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BY COUNTRY](#)[WHERE WE  
WORK](#)[HUMAN RIGHTS  
BODIES](#)[NEWS AND  
EVENTS](#)[PUBLICATIONS AND  
RESOURCES](#)[English > News and Events > DisplayNews](#)

## El Salvador End of Mission Statement

### **Agnes Callamard, United Nations Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions**

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#### **Introduction**

I conducted an official country visit to El Salvador from 25 January to 5 February 2018. I warmly thank the Government of El Salvador for their invitation to visit the country, and the officials I met for their availability and support, the time and effort they invested in my mission, and the open and frank discussions, which contributed to make my visit informed and substantive

I also thank the United Nations (UN) Office of the High Commission for Human Rights (OHCHR), in Geneva and the Regional Office for Central America. I thank the UN Resident Coordinator of El Salvador and his team, the various UN agencies within the UN country team. Their support both before and during my visit was invaluable.

The main goals of my visit were to examine: 1. The State security strategy and its response to allegations of arbitrary deprivation of life; 2. Abuses of the Right to Life, committed by non-State actors - primarily by gangs ; 3. Programmes designed to address and prevent the killings of women, members of the LGBTQI community, migrants, and human rights defenders. As part of my gender-sensitive approach to my Mandate, I also included a focus on El Salvador's absolute criminalization of abortion.

During the twelve days of my mission, I held meetings with all branches of the State - the executive, legislative and the judiciary - at the highest levels as well as at the local municipal levels. I met with the President, the Ministers for Foreign Affairs and for Justice and Public Security, the National Council of Citizen's Security and Coexistence, the Police and the Armed Forces, the National Forensics Institute, the Coordinating Commission of the Justice Sector, the National Human Rights Institution (NHRI), the National Women's Institute (ISDEMU) and Parliament (National Assembly). I also visited prisons under the Extraordinary Measures and a local police station (*bartolinas*). I wish to commend the official collaboration I benefited from throughout the visit. I am particularly grateful for the detailed responses I received regarding a number of cases of alleged extrajudicial killings and impunity that I raised with officials. I intend to follow up on these cases.

I also met with international, regional and national human rights organizations; with women and men working for human rights at the grassroots level; with indigenous peoples' representatives; religious leaders; media workers, including journalists; activists; LGBTQI individuals; internally displaced women and men; and with victims of human rights violations and abuse, including survivors, eve

women and men, and with victims of human rights violations and abuse, including survivors, eye witnesses and family members whose relatives have been brutally killed.

Throughout these twelve days I witnessed the resilience of Salvadorian society at first hand. However, I also saw the fear in the eyes of people so scared that they could only whisper their sentences. I have been deeply moved, and at the same time, greatly impressed by the courage of the people of El Salvador. It was an honor and an inspiration to meet them.

## **I - Overview: Key Issues and Findings<sup>1</sup>**

Some of the preliminary findings of my mission are summarised below. Some of them are elaborated in the rest of the statement.

### *General Issues*

During my mission, a number of people highlighted the country's structural and systemic challenges. While these in no way justify the violations that I now must report, it is important to acknowledge the context within which these violations have been committed including:

El Salvador's poor and worsening economic performance, characterized by low job creation and high unemployment, particularly amongst the youth;

The high rate of killings, general violence and crime would create major challenges for any police force or judicial system. However, this is further aggravated for a country like El Salvador, which has a limited national budget and limited access to resources. This has been further worsened by adoption of the 2016 Extraordinary Security Measures, which sharply added to the legal system's workload;

The limited investigatory resources available to the police combined with their operating culture means there is a chronic paucity of forensic evidence and close to no scientific investigation capacity;

The difficulties faced by the Attorney General's office in conducting investigations;

The saturation of the Courts, particularly at the first/entry levels, where there are far too many cases for the current levels of resources and capacity;

In light of the above, I urge the international community to support the Government, national institutions and civil society organisations as they seek to address these problems.

I have been told repeatedly that the Police is overstretched and demoralised, police officers are poorly paid and confronting difficult and traumatic situations on a daily basis. Measures to improve Police well-being and protection have been initiated, but remain limited.

During my mission, which took place in a pre-electoral context, I came across a number of electoral statements that may violate international standards on the prohibition of incitement to violence. It appears that repressive "quick fixes" to extremely complex problems are routinely and falsely sold to a population deeply traumatised by decades of high levels of violence.

The political environment is not encouraging an open and well-informed public debate about the country's Security Strategy, the root causes of violence and gangs, nor of the possible policy options and alternatives to the dominant *Iron Fist* paradigm. I was told repeatedly that "dialogue" with, and rehabilitation of, gang members are quasi-taboo topics, while the phenomenon of internal displacement is yet to be officially recognized.

### *Positive Developments*

There are a number of positive and due diligence initiatives and responses by the government that must be highlighted. These include, for instance: *Plan El Salvador Seguro*, which is presented below, along with other initiatives, such as "*Yo Cambio*": a program of rehabilitation for detainees; and "*Jovenes Con Todo*", a programme seeking to provide youth with opportunities, training, and employment. All of these testify to the appetite, at least amongst some officials and some sectors of the population, for alternatives to repressive measures and a focus on root causes. I welcome these

the population, for alternatives to repressive measures and a focus on root causes. I welcome these anti-violence initiatives, and echo the recommendations issued by the United Nations High Commissioner for Human Rights after his visit to the country, regarding the need to ensure that these programs are well resourced and implemented.

I was glad to find out that the international community is already supporting some of these initiatives and encourage donors to continue doing so. I was also impressed by the establishment of the National Council of Citizen's security and coexistence, a multi-stakeholder coordinating body security strategy as a demonstration of a commitment to transparency and international scrutiny. Other positive developments are identified in the rest of this statement.

#### *State Responsibilities: Arbitrary Deprivation of Life and Impunity*

I have found a pattern of behaviour amongst security personnel, amounting to extrajudicial executions and excessive use of force, which is fed by very weak institutional responses, including at the investigatory and judicial level. Elements of the legal framework, such as the 2006 Counter-terrorism Law and its application to gangs; elements of the 2013 reform of the Procedural Penal Code and the 2016 Extraordinary Security Measures contribute to this. The failure by state institutions to undertake professional and effective investigation constitutes a separate violation of the right to life. Breaking the cycle of impunity is an absolute necessity. This will demand, amongst other things, a firm and sustained political will, stronger investment in the Police and Army internal control mechanisms; independent monitoring; the strengthening of criminal investigatory techniques and know-how; strategic litigation; as well as cooperation with and support to local human rights lawyers.

The application of the Extraordinary Security Measures has resulted in thousands of people often placed in prolonged detention, including pre-trial, under cruel and inhumane conditions. Security concerns alone do not explain the conditions that I have witnessed, leading me to conclude that these are implemented for the primary purpose of dehumanising the detainees. Such measures ought to be stopped immediately. I am encouraged by the proposed mitigating measures, announced for a one-month trial period, and urge that alternatives be explored and implemented in full compliance with international standards be implemented beyond 28 February 2018.

Outbreaks of tuberculosis have resulted in a number of deaths in custody, all of which could have been prevented had the proper conditions been provided. I was informed of, saw and welcome a number of steps being taken by the Prison authorities to address tuberculosis, malnutrition and other communicable diseases.

It is essential that international organisations, such as the ICRC and OHCHR, and national specialized organizations, be given immediate and unhindered access to all prisons. The ICRC, in particular, can play a crucial independent monitoring function thus enabling prison authorities and relevant ministries to be informed in a reliable manner about the prevailing conditions, while also providing a range of recommendations that would assist the Prisons authorities in meeting their human rights obligations. The Government should also ratify the Optional Protocol to CAT.

#### *Gangs Responsibilities*

Gangs, by virtue of their territorial control, are responsible for massive violations of human rights, including violations of the right to life. They are responsible of a large proportion of El Salvador's homicides. I have found that most of these killings are not random criminal acts. They are *organised* and appear to be part of something close to a deliberate "strategy," aimed at targeting security personnel and their families to terrorise them. Gangs are also responsible, on a large scale, for sexual violence and sexual exploitation of women and girls, torture, violations of freedom of movement, violations of the right to work and education, amongst others.

#### *Addressing Trauma*

I have met many people who were visibly traumatised by the endemic violence. Some had been tortured. Many had witnessed horrific violence. Most told me that they were constantly re-traumatised. They walk the same roads as their parents: meet their torturers on the street corner: watch their son's

they walk the same roads as their rapists, meet their torturers on the street corner, watch their sons' killers pass-by routinely. I was alarmed by the paucity of the services available for victims of violence. I call on the Government, international civil and inter-governmental organisations and donors to establish or support the establishment of centers for the victims of torture, trauma and violence.

### *Protecting those on the Frontline*

I was informed that some of those working towards the rehabilitation of gang members have been harassed and threatened by the Police and the Army, and their work hampered and stigmatized, even though it is essential to address root causes and provide alternatives to gang's recruitment and membership. I also received worrying information about threats towards investigative media workers and journalists documenting alleged executions. I urge the Government to ensure their protection, including through appropriate legal frameworks and adequate public policies that protect all human rights defenders. The scourge of violence that plague the society cannot be effectively addressed without a large cooperation and mutual support between all actors seeking to curb the violence, and address its root causes.

### *Protecting Groups At-Risk*

The Government has adopted an ambitious legal framework for the investigation and prevention of gender-based killings, including hate crimes and femicide. Unfortunately, I have found that this is not implemented and that El Salvador continues to register alarmingly high levels of killings of women and LGBTQI individuals, in particular transgender women. I call on the State to redouble its efforts to reduce the impunity concerning these crimes.

I was informed of some progress towards addressing the access to justice and fair trial issues in some of the cases known as "Las 17." I acknowledge these efforts and call for the rapid and careful review of the convictions to ensure a fair trial, and the release of these women.

I welcome the legislative reform proposal that stipulates exception of the absolute ban on abortion on four grounds and call for the decriminalization of abortion to safeguard women's rights to life, health, autonomy and wellbeing.

Violence is forcing thousands of Salvadorians to flee their homes and migrate. Some people are doing so under the auspices of the UNHCR resettlement program. However, the vast majority of those leaving the country are undocumented. Too many are killed, disappeared, sexually abused, or detained under inhuman conditions in neighboring and destination countries. While these crimes take place outside the territory of El Salvador, the State retains a range of obligations to protect the rights of their migrant populations.

I very much welcome the establishment of the Forensic Data Bank of Non-Localized Migrants, which should allow better tracing and matching of the remains of missing migrants and thus provide information for to affected families. Its capacity should be strengthened, including through international cooperation and as part of the Global Compact for Safe, Regular and Orderly Migration.

In view of my findings, I also call on the Government of the United States to extend once again Temporary Protected Status (TPS) for El Salvador.

### *Transitional Justice*

I welcome the steps taken over the past years by the Executive, Attorney General and Judges in the search for justice for past violations. In my view such a process not only contributes to healing wounds from the past but also helps set the conditions for combatting current impunity, as often patterns repeat themselves.

## **II - Overview of Violence, including killings**

In 2015, the murder rate in El Salvador was 103 per 100,000 people, making it - at the time - the country with the highest murder rate in the world. The numbers have decreased since then: In 2016, the homicide rate was of 80.94 per 100.000 inhabitants (5.278 homicides. a 20.7% decrease from the

the homicide rate has decreased from 100,000 homicides per 100,000 inhabitants in 2008 to 6,657 in 2015). In 2017, the number had dropped to a further 25%. Still, homicide rates remain extremely high. A large number of these killings - officially two thirds - are attributed to gangs.

Every 19 hours in El Salvador, a woman is killed; every three hours someone is sexually assaulted and in more than 70% of cases, the victims are under the age of 18. Throughout my visit, I heard about the country's generalized and pervasive violence at the hands of gangs, including killings, but also of the high level of interpersonal violence and homicides, and sexual violence. A grandmother told me about how she keeps her grandson indoor for fear he may be forcefully recruited by gangs. A young person told me that because he is young, he cannot move around freely "Because I come from an area where there is one gang, I cannot go to another gang controlled area. One needs to know which areas one can go to." Young women and girls are subject to femicide, rape and sexual exploitation, including as retaliation against male members of their families in the context of gangs violence and "settling of accounts".

People from the most impoverished communities also told me of their fear and distrust of public officials, primarily by the Police and the Army. Many spoke to me of what they perceive to be a war against the country's young people: the Police and State officials assume that all young people are gang members by the mere fact of their places of residence.

In places of detention, I saw people with no other belongings than their shorts, living in spaces so overcrowded that they could not sit or lie down, being forced to take turns to sleep. I met people who had not seen the sun light for weeks. I met with inmates who were so weak that they had to be carried in by other inmates to speak with me as they were not strong enough to walk.

I would like here to express my deepest condolences to all those who have lost loved ones to this violence, and I extend my heart-felt sympathy to all those who have been subjected to other forms of violence.

### **III - State Responses**

#### ***Plan El Salvador Seguro***

Since the beginning of the 21st century, successive Governments of El Salvador have followed a *mano dura* (iron fist) strategy against gangs, with the exception of a two years "truce" in 2012-2014. Over the years, security strategies have followed similar approaches: mass detention and incarceration, as well as militarization of policing. Researchers I spoke to suggested that these policies have not delivered any tangible results and may actually have made matters worse by failing to address the structural problems of violence and gangs.

In 2015, the Government adopted the *Plan El Salvador Seguro*, an ambitious five-year plan to curb violence through prevention, improvement of the criminal prosecution system and social programs. Initiatives include employment projects, parks, sports facilities, education and training pilot programs for the country's 50 most violent municipalities. The Plan also aims to curb the influence of criminal gangs in prisons, improve prison conditions and opportunities for rehabilitation, and ensure that victims of crime are supported and can obtain justice and reparation.

I met the representatives of one such municipality and was impressed by their commitment to the Plan, the many projects and ideas they had generated and, most importantly, the "hope" that the Plan is providing, at least among these local officials.

The Plan is estimated to cost around US\$200 million per year, and it is financed by international cooperation funds and an earmarked tax. In 2017, close to 70 per cent of this tax went to financing the police and the armed forces, with 81% directed to bonuses for the security personnel.

The lack of resources for Prevention means that many people I met have lost faith in the ability or willingness of the Government to truly implement the Plan as intended. In addition, members of the Opposition Parties (ARENA and GANA) have indicated their distrust for such "soft" measures, if not

outright rejection, making the implementation of *PlanEl Salvador Seguro* a political challenge and the unfortunate hostage of elections and politics.

### **Legal reforms and the Extraordinary Security Measures**

In 2013, a reform to the Criminal Procedure Code (CPC) was initiated, modifying articles 300, 350 and 351 of the CPC. According to the revised article 350, the Justice of the Peace [Juez de Paz] may order the definitive dismissal of charges against police officers, military agents serving public security functions, among others, who have "affected legal rights in the fulfillment of their legal duty". In these cases, the hierarchically superior, of the security officer involved, must send a report to the Office of the Prosecutor or the judge, detailing the circumstances of time, method, and place under which the event occurred. The judge will make the decision to dismiss based on this report and other evidence provided that they could prove any exclusion of responsibility. For its part, the Office of the Attorney General has 72 hours to determine whether to call for a dismissal of the charges or not. As a result, according to the information I received, the majority of charges against police officers and military have been dismissed at this first level, on the basis of a report detailing, for example, that the killing occurred during a police operation.

In 2015, the Attorney General announced that El Salvador's Special Law Against Acts of Terrorism (adopted in 2006) is to be used against gang members to "restore order and create social peace." The law defines acts of terrorism as "evidence of intent to provoke states of alarm, fear or terror in the population, place in imminent danger or affect the life or physical or mental integrity of people." The Supreme Court confirmed that the law and its application to gangs were constitutional in August 2015. In the course of the two prisons visits I undertook, the vast majority of the detainees claimed that they were charged with membership to a terrorist organization, along with a range of other crimes such as extortion or homicide. According to the information provided officially, in 2017 (first 6 months) 19 men only had been found guilty of membership to a terrorist organization. The disparity between the charges and the sentences needs to be further investigated. If proven correct, it could indicate that such charges are used primarily for the purpose of (arbitrary) detention.

In April 2016, the Government announced the Extraordinary Security Measures, including extended detention periods; use of the army in public security activities; increased flexibility for the execution of searches and seizures; and, the tightening of administrative measures in prisons. New legal reforms were also instituted, including the creation of 13 new crimes and the reform of the juvenile criminal law. The measures have been extended in 2017 and are due to be extended for the third year in 2018.

The Government launched the Force for the Intervention and Recovery of the Territory (FIRT), the Specialized Reaction Forces El Salvador (FES), a group composed of 600 military and 400 police officers, the Joint Group to Community Support (GCAC) and the Task Force "Centro Histórico". According to information provided by academics and human rights organization, from 2006 to 2017, the growth of military personnel in public security work has been of the magnitude of 1,550%. However, the involvement of the Army in policing functions dates back to 1993 and was significantly increased in 2009.

Army officials I met insisted that the Army has a supporting role and that the Police is ultimately responsible for leading the operations. They, however, acknowledged their increasing role over the past three years "due to the increase of violent clashes." They also suggested to me that *"Low intensity conflict is how we see the situation despite the disapproval from academic and political sectors."*

I have been told repeatedly that the Police is overstretched and demoralised, police officers are poorly paid and confronting difficult and traumatic situations on a daily basis. Measures to improve Police well-being and protection have been initiated, but remain limited.

Officials pointed to the decline in homicide rates since 2015 as proof that the Extraordinary Security Measures are "working". From 2016 to 2017, homicides have indeed declined by some 25%, according to official figures, a decline largely attributed to a drop in gang related murders. The causes of this apparent decline should be documented, in order to identify the factors mainly conducive to it, and

apparent decline should be documented, in order to identify the factors mainly conducive to it, and building on them.

#### **IV - Allegations of extrajudicial executions and/or excessive use of force**

In the course of my mission, I was informed of a large number of allegations of extrajudicial killings or excessive use of force. I interviewed a number of witnesses and family members about such allegations, most of which, according to the information I have received, amount to extrajudicial executions rather than cases of excessive use of force.

Officials I have met acknowledged there may be some cases of extrajudicial killings but insisted that these were isolated incidents. My findings, however, indicate a pattern of behavior by Security Personnel amounting to extrajudicial executions fed by institutional weaknesses in the areas of investigation and accountability.

Official figures point to an alarming increase in the number of people killed by the police and/or the Army. As of 2014, 103 alleged gang members were reported killed by the police. This number had increased to 591 in 2016 with 119 wounded. The lethality index calculated by academics and human rights organisations points to a constant increase, from 3.1 in 2015 to 6.3 in 2017 (first 6 months). The mortality ratio between security agents and civilians from 2014 to June 2017 rose almost 8 times, from 15 to 112.5.

Interviews that I conducted with survivors or witnesses of the so-called "armed confrontation" (labelled as such officially) pointed out similar, highly concerning, patterns across these "clashes." In particular, there are repeated allegations that alleged gang members are killed execution-style, and that the crime scene is then tampered with by those responsible for the killings or by others, including by placing weapons alongside the bodies of the alleged gang members. A number of persons interviewed in different locations pointed to a pattern being replaced immediately after an incident. I interviewed a number of family members who vehemently denied that the person killed was a gang member.

I was also informed of various allegations of torture preceding attempted homicides, as reported by victims themselves (all of whom bore physical signs in evidence of their claims). In all these cases they were young, between 16 and 30 years old, prompting many persons interviewed to tell me that "being young in El Salvador is a crime." With a few exceptions, these testimonies suggest extrajudicial killings (deliberate and intentional killing) rather than excessive use of force (violation of the principles of necessity, proportionality and precaution).

Killings or massacres investigated by the NHRI, NGOs and journalists, which have since become emblematic, point to very similar patterns to those I have identified through my interviews. This includes the San Blas massacre of eight persons, including seven alleged gang members.

In addition, I received various allegations of the existence of "death squads" within the Police, some of which have been confirmed by officials and corroborated by investigations.

#### **V – Impunity: weak or passive Institutional responses**

To date none of these allegations have yet resulted in the conviction and sentencing of a police officer or soldier, making conviction rates for alleged killings by security personnel even lower than El Salvador's overall criminal conviction rate, which stands at less than 5%. Few of these allegations have been fully and properly investigated.

This "impunity bottleneck" begins in the first 72 hours of the alleged execution or excessive use of force: human rights organisations have pointed out that, from 2014 onwards, the Office of the Attorney General has requested dismissal of charges for more than 50% of cases of alleged extrajudicial killings or excessive use of force by Police or military personnel. In 2017, the Judges of the Peace similarly dismissed charges in 52% of the cases (against 0% in 2013 when they were not allowed to do so).

When cases do make it to a more in-depth investigatory stage, the vast majority are dismissed then, never reaching the sentencing stage. According to NGOs, between the first and secondary levels, in 2017, 92.96% of all allegations of police/army killings were dismissed.

With regard to the very few cases reaching sentencing level, judges so far have never sentenced Police Officers or Army officials. Astonishingly, this includes a case where the judge herself concluded that one extrajudicial killing had taken place (eight persons killed) but that no individual responsibility could be attributed.

The majority of the family members I interviewed have filed formal complaints against the police or the Army. Most of these cases were dismissed at the first level by the Judges of Peace, prompting one of the persons interviewed to tell me *"My testimony was useless; the judge did not use it. The case was dismissed. There is no justice for us poor people...They should first go in and search and not shoot to kill."*

Internal disciplinary responses have also proven to be weak. According to official data, as of 31 December 2017, 189 police officers have been permanently dismissed, 2 have been provisionally dismissed, 47 are under investigation, 3 of whom detained. During the period between 2014 and 2016, 41 cases of police involvement in extermination groups or homicides have been investigated. Of these, 24 cases have been dismissed, ten cases are under investigation, six are under deliberation and action of the Inspector General, and only one person has been sanctioned. In relative terms, 2.44% of those indicated in these practices have reached a conviction, and 58.54% have been shelved because the investigation did not yield results.

## **VI - Prison Conditions and Deaths in Custody**

I was informed of the State's efforts to regain full control of the country's prisons through the enactment of the Extraordinary Security Measures in April 2016 (Legislative Decree 321 of 2016). The Decree established a series of extraordinary security measures in seven (now 6) Penitentiary Centers, Prison Farms, Intermediate Centers and Temporary Prison Centers. These Extraordinary Security Measures include, among others, a 24-hour confinement of prisoners in their cells, the suspension of family visits, restrictions on visits to defenders and lawyers, the prohibition to transfer persons deprived of liberty to the courts for judicial hearings, as well as access of national and international organizations to these prisons. Also, communications from and to the prisons is prohibited. The decree was extended until 30 April 2018.

I thank the government of El Salvador for giving me full access to various prisons. During my visit, I corroborated the inhumane conditions of the prisons subject to extraordinary measures. These measures are applied in penitentiaries with an initial critical overcrowding rate. Added to this, the confinement in the cells with no sunlight and the restricted access to water and food, have a serious effect on the health of the inmates and could eventually become a public health problem.

According to the information received, as of January this year, 1,272 people deprived of liberty in prisons under the extraordinary security measures suffer from tuberculosis (TB). According to the National Human Rights Institution (NHRI), the increase in tuberculosis cases in these centers constitutes a "great health crisis". Before the entry into force of these measures (March 2016) 96 cases of tuberculosis had been registered, an increase of 1225%.

During my visit to the prisons, I interviewed some of the people who have been diagnosed with TB and I was able to observe with great concern the conditions in which they are confined, including damp places and poor hygienic conditions. According to the information received, overcrowding is similar to that before the Extraordinary Measures. The biggest difference is that inmates are locked up for 24-hours a day, increasing the deterioration of the conditions, and the spread of the virus to co-inmates.

The number of deaths in detention is particularly alarming. According to the information provided by civil society organizations, the prisons that are not subject to extraordinary measures average 39 deaths per year since 2015. In contrast, the extraordinary measures prisons have experienced a significant increase of deaths in custody. Thus, in 2015, 63 people [41 according to NHRI] died in the



7 prisons affected by the measures, in 2016, 61 people [56 according to NHRI] and in 2017 a total of 127 people [83 according to NHRI].

Following an evaluation, the Ministry of Justice and Public Security announced on 31 January 2018, a number of measures aimed at improving prisons conditions, to be implemented on a trial basis for a month. The new measures include: prisoners who are diagnosed with an illness and who are isolated in order to receive specialized treatment for TB, HIV, skin diseases, malnutrition or other similar diseases, may access a daily hour in the sun. The other detainees or prisoners receive sun for one hour three times a week. Access to the prison store will be restored for the sale of certain nutritious food (a specific list was provided), basic hygiene supplies. Duly accredited public and private defenders will be allowed to enter the prisons once again. Finally, the prohibition of intimate and family visits will only apply to members of the MS-13 gang held in specific sectors and dormitories.

I am encouraged by the proposed mitigating measures, announced for a one-month trial period, and urge that measures in full compliance with international standards be implemented beyond 28 February 2018. International human rights obligations such as the prohibition of inhuman and degrading treatment and punishment are not subject to pilot testing.

Currently the punitive security regime is applied collectively and indiscriminately to the inmate population. . I believe that the extraordinary measures that cannot be justified based on an objective interpretation of security risks must be eliminated. It is also of the utmost importance to grant access to these detention centers to international independent organizations, such as the ICRC or the OHCHR, and national specialized organisations.

During my visit, I was also allowed full access to a *bartolina*, which, in theory, is a pretrial detention center for 72 hours. However the vast majority of detainees were held there for months. The alarming overcrowding of the cells for male detainees barely allow them to move, and they have access to limited hygiene and health care. To illustrate the magnitude of the overcrowding the detainees explained that they take shifts of an hour and a half each to sleep. Detainees have access to food if a family member or acquaintance brings them food. Prisoners without access to food depend on other inmates who share. Detainees mentioned the lack of warm clothes and access to personal hygiene materials, such as soap, feminine pads, and underwear.

## **VII - Killings by Non-State actors: Gangs Killings**

One objective of my mission was to focus on violence, and particularly killings, by gangs or so-called *Maras*. People I met pointed to the complex and multiple factors influencing gangs' origins and development, including the internal armed conflict, immigration, family disintegration, natural disasters, economic policies, mass deportations from the U.S. in the late 1990s, etc.

There are two main gangs operating on the territory of El Salvador: the Mara Salvatrucha, or MS-13, which comprises an estimated two thirds of the total number of gang members, and the 18th Street (Barrio 18) gang. In the course of my mission, people noted that a possible re-organisation of the gangs is underway with the emergence of splinter groups.

Unverified estimates place the number of gang members at some 60,000 persons, mostly young men. Some sources suggest that the gangs' support base include some 500,000 people – almost 8 % of total population. However, I was also told that whomever lives in gang territory has little choice but to “cooperate” with the gangs.

People I met highlighted the following characteristics of the gangs in terms of their organisation and modus operandi:

Gangs exercise territorial control: no one denied this nor the control they exercise over these territories, sometimes just a few blocks wide. Gangs reportedly maintain a presence in some 247 out of 262 municipalities.

This territorial control is expressed by and through, among other things, checkpoints. The narrative

regarding gang territories is reminiscent of that used for countries: people speak of borders, the unauthorised crossing of which may result in death. Some people I met spoke of the large detours they are forced to make to get to work or reach a certain place.

Extraction of “revenue” is largely territorially-based: small scale extortion (of stand owners, small business men, etc.) is the primary source of gang revenue.

A number of sources told us that all political parties have, at some time or another, “negotiated” with gangs, if only to obtain authorisation to run electoral rallies and gain electoral votes. These were consistent allegations, which I could not substantiate.

Besides killings, as set out below, gang members commit a range of serious and pervasive crimes on the territories they control and sometimes beyond:

Rape and sexual violence and exploitation of women and girls;

Restrictions on freedom of movement and forced displacement;

Forced recruitment of children, including through control over schools;

Control over the public transport system, including enforced paralysis of public transport through threats and killings

Killings are an integral part of gangs’ exercise of control and power. Killings may be directed at rival gang members; women and girls; individuals who resisted extortion or complained against them; and representatives of public services, including workers for the public electricity company, police and soldiers.

Based on the information I received, it is fairly clear that many gangs’ killings are not random criminal acts. They are organised and appear to respond to, or be part of, something close to a deliberate “strategy”. This is evidenced by:

The large statistical disparity between the spikes and lows in gang committed homicides, suggesting a high level of organised determination as to who should be killed, when and where.

The spike in killings, and widespread targeting, of specific individuals, representative of the State, in the first place police and military personnel, but also prison guards and Judicial Branch personnel as well as their families. Human Rights organisations and Public Officials speak of a *systematic strategy against agents of the State*, in response to or as a precursor of, the Government’s own war against gangs. Official figures show a sharp increase from 13 killings of Security personnel in 2013, to 60 in 2017.

The increase in the number of armed confrontations between opposing gang members and the police and armed forces. According to official data of the National Civil Police (PNC), the Ministry of National Defense (MDN) and the Attorney General’s Office (FGR), the number of armed confrontations has increased from 256 in 2014 to 407 in 2016. While the official description of some of these “clashes” may be questioned, gangs themselves have reportedly claimed responsibility for the increase in the armed confrontations.

There is no suggestion that gangs have an ideological basis or a political programme and no real evidence that they are providing any kind of services to the population they control.

Whether or not gangs have “displaced” state control and authorities or merely filled a vacuum remains open to debate. What leaves little doubt is the fear they generate within the population through the use of widespread violence. In a report provided to me during my mission, the NHRI concluded that, in view of their capacities for territorial control, *“these groups can be considered as having enough power to systematically violate the human rights of a large number of the population”* including violations of the right to life, personal integrity, personal security, individual freedom, freedom of movement and right to property, as well as a range of economic rights such as right to health, work, education and recreation.

The official language and some of the State strategies, particularly the militarisation of policing, and the State's justification for the resort to force, seemingly shifting from a focus on the individual (as requested under international human rights law) to the collective (the gangs) are concerning. While no one suggested that the threshold of a non-international armed conflict has been crossed, some of the practices may suggest otherwise.

The report of the NHRI does not suggest that gang members should be tried for human rights violations. However, this is the logical conclusion of any assessment of the situation, even though such a step presents legal challenges.

### **VIII - Killing by Non-State actors: Femicides**

The Law on a Violence-Free Life for Women (LIEV) was adopted in 2012 and is one of the key pillars that guide public policies on the prevention of and protection from violence against women. The LIEV law includes the definition of femicide (articles 45 and 46). The most significant measure undertaken by the State in an effort to improve the access to justice is the set up of specialized courts for gender-based crimes in San Salvador. Two more specialized courts will be set up in other departments during 2018.

I note with concern that El Salvador continues to register alarmingly high levels of killings of women. According to data from ISDEMU in 2017 every 18.7 hours a woman was killed in the country. The departments with the highest rate of femicides are: San Salvador, San Miguel, La Paz and Sonsonate. While the classification of femicides has increased in 2017 the numbers remain scattered and vary from one institution to another, and more importantly they seldom reach the sentencing stage.

Both state authorities (Forensic Institute, Police, and Attorney-General's Office) and civil society representatives informed me that many killings that constitute femicide are still registered only as homicides, or as "violent death of women". The lack of a unified systematization of the data makes it difficult to grasp the magnitude of the killings. To resolve this obstacle I highly recommend the State that all killings of women by default be classified as femicide.

I have also received troubling information of increased numbers of enforced disappearances of women and men alike, which may indicate even higher numbers in reality, as many disappearances culminate in killings. Some women, victims and family members are afraid of reprisals and therefore may abstain from lodging complaints with state authorities. I was made aware of systematic impunity for gender-based crimes, and that women's access to justice is hampered by weak institutions amongst other things.

I believe that the State needs to redouble its efforts and provide specialized gender sensitive training for police officials, forensics, and members of the Judiciary. I was alarmed to hear about a case where the crime scene appeared to have been manipulated and despite evidence indicating it was a femicide the prosecutor decided to dismiss the gendered aspects of the killing. There is a need for improved technical expertise to help implement the Latin American Model Protocol for Investigations of Femicide in a practical and consistent manner at all levels (police, prosecutor's and forensics), including at the departmental and municipal levels. There is a clear need to strengthen the State's investigative capacity. Religious or chauvinist bias should be strictly excluded from rulings, as they are detrimental to the safeguarding and protection of women's rights. I received little information on disciplinary complaint mechanism available to address judges' violations of the principles of equality and non-discrimination.

### ***Women's bodies - a territory for revenge and to exert control***

Through the many telling and deeply disturbing testimonies I encountered during my mission, the systematic human rights abuse committed against women and girls was striking. Not one person I met with denied this harsh reality for women in gang-controlled areas. The gangs are a male dominated business and girls and women are used more as collaborators, messengers, or as sex slaves. However,

there is a fine line between coercion and free will, or just mere survival. Women are also killed and targeted by the gangs when they meet out revenge to a rival gang, for example when a gang member goes to jail the opposing gang may kill his wife or girlfriend as punishment. I also learned about a gruesome case where two women were brutally raped by several gang-members for having soldiers amongst their family members.

## **IX - Hate crimes against LGBTQI individuals**

I have received disturbing reports of discrimination and attacks against LGBTQI individuals committed by both state and non-state actors. The NHRI has documented 19 killings of LGBTQI individuals that it considers constitute hate crimes from 2009 to 2016. This is believed to be only a small fraction of the many cases that go unreported. In none of the 19 cases was any justice obtained, as the prosecutor was unable to identify the perpetrator.

The lack of trust in state institutions due to systematic abuse and discrimination against this group in society (including by public officials) inhibits the victim's search for justice and redress. I was also shocked to learn about sexual violence suffered by transgender and lesbian women allegedly to "cure them". While the definition of hate crime was included in El Salvador's penal code in 2015, it is regrettable that no case has so far been catalogued as a hate crime, and no sentencing has been reached on this provision.

Civil society reports indicate an almost 100% impunity covering the killings of LGBTQI individuals. The endemic violence in the country and the territorial control of the gangs over certain areas has also negatively impacted LGBTQI individuals, who in addition to unlawful killings have suffered a wide range of human rights violations such as enforced displacement, threats and intimidations, sexual violence, and torture. I was shocked to hear the story of a lesbian woman that was killed by the gangs in 2017, allegedly members of her own family ordered her killing because they disapproved of her sexual orientation.

### ***Transgender women***

I was made aware of the pervasive discrimination that transgender women endure in Salvadoran society, even some public officials reject their gender identify and refer to them as boys, or "men with a wig". As one transgender woman I met described: *"We are rejected and thus even more targeted, even more discriminated against"*. Both state and non-state actors target transgender women.

I was informed of horrific cases where transgender women had been attacked by police, or by gang members. Transgender women are particularly exposed to police violence during the evening and at night. I received information about a transgender woman who was raped by two police officers in order to be released from detention. In February 2017, 3 transgender women were killed in the same department, La Paz. In November 2017 a transgender woman was badly beaten by a gang member for not paying the extortion fee.

The majority of transgender killings are hate crimes; usually the victim has received threats against her life prior to the killing. They are also an illustration of the extreme kind of violence that is aimed at individuals that defy conventional gender roles. Out of the 19 LGBTQI killings documented by the NHRI, 16 lethal victims were transgender women (84%). According to data shared by civil society organizations 32 transgender women were killed in 2016, and in 2017 14 killings were registered. Civil society organizations indicate that an estimated 700 hate crimes have taken place over the last 10 years.

The State has at times been directly responsible for some of these killings, or faltered in its protection and prevention responsibilities. Much more needs to be done to improve the protection and to prevent these killings, which have been largely covered by impunity.

## **X - Killings of Migrants**

The Bureau of Civil Society Against Forced Displacement reported that, in 2016, 699 individuals became victims of enforced displacement due to violence and organized crime. Nevertheless, to date, the Salvadoran State has not recognized the problem. As noted by the Special rapporteur on the rights of Internally Displaced Peoples (IDPs), there is no legal framework, policies, nor programmes for displaced populations.

Migration appears to be part of the everyday reality in El Salvador. A large number of individuals leave the country to escape violence and insecurity. I have met families who are under protection and under an UNHCR-organised resettlement scheme, to the United States and also Canada.

Undocumented migrants suffer grave human rights violations during their journey (usually to the United States), including killings, enforced disappearances, sexual violence and inhuman conditions in detention centers. For instance, I was told of 195 migrants killed in San Fernando, Tamaulipas, as evidenced by the discovery of 47 clandestine graves in April 2011. Relatives of killed or disappeared migrants spoke of the lack of national support advice and accompaniment.

In 2010, the Forensic Data Bank of Non-Localized Migrants was created in coordination with the Office for the Defense of Human Rights, the Ministry of Foreign Affairs, the Argentine Forensic Anthropology Team and the Committee of Relatives of Migrants who have died and disappeared (COFAMIDE.) It remains weak and in desperate need of capacity strengthening and operational support.

The end of DACA and TPS programs by the US administration creates the risk of an unprecedented crisis for which El Salvador is not prepared.

## **XI - Total ban on abortion**

El Salvador is one of very few countries in the world that still has an absolute ban on abortion. This has led to unfair imprisonment of women after having obstetric emergencies and miscarriages and later unjustly charged with having induced termination of pregnancy. Some women have been charged with the offence of "aggravated homicide" and sentenced to harsh prison sentences up to 40 years. At present a total of 27 women are serving severe prison sentences on abortion related offences.

UN Human rights mechanisms and the Inter-American system have systematically called for decriminalization of abortion to safeguard women's right to life, health, autonomy and wellbeing. In February 2017, the CEDAW Committee expressed concern "about the absolute criminalization of abortion, according to article 133 of the Penal Code and about women often resorting to unsafe methods of abortion, thus facing serious risk to health and life and called for a moratorium on the application of this law, as well as a review of the law."

In this context I welcome the legislative reform proposal that stipulates exception of the ban on four grounds (when the mother's life is at risk; when there is no possibility for the fetus to survive outside the womb; when the pregnancy results from sexual violence or trafficking of women; and when the pregnancy results from sexual violence or trafficking of minors). I urge the Legislative Assembly to speed up the passing of this bill into law. I also take note of another amendment proposal presented in August 2017 for the lift of the total ban on two specific circumstances: when the life and health of the mother is in danger and in the case of rape of minors. The stance of the current NHRI on this issue contravenes international human rights standards and obligations that fall under the NHRI purview. I urge the institution to reconsider its position and support the legislative reforms needed, as well as more broadly to support the promotion of women's sexual and reproductive rights.

I have asked for official data on how many women have undergone unsafe abortion or how many of these have resulted in the arbitrary deprivation of a woman's life due to complications. It is unclear how these deaths are registered. While I was pleased to hear that the maternal mortality rate has dropped significantly in recent years, I was very alarmed to learn about the high suicide rate among women that are pregnant. According to civil society data, in 2016, 57% (69 out of 121) of women that committed suicide were pregnant.

committed suicide were pregnant.

I fully support and reiterate the recommendation made by the UN High Commissioner for Human rights following his visit to El Salvador in November 2017 calling upon El Salvador “to launch a moratorium on the application of article 133 of the Penal Code, and review all cases where women have been detained for abortion-related offences, with the aim of ensuring compliance with due process and fair trial standards. Should it be found their cases were not compliant, I appeal for the immediate release of these women.” To establish compliance, such a review could be established by presidential decree and be carried out by an expert executive committee composed of national and international members. I also strongly urge the State to speedily ratify CEDAW’s optional protocol.

## **XII - Transitional Justice and indigenous peoples**

The UN-backed Truth Commission, established as part of the Peace Agreements of El Salvador on 15 March 1993, documented the killing, torture and forceful disappearance of more than 75,000 persons during the armed conflict. The Truth Commission recommended that investigations be carried out, and that those responsible for human rights violations and abuses be brought to justice. With the passing of a General Amnesty Law, the victims of this tremendous violence were made to wait for a quarter of a century for justice to be made as effective investigations into the grave human rights violations committed during the conflict were prevented. In my meetings with indigenous peoples representatives I also learned about the 1932 massacre of approximately 30,000 indigenous peoples, and other more recent alleged killings, disappearance and internal displacement.

I welcome the initial steps taken over the last year to move forward in the search for justice for past violations. In my view, such a process not only contributes to repairing wounds from the past but it also helps set the conditions for combatting current impunity, as often patterns repeat themselves.

The Constitutional Chamber of the Supreme Court’s repeal of the General Amnesty Law in its landmark ruling of 14 July 2016, certainly sparked a new momentum for the drive towards justice, including for serious and systematic human rights violations that occurred during the armed conflict. Nevertheless, I have been informed that after the nullification of the amnesty law, only three criminal cases – among over 100 criminal complaints presented by the victims over the years – have been re-opened, and one local judge has had the courage to reopen investigations into the actions of the armed forces (in the emblematic 1981-El Mozote massacre on 30 September 2016 --- in line also with the ruling of the Inter-American Court for Human Rights). While I welcome the steps, I also lament that victims continue to wait for justice for past violations.

I have been informed that the Attorney General has appointed a small team of prosecutors to conduct investigations of past human rights violations that occurred during the armed conflict. The United Nations Human Rights Office is providing technical assistance. I hope the Government – and the international community – continues to provide support to the fearless litigators and human rights defenders who are representing victims despite the many obstacles.

The executive has also taken bold moves to help the healing process of its brutal past, the last of which includes the establishment, by Presidential Decree No. 33, of the National Search Commission of Disappearances of Adults (September 2017- Comisión Nacional de Búsqueda de Personas Adultas Desaparecidas en el contexto del conflicto armado en El Salvador (CONABUSQUEDA)) thereby complementing the 2010-National Search Commission of Children Disappeared during the Armed Conflict. These are commendable efforts, which must be strengthened and made into State policies.

Note:

1. Any references to “Security Personnel/Security Forces” in the document is meant to include the Police and the Army.