

**Report from Civil Society about the implementation of the
International Covenant on Civil and Political Rights in
El Salvador**

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Introduction

The present alternative report contains the view of a variety of Human Rights Organizations (HRO) about determined topics contained on the List of Issues Prior to Reporting (LoIPR) of the seventh periodic report of El Salvador (CCPR/C/SLV/QPR/2017), With the intention to collaborate with the Human Rights Committee of the United Nations (The Committee) on the process of reviewing the official report (CCPR/C/SLV/7), giving accomplishment to the disposition of the International Covenant on Civil and Political Rights (on the Future “the Covenant” or “ICCPR)

On summary, the subscribed organizations manifest their concern for the high levels of criminal violence in the State party, which have generated an inadequate official response, waging to repressive policies and creating the propitious conditions for the excessive use of the force and lethal weapons. Those levels of violence are producing phenomenon like the hardening of prison conditions, the raising of families displaced because of gang violence, the resurgence of extermination groups and extrajudicial executions. Meanwhile, the victims of the Salvadoran armed conflict continue without being adequate heard and cared on truth, justice and reparation issues. Likewise, persist high levels of violence and discrimination against LGBTI population.

We note that the report of State of El Salvador lack of figures and datum about the impact, positive and negative, of the multiple executed actions that presents to give validity to the Covenant. The periodic report contains a number of programs, plans and policies at first sight

positives, but does not go deep in their fulfillment on the Salvadoran reality. For that reason, the Committee must request complimentary data about the impact and results of those implemented policies by the State party. The periodic report neither shows about the obstacles faced to guarantee the humans rights recognized on the Covenant.

Subscribers Organizations:

This alternative report was elaborated y validated on a join way by the follow organizations:

- Asociación Pro-Búsqueda de niñas y niños desaparecidos durante el conflicto armado (Pro-Búsqueda)
- Asociación Comunicado y Capacitando a Mujeres Trans con o sin VIH en El Salvador-COMCAVISTRANS
- Fundación Cristosal
- Fundación de Estudios para la Aplicación del Derecho (FESPAD)
- Fundación para el Debido Proceso (DPLF)
- Fundación para la Justicia y el Estado Democrático de Derecho El Salvador
- Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (IDHUCA)
- Servicio Social Pasionista (SSPAS)

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Constitutional and legal framework (arts. 1 and 2 ICCPR); Autonomy of the Office of the Human Rights Advocate “PDDH” (Paragraph 2 LoIPR):

The executive and legislative branches have not adopted measures to outfit the enough financial resources to the Office of the Human Rights Advocate (PDDH) to guarantee its autonomy and adequate operation. This institution budget increased from 9.1 million US

dollars on 2014 to 10.01 million US dollars on 2016; however, on 2017 its budget lowered to 9.44 million US dollars. For 2018 has been assigned 9.47 million US dollars.¹

Beyond of the well-known shortage of human and material resources, continues to be disturbing the little impact of the resolutions and recommendations of the PDDH to the state branches. According to an academic investigation, between 2014 and 2015, only 27% of its resolutions were totally adopted². This indicates that the official institutions do not have a generalized policies of respect for the work of the PDDH, although its importance for the defense and promotion of human rights.

Recommendations:

1. The State party must increase the budget of the PDDH at least to the levels of the year 2016 and to adopt all the legislative, administrative or another measure, so the state institutions fully adopt its resolutions and recommendations.

Non- discrimination (Art. 21 ICCPR); Discrimination and crimes against LGBTI community (Paragraph 4 LoIPR):

In El Salvador the violations of human rights based on sexual orientation, identity or gender expression, constitute a generalized and ingrained pattern, that subject LGBTI people to killings, torture, abuse, forced migration, persecution, extortion, threats and discrimination, between other things. On many cases, security forces with excessive use of power, inhuman or degrading treatment, and illegal and arbitrary detentions exert violence.

The hate, mixed with the violence, results on terrifying hate crimes, acts that are performed with more cruelty than usual: mutilations, excessive violence that have ended on multiple shootings, tied bodies, signs of executions, dismemberment of part of their genitals and other systematic actions taken against the LGBTI population. In the last 3 years have happened a

¹Los presupuestos pueden ser consultados en <http://www.transparenciafiscal.gob.sv/ptf/es/PresupuestosPublicos/Presupuestosvotados>

²Cea Nerio, Sara Esther y Moreno Romero, Ricardo Antonio: *La eficacia de las resoluciones de la Procuraduría para la Defensa de los Derechos Humanos respecto de la garantía, respeto y restitución de los derechos humanos*. Trabajo de grado para obtener el título de Licenciado (a) en Ciencias Jurídicas. Universidad de El Salvador, Febrero de 2017, página 89.

number of hate crimes: 42 on 2015, 28 on 2016, 26 on 2017 and 2 on 2018; all homicides of LGBTI people that remain on total impunity.³

A report made by the United Nation Development Program (UNDP), the PDDH and civil society organizations, shows that 52% of trans women has suffered life or violence threats, mostly because of the transphobia and the extortion or rent imposed by the gangs to sexual workers⁴.

The State keep its position of no recognition of the fundamentals rights of LGBTI people, allowing the increase of hate crimes and impunity, becoming this way a real accomplice, if not a direct author of severe human rights violations.

Persist significant gaps on the legal framework because there are no constitutional guarantees neither specific protection mechanism for LGBTI people. The lack of approved laws and integral policies is responsibility of the three branches of the State (judicial, executive and legislative), whom do not generate favorable conditions to ensure, guarantee and protect human rights of this vulnerable group.

After the seriousness of the LGBTI people situation, as the lack of protection from the State, many members of these groups have been force to leave the country. Just between 2014 and 2015, more than 70 LGBTI people decided to migrate running away from violence situations, while other 50 did on the first 3 months of 2017. Between them - because of three murder occurred on San Luis Talpa, La Paz, on February 2017 - 8 Trans women of this area abandoned the country⁵.

The Salvadoran state has violated its international duties on the prevention of hate crimes, discrimination and protection of LGBTI people. The few actions taken and pointed in its report are weak or of null implementation, which brings the spread of human rights violation of LGBTI people as consequence.

³Fuente CNN: <http://cnnespanol.cnn.com/2017/03/07/denuncian-aumento-de-crimenes-de-intolerancia-contra-comunidad-trans-en-el-salvador/>

⁴ Programa de las Naciones Unidas para el Desarrollo et al: Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador. San Salvador, 2015, pág. 38

⁵Fuente Diario 1: <http://diario1.com/nacionales/2017/02/denuncian-asesinatos-de-odio-contra-transexuales-en-la-paz/>
<http://elmundo.sv/comunidad-transgenero-del-centro-de-el-salvador-huye-a-mexico-por-asesinatos/>

In addition to that, the PDDH has closed spaces of coordination with social organizations, the current head of the institution has remained ward off from the communities, and the human rights organizations, especially the ones related to the LGBTI community and women movements.

Recommendations:

The State party must:

1. To start mechanisms to guarantee the fulfillment of the legislation against discrimination by agents or order, to firmly process hate crimes for sexual orientation and gender identity, and guarantee that those are investigated and punished on an appropriate form.
2. To develop the necessary legislation to guarantee the rights associated with gender identity and other fundamental rights to achieve the full integration of the LGBTI people as citizen of the society. Specially, is indispensable to develop legislation to eradicate all forms of discrimination for identity or gender expression.

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment, and combating impunity (arts. 2, 6 and 7 ICCP); Justice and victims of the Armed Conflict. (Paragraph 10 and 11 LoIPR)

The General Amnesty Law “Act for the Consolidation of the Peace”, approved on March 20, 1993, was declare Unconstitutional on July 13, 2016, after 23 years of obstacles for the demands of justice by the victims of war and lesa humanity crimes that happened on the armed conflicts⁶.

The Constitutional Chamber ordered to the Legislative Assembly that on a reasonable time:

- (i) To regulate the ways to guarantee the accessing to public information about the facts and circumstances related to lesa humanity crimes and war crimes which constitute serious violations of the international humanitarian law, occurred the armed conflict.
- (ii) To provide the adequate resources to answer, on the shortest time possible, the demands of the victims and their families and from the Salvadoran society, about the investigations,

⁶Inconstitucionalidad 44-2013/145-2013, Sentencia de 13 de julio de 2016

the prosecutions, the enlightenment of truth and the penalties to the responsible of lesa humanity and war crimes during the Armed conflict; and

(iii) To considerate integral reparation measures for the victims to guarantee their satisfaction, compensation and claims, as well as the measures for no repetition of lesa humanity and war crimes, taking as level international transitional justice standards.

The decision lift any obstacle for the prosecution of crimes and victims reparations and so, enables the exercise of criminal actions, *ex officio*, about the pointed crimes.

After a year of the declaration of unconstitutionality of the Amnesty, the Constitutional Chamber called a public hearing to follow and analyze the fulfillment of the imposed obligations. On that opportunity, was evident that the sentence was much unfulfilled because the Legislative Assembly and the Executive branch did not take any action. The General Attorney of the Republic (FGR) - until that time - was not able to present any concrete results about the criminal prosecution of the human rights violations happened during the armed conflict⁷. In sum, the sentence of unconstitutionality have not had any effect on the care of victims and the impunity of the victimizers.

The actions of the FGR after the derogatory of the Amnesty have been more symbolic than effective. On December 2016, the General Attorney emitted an agreement designating a group of attorneys for the investigation of the crimes that have to be investigated and sanctioned after the derogatory of the Amnesty Law. It has been informed that this unity would assume the investigation and the prosecution of more than 146 cases filed or reopened at courts - which is a tiny quantity in relation with the crimes committed- . The creation of this unity, however, has had just few impacts on the real advancement of the cases. Today, even existing some collaboration from the attorneys of this Unity in cases like the Massacre of El Mozote, it's unknown the strategies or general policies of criminal prosecution on this cases, neither the priorities of investigation.

On other hand, on September 2017, the General Attorney met with some organizations representing the victims of the conflict and publicly compromised to investigate the war crimes. This gesture is, without doubt, positive, but must be translated to concrete actions and overwhelming that yet have not come.

⁷ Fuente Diario de Hoy: <http://www.elsalvador.com/noticias/nacional/375516/sala-exige-a-gobierno-y-asamblea-cumplir-fallo-sobre-ley-de-amnistia/> consultado el 09.01.2017

Meanwhile, El Salvador Armed Forces (FAES) continues denying information about the operatives performed during the armed conflict or declaring nonexistent, and far from collaborating in its reconstruction, destroys it or appeal to the Administrative Contentious Chamber of the Supreme Court of Justice (CSJ) to not deliver it.⁸

The State has informed to the Committee about the creation of the National Commission on Reparations for the Victims of Human Rights Violations in the context of the Internal Armed Conflict and about the Reparations Programs⁹, but does not point any impact of these actions, neither the benefits nor the numbers of victims attended.

The Legislative Assembly or the Executive branch introduced no initiative for the care of the victims of the Armed Conflict. Has been the victims the ones, which after a long process of consulting and elaboration, and without any government assistance, drafted a Law of Integral Reparation, introduced on August 31, 2017, to the Legislative Assembly. Until date, the Legislative Assembly has not studied this draft. Neither are observed any advanced about the elaboration of a single census of victims with the right of reparation.

In summary, neither the Executive branch, nor the Legislative, nor the FGG have adopted the needed measures to guarantee the rights to true, justice and reparation of the victims of the severe human rights violations in the context of the Armed Conflict, despite the derogatory declaration of the General Amnesty Act.

Recommendations:

The State party must:

- 1) To give access to the FAES files that contains information about human rights violations in the context of the Armed Conflict. The Executive branch must collaborate without conditions on the investigations that are open because of the Derogatory declaration of the General Amnesty Act.

⁸ Fuente La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Ministerio-de-Defensa-impidio-al-IAIP-revisar-archivo-militar-20140124-0082.html>, consultado el 09.01.2017

⁹CCPR/C/SLV/QPR/2017 párrafos 101 y 102

- 2) To require to the Legislative Assembly to approve the Law of Integral Reparation of the civilians victims of the Armed Conflict, introduced by a group of NGO and different social groups.
- 3) Through the General Attorney of the Republic, to develop a specific criminal persecution policy for the cases of the armed conflict and other actions against the impunity of these crimes, in attention to the requirements of transitional justice. }

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment, and combating impunity (arts. 2, 6 and 7 ICCP): Violence Situation and State Policies (Paragraph 12 and 21 LoIPR).

In the last years, El Salvador has kept the qualifying of being one the most violent countries in the world. The figures show an epidemic of violent deaths, that although tends to low, are still severe, worrying and intolerable. The homicides have keep high figures en the las seven years, with a significate increasing on 2015: 4004 in 2010; 4371 in 2011; 2594 in 2012; 2513 in 2013; 3921 in 2014; 6656 in 2015 and 5278 in 2016¹⁰. According to a report from the Ministry of Justice and public security, between 2016 and 2017 there was a decrease of homicides in around 27%; however, the year 2017 finished with 3,954 murders and a rate of 60 homicides by each 100,000 habitants. The homicide rates by each 100,000 habitants since 2010 has been the following: 2010: 64.7; 2011: 70.1; 2012: 41.2; 2013: 39.4; 2014: 61.1; 2015: 103.0¹¹; and 2016: 81.2¹².

Before these levels of violence, the State adopted on 2016 the “*National Policy for Security and Coexistence*” and “*The Safe El Salvador Plan*” (PESS)¹³, designed with participation of different social sectors in the *National Council for Citizen Security and Coexistence*. The

¹⁰ Servicio Social Pasionista: *Inseguridad y violencia en El Salvador. El impacto en los derechos de adolescentes y jóvenes del municipio de Mejicanos. Enero de 2017*, páginas 21 a 23.

¹¹ Fundación Guillermo Manuel Ungo: *Aportes al Debate sobre Seguridad Ciudadana*. No 04, septiembre 2016, página 1.

¹² InsightCrime: Balance de InsightCrime sobre Homicidios en Latinoamérica en 2016 <https://es.insightcrime.org/noticias/analisis/balance-insight-crime-sobre-homicidios-2016/> consultado el 15.01.2018

¹³ Disponible en <http://www.seguridad.gob.sv/wp-content/uploads/2017/01/3.-Plan-El-Salvador-Seguro.pdf>

implementation of PESS has prioritize the criminal persecution line, relegating its integral approach.

On this line on April 2016, the government launched the “Extraordinary Security Measures” that comprehended the creation of joint task groups for the combat against gangs, conformed by police and militaries, and legislative reforms oriented to increase the penalties and the creation of new crimes, and the harmonizing of some norms calling the gangs like terrorist groups. These last actions are the ones that are orienting the current State security strategies, being characterized by their repressive and punitive emphasis.

That explains why detentions made for different crimes, performed by the National Civil Police (in the future PNC) have increased on a 26% between 2016 and 2017. El Salvador has located as one the country with the highest imprisonment rates in the world: 464 prisoners by each 100,000 people in 2014¹⁴, which has increased to 597 prisoners by each 100,000 habitants on 2017¹⁵.

Other of the initiatives that are being valued on the Legislative Assembly is the proposal of the “Special Law of National Registry of Illicit Groups and Terrorist Organizations, its Members and Collaborators”. The terms of this legal text might cause stigmatization – particularly on low incomes youth that live on dense areas – and human rights violations. It pretends to include on this register to “bosses, chiefs, members, financiers or collaborators of the Illicit Groups”, without defining categories and without establishing the affected legal assets.

We consider that the policies that privilege control and persecution of crimes, in such violent context like the Salvadorian, where even the members of the official forces are victims, encourage abuses of state power, despite the fact that might be joined by prevention and rehabilitation measures

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Abuses on the use of Force

The available figures points that has been committed sever abuses from official spheres. Between 2014 and 2016, the PDDH has registered at least 44 cases of possible extrajudicial

¹⁴<http://es.theglobaleconomy.com/rankings/prisoners/>

¹⁵ World Prison Brief: http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All consultado el 12.12.2017

killing performed by the PNC and the FAES, besides 25 cases of tentative extrajudicial killings. These cases include more than 114 deathly victims at hands of the PNC and FAES¹⁶. There have been resolutions from the PDDH where has been checked the commission of extrajudicial executions by the official forces, *inter alia*, Caserío San Felipe case¹⁷, San Blas case¹⁸ and Panchimalco case¹⁹ and even so these cases remain on impunity.

Since January 2015 to February 2017, official sources have report 1,161 clashes between forces of order and criminal structures where have died 1,137 civilian, more than 90% presented as gang members by the authorities and 45 policy members and militaries. The relation of dead in 2016 was of 60 dead civilians by each police or military dead on clashes²⁰. In 2017, that relation would have been of 6.07 civilian by each police or military death²¹.

According the director of the ONC Howard Cotto, in 2017 would have occurred 497 clashes, with 391 alleged gangs dead and 64 injured. These figures generate serious concerns about the reality of this clashes or if behind these stories are hidied real extrajudicial killings and in an excessive use of lethal force. According the investigation of the digital media El Faro, “the lethality rat is of 6.1 dead by each injured above the 2015 and 106 rates ... International experts... establish that in real armed clashes its expectable for police to cause more injured with which the rate should be always les that 1”²². James Cavallaro, ex Commissioner of the Inter American Human Rights Commission (CIDH) and ex Rapporteur for Peoples

¹⁶ Fuente: Servicio Social Pasionista (2017). *Informe de violaciones a derechos humanos 2016*. Recuperado el 20-11-2017 en: <https://drive.google.com/file/d/0B5e-eVWTfKJ4eFB1cEEzSkctOUU/view>

¹⁷ Expediente LP-0066-2015

¹⁸ Expediente SS-0309-2015

¹⁹ Expediente SS-0369-2015

²⁰ Fuente: elaboración propia a partir de datos consolidados de la Policía Nacional Civil, la Fiscalía General de la República y el Ministerio de Defensa Nacional.

²¹ Fuente: elaboración propia a partir de datos consolidados de la Policía Nacional Civil, la Fiscalía General de la República y el Ministerio de Defensa Nacional.

²² Fuente periódico digital El Faro: https://elfaro.net/es/201712/el_salvador/21252/Ram%C3%ADrez-Landaverde-%E2%80%9CNuestra-estrategia-de-seguridad-es-la-correcta%E2%80%9D.htm?utm_source=twitter&utm_medium=CPC&utm_campaign=Ram%C3%ADrez%20Landaverde:%20%E2%80%9CNuestra%20estrategia%20de%20seguridad%20es%20la%20correcta%E2%80%9D&utm_term=EFFB&utm_content=UTM01 consultado el 08.12.2017

Deprived of liberty, also manifested his concerns on the same way during a thematic hearing on the CIDH²³.

The increase of armed clashes and in the number of civilian victims, happens in a context where the death of police and military has increased too. More than 150 police members have been murdered since January 5, 2015 to the present, most of them when they were on license, presumably on gang members' hands²⁴. Also between January and November 2017, would have been killed 21 member of the FAES²⁵. There has been reported numerous attacks against police and military families.

In spite of existing strong suspicions about the criminal behavior of some member of the public forces, in a possible cycle of revenge between authority agents and the gangs, the reaction has been to deny or minimize those facts. The evasion of all State responsibility and the almost total absence of investigation of these complaints, provide overwhelming clues about the existence of a deliberate impunity.

For example, the Vice Minister of Justice and Public Security, in a hearing on the CIDH²⁶, denied the existence of those facts and any chance of bad police behavior. The same attitude has taken the Inspectorate-General of Public Security (IGSP), because it does not recognize the existence of extrajudicial executions committed by the police²⁷.

Denial as a policy has been accompanied by improper demonstrations by senior public officials, which show acquiescence to the excessive use of force and dismiss human rights as limits to state action. The director of the National Public Security Academy, Jaime Martínez, during a graduation ceremony for police officers, said, "The full legitimacy of the State of

²³ Comisión Interamericana de Derechos Humanos, audiencia temática sobre ejecuciones extrajudiciales en El Salvador, durante el 164º Período Extraordinario de Sesiones, el 5 de septiembre de 2017.

²⁴ Fuente periódico digital El Faro: <https://elfaro.net/es/201712/salanegra/21247/La-Polic%C3%ADa-Nacional-Civil-est%C3%A1-menguando.htm>

²⁵ Fuente La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Pandillas-siguen-ordenando-asesinatos-de-policias-desde-las-carceles-20171115-0106.html> consultado el 04.01.2018

²⁶ Comisión Interamericana de Derechos Humanos, audiencia temática sobre ejecuciones extrajudiciales en El Salvador, durante el 164º Período Extraordinario de Sesiones, el 5 de septiembre de 2017, op. cit.

²⁷ Fuente periódico digital El Faro: https://elfaro.net/es/201607/el_salvador/18875/El-inspector-general-de-Seguridad-P%C3%BAblica-cree-que-la-PNC-mata-con-apego-a-la-ley.htm consultado el 06.12.2017

keeping the police it is in your hands. There, do not shake your hand. There is no way to be thinking that there are human rights involved, if there is criticism from the press or from international organizations. The moment you disrespect the legitimacy of the State, you have to make use of all the tactics and team teachings that you have for it.”²⁸

More radical has been the president of the Legislative Assembly, Guillermo Gallegos, who has said that the only way for gang member can pay for the murder of a public servant, is with his life²⁹.

The official tolerance and encouragement to the use of force, without limits, coupled with high crime rates, encourage a society susceptible to more violence and disrespecting the rule of law. According to a recent poll, “significant sectors of the population seem to favor the use of extralegal measures in the fight against crime: 40% would approve the use of torture to deal with member of organized crime, 34.6% would approve extrajudicial executions, and the 17.2% would consent the practice of social cleaning”³⁰.

Weakness on Policing Control Mechanism

The control mechanisms of the PNC seem to have weakened and have not reacted strongly to possible police abuses. The same Salvadorian State recognized in the Committee session on 2011, that the high rate of absolutions in cases of human rights violations against members of PNC was explained by the fact that IGSP “has not always conducted its investigations with the necessary independence and impartiality and has silenced, and even justified, a series of violations committed by police officers”³¹.

²⁸ Fuente La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Que-no-les-tiemble-la-mano-director-de-ANSP-a-policias-20170506-0052.html> Consultado el 07.12.2017

²⁹ Asamblea Legislativa: <https://www.asamblea.gob.sv/noticias/archivo-de-noticias/presidente-gallegos-la-unica-forma-en-que-un-pandillero-pague-por-la-muerte-de-un-policia-es-con-su-vida>. Sitio oficial de la Asamblea Legislativa. Consultado el 07.12.2017

³⁰Cruz, José Miguel; Aguilar, Jeannette y Vorobyeva, Yulia; *Legitimidad y confianza pública de la policía en El Salvador*, Instituto Universitario de Opinión Pública, Universidad Centroamericana José Simeón Cañas. San Salvador, julio de 2017, pág. 5.

³¹Comité de Derechos Humanos, 100º período de sesiones Acta resumida de la 2745ª sesión, CCPR/C/SR.2745 de 25 de octubre de 2011, párrafo 12

In last months, everything indicates that this confession of the State is again in force, because there is a high degree of impunity regarding extrajudicial executions and the excessive use of force and lethal weapons denounced by NGOs, the PDDH or the media.

On November 2014, the General Inspector of the National Civil Police was transformed to the Inspectorate-General of Public Security (IGSP), giving it a character external control and inspection. This reform, although it transferred the dependency of the IGSP to the Minister of Justice and Security, also detracted from its functions, leaving it solely responsible for the investigation and sanction of administrative offenses. The Control Unit and the Internal Affairs Unit of the PNC – which have a central role in the investigation of crimes committed by police members – now depends of the General Direction of the PNC.

Resurgence of extermination groups

The subscribing organizations see with special concern the resurgence of practices that were overcome since the Peace Agreement. There have been many murders of people suspected of being gang members through operations of extermination groups³².

Different media, whom have checked that some structures operate even from inside the PNC, have investigated these actions of social cleaning³³. Although the complaints and the strong evidence of the acting of these groups, the investigation and sanction of these criminal facts present little progress.³⁴

We agree with the verification that the UN High Commissioner for Human Rights realized on his recent visit to El Salvador: “the level of violence in El Salvador remains scandalously high and there are alarming reports of extrajudicial killings and the return of death squads”³⁵.

Forced Displacement caused by Violence

³² Revista Estrategia y Negocios: <http://www.estrategiaynegocios.net/lasclavesdeldia/888781-330/resurgen-escuadrones-de-la-muerte-en-el-salvador>

³³ Revista Factum: <http://revistafactum.com/en-la-intimidacion-del-escuadron-de-la-muerte-de-la-policia/>

³⁴ Insight Crime: <https://es.insightcrime.org/noticias/noticias-del-dia/escuadrones-muerte-matanza-el-salvador-no-afrontan-investigaciones/>

³⁵ Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos: <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=S> consultado el 08.12.2017

One of the most sensitive impacts of violence has been the forced displacement of people. These are entire families who are forced to leave their homes on pain of being killed by gang members or other criminals.

The phenomenon is, without a doubt, significant. There are no official figures, but the Internal Displacement Monitoring Center (IDMC, for its acronym in English) estimated that from 2014 to 2017 people displaced by violence would have gone from 191,000 to 220,000 people³⁶.

The Board of Civil Society against the Forced Displacement by Violence and Organized Crime, served in 2016 to 699 victims of forced displacement, mostly for threats, homicide or attempted homicide, or injuries caused by gang members (83.7%), PNC/FAES (8.1%) or death squads (3.2%)³⁷. While on the first semester of 2017, were served 328 victims, 163 men and 168 women. Cristosal Foundation has served, between January and September 2017, to 394 people for internal displacement, 55.3% de boys, girls, and youth under 25 years old, most of them caused by gangs (79%) y PNC/FAES (6%). It is of extreme concern that some families have migrated because of the action of State agents.

Despite the seriousness of the situation, the State still does not recognize the problem. The Vice President of the Republic, Oscar Ortiz, publicly stated, “Displacement has (sic) always existed”³⁸. The Director of Attention to Victims of the Ministry of Justice and Public Security said in an interview “in some cases of displacement people want to change home... take advantage”; however, accepted that the Salvadorian State does not recognize the internal displacement because of political reasons, because does not have the magnitude neither the temporality presented by international institutions”³⁹.

The most serious consequence of the absence of recognition of the problem has been the lack of adequate attention to the victims, the lack of quantification of the phenomenon and the

³⁶ Internal Displacement Monitoring Centre <http://www.internal-displacement.org/countries/el-salvador/>

³⁷ Mesa de la sociedad civil contra el desplazamiento forzado por violencia y crimen organizado: Desplazamiento interno por violencia y crimen organizado en El Salvador. Informe 2016.,

³⁸ Fuente La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Desplazamientos-por-violencia-han-habido-siempre-vicepresidente-Ortiz-20170828-0032.html> consultado el 08.12.2017

³⁹ Revista Factum: <http://revistafactum.com/en- algunos-casos-de-desplazamiento-la-gente-quiere-cambiarse-de-casa-aprovecharse/>

scarce results of the investigations. The police authorities' intervention, most times, has been limited to just providing security to people when they leave their homes.

This situation has called the attention of international organizations. The Special Rapporteur of Human Rights for Internal displacement affirmed on August 2017 that “the phenomenon of internal displacement, caused by the general violence and related with the gangs, is a significant crisis and in a large degree not assumed by El Salvador, that affects thousands of people, families, full communities”. The Rapporteur called to establish norms, policies and institutions to serve the vulnerabilities of the internal displaced people, as a pending and principal task”⁴⁰.

Violence has also transformed the phenomenon of migration. If before the economic reasons were the fundamental ones to migrate - although they persist -, the violence has come to be added to the main motivations to leave the country. Amnesty International has concluded that violence is a key expulsion factor in El Salvador⁴¹.

The office of the United Nations High Commissioner for Refugees (UNHCR) reports significant increases in the number of asylum applications from El Salvador⁴². According to this report just between 2010 and 2015, the number of people seeking refuge and asylum from the Northern Triangle of Central America (El Salvador, Guatemala y Honduras) have increased from 8,052 to 56,097, which equals a raise of 597% through the last 5 years⁴³. From new applications from 2015, most of them (22,917 cases) were Salvadorians⁴⁴.

The organizations are also concerned by the execution of many Salvadorians emigrants that we have registered:

- 72 migrant people killed in San Fernando, Tamaulipas, whose bodies were found in a warehouse in August 2010.

⁴⁰Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos: http://www.ohchr.org/Documents/Issues/IDPersons/IACHR_UNSR_DecisionsElSalvador_SP.docx

⁴¹Amnistía Internacional: *¿Hogar dulce hogar? El papel de Honduras, Guatemala y El Salvador en la creciente crisis de Refugiados*. Amnesty International Ltd, London, 2016, página 6

⁴² Alto Comisionado de las Naciones Unidas para los Refugiados: <http://www.acnur.org/noticias/noticia/acnur-pide-accion-urgente-por-el-aumento-de-solicitudes-de-asilo-de-centroamericanos/> consultado el 04.01.2018

⁴³ Citado en Amnistía Internacional, op. cit. pág. 26

⁴⁴ ib.

- 195 migrant people killed in San Fernando, Tamaulipas, which led to the discovery of 47 clandestine graves in April 2011.
- 49 murdered people whose torsos were found in Cadereyta, Nuevo León, in May 2012.
- 22 Female Mexican migrants from San Luis de la Paz, Guanajuato, disappeared in March 2011, during their trip to the United States.
- 9 migrant people of Guatemalan origin disappeared during their transit through Mexico to the United States in February 2014.
- 59 cases of disappeared migrants (47), deceased (11) and deprived of liberty (1) between 1999 and 2014 who have been admitted through the Foreign Support Mechanism assigned to the Migrant Unit of the Office of the General Attorney of the Republic.

Although no Salvadorian authorities are engaged in those killings, the organization, consider that State authorities can provide a much more effective response to attend humanitarian relief for the families, and to encourage the foreign governments to provide effective justice services for the families and relatives⁴⁵.

Forced disappearances or unintentional

In 2016, about 3,859 people disappeared due to violence, as the General Attorney of the Republic recognized it⁴⁶.

There have been reports of at least 5 victims of enforced disappearances at the hands of police and military officers since 2014, without their whereabouts being determined or their responsibilities deduced.. On December 11, 2017, the PDDH together with IDHUCA held police officers responsible for the forced disappearance of two young people in July 2017 in

⁴⁵ United States of Mexico – General Attorney. Acuerdo A/11/15 which creates the Migrant Crimes Investigation Unit and the Mexican Foreign Search and Research Support Mechanism and establishes its faculties and organization.

http://www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015

⁴⁶Fuente La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Desapariciones-se-incrementaron-en-2016-3859-personas-20170320-0003.html>

Santiago Nonualco, in the department of La Paz⁴⁷. In another case, in 2014, the Constitutional Chamber of the Supreme Court of Justice (CSJ) declared the Special Security Brigade of Armenia, in Sonsonate, responsible for the forced disappearance of three young people in February 2014.

There are no official figures on the disappearances committed by individuals in recent years, because the FGR, even having all the requirement to configure the criminal type has preferred to classify the facts under the criminal type or “deprivation of liberty” to prosecute this crimes which has a minor penalty and does not adequately understand the seriousness of the behavior.

There are serious shortcomings of the State in terms of the investigation and search of the victims. The investigations under the FGR – are limited and with a low rate of judicialization - they are not oriented to identify links or geographic reach, nor are they investigated or analyzed elements that constitute a pattern of criminalization. There are no manuals, effective protocols in the FGR neither the PNC to investigate this crime. As general rule dead is presumed and not that the victim is alive, reason why the search it is not prioritized.

Nor is there a protection policy for families of missing persons from the perspective of emotional impacts and the gender and non-discrimination approach.

The cases of forced disappearance in the context of the armed conflict are not being investigated in court, despite the repeal of the general amnesty, nor are benefits being granted to the relatives of the victims.

In August 2017, the Executive Branch agreed to create a "National Search Commission for Missing Persons in the Context of the Armed Conflict of El Salvador", but to date there is no official information on its composition, work methods, assigned resources or the results of its investigations

Recommendations:

The State party must:

⁴⁷Fuente El Diario de Hoy:<http://www.elsalvador.com/noticias/nacional/428589/jovenes-fueron-desaparecidos-por-policias-dice-pddh/>consultado el 12.12.2017

- 1) To prioritize the actions for prevention of violence and the integral application PESS, without favoring the punitive and repressive approach on the actions in public security issues. Must emphasis its implementation in the line of attention to the victims of violence.
- 2) To reject the draft of the “Special Law of National Registry of Illicit Groups and Terrorist Organizations, its Members and Collaborators” because might cause stigmatization in part of the population. On its place should be value the approval of rehabilitation instruments and for mara and gangs reintegration, previous consultation with the Human Rights organizations and the families of gang members.
- 3) Other of the initiatives that are being valued on the Legislative Assembly is the proposal of the “Special Law of National Registry of Illicit Groups and Terrorist Organizations, its Members and Collaborators”. The terms of this legal text might cause stigmatization – particularly on low incomes youth that live on dense areas – and human rights violations. It pretends to include on this register to “bosses, chiefs, members, financiers or collaborators of the Illicit Groups”, without defining categories and without establishing the affected legal assets.
- 4) To guarantee the autonomy of the Control Unit and the Internal Affairs Unit, in way that they do not functionally depend of the General Direction of the PNC. At the same time those unit must specialize on the investigation of extrajudicial cases, forced disappearances and torture; and to strengthen the leadership of the FGR in the investigation of this crimes.
- 5) To investigate, punish the responsible and provide reparations to the victims in cases of possible extrajudicial executions, forced disappearance and torture where the participation of the PNC and the FAES is indicated.
- 6) To Recognize disappearances and forced displacement due to violence as a critical reality. The State must create policies, protocols and a legal framework of protection and attention for the impacts on the mental and physical health of families of missing or displaced persons. Likewise, a route of attention and investigation must be designed in cases of disappearance or forced displacement, taking into account that in these Crimes State agents could have been perpetrators.

7) To Sign and ratify the International Convention for the Protection of All Persons against Enforced Disappearances

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment, and combating impunity (arts. 2, 6 and 7 ICCP): Military participation on security tasks ((Paragraph 13 LoIPR)

La presencia militar en tareas de seguridad pública se ha incrementado en los últimos años. En 2014 participaron 7,900 militares en tareas de seguridad⁴⁸ y, para el 2017, de acuerdo con declaraciones del Ministro de Defensa, esa cifra se habría duplicado, con un registro de más de 14,000 militares en seguridad⁴⁹. En los últimos tres años se han creado al menos cinco grupos de tarea conjunta conformados por la PNC y la FAES, el más reciente en el Área Metropolitana de San Salvador, donde se cuenta con mayor cantidad de efectivos militares con relación a policías.

La militarización de la seguridad pública ha implicado un aumento en el presupuesto del Ministerio de la Defensa Nacional. En 2017 se asignaron más de 28 millones de dólares para el desarrollo de tareas de seguridad, a los que se suman más de ocho millones en bonos entregados a militares⁵⁰. La participación militar en tareas de seguridad está alterando la visión civil con que se creó la policía y ha derivado en un uso excesivo de la fuerza y las armas letales

Desde el involucramiento militar en tareas de seguridad pública, la PDDH ha registrado un mayor número de denuncias de violaciones a derechos humanos donde se señala a la FAES como responsable. La PDDH, en su informe de labores 2015-2016, indicó que la FAES se encontraba como la segunda institución gubernamental más denunciada, sólo por debajo de

⁴⁸Unidad de Acceso a la Información Pública (UAIP) del Ministerio de Defensa Nacional, resolución de solicitud de información No. 83.1-015-126/060CT016

⁴⁹Fuente La Prensa Gráfica: <https://www.laprensagrafica.com/elsalvador/Hay-presiones-internacionales-para-quitar-la-FAES-de-tareas-en-Seguridad-Publica-dice-Payes-20170914-0011.html> consultado el 20-11-2017

⁵⁰Unidad de Acceso a la Información Pública del Ministerio de Defensa Nacional, resolución de solicitud de información No. B3.1-015-060/14JUN17

la PNC⁵¹. Las denuncias contra la FAES en los últimos años subieron de 41 (1.2%) en el informe 2009-2010 hasta 161 denuncias (8.5%) en 2015-2016.

La participación de la FAES en labores de seguridad se ha vuelto permanente, lo cual ha roto la temporalidad de la intervención militar en este ámbito prevista por la Constitución. Además, el aumento de presupuesto hacia la FAES para labores de seguridad drena la posibilidad de fortalecer el cuerpo policial, por lo que es necesario un proceso de desmilitarización de la seguridad pública.

Recommendations:

The State party must:

- 1) To Adopt a policy of immediate withdraw of the FAES participation in public security. Simultaneity, the assigned funds to the FAES and the Ministry of National Defense for the support in public security tasks must be reoriented to the PNC and the FGR to strengthen the scientific investigation of crimes.

Right to liberty and security of person, rights of persons deprived of their liberty (arts. 7, 9, 10 ICCP): Population deprived of liberty (Paragraph 16 to 18 LoIPR)

Las cárceles salvadoreñas ocupan los primeros lugares entre las más hacinadas del mundo. Según World Prison Brief, se encuentran sobrepobladas en un 348.2% respecto de la capacidad instalada⁵². En solo tres años, la población penitenciaria ha aumentado un 40.4%. Resulta especialmente preocupante el uso excesivo de la privación de libertad como medida cautelar. Del total de las personas privadas de la libertad que están en los centros penales, el 32.1% se encuentra en detención provisional⁵³. Este porcentaje asciende hasta el 42% si

⁵¹PDDH. Informe de labores 2015-2016. En: <http://www.pddh.gob.sv/portal/wp-content/uploads/2017/09/Informe-Anual-2015-2016-con-analisis-situacional.pdf>

⁵²World Prison Brief: http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All

⁵³ Dirección General de Centros

Penales: http://www.dgcp.gob.sv/images/stories/Estadistica%20Penitenciaria/2017/Diciembre/Estadistica_General_04-12-2017.pdf

contabilizamos las más de 6,000 personas internadas en dependencias policiales (bartolinas) también en situación de detención provisional.

Si bien el creciente uso de la prisión como primerrecurso constituye un problema de urgente atención, las condiciones de internamiento han generado una crisis humanitaria al interior de los penales. En el 2014, la Sala de lo Constitucional de la CSJ determinó que estas condiciones atentan contra la dignidad humana y ordenó el cese del hacinamiento en las instalaciones policiales⁵⁴.

A pesar de la decisión de la Sala de lo Constitucional, ni la Asamblea ni el Ejecutivo emprendieron acciones para resolver la situación y, por el contrario, la Asamblea, a propuesta del Ejecutivo, aprobó en abril del 2016 una serie de medidas extraordinarias en el sistema penitenciario, las cuales se han mantenido hasta la fecha. Dichas medidas consisten en el encierro y aislamiento permanente de personas que el sistema cataloga como pandilleros, la limitación de acceso a abogados defensores y la prohibición de contacto con familiares⁵⁵.

Las consecuencias de las medidas son francamente alarmantes. De acuerdo con un informe de la PDDH, los internos no tienen acceso a artículos de higiene personal, agua potable ni comida suficiente. La precariedad de tales condiciones de vida, agravada por las medidas ha provocado una epidemia de tuberculosis. Desde abril de 2016 a la fecha, se ha registrado un incremento de personas infectadas de 400%⁵⁶. En bartolinas de la PNC, solo de enero a octubre de 2017, se han registrado 39 muertes por complicaciones de salud, superando la cantidad de muertes ocurridas en ocho años (2009-2016), periodo en el cual se registran 12 muertes⁵⁷.

Recommendations:

The State party must:

⁵⁴Habeas Corpus 119-2014 ac. Sentencia de veintisiete de mayo de dos mil dieciséis

⁵⁵Disposiciones Especiales Transitorias y Extraordinarias en los Centros Penitenciarios, Granjas Penitenciarias, Centros Intermedios y Centros Temporales de Reclusión, Decreto Legislativo N° 321, de fecha 1 de abril de 2016, publicado en el Diario Oficial N° 59, Tomo 411, de esa misma fecha.

⁵⁶PDDH: <http://www.pddh.gob.sv/portal/wp-content/uploads/2017/09/Informe-preliminar-sobre-el-impacto-de-las-medidas-extraordinarias-para-combatir-la-delincuencia-en-el-ambito-de-los-DH-FIRMADO.1.pdf>

⁵⁷ Unidad de Acceso a la Información Pública de la PNC, resolución PNC/UAIP/927/2017.

- 1) To derogate the Extraordinary Security Measures because of the disproportionate affectations to human rights.
- 2) To avoid the legal reforms oriented to increase penalties, and the change of alternative measures for provisional detention in some specific crimes; or hardening the imprisoning conditions, and to promote the use of alternative precautionary measures over preventive detention.

Right to a fair trial and due process (art. 14 ICCP): Judicial Independence (Paragraph 20 LoIPR)

To guaranty the right to an effective judicial protection requires consolidating the progress in Judicial Independence that there have been in the country. That is particularly transcendent on the selection and appointing process of the Constitutional Chamber, which periodical renewal will be verify on the first semester of 2018. The mostly total renewal (4 from 5 members) of the Constitutional Chamber for the next nine years will determinate the development or the backward in the protection of human rights on the medium term.

Therefore, it is important that the State might take actions, so the selection and appointing process of the judges of the Constitutional Chamber of the Supreme Court of Justice (CSJ) keeps in mind: objective and clearly pre-established criteria, to guarantee the transparency; including civil society participation, public oversight on the selection process and professional merit of the selected people; as well as the measures to strength the independence of the Judicial System⁵⁸. These measures also must be adopt in the election process of other essential officials to guarantee the protection of fundamental rights, like the General Prosecutor of the Republic and The Head of the Office of the Human Rights Advocate.

One of the main concern aspects about the current appointment process of Judges for the CSJ it is its dysfunctional design, that prevents to carry out a selection based on the merit of the candidates. It is a procedure of two steps. The first consist in an evaluation phase done by the

⁵⁸Due Process of Law Foundation:
http://www.dplf.org/sites/default/files/seleccion_mag_esv5.pdf

National Council of the Judiciary (CNJ) to shape a list of 15 candidates and the election of other 15 candidates by direct and secret vote of the attorneys on exercise. The list of 30 candidates it is submitted to the Legislative Assembly, whom in a second step, choose the holders and substitute judges.

The creation of the list of 30 candidates – in particular the election by the lawyers – has no subjection to a merit and quality criteria neither exist the possibility of stablishing an order of precedence. This design do not guarantee the integration of the list by the most qualifies aspirants.

From another side, it can be find the lack of a clear and detailed profile, that beyond minimal age, profession and years of practice requirements, serve as an objective parameter to measure the qualities and essential abilities of the future judge – as its independence, honorability or relevant knowledge - as well as the transparency and publicity of the process. About this last point, has been the precedent from the Constitutional Chamber the one that has stablished standards on transparency matters, but these precedents have not been collected in the law.

It is important to highlight that the approval, on September 2017, of the “Selection Manual of Magistrates and Judges) by the CNJ, has tried to cover some of these deficiencies, developing more scope elements of the profiles and stablishing which must be fulfilled by the postulants to the position. Also, stablish that the CNJ will review the fulfillment of the constitutional and legal requirements of the aspirants chosen by direct vote from the attorneys, and that will not accept those candidatures that do not fulfil those requirements.

However, this instrument has the weakness and instability common to this hierarchy of regulation, and has some important deficiencies, because does not clearly stablish the publicity of all the information about the candidates, neither contains mechanisms so citizens might participate of the process, offering information about the candidates background, or objecting or supporting specific candidates.

Recommendations:

The State party must:

- 1) To establish by law all the aspects of the appointing process of judges to the Supreme Court of Justice (CSJ), its steps, schedules, deadlines, minimal requirements to Access the position, the profile, as well as the transparency mechanisms, publicity and citizen participation. The norm must develop the competencies and general guidelines established by the Constitution and the constitutional precedent.
- 2) To eliminate the direct vote as a preselection mechanism of the candidates. This mechanism it is not suitable to identify the candidates and it is not useful on the search and identification of merit, which is the goal of the preselection step.
- 3) To verify that the National Council of the Judiciary (CNJ) has enough guaranties to develop its work in an independent way and free of undue interferences from political and economic powers.

Given the depth and severity of the described situations, which persistence is predictable on the short and long term, the Committee must value if it continues its inclusion on the List of Issues Prior to the review of the eighth periodic report of El Salvador.

San Salvador, February 5, 2018.