



## **EL SALVADOR**

### **Stakeholder Report for the United Nations Universal Periodic Review**

**Submitted by The Advocates for Human Rights,**  
a non-governmental organization in special consultative status

for the 34th Session of the Working Group on the Universal Periodic Review  
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Founded in 1983, **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates has published numerous reports on violence against women as a human rights issue, provides consultation and commentary on draft laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws on domestic violence. Since 2014, a growing number of individuals fleeing gender-based violence and related human rights violations in El Salvador have requested legal assistance from The Advocates in applying for asylum in the United States. Firsthand information from asylum clients about the human rights violations they experienced in El Salvador has been used in this submission with their permission.

## **I. EXECUTIVE SUMMARY**

1. This report addresses issues related to violence against women and discrimination against LGBTI persons, as well as related gang violence.
2. Despite the implementation of legislative and societal reforms, violence against women remains a severe problem in El Salvador. Gender-based violence includes domestic violence, sexual assault, and even femicide. Moreover, police in El Salvador consistently fails to adequately protect women victims of violence.
3. LGBTI persons in El Salvador also continue to face threats and assaults based upon their sexual orientation. With respect to this issue as well, police in El Salvador have failed to take adequate steps to protect those at risk.
4. The Advocates has received firsthand information from women and LGBTI survivors who fled violence and discrimination about their experiences in El Salvador.<sup>1</sup> Their experiences confirm that the legal system and policies in place in El Salvador are not protecting women and LGBTI persons from violence or providing victims with the necessary support and services. Moreover, the legal system and policies fail to hold perpetrators accountable.

## **I. BACKGROUND AND FRAMEWORK**

5. El Salvador is party to several human rights treaties. <sup>2</sup> Article 144 of the El Salvadoran constitution demands the supremacy of international treaties over domestic law.<sup>3</sup>

### **A. 2014 Universal Periodic Review**

6. During the 2014 Universal Periodic Review, El Salvador received 159 recommendations. El Salvador initially accepted 97 of the recommendations—36 of which it considered already implemented or in the process of implementation.<sup>4</sup> As of the Adoption of the UPR Outcomes in the Plenary in March 2015, El Salvador had accepted 117 and noted 42 recommendations.<sup>5</sup>

#### *1. Discrimination against Women*

### **Status of Implementation: Accepted, Partially Implemented**

7. El Salvador received 7 recommendations related to discrimination against women, and supported all, stating that it considered that all of the recommendations were already implemented or were in the process of being implemented.<sup>6</sup> Although El Salvador has taken steps to address discrimination against women in the workplace, discrimination against women persists and has detrimental effect.

#### *2. Gender-based Violence*

### **Status of Implementation: Accepted, Partially Implemented**

8. El Salvador received 15 recommendations related to gender-based violence and supported all, stating that it considered 5 of the recommendations—primarily regarding legislation—to already be implemented or in process of being implemented.<sup>7</sup> El Salvador has implemented some recommendations—including implementing a national action plan on women, peace, and security—gender-based violence remains a severe problem.

#### 3. *Discrimination on the Basis of Sexual Orientation and Gender Identity*

### **Status of Implementation: Not Accepted, Not Implemented**

9. El Salvador received 5 recommendations related to equality, non-discrimination, and protections for LGBTI persons, and did not accept any.<sup>8</sup> In doing so, El Salvador acknowledged the need to develop legislation and stated that it was “prepared to engage in discussion on initiatives....”<sup>9</sup> LGBTI persons in El Salvador continue to experience high rates of violence and discrimination.

### **B. Domestic Legal Framework**

10. In 2012, El Salvador enacted the *Ley Especial Integral para una Vida Libre de Violencia para las Mujeres*, criminalizing domestic violence, sexual assault, psychological abuse and financial abuse, and providing jail or prison sentences for violations.<sup>10</sup> However, many serious problems remain with the domestic violence legislation and its implementation, resulting in a systemic failure to protect victims and promote offender accountability.
11. In 2013, El Salvador adopted a National Policy on Access to a Violence-Free Life for Women and created a Five-Year Development Plan for 2014–2019 to guide implementation of the policy.<sup>11</sup> Some measures include the creation of special courts to handle crimes against women, institutional gender units, and specialized support units.<sup>12</sup> In addition, inclusive language is now required in all internal work regulations of the Labour Directorate of the Ministry of Labour and Social Security.<sup>13</sup>
12. In 2015, El Salvador approved reforms to the penal code to include sexual orientation, sexual identity, and gender expression as categories protected against hate crimes—including threats and homicides—and increased associated prison sentences.<sup>14</sup>
13. In 2017, El Salvador adopted the *Plan de Acción Nacional “Mujeres, Paz y Seguridad” 2017-2022*,<sup>15</sup> in order to streamline implementation and coordination with the Women, Peace, and Security Agenda.<sup>16</sup>
14. In 2018, El Salvador amended its labor code to address discrimination against women in the workplace, prohibiting verbal offenses and sexual harassment.<sup>17</sup>

## II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

### Discrimination and Violence against Women

15. **Persistent stereotypes and prejudices regarding the role of women in society perpetuate violence against women in El Salvador.** Domestic violence is considered socially acceptable by a large portion of the population.<sup>18</sup> Human rights reports document that domestic violence, sexual assault, and other crimes of violence against women in El Salvador are underreported due to a number of factors: 1) societal and cultural pressures on victims; 2) fear of reprisal; 3) ineffective and unsupportive responses by authorities toward victims; 4) fear of publicity; and 5) a belief among victims that the laws will not be enforced.<sup>19</sup>
16. While El Salvadoran laws prohibit gender-based discrimination, require equal pay for equal work, and forbid pregnancy tests as a condition for employment, these laws are not properly enforced.<sup>20</sup>

#### A. Gender-based Violence

17. The Ministry of Health reported that 4,686 women were victims of violence in the first eleven months of 2015.<sup>21</sup> The Civil Chamber of the Supreme Court of El Salvador estimated that there were 5,007 reported cases of domestic violence in 2014.<sup>22</sup> Rape and other sexual crimes against women are widespread. A female victim's statements are often given little credibility, resulting in a low conviction rate and impunity for offenders.<sup>23</sup> In the first eight months of 2014 alone, the Office of the Attorney General (FGR) of El Salvador reported 1,793 cases of alleged sexual crimes resulting in only 24 convictions.<sup>24</sup> In addition to one of the highest femicide rates in the world, the rate of impunity for femicide crimes is estimated to be as high as 77% in El Salvador.<sup>25</sup> Amnesty International reports at least 429 femicides in 2017.<sup>26</sup> In the same year, one woman was killed every 18.7 hours.<sup>27</sup>
18. Many women report violence and sexual assault by their intimate partners.<sup>28</sup> One young woman, who left El Salvador in 2014 when she was 17, described years of physical and sexual abuse inflicted by her boyfriend, who was a gang member. He hit her until she had bruises all over her body, kicked her in the head, and threw her into the wall. She has lasting scars from the abuse. One time he choked her and beat her to the point where her "white pants became all red with blood." He forced her to move in with him when she was 15. He often prevented her from going to school, causing her to miss many days. He raped her repeatedly, telling her "You are my property" and that she could never leave because "You are mine." When she tried to leave, he stalked her and threatened he would "cut her up into pieces and throw her remains in the dirt ditch."<sup>29</sup>

#### B. Ineffective Assistance from Police, Prosecutors, and Judges

19. Domestic violence, sexual violence, sexual harassment, and other gender-based violence crimes are widespread and ineffectively investigated, prosecuted and adjudicated. Widespread acceptance of domestic violence and rape is an obstacle to reporting of violence against women,<sup>30</sup> and laws against rape and domestic violence are poorly enforced.<sup>31</sup> Societal perception creates an obstacle to victims seeking justice when laws are not enforced and cases are inadequately investigated and prosecuted.<sup>32</sup>
20. Women interviewed by The Advocates frequently reported that they did not report violence to police because of fear of retribution, as well as the lack of protection from the police. One woman reported that she feared that if she went to the police, her intimate partner would “have the gangs do something horrible to her.”<sup>33</sup> Many clients reported that police were connected with gangs and that information reported to the police was not kept confidential. Other women reported that they did not go to the police because they believed that the police would do nothing.<sup>34</sup> Another woman described years of domestic abuse, noting that her partner threatened to kill her if she stepped outside the home, and that he knew authorities would not act because she had previously called the police but they did not do anything.<sup>35</sup> Yet another client experienced physical abuse as well as threats against her and her infant daughter’s life. Her partner strangled her and held a knife against her throat, and he later told her that if she wanted to leave she would have to leave her daughter with him. The police refused to intervene, stating that they did not get involved with marital relations.<sup>36</sup>
21. Of the women who suffered sexual assault and did report it to the police, many discussed how the police did not follow up on investigations.<sup>37</sup> Ineffective investigation and low conviction rates discouraged victims of domestic violence to seek help from the state authorities. Further, ineffective court systems endanger victims as the perpetrator is aware the victim went to the police and is free to extract revenge.

### **C. Gang-Perpetrated Gender-based Violence**

22. Gang violence and a culture of impunity create an unsafe and violent environment for women. The U.S. Department of State reported that women’s rights NGOs claimed that many violent crimes against women occurred within the context of gang structures, where women were “corralled” and “disposed of at the whims of male gang members.”<sup>38</sup> Women interviewed by The Advocates corroborate these accounts. Many reported that gang members used sexual and physical violence to extort money and silence political opposition.<sup>39</sup> Interviewees reported that families are extorted and intimidated by gangs for various reasons, including money, the refusal of family members to join the gang, or participation in opposition political parties.<sup>40</sup>
23. Impunity for gender-based gang violence forces women and girls to flee the country. Some women reported that gangs perpetrated acts of gender-based violence alongside general acts of violence, such as beatings, gun violence, theft, stalking, and threats against family and employers.<sup>41</sup> One woman reported that three members of the MS-13

gang, including the local leader, demanded that the woman leave school, break up with her boyfriend, and become the leader's girlfriend. The gang members threatened her brother at gunpoint and later physically assaulted him. She was forced to go into hiding to escape the threats and violence.<sup>42</sup> Another faced a similar situation where a gang member stalked and harassed her, eventually telling her that he knew where she lived and would kill her. She fled the country and later learned that the gang had begun harassing and threatening her pregnant sister. Gang members kidnapped a 15-year-old girl and her friend and kept them hostage for five months, during which they were sexually abused and raped daily. The girl was released only after a family member found her and paid the gang.<sup>43</sup> In many cases, gang members demand that young women and girls become their "girlfriends" and subject them and their family members to threats and violence if they refuse. One girl received threats from a gang member for months, and decided to flee the country because she knew another girl who refused the advances of a local gang member had been killed soon after her father filed a police complaint about the threats. One woman who faced threats from a gang for many years eventually went to the police after gang members killed her son. But after police arrested the murderer, the gang retaliated, threatening to kill her and her other children, prompting them to flee the country.

### **Discrimination and Violence based on Sexual Orientation and Gender Identity**

24. From 2015–2016, the El Salvador Office of Human Rights received 31 complaints alleging discrimination based upon sexual orientation, including 14 alleged homicides.<sup>44</sup> Recently, Human Rights Watch noted that although the penal code penalizes hate crimes based on sexual orientation and gender identity (SOGI), it was not aware of any hate-based murders of LGBTI individuals that resulted in a conviction.<sup>45</sup>
25. Impunity persists for violence based on SOGI. The LGBTI community is particularly vulnerable in El Salvador, where the endemic violence and impunity has a harsher toll on people who identify as LGBTI. Violence by private actors is not pursued by the police, as in the case of Bloody June of 2009, when a wave of murders and other violence (including rape, sexual assault, and evidence of torture and dismemberment) targeted LGBT persons. No one has been held accountable for this violence. Violence by public servants is common as well, with the police as the main perpetrators.<sup>46</sup>
26. The U.S. State Department reports continuing unlawful discrimination against LGBTI individuals across society, including in the areas of government services, employment, and healthcare treatment.<sup>47</sup> Office of the Human Rights Ombudsman (PDDH) survey data reports 52% of LGBTI individuals have been the subject of death threats or violence, and the Secretariat for Social Inclusion reports 11 homicides.<sup>48</sup> The U.S. State Department cited NGO reports of the lack of prosecutions of violence and human rights violations against LGBTI individuals.<sup>49</sup>
27. The experiences of individuals interviewed by The Advocates demonstrate that LGBTI individuals often face discrimination and violence from gangs, the police, and other

members of society. A gang attacked one gay man for his sexual orientation, cutting off his long hair and threatening to kill him. The police took no action because of the victim's sexual orientation. Another young man perceived as gay faced bullying and physical violence from an early age. He later joined an LGBT group that received threats and violent attacks from gangs.<sup>50</sup>

### **III.RECOMMENDATIONS**

28. This stakeholder report suggests the following recommendations for the Government of El Salvador:

- Violence and Discrimination against Women
  - Put into practice strategies aimed at eliminating gender stereotypes in society and take concrete steps to address the societal and cultural pressures on victims and increase the reporting of crimes of violence against women, including sexual assault and domestic violence
  - Establish a comprehensive program to protect women from violence, including public education, effective prosecutions, and training for police, investigators, prosecutors, and judges.
  - Ensure that all acts of domestic violence are effectively investigated, prosecuted, and perpetrators punished.
  - Ensure that victim services—shelters, helplines, crisis centers, and medical and legal aid—receive adequate, regular funding and are accessible to women and girls seeking assistance.
  - Ensure that laws and budgets provide adequate reparation to victims and their families or dependents, as appropriate.
  - Provide training on domestic violence for police, in consultation with or led by NGOs that serve victims of domestic violence, on the law, dynamics of domestic violence, and best practices in police response.
  - Provide training on domestic violence for the judiciary, in consultation with or led by NGOs that serve victims of domestic violence, on the law, dynamics of domestic violence, and best practices for judicial responses to domestic violence.
  - Strengthen the criminal justice response to gender-related killings of women and girls, in particular measures to support its capacity to investigate, prosecute, and punish all forms of such crimes and provide reparation and/or compensation to victims and their families or dependents, as appropriate.
  - Monitor and review the performance of police, prosecutors, and judges relating to the adjudication of cases involving violence against women.
- Violence and Discrimination against LGBTI Individuals

- Compile and publish on an annual basis data about the number of calls to the sexual diversity helpline, as well as the type of help requested, assistance provided, and demographic information about the callers.
- Compile and publish on an annual basis data about all complaints received by the Office of the Human Rights Advocate alleging violations of the rights of LGBTI individuals, including the nature of the allegations, the response by the Office, and any follow-up or disciplinary action taken by the Office or other sectors.
- Ensure that police compile and publish data on an annual basis about all reported acts of violence and threats of violence allegedly based on sexual orientation or gender identity, as well as any action taken to investigate and prosecute such actions.
- Provide an annual report with information about all homicides allegedly based on sexual orientation or gender identity, whether such crimes have been investigated, whether offenders have been prosecuted and convicted for such crimes, and whether victims' families have received reparations for such crimes.
- Ensure that victims of violence and discrimination based on SOGI receive appropriate rehabilitative services and support.
- Establish a national referral mechanism to ensure that the sexual diversity helpline provides all callers with appropriate and timely referrals to governmental or non-governmental service providers and provide funding and logistical support to ensure that all mechanism participants are trained in best practices for responding to violence and discrimination based on SOGI.

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<sup>1</sup> The case information presented in this submission is compiled from intake and other interviews conducted by The Advocates for Human Rights with asylum seekers from El Salvador between January 2014 and January 2019 (hereinafter referred to as “Interviews conducted by The Advocates (January 2014–January 2019)”). Some details of the cases have been removed to maintain confidentiality and to protect the identities of the individuals and their families. Information is used with the express permission of the clients.

<sup>2</sup> The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, The International Covenant on Civil and Political Rights and its Second Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, UN Office of the High Commissioner of Human Rights,

[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=55&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=55&Lang=EN)

<sup>3</sup> CONSTITUTION OF THE REPUBLIC OF EL SALVADOR art. 144.

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review: El Salvador*, (Dec. 17, 2014), U.N. Doc. A/HRC/28/5, ¶¶ 103–05.

<sup>5</sup> *Report of the Working Group on the Universal Periodic Review: El Salvador: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, (Mar. 18, 2015), U.N. Doc. A/HRC/28/5/Add.1, ¶20.

<sup>6</sup> *Report of the Working Group on the Universal Periodic Review: El Salvador*, (Dec. 17, 2014), U.N. Doc. A/HRC/28/5 ¶ 104.

<sup>7</sup> *Id.* ¶¶ 103–04.

<sup>8</sup> *Report of the Working Group on the Universal Periodic Review: El Salvador: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, (Mar. 18, 2015), U.N. Doc. A/HRC/28/5/Add.1, ¶ 13.

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<sup>9</sup> *Id.*

<sup>10</sup> Ley No. 520, 4 January 2011, Ley Especial Integral para una Vida Libre de Violencia para las Mujeres [Law for a Life Free of Violence Against Women] tit. II, ch. 390. <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-especial-integral-para-una-vida-libre-de-violencia-para-las-mujeres> (accessed April 16, 2015).

<sup>11</sup> Human Rights Committee, *Seventh periodic reports of States parties due in 2016: El Salvador*, December 23, 2016, UNDOC CCPR/C/SLV/7, ¶63 (hereinafter referred to as “2016 State Party Report”).

<sup>12</sup> 2016 State Party Report, ¶¶66, 70.

<sup>13</sup> 2016 State Party Report, ¶67.

<sup>14</sup> United States Department of State, *El Salvador 2015 Human Rights Report*, p. 23 (hereinafter referred to as “2015 Department of State Human Rights Report”).

<sup>15</sup> Government of El Salvador, *Plan de Acción Nacional “Mujeres, Paz y Seguridad”* (San Salvador, 2017).

<sup>16</sup> Security Council Resolution 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000). Also available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>.

<sup>17</sup> Official Gazette number 40, published on February 27, 2018; Legislative Decree number 900.

<sup>18</sup>, United States Department of State, *El Salvador 2013 Human Rights Report*, p. 15 (hereinafter referred to as “2013 Department of State Human Rights Report”).

<sup>19</sup> *Id.*

<sup>20</sup> 2015 Department of State Human Rights Report, p. 19.

<sup>21</sup> *Id.* p. 17.

<sup>22</sup> Corte Supreme de Justicia Sala de lo Civil, *Casos de Violencia Intrafamiliar por Departamento 2014*, <http://www.csj.gob.sv:88/?op=content&seccion=11&categoria=tru&id=95> (accessed June 13, 2016).

<sup>23</sup> Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, December 28, 2011, OAS/Ser.L./V/II. doc 65, p. 50, para 150, <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf> (accessed June 13, 2016).

<sup>24</sup> United States Department of State, *El Salvador 2014 Human Rights Report*, p. 15 (hereinafter referred to as “2014 Department of State Human Rights Report”).

<sup>25</sup> UN Women, *Femicide in Latin America*, April 4, 2013, <http://www.unwomen.org/en/news/stories/2013/4/femicide-in-latin-america#sthash.WyDyzaZE.dpuf> (accessed June 13, 2016).

<sup>26</sup> Amnesty International, “El Salvador 2017/2018,” accessed Mar. 21, 2019, <https://www.amnesty.org/en/countries/americas/el-salvador/report-el-salvador/>.

<sup>27</sup> *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador*, (June 18, 2018), U.N. Doc. A/HRC/38/44/Add.2, ¶ 70.

<sup>28</sup> Interviews conducted by The Advocates (January 2014–January 2019).

<sup>29</sup> *Id.*

<sup>30</sup> United States Department of State, *El Salvador 2016 Human Rights Report*, p. 21 (hereinafter referred to as “2016 Department of State Human Rights Report”).

<sup>31</sup> United States Department of State, *El Salvador 2017 Human Rights Report*, p. 23 (hereinafter referred to as “2017 Department of State Human Rights Report”).

<sup>32</sup> 2016 Department of State Human Rights Report, p. 21.

<sup>33</sup> Interviews conducted by The Advocates (January 2014–January 2019).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> El Salvador 2016 Human Rights Report, p. 22.

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<sup>39</sup> *Id.* See also University of California, Hastings School of Law, Thousands of Girls and Women are Fleeing Rape, Sexual Violence and Torture in Honduras, El Salvador and Guatemala, 2015. <http://cgrs.uchastings.edu/talking-points-and-stories> (accessed April 16, 2015) (collecting numerous reports of women from El Salvador who were sexually assaulted by gang members).

<sup>40</sup> Interviews conducted by The Advocates (January 2014–January 2019).

<sup>41</sup> Interviews conducted by The Advocates (January 2014–January 2019).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Human Rights Committee, *Seventh periodic reports of States parties due in 2016: El Salvador*, December 23, 2016, U.N. DOC. CCPR/C/SLV/7, ¶35.

<sup>45</sup> Human Rights Watch, “El Salvador: Events of 2018,” accessed Mar. 21, 2019, <https://www.hrw.org/world-report/2019/country-chapters/el-salvador>.

<sup>46</sup> 2012 “Sexual Diversity in El Salvador: A Report on the Human Rights Situation of the LGBT Community”, International HR Law Clinic, UC Berkeley School of Law

<sup>47</sup> 2016 Department of State Human Rights Report, p. 4, 27.

<sup>48</sup> *Id.* p. 27–28.

<sup>49</sup> *Id.* p. 28.

<sup>50</sup> Interviews conducted by The Advocates (January 2014–January 2019).