

**Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

EL SALVADOR

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

El Salvador ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1983. El Salvador signed the *1954 Convention relating to the Status of Stateless Persons (1954 Convention)* in 1954 but did not ratify it yet, nor has accessed the *1961 Convention on the Reduction of Statelessness (1961 Convention)*.

The refugee definition of the *1951 Convention* and the extended refugee definition of the *Cartagena Declaration* of 1984 are included in Article 4 of the *Law on the Determination of the Status of Refugees (Regulation n°918 of 2002)*.

The national Refugee Status Determination (RSD) procedure is implemented by an inter-ministerial commission, the Commission for the Determination of Refugee Status (CDRS), integrated by the Ministries of Interior and of Foreign Relations. The Secretariat of the CDRS is handled by the Judicial Unit of the Ministry of Foreign Relations. The CDRS is supported by an Eligibility Sub-Commission, composed by the same number of officials from each ministry, which oversees the processing of asylum applications.

El Salvador is a country of origin of economic migrants as well as refugees and asylum-seekers. El Salvador hosts a total of 38 refugees, most of whom are Nicaraguans and Hondurans. 15 persons applied for asylum in 2011 and 4 asylum claims were lodged in 2012. During this period, 26 cases had to be closed, as the asylum-seekers had left the country before the asylum process concluded. As country of origin, at the end of 2012 there were 8,153 Salvadorians recognized as refugees around the world and 1,612 pending decision on their asylum claims¹. Besides, the number of Salvadorian citizens deported back from Mexico and the United States continues to be high: over 90,000 Salvadorian persons were deported between 2009 and 2011². Of particular concern is the considerable number of children, among the deportees.

¹ <http://popstats.unhcr.org/>

² Data retrieved from the following sources: United States Department of Homeland Security, *2011 Yearbook of Immigration Statistics*, pp. 103-107; Instituto Nacional de Migración de México, *Estadística Migratoria: Síntesis 2010*, p. 30; Instituto Nacional de Migración de México, *Estadística Migratoria: Síntesis 2012*, p. 32.

El Salvador is highly committed to migration and displacement issues. It is the only country in Central America that with a department attending to the situation of Salvadorians abroad³. This department is also responsible of human rights and refugees issues within the Ministry of Foreign Affairs and therefore, is one of the main UNHCR government counterparts. However, given the small number of asylum-seekers and refugees and the pressing nature of other national political priorities (such as combating poverty, unemployment, insecurity, growing gang and transnational organized crime violence, corruption, etc.), asylum does not seem to be a key priority for the Government of El Salvador. Nevertheless, there is a need to develop migration and detention standards that comply with basic international human rights standards.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

A. Refugees' individual documentation

El Salvador started issuing individual documents since July 2012 and individual travel documents since March 2013. The type of individual document issued is welcomed and considered a good example, as it is the same document issued to all foreigners who are permanent residents in El Salvador. It does not bear any mention of the refugee status of its holder, thus reducing the risk of discrimination.

Besides, in 2013 the Government began issuing Machine Readable Convention Travel Documents (MRCTDs) in compliance with UNHCR Guidelines as well as ICAO standards and specifications. El Salvador is currently the only country in the region that issues MRTDs. In addition, just as the refugees' individual documents, the MRCTDs do not bear any mention to the refugee status of their holder.

UNHCR welcomes the issuance of MRCTDs and encourages the Government to inform recognized refugees of their right to obtain such documents.

B. Training of Authorities in Addressing Migration Issues

The Government has taken steps to provide training in the field of migration on issues related to refugees, victims of trafficking and stateless persons to national police, migration officers and other authorities.

UNHCR welcomes the interest, collaboration and participation of relevant authorities in capacity-building initiatives. For instance, between 2012 and 2013 UNHCR's implementing partner (IP) in El Salvador provided more than 10 capacity-building sessions to several state authorities, including the national civil police, the Salvadoran Institute for Childhood and Youth, the National Commission for the Determination of Refugee Status, the General Directorate on Migration, the Ombudsperson's Office and local authorities in border areas. UNHCR encourages the Government to continue using UNHCR's IP's (as well as UNHCR's) expertise for relevant capacity-building initiatives.

³ Vice Ministry of Salvadorians abroad, see <http://www.rree.gob.sv/index.php/temas/viceministerio-para-los-salvadorenos-en-el-exterior>

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: National Refugee Law and Refugee Status Determination Procedure

In 2012, the Government of El Salvador showed its political commitment to improve the national asylum system by requesting UNHCR to provide comments on its *Law on the Determination of the Status of Refugees* of 2002 and its *2005 Regulation*. One of the provisions that were highlighted as problematic was Article 32 of the Law, conferring responsibility for assisting asylum-seekers to civil society organizations in cooperation with UNHCR, rather than to the State itself. More specifically, according to Article 37 of the *2005 Regulation*, the State would only be responsible for providing health and education services to persons applying for refugee status.

The RSD procedure in El Salvador also presents various shortcomings. According to Article 6 of the Law, the RSD Commission is composed of the incumbent Ministers of Foreign Affairs and Interior. In practice, this commission never meets, and the entity that oversees *de facto* the processing of asylum applications is the Eligibility Sub-Commission. The decision adopted by the Sub-Commission is then transmitted to the two Ministries for their final endorsement. In practice, this process has taken up to 8 months, leaving asylum-seekers in a protection limbo for a considerable amount of time. Additionally, appeal is not foreseen in the ordinary process. In case of a negative decision, Article 29 of the Law (and articles 32 and 33 of the *Regulation*) provide for a revision by the same Commission (same level).

Recommendation:

UNHCR encourages the Government of El Salvador to:

- Reform the *Law on the Determination of the Status of Refugees* and its Regulation, taking into consideration UNHCR's suggestions, among other things by conferring responsibility for assistance to refugees to the State, by reviewing the RSD procedure in order to reduce the waiting time before the issuance of the first instance decision and by ensuring an appeal procedure at a higher level

Issue 2: Legal Framework for Migration

The current national legal framework on migration dates back to 1958 and is no longer duly harmonized with international standards including the *1951 Convention*. Since January 6th, 2013, the new Migration Law draft is being examined by the Presidential House ("*Casa Presidencial*"). Following a request on the part of the Government of El Salvador, in 2011 UNHCR provided comments on the current migration law suggesting among others the need to include the principle of *non-refoulement* and to avoid penalizing illegal entry or the requirement to appeal to their consular representation for persons in need of international protection. The Working Group on Arbitrary Detention also recommended that the 1958 Law be updated.⁴

Recommendation:

UNHCR recommends the Government of El Salvador to:

⁴ Human Rights Council, twenty-second session, Report of the Working Group on Arbitrary Detention, Para. 132. (e), available at : <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/101/63/PDF/G1310163.pdf?OpenElement>

- Promote the adoption of the new national migration legislation with a view to guaranteeing the full enjoyment of human rights for all persons of concern to UNHCR and taking into account key protection principles included in UNHCR’s comments on the draft law.

Issue 3: Complementary Forms of Protection

In El Salvador, there are no protection mechanisms for people that do not qualify as refugees under the *Law on the Determination of the Status of Refugees*, but who still require international protection. Due to the lack of a complementary protection mechanism, people in need of international protection who did not qualify as refugees tried to obtain protection by applying for asylum. While very few of these persons were granted refugee status, most saw their applications denied and had no access to the international protection they needed.

Recommendation:

UNHCR encourages the Government of El Salvador to:

- Introduce complementary forms of protection, such as humanitarian visas and specific visas for victims of human trafficking, in its legislation concerning international protection.

Issue 4: Protection of Persons in Mixed Migratory Flows

UNHCR and its implementing partner are pursuing efforts to ensure that national police and migration officers in the field, particularly at airport, land, and sea border points, as well as unauthorized border crossings, are informed, trained, and sensitive to the situation of migrants, including persons in need of international protection. However, more efforts are required to strengthen the identification of persons in need of international protection, so that the Government does not inadvertently violate the *non-refoulement* principle, due to the limited awareness of immigration, customs or police personnel who come into contact with undocumented persons on the territory of El Salvador. In the context of the mixed migratory flows arriving to El Salvador, it is crucial for the Government to establish proper identification and referral mechanisms to be able to respond to the specific needs of all categories of persons in need of international protection.

Recommendations:

UNHCR recommends the Government of El Salvador to:

- Strengthen its efforts to manage mixed migratory flows in a protection-sensitive manner, among others by providing specialized training to border officials on international protection principles and on groups with specific protection needs, including unaccompanied or separated minors, victims of trafficking and LGBTI persons;
- Establish appropriate mechanisms aimed at early identification, referral, assistance and support for persons in need of international protection;
- Incorporate the Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations⁵ in its national practice; and

⁵ Lineamientos regionales para la identificación preliminar de perfiles y mecanismos de referencia de poblaciones migrantes en condición de vulnerabilidad, available at <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2014/9472>

- Facilitate access to reception arrangements to migrant population in vulnerable situation, including asylum-seekers, providing them the assistance and the protection necessary to attend their needs.

Issue 5: Human Trafficking

In spite of the various efforts to strengthen the framework for the prevention and persecution of human trafficking that have been developed in El Salvador in the last few years, the current framework does not effectively protect victims of trafficking, especially victims of international trafficking, who can be at risk in case of deportation. There is only one reception center for minor women victims of trafficking in the country, while adult women, minor boys and men victims of trafficking cannot be accommodated in any reception center, or with any protection mechanism that could allow them to obtain a special visa for victims of international trafficking.

A new Law against Trafficking is currently discussed in the Parliament. Upon request by the Government of El Salvador, UNHCR provided comments to the draft law on issues related to international protection.

Recommendations:

UNHCR encourages the Government of El Salvador to:

- Adopt the new legislation against trafficking, taking into consideration comments to the draft law provided by UNHCR;
- Elaborate an action plan against trafficking that addresses not only its prevention and persecution, but also the creation of mechanisms for the protection of and assistance to victims of such practice;
- Provide trainings and raise awareness among border agents on the need to guarantee effective access to the asylum system for victims of trafficking with international protection needs; and
- Create additional reception centers for minor victims of trafficking, providing them the assistance and the protection necessary to attend their needs.

Issue 6: Integration of refugees and self-reliance

Refugees in El Salvador can obtain temporary residence, permanent residence and the Salvadoran nationality in accordance to the Constitution. Nevertheless, the high costs of these procedures have become an obstacle for refugees to renew their identification documents or to apply for naturalization. Besides, even if the Law on the Determination of the Status of Refugees foresees that a refugee can become a Salvadorian national, the naturalization process for refugees has not been formally regulated by law, making it a process dependent of the will of the executive director in office.

Refugees in El Salvador have access to education, however refugees who had lost their educational certificates or who do not have the international “apostille” face problems both to continue education and/or to get their qualifications recognized. In few cases, this has limited their capacity to find a job. El Salvador has very limited and usually short-term and precarious employment options, which relegate these persons into poor economic conditions, and there is no specific mechanism available for them in order to gain access to the labor market once they are granted refugee status. Besides, asylum-seekers do not have the right to work.

Recommendations:

UNHCR encourages the Government of El Salvador to:

- Amend the Migration Law establishing a partial or total exemption for recognized refugees in a vulnerable situation from the cost of obtaining temporary residence and permanent residence or Salvadoran nationality;
- Create a special procedure for the recognition of education certifications and validation of refugee qualifications;
- Improve local integration of recognized refugees by including them in public policies, livelihoods and self-reliance programs available, including access to decent work; and
- Amend the current legislation allowing for the provision of work permit to asylum-seekers.

Issue 7: Child Protection

In the last months, there has been an increase in the number of families with children who seek asylum in El Salvador. Moreover, There is a flow of separated or non-accompanied children who are deported back from Mexico, the United States or Canada without their protection needs having been evaluated. Notwithstanding the strong commitment on the part of the Salvadoran authorities to provide protection to children, including asylum-seeking and refugee children, there is a need for formal procedures for the treatment of cases involving foreign children with specific needs in the country, as well as Salvadoran underage nationals deported back from North America. In connection with the situation children affected by migration, the Committee on the Rights of the Child (CRC) recommended that El Salvador: *“Pay special attention to the situation of migrant children, particularly those unaccompanied and in irregular and/or undocumented situations [...] Intensify its efforts to prevent irregular migration, including by raising awareness about the risks involved, and promoting adequate conditions for the resettlement and reintegration of these children and their families upon their return.”*⁶ The CRC further recommended this country *“Ensure that the principle of best interests of the child does not remain on paper but is taken into account in practice in children’s policies and programmes”*.⁷ UNHCR remains at the disposal of the Government of El Salvador to continue providing support for relevant capacity-building initiatives.

Recommendations:

UNHCR encourages the Government of El Salvador to:

- Formalize its internal mechanisms and adopt formal child protection procedures, including for best interest determination; and
- Adopt measures to ensure that the determination of the “best interests of the child” is a primary consideration in all decisions throughout the immigration and refugee processes that affect children.

⁶ Committee on the Right of the Child, Fifty-third session, 11-29 January 2010 Concluding observation: El Salvador, paragraph 73 (a)-(c), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSLV%2fCO%2f3-4&Lang=en

⁷ Ibid. Paragraph 30.(a)

Issue 8: Prevention and Reduction of Statelessness

El Salvador signed the *1954 Convention relating to the Status of Stateless Persons (1954 Convention)* in 1954 but did not ratify it yet, nor has acceded to the *1961 Convention on the Reduction of Statelessness (1961 Convention)*. However, the Government of El Salvador has shown the political will to do so and to facilitate, through the Ombudsperson's Office, the inclusion of civil society organizations in consultations carried out on the topic. Accession to the Conventions has been delayed due to an alleged conflict of norms between Article 94 of the Constitution of El Salvador⁸ and Article 4 of the *1961 Convention* (as the two provisions set different time frames for loss of nationality acquired through naturalization).

In 2012 and 2013, El Salvador held several inter-governmental consultation meetings to analyze the compatibility of the provisions of the two Conventions with the Constitution of El Salvador and consider the potential accession to the two instruments. Upon request from the Government of El Salvador, UNHCR also provided a legal opinion on the compatibility matter.

Furthermore, in November 2013 UNHCR facilitated a workshop on the Statelessness Conventions organized by the Ministry of Foreign Affairs of El Salvador. The workshop analyzed the content and scope of both Conventions, following the event, the Government representatives who attended the workshop confirmed their commitment to promote adherence to the two Conventions. According to the information provided, the proposal to ratify the *1954 Convention* is currently under analysis by the Presidency; whereas the accession to the *1961 Convention* is still under review by the legal departments.

Recommendations:

UNHCR encourages the Government of El Salvador to:

- Ratify the *1954 Convention* and accede to the *1961 Convention*, thereby joining the several states in the region that are already party to both Statelessness Conventions;
- Adopt and implement, upon accession or ratification, a statelessness determination procedure to ensure the protection of stateless persons in El Salvador; and
- Implement legislation that codifies the protections guaranteed in the two Conventions in national legislation.

**Human Rights Liaison Unit
Division of International Protection
March 2014**

⁸ Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/constitucion-de-la-republica> (only in Spanish).

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

EL SALVADOR

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to El Salvador.

I. Treaty Bodies

Human Rights Committee

CCPR/C/SLV/CO/6, 100th Session

18 November 2010

9. The Committee expresses its concern about the situation of women in the State party, the persistence of stereotypes and prejudices regarding the role of women in society, reports that the number of murders of women has remained constant or even increased during the reporting period, impunity for these murders, the lack of disaggregated statistical data on crimes against the lives and integrity of women, the high rates of domestic violence in the State party, inadequate coordination among State bodies involved in preventing and punishing domestic violence, and the still sparse representation of women in public or elected office (articles 3, 6, 7 and 25 of the Covenant).

The State party should design and implement programmes aimed at eliminating gender stereotypes in society. It should implement the right of women victims of violence to justice and reparation, including fair and adequate compensation. The State should also use all the means at its disposal to investigate acts of violence against women, especially murders of women, identifying those responsible, prosecuting them and imposing appropriate penalties, and establishing a statistical system that can provide disaggregated data on gender violence. The State should also improve coordination among the bodies responsible for preventing and punishing domestic violence, in order to make them more effective. The State party should also ensure that those responsible for domestic violence are identified, prosecuted and duly punished, and should adopt special measures to further increase the participation of women in public or elected office.

11. The Committee expresses concern about the situation of women and girls performing domestic work in the State party, which primarily concerns rural and indigenous women and girls and those in vulnerable situations. The Committee is concerned that domestic workers are subjected to particularly harsh working conditions, excessive working hours and unpaid or poorly paid work (articles 3 and 26 of the Covenant).

The State party should adopt effective measures to remedy the discriminatory treatment of women domestic workers, and ensure that there is no discrimination in their working conditions.

13. The Committee is concerned about the situation with regard to trafficking in persons, which affects mainly women, the fact that there have been investigations, prosecutions and convictions in only a very

small proportion of cases, and the fact that there are only a limited number of shelters for trafficking victims (articles 3, 7 and 8 of the Covenant).

The State party should effectively investigate trafficking in persons, identify and prosecute those responsible and apply penalties commensurate with the seriousness of the offence. It should also ensure the protection of the rights of victims of trafficking, including by providing an adequate number of shelters for them. The State party should also compile reliable statistics in order to combat the problem effectively.

17. The Committee is concerned at the situation of foreigners facing deportation and expulsion proceedings in the State party, particularly with regard to an effective right to be heard, to have an adequate defence and to have their case reviewed by a competent authority (article 13 of the Covenant).

The State party should ensure that persons subject to deportation proceedings benefit from an effective right to be heard, to have an adequate defence and to request that their case be reviewed by a competent authority.

Committee on the Elimination of Racial Discrimination

CERD/C/SLV/CO/14-15, 77th Session

14 September 2010

B. Positive aspects

4. The Committee also notes with satisfaction the agreement signed by four State institutions [“Secretaría de Inclusión Social”; “Registro Nacional de las Personas Naturales” (RNPN); “la Corporación de Municipios de la República de El Salvador” (COMURES); “la Procuraduría General de la República” (PGR)] on 28 July 2010 which allows all indigenous persons victims of past persecution to recover their indigenous names and for children to be given indigenous names in the future. It also welcomes the creation of the Pilot Project for an Indigenous Peoples’ Birth and Identity Papers Register (“Registro de Partidas de Nacimiento e Identificación Civil de los Pueblos Indígenas”) in six municipalities.

C. Concerns and recommendations

13. The Committee is concerned that the State party’s domestic legislation continues to omit a definition of racial discrimination conforming to all the elements set out in article 1 of the Convention.

The Committee reiterates its recommendation contained in paragraph 8 of its previous concluding observations (CERD/C/SLV/CO/13) that the State party should incorporate in its domestic legislation a definition of racial discrimination which includes all elements set out in article 1 of the Convention. It also requests the State party to provide information on affirmative action in the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination.

Committee on the Rights of the Child

CRC/C/SLV/CO/3-4, 53rd Session

17 February 2010

The Committee’s previous recommendations

7. The Committee notes that several concerns and recommendations made in 2004 and 2006 upon the consideration of, respectively, the State party's second periodic report under the Convention (CRC/C/15/Add.232) and the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/SLV/CO/1) have been addressed, but regrets that many others have been insufficiently or only partly considered.

8. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the second periodic report under the Convention as well as on the initial report under the Optional Protocol on the involvement of children in armed conflict that have not yet been implemented or sufficiently implemented, including with regard to: (a) the high level of crime and violence, including killing of children (CRC/C/15/Add.232, paras. 29-30); (b) sexual exploitation and trafficking (paras. 63-64); (c) the administration of juvenile justice, including the prevention, rehabilitation and reintegration of youth gang members (paras. 65-68); (d) the abolition by law of the voluntary recruitment of 16-17- year- olds (CRC/C/OPAC/SLV/CO/1, para. 17). The State party should also adequately implement and provide follow-up to the recommendations contained in the present concluding observations on the combined third and fourth periodic report.

Non-discrimination

27. The Committee regrets that, despite the State party's efforts to combat racism and discrimination, discriminatory attitudes and social exclusion still affect some sections of the child population, and in particular adolescents, children with disabilities, girls, children living in rural and remote areas, indigenous children and children from economically excluded families. The Committee also notes the persistence of a traditional patriarchal conception of the family, which often results in girls being given subordinate and dangerous tasks, such as domestic service, which place them in a vulnerable situation and at risk of abuses. Furthermore, the Committee is also concerned that adolescents are often mistakenly depicted in the media and in the society as the main cause of the spread of violence affecting the country

28. In light of article 2 of the Convention, the Committee reiterates its recommendation that the State party:

- (a) Ensure full implementation in practice of all legal provisions prohibiting discrimination;**
- (b) Combat discrimination by, inter alia, ensuring equal access to education, health-care facilities and poverty reduction programmes and pay special attention to the situation of girls;**
- (c) Take measures to address the inappropriate characterization and stigmatization of children, especially adolescents, within the society, including in the media;**
- (d) Carry out comprehensive public education campaigns to prevent and combat all forms of discrimination;**
- (e) Intensify its efforts to prevent and eliminate all forms of de facto discrimination against adolescents, children with disabilities, girls, children living in rural and remote areas, children in street situations, indigenous children and children from economically excluded families;**
- (f) Take into account in these efforts the recommendations adopted by the Committee in its general comment No. 11 (2009) on indigenous children and their rights under the Convention, as well as the outcome document adopted at the 2009 Durban Review Conference.**

Best interests of the child

29. The Committee notes with appreciation that the principle of the best interests of the child is already included in the Family Code (art. 305) and is also enshrined in the LEPINA, notably in its article 12.

However, the Committee is concerned that the principle is not sufficiently implemented in practice, especially in the areas of prevention, corporal punishment, child protection and juvenile justice.

30. The Committee recommends that the State party: (a) Ensure that the principle of best interests of the child does not remain on paper but is taken into account in practice in children's policies and programmes; (b) Continue and strengthen its efforts to ensure that the general principle of the best interests of the child is appropriately integrated in all legal provisions as well as in judicial and administrative decisions and in projects, programmes, and services that have an impact on children; (c) Carry out a study to assess how the principle of the best interests of the child is implemented in practice in individual cases at judicial and administrative levels; (d) Take into account the recommendations adopted in general comment No. 5 (2003).

Birth registration, name and nationality

35. The Committee, while welcoming the operative plan 2010 for the elimination of fines for the late registration of children, is concerned at the information that the lack of birth registration continues to be a problem, especially in rural and remote areas and regrets the lack of data on this issue. The Committee is also concerned that, there are still fees to pay to register a child, fines applicable for non-registration, as well as administrative obstacles which de facto obstruct registration.

36. The Committee reiterates its previous recommendation that the State party pursue and strengthen its efforts to develop an efficient and free birth registration system for all children. The Committee urges the State party to make the civil registration system more accessible at the grassroots level, to ensure allocation of adequate human, technical and financial resources to registration centres and to take further measures, including mobile services, to ensure easy access to registration by the population, including in less accessible areas of the country. The State party should also provide the Committee with relevant data on this issue in its next report.

Family environment

46. The Committee welcomes the approach contained in the LEPINA which recognises and strengthens the fundamental right of the child and adolescent to live, be brought up and develop in the nuclear or extended family of origin. According to the new Law, family separation may only take place in exceptional cases; it also clearly establishes the shared responsibility of the family, the State and society in complying with these rights. The Committee, however, is concerned that for different reasons, including the weakening of the social fabric at community level, the absence at local level of policies to strengthen families, parental irresponsibility and migration abroad, many children live without one or both parents and are left without the necessary support and care.

47. The Committee encourages the State party to:

(f) Implement the recommendation made recently by the Committee on Migrant Workers (CMW/C/SLV/CO/1) to finalize the study on the impact of migration on children. The findings of the study should be widely disseminated with a view to developing adequate strategies to ensure the protection and the full enjoyment of rights by children affected by migration;

Standard of living

66. The Committee notes the efforts undertaken by the State party to reduce poverty and socio-economic disparities, such as the programme "Urban and Rural Communities in Solidarity". However, the Committee is concerned that, although poverty has been decreasing since 1991, six out of ten children still live in poverty with devastating effects on their standard of living and the enjoyment of their rights.

The Committee is also concerned that disparities between urban and rural areas remain substantial.

67. The Committee recommends that the State party:

- (a) Take additional measures to guarantee to all children in the State party an adequate standard of living, including by providing additional and better managed resources;**
- (b) Expand the capacity of local services to improve access to basic goods, education, health and other services, especially in the rural areas;**
- (c) Pay special attention to children's rights in the development and implementation of poverty reduction strategies;**
- (d) Intensify its efforts to provide a safer, more secure and non-violent environment, which is the basis of an adequate standard of living for children.**

Children affected by migration

72. The Committee is concerned about the impact of migration on the enjoyment by children of their rights (about three million Salvadorans are believed to live outside the country because of economic migration) and is concerned in particular at the situation of migrant children - especially those unaccompanied and in an irregular or undocumented situation – who are particularly vulnerable to becoming victims of exploitation and abuse, notably sexual and economic exploitation, and have difficulties of reintegration when forcibly returned home from the country of destination.

73. The Committee recommends that the State party, taking into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin:

- (a) Pay special attention to the situation of migrant children, particularly those unaccompanied and in irregular and/or undocumented situations;**
- (b) Intensify its efforts to prevent irregular migration, including by raising awareness about the risks involved, and promoting adequate conditions for the resettlement and reintegration of these children and their families upon their return;**
- (c) Strengthen bilateral, regional and international cooperation in this respect.**

Sale, trafficking and sexual exploitation

82. The Committee notes the 2004 reform of the Penal and Penal Procedure Codes which punish offenses related to the commercial sexual exploitation of children, including trafficking in persons (art. 367-B) as well as the National Policy against the Trafficking in Persons (2008-2017) and its Action Plan (2008-2012). However, the Committee regrets that trafficking for the purposes of commercial sexual exploitation and forced labor remains a substantial problem in the country and that there are no measures aimed at reducing demand for commercial sex or forced labour. The Committee is also concerned at the low level of prosecutions and convictions for trafficking-related crimes vis-à-vis the reported cases.

83. The Committee recommends that the State party:

- (a) Take appropriate measures to ensure the prompt investigations of sale, trafficking and sexual exploitation offences against children, and the prosecution of perpetrators, when appropriate;**
- (b) Intensify its efforts of public awareness and campaigns of prevention in order to tackle any societal attitude of tolerance towards such practice;**
- (c) Further disseminate and implement the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography as well as the Palermo Protocol to Prevent, Suppress and Punish trafficking in persons, especially women and children.**

84. The Committee further refers to its concluding observations on the State party's initial report under the Optional Protocol to the Convention on the sale of children, child prostitution and child

pornography (CRC/C/OPSC/SLV/CO/1), adopted on the same date.

Committee on the Rights of the Child

CRC/C/OPSC/SLV/CO/1, 53rd Session

12 February 2010

IV. Prevention of the sale of children, child prostitution and child pornography

17. The Committee takes note of the State party's initiatives aimed at preventing the offences covered by the Optional Protocol, especially within the context of the activities of the round table ("*Mesa*") focused on the issue of commercial sexual exploitation of children. The Committee is concerned, however, that preventive efforts do not cover sufficiently large groups of vulnerable children in the State party, such as children living in poverty, indigenous children, children living in difficult family situations and children left behind by their migrating parents.

18. The Committee recommends that the State party continue and intensify its preventive efforts by giving adequate attention to projects aimed at addressing the root causes, such as poverty, underdevelopment and cultural attitudes, contributing to the vulnerability of children to sale, prostitution, pornography and sex tourism, including at the local level. The State party should also endeavour to promote the strengthening of international cooperation in this respect.

Existing criminal or penal laws and regulations

23. The Committee notes that the legislation of the State party covers some of the activities included in article 3, paragraph 1 (a)(i), of the Optional Protocol in the context of the sale of children. However, the Committee is concerned that the legislation does not seem to criminalize the sale of children for the purpose of illegal adoption, the sale of children for the engagement of the child in forced labour and the sale for the transfer of organs of the child for profit, which is punished as an aggravated form of trafficking, but not as a separate offence.

24. The Committee recommends that the State party define and criminalize the sale of children in accordance with the Optional Protocol, and in particular the sale of children for the purpose of illegal adoption, for the engagement of the child in forced labour and for the transfer of organs of the child for profit, in conformity with article 3, paragraphs 1 (a)(i) b., 1(a)(i) c., 1(a)(ii) and 5 of the Optional Protocol.

25. The Committee welcomes the introduction in the Penal Code of the crimes of the use of children in pornography and of possession of child pornography. However, while noting the creation of a specialized unit in the National Civilian Police dealing with the investigation of trafficking-related crimes, the Committee is concerned at the information that investigation and prosecution of child pornography is hampered by the lack of specialized staff and technically adequate means of investigation, especially when it comes to child pornography through the Internet. In this respect (see also *supra*, para. 19), the Committee welcomes the information about the upcoming creation of specialized units to investigate crimes related to child pornography.

26. The Committee recommends that the State party strengthen the capacity of law-enforcement officials for the investigation and prosecution of crimes related to child pornography, including, if necessary, the adoption of specific legislation, notably on child pornography through the Internet and other digital means.

Extradition

31. The Committee notes with concern that, according to the State party's declaration entered to the Optional Protocol upon ratification, extradition of nationals will be permitted on the basis of the principle of reciprocity and if the offence was committed in the territory of the requesting country "unless the offence is international in scope". The Committee is concerned at the fact that the State party makes the possibility of extradition conditional to the principle of double criminality.

32 The Committee, in accordance with article 5, paragraph 4, of the Optional Protocol, recommends that the State party:

(a) Consider, for the purpose of extradition between States parties, offences covered by the Optional Protocol as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4 of the Optional Protocol;

(b) Take suitable measures, if an extradition is refused on the basis of the nationality of the offender, to submit the case to its competent authorities for the purpose of prosecution, in accordance with article 5, paragraph 5, of the Optional Protocol;

(c) Amend its legislation in order to abolish the requirement of double criminality for the purpose of extradition and/or prosecution of the offences covered by the Optional Protocol committed abroad.

Committee against Torture

CAT/C/SLV/CO/2, 43rd Session

9 December 2009

B. Positive aspects

7. The Committee welcomes:

(b) The establishment of the Commission on Refugee Status Determination in July 2002;

C. Principal subjects of concern and recommendations

10. Violence against women and femicide

21. The Committee notes the setting up of 14 Inter-Institutional Committees to implement the National Plan on Domestic Violence, the establishment of observatories on violence and the initiation in 2005 of the national research project on femicide. The Committee takes note of a draft bill on violence against women and the touring fairs aimed at educating and informing people about domestic violence. Nevertheless, it is very concerned at the prevalence of numerous forms of violence against women and girls, including sexual abuse, domestic violence and the violent deaths of women (femicide). The Committee is furthermore concerned at the absence of thorough investigations into reported cases and the impunity enjoyed by the perpetrators of such acts (arts. 12, 13 and 16).

The State party should increase its efforts to ensure that urgent and efficient protection measures are put in place to prevent and combat violence against women and girls, including sexual abuse, domestic violence and femicide. The Committee considers that these crimes should not go unpunished and the State party should provide human and financial resources to punish the perpetrators of these acts. The State party should also organize widespread awareness-raising campaigns and training courses on violence against women and girls for officials in direct contact with the victims (law enforcement officers, judges, lawyers, social workers, etc.) as well as for the

public at large.

12. Trafficking in persons

24. The Committee recognizes the efforts made by the State party to deal with the trafficking of women and girls, such as the creation of a temporary shelter for women and their children who have been victims of commercial sexual and other forms of exploitation and of a shelter for girl victims of trafficking. However, the Committee is concerned about the continuous reports of cases involving the internal and cross-border trafficking of women and children for sexual and other purposes, and deplors the fact that the officials suspected of committing these acts have not been properly investigated, prosecuted and punished (arts. 2, 10 and 16).

The State party should ensure that all allegations concerning the trafficking of persons are investigated promptly, impartially and thoroughly and that the offenders are prosecuted and punished for the crime of trafficking in persons. The State party should continue to conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and offer training to law enforcement officers, migration officials and border police on the causes, consequences and repercussions of trafficking and other forms of exploitation. The Committee further recommends that the State party increase its efforts to establish systems and mechanisms of international, regional and bilateral cooperation with the countries of origin, transit and destination in order to prevent, investigate and punish cases of human trafficking.

13. The principle of “non-refoulement”

25. The Committee regrets the complaints alleging a systematic failure to comply with the principle of “non-refoulement” and with the right of access to due process and information for refugees and potential asylum-seekers, and the failure to provide proper safeguards against persons being placed at risk when returned to their country of origin. It further regrets the inadequacy of the mechanisms enabling the immigration authorities to establish that a person runs the risk of being tortured on return to his or her country of origin. The Committee further notes with concern the allegations of discriminatory treatment of asylum-seekers by the authorities of the State party (arts. 3 and 6).

The State party should adopt administrative and legislative measures to ensure respect for due process in the procedures for deciding on refugee status or deportation, with particular regard to the right of defence and the requirement that a representative of the Office of the United Nations High Commissioner for Refugees be present. It also recommends the introduction of training programmes on international humanitarian law applicable to refugees, with emphasis on the content and scope of the principle of non-refoulement, for immigration police and administrative officials responsible for deciding on refugee status and deportation.

Committee on the Elimination of Discrimination against Women

CEDAW/C/SLV/CO/7, 42nd Session

7 November 2008

Sexist stereotypes

21. Notwithstanding various measures taken by the State party to eliminate gender stereotypes, the Committee is strongly concerned at the pervasiveness of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family, in the workplace

and in society, which constitute serious obstacles to women's enjoyment of their human rights, in particular their right to be free from all forms of violence, and impede the full implementation of the Convention. The Committee is further concerned that an overall strategy to eliminate sexist stereotypes has not yet been put in place by the State party.

22. The Committee urges the State party to increase its efforts to design and implement comprehensive awareness-raising programmes to foster a better understanding of and support for equality between women and men at all levels of society. Such efforts should aim at modifying stereotypical attitudes and cultural norms about the responsibilities and roles of women and men in the family, the workplace and in society, as required under articles 2 (f) and 5 (a) of the Convention, and strengthening societal support for equality between women and men. The Committee also urges the State party to adopt an overall strategy to eliminate sexist stereotypes, including through the inclusion of awareness-raising in school curricula, the training of teachers and the sensitization of the media and the public at large, including actions specifically targeting men and boys.

Violence against women

23. The Committee notes with appreciation the various measures undertaken by the Salvadoran Institute for the Advancement of Women to address the issue of violence against women, including domestic violence, child abuse and sexual assault, under the National Policy on Women's "Programme to Improve Family Relations". The Committee also welcomes the fact that complaints on the grounds of sexual harassment can now be brought to courts by victims of such acts. However, the Committee remains concerned at the high incidence of violence against women prevailing in the State party, notably intrafamily violence, sexual violence and abuse, rape and sexual harassment in schools and in the workplace. The Committee is also alarmed at cases of extreme violence manifested by the murder of women motivated by gender-specific causes. Furthermore, the Committee is concerned at the weak implementation of existing provisions criminalizing violence against women, the insufficient investigations into reported cases and impunity enjoyed by perpetrators.

24. The Committee urges the State party to accord priority attention to the adoption of a comprehensive approach to address violence against women and girls, taking into account the Committee's general recommendation 19 on violence against women. The Committee also calls on the State party to monitor the implementation of the existing legislation criminalizing violence against women so as to ensure that women and girls who are victims of violence have access to protection and effective redress and that perpetrators of such acts are effectively prosecuted and punished and do not enjoy impunity. The Committee also recommends the implementation of gender-sensitive training on violence against women for public officials, particularly law enforcement personnel, the judiciary and health-service providers, so as to ensure that they are sensitized and can respond effectively to all forms of violence against women. The Committee also calls on the State party to take measures to modify social and cultural attitudes which are the root causes of most forms of violence targeting women, in particular murders motivated by gender prejudice.

Trafficking

25. The Committee notes with appreciation the measures taken by the State party to tackle the phenomenon of trafficking, such as the creation of the National Committee on Trafficking in Persons, the publication of the Foreign Service Handbook on combating trafficking in persons and the formulation of a strategy by the Office of the Attorney-General of the Republic for inter-institutional action against commercial sexual exploitation. The Committee is concerned, however, that there are insufficient investigations into cases of trafficking in women and girls and, consequently, that a very low

number of perpetrators are prosecuted and punished. Furthermore, the Committee is also concerned at the lack of shelters available for trafficked women.

26. The Committee urges the State party to intensify its efforts to combat all forms of trafficking in women and girls. It also calls on the State party to collect and analyse data from the police and international sources, prosecute and punish traffickers, ensure the protection of the human rights of trafficked women and girls, and provide for their rehabilitation. The Committee calls on the State party to ensure that trafficked women and girls receive adequate support to be in a position to testify without fear against their traffickers. The Committee further encourages the State party to develop awareness-raising programmes, conduct research on the root causes of trafficking, provide comprehensive training to lawyers, criminal justice workers, health-care providers and law enforcement officials in all matters concerning sexual exploitation and trafficking, and continue bilateral and multilateral cooperation with neighbouring countries.

II. Special Procedures

Report of the Working Group on Arbitrary Detention

Addendum: Mission to El Salvador
Human Rights Council, 22nd Session
A/HRC/22/44/Add.2, 11 January 2013

N. Migrants, asylum seekers and refugees

117. It is not an offence to enter El Salvador illegally. Foreigners who must be expelled from Salvadoran territory are placed in administrative custody and, since 2008, sent to the Centre for the Comprehensive Care of Migrants. The Centre, which has a budget of US\$ 128,000, receives support from a team of psychologists, social workers and legal assistance providers. NGOs can visit the Centre when they wish.

118. The Working Group noted that the five-day time limit for deporting a foreigner to their country of origin or the country they came from is not observed. Foreigners remain at the Centre for up to weeks and even months. They may apply for a writ of habeas corpus before the Constitutional Division of the Supreme Court of Justice, but, this is rare in practice. A College for Migration Affairs was set up in 2011.

119. Legislation on migration is out of date. It dates back to 1958 and consequently fails to take into account the increase in migration witnessed in Central America, including El Salvador.

120. As far as political asylum is concerned, asylum may be applied for at the border or once inside Salvadoran territory, including in the Centre for the Comprehensive Care of Migrants. A committee has to rule on a petition for political asylum within 72 hours.

121. The Office of the United Nations High Commissioner for Refugees (UNHCR) is represented by the Anglican Church in El Salvador. A committee decides whether applications for refugee status should proceed. If so, the foreigner is given a provisional accreditation or identity card and allowed to leave the Centre.

V. Recommendations

132. **The recommendations are as follows:**

(d) The detention of minors must always be viewed as an exceptional measure;

(e) Review and update the legislation on irregular migrants, refugees, asylum seekers and alien

affairs. The current legislation dates back to 1958. National legislation on refugees must fully comply with the Convention relating to the Status of Refugees and other relevant international instruments;

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

Addendum: Follow-up mission to El Salvador
Human Rights Council, 17th Session
A/HRC/17/26/Add.2, 14 February 2011

76. In the area of gender equality and violence against women, in spite of legal, institutional and policy developments that reflect the Government's intention to fulfil its due diligence obligations, challenges remain. Impunity for crimes, socio-economic disparities and the *machista* culture continue to foster a generalized state of violence, subjecting women to a continuum of multiple violent acts. Other major persisting challenges relate to sexual and reproductive rights, in particular the impact and consequences of the total ban on abortions and the lack of a comprehensive system of data collection to guide policy and monitor progress in the field of violence against women.

77. In the light of the information received, the Special Rapporteur considers the recommendations in the report of the previous mandate holder still applicable and relevant, and reiterates the need for the Government to:

(a) Establish a comprehensive, gender-sensitive information and knowledge base, including through the creation of a statistical commission, in order to:

(i) Improve data collection and analysis of incidents of violence and discrimination against women in all sectors concerned, particularly those relating to labour, health, education and the criminal justice system, while ensuring safety and privacy rights throughout the process;

(ii) Ensure common, reliable and transparent recording methods on all forms of violence against women, its causes and consequences. Such data should be disaggregated by sex, age, race, ethnic origin and other socio-economic variables that increase women's and girls' vulnerability to violence. This is particularly relevant for indigenous women and women living in rural areas;

(iii) Develop indicators on the State response to violence against women, illustrating the realization of rights through prevention and protection measures, as well as remedies. Their accuracy will largely depend on ensuring that all reported and identified cases are recorded and can be traced through an effective tracking system;

(iv) Institutionalize means and methods to share information on patterns, trends and State response to cases of violence with a diversity of actors, including Government bodies, academia and international and non-governmental organizations;

(b) Ensure the protection of women and girls through legislative, investigative and judicial reforms, including by:

(i) Devising a comprehensive, coordinated and properly resourced State policy that removes all remaining obstacles to the effective implementation of existing laws, including the categorization of violence against women as a criminal offence. Effective investigation and monitoring mechanisms for all instances of alleged violence should include measures to institutionalize

cooperation and information-sharing among investigative institutions, particularly the Office of the Procurator-General and the National Civil Police. The design and implementation of protocols to facilitate and promote effective, uniform and transparent investigations is crucial;

(ii) **Recognizing femicide as a separate category of crime.** The Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter- American Convention on the Prevention, Punishment and Eradication of Violence against Women stated in its declaration on femicide of 15 August 2008 that States must guarantee increased and enhanced access to justice for women by improving the system for criminal investigation and the protection of women affected by violence, by including forensic expertise, enhancing court proceedings to eliminate impunity for perpetrators and adequately punishing public officials who do not exercise due diligence in those proceedings;

(iii) **Taking specific measures to ensure the protection of women who are victims of discrimination and violence on account of their sexual orientation or gender identity;**

(iv) **Ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights and the Rome Statute of the International Criminal Court;**

(v) **Bringing national legislation into line with the Convention on the Elimination of All Forms of Discrimination against Women and the Inter- American Convention on the Prevention, Punishment and Eradication of Violence against Women, as well as with other international human rights instruments addressing violence and discrimination against women. This includes further amendments to the Code of Criminal Procedure to ensure that conciliation is prohibited in all cases of intra-family violence, and the explicit prohibition of corporal punishment against children. Furthermore, it is essential that a national dialogue on the current legislation on abortion be launched, in order to consider exceptions to its general prohibition, particularly in cases of therapeutic abortion and pregnancies resulting from rape or incest;**

(vi) **Ensuring, in consultation with civil society organizations, the elaboration of a comprehensive law on violence against women that criminalizes all forms of violence and encompasses issues relating to prevention, protection, victim empowerment and support, including the availability of remedies for survivors and adequate punishment for perpetrators. It is essential that the justice system be allocated adequate budgetary and human resources to ensure effective implementation and monitoring mechanisms;**

(vii) **Adopting laws to provide protection to victims of trafficking in accordance with international human rights standards and the effective prosecution of users and abusers of trafficked persons;**

(c) **Strengthen institutional infrastructure, including through the allocation of appropriate resources to enable sustainability and effectiveness, by:**

(i) **Establishing a specialized investigations and prosecutions unit on femicides to combat the pattern of impunity in gender-based violent murders and conduct effective criminal investigations;**

(ii) **Ensuring adequate funding to improve existing infrastructure to support victims of gender-based violence and to create new centres that provide psychosocial, legal and residential services throughout the country, paying special attention to the increased vulnerability of indigenous women and women living in rural areas;**

(iii) **Building the capacity of institutions such as the National Institute for the Advancement of Women, the National Civil Police, the Office of the Procurator-General, the Supreme Court of Justice and the Institute of Forensic Medicine by increasing their human and material resources;**

(iv) Supporting the Office of the Procurator for Human Rights, including through institutional recognition of its authority and providing sufficient resources to ensure the effectiveness of its operations and independence;

(v) Strengthening the institutions responsible for addressing the advancement of women and gender equality, in line with the Beijing Declaration and Programme of Action, by providing them with clearly defined mandates, power and authority, visibility and human and financial resources, thereby improving their capacity to coordinate and monitor actions at the local and national levels;

(d) Initiate further training and awareness-raising programmes, including by:

(i) Supporting further gender-sensitive training with a focus on women's human rights for public officials involved in prosecuting cases of violence and discrimination against women, in order to conduct proper and efficient investigations and prosecutions while respecting the integrity and dignity of victims and their families throughout the process;

(ii) Institutionalizing gender-sensitive training with a focus on women's human rights for civil servants in other sectors addressing violence and discrimination against women, including in the areas of health, education and labour, to ensure that they can respond effectively to all forms of violence against women;

(iii) Ensuring that all job generation and poverty alleviation strategies and programmes are gender-sensitive, and that women, particularly indigenous women and those from rural areas, have full access to adult literacy and vocational training programmes;

(iv) Conducting awareness-raising campaigns, with the support of sensitized media, aimed at eliminating stereotypical attitudes and cultural norms about the roles and responsibilities of women and men in the family, society and the workplace;

(v) Integrating a gender equality perspective into school textbooks and curricula, including on sexual and reproductive rights, and providing gender training for teachers with a view to changing patriarchal attitudes and gender stereotypes;

(e) Monitor the implementation of and enforce international and regional human rights standards generally, with a special focus on the labour sector, by:

(i) Exercising due diligence to combat violence, harassment and violations of labour standards in the workplace, including through the adoption of legislative, administrative and other measures to guarantee access to social security and other labour benefits, monitor labour standards, particularly in maquilas and private homes, investigate complaints and bring perpetrators to justice.;

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid

Addendum: Mission to El Salvador
Human Rights Council, 16th Session
A/HRC/16/57/Add.4, 4 February 2011

123. With regard to the national policy for the comprehensive protection of children, with a view to ensuring its adoption and effective implementation in 2011, the Special Rapporteur recommends that the Government:

(f) Increase accessibility to social and economic services to vulnerable children, families and communities;

(g) Increase awareness-raising regarding a culture of promoting and protecting the rights of child, with a view to tackling social tolerance regarding commercial sexual exploitation of children and gender discrimination;

128. With regard to international and regional cooperation, the Government should also continue to pursue cooperation through technical and logistical assistance on themes such as combating cybercrime, trafficking and transnational organized crime by sharing information relating to the detection of crimes, the identification of child victims and the prosecution of offenders.