



**International  
Human Rights  
Instruments**

Distr.  
GENERAL

HRI/CORE/1/Add.34/Rev.2  
15 July 2003

ENGLISH  
Original: SPANISH

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**CORE DOCUMENT FORMING PART OF THE REPORTS  
OF STATES PARTIES**

**EL SALVADOR**

[9 July 2003]

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## **I. LAND AND PEOPLE**

### **A. Geographical situation**

1. El Salvador is situated in the south-west of the Central American Isthmus on the Pacific Coast.
2. El Salvador lies in the torrid zone north of the equator, between 13°09' and 14°27' north latitude and 87°41' and 90°08' west longitude.
3. The territory over which El Salvador exercises jurisdiction and sovereignty is irreducible, comprising a surface area of 20,742 square kilometres, and includes, in addition to the mainland:
  - (a) The islands, islets and cays listed in the judgement of the Central American Court of Justice delivered on 9 March 1917 which are also established as belonging to it by other sources of international law, as well as other islands, islets and cays which belong to it in accordance with international law;
  - (b) The territorial waters and the common waters of the Gulf of Fonseca, which is a historic bay with the characteristics of a closed sea and is governed by a regime defined by international law and by the judgement referred to in subparagraph (a) above;
  - (c) The airspace, the subsoil and the corresponding continental and island shelf, as well as the sea, its subsoil and seabed to a distance of 200 nautical miles from the baseline, all in conformity with the rules of international law.
4. The Salvadoran territory is bounded:
  - (a) To the west, by the Republic of Guatemala, in accordance with the Treaty of Territorial Limits, concluded at Guatemala City on 9 April 1938;
  - (b) To the north and east, partly by the Republic of Honduras in those sections delimited by the General Peace Treaty between the Republic of El Salvador and Honduras, signed at Lima, Peru, on 30 October 1980. As to the sections that are still to be delimited, the boundaries will be those determined in accordance with the aforementioned Treaty or, where appropriate, in accordance with any measures adopted for the peaceful settlement of international disputes;
  - (c) On the remainder of the eastern border, by the Republics of Honduras and Nicaragua along the Gulf of Fonseca;
  - (d) To the south, by the Pacific Ocean.
5. For the purpose of political and administrative organization, the territory of the Republic is divided into 14 departments.

## **B. Main ethnic and demographic characteristics of the country and the population**

6. The country's population is partially homogenous with a mestizo majority. This fact makes it difficult to distinguish the country's ethnic minorities, especially its indigenous peoples, who have not retained many of their ethnic features or sociocultural characteristics.

7. Demographic trends in El Salvador are characterized by sustained and relatively high rates of birth, mortality and migration. Mortality and migration have been affected by the armed conflict, which lasted from the late 1970s until the early 1990s.

8. Demographic trends reveal a relatively young population in which females outnumber males. There is significant internal migration towards the main urban areas, where an increasingly large share of the country's population is concentrated. Recently international migration has also become a major phenomenon in the country, with large outflows of Salvadorans to other countries.

Total population (2001)	6, 397, 000*
Female population	50.9% of total*
Male population	49.1% of total*
Population under the age of 15 (2000)	35.6% of total*
Population aged 65 and above (2000)	4.98% of total*
Rural population (2000)	2,610,300 (41.59% of total)*
Urban population (2000)	3,665,700 (58.41% of total)*

## **C. Socio-economic and cultural indicators**

Gross domestic product (GDP) per capita (2000)	US\$ 2,105.90 or 18,427 colones**
Inflation rate (2000)	4.3%**
Ratio of official external debt to GDP (1999)	22.5%**

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\* *“Seguimiento a metas internacionales sobre desarrollo social”*, Social Development Unit, Ministry of Foreign Affairs of El Salvador.

\*\* *The Human Development Report in El Salvador: 2001.*

Total number of households (1999)	1,383,145*
Female heads of household (1999)	398,242 (28.79% of total)*
Male heads of household (1999)	984,903 (71.21% of total)*
National unemployment rate (2000)	6.9%*
Total fertility rate (2000)	3.0 children per woman**
Life expectancy at birth (1999)	69.7 years*
Female	72.8 years*
Male	66.9 years*
Infant mortality rate (2000)	35 per 100,000 live births***
Maternal mortality rate (2001)	67 per 100,000 live births**
Adult literacy rate (2001)	82.5% of persons aged 15 and above**
Female	80.1% of persons aged 15 and above**
Male	85.3% of persons aged 15 and above**
Participation of women in the Legislative Assembly (2000-January 2003)	9.5%*
Participation of women in municipal councils (1999)	19.5%*
Participation of women in executive and administrative positions (1999)	34.2%*
Participation of women in professional and technical positions (1999)	46.6%*

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\* *The Human Development Report in El Salvador: 2001.*

\*\* “*Seguimiento a metas internacionales sobre desarrollo social*”, Social Development Unit, Ministry of Foreign Affairs of El Salvador.

\*\*\* “*Indicadores de salud en la población de El Salvador año 2002*”, Ministry of Health and Social Welfare of El Salvador.

Religion	The Constitution guarantees freedom of religion, with no limits other than those pertaining to morality and public order. The legal personality of the Roman Catholic Church is recognized; other churches may, in accordance with the law, obtain such recognition (Constitution, art. 26)
Official language	Spanish (Constitution, art. 62).

## II. GENERAL POLITICAL STRUCTURE

### A. History

9. The history of El Salvador dates back to the pre-Colombian era some 1,500 years B.C., as can be seen from Mayan remains in the west of the country.

10. The first settlers were the Pokomans, Lencas and Chortis. They were followed by the Uluas and the Pipils, who settled in the western and central parts of the country about the middle of the eleventh century, dividing their territory into various chieftaincies under the control of the chieftaincy of Cuscatlán, the indigenous name for El Salvador.

11. On 31 May 1522, the Spaniard Andres Niño headed an expedition which landed on Meanguera Island in the Gulf of Fonseca, making this the first part of Salvadoran territory to be visited by the Spaniards.

12. In June 1524, the Spanish captain Pedro de Alvarado launched a war to conquer the Pipil Indians in the land of Cuscatlán, which means "land of treasures or riches". After 17 days of bloody fighting, in which many Indians, including Atlacatl, the Cuscatlán chieftain, lost their lives, Pedro de Alvarado, defeated and wounded in the left thigh, abandoned the fight and withdrew to Guatemala, ordering his brother Gonzalo to continue the conquest. A colony, designated as a town with the name of San Salvador, was founded around 1 April 1525. In September 1546 it was granted the status of a city by the Holy Roman Emperor Charles V (Charles I of Spain).

13. In the years that followed, the country developed under Spanish domination, and by the end of the first decade of the nineteenth century, the Spanish colonies of Central America all wanted independence and autonomy.

14. The first proclamation of independence was made in San Salvador on 5 November 1811 by Father José Matías Delgado, who was a focal point for the ideas and movements that eventually led to Central American independence. Other important men who helped to achieve the noble ideals of liberty and national unity were: Manuel José Arce; Juan Manuel Rodríguez; the brothers Nicolás, Vicente and Manuel Aguilar; Pedro Pablo Castillo; Domingo Antonio de Lara; Santiago José Celis and José Simeón Cañas.

15. Father José Simeón Cañas is known as the “liberator of the Central American slaves” because at a historic meeting of the Constituent Assembly of the United Provinces of Central America, held on 31 December 1823 in Guatemala, the seat of the Central American Federal Government, he called for the abolition of slavery. As a result, Central America has the distinction of being the first country to abolish slavery.

16. In the year independence was proclaimed the Government was established at Guatemala City, and it decided on the union of the Central American provinces with Mexico. El Salvador, however, again under the leadership of Father Delgado, opposed the annexation until 1823, when the Mexican Empire of Agustín de Iturbide fell and the five Central American provinces proclaimed their independence from any other nation and adopted a republican and democratic form of government.

17. The five provinces remained united under the so-called Federal Republic of Central America and elected as their first president the Salvadoran Manuel José Arce. The federation lasted only a short time, with El Salvador being the last province to leave the union. These events led to the establishment of the Republics of Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica. However, the federalist feeling remains alive and efforts are being made to promote this ideal.

18. On 12 June 1824, El Salvador promulgated its first constitution, under which it retained federalist ties. It became an independent State in 1841 when it issued its second constitution, the Political Constitution of the State of El Salvador.

19. Throughout the nineteenth century political life in El Salvador was turbulent. Liberals and conservatives fought for power in a series of political intrigues and uprisings, a situation that often aggravated conflicts in neighbouring States. Political power changed hands a number of times, alternating between family dynasties and despotic centralist Governments through the first two decades of the twentieth century.

20. Under the presidency of General Gerardo Barrios (1859-1863) important changes were introduced in the country: the civil and criminal codes were adopted and efforts were made to promote the education of the population and to develop the technical and academic qualifications of the army. This constructive period saw the introduction of coffee as a crop; it would eventually become the country's leading export and the strongest sector of the Salvadoran economy.

21. During the first 25 years of the twentieth century the country's economic development was outstanding and accompanied by significant improvements in communications and transport.

22. Following the free elections of 1930, Arturo Araujo took office, but internal difficulties stemming from the effects of the Great Depression and the collapse of coffee prices led to a coup d'état that brought General Maximiliano Hernández Martínez to power. Hernández Martínez assumed the office of President in 1931 and held it until 1944, when he was deposed by a coup d'état, after which power was exercised successively by provisional military Governments until 1948.

23. In 1948, a revolutionary movement overthrew the regime of General Salvador Castaneda Castro. Lieutenant Colonel Oscar Osorio held power from 1950 to 1956, when he was succeeded by Lieutenant Colonel José María Lemus. In late 1960, Lemus was replaced by a leftist junta composed of René Fortín Magaña, Ricardo Falla Cáceres, Fabio Castillo, Colonel César Yanez Urías, Lieutenant Colonel Miguel Angel Castillo and Major Rubén Alonso Rosales. This junta was overthrown in January of the following year and a more moderate joint civilian-military directorate took control of the country. Its members were Colonel Aníbal Portillo, Lieutenant Colonel Julio Adalberto Rivera, José Antonio Rodríguez Porth, José Francisco Valiente, Feliciano Avelar and Major Mariano Castro Morán. From January to July 1962 Rodolfo Eusebio Cordón served as temporary President.

24. In 1962 a new Constitution was promulgated and Lieutenant Colonel Julio A. Rivera became President of the Republic until 1967. He was succeeded by General Fidel Sánchez Hernández, who remained in office from 1967 to 1972. In 1972 Colonel Arturo Armando Molina became President. In 1977, General Carlos H. Romero was elected President. He was ousted in a coup on 15 October 1979 and was succeeded by a Revolutionary Junta composed of Guillermo Manuel Ungo, Román Mayorga Quiroz, Mario Andino, Colonel Adolfo Majano and Colonel Jaime Abdul Gutiérrez. This body was succeeded in 1980 by a second Revolutionary Junta, whose members were José Napoleón Duarte, José Antonio Morales, José Ramón Avalos and Colonel Jaime Abdul Gutiérrez.

25. From 1980 to 1992, El Salvador was ravaged by a devastating armed conflict, resulting from the demise of a system based on authoritarian notions of power and the adverse effects, felt around the world, of cold-war confrontation. The Salvadoran conflict was characterized by grave acts of violence and heavy damage to the national economy. This period could be described as a lost decade in the political, economic and social development of El Salvador and the rest of Central America, given that the crisis spread throughout the entire region and undermined its political stability and economic and social development.

26. In 1982, elections were held for the Constituent Assembly, which decreed, ratified and proclaimed the 1983 Constitution of the Republic, the document that currently governs the institutional life of the nation.

27. In 1982 a Government of National Unity was formed with Alvaro Magaña as President. In June 1984 he handed over political power to José Napoleón Duarte, who remained in office until May 1989. Duarte was succeeded by Alfredo Félix Cristiani Burkard, who handed over the presidency in June 1994 to Armando Calderón Sol. Calderón Sol governed until June 1999, when Francisco Guillermo Flores Pérez took office; his term ends on 31 May 2004.

28. The Peace Agreements were signed on 16 January 1992; their main objectives were to end the war through political means, promote the democratization of the country, guarantee full respect for human rights and reunite the Salvadoran people. A process of reconstruction was initiated and important changes were introduced with a view to strengthening the legal and institutional framework of the State and the creation of new political, judicial, public security and human rights institutions.

29. The task of monitoring compliance with the Peace Agreements was entrusted to the United Nations, which completed its work in January 2003, confirming that the commitments and obligations undertaken in those Agreements had been respected in El Salvador.

### **B. Political history**

30. The life of El Salvador's political institutions is governed by the Constitution which entered into force on 20 December 1983. This instrument was produced by the Constituent Assembly that was elected by popular vote in 1982.

31. Promulgation of the current Constitution has led to a remarkable change in El Salvador with the recognition of "the human person as the source and the object of the activity of the State, which is organized for the attainment of justice, judicial security and the common good" (Constitution, art. 1). Unlike previous constitutions, particularly the more recent ones of 1950 and 1962, the present Constitution establishes and proclaims as a guiding principle recognition of and respect for the individual and his or her dignity, and the concomitant guaranteeing and protection of the rights inherent in that dignity, and this overshadows the importance attached by the State and its structures to the pursuit of major national objectives.

32. A cursory comparison will reveal this change. The 1983 Constitution has as its philosophical and political underpinnings the intrinsic value of the human person and the aims which the State must accordingly pursue. This is reflected in article 1 of the Constitution, which states that "El Salvador recognizes the human person as the source and the object of the activity of the State, which is organized for the attainment of justice, judicial security and the common good. Accordingly, it is the duty of the State to ensure that the inhabitants of the Republic enjoy liberty, health, culture, economic well-being and social justice".

33. This humanist concept based on the individual, which is also reflected in the preamble to the Constitution, provides the key to a proper interpretation of the Constitution as a whole, and this same concept also lends substance to the development of the political, economic, social and cultural programmes that the various government bodies are required to carry out.

34. In November 1991 and January 1992 the Legislative Assembly ratified reforms to the Constitution which were the product of a national consensus, in keeping with the provisions of article 248 of the Constitution. These reforms dealt with human rights, electoral matters, the judiciary and the armed forces, and have helped to strengthen the peace process and consolidate democracy in the country.

### **C. Type of government**

35. El Salvador is a sovereign State. Sovereignty is vested in the people, who exercise it in the form and within the limits laid down in the Constitution.

36. The form of government is republican, democratic and representative. The State is unitary.

37. The political system is pluralist and is reflected in political parties, which are the sole instrument for representation of the people in the Government. Their rules, organization and operation are governed by the principles of representative democracy.

38. The existence of a single official party is incompatible with a democratic system and with the form of government established in the Constitution. The rotational nature of the presidency is indispensable for maintaining the form of government and political system that have been established.

#### **D. Political structure**

39. Public authority emanates from the people, and the various branches of government exercise their powers independently, within their respective jurisdictions, as established by the Constitution and the law.

40. The duties of the various branches of government may not be delegated, but the branches shall cooperate with one another in performing State duties.

41. The main branches of the Government are the legislature, the executive branch and the judiciary. Government officials are the delegates of the people and have no powers greater than those expressly conferred on them by law.

#### **Legislature**

42. The function of legislating - in other words, of creating, interpreting, amending and repealing laws and of ratifying or rejecting the ratification of treaties or agreements concluded by the executive branch with other States or international organizations - is vested in the Legislative Assembly, a collegiate body of 84 deputies elected by the people by direct, secret and equal vote. The Assembly's actions are governed by the Constitution and by its own internal regulations.

43. "Deputies represent the whole of the people and are not bound by mandatory terms of reference. They are inviolable and shall not be held liable at any time for opinions expressed or votes cast" (Constitution, art. 125). However, they shall relinquish their posts in the following cases: "1. If they are convicted of serious offences in a final judgement; 2. If they violate any of the prohibitions set out in article 128 of the Constitution; 3. If they resign without justifiable cause that has been so deemed by the Assembly" (Constitution, art. 130).

44. Deputies are elected for a term of three years and may be re-elected. Their term of office begins on 1 May of the year in which they are elected.

45. For the purposes of decision-making, the vote of at least one half of the elected deputies plus one is required; in other words, a simple majority of 43 votes is required. However, a number of decisions require a qualified majority of two thirds, or 56 votes, such as election of the President and judges of the Supreme Court of Justice, the President and judges of the Supreme Electoral Tribunal, the President and judges of the Court of Audit of the Republic, the Attorney-General of the Republic, the Prosecutor-General of the Republic, the Procurator for the Protection of Human Rights and members of the National Council of the Judiciary.

46. Deputies may not occupy any paid public post during their term of office, except for academic or cultural posts or those connected with professional social welfare services.

### **Executive branch**

47. The executive branch consists of the President and Vice-President of the Republic, the Ministers and Deputy Ministers of State and their subordinate officials. It acts in conformity with the provisions of the Constitution and its own internal regulations.
48. The President of the Republic is both Head of State and Head of Government, and the executive branch is under his or her direction. The presidential term of office is five years and begins and ends on 1 June. The President of the Republic is also Commander-in-Chief of the Armed Forces.
49. In order to be valid, presidential decrees, agreements, orders and decisions must be endorsed and published by the competent ministers or, where appropriate, by their deputies.
50. The conduct of public affairs is the responsibility of such State secretariats as may be necessary, with the various branches of the administration allocated among them. Each secretariat is headed by a minister, who acts in cooperation with one or more deputy ministers. (Constitution, art. 159).
51. The Council of Ministers is composed of the President and Vice-President of the Republic together with the Ministers of State or those acting in their stead.
52. The executive branch currently consists of the following ministries and secretariats: the Ministry of Foreign Affairs; the Ministry of the Interior; the Ministry of Finance; the Ministry of Economic Affairs; the Ministry of Education; the Ministry of Defence; the Ministry of Labour and Social Security; the Ministry of Agriculture; the Ministry of Health and Social Welfare; the Ministry of Works; the Ministry of the Environment and Natural Resources; the National Secretariat for the Family; and the Technical Secretariat of the Office of the President.
53. National defence and public security are assigned under the Constitution to separate ministries: national defence to the Ministry of Defence and public security to the National Civil Police, which was created after the 1992 Peace Agreements and inspired by humanist and democratic principles; the National Civil Police is a professional body independent of the armed forces and removed from all partisan activity.
54. The Director of the National Civil Police is appointed by the President of the Republic. The National Civil Police is responsible for policing activities in urban and rural areas and guarantees order, security and public tranquillity. It cooperates in the conduct of criminal investigations and performs all of its functions in accordance with the law, with strict respect for human rights and under the direction of civilian authorities.
55. The armed forces are a permanent institution in the service of the nation. They are an obedient, professional, apolitical and non-deliberative body whose mission is to uphold the sovereignty and territorial integrity of the State.

## Judiciary

56. The judiciary comprises the Supreme Court of Justice, the appellate courts and such other courts as may be established by subsidiary laws. It has the power to adjudicate and to execute judicial decisions in constitutional, civil, criminal, commercial, labour and agrarian matters as well as in administrative disputes and in such other areas as may be determined by law. Its structure and functioning are governed by the Constitution of the Republic and by the Judiciary Organization Act (Constitution, art. 172).

57. The Supreme Court of Justice consists of 15 supreme court justices assigned to four divisions: the Constitutional, Civil, Criminal and Administrative Disputes Divisions.

58. The Constitutional Division consists of five specially elected justices and is headed by the President of the Court, who is at the same time President of the Judiciary.

59. The Civil and Criminal Divisions consist of a President and two justices, while the Administrative Disputes Division consists of a President and three justices, all of whom are appointed by the Court on the first working day of January of each year from among the other justices of the Court. These arrangements may be altered if such changes are deemed necessary and likely to improve the administration of justice.

60. The second-tier jurisdictions, or appellate courts, consist of two judges, while the courts of first instance and courts of justices of the peace are single-judge courts. These judges are all appointed by the Supreme Court of Justice from a list of three candidates submitted in each case by the National Council of the Judiciary (Constitution, art. 175).

61. All members of the judiciary are independent in the discharge of their duties and subject exclusively to the Constitution and the law. However, by virtue of the powers vested in them by the Constitution, relating to the administration of justice, they may, in the cases they are called upon to adjudicate, declare any law or any measure taken by another branch of the Government inapplicable on the grounds of a breach of constitutional provisions.

62. The Judiciary Organization Act lays down the organization of the courts, determines the functions of the President of the Supreme Court of Justice in plenary and of its divisions, of the appellate and lower courts, and of bailiffs. It also determines the duties of other judicial officials who do not exercise jurisdiction, such as chiefs of section, registrars, chief clerks, legal assistants, coroners and legal experts. The Act also establishes the actual territory covered by each court and its jurisdiction.

63. Under the Act, the Supreme Court of Justice has the following sections: the Notarial Section, which monitors the functions of notaries; the Probity Section, which keeps a check on the assets of public officials under the Illicit Enrichment of Public Officials and Employees Act; the Professional Investigation Section, which investigates the conduct of notaries, law students empowered to defend or prosecute, bailiffs and other officials appointed by the court who are not members of the judiciary; and the Publications Section, which publishes the *Revista Judicial*, the publication by which the Supreme Court of Justice disseminates information, particularly laws and regulations relating to the judiciary and academic works on legal subjects by national authors.

64. The function of the Department of Evidence and Probation is to cooperate with the judges of courts for prison supervision and the enforcement of sentences in monitoring the conditions or rules of conduct imposed in cases involving conditional suspension of criminal proceedings, security measures, conditional release, conditional suspension of the execution of a sentence in any of its forms, and the serving of sentences that do not involve imprisonment. It also has three units or offices that are responsible for: (1) information on persons detained by any authority; (2) monitoring the serving of criminal sentences; and (3) seizures made and fines paid in all courts of the Republic. It also has a section that is responsible for compiling the laws, regulations and jurisprudence of the Supreme Court of Justice as well as a number of administrative units.

65. Pursuant to the Judiciary Organization Act, the Supreme Court of Justice has established forensic medicine institutes in the major or capital cities of the Republic's departments; these are provided with medical staff specializing in forensic medicine and with the equipment needed for the operation of these institutions, which play an important auxiliary role in the criminal justice system through their scientific investigation in criminal cases. For its part, the Department of Detainee Information keeps a check on such persons in order to ensure that their rights are respected and to provide information to interested parties who request it. Accordingly, every State or municipal judicial or administrative authority or auxiliary body in the justice system or the military, including subordinate authorities, must, within 24 hours, inform the Department when any person is detained on their initiative or pursuant to an order by a competent authority.

### **Independence of judges and of the judiciary**

66. Article 172, paragraph 3, of the Constitution stipulates that in matters pertaining to the discharge of judicial duties, judges shall be independent and subject exclusively to the Constitution and the law. In accordance with that provision, judges, when handing down decisions, are bound solely by the Constitution and the laws that must be respected in their verdicts. Consequently, judges in El Salvador are, irrespective of their rank, independent when trying the cases brought before them.

67. The independence enjoyed by judges in the exercise of their judicial duties is consistent with the idea of due process, which is also established in the Constitution. Article 24 of the Judiciary Organization Act also conveys this idea by providing that:

“In matters pertaining to the discharge of their judicial duties, judges shall be independent and subject exclusively to the Constitution and the law. They may not lay down any rules or provisions of a general character regarding the application or interpretation of the laws nor may they publicly censure the manner in which they are applied or interpreted by other courts in their judgements, whether they are higher or lower courts. The foregoing shall be interpreted without prejudice to the provisions of article 183 of the Constitution and to the fact that the higher courts may issue to the lower courts any warnings which they deem appropriate for better administration of justice.”

68. As a result of these provisions, a judge may not be subject to any authority in his or her decisions other than the terms of the Constitution and of the applicable laws.

69. In a series of provisions that cover budget and operational matters, the current Constitution has guaranteed the independence of the judiciary vis-à-vis the other branches of the State. For example, the final paragraph of article 172 states that “The judiciary shall be entitled to an annual allocation of not less than 6 per cent of the current revenue of the State budget.” Article 182, paragraph 13, of the Constitution states that it is the duty of the Supreme Court of Justice “to prepare the budget for salaries and expenditures in the administration of justice and to transmit it to the executive branch for inclusion in the general budget of the State. The Legislative Assembly shall consult with the Supreme Court of Justice about any adjustments to the budget estimates that it deems necessary.”

70. The organizational, economic and operational independence of the judiciary in El Salvador is currently guaranteed under the various constitutional provisions mentioned in this document.

71. Operational independence is guaranteed mainly through the Judicial Profession Act and the National Council of the Judiciary Act, two laws that strengthen the justice system and enhance the independence of the officials concerned. The first Act sets out the principle of security of tenure and promotion of judges, while the second elaborates this principle even further, making it feasible to assess the competence of judges through the establishment of the Judicial Service Training College.

#### **Participation of the judiciary in law-making**

72. The Supreme Court of Justice may, in certain cases, intervene in the law-making process.

73. Under article 133, paragraph 3, of the Constitution, the Supreme Court of Justice has the power to draft legislation on matters concerning the judiciary, the practice of the legal profession by notaries and lawyers, and the jurisdiction and competence of the courts.

74. The Supreme Court of Justice may also intervene in the law-making process, on any matter, when the President of the Republic vetoes a bill on the grounds of unconstitutionality and the legislature confirms it by at least two thirds of the votes of the elected deputies. In such cases, the President of the Republic must, within three days, ask the Supreme Court of Justice to decide whether or not the bill is constitutional.

### **III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

#### **A. Institutions for the protection of human rights (competent administrative and judicial authorities)**

75. The following institutions guarantee the effective exercise of human rights and fundamental freedoms:

(a) The Judiciary, which comprises the Supreme Court of Justice, the appellate courts and such other courts as may be established by subsidiary laws (Constitution, art. 172);

- (b) The Department of Public Prosecutions, which comprises the following:
  - (i) The Office of the Attorney-General of the Republic;
  - (ii) The Office of the Prosecutor-General of the Republic;
  - (iii) The Office of the Procurator for the Protection of Human Rights (Constitution, art. 191).

76. The Office of the Attorney-General of the Republic is responsible for defending the interests of the State and society. It institutes legal proceedings at its own initiative or at the request of a party in defence of the law. It also conducts criminal investigations and initiates legal proceedings in criminal matters at its own initiative or at the request of a party, among other functions and attributes. The post of Deputy Procurator for Human Rights has been established within the Office of the Attorney-General of the Republic.

77. The Office of the Prosecutor-General of the Republic is responsible for the defence of the family and of the persons and interests of minors and others lacking legal capacity. Its tasks include the provision of legal assistance to persons of limited financial means and the provision of legal representation in the defence of their freedom and employment rights.

78. The principal functions of the Office of the Procurator for the Protection of Human Rights include ensuring respect for and enjoyment of human rights; investigating, at its own initiative or on the basis of complaints received, cases of human rights violations; supervising the conduct of the public administration towards individuals; issuing opinions and preparing and publishing reports; and undertaking activities to promote human rights.

79. A Commission of Justice and Human Rights has been established in the Legislative Assembly. The National Civil Police has its own Inspectorate and a Division of Human Rights. The Ministry of Foreign Affairs has a unit that handles human rights matters and the Ministry of Defence has a Division of Human Rights.

### **Judicial authority in El Salvador**

80. Judicial authority lies with the judiciary, which consists of the Supreme Court of Justice and its Divisions, the appellate courts, the courts of first instance and the courts of justices of the peace. This branch of government has exclusive powers to adjudicate and to execute judgements in constitutional, civil, criminal, commercial, labour and agrarian matters, as well as in administrative disputes and in such other matters as may be determined by law.

81. It will be seen that, in the exercise of judicial authority, judges are independent and are subject to no restrictions other than those established by the Constitution and by the law.

82. The jurisdiction of the courts in El Salvador tends to be specialized by subject matter. Accordingly, there are courts of first instance for civil, family, criminal, military and labour matters and for cases involving housing, traffic violations, commerce, juveniles and public

finance. There are also courts of appeal for civil, labour and criminal matters, while the Supreme Court of Justice has constitutional, civil, criminal and administrative disputes divisions. The latter exercise constitutional jurisdiction, deal with reviews on points of law in civil and criminal cases and with administrative disputes, serving as the final arbiter with regard to the constitutionality and legality of acts by any public authority.

### **Quasi-judicial authority in El Salvador**

83. The Office of the Procurator for the Protection of Human Rights was established under the 1992 Peace Agreements pursuant to the provisions of articles 191, 192 and 194 of the Constitution. This institution is part of the Office of the Attorney-General and is a permanent and independent body having legal personality and administrative autonomy whose function is to ensure the promotion and teaching of respect for human rights and their unrestricted enjoyment.

84. Under article 194 of the Constitution, the Procurator for the Protection of Human Rights shall:

- (a) Ensure respect for and the enjoyment of human rights;
- (b) Investigate, of his own accord or on complaints received by him, cases of human rights violations;
- (c) Assist presumed victims of human rights violations;
- (d) Initiate judicial or administrative proceedings for the protection of human rights;
- (e) Monitor the situation of persons deprived of their freedom; the Procurator shall be notified of all arrests and ensure that the legal limits for administrative detention are observed;
- (f) Carry out any inspections deemed necessary to ensure respect for human rights;
- (g) Supervise the conduct of the public administration towards individuals;
- (h) Promote reforms in State bodies with a view to the advancement of human rights;
- (i) Give advice concerning draft legislation that affects the exercise of human rights;
- (j) Promote and propose any measures deemed necessary to prevent human rights violations;
- (k) Formulate conclusions and recommendations, publicly or privately;
- (l) Prepare and publish reports;
- (m) Develop an ongoing programme of activities to foster awareness of and respect for human rights;
- (n) Exercise any other powers conferred on him by the Constitution or the law.”

85. The Act establishing the Office of the Procurator for the Defence of Human Rights was promulgated in Legislative Decree No. 183 of 20 February 1992. This legislation lays down the functions and constitutional powers of the institution and determines the way in which it is organized and how it operates. Funding is provided for in the general budget of the State.

86. The Procurator may, for the proper discharge of his duties, ask State bodies, civil, military or police authorities or officials or any other person for assistance, cooperation, reports or opinions, all of whom shall be obliged to cooperate with him and to give his requests and recommendations priority and immediate attention.

87. In addition to those mentioned above, the Procurator for the Protection of Human Rights has the following duties, in accordance with the applicable law:

(a) To ensure strict compliance with the legal procedures and time limits for any appeals he or she may lodge or legal proceedings in which he or she may be involved;

(b) To ensure respect for the guarantees of due process and to prevent detainees from being held in solitary confinement;

(c) To keep a consolidated record of persons deprived of their freedom and of authorized detention centres;

(d) To submit draft legislation for the promotion of human rights in El Salvador;

(e) To promote the signature, ratification of or accession to international human rights treaties;

(f) To issue statements of public censure against persons materially or intellectually responsible for human rights violations;

(g) To endeavour to reconcile persons whose rights have been violated with the authorities or officials allegedly responsible, when the nature of the case so permits;

(h) To establish, promote and develop communication and cooperation links with intergovernmental and non-governmental bodies for the promotion and protection of human rights, both national and international, and with the various sectors of Salvadoran society;

(i) To issue the rules and regulations for the application of this Act and any rules of procedure that may be necessary;

(j) To appoint, remove, grant leave to and accept the resignations of officials and employees of the Office;

(k) To prepare the annual budget and transmit it to the competent authority; and

(l) To exercise any other powers conferred on him or her by the Constitution or the law.

88. The Office is headed by the Procurator for the Protection of Human Rights, who performs his or her duties throughout all of the national territory, either personally or through his or her deputies. The Office is based in the city of San Salvador.

89. The Procurator for the Protection of Human Rights is elected by the Legislative Assembly, by a clear two-thirds majority of the elected deputies, for a three-year term and may be re-elected. The holder of this post may not hold any other public office or exercise his or her profession, with the exception of teaching or cultural activities. The post is also incompatible with active participation in political parties, executive positions in trade unions or business organizations or with the position of minister in any religious denomination.

90. In addition to the Procurator, the Office is composed of a Deputy Procurator for the Protection of Human Rights and Deputy Procurators for labour rights and the rights of the elderly; environmental and consumer rights; civil and political rights; rights of children and youth; and women's and family rights. The Procurator may appoint such other Deputy Procurators as he or she may consider necessary for the most effective discharge of his or her constitutional and legal duties.

91. The mandate of the Office is extremely broad and allows it to monitor the respect shown for human rights by all State agencies without exception. This mandate also gives the Office wide scope to engage in various activities for the promotion and dissemination of human rights, including civil, political, economic, social and cultural rights and the rights of the elderly as set out in the Constitution, laws and treaties in force, as well as those laid down in the declarations and principles of the United Nations and of the Organization of American States.

## **B. National legal framework for the protection of human rights**

### **Relationship between international human rights instruments and the Constitution and legislation**

92. The Constitution of the Republic establishes the principle that once international treaties enter into force in accordance with their own provisions and the Constitution, they become laws of the Republic. It is thus accepted that treaties that have been legally concluded and ratified form part of Salvadoran legislation.

93. A second principle found in the Constitution establishes the position of treaties in Salvadoran law. Accordingly, a treaty has a higher ranking than subsidiary laws, whether enacted before or after the entry into force of the treaty. Thus, under a treaty, an earlier subsidiary law may be repealed, but no subsidiary legislation may repeal or amend the provisions of a treaty.

94. Article 144, paragraph 2, of the Constitution confirms the previous statement when it provides that, in the event of a conflict between a treaty and a law, the treaty shall prevail. In this regard, "treaties in which constitutional provisions are in any way restricted or affected may not be ratified unless the ratification is accompanied by the appropriate reservations. In such cases the provisions of the treaty in respect of which reservations have been made shall not be a law of the Republic" (Constitution, art. 145).

95. Article 168, paragraph 4, of the Constitution confers on the President of the Republic the power to conclude international treaties and agreements, to submit them for ratification by the Legislative Assembly and to ensure compliance with their provisions.

96. The Legislative Assembly may refuse to ratify a treaty or agreement or may ratify it with reservations if it considers the parts to which it objects to be unconstitutional or inappropriate.

### **Incorporation of international human rights treaties into domestic law**

97. The Constitution of the Republic contains the basic norms relating to civil and political rights, economic, social and cultural rights, guarantees of due process of law and the duties of individuals, in keeping with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights, the Universal Declaration of Human Rights and the American Declaration on the Rights and Duties of Man.

98. Subsidiary laws also establish rights that are contained in international human rights instruments. For example, the Criminal Code and Code of Criminal Procedure provide punishment for torture, acts of terrorism, kidnapping, genocide, violation of the laws and customs of war, enforced disappearance of persons and child prostitution. Some domestic subsidiary laws have drawn inspiration from non-binding international instruments, as in the case of the Act Organizing the National Civil Police, which has incorporated provisions of the Code of Conduct for Law Enforcement Officials and of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

99. The principal United Nations international human rights instruments in force in El Salvador are: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention against Apartheid in Sports; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict; the Convention relating to the Status of Refugees; and the Protocol relating to the Status of Refugees.

100. The principal international human rights instruments of the Organization of American States in force in El Salvador are: the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

101. All international instruments which have been ratified by the State, including those that have not been mentioned, constitute laws of the Republic that require observance and respect for the principles and precepts which they establish throughout the national territory.

### **Remedies available to individuals who are victims of human rights violations**

102. Under Salvadoran legislation, any person who considers that any of the constitutional principles has been violated has three basic remedies: (a) habeas corpus; (b) enforcement of constitutional rights (amparo); and (c) constitutional review. All three are regulated by the Constitutional Procedures Act. In addition, a right of administrative appeal is established in the Constitution and regulated by the Administrative Jurisdiction Remedies Act; such appeals are lodged with the Administrative Disputes Division of the Supreme Court of Justice.

#### **Habeas corpus or personal appearance**

103. Article 11, paragraph 2, of the Constitution of the Republic provides that “Any person whose freedom is unlawfully restricted by any authority or individual shall have the right to habeas corpus.”

104. Article 4 of the Constitutional Procedures Act stipulates: “Where the violation of a right consists in the illegal restriction of individual freedom by any authority or individual, the affected person shall have the right to file a writ of habeas corpus before the Constitutional Division of the Supreme Court of Justice or before appellate courts located outside the capital.”

105. Article 40 of the Constitutional Procedures Act stipulates: “In all cases, whatever their nature, involving imprisonment, detention, custody or restraint that is not authorized by the law or is exercised in a manner or to a degree that is not authorized by the law, the affected party shall have the right to be protected by a writ of personal appearance.”

#### **Amparo (enforcement of constitutional rights)**

106. Article 182 of the Constitution provides that “the duties of the Supreme Court of Justice are [...] to hear amparo proceedings”.

107. This remedy is therefore available when any of the rights guaranteed in the Constitution is violated. This principle is developed in article 12 of the Constitutional Procedures Act, which states: “Any person may apply to the Constitutional Division of the Supreme Court of Justice for amparo in the event of the violation of the rights granted to him by the Constitution.”

108. Application for amparo may be made in response to any act or omission by any authority or official of the State or of its decentralized bodies which violates those rights or impedes their enjoyment.

109. Application for amparo may be made only when the act complained of cannot be remedied by other recourse procedures.

110. If the application for amparo is based on unlawful detention or undue restriction of personal liberty, the provisions of Chapter IV of the Constitutional Procedures Act shall apply; in other words, the matter shall be treated as one of habeas corpus.

### **Constitutional review**

111. Application for constitutional review is provided for under article 183 of the Constitution, which stipulates that the only court competent to challenge the constitutionality of laws, decrees and regulations, in form and in content, generally and with binding effect, is the Supreme Court of Justice. It acts in response to a petition lodged by any citizen.

### **Administrative jurisdiction**

112. The term “administrative jurisdiction” refers to the power to hear and settle disputes arising over the legality of acts committed by the public administration. In El Salvador remedies of this type have a constitutional basis in article 172 of the Constitution, which gives the judiciary sole power to hear, among other things, cases in which the remedy of administrative jurisdiction is invoked and to enforce its judgements in such cases.

113. The establishment of a judicial forum to hear administrative disputes dates back to 1978, when the Legislative Assembly adopted the Administrative Jurisdiction Remedies Act. This addition to the Salvadoran legal system constituted a major advance inasmuch as it provided an effective legal instrument to ensure that applicants’ individual rights and legitimate interests were protected against acts by the public administration, and thus constitutes an important tool for ensuring the legality and the certainty of the law.

114. The establishment of this machinery filled a gap in Salvadoran legislation, since the aforementioned Act guarantees the rights of the public administration as well as those of the individuals subject to it.

115. The Act is consistent with the relevant constitutional standards; it conceives and articulates the remedy of administrative jurisdiction as falling within the powers of the Supreme Court of Justice and, within the court’s structure, as the responsibility of the Administrative Disputes Division. Thus the system of administrative justice comprises only one level of jurisdiction.

116. Basically the Administrative Jurisdiction Remedies Act is a statutory instrument containing provisions that are simple and easy to apply; it has its basis in the guiding principles and norms of administrative law that are to be found in the laws and codes of other States. Experience gained over the years has confirmed that this Act plays a primary role in ensuring the legality of administrative acts.

### **Domestic protection of the human rights contemplated in international instruments**

117. Under the Constitution, the rights and freedoms which are contemplated in the human rights instruments ratified by El Salvador - and thus form part of its domestic positive law - are guaranteed by allowing citizens to apply to the relevant jurisdictions to avail themselves of the right of protection afforded by the treaties so that they can enjoy the rights and freedoms provided in them.

118. It should be pointed out again that, where treaties and subsidiary legislation are concerned, the former take precedence over the latter since they enjoy a higher constitutional

ranking. The international treaties ratified by El Salvador constitute laws of the Republic and imply an obligation on the part of State officials to apply them directly with no need for a subsequent legislative or administrative act.

119. As regards the international human rights machinery, El Salvador has ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which establishes a procedure for the submission of individual communications to the Human Rights Committee.

120. In the context of the Inter-American system for the protection of human rights, El Salvador has made an express declaration accepting the jurisdiction of the Inter-American Court of Human Rights in cases of individual complaints of violations of the rights set out in the Inter-American Convention on Human Rights.

121. With the Inter-American system the Inter-American Commission on Human Rights handles complaints concerning individual cases and publishes its resolutions and recommendations; El Salvador participates in this system.

122. The international and regional machinery come into play once all domestic remedies established in the judicial system have been exhausted. This machinery constitutes an additional recourse for persons who consider that their human rights and fundamental freedoms have been violated.

123. The Ministry of Foreign Affairs serves as the link with the competent national bodies and prepares replies with the information it receives from them concerning human rights complaints or communications.

124. During the armed conflict, the situation of human rights in El Salvador was considered by the Commission on Human Rights, which appointed Professor José Antonio Pastor Ridruejo as Special Representative in 1981 with a mandate to investigate human rights violations in El Salvador and make relevant recommendations. In 1992, the Commission appointed Dr. Pedro Nikken as independent expert with a new mandate of providing assistance in human rights matters to the Government of El Salvador and considering the effects of the Peace Agreements on human rights.

125. The first of the substantive agreements in the El Salvador peace process was the San José Agreement on Human Rights of 26 July 1990, which laid down a commitment to ensuring respect for human rights and to the establishment, under Security Council resolution 693 (1991) of 20 May 1991, of the United Nations Observer Mission in El Salvador (ONUSAL) as an integrated operation to verify compliance with all the peace agreements, its duties to conclude in 1995.

126. El Salvador was a member of the Commission on Human Rights from 1995 to 2000, and in 1997 served as Rapporteur to the Commission's Bureau.

#### **IV. INFORMATION AND PUBLICITY**

##### **A. Domestic promotion of the rights contained in international human rights instruments**

127. On the basis of the 1992 Peace Agreements, a commitment was established to make progress in respecting and promoting human rights, which had been violated at a number of levels during the violent period of the armed conflict in El Salvador.

128. The general environment in El Salvador has been favourable to institutionalizing a culture of respect for human rights and democratic freedoms; the State has made efforts to strengthen the legal and institutional framework, thus making it possible to change attitudes and behaviour. Civil society has become very active, with increased participation in democratic life, and has reached out to the population through education and information campaigns designed to help people exercise and assert their rights.

129. As a result, human rights in El Salvador are now considered from a broad perspective that encompasses respect for the freedom and dignity of the individual, safeguards for the expression of ideas and political participation, which are political and social rights, and a reclaiming of economic, social and cultural rights.

130. The national education system seeks to promote human rights in El Salvador. To this end, article 60, paragraph 2, of the Constitution stipulates that human rights education will be mandatory in all teaching centres, whether public or private, civilian or military.

131. By constitutional mandate, the Office of the Procurator for the Protection of Human Rights is entrusted with developing an ongoing programme of activities to promote familiarity with and respect for human rights. It carries out activities aimed at meeting its obligations in this area and enhancing public awareness of human rights and fundamental freedoms.

132. Information on and knowledge of human rights legislation, policies and procedures are regularly provided by means of training, practical courses, seminars and special human rights commemorative activities for government employees, prosecutors, public defenders, judges, police, and military and prison personnel.

133. State institutions helping to disseminate information, promote awareness and provide training in the area of human rights include the Judicial Service Training College, the National Secretariat for the Family (SNF), the Salvadoran Institute for Women's Development (ISDEMU) and the Salvadoran Institute for the Protection of Children and Adolescents (ISNA).

134. International cooperation has been of great importance for the development of programmes concerned with the administration of justice, public security, the human rights of vulnerable groups, and education in and promotion of human rights.

135. One significant international cooperation activity was the technical cooperation project in the field of human rights carried out in El Salvador by the Office of the United Nations High Commissioner for Human Rights from 1997 to 2000, which sought to provide training and documentation on the system for the protection of human rights and to reinforce public security in El Salvador. The institutions that benefited were the Ministry of Foreign Affairs, the

Legislative Assembly, the armed forces, the National Civil Police and its General Inspectorate, the Public Security Academy, the Salvadoran Institute for the Protection of Minors and the Salvadoran Institute for Women's Development.

136. As part of this project, publications and material on human rights and fundamental freedoms were issued and disseminated on the following topics: basic human rights standards; basic standards of international humanitarian law; the Convention on the Rights of the Child (pocket edition); national and international standards concerning violence against women (pocket edition); Universal Declaration of Human Rights (pocket edition); national and international standards applicable to the penitentiary system (pocket edition); national and international standards concerning discrimination against women (pocket edition); national and international standards applicable to juvenile offenders (pocket edition); and international human rights standards for law enforcement.

137. Posters dealing with human rights were also printed and distributed to various State institutions and non-governmental human rights organizations. The subjects covered were: the rights and duties of the individual; children's rights and duties; main human rights treaties in force in El Salvador; and the rights and obligations of persons deprived of their liberty and prison staff.

138. The technical cooperation project conducted by the Office of the United Nations High Commissioner for Human Rights was extended to 2003 with a view to further building the capacities of the Office of the Procurator for the Protection of Human Rights. The project also contains other components aimed at integrating human rights into the activities of government institutions and the programmes and activities of the United Nations system in El Salvador.

139. Periodically, messages are inserted in the mass media (press, radio and television) with support from the Government, the private sector and non-governmental organizations, in particular concerning the protection of the human rights of vulnerable sectors of the population (children, women and the disabled).

#### **B. Manner and extent to which international human rights instruments have been translated into local languages**

140. As part of the technical cooperation project carried out by the Office of the United Nations High Commissioner for Human Rights, the Universal Declaration of Human Rights has been translated into Pipil, the language used by the indigenous minorities, in order to familiarize them with its principles. The Pipil-language version can be found on the web site of the High Commissioner's Office.

141. A Spanish translation of the Universal Declaration has been printed in Braille and a video has been made which presents the Universal Declaration in sign language, both initiatives with the aim of enabling persons with sight and hearing impairment to be familiar with it and its application.

142. This material has been distributed to cultural centres throughout the country so that it can be available and easily accessible to those interested.

**C. Government agencies responsible for preparing reports**

143. The preparation of the reports which El Salvador submits to the United Nations human rights treaty bodies is a genuine inter-agency effort, coordinated by the Ministry of Foreign Affairs.

144. Experts from the Government as well as from independent and State agencies, particularly those concerned with the implementation of the rights covered by the various international human rights covenants and treaties, participate in the preparation of these reports.

145. Efforts have been launched to ensure efficient collaboration among non-governmental organizations through activities relating to protection and investigation in the area of human rights.

**D. National dissemination of reports to international human rights treaty bodies**

146. The Ministry of Foreign Affairs is currently preparing a page on its web site for the publication and distribution of the reports submitted by the Government of El Salvador to the United Nations human rights treaty bodies and of the pertinent recommendations made by those bodies, in order to provide information at the national and international levels about its progress in the promotion and protection of human rights.

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