

**Совет по правам человека****Тридцать восьмая сессия**

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**Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие****Доклад Специального докладчика по вопросу о внесудебных казнях, казнях без надлежащего судебного разбирательства или произвольных казнях о ее миссии в Сальвадор\*****Записка секретариата**

Секретариат имеет честь препроводить Совету по правам человека доклад Специального докладчика по вопросу о внесудебных казнях, казнях без надлежащего судебного разбирательства или произвольных казнях о ее официальном визите в Сальвадор в период с 25 января по 5 февраля 2018 года. Специальный докладчик изучила положение в области осуществления права на жизнь, уделив особое внимание проблеме произвольного лишения жизни, правовым и политическим мерам реагирования, случаям нарушения права на жизнь негосударственными субъектами, в частности бандами, а также положению лиц, входящих в группы риска, и полному запрету на аборт. Она вынесла ряд рекомендаций правительству и международному сообществу.

\* Настоящий доклад был представлен после установленного срока в связи с необходимостью отразить в нем самые последние события.



## Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador\*\*

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\*\* Circulated in the language of submission and in Spanish only.

## I. Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions visited El Salvador from 25 January to 5 February 2018. She thanks the Government for their invitation, extensive cooperation and willingness to engage with her. The Special Rapporteur also thanks the Office of the United Nations High Commissioner for Human Rights (OHCHR) including the Regional Office for Central America, the United Nations Resident Coordinator and the country team for their invaluable support.
2. The main focus of the visit was on (a) allegations of arbitrary deprivation of life as part of a State security strategy and official responses; (b) violations of the right to life by non-State actors, primarily gangs; (c) programmes designed to address and prevent killings of groups at risk; and (d) the absolute ban on abortion.
3. The Special Rapporteur met with representatives of all branches of the State at both the highest and municipal levels: the President, the Ministers for Foreign Affairs, for Justice and for Public Security, members of the National Council on Citizen's Security and Co-existence, representatives of the police and armed forces, the National Forensics Institute, the Coordinating Commission of the Justice Sector, the Office of the Human Rights Advocate and the National Women's Institute and members of the parliament (Legislative Assembly). She visited prisons under the "extraordinary security measures" and a police station (*bartolina*). The Special Rapporteur also met with international, regional and national human rights organizations; grassroots human rights activists; representatives of indigenous peoples; religious leaders; media professionals, including journalists; lesbian, gay, bisexual, transsexual and intersex persons; internally displaced persons; survivors of human rights violations, family members of individuals who had been killed and eyewitnesses to killings.
4. In the present report, the Special Rapporteur focuses on the situation as it was during the visit,<sup>1</sup> with specific references to subsequent developments where possible. She thanks the Government for the detailed responses received to the present report and looks forward to engaging in further dialogue.

## II. Overview of violence, including killings

5. The official murder rate in El Salvador peaked in 2015 at 103 per 100,000 inhabitants (6,657 homicides), making it at the time the highest in the world. The numbers have since decreased to 80.94 per 100,000 inhabitants in 2016 (5,278 homicides, a 21 per cent decrease) and 60.07 in 2017 (3,950 homicides, a further 25 per cent decrease). However, the homicide rate remains extremely high. A large number of the killings, officially two thirds but other sources suggest an even higher proportion, are attributed to gangs. Moreover, the percentage of murders allegedly attributed to the police increased from less than 1 per cent in 2010 (11 out of 4,004 homicides) to almost 5 per cent in 2015 (328 out of 6,656 homicides) and more than 10 per cent in 2017 (412 out of 3,954 homicides).
6. El Salvador experiences high levels of generalized and pervasive interpersonal and sexual violence: every 19 hours a woman is killed and every 3 hours someone is sexually assaulted. In more than 70 per cent of cases, the victims are minors.
7. Interlocutors spoke of what they perceive to be a war against the country's youth, waged by both gangs and security forces. Young men face being forcefully recruited or killed by (rival) gangs for setting foot in the wrong neighbourhood. Women and girls face femicide, rape and sexual exploitation, including as retaliation by gangs. Police and State officials assume that young people are gang members based on their place of residence.

<sup>1</sup> See her end of mission-statement, available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E).

8. The Special Rapporteur met many visibly traumatized survivors and witnesses of the endemic violence. Some had been tortured and bore visible scars. Many had witnessed horrific violence and were exposed to constant retraumatization. They routinely walked the same roads as their rapists, met their torturers on street corners and watched their children's killers pass by. The Special Rapporteur was alarmed by the paucity of services available to survivors of violence.

9. A number of interlocutors highlighted the country's structural and systemic challenges. While they in no way justify the violations referred to in the present report, it is important to acknowledge the complex economic, social and cultural context within which they are committed, including:

- (a) Low job creation and high unemployment rates, particularly among youth;
- (b) Limited investigatory resources and expertise available to the police, resulting in a chronic paucity of forensic evidence and little to no scientific investigation capacity;
- (c) Saturation of the court system, particularly at the first/entry levels, owing to a lack of resources compared to the large number of cases;
- (d) Demoralization and overstretching of police, poor pay and daily confrontations with difficult and traumatic situations. Measures to improve police well-being and protection have been initiated but remain limited;
- (e) High levels of impunity for past crimes, giving rise to persisting and repetitive systemic patterns;
- (f) Lack of an effective State presence and de facto territorial control by gangs.

### III. State responses

10. Since the beginning of the twenty-first century, successive Governments have followed a *mano dura* (iron fist) strategy against gangs, with the exception of a two-year "truce" between 2012 and 2014. Over the years, security strategies have followed similar approaches: mass incarceration, militarization of policing and privatization of security. Those policies do not appear to have delivered tangible results and may actually have made matters worse by failing to address the root causes of violence and the strength of the gangs.

11. The Government has encouraged public participation in the development of *Plan El Salvador Seguro* (see below), but the overall political environment is not conducive to an open and well-informed public debate about the root causes of violence and gangs, nor about possible policy options and alternatives to the dominant "iron fist" paradigm. The Special Rapporteur was told repeatedly that "dialogue" with, and rehabilitation of, gang members are quasi-taboo topics.

12. However, there are a number of positive government responses and due diligence initiatives that deserve to be highlighted. They include *Plan El Salvador Seguro, Yo Cambio*, a rehabilitation programme for detainees, and *Jóvenes con Todo*, a youth programme providing learning, training and employment opportunities. All of these testify to the appetite, at least among some officials and sectors of society, for alternatives to repressive measures and a focus on root causes.

13. The Special Rapporteur was also impressed by the establishment of the National Council on Citizen's Security and Coexistence, a multi-stakeholder coordinating body, as a demonstration of commitment to transparency and international scrutiny.

#### A. Plan El Salvador Seguro

14. In 2015, the Government adopted Plan El Salvador Seguro (Safe El Salvador Plan). An ambitious five-year plan to curb escalating gang violence and address other forms of violence. Developed by the National Council on Citizen's Security and Co-existence, it

contains a range of short- to long-term actions and focuses on five key areas: prevention, criminal punishment, rehabilitation and reintegration, victim protection and assistance, and institutional enforcement. Initiatives include development, education and employment projects for the country's 50 most violent municipalities. It also aims to curb the influence of gangs in prisons, improve prison conditions and support victims in obtaining justice and reparations.

15. The Special Rapporteur met representatives of one priority municipality and was impressed by their commitment to the Plan, the many projects and initiatives it had generated and, most importantly, the hope that it provides, at least among local officials. Researchers have also pointed out that the Plan has strengthened efforts at local levels and allowed committed mayors to undertake and demonstrate visible changes to their communities.

16. The Plan is estimated to cost around \$210 million a year, financed by international cooperation funds and an earmarked tax. In 2017, close to 55 per cent of that tax went to financing security personnel (of which 78 per cent was in bonuses).<sup>2</sup>

17. The lack of resources for prevention has resulted in a loss of faith among those interviewed by the Special Rapporteur in the ability or willingness of the Government to truly implement the Plan as intended. In addition, members of opposition parties (ARENA and GANA) have indicated their mistrust for such "soft" measures, if not outright rejection, making its implementation a political challenge and the unfortunate hostage of elections and politics.

## **B. Legal and policy responses**

18. In recent years, El Salvador has adopted a series of measures, designed, in principle, to be temporary. A month before issuing a decree on the extraordinary security measures aimed at regaining control in prisons, the Executive declared a state of emergency in 25 of them. Subsequently, the Government issued a decree on the measures for 7 prisons and has extended their validity ever since.

19. Several Governments, including the current one, have used their constitutional powers to authorize the armed forces to execute public security tasks, for which they are not trained and which may distort their functions and lead to further abuses of power and human rights violations. She is also concerned that since 2015, gang members are prosecuted under the Special Law against Acts of Terrorism to "restore order and create social peace". The Special Rapporteur stresses that the cumulative effect of overlapping permanent and complex regimes of emergencies makes accountability and oversight of emergency powers difficult (see A/HRC/37/52, para. 59).

### **1. Extraordinary security measures**

20. In April 2016, the Government announced the implementation of a set of measures officially aimed at addressing the violence, including killings. They are divided into three groups: (a) extraordinary security measures aimed at those deprived of liberty; (b) public safety; and (c) legal reforms.

21. With regard to persons deprived of liberty, legislative decree 321 of 2016 established a series of extraordinary security measures applied to seven (now six) different penitentiaries to regain full control of them. Those measures included, inter alia, the 24-hour confinement of prisoners to their cells, suspension of all family and intimate visits, correspondence by and to detainees, prohibition of transfer of detainees to court for hearings and denial of access by national and international organizations to those prisons. While lawyers are in principle allowed to visit their clients, the obstacles in place result in a de facto prohibition. On 6 April 2018, the National Assembly approved a six-month extension of the decree, with the

<sup>2</sup> The term security personnel includes the police and the armed forces.

exception of the prohibition of the transfer of detainees to court (some prisons can also hold virtual hearings).

22. With regard to public safety, the Government has strengthened joint police-military work. In 2016, it launched the “Force for the Intervention and Recovery of the Territory”, composed of 600 military and 200 police officers in February; the Specialized Reaction Forces, composed of 600 military and 400 police officers, in April;<sup>3</sup> a task force “Centro Histórico”, composed of 400 military reservists and 400 police officers in June; and the Joint Group for Community Support in November. The involvement of the armed forces in policing functions dates back to December 1992 and increased significantly in 2009. It has expanded without a proper legal framework that determines the specific role of the military units involved in public security tasks, thus potentially leading to a de facto militarization of civil policing.

23. The Special Rapporteur met military officials of those units, who insisted on their supporting role, indicating that the police were ultimately responsible for leading joint operations. However, they acknowledged that their role had increased over the past three years “due to the increase in violent clashes” and referred to the current security situation as a low-intensity conflict. Between 2006 and 2017, the number of military personnel increased from 876 to 13,827.

24. Article 159 of the Constitution provides that national defence and public security will be under different ministries, article 168 (12th) states that exceptionally, if ordinary means for the maintenance of internal peace, tranquillity and public security have been exhausted, the President of the Republic may dispose of the armed forces for this purpose. That the use of the armed forces for public security is of an “exceptional” nature is confirmed by article 3 of the Organic Law of the Armed Forces, and is placed under parliamentary control. The President must inform the Legislative Assembly about such actions.

25. The military role in public security is thus clearly established as exceptional. However, in practice, the executive, the legislature and the military and police forces have turned what should be an exceptional regime into a norm in the name of public emergency.<sup>4</sup>

26. The joint police-military deployments have been accompanied by ambiguous and permissive speech regarding their human rights obligations. For example, the Director of the National Public Security Academy stated that: “The full legitimacy of the State to preserve the police is in your hands ... There is no need to think that there are human rights involved, that there is criticism from the press or international organizations: when the legitimacy of the State is disrespected, you have to make use of all tactics.”<sup>5</sup> The Director of Police publicly affirmed that: “No case will be left in impunity, we will look for them under stones and if they resist, they will die. Whoever harms a member of the police should prepare for a hail of fire.”<sup>6</sup>

27. New legal reforms have also been initiated, including the creation of 13 new crimes and the reform of 11 existing ones. In 2016, the Juvenile Criminal Law was reformed to allow the Office of the Attorney-General to issue arrest warrants for minors.

<sup>3</sup> After the disappearance of a police officer, allegedly brought about by members of her own elite unit, the Police Reaction Group, the National Civil Police decided to “dissolve” the Group and merge the Specialized Reaction Forces and the Special Police Operations Unit into a new unit called Specialized Police Tactical Unit.

<sup>4</sup> On 28 September 2009, President Funes approved executive decree No. 60 authorizing the armed forces to support the National Civil Police in operations for the maintenance of internal peace for six months. It has since been renewed every year.

<sup>5</sup> See [www.laprensagrafica.com/elsalvador/Que-no-les-tiemble-la-mano-director-de-ANSP-a-policias-20170506-0052.html](http://www.laprensagrafica.com/elsalvador/Que-no-les-tiemble-la-mano-director-de-ANSP-a-policias-20170506-0052.html); [www.cristosal.org/spanishnews/2017/9/18/las-matemáticas-sobre-enfrentamientos-armados-que-le-cuestan-a-jaime-martnez](http://www.cristosal.org/spanishnews/2017/9/18/las-matemáticas-sobre-enfrentamientos-armados-que-le-cuestan-a-jaime-martnez).

<sup>6</sup> See <https://orbitatv.com/programas/la-entrevista-630am/cotto-quien-atente-la-policia-se-prepare-una-lluvia-fuego/>.

28. Officials pointed to the decline in homicide rates since 2015 as evidence that the measures are working. Official figures indicate that between 2016 and 2017, homicide rates in the prioritized municipalities declined by some 25 per cent, largely attributable to a drop in gang-related murders. The reasons for this apparent decline should, however, be further documented to identify the factors that have influenced it, in particular as it appears that a similar reduction in homicides has occurred in non-prioritized municipalities.

## 2. Special Law against Acts of Terrorism

29. In 2015, the Attorney-General announced the use of the Special Law against Acts of Terrorism to prosecute gang members, restore order and create social peace. In the Law, acts of terrorism are defined as evidence of intent to provoke states of alarm, fear or terror in the population, or place in imminent danger or affect the life or physical or mental integrity of people. The Supreme Court confirmed, in August 2015, that the Law and its application to gangs was constitutional. During the prison visits conducted by the Special Rapporteur, the vast majority of detainees claimed that they had been charged with membership of a terrorist organization, or illegal groups, along with a range of other crimes such as extortion or homicide.

30. In April 2016, the definition of a terrorist organization under the Law was broadened to include those declared as such by the competent authority of the country, those on the lists established by the United Nations and other international organizations of which El Salvador is a member and those established in bilateral agreements.

31. Between January and 27 October 2017, 3,413 people were charged with membership of a terrorist organization under the Law and placed in pretrial detention. In the first six months of 2017, 19 men were found guilty of membership of a terrorist organization (compared to 7 in 2016) and 3 were found guilty of membership of a terrorist organization with special aggravating circumstance (compared to 25 men and 8 women in 2016).<sup>7</sup> The disparity between the charges and sentences could indicate that the charges are used primarily for the purpose of (arbitrary) detention.

32. Expansive anti-terrorism laws pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights (see A/HRC/16/51, para. 26).

## 3. Code of Criminal Procedure

33. In 2013, a reform of the Code of Criminal Procedure was enacted, allowing Justices of the Peace to order, among other things, the definitive dismissal of charges against security personnel serving public security functions. In those cases, the superior officer of the individual involved must send a report to the Office of the Prosecutor or judge, detailing the circumstances under which the incident occurred. The judge's decision to dismiss is based on that report and other evidence provided. 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.

34. This legal reform has resulted in a substantial increase in the definitive or provisional dismissal of investigations against police officers. In 2013, according to civil society, prior to the reform, no cases were permanently dismissed and more than 60 per cent of those under investigation were detained. In contrast, since 2014, more than 50 per cent of the cases investigated by the Office of the Attorney-General have been permanently dismissed.

<sup>7</sup> In 2016 and the period from January to June 2017, 431 people were convicted for membership of "illegal groups" (of whom 29 were women); 5 for criminal activities related to weapons, artefacts or explosive substances and chemical agents; 3 for terrorist acts committed with weapons, artefacts, explosive substances and chemical or biological agents; 34 for the seizure, deviation or use of a ship; and 36 for membership of terrorist organizations with special aggravating circumstances. The General Directorate of Penal Centres registered 2,895 convictions for crimes related to illegal groups (7 per cent of the total number of convictions).

35. The reform further established that when security personnel, among others, affect legal rights in the fulfilment of their legal duty, their identity must be protected from the moment of arrest. The protection of identity is lifted only when the judge has issued the final judgment. While the reform seeks to ensure the protection of officers, in the light of the specific conditions of violence, it should not be an obstacle to State accountability for crimes committed by its agents.

#### **IV. State responsibility: arbitrary deprivation of life and impunity**

36. The Special Rapporteur found a pattern of behaviour among security personnel amounting to extrajudicial executions and excessive use of force, nurtured and aggravated by very weak institutional responses. Elements of the legal framework, such as the Special Law against Acts of Terrorism and its application to gangs, elements of the 2013 reform of the Code of Criminal Procedure and the 2016 extraordinary security measures have contributed to this. The failure of State institutions to undertake professional and effective investigations constitutes a separate violation of the right to life. Breaking the cycle of impunity is an absolute necessity. That will demand, among other things, firm and sustained political will; a greater level of investment in security personnel internal control mechanisms; independent monitoring; the strengthening of criminal investigatory techniques and know-how; strategic litigation; and cooperation with and support for human rights lawyers.

##### **A. Allegations of extrajudicial executions and/or excessive use of force**

37. The Special Rapporteur learned of a large number of alleged extrajudicial killings or deaths resulting from excessive use of force by security agents. While officials acknowledged that there might be some cases of extrajudicial killings, they insisted that they were isolated incidents. However, the Special Rapporteur finds that the above-mentioned pattern of behaviour by security personnel points to extrajudicial executions facilitated by inadequate investigations and judicial responses.

38. Official figures provided by the Ministry of Justice and Public Security indicate an alarming increase in the number of persons — alleged gang members — killed by security personnel, up from 103 in 2014 to 591 in 2016 with a further 119 wounded. Between January 2014 and June 2017, the mortality ratio between security agents and civilians rose significantly, from 15 to 112.5 civilians killed for every police officer killed. In 2017, during 536 so-called situations of assault with a firearm, 66 security personnel and 413 “criminals” were killed and 290 “criminals” detained.

39. Interviews conducted with survivors and witnesses of so-called armed confrontations pointed out similar, highly concerning, patterns across these “clashes”. In particular, alleged gang members were reportedly killed execution-style and the crime scene tampered with by those responsible or others, including by placing weapons and drugs alongside the dead bodies. A number of interviewees in different locations pointed to a pattern of army officers being replaced immediately after an incident by another team. With few exceptions, the testimonies suggested extrajudicial killings rather than excessive use of force. That pattern was confirmed by similar cases of extrajudicial executions investigated by the Office of the Human Rights Advocate, non-governmental organizations (NGOs) and journalists. They include the San Blas massacre of eight persons, including seven alleged gang members.

40. When interviewed, family members vehemently denied that their deceased relative had been a gang member. The Special Rapporteur was also informed of various allegations of torture preceding attempted executions, as reported by survivors themselves (all of whom bore physical evidence of their claims).

41. In addition, the Special Rapporteur received various allegations of the existence of “death squads” within the police and military, some of which have been confirmed by officials and corroborated by investigations. In August 2017, the Office of the Attorney-

General announced that it was opening investigations into three death squads involving police officers operating in the country — two in the eastern zone and one in the western zone.

42. According to official information, in the El Carmen (La Unión) case, a squad was identified, calling itself the “Extermination Group” and consisting of six persons accused of having perpetrated crimes of aggravated homicide, deprivation of liberty, illegal trafficking of persons and illicit groups. In the Lourdes (Colón) case, 5 police officers were identified among 22 members of the “Lourdes Hitmen” squad that committed 11 homicides between 2014 and 2015. The police officers were, inter alia, in charge of providing logistical means, including police uniforms, in addition to actively participating in illicit acts. In the Intipuca (La Unión) case (first phase), a squad consisting of 26 people was accused of, inter alia, aggravated homicide and 3 police officers and 11 armed forces personnel were detained.

43. The Special Rapporteur received information about a number of statements made by high-ranking officials regarding their human rights obligations 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 traumatized by decades of high levels of violence.

44. For example, the Speaker of the Legislative Assembly declared that the death penalty should be approved to deal with the problem of the gangs and insisted on this throughout the electoral campaign in early 2018.<sup>8</sup>

## **B. Impunity: weak or passive institutional responses**

45. To date none of the allegations have resulted in the conviction and sentencing of any police or military officer, making conviction rates for killings by security personnel even lower than the overall criminal conviction rate, which stands at less than 5 per cent. Few of these allegations have been fully and properly investigated.

46. The “impunity bottleneck” begins during the first 72 hours after the alleged execution or excessive use of force has taken place: since 2014, the Office of the Attorney-General has requested dismissal of the charges in more than 50 per cent of such cases. In 2017, the Justices of the Peace similarly dismissed charges in 52 per cent of cases (against none in 2013, when dismissal was not permitted).

47. When such cases do proceed to a more in-depth investigatory stage, the vast majority (93 per cent in 2017 according to NGOs) are dismissed and never reach the sentencing stage. In the very few cases reaching sentencing level, judges so far have never convicted security personnel. Astonishingly, this includes the San Blas case, in which the judge concluded that one extrajudicial killing had taken place (eight persons killed) but that no individual responsibility could be attributed.

48. The majority of the family members interviewed had filed formal complaints against security personnel. Most of these cases were dismissed at the first stage by the Justices of the Peace, prompting one of them to tell the Special Rapporteur: “My testimony was useless; the judge did not use it. The case was dismissed. There is no justice for us poor people.”

49. Internal disciplinary responses have also proven weak. According to official data, as of 31 December 2017, 238 police and 40 military personnel had been prosecuted. Of the police officers, 189 were permanently dismissed, 2 provisionally dismissed and 47 remain under investigation, with 4 detained. According to the Ministry of Defence, 12 soldiers and 2 sergeants have been sentenced for deprivation of freedom and breaking and entering (pending cassation) and 8 soldiers remain under investigation, pending judgment, for

<sup>8</sup> See [www.laprensagrafica.com/elsalvador/Gallegos-insiste-en-que-se-apruebe-pena-de-muerte-como-disuasivo-para-pandilleros-20171114-0022.html](http://www.laprensagrafica.com/elsalvador/Gallegos-insiste-en-que-se-apruebe-pena-de-muerte-como-disuasivo-para-pandilleros-20171114-0022.html). and [www.elsalvadortimes.com/articulo/politicos/guillermo-gallegos/20180121200322035203.html](http://www.elsalvadortimes.com/articulo/politicos/guillermo-gallegos/20180121200322035203.html).

deprivation of freedom and aggravated homicide. In 2017, the Office of the Human Rights Advocate received 78 complaints of human rights violations by the armed forces.

50. Between 2014 and 2016, 41 cases of police involvement in extermination groups or homicides were investigated. Of those cases, 24 have been dismissed, 10 are under investigation, 6 are under deliberation and possible action of the Inspector General and only 1 person has been sanctioned. In relative terms, 2.44 per cent of those implicated in such practices have reached a conviction and 58.54 per cent have been shelved because the investigation did not yield results.

### C. Prison conditions and deaths in custody

51. The Special Rapporteur thanks the Government for giving her full access to various detention facilities. In those subject to the extraordinary security measures — applied in penitentiaries with an initial critical overcrowding rate — she saw detainees, with no other belongings than their shorts, living in spaces so overcrowded that they could not sit or lie down, forcing them to take turns for sleeping. She met people who had not seen daylight for weeks and inmates who were so weak that they had to be carried in to speak with her.

52. According to official information, as of January 2018 the total prison population was 39,302 (of whom 3,721 were women), of whom 26,436 had been convicted (67 per cent) and 12,866 were pretrial detainees, resulting in an average overcrowding rate of 218 per cent, with figures reaching as high as 902 per cent in San Miguel prison. The most common crimes are homicide (30 per cent), extortion (17 per cent), robbery (9.5 per cent), drug-related crimes (8 per cent), unlawful groups (7 per cent) and rape (7 per cent).

53. The number of deaths in detention is alarming. While prisons not subject to the extraordinary security measures have averaged 39 deaths a year since 2015, those subject to the measures have reportedly seen a significant increase from 63 deaths in 2015 (41 according to the Office of the Human Rights Advocate) to 127 in 2017 (83 according to the Office of the Human Rights Advocate). Outbreaks of tuberculosis have caused a large number of the deaths in custody, all of which could have been prevented had the proper conditions prevailed.

54. The number of cases of tuberculosis increased from 724 in 2015 to 1,956 in 2017. According to the Ministry of Health, of the cases among detainees more than 95 per cent were bacterial pulmonary, meaning contagious and airborne. The Ministry of Justice has further indicated that of the total prison population around 5.45 per cent have been treated for tuberculosis. As of January 2018, 1,272 cases were registered in prisons under the extraordinary security measures, compared to 96 cases prior to their entry into force, an increase of 1,225 per cent that the Office of the Human Rights Advocate has called a “great health crisis”.

55. The Special Rapporteur interviewed a number of detainees who had been diagnosed with tuberculosis and observed with great concern their conditions of detention, including damp places with poor hygienic conditions. While the level of overcrowding is similar to that before the extraordinary security measures were introduced, the difference is that detainees are now locked up for 24 hours a day, causing conditions to deteriorate further, facilitating the spread of the virus and complicating medical follow-up, making the development of multidrug-resistant tuberculosis more likely.

56. The Special Rapporteur was informed of, saw and welcomed a number of steps being taken by the prison authorities to address tuberculosis, malnutrition and other communicable diseases, and takes note of the launch in April 2018 of the Penitentiary Human Rights Unit. It should be adequately resourced to be effective in its functions, inter alia to prevent deaths in custody.

57. On 31 January 2018, the Ministry of Justice also announced a number of provisional measures, of one month’s duration, aimed at improving conditions in facilities subject to extraordinary security measures, including providing inmates receiving treatment for tuberculosis with access to open air for one hour daily and all inmates access to the prison store and basic hygiene supplies. Duly accredited public and private defenders have also been

allowed to enter the prisons. The prohibition on intimate and family visits applied to members of the Mara Salvatrucha gang held in specific sectors remains in force.

58. While the Special Rapporteur was encouraged by these and other mitigating measures,<sup>9</sup> she urges that they be implemented in full compliance with international standards and unconditionally. Not allowing detainees access to natural light, open air, personal hygiene products, changes of clothing or sufficient water and food, barring communication with lawyers and family visits under any circumstances and the lack of cell space are examples of measures that must be lifted immediately.

59. Security concerns alone do not explain the conditions witnessed by the Special Rapporteur, leading to the conclusion that the extraordinary security measures have been implemented for the primary purpose of dehumanizing detainees. International human rights obligations, such as the prohibition of inhuman and degrading treatment and punishment, are not subject to pilot testing. The Special Rapporteur urges that alternative restrictions be explored and implemented in full compliance with international standards, in particular the minimum standards set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners. It is also of the utmost importance that access to those detention centers by international independent organizations, including the International Committee of the Red Cross and/or OHCHR, and national specialized organizations, is immediately granted.

60. The Special Rapporteur also visited a police station (*bartolina*). They are not designed to hold people for more than 72 hours, but end up holding persons awaiting trial and those remanded in custody. The vast majority of detainees have been held there for months, sometimes years, with several deaths in custody, in violation of articles 9 (3) and 14 (2) of the International Covenant on Civil and Political Rights. The cells are not equipped with furniture and those holding male detainees are alarmingly overcrowded, barely allowing the men to move and forcing them to sleep in shifts on concrete floors. Detainees rely on family members, acquaintances or other *inmates* for food. They also mentioned a lack of warm clothes, of access to health care and of personal hygiene materials, including soap.

61. As stated by the Constitutional Chamber of the Supreme Court of Justice, police stations should be used only temporarily to protect prisoners and not exceed the time limits. A minimum amount of cell space must be guaranteed at all times, including in the *bartolinas*, so that all detainees are able to move, are not forced to sit, crouch or remain standing and can rest, with mats or cots placed on the ground.

62. The State acquires a heightened level of responsibility when it deprives a person of their liberty and becomes the guarantor of their fundamental rights, including to life, health and humane treatment, and that has been recognized by the Supreme Court itself in a resolution of 7 July 2017. Lack of compliance with the duty to guarantee the health and welfare of inmates and “ensure that the manner and method of any deprivation of liberty does not exceed the unavoidable level of suffering inherent in incarceration ... may constitute a violation of the absolute prohibition against torture and cruel, inhumane, or degrading punishment or treatment”<sup>10</sup> (see also A/56/44, para. 95 (f)).

## V. Killings by non-State actors

### A. Gang killings

63. Part of the Special Rapporteur’s visit focused on killings by gangs or *maras*. Gangs, by virtue of their territorial control, are responsible for massive human rights violations, including a large proportion of the homicides in El Salvador. The Special Rapporteur found

<sup>9</sup> Including the opening of a tuberculosis treatment centre in Izalco prison, the Centro de Acopio Penitenciario and the Human Rights Penitentiary Unit and Prison Information Office.

<sup>10</sup> See Inter-American Court of Human Rights, *Vélez Loor v. Panama*, judgment of 23 November 2010, para. 198.

that most killings are not random criminal acts. They are organized and appear to be part of something close to a deliberate strategy, targeting security personnel and their families in order to terrorize them.

64. There are two main gangs operating in the country, with an unverified, estimated total of 60,000 members, mostly young men: the Mara Salvatrucha, comprising an estimated two thirds of gang members, and two factions of 18th Street (Barrio 18). A possible reorganization of the gang landscape appears to be under way with the emergence of splinter groups. Some sources suggest that the support base of the gangs includes some 500,000 people (almost 8 per cent of the total population). However, the Special Rapporteur was also told that anyone living in gang territory has little choice but to cooperate with them.

65. Interlocutors pointed to complex and multiple factors influencing the origins and development of the gangs, including the past internal armed conflict, immigration, family disintegration, natural disasters, economic policies and mass deportations from the United States of America in the late 1990s. They highlighted a number of gang characteristics as regards their organization and modus operandi:

(a) The exercise of territorial control, expressed through, inter alia, the use of checkpoints. Gangs reportedly maintain a presence in 247 out of 262 municipalities, sometimes in just a few blocks. The narrative regarding gang territories is reminiscent of that used for war-torn countries: people speak of borders, the unauthorized crossing of which may result in death, resulting in long detours they are forced to make to get to work or reach a certain place;

(b) The extraction of “revenue”, which is largely territorially based and consists of small-scale extortion of small businesses. Some pointed out that gangs do not have direct business control over parts of the drug trade, but drug traffickers sporadically employ them as “muscle” in some operations;

(c) The typical profile of a gang member is a young male, on average 25 years old, usually from a low-income family and recruited at around the age of 15;

(d) A number of interlocutors said that all political parties have, at one point or another, negotiated with gangs, if only to obtain authorization to run electoral rallies and gain votes. Some also indicated that both major political parties have allegedly paid gangs for votes. Those were consistent allegations, which the Special Rapporteur could not verify;

(e) The commission of a range of serious and pervasive violations within the territories they control and sometimes beyond:

- (i) Sexual violence and exploitation, including rape, of women and girls;
- (ii) Restrictions on freedom of movement and forced internal displacement;
- (iii) Forced recruitment of children, including through control over schools;
- (iv) Control over the public transport system, including its forced paralysis through threats and killings.

(f) Killings are an integral part of their exercise of control and power. They are in large majority part of a deliberate strategy targeting, inter alia, rival gang members, women and girls, individuals resisting extortion or complaining about them, and representatives of public services. That is evidenced by:

- (i) The large statistical disparity between the highs and lows in gang homicides, suggesting a high level of organized determination as to who should be killed, when and where;
- (ii) A spike in killings, and widespread targeting of specific individuals seen as representative of the State: police and military personnel, prison guards, public electricity company workers and personnel from the judicial branch and their families. Human rights organizations and public officials speak of a systematic strategy against agents of the State in response to, or as a precursor of, the Government’s war against

gangs. Official figures show a sharp increase from 13 killings of security personnel in 2013 to 60 in 2017;

(iii) The increase in the alleged number of armed confrontations between opposing gang members and security personnel. According to official data, the number of armed confrontations increased from 256 in 2014 to 407 in 2016.<sup>11</sup> While the official description of some of those clashes may be questioned, gangs themselves have reportedly claimed responsibility for the increase in armed confrontations.

There was no indication that gangs have an ideological basis or political programme.

66. No one suggested that the threshold of a non-international armed conflict or an insurgency had been crossed. The Special Rapporteur agrees with this view. However, she also points to troubling developments, such as the official discourse regarding gangs, the militarization of police functions, State reliance on counter-terrorism legislation and extensive imprisonment of gang members.

67. Whether or not gangs have displaced State control and governance, or merely filled a vacuum remains open to debate. What is in little doubt is the fear they generate among the population through widespread violence. The Office of the Human Rights Advocate has concluded that in view of their capacity for territorial control, gangs 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, health, personal integrity and security, property and freedom of movement, as well as a range of economic, social and cultural rights, including to work and education.

68. The Office of the Human Rights Advocate does not suggest that gang members should be tried for human rights violations. However, that is the logical conclusion of any assessment of the situation, even though such a step presents legal challenges. On the other hand, framing the crimes committed by gangs as human rights violations, while addressing the root causes of their existence, growth and influence, such as governance deficits, and economic and social disparities and the related marginalization of increasing sections of society, may provide alternative narratives to the situation that are less centred on security and help to secure long-term solutions.

## **B. Groups at risk**

### **1. Women and girls**

69. The 2012 Law on a life free from violence for women defines femicide as the extreme form of gender violence against women, a product of the violation of their human rights, in the public and private spheres, shaped by misogynistic conduct that leads to social impunity (article 9 (b)). It is one of the key pillars guiding public policy on the prevention of violence against women. The State has set up specialized courts for gender-based crimes in San Salvador with more to be set up in other departments during 2018. One weakness of the Law is that State response is triggered solely when femicides are committed by male partners, thus excluding many gang members.

70. The Special Rapporteur notes with concern that El Salvador continues to register alarmingly high numbers of femicides. According to the National Women's Institute, in 2017 a woman was killed every 18.7 hours. The departments with the highest rates of femicide are San Salvador, San Miguel, La Paz and Sonsonate. While the classification of murders as femicide increased in 2017, the numbers remain scattered and vary from one institution to another and, more importantly, seldom reach the sentencing stage.

71. Many killings constituting femicide are still registered only as homicide or "violent death of women". The lack of a unified systematization of data makes it difficult to grasp the magnitude of these killings. According to the National Women's Institute, between January

<sup>11</sup> Figures provided by the National Civil Police, the Ministry of National Defence and the Office of the Attorney-General.

2015 and June 2017 1,299 killings were registered as “violent deaths of women”, 846 of which were classified as femicide. The National Women’s Institute also indicated that in the same period, 1,626 investigations were opened into cases of homicide of women, of which 855 were registered as femicide. Of those cases, 177 resulted in conviction (59 for femicide) and 75 in acquittal (18 for femicide).

72. The Special Rapporteur also received troubling information about increased numbers of enforced disappearances of women (and men), which may be indicative of a higher than reported murder rate, as many disappearances culminate in killings. It is concerning that this number may be underreported owing to a lack of complaints lodged for fear of reprisals.

73. Women’s bodies are a territory for revenge and control. Not one person interviewed denied the harsh reality for women in gang-controlled areas. Gangs are male-dominated and girls and women are often forced into sex slavery. Women are also killed or otherwise punished by gangs for revenge. The Special Rapporteur heard testimony about a gruesome case involving the brutal rape of two women by several gang members for having family members in the armed forces.

## **2. Lesbian, gay, bisexual, transgender and intersex persons**

74. The Special Rapporteur received disturbing reports of discrimination and attacks on lesbian, gay, bisexual, transgender and intersex individuals committed by State and non-State actors. Between 2009 and 2016, the Office of the Human Rights Advocate documented 19 killings of lesbian, gay, bisexual, transgender and intersex individuals that it regards as hate crimes. In none of those cases was justice obtained, as the prosecutor was unable to identify the perpetrators. That number is believed to be only a small fraction of actual incidents, as many go unreported. According to civil society, between 1995 and 2016, more than 500 lesbian, gay, bisexual, transgender and intersex individuals were killed. However, there is no common registry for such cases.

75. The lack of trust in State institutions and the systematic abuse of and discrimination against lesbian, gay, bisexual, transgender and intersex individuals inhibits the victims’ search for justice and redress. The Special Rapporteur was shocked to learn of the sexual violence suffered by transgender and lesbian women allegedly to “cure them”. While the definition of hate crime was included in the Penal Code in 2015, no case has so far been catalogued as such and no conviction has been obtained under that provision.

76. Civil society reports indicate almost complete impunity for killings of lesbian, gay, bisexual, transgender and intersex persons. The endemic violence in the country and the territorial control of gangs over certain areas has also had a negative impact on them. In addition to unlawful killings, they have suffered a wide range of human rights violations, including forced displacement, threats and intimidation, sexual violence and torture. The Special Rapporteur was deeply disturbed to hear the story of a lesbian woman killed by a gang in 2017, allegedly on orders from members of her own family because they disapproved of her sexual orientation.

77. Transgender women encounter pervasive discrimination in Salvadoran society, with some public officials referring to them as boys or “men with a wig”. As one transgender woman told the Special Rapporteur: “We are rejected and thus even more targeted, even more discriminated against.”

78. Both State and non-State actors target transgender women. They are particularly exposed to police violence during the evening and night. The Special Rapporteur learned of several horrific attacks on transgender women by police and gang members. She received information about a transgender woman who was raped by two police officers in order to be released from detention. In February 2017, three transgender women were killed in La Paz. In November 2017, a transgender woman was badly beaten by a gang member for not paying an extortion fee and one transgender human rights defender had to flee the country following death threats.

79. The majority of transgender killings are hate crimes, usually preceded by death threats. They are also an illustration of the extreme kind of violence that is aimed at

individuals defying conventional gender roles. Of the 19 killings of lesbian, gay, bisexual, transgender and intersex individuals documented by the Office of the Human Rights Advocate, 16 were of transgender women. According to civil society organizations, an estimated 700 hate crimes involving transgender individuals have taken place over the last 10 years. They registered 32 killings of transgender women in 2016 and 14 in 2017.

80. The Special Rapporteur appreciates the launch by the Ministry of Justice and Public Security of its institutional policy for the lesbian, gay, bisexual, transgender and intersex population. That is an important step towards addressing the aforementioned violations. Other initiatives include the development of a new protocol for lesbian, gay, bisexual, transgender and intersex persons deprived of their liberty guaranteeing dignified conditions during imprisonment and a pilot violence prevention programme carried out in the municipality of Santiago Nonualco (La Paz).

### **3. Migrants and internally displaced persons**

81. Migration is part of everyday reality in El Salvador. A large number of Salvadorans leave the country to escape violence and insecurity.<sup>12</sup> While some do so under the auspices of the resettlement programme of the Office of the United Nations High Commissioner for Refugees, the vast majority are undocumented. Undocumented migrants suffer grave human rights violations during their journeys (usually to the United States), including killings, enforced disappearances, sexual violence and inhuman conditions in detention centres.

82. While such crimes take place outside the territory of El Salvador, the State retains a range of obligations to protect the rights of nationals who have emigrated. For instance, the Special Rapporteur received information about 195 Salvadoran migrants killed in San Fernando, Tamaulipas, Mexico, evidenced by the discovery of 47 clandestine graves in April 2011. Relatives of killed or disappeared migrants spoke of the lack of national support and advice.

83. In 2010, a forensic data bank of non-localized migrants was created in coordination with the Office for the Defence of Human Rights of the Ministry of Foreign Affairs, an Argentine forensic anthropology team and the Committee of Relatives of Migrants who have Died or Disappeared. It should allow for better tracing and matching of the remains of missing migrants and thus provide information to affected families and relatives about their loved ones whereabouts. It remains weak and in desperate need of capacity-strengthening and operational support as part of the Global Compact for Safe, Orderly and Regular Migration.

84. The planned termination of the United States “deferred action for childhood arrivals” and “temporary protected status” policies creates the risk of an unprecedented crisis for which El Salvador is not prepared. The Special Rapporteur calls on the Government of the United States to continue both policies for El Salvador.

85. The Bureau of Civil Society against Forced Displacement reported that, in 2016, 699 individuals were forcibly displaced due to violence. To date, the State has not recognized the problem. As noted by the Special Rapporteur on the human rights of internally displaced persons, El Salvador does not have a legal framework, policies or programmes for its displaced population (see A/HRC/38/39/Add.1, para. 31).

### **4. Human rights defenders**

86. The Special Rapporteur was informed that a number of those working towards the rehabilitation of gang-members had been harassed and threatened by security personnel, and their work hampered and stigmatized. She also received worrying information about threats to investigative media workers and journalists documenting alleged executions, as well as intimidation and criminalization of church leaders working in gang-controlled communities. The Special Rapporteur urges the Government to ensure their protection, including through

<sup>12</sup> At the end of 2016, there were 81,800 Salvadorian refugees and asylum seekers worldwide, 10 times the number in 2011.

appropriate legal frameworks. The scourge of violence that plagues Salvadoran society cannot be effectively addressed without cooperation from different actors seeking to curb the violence, provide alternatives to gang recruitment and address its root causes.

## VI. Absolute ban on abortion

87. El Salvador is one of very few countries in the world that still has an absolute ban on abortion. Women who experience obstetric emergencies, including life-threatening situations and miscarriages, may later be unjustly charged with having induced a termination of pregnancy. More than 20 women have been charged with aggravated homicide in this connection and sentenced to prison for up to 40 years. According to civil society data, as of October 2017 at least 159 women had been imprisoned under the Penal Code for abortion-related offences.

88. The Special Rapporteur was informed of some progress in some of the cases known as “Las 17”. For instance, the sentences of Teodora Vasquez and Maira Verónica Figueroa Marroquín were commuted in February and March 2018 respectively, ending their imprisonment. Nonetheless, the Special Rapporteur notes with concern that the charges against them have not been dismissed and there has been no provision for full access to justice, redress or compensation. She calls for the rapid and careful review of the convictions to ensure the release of the women and a review of the existing legislation criminalizing abortion.

89. The United Nations human rights mechanisms and the Inter-American organizations have systematically called for the decriminalization of abortion to safeguard women’s rights to life, health, autonomy and well-being. In February 2017, the Committee on the Elimination of Discrimination against Women expressed concern about the absolute criminalization of abortion and about women resorting to unsafe methods of abortion, and called for a review of the law and a moratorium on its application (see CEDAW/C/SLV/CO/8-9, para. 36).

90. The Special Rapporteur recalls that the death of a woman, where it can be medically linked to a deliberate denial of access to life-saving medical care because of an absolute legal ban on abortion, would not only constitute a violation of the right to life and an arbitrary deprivation of life, but would also amount to gender-based arbitrary killing at the hands of the State, only suffered by women, as a result of discrimination enshrined in law.

91. There is no unified or up-to-date information on how many women have undergone unsafe abortions or how many of these have resulted in the arbitrary deprivation of a woman’s life because of complications. Reportedly, between 2011 and 2015, 14 women died from abortion-related complications, 13 due to ectopic pregnancies and 36 because of complications during pregnancy. While the maternal mortality rate has dropped significantly in recent years, there is a high suicide rate among pregnant women. According to civil society, in 2016, 57 per cent (69 out of 121) of women who committed suicide were pregnant.

92. The Special Rapporteur condemns the failure of the Legislative Assembly in April 2018 to vote on two proposed bills seeking to amend article 133 of the Penal Code that would have allowed access to safe and legal abortion services when pregnancy poses a risk to the health or life of the woman and in cases of rape and fatal fetal impairment. She notes that human rights standards require the decriminalization and legalization of abortion, at a minimum in cases of threat to the life or health of the woman, rape, incest and fetal impairment, and urges lawmakers in El Salvador to move expeditiously towards such standards.

93. The Special Rapporteur also notes with regret that the stance of the Office of the Human Rights Advocate on the issues of abortion and the sexual, health and reproductive rights of women and girls more generally contravenes international human rights law and standards, as well as treaty obligations undertaken by El Salvador that fall under its purview.

## VII. Transitional justice and indigenous peoples

94. The Truth Commission, backed by the United Nations, that was established as part of the peace agreements, documented over 22,000 claims involving killing, torture and enforced disappearances during the armed conflict that took place between 1979 and 1992. It recommended that investigations be carried out and that those responsible for human rights violations be brought to justice. With the passing of a general amnesty law, the victims of the violence were made to wait for a quarter of a century for justice. In meetings with representatives of indigenous peoples, the Special Rapporteur also learned about the 1932 massacre of approximately 30,000 indigenous people and other more recent alleged killings, disappearances and internal displacement.

95. The Special Rapporteur welcomes the initial steps taken recently to move forward in the search for justice for such massive past violations. In her view, such a process not only contributes to repairing wounds from the past but may also help set the conditions for combating current impunity, as patterns often repeat themselves.

96. The repeal of the general amnesty law by the Constitutional Chamber of the Supreme Court in July 2016 sparked a new momentum for the drive towards justice. Since then, only 3 criminal cases — of the over 100 criminal complaints filed by victims over the years — have been reopened, and one local judge has reopened investigations into the actions of the armed forces in the 1981 El Mozote massacre. The Special Rapporteur calls for those timid steps to inspire a broader movement towards addressing the crimes of the past, thus paving the way for a healing process.

97. According to information received, the Attorney-General has appointed a small team of prosecutors to conduct investigations into conflict-related human rights violations. With technical assistance from OHCHR, the Government and the international community should continue to provide support to the litigators and human rights defenders representing the victims.

98. The executive has also taken steps to support the healing process of its brutal past, the latest of which included the establishment, by presidential decree No. 33, of the National Commission for the Search for Disappeared Adults in September 2017. The Commission complements the National Commission for the Search for Disappeared Children. These are commendable efforts, which must be strengthened and made into State policies.

## VIII. Conclusions and recommendations

### A. Conclusions

99. **The security challenges facing El Salvador are both complex and long-standing, including one of the highest murder rates in the world and pervasive violence, largely carried out by gangs exercising territorial control. El Salvador continues to suffer alarmingly high levels of killings of women and lesbian, gay, bisexual, transgender and intersex persons, in particular transgender women. Large numbers of people have fled the country because of the violence, with many killed, disappeared or sexually abused on their journeys, or detained under inhuman conditions in neighbouring or destination countries.**

100. **No matter how complex the context, the response of the Government to endemic violence should not further it. The surge in killings by security personnel, pointing to excessive use of force and extrajudicial executions, the massive imprisonment of alleged gang members, the normalization of emergency decrees, the imposition of the extraordinary security measures and the application of terrorism laws to gang activities are unlikely to address the root causes of violence and gang existence, or respond to the evident need for accountability.**

101. For more than a decade, a series of “iron fist” strategies have failed to deliver security and justice. It is more than time for the Government to consider and implement other options, focusing on prevention, reintegration and rehabilitation. Welcoming and courageous steps have been taken in this direction, including Plan El Salvador Seguro, Yo Cambio and Jovenes Con Todo. These must now be fully resourced and implemented, as should the ambitious legal framework for the investigation and prevention of gender-based killings, including hate crimes and femicide, and the newly adopted policy on lesbian, gay, bisexual, transgender and intersex persons.

102. Since the 1990s, El Salvador has criminalized abortion under all circumstances. The absolute ban violates international human rights law and results in the arbitrary deprivation of the lives of women and girls, involving State responsibility. The decriminalization of abortion to safeguard women’s rights to life, health, autonomy and well-being must be prioritized.

## **B. Recommendations**

103. The Special Rapporteur makes the following recommendations to the Government on the legal framework and policies:

(a) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Amend the Penal Code and define extrajudicial killings as a specific crime in line with international law and standards;

(c) Prioritize violence-prevention strategies and allocate sufficient public resources, particularly for prevention programmes targeting youth;

(d) Develop policies and frameworks to guide the reintegration of former gang members;

(e) Develop a comprehensive protection mechanism for victims of violence, including the displaced and deportees;

(f) Address legal gaps regarding femicide committed by gang members and non-male partners;

(g) Recognize the situation of internally displaced persons.

104. The Special Rapporteur makes the following recommendations to the Government on arbitrary killings by security personnel:

(a) Enhance the role, functionality and effectiveness of the Internal Affairs Unit of the National Civil Police for conducting independent, impartial, evidence-based and timely investigations into all alleged cases of extrajudicial killings committed by police officers, in good coordination with the Office of the Attorney-General;

(b) Review, and possibly modify, existing policies so that extrajudicial killings can be effectively investigated in full conformity with the Minnesota Protocol on the Investigation of Potentially Unlawful Death;

(c) Gradually reduce the involvement of the armed forces in public security tasks, aiming at their complete withdrawal;

(d) Strengthen investigative capabilities into extrajudicial killings, enforced disappearances and torture through more resources and international cooperation, and design and implement protocols to guide criminal investigations;

- (e) Identify the causes of the high level of dismissal of cases, with a focus on the first 72 hours, evaluate the role of the Justices of the Peace and the limits of preliminary investigation, and identify effective remedial responses to ensure allegations are properly, independently and professionally investigated by police officers;
- (f) Strengthen the effective planning of security operations to minimize the use of lethal force and ensure all investigations into its use include decisions and planning at the early stages;
- (g) Consider embedding independent human rights advisers in security units and municipalities where the lethal use of force is particularly high;
- (h) Equip security patrols, units and individual officers with GPS, body-worn cameras and video recording, beginning with those with particularly high lethal use of force rates;
- (i) Strengthen research into the systemic character of police abuse;
- (j) Strengthen external controls, including through coordination between the Office of the Attorney General, the Procurator's Office, the National Human Rights Institute and civil society;
- (k) Prioritize resources for the Forensic Institute to strengthen its technical capacity and coordination with the Office of the Attorney-General, improve its facilities, infrastructure and mobility;
- (l) Strengthen internal controls within the national police.

105. The Special Rapporteur makes the following recommendations to the Government on transitional justice:

Ensure public access to the files in the possession of the armed forces containing information about enforced disappearances, extrajudicial executions, massacres and acts of torture committed during the armed conflict.

106. The Special Rapporteur makes the following recommendations to the Government on gang crime:

- (a) Prioritize investigations into the most serious crimes, above all murder, rape and forced displacement, placing victims at the centre of the process;
- (b) Consider developing legal and policy frameworks and establishing human rights investigation teams who will focus on the worst cases and investigate violations of human rights committed both individually and collectively by gang members;
- (c) Ensure that victims of crimes and violations by gangs have access to remedies and reparations;
- (d) Expand the witness protection programme for victims of gang violence;
- (e) Develop gender-specific strategies to protect adults, adolescents and children, including displaced persons and deportees, from violence and recruitment into criminal gangs.

107. The Special Rapporteur makes the following recommendations to the Government on prisons:

- (a) Evaluate the legality under international human rights law of the measures deemed necessary and appropriate to counter security risks and discuss the evaluation with international and national human rights organizations. Repeal immediately the extraordinary security measures that cannot be justified based on an objective interpretation of the security risks;
- (b) Conduct an individualized evaluation to determine the necessity of placing a person under the extraordinary measures (or any legal regime that restricts human

rights). The authorities must periodically review *ex officio* if the necessity persists and any decision should be subject to judicial review;

(c) Grant immediate and unhindered access to all prisons to international independent organizations, including ICRC and OHCHR, and national specialized organizations;

(d) Ensure that pretrial and provisional detention is the exception, not the norm. Judges must urgently update the cases in which, according to law, detainees should no longer be deprived of their liberty;

(e) Ensure that prisons and *bartolinas* have the necessary funds to provide sufficient food and water to detainees;

(f) The Office of the Attorney-General should only order administrative detention after a careful analysis regarding compliance with legal requirements and in an exceptional manner;

(g) Develop and implement as soon as possible policies and strategies for the decongestion of prison facilities, including by identifying and piloting alternatives to prison sentences and non-custodial measures (for example, electronic bracelets).

108. The Special Rapporteur makes the following recommendations to the Government on women:

(a) Urge the Office of the Human Rights Advocate to reconsider its position on the issue of abortion to support the promotion of women's sexual and reproductive health rights;

(b) Establish a moratorium on the application of article 133 of the Penal Code and urgently set up a mechanism to review all cases where women have been imprisoned for obstetric emergencies or abortion-related offences, with the aim of releasing them without delay;

(c) Provide specialized gender-sensitive training to police officials, forensic experts and members of the judiciary and seek assistance from the specialized bodies;

(d) Improve technical expertise to help implement the Latin American Model Protocol for Investigations of gender-related killings of women (femicide) in a practical and consistent manner at all levels (police, prosecutor's office and forensics), including at the departmental and municipal levels;

(e) Ensure that killings of women are by default classified as femicide by the appropriate authorities;

(f) Design and implement a national strategy for preventing, combating and punishing femicide and sexual violence based on the proposals that specialized institutions have created on the topic, including protocols on survivors of sexual violence;

(g) Ensure the effective application of the normative framework for substantive equality;<sup>13</sup>

(h) Ensure access to comprehensive reproductive health services, including legal abortion in cases where it is necessary to save the life and protect the health of the woman, and approve reform of article 133 of the Penal Code.

109. The Special Rapporteur makes the following recommendations to the Government on lesbian, gay, bisexual, transgender and intersex persons:

(a) Enhance engagement with the lesbian, gay, bisexual, transgender and intersex community to create a viable protection process and mechanisms recognizing the heightened risk facing some individuals, particularly transgender women;

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<sup>13</sup> A comprehensive special law for a life free of violence for women and a law on equality, equity and the eradication of discrimination against women.

(b) Fully resource and implement all recently approved laws and policies for the attention of the lesbian, gay, bisexual, transgender and intersex population, evaluate them regularly and revise them accordingly, in collaboration with those communities;

(c) Approve the draft law on gender identity to allow transsexual individuals to have identity documents in accordance with their identity and gender expression;

(d) Publicly condemn State authorities and public personalities that have contributed to the justification of hate.

110. The Special Rapporteur makes the following recommendations to the Government on migrants and internally displaced persons:

(a) Design a comprehensive programme to aid and protect displaced persons, deportees and returnees;

(b) Develop a legal framework to aid and protect victims of internal displacement, inclusive of registration and monitoring mechanisms;

(c) Establish a genetic database that complies with international standards and best practices to search for disappeared persons;

(d) Establish specialized units of the Office of the Attorney-General and the National Civil Police in order to coordinate the search for disappeared persons.

111. The Special Rapporteur makes the following recommendations to the Government on human rights defenders:

(a) Provide protection to human rights defenders, including through appropriate legal frameworks and adequate public policies;

(b) Ensure that individuals and groups involved in the reintegration and rehabilitation of gang members are not subject to criminal pursuit and are able to work without fear and stigmatization.

112. The Special Rapporteur makes the following recommendations to the Government on trauma:

Establish or support the establishment of community-based centres for victims of torture, trauma and violence.

113. The Special Rapporteur makes the following recommendations to the international community:

(a) Support the implementation of the above recommendations, strategically or financially;

(b) Support the development of a legal and policy framework guiding the interventions of United Nations and other actors in situations of unconventional violence.