td>b. Guerrillas</td>
</tr>
<tr>
<td></td>
<td>c. Rightist Terrorists/Death Squads</td>
</tr>
<tr>
<td></td>
<td>d. Unknown Assailants</td>
</tr>
<tr>
<td>2. Combatants</td>
<td></td>
</tr>
<tr>
<td>Military K.I.A. (killed in action)</td>
<td></td>
</tr>
<tr>
<td>Guerrilla K.I.A.</td>
<td></td>
</tr>
<tr>
<td>Civilian K.I.A.</td>
<td></td>
</tr>
<tr>
<td>3. Criminal Deaths³</td>
<td></td>
</tr>
</tbody>
</table>

¹ The different security forces (National Guard, National Police, and Treasury Police) are not separately listed. No armed forces category exists for the Army and the Air Force.
² Includes those listed after 1981 as “Political Deaths (Unknown Assailants)” and “Found Dead” with no perpetrator identified.
³ After August 1981 (approximately), the Embassy began using some regular categories rather than the variable descriptions previously used. By April 1982 these categories were established in a format and category change.

form the basis for the certification report that the State Department and the President submit to Congress. The framework summaries include a variety of data: quantitative, anecdotal, descriptive, and evaluative.

A. Method

The following information on methodology was extracted from the State Department Country Reports, from certification reports on El Salvador, and
from whatever copies of declassified U.S. Embassy cables the authors could obtain. The cables were probably representative, though not complete for the period since 1980. Efforts to obtain explanations of method from the State Department were unsuccessful. The writers were told specifically that technical materials of that kind did not exist and that the methodology should be extrapolated from the State Department publications.38

The Embassy depends exclusively on published newspaper accounts for its data on deaths and disappearances. The newspaper reports are contingent on an individual reporter's initiative in gathering information. The reporting system is dependent on the degree to which reporters have access to parties with information, including the Justices of Peace who may file reports on the disappeared or the murdered.

The newspaper reports are not verified independently by the Embassy. An embassy is generally not an investigative agency; its function and its resources do not mandate operating investigative services. In special circumstances the Embassy may send out staff to investigate, but such firsthand knowledge does not effect what is tabulated. In November 1981 accounts emerged of the El Playon lava fields being used by the government forces and their allies as dump sites for bodies. The Embassy sent an official who noted in the cable for November 14–21, "Convincing evidence that the press is an inadequate measure of the violence here. . . . An 11/14 visit to the site revealed six fresh bodies on the lava being devoured by vultures. The deaths of these six persons received no coverage in the media."39 These six bodies were not included in the week's tally by the Embassy. Accounts from other reliable sources do not result in adjustments in the tallies obtained from news accounts.

B. Victim and Perpetrator Categories

The Embassy categories culled from framework summaries are shown in Table 3.40 Overall, consistency in reporting categories has not developed in Embassy reports. Until approximately August 1981 reports used variable terms which tended to fall in the categories shown in Part A of Table 3. Summaries of tabulations in some categories were used in the August cables. In April 1982, the cables changed format and added some new terms, indicated in Part B, Table 3. These terms were used with greater consistency, but

38. Telephone discussion with Marianne Gustafson, Regional Officer for Latin America, Bureau of Human Rights, U.S. Department of State (27 November 1984). This discussion resulted after correspondence did not secure the information requested from the State Department.


some variability of reporting categories continues in the summaries or tables and written comments. Most importantly, no category has ever specifically included the armed forces (the Army and the Air Force) as perpetrators.

Civilians caught in combat or military operations may be counted as noncombatants if described as such in the press. The Embassy accepts and uses the reports of the Armed Forces Press Committee (COPREFA) which count numerous civilians as guerrilla combatants killed in action (K.I.A.s). The military judgment of circumstances and casualty identification is relied on without additional verification. Reliance on the COPREFA means that the non-COPREFA data are adjusted when used in Embassy reports.

The Embassy cable reports include commentary. Representative commentaries describe the degree to which security forces work with death squads. The commentaries also try to explain and coordinate Tutela’s data with its own by deducting the noncivilian K.I.A.s in COPREFA reports from the Tutela tabulations.41

The Embassy cables provide the information used by the State Department to prepare the final country report. Sometimes there are inconsistencies or lapses between the cables and the final country reports. For example, for the July 1982 cable, the Embassy relayed the number (109) of disciplinary actions against members of the armed forces for violations of human rights. Ambassador Deane Hinton included the warning, “The Embassy cannot confirm it independently. Therefore, we recommend that it be used with proper caveats.”42 Nonetheless, the number 109 appeared in the 27 July 1982 certification report without caveats. Furthermore, as has happened on other occasions with military discipline data, congressional inquiry and monitoring by organizations subsequently proved that the military men were not prosecuted for human rights violations.43

Before approximately August 1981 the Embassy cables included no summaries with tabulations. By April 1982 the cables included the statistical

43. The Report on Human Rights, id., includes congressional inquiries, State Department replies, and Americas Watch correspondence which establish that the government forces were not charged with human rights violations. In February 1982 two congressional delegations visited El Salvador and were shown data that fifty-six to fifty-nine national guardsmen were dismissed to face charges on human rights violations. Closer scrutiny by both delegations revealed only one true case; that was the five guardsmen charged in the killing of the American churchwomen. The rest all comprised acts against authority or ordinary crimes. The El Salvadoran practices would include a soldier who commits an ordinary robbery as a human rights violation. See Americas Watch Committee and the American Civil Liberties Union, Supplement to the Report on Human Rights (20 July 1982) for documentation on congressional visits.
breakdown by location (department), occupation, sex, and age of victims. The cable for 21 April 1982 warns that the information, being derived solely from press reports, should not be considered comprehensive.44

The Embassy does not interpret its data consistently or draw reasonable inferences from them. For example, it is possible to conclude that during the night hours, especially during official curfew periods, it is primarily the government forces and their allies, rather than government opponents, who have access to the streets. The method of killing also reveals perpetrators, especially when some groups use “signature” killings, including mutilating the victim’s body with the killer group’s initials. The interpretive “choice” by the Embassy is to attribute causes to the “unknown” perpetrator class; about two-thirds of the cases reported by the Embassy fall in this class.

The Embassy and Tutela use terms differently. A primary concern of the Embassy is whether civilians can be counted as guerrillas or as “masas.” Masas is not a Tutela descriptor term but a guerrilla and government term for civilians who support guerrillas. A January 1984 cable, cited during the February 1984 Hearings of the Western Hemisphere Subcommittee, reveals the approach to such civilians.

Tutela Legal alleges that the Salvadoran Army frequently single out ‘masas’ for attack. (Comment: Although Tutela Legal regards ‘Masas’ as unarmed civilians, some of whom even may be helping the guerrillas involuntarily, ‘masas’ do live in close proximity of and travel in the company of armed guerrillas. This intermingling with, and support of the armed insurgents makes them something more than innocent civilian bystanders when they and their armed companions come under fire during military engagements.)45

The State Department, in Embassy staff interviews in July 1984 and in an August 1984 reply to Congress, conceded that such unarmed persons are civilians, not combatants.46 Consequently, they are entitled to protection from attack, and they should be counted as cases involving violations of human rights. It is not clear that this official recognition by the State Department will affect what happens to such persons. In a 26 March 1984 interview in the Christian Science Monitor, a Salvadoran Army spokesperson said “the people who live in conflict zones are massas [sic] . . . the same as guerrillas. They are not innocent.”47

Sometimes the Embassy will fail to correct demonstrably inaccurate data. Victim characteristics are sometimes used by the Embassy in denoting perpetrators. That is, the likely enemy of the victim is counted as the

45. U.S. Embassy Summary Cable, supra note 41, para. 4.
46. Interview with U.S. Embassy staff (11 July 1984); see Free Fire, supra note 32, at 36.
47. Statement by Captain Luis Mario Aguilár Alfaro, quoted in Hedges, “El Salvador Military Said to Bomb Red Cross Aid Sites,” Christian Science Monitor, 28 March 1984, at 1, col. 2; see also Country Reports 1985, supra note 7, at 519, noting harsh treatment of “masas” by Salvadoran Armed Forces.
perpetrator. This can result in errors, as in any system. A given attribution can continue even in the face of contrary facts, however. The killing of the four American churchwomen was attributed to rightist death squads. Even after five National Guardsmen were charged with the murder, the women's death continued to be reported in the rightist perpetrator category.48 This strongly suggests that there is no feedback mechanism in place to correct errors in the database.

V. METHOD: RESULTS, RELIABILITY, AND ACCURACY

An important difference between Embassy and Tutela data is not in the trends, but in the categories of victim and perpetrator data. Though there is a difference in absolute numbers, both data sets indicate a general decline in numbers of deaths, as shown in Figure 1 (Tutela data) and Figure 2 (State Department data). The general downward trend has been documented by other clearinghouse and data collection organizations in El Salvador.49

The interpretation of the downward trend is open to question. First, it could be due to an improvement in human rights. Second, it could mean that political opposition to the government has largely been eliminated or gone into exile. Third, it could mean that the efforts of the Salvadoran government have been redirected toward military engagements such as bombing in outlying areas. Evidence on these alternatives is complex. The State Department regularly asserts in the Country Reports that there has been an improvement in human rights. However, there are over 500,000 internal refugees and 750,000 external refugees. The refugee problem and the continued practices involving murders and disappearances argue for the probable elimination of most of the opposition, hardly a reason to applaud "improvements."

The State Department commentaries in certification and country reports have consistently disputed the number of cases attributed by Tutela to the armed forces as "exaggerated or simply baseless."50 However, the State Department reports, based on Embassy data, do not report data by specific government forces. The data in certification reports are, unfortunately, aggregated at a high level which, at best, show overall trends. An example is shown in Figure 2. Embassy frameworks and "grim-grams," with no categories for the armed forces, result in having two-thirds of the deaths in the "unknown" perpetrator category. The Embassy method, because it is based

49. B. Cohen, "Political Death and Homicide in El Salvador," Table 1 in manuscript 6 (unpublished manuscript, 1 September 1984).

only on newspaper accounts, cannot provide perpetrator data comparable in detail to Tutela’s.

Even for political deaths, Tutela has consistently assigned over 60 percent to the armed forces (Army and Air Force). This does not fit a common view that death squads have been the primary perpetrators. Even at the height of the death squad activity (1980–1981), the armed forces were reported as the primary perpetrators. The death squads have been closely allied with the security forces. The security forces changed their practices, and there was a subsequent decline in the killings and disappearances attributed to these forces and their allies. The more recent data for 1983 and 1984 show this pattern in which death squad activity declines but deaths attributable to actions by the armed forces are relatively unaffected.

Moreover, there is a duty and responsibility on the part of the State Department to develop meaningful ways of assessing the behaviors and conditions that constitute violations of human rights by governments. The United States is a powerful government with international impact and substantial resources; its domestic law requires comparative evaluations as the

basis for providing economic assistance. Beyond the statutory requirements for foreign policy, the United States has a history which proclaims the importance of human rights. Tutela as a nongovernment agency which collects and reports descriptive data has a more limited responsibility for developing new methods and indices. As an indigenous organization, it has a specific focus and limited resources; its obligation would seem to be the collection and interpretation of local or internal information.

The methods and indices to be developed should be easily understood and accepted. They should be reliable; that is, a given putative case of human rights abuse would receive the same classification by different groups or by the same group at different times. Concurrently, they should be accurate; that is, a putative case of rights abuse should be correctly classified.

The Embassy and Tutela methods are now discussed in terms of the reliability and accuracy of their particular procedures. The monitoring practices in El Salvador are part of the larger issue of how methods and indices are developed for measuring human rights violations.
The reliability and accuracy of the method used is important for practical and theoretical reasons. At a practical level, the State Department makes comparative, international reports on human rights on which foreign policy is based; it needs a method which will lead to substantive data and conclusions about specific countries. The State Department has not recognized explicitly the responsibility for developing generally applicable methods for collecting data, for reporting data, for comparing a given country over time, or for comparing two or more countries at the same point in time, nor has it consistently attributed limits to the U.S. method.

In 1983, the State Department did not recognize either the need or the responsibility for developing ways to assess accurately the behaviors and conditions that constitute violations of human rights by governments. As stated in the 1982 Country Reports: "It appears that academic research based upon the annual report has begun, with some scholars attempting to draw statistical comparisons of practices between countries, etc. While we are pleased to note this interest and its promise for further understanding of the elements of human rights practices in the world, we caution researchers that the reports are not prepared with this purpose in mind, and that the data are not fully standardized."51 This astonishing statement indicates that the State Department could use its unstandardized methods to make comparative reports on which foreign policy is based, but others could not rely on the method. In addition, one may wonder for what purpose the State Department reports are intended, if not to make comparisons over time or between countries.

The 1985 Country Reports revealed a continuation of the unstandardized evaluation of practices in nations with "differing political realities," plus a new claim to a standardized method.52 According to the State Department, its uniformity and objectivity have produced a high standard of consistency, despite the variances in political realities. Thus to an unexplained degree the State Department asserts that "in the interest of uniformity, and to provide a ready basis for comparison, we have continued our practice of applying the same reporting standards to all countries on which we prepare reports."53

The State Department does not describe adequately its method or its limits in either the Country Reports or Salvadoran certification reports. It is unclear how the method allows valid comparisons within a country, be-

52. Country Reports 1985, supra note 7, at 1427.
53. Id. at 2. The State Department method is significant because the scope of the Country Reports is beyond those countries covered in congressional requirements. Id. at 1; "U.S. Will Publish Rights Reports," N.Y. Times, 10 June 1986, at A14, col. 1 describes prospective reports on communist countries which are expected "to be used as source material by scholars."
between different years, or between countries. Data are not typically presented in tabular or graphic form which would allow comparisons over time. Figure 2 is exceptional in this regard, but even then the sources and data reduction procedures are not explicit.

A. Reliability

Reliability in a legal context refers to both consistency and accuracy of evidence. There is a primary preference for firsthand information: eyewitness testimony from a knowledgeable person under oath in a legal proceeding. By this standard, the procedures at Tutela are more likely to produce reliable results (in agreement with other evidence) than the hearsay method used by the State Department. The Weissbrodt and McCarthy description of preferred methods describes sworn testimony from a witness as a primary means of ensuring reliability in human rights investigations.54

The definition of reliability in the social sciences is somewhat different. Two or more measurements of a given event are reliable to the extent that the measures agree with one another.55 This may be referred to as the test-retest definition of reliability. When reliability is zero there is no agreement or association between measurements of the same event. When reliability in 1.0 there is complete agreement among the two measures.

Note that with this concept of reliability the measures could be completely wrong; all that high reliability requires is that the measures agree with one another. In contrast, accuracy means the extent to which a measure approximates what is actually happening. The smaller the difference between the "real" situation and the measured result, the greater the accuracy. See section B. Accuracy infra.

The test-retest definition of reliability is most germane in the context of the Salvadoran data.56 This method determines the degree to which measuring the same phenomenon on different occasions will yield the same results. In El Salvador this means asking whether, say, the same 100 violations of human rights would be classified in the same way today as they would have been in September 1980 (when the State Department began using the newspaper reports as their source) or May 1982 (when Tutela officially began to operate).

It is possible to examine factors that adversely affect reliability even if one cannot arrive at a numerical index of reliability for human rights data. A question to consider in test-retest reliability is whether there have been ex-

54. Weissbrodt and McCarthy, supra note 30, at 203.
56. Id. at 110–111.
traneous intervening factors between the two measurements that will affect their relationship. In El Salvador there have been two documented factors which may adversely affect the reliability: the incapacitation of the press and a shift to rural actions by the government forces. One needs to ask whether these factors would affect the reporting of the specified 100 cases, that is, would they all be reported now, and would they still be classified as they would have been in 1980?

The first factor to consider is the diminished capacity of the press. The press has been the subject of threats and intimidation continuously since October 1979 when the Revolutionary Governing Junta came into power. At that time there were six major newspapers in San Salvador. Beginning in 1980 pressures increased on the two newspapers that were most critical of the junta. Each newspaper struggled to resist, with periodic closings, but by February 1981 both were permanently closed. La Cronica del Pueblo closed after its editor and photographer were abducted and found dismembered in July 1980. In June 1980 the premises of the El Independiente were destroyed. The editor, Jorge Pinto, was the object of repeated assassination attempts. Finally, on 15 January 1981 army tanks and trucks surrounded the offices of El Independiente and Pinto’s home was occupied. In Pinto’s home members of the National Guard grabbed Pinto’s three-year-old son, telling the mother that “We are going to take him, we have to kill him because he is the seed and we have an order to stamp out the seed.” A few days earlier eight newspaper employees had been arrested. Pinto offered to exchange himself for the release of his employees, who remained imprisoned. Pinto closed the newspaper and left his country.

Since 1980 the intimidation and harrassment campaigns against journalists have had key periods of intensity. One was from January 1980 through September 1981. Seventeen news offices and radio stations were bombed or machine-gunned, twelve journalists were killed by government soldiers, and three more disappeared. In April 1981, COPREFA announced “drastic measures” would be taken against foreign journalists who continued to “distort” the image of the Salvadoran Government and citizens.

Immediately before the 28 March 1982 election another notable terror campaign materialized. On 10 March a death list appeared. It gave notice to

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58. Id. at 126, citing an interview with Jorge Pinto, Mexico City, Mexico (13 August 1981).
59. Id.
60. Id.
61. Id. at 124; see also Elsen and Verstappen, supra note 1, at 5–6, regarding forced closing of the two newspapers.
"pseudo-journalists" and named thirty-five Salvadoreans and foreign journalists. It was signed by the Anti-Communist Alliance of El Salvador, "sympathizers of the glorious Gen. Maximilian Hernandez Martinez Brigade" (the general in charge of the 1932 massacres in which up to 30,000 peasants died). On 18 March, the bodies of four Dutch journalists were returned to San Salvador by the army. The army claimed that they were victims of combat cross-fire. The Dutch government conducted its own investigation and concluded otherwise, however. The arrest of one of the journalists one week prior to the deaths and the nature of the wounds (signs of mistreatment, genital injuries) did not support the army. The Dutch Government report called the army account "unbelievable and contestable." Journalists attempting to investigate the deaths were threatened by persons calling themselves members of ORDEN, a paramilitary group linked to the military. The attacks continued, with firings on a Brazilian news team on 19 March and on German and Swedish journalists on 27 March.

The terror and intimidation were effective. Alan Riding formerly covered El Salvador for the New York Times. His name appeared on death lists. Riding concedes, "it's been effective in stifling me." Cohen reported that seventy-six journalists were killed in 1983. They constituted 20.9 percent of the victims for whom occupations were known. The individual journalist could not ignore such a message.

The publishers also faced threats. One threat came directly from Decree 507 (in effect until February 1984) which allowed press censoring; journalists could be detained as subversives for printing material unfavorable to the government or the military forces. The surviving newspapers were subject to pressure. The advertisements published by the families of the disappeared were periodically suspended by El Mundo because of threats against the newspaper in 1983.

The second factor that may interfere with the reliability of using news accounts as an indicator of deaths is the shift of hostilities to the rural areas. It is more difficult for journalists to cover cases outside the urban areas. The military is creating "free fire" zones, that is, zones in the rural areas with no people and consequently no possible sustenance for the guerrillas. Bombardment and other attacks are followed by sweeps to clear out all inhabi-

66. Supplement, supra note 64, at 94.
68. B. Cohen, supra note 49, at 59.
69. Protection of the Weak and Unarmed, supra note 14, at 10.
tants. This has been partly responsible for the internal and external refugee population of over 1,250,000.

There have been Salvadoran Government denials and affirmations of a free-fire policy. President Duarte announced new rules on bombing in September 1984 which required that bombing raids be approved in writing by the Chief of Staff and which imposed other restrictions for the Air Force.\textsuperscript{70} According to Tutela, both the indiscriminate attacks and the ensuing sweeps are now the main cause of civilian deaths. Duarte’s directive is not being followed.\textsuperscript{71} Such violations of human rights in rural areas are not likely to receive extensive press coverage and will therefore be undercounted.

In fact, areas without any guerrilla activity are also vulnerable to the actions of the armed forces. In the August 1984 reply to Congress about the attacks on civilians, the State Department claimed that the Air Force was careful only to attack bona fide military objects and with “surgical precision.”\textsuperscript{72} However, this contradicts the finding of the U.S. Department of Defense Advisory Panel, headed by retired Major General John Singlaub. Dropping 500-pound bombs on insurgents and on civilian noncombatants “is not the way to go” for precise military encounters.\textsuperscript{73}

Thus it is likely that the test-retest reliability of newspaper accounts used by the State Department has been adversely affected by a systematic campaign of terror against the press and by the movement of hostilities to the countryside.

In contrast, how will the same factors affect the reliability of Tutela data? It is unlikely that intimidation of the press will adversely affect Tutela’s data since it depends upon sworn testimony, a process independent of the press.

\textsuperscript{70} Free Fire, supra note 32, at 44–45 presents data for this policy description. President Duarte’s new rules are reported in Wash. Post, 13 September 1984, at A1, col. 6. See also Americas Watch Committee, Draining the Sea . . ., Sixth Supplement to the Report on Human Rights in El Salvador (March 1985).

\textsuperscript{71} Free Fire, supra note 32, and Draining the Sea, supra note 70, document the civilian deaths from indiscriminate attacks. The latter includes excerpts from the directive of President Duarte, as distributed by the U.S. Department of State, and data which demonstrate that Duarte’s directive has not been followed. Country Reports 1985, supra note 7, at 516 states that the bombing restrictions are “generally observed.” But see Preston, “Air Power Key in El Salvador: Government Launches Drives Against Insurgents,” Boston Globe, 15 August 1985, at 1, col. 3; LeMoyne, “In Salvador Rebel Zone: A Life of War and Want,” N.Y. Times, 24 December 1985, at A4, col. 1; LeMoyne, “Salvador Prelate Accuses Air Force,” N.Y. Times, 13 January 1986, at A3, col. 4. In reporting the Prelate’s plea for the cessation of the indiscriminate bombing of civilians, the U.S. Embassy made significant omissions in the Archbishop’s statement which could mislead observers about the veracity of the Times story and the Prelate’s concern for civilian victims. See Americas Watch, Settling Into Routine: Human Rights Abuses in Duarte’s Second Year, Eighth Supplement to the Report on Human Rights in El Salvador 142–145 (May 1986).

\textsuperscript{72} State Department responses, supra note 32, at reply 1(D).

\textsuperscript{73} Singlaub Report (classified), as described in a press report, in Free Fire, supra note 32, at 37.
It is also unlikely that the movement of hostilities to the countryside would adversely affect the test-retest reliability for the same 100 hypothetical cases from 1980. Thus the reliability of Tutela’s method is likely to be comparatively unaffected by the terrorizing of the press or by changing the location of the attacks on victims.

B. Accuracy

Accuracy is a concept that assumes that there is some real underlying frequency of violations and that the observed frequency is an approximation to that real frequency. An index of accuracy is the difference between the observed frequency and the real frequency. As a practical matter it is impossible to know the real frequency. Once again, however, it is possible to identify factors that will impact favorably or unfavorably on the accuracy of a given method of assessing human rights violations. It is important to note that accuracy is a very different concept than reliability, which refers simply to the reproducibility of results, irrespective of their accuracy. In any data collection procedure it is necessary to be concerned about both reliability and accuracy.

The concern for accuracy focuses on the most important part of establishing measurable standards: the detection and determination of human rights violations. In the behavioral sciences this task is called a “signal detection” task or problem. The types of outcomes that are possible in a signal detection analysis of human rights violations can be represented as in Table 4. The respective cells of the table have the following meaning:

1. A human rights violation that is reported (tabulated). Correct detection.

2. A human rights violation that is unreported; leads to undercount. Error.

3. Not a violation, but reported as such; leads to overcount. Error.

4. Not a violation, and not reported (untabulated). Correct rejection.

Cells 2 and 3 are the areas where reporting errors are found. The characteristics of the Salvadoran civil war include many error factors which could lead to these error types and thus produce an inaccurate count of violations. These are now discussed in detail.

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C. Reliability and Accuracy in Tutela and U.S. Data

Table 5 indicates important factors involved in the accuracy and reliability of human rights data. Those factors on the left side of the table that are likely to produce undercounts, overcounts, or accurate data are so marked in the Effect column, and the last column indicates which organization’s procedures will be primarily associated with a given factor. For example, under Data Source and under Conditions, the threats against journalists can be expected to affect the State Department data by producing an undercount. In periods of extreme press intimidation the undercount effect will be greater. Under Data Source, the reliance on family, friends, and witnesses produces both accurate data and an undercount. Those parties reaching Tutela are likely to produce accurate data (sworn statements), and those unable to reach the Tutela office will not produce data for tabulations.

As Table 5 indicates, Tutela’s reporting system is a conservative one, because virtually all of the potential error factors will lead to underestimates of the real count. The Tutela system is subject to undercount because its urban location acts in combination with witnesses (data source) being willing to travel to Tutela and to give sworn and signed testimony (conditions). The one possible overcount factor, intentional fabrication, may be injected by both pro and antigovernment forces, assuming such parties were motivated to subject themselves to the Tutela process. The safeguards against fabrication include the training and experience of the Tutela staff. The staff have continuous information coming in about what is happening in the country.

To date, there have not been substantive charges of fabrication against Tutela (other than the rhetorical-type charges levied by the State Department and the Salvadoran Government). What has occurred, which is to be expected, is that individuals are revealed by subsequent information as misclassified. That Tutela updates its misclassifications indicates that it has a feedback system for correcting errors. Evidently the State Department does not because classification errors persist despite subsequent corrective information; for example, as noted above, observations by Embassy staff of bodies in El Playon and prosecution of national guardsmen for the murders of four American churchwomen did not change the U.S. data.

The conservative approach of Tutela inhibits the reporting of an event until there is a witness account. In the undisputed massacre at Las Hojas, described in VI. A. The Tutela Picture, below, the agency did not report the event until one month later when it had obtained witnesses. Furthermore, because of limited primary source testimony, Tutela did not tabulate the majority of deaths reported in the press. The use of multiple observer sources (eyewitnesses including family, friends, journalists, human rights workers, plus the justices of peace reports) for data increases the accuracy of Tutela reports, but overall the system still has an undercount tendency.
The accuracy of the Tutela method could be increased by greater access to the areas where the victims are. The Salvadoran and U.S. Governments criticize Tutela for inaccuracies, especially the numbers cited without the particulars of age, sex, or other basic identification characteristics. The July 1984 certification report on El Salvador carried criticisms of this type.\(^{75}\) However, there is no documented willingness by the Salvadoran or U.S. Governments to allow the Tutela staff safe access to military action areas and into refugee camps.\(^{76}\) The materials reviewed for this study documented instances in which Tutela’s staff made efforts independent of the government and sometimes succeeded in visiting sites where group attacks had been reported. In these instances the identification of victims was obtained from survivors and witnesses. Where Tutela could not identify individual victims, a conservative body count (lowest estimate) was used, with no attribution of sex and age.

The materials reviewed cataloged another statistical problem: repeated State Department charges that Tutela falsely claims to use eyewitness testimonies for reports on the indiscriminate attacks on civilians. Because the Tutela counts sometimes match those cited in newspaper accounts, the July 1984 certification report charges Tutela with (1) misrepresenting its methodology and (2) using the press figures for guerrilla deaths, but citing them as civilian deaths in their reports.\(^{77}\) On acknowledged civilian deaths, as long as Tutela uses the lowest figure provided by informants, it is quite likely that this figure will often match the conservative number reported in newspapers. As a better estimate, Tutela could use the median (which is not sensitive to extremes), or it could reject the highest and lowest figures and use an arithmetic mean. There is a choice of methods that would be more accurate and would separate Tutela data from that commonly reported, but unverified, in the press. There still remains the problem of classifying the dead as civilians or guerrillas, however.

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The U.S. method is also a conservative approach. It is likely to produce an even greater undercount, because of its reliance on a single data source, the press. The diminished capacity of the press is an intervening condition which ultimately affects both the reliability and accuracy of press coverage. The effects of having two fewer newspapers, especially those critical of the government, along with a continuous effort to intimidate journalists, reduces
the quantity and quality of coverage and data. There is a kill-the-messenger pattern in the frequent selection of journalists and human rights workers as victims. The U.S. method of relying exclusively on newspaper data may in fact create special dangers to journalists, dangers which could be diminished if multiple sources of data were used.

The State Department frequently criticizes Tutela for not providing specifics on victims, an impossible requirement. Such criticism may serve a political purpose. There is no evidence of the State Department having a methodology based on a standard report form, nor does it use multiple categories of information employed in standardized reporting. The important concern is that the State Department, as an influential organization in assessing human rights violations, is not acting in an affirmative way. Its actions do not increase the reliability or accuracy of its own data, nor of the data collected by Tutela and other monitoring agencies. The development of models and measurement methods for human rights violations are not nurtured by this conduct.

The State Department reliance on COPREFA bulletins allows for intentional fabrication or misrepresentation on a critical matter: the status of civilians who are currently counted as guerrillas. The State Department now concedes that these noncombatant civilians cannot be classified with the armed insurgents. Convincing the State Department's own Embassy officials and the Salvadoran armed forces to change their reporting categories is the next step in improving the accuracy of the system. When the COPREFA reliance is combined with transfer of information problems, the accuracy of the State Department reports is in question.

Without multiple sources of verification and some control exercised by the Embassy, external forces determine the accuracy which can be achieved. Cohen makes a primary recommendation that the Salvadoran Government establish a nationwide centralized system of statistics. This organized approach would collect information on routine homicides as well as

78. The writers were unable to tally the approximate number of journalist and human rights worker deaths to date. The Americas Watch publications are filled with verified instances of abduction, torture, disappearance, and murder of persons in these occupations and their children, parents, and relatives. The maltreatment of journalists has recently involved government forces who detain, confiscate, or copy the journalists' materials. See generally Settling into Routine, supra note 71, at 118–124, 139–145, which describes the continuing intimidation of the press.

The Department of State also takes an active role in criticizing international press coverage on El Salvador, and usually this criticism is directed toward stories dealing with human rights abuses. . . . At some point, the active role of the Department of State in criticizing press coverage of El Salvador may cross over the line between fair comment and the chilling effect that government can have on free speech. This is especially significant in a setting such as El Salvador, where journalists must depend to some extent on the U.S. Embassy for their own protection, for cooperation in dealing with impediments to their reporting imposed by the Salvadoran government, and for access to information.

Id. at 142.
human rights violations. Besides producing more reliable and accurate data, such an effort could promote the public trust and confidence which is now denied to the government.79

VI. THE METHODOLOGICAL AND POLITICAL PICTURE

The State Department and Tutela data have some common features in the picture they present of life in El Salvador. Both present a trend of declining numbers of death squad killings and disappearances. They also present a picture of an incapacitated justice system. To date, over 40,000 civilians have died in political murder in El Salvador. Yet there have been no prosecutions of military or security forces personnel for political murders of Salvadorans.80 Only the national guardsmen convicted for the murder of four American churchwomen and one civil defense man convicted of murdering a seminarian have been prosecuted for human rights violations.

Cohen's recent study fully documents the symptoms of an inadequate justice system in El Salvador: the highest Latin American proportion of non-sentenced offenders in a penal population (89.5 percent); less than 1 percent of the total military force prosecuted for common crimes (which are not human rights violations); the highest Latin American "average time" for criminal proceedings (time from arrest to disposition averages 2.6 years). Cohen concludes that the corrective steps outlined in the July 1984 certification report are not adequate.81 These projected actions were aimed at the death squads, not at the Salvadoran Government forces. In contrast, the July 1984 certification report describes the conviction of the national guardsmen as "clear evidence that the Salvadoran judicial system can work and is a significant potential milestone in the establishment of an effective functioning system of criminal justice."82

79. B. Cohen, supra note 49, at 42. Also, the Country Reports 1984, supra note 4, at 513–520 describe an "inadequate judicial system . . . a prime contributing factor in human rights abuses."

80. Lawyers Committee for International Human Rights, Justice Denied: A Report on Twelve Unresolved Human Rights Cases in El Salvador (February 1985) describes acknowledged cases of individual and group killings where the Salvadoran Government has failed to prosecute, such as Archbishop Oscar Arnulfo Romero, the four Dutch journalists, the Las Hojas Massacre, two American agrarian advisors and a Salvadoran land reformist, and others; see also Simons, "Duarte Rights Unit Replaced, But Investigations Still Lag," N.Y. Times, 23 November 1985, at 4, col. 3, describing replacement of the presidential commission to investigate the murders described supra. Army officers were revealed as operators of an abduction-for-profit ring, which included the Army officer accused of killing the two American agrarian advisors and a Salvadoran land reformist. LeMoyne, "Officers Held in Salvador Abduction," N.Y. Times, 25 April 1986, at A3, col. 4; "Salvador Rightists Said to be Held in Abductions," Boston Globe, 5 April 1986, at 8, col. 4.


A. The Tutela Picture

Tutela has consistently documented a picture of government forces and allied forces as being the primary perpetrators of human rights violations. The Americas Watch review of the history since 1980 states that while “press accounts of human rights abuses in El Salvador have tended to attribute most of the killings of civilian noncombatants to death squads, this has never been accurate. Even in 1981, at the peak of the death squad activity, Socorro Juridico attributed more than sixty percent of civilian deaths to regular uniformed Salvadoran forces. During 1982 and 1983 Socorro Juridico and Tutela Legal attributed only about one third of the killings of civilian noncombatants to death squads, or paramilitary groups not displaying military insignia, and the balance to uniformed forces.”

The government victims are now predominantly the rural people. The shift in target was not accompanied by any improvement in the government’s ability to discipline its forces for undeniable abuses. The Las Hojas massacre, one of many attacks on civilians, stands out because there was no controversy about what occurred. On 22 February 1983 an Indian peasant cooperative in Sonsonate was attacked by uniformed Salvadoran soldiers. Eighteen males from the cooperative were dragged away and killed (hands tied behind their backs, shot in the head with high powered weapons). The massacre was part of an area operation which also resulted in seventy-four other acknowledged civilian deaths. Las Hojas was reported in the New York Times and the Washington Post. The Director of the Salvadoran Government’s own Commission on Human Rights visited the site and confirmed the eighteen deaths. Only eighteen victims of the Las Hojas massacre were mentioned in the Country Report for 1983.

After the massacre, General Jose Guillermo Garcia, then Salvadoran Minister of Defense, publicly pledged a full investigation. The commander of the Las Hojas attack was known, but to date no disciplinary action has been taken against Colonel Elmer Gonzalez Araujo, who remains in command of the garrison near Las Hojas. The one officer supposedly disciplined (in administrative detention), was never detained, but instead promoted to head intelligence in the area. None of the over 200 soldiers who took part in the massacre have been charged and prosecuted. Las Hojas was not mentioned in the 1984 and 1985 Country Reports, although the Salvadoran Govern-

83. C. Brown, supra note 3, at 214.
85. Country Reports 1983, supra note 4, at 552.
86. C. Brown, supra note 3, at 124–125.
メント promised that it would investigate, prosecute, and publically reveal the perpetrators.

B. The U.S. Embassy Picture

The State Department emphatically depicts a conflict between the West and the East in the Country Reports. "The Soviet bloc presents the most serious long-term human rights problem."87 According to this view, the fate of Latin America depends on strengthening and keeping countries in the Western column. This requires a policy toward friendly countries which uses quiet diplomacy to influence human rights policies in struggling countries. In this evolving relationship the achievement of democratic elections is the key way to protect human rights. During the nurturing process the United States cannot weaken friendly allies with public condemnation as they try to overcome historically based abuses of power.

Thus El Salvador is pictured as a struggling democracy. It is a country cognizant of its weaknesses and it is making efforts to correct them. The 1983 Country Report attributed no specific responsibility to the military and security forces for human rights offenses. "Extremists of the right and left are guilty of politically motivated civilian deaths as are some members of the Armed Forces."88 It is the extremists, not the government forces, who are the violators.

The Country Reports and certification reports cite attempts made by the government to control the abuses inflicted on civilians. In December 1982 the government’s own Human Rights Commission was established. The government’s representative on the Commission is Colonel Reynaldo Lopez Nuila, former head of the National Police. Lopez, when he directed the police, admitted that these security forces would arrest people by sending nonuniformed agents on midnight raids, agents who did not identify themselves as police nor state the charges. According to Lopez, this method was necessary to surprise subversives.89 Human rights workers were understandably skeptical that reform is possible through individuals like Lopez. The Commission has assisted in finding disappeared persons who were located in detention in government forces facilities. Other government efforts include indoctrination of the government’s forces in respect for human rights through educational programs and through proclamations made by the president and by top military and security commanders.90

C. Critic Reviews

Reviews of the methods used by Tutela and the State Department are available from sources within the community of human rights organizations. The Americas Watch, Helsinki Watch, and the Lawyers Committee for International Human Rights issued a critique of the State Department’s reports for 1982, 1983, 1984, and 1985. These joint reviews affirmatively credit those country reports which comport with international standards used by responsible human rights agencies and commissions. The reviews also pointed out as seriously distorted or inaccurate the reports on El Salvador.91 The Washington Office on Latin America and the Council on Hemispheric Affairs have similar reviews.92

A critical evaluation of the political policy accompanying the methodology is provided by the American Association for the International Commission of Jurists. In its evaluation of the first decade of human rights in U.S. foreign policy (1973–1983), the study critiques the Carter and Reagan administrations. The latter “has not overcome the problems posed by initial anti-human rights declarations, by the almost one-year delay in appointing an Assistant Secretary for Human Rights, and by policies that support actively a number of repressive regimes, particularly in Latin America.”93

Tutela receives recognition from numerous intergovernmental and international human rights organizations which rely on its data for their work. The organizations previously mentioned, plus Amnesty International, the United Nations Commission on Human Rights, and the Inter-American Commission on Human Rights of the Organization of American States do not regard the information as biased or unreliable. The data were used in the U.N. as one basis for the repeated resolutions which criticized the government in El Salvador. Through the testimony of human rights advocates, the Tutela data have been instrumental in the congressional actions which have required special certification of El Salvador.

Aryeh Neier, Vice Chair of the Americas Watch, has summarized the reasons why people work to document human rights data. The data collecting and reporting processes: (1) provide a psychological support for the survivors who have brutally been deprived of friends and family members; (2)

provide evidence essential for prosecutions wherever they can be obtained; (3) provide data for international knowledge about human rights; (4) provide effective pressure on the government responsible by the very existence of the data – practices are worse when no data are collected; and (5) provide a form of retribution on the perpetrators by stigmatizing them. If these reasons are used as criteria for success, the Tutela method, with its flaws, is more successful than the U.S. method.

94. Interview with Aryeh Neier in New York City (16 November 1984).
APPENDIX: INDICES FOR COMPARING HUMAN RIGHTS ABUSES

The international human rights standards do not provide methods or measurements for determining if a given country's human rights abuses are improving or becoming worse. Nor do they provide a way of comparing different countries for human rights abuses. Indices for comparisons within and between countries are needed to aid in the formulation of verifiable standards and to implement decision-making rules. Thus the existence of comparative indices of human rights abuse make it possible to ask: (1) if rules can be derived which determine violations and penalties with more certainty, and (2) if standards are being met.

Newberg discusses the formulation of indices of human rights violation as a dual dilemma. The ethical dilemma of achieving emotional understanding by treating each human victim as unique is juxtaposed with the attempt dispassionately to quantify violations as discrete events, with some numerical relationship to one another. "How many reports of torture are equivalent to a murder? Or, in more basic terms: What do we care about, and how much?" Obviously, both approaches are needed: individual human suffering motivates us to construct remedies, and numerical information is needed to determine if the remedies are in fact improving the conditions that we deplore.

From the brief discussion by Newberg, we have constructed four indices, each of which provides some perspective on what is done by Tutela or the State Department.

Weight-by-Violation-Type Index. This index produces a single number, which might be called an index of severity of violations. It allows comparison across times for a given country (assuming that data are collected in the same way). Most importantly, it also allows for a comparison between countries for any kind of human rights abuse. In short, it provides a single index of the degree of human rights violations that occur in a country. This is accomplished through several steps.

First, a relative frequency measure is used to take into account the fact that different countries have different populations; that is, the index is based on a unit of population, for example, number of violations for every 100,000 persons. (Cohen recently used this type of rate measure in a study on the human rights violations of murder and disappeared in El Salvador.) The next step is to assign weights that reflect the relative importance of a given

96. Id. at 280.
97. B. Cohen, supra note 49.
type of violation. For example, if murder, disappearance, and torture are counted, the weights might be .50 for murder, .35 for disappearance, and .15 for torture. Then

\[
S.I. = .50 \times \text{Murders} + .35 \times \text{Disappearances} + .15 \times \text{Tortures}
\]

where S.I. = Severity Index of Human Rights Violations, and Murders, Disappearances, and Tortures are based on the number per 100,000 population.

In the case of multiple abuses (such as a disappearance followed by torture followed by murder), only the most severe abuse might be entered for that case (murder). Other variables and associated weights could also be included (e.g., detention without charges); the only restriction is that the weights add to 1.0. What this index requires is agreement on which particular human rights violations to include (murder, disappearance, torture, and so on) and the appropriate weights to assign to each.

The logic is clear. The index has the desirable features of allowing comparison between countries and within a country over time, even though the distribution of violation types may differ from time to time and country to country. Thus if murder becomes too difficult for an oppressive government to handle politically, there may be a shift to disappearances. The severity index will still capture such shifts as human rights violations, however, and should discourage tactical shifts of abuses over time. For example, suppose the following change in the distribution of human rights abuses from time 1 to time 2:

\[
S.I. \text{ (time 1)} = .50 \times (70 \text{ murders}) + .35 \times (0 \text{ disappearances}) + .15 \times (0 \text{ tortures}) = 35
\]

\[
S.I. \text{ (time 2)} = .50 \times (0 \text{ murders}) + .35 \times (100 \text{ disappearances}) + .15 \times (0 \text{ tortures}) = 35
\]

In each case, there is a different mix of abuses, but the severity index S.I. equals the same number, 35, at both times.

While no such explicit index has been used in El Salvador, there may well have been related tactical shifts in the nature of government abuses. In Fall 1983, the new American Ambassador, Thomas Pickering, pointedly warned the Salvadoran Government and business community that the murders and disappearances must cease or American aid would be curtailed. His message was followed by a November 11 visit from Vice President George Bush who met in secret with military and security leaders. The message was forcefully repeated.\(^98\) Also, a flurry of official military and

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\(^98\). This interpretation is provided by Protection of the Weak and Unarmed, supra note 69, at 4; and McCartney, “Democracy Gaining in El Salvador, U.S. Believes: Aid, Reforms Said to Calm Turmoil,” Wash. Post, 2 June 1985, at 1, col. 2.
security statements were made which exorted the government forces to protect human rights as their patriotic and professional duty. These proclama-
mations attacked death squads and terrorist groups. There was an ac-
companying decline in death squad activity which may have reflected the Pick-
ering and Bush messages. See Figure 1.

Human rights violations remained at a high rate in the rural areas, however. Many rural violations were unlikely to be counted by either the State Department or Tutela because of the remoteness of the countryside. Moreover, such deaths were likely to be the result of Air Force bombing or Army violence, and they were therefore difficult to separate from bona fide military actions which did not enter into the tabulation of human rights violations.

_Rank-by-Country Index_. This index is related to the prior one, and it also produces a single number describing human rights violations. Moreover, that number allows, without any separate table lookups, a judgment of the relative violation of human rights with respect to other countries. While it is not much different mathematically, its psychological immediacy in describing the relative standing of a country for human rights violations may be quite important. As with the previous index, the types of violation are specified and a weight is assigned to each type. Countries are then ranked for relative frequency of each violation type per 100,000 population. Thus if there were twenty-five countries and a given country had the highest political murder rate, it would receive a rank = 1 for murder. Consider a simplified example in which all weights are equal (and can therefore be ignored):

\[
S.I. = \frac{\text{Murder Rank} + \text{Disappearance Rank} + \text{Torture Rank}}{\text{(No. of Categories)}}
\]

Thus a country that had high ranks (this time, close to 1.0) for murder, for disappearance, and for torture would receive an average severity index rank number at or near the top of the list for all the countries with human rights problems. The appeal of this index is that a given value of S.I. is easy to interpret. Values close to 1.0 mean that a country ranks at or near the top of the scale for human rights abuses. In contrast, countries with large rank numbers are near or at the bottom of the list for human rights abuses.

It is of interest to provide a rough comparison of El Salvador and Guatemala versus Nicaragua. In a review of the 1983 _Country Reports_, the Council on Hemispheric Affairs noted some contradictions. The human rights situation in El Salvador and in Guatemala, where over 10,000 political killings took place in 1983, displayed “improvement” over the

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previous year. In Nicaragua twelve persons died in 1983 while in the custody of government authorities, and the human rights situation was described as “much worse.” 100 A rank-by-country index would allow a comparison which takes into account the relevant human rights abuses, so that such distorted conclusions are less likely.

Ordered List Index. For at least some purposes the previous indices are not appropriate. For example, any weighted index implicitly trades off human rights violations against one another. Thus a weighting that assigned values of .9 to murder and .1 to torture is in effect saying that one murder is “worth” nine tortures. It may be claimed, with some force, that this is morally repugnant and in addition is really comparing incommensurables. Any index that arrives at a single number for human rights violations is subject to such criticism.

The Ordered List Index recognizes these difficulties. Newberg relates it to Rawls’ lexical order of factors in a justice system. 101 No attempt is made to produce a single number. The violations are, however, ranked for severity. Presumably murder would be most serious, followed by other human rights violations. For each type of violation there is an index such as frequency of people murdered per 100,000 population. This produces a rank of countries for each specific violation, with 1 = most severe abuse. For example, consider the performance of two countries, A and B.

<table>
<thead>
<tr>
<th>Rank Order of Severity</th>
<th>Rank of Country for Relative Frequency of Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1 = worst . . . n = best)</td>
<td></td>
</tr>
<tr>
<td>1. Murder:</td>
<td>8</td>
</tr>
<tr>
<td>2. Disappearance:</td>
<td>5</td>
</tr>
<tr>
<td>3. Torture:</td>
<td>28</td>
</tr>
<tr>
<td>4. Etc.</td>
<td></td>
</tr>
</tbody>
</table>

Country A  | Country B
8          | 20
5          | 22
28         | 1

No attempt would be made to combine across violation categories. Each category would be distinct, except that some categories would be seen as more important than others. Nonetheless, for a given type of violation, the two countries could be readily compared.

A disadvantage of this index is that it would be very difficult to compare one country with another for its overall human rights record. As shown in the example above, Country B is much better than Country A for murder.

101. Newberg, supra note 95, at 281.
and disappearances, but it is number 1 in its use of torture. Of course, individuals may well assign their own implicit weights to different human rights violations. If so, it is unlikely that a conscientious U.S. Senator would be impressed with either Country A or Country B when it was time to dispense foreign aid.

*Minimal Index.* This index is very much like the Ordered List Index except that it does not even order the different human rights violations for severity. It requires the user to determine what implicit rank or weight to assign to each type of violation. All that it does is report frequencies of violations by category of abuse.

The Minimal Index is certainly a practical one for the State Department to implement, but it does set a lower bound on the types and quality of data the department should produce. It requires some form of documented, even certified, data which results from a finding-of-fact process which is explicit and as far as possible meets the best existing conditions of reliability and accuracy (validity). The conditions which produce reliability and accuracy are discussed in the text of this article.