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## **EL SALVADOR--A PEACE WORSE THAN WAR: VIOLENCE, GENDER AND A FAILED LEGAL RESPONSE**

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## \*4INTRODUCTION

After twelve years of violent conflict, the bloody civil war in El Salvador came to an end in January 1992 with the signing of peace agreements and, ultimately, comprehensive Peace Accords.<sup>1</sup> During the conflict between the Frente Farabundo Martí para la Liberación Nacional (FMLN) [Farabundo Martí National Liberation Front<sup>2</sup> and the government, at least seventy-five thousand \*5 people were killed, seven thousand were “disappeared,”<sup>3</sup> and five hundred thousand were displaced.<sup>4</sup> The great majority of these abuses were committed by the Salvadoran government, which received more than \$5 billion in assistance from the United States.<sup>5</sup>

The civil war in El Salvador was fought in response to decades of “economic inequality and exploitation suffered by the majority of the population at the hands of an elite oligarchy whose will was enforced by state security forces.”<sup>6</sup> Hardline factions in alliance with the oligarchy met any attempts at reform, even by moderate military factions, with repression. The conflict ended in a stalemate between the FMLN and the military with a negotiated peace accord that, though it led to significant political reforms,<sup>7</sup> for the most part failed to address the inequalities and marginalization that had led to the conflict. Following the end of the conflict, powerful elite interests and United States pressure led to the adoption of neoliberal economic policies that only worsened conditions for ordinary Salvadorans.<sup>8</sup>

In the years since the civil war ended, El Salvador has experienced levels of violence that rank among the highest in the world. In 2009, El Salvador had the highest homicide rate in the world, and although the rate subsequently decreased, in 2015 and 2016 it was once again ranked number one.<sup>9</sup> The violence in El Salvador has led some to comment that the peace is worse than the war,<sup>10</sup> with recent homicide rates often exceeding those during wartime.<sup>11</sup>

El Salvador has also distinguished itself as having extremely high levels of gender-based violence. Multiple forms of violence against women and girls are pervasive, including intrafamilial or domestic violence, sexual violence, trafficking for sexual exploitation, and incest. Salvadorans readily admit that gender-based violence is so common that not only is it tolerated, it is considered normal, as is impunity for those who perpetrate these acts.<sup>12</sup> The incidence of femicide<sup>13</sup>--the gender-motivated killing of women--has increased, and although more men than women are killed in El Salvador, the rate at which women are killed has risen more rapidly in recent years than that of men.<sup>14</sup> From 2007 to 2012 El Salvador had the highest reported femicide rate in the world.<sup>15</sup>

Laws to address domestic violence,<sup>16</sup> violence against women,<sup>17</sup> gender inequality,<sup>18</sup> and trafficking,<sup>19</sup> much of which is for sexual exploitation, have been enacted, and governmental bodies have been created pursuant to these new laws.<sup>20</sup> Most recently, the government created specialized courts<sup>21</sup> with limited jurisdiction<sup>22</sup> over matters involving violence against women. Notwithstanding these developments, with the exception of a short period when there was a dip in the number of women murdered,<sup>23</sup> there has been no reduction in gender violence in El Salvador or in the impunity enjoyed by its perpetrators.<sup>24</sup>

This article explores explanations for the high levels of violence, including gender violence and femicides, in El Salvador. It examines how the conditions that preceded, accompanied, and have followed the civil war may explain the violence that has engulfed contemporary El Salvador. Within that context, this article focuses particularly on violence against women; it looks at the response to gendered violence in the forms of laws and governmental institutions and evaluates their impact--if any--in reducing the multiple types of violence against women, including gender-motivated killings. The article draws not only on an extensive review of the literature analyzing the situation in El Salvador prior to and following the armed conflict, but also on information gathered from in-depth interviews of Salvadoran experts.<sup>25</sup> Given the dearth and unreliability of published information regarding violence against women in El Salvador, discussed *infra*, the insights and analyses from in-country experts are essential to presenting a fuller picture of the reality.

Part I provides an overview of the historical context relevant to the current situation in El Salvador, looking principally at significant events in the twentieth century. It examines how a confluence of factors--including structural violence, economic inequalities, social exclusion, the proliferation of gangs and organized crime, and a culture of patriarchy dating from the Spanish Conquest--have given rise to contemporary levels of violence, including gender-based violence. Part II presents information on the societal levels of violence, including violence against women and girls, drawing connections between historical and socio-political factors and the contemporary explosion of violence. Part III discusses the legal framework addressing violence against women that has been under development in El Salvador since 1996. It details the inadequacy of the laws, as well as the significant barriers to implementation arising from deeply entrenched institutional resistance to gender equality, which has led to, among other problems, insufficient funding for the laws' implementation and virtual impunity for the failure of governmental officials to carry out their responsibilities under the laws. An objective and key contribution of this article is to substantiate the links between the historical origins of violence and the magnitude of gender violence in El Salvador today. Finally, the Conclusion offers some overarching observations and recommendations drawn from the many Salvadoran activists who have committed themselves to a long struggle to achieve justice and equality for women.

## I. HISTORICAL ANTECEDENTS TO EL SALVADOR'S CIVIL WAR AND ITS NEGOTIATED SETTLEMENT

Numerous scholars have detailed the conditions of inequality, exploitation, and brutal repression that preceded El Salvador's civil war.<sup>26</sup> In her seminal book *Forging Democracy from Below*, Elisabeth Wood writes that, beginning in the colonial period, "cacao merchants, then indigo growers, and later the coffee planters"<sup>27</sup> sought ways to coerce indigenous communities into becoming a pliant, low-wage source of labor. One of the most significant measures toward <sup>28</sup> that end was the abolition of communal land tenure in 1881 and 1882. This resulted in increased land ownership by those with "the contact, the cash,

and the knowledge,”<sup>28</sup> and the effective dispossession from their land of indigenous communities, forcing many into a poorly paid labor force. The rural police, and then the National Guard, formed in 1912, protected landowner interests. They could be summoned to “evict squatters or to jail workers who were seen as troublemakers.”<sup>29</sup>

This repressive environment temporarily lifted with the election of Pio Romero Bosque in 1927, which allowed workers to organize in the countryside and in the cities. Bosque’s presidency was followed by the election of Arturo Araujo, who also shared “progressive ideals.”<sup>30</sup> However, the Wall Street crash and subsequent collapse of coffee prices set off a chain of events that led to even greater repression. As coffee prices dropped, coffee growers drastically cut back on wages and employment. Workers organized in response, with some ultimately engaging in armed attacks against the government.<sup>31</sup> The loosely organized group of workers, who were mostly indigenous, with some “leadership and support” from the Communist party, declared a “general insurrection.”<sup>32</sup> As described by Wood, the response to this insurrection, which was disproportionate by any measure, is infamous in Salvadoran history:

[T]he National Guard (and to a lesser extent, the regular army) responded with great brutality, killing some 17,000 people in the rebellion area [the western highlands] and desisting only when several landlords complained that there would be no labor left to cultivate the local estates. According to a number of recent historical studies, racism contributed to the ferocious response by the state.<sup>33</sup>

According to Wood, there were a number of long-lasting “legac[ies] of the *Matanza* (slaughter),”<sup>34</sup> including the consolidation of “a model of development ... that combined direct repression of labor, preemptive militarization, and policing by the state of the terms of the labor market,” as well as “a fifty-year political arrangement in which the military ruled directly, while economic elites directed economic policy,”<sup>35</sup> protecting their own interests at the expense of the \*10 growing number of landless and poor Salvadorans. This explains why, though elites’ power and wealth continued to increase in periods of economic growth, there was no benefit to the majority of Salvadorans. To the contrary, their situation worsened: the number of landless peasants grew “from 12 percent of the rural population in 1961 to 41 percent by 1975,”<sup>36</sup> and by the end of that same period, 50 percent of the population was unemployed or underemployed.<sup>37</sup>

When efforts at modest land reform were defeated by “hardline elements” in the 1970s, and electoral fraud was committed during the 1972<sup>38</sup> and 1977 elections,<sup>39</sup> organizing and active resistance by urban and rural Salvadorans began to take root. Non-violent popular organizations, such as the Bloque Popular Revolucionario (BPR) [Popular Revolutionary Block] and the Frente de Acción Popular Unificada (FAPU) [United Popular Action Front], helped bring together peasant, student, and union groups in nationwide mobilizations.<sup>40</sup>

Liberation theology called attention to social injustices in contemporary Salvadoran society and encouraged ordinary people to take action. It “awoke in them a vision that a more just social landscape was possible because it was God’s will, and that bringing it about required their own efforts.”<sup>41</sup> Some church-based organizations, such as the Federación Cristiana de Campesinos Salvadoreños (FECCAS) [Christian Federation of Salvadoran Peasants], were “overtly political ... demanding land and better working conditions.”<sup>42</sup> All of this was met with increasing repression by the Salvadoran government. With their teaching of liberation theology, priests were a particular target; “[b]etween 1976 and 1977 more than twenty-five Catholic priests were imprisoned, tortured, or murdered.”<sup>43</sup>

\*11 A group of reformist military officers opposed the violent repression and successfully carried out a coup in 1979.<sup>44</sup> Although this led to the beginnings of reform, and the incorporation of the opposition Partido Demócrata Cristiano (PDC) [Christian Democratic Party] into the government, the hardliners resisted the changes and ultimately prevailed. The “extreme right, under the leadership of Roberto d’Aubuisson[,] rapidly built up a network of death squads within the security forces and the intelligence divisions of the army to carry out a deadly mixture of targeted assassinations, interrogations, and generalized violence.”<sup>45</sup>

By the beginning of 1980, then-United States Ambassador Frank Devine reported to his State Department that “mutilated bodies [were] appearing on roadsides just as they had during the worst days” of former military ruler Carlos Humberto Romero’s reign.<sup>46</sup> Among the many atrocities committed by military or paramilitary forces that year was the assassination of Archbishop Oscar Romero,<sup>47</sup> the murder of 300 peasants from Chalatenango who were suspected of being guerrillas,<sup>48</sup> and the kidnapping, rape, and murder of four American churchwomen.<sup>49</sup> In late 1980, the violence “claimed about 200 lives a

week,”<sup>50</sup> and in early 1981, “300 to 500 people were [being] killed each week.”<sup>51</sup>

The United States funded the Salvadoran military, first with the Carter Administration and at a higher level under the Reagan Administration, notwithstanding this ever-growing evidence of its commission of atrocities.<sup>52</sup> The United States finally ended its support in 1989 following a campaign led by Senator Joseph Moakley that protested human rights abuses in El Salvador.<sup>53</sup>

\*12 It was in this context of extreme repression that El Salvador’s five previously “inconsequential”<sup>54</sup> guerrilla groups<sup>55</sup> decided to unify as the FMLN<sup>56</sup> and that many who had been active in non-violent, popular organizations opted to support or join the guerrillas.<sup>57</sup> Although some were pressured to join the FMLN, coercion “played a distinctly minor role compared with repression by the state.”<sup>58</sup>

At the beginning of 1981, the FMLN launched what it called a “Final Offensive,” named after the 1979 Sandinista offensive in neighboring Nicaragua, which had brought about the overthrow of that country’s long-ruling dictator, Anastasio Somoza. As detailed by Alberto Martín Álvarez in his paper “From Revolutionary War to Democratic Revolution,” the FMLN’s strategy was “to combine a military offensive with a general strike and urban insurgency.”<sup>59</sup> But the FMLN Final Offensive did not achieve the overthrow of the government as had the offensive in Nicaragua. The FMLN’s failure has been attributed to a \*13 “lack of arms and training” and to the severe state repression of the civilian population, which kept many people away from joining the insurrection.<sup>60</sup>

The strategy of the FMLN evolved over time in response to the circumstances. In its early years, the FMLN sought a military win.<sup>61</sup> It forced the Salvadoran military from some territories and was able to control a number of towns and cities. It engaged in acts of economic sabotage. After years of fighting, it ultimately became clear that the FMLN was unable to defeat the Salvadoran military outright. However, it had developed a “significant military capacity,”<sup>62</sup> which the Salvadoran military was unable to defeat notwithstanding “the more than \$5 billion of United States assistance to the government.”<sup>63</sup> The conflict had reached a “military stalemate in which neither of the two parties had a real shot at winning the war.”<sup>64</sup>

There were other pressures toward bringing the conflict to an end. The rightwing governing Alianza Republicana Nacionalista (ARENA) [Nationalist Republican Alliance] party, “dominated by ... financial elites,” was more concerned with making money and with “getting on with business in a globalizing economy than with fighting.”<sup>65</sup> The United States was threatening to cut off military assistance in response to the November 16, 1989, assassination of six Jesuit priests, their housekeeper, and the housekeeper’s 16-year-old daughter at the Universidad Centroamericana “José Simeón Cañas” (UCA) [José Simeón Cañas Central American University].<sup>66</sup> In this context, the government and the FMLN agreed to engage in negotiations that could end the conflict.

Over the course of two years, the FMLN and the government entered into a series of Peace Accords that laid the groundwork for the signing of a Peace Agreement in Mexico on January 16, 1992. It is not surprising--given the massive human rights violations that were committed during the conflict--that much of the Accords focused on preventing such violations in the future. However, as discussed *infra* Part II.B.1, amnesty laws enacted in the wake of the conflict--only found unconstitutional 25 years later, in 2016--greatly undercut the construction of a state committed to the full and effective protection of human rights. And although 100 of the worst human rights violators were purged from \*14 their positions in government, not all individuals who had participated in gross human rights violations were removed, and corrupt or dysfunctional institutions, such as the judiciary, did not undergo much-needed reforms. Equally important, the Peace Accords failed in great measure to address the conditions of economic inequality and marginalization that had given rise to the conflict. They did not help create a more equal society. Many commentators have since pointed out that the present high levels of violence, including gender violence, and impunity can be understood only within this historical context.

## II. LEVELS AND UNDERLYING CAUSES OF VIOLENCE IN EL SALVADOR

### A. Levels of Violence

Post-war El Salvador has consistently experienced violence at higher levels than during the armed conflict.<sup>67</sup> Salvadoran

governmental sources were the first to report higher homicide rates following the Peace Accords.<sup>68</sup> At least one Salvadoran government source, the Ministry of Justice, reported that crime increased two years prior to the conclusion of the war and the Peace Accords. And these levels of post-war violence have remained among the highest in the world.<sup>69</sup> In 2013, El Salvador's homicide rate was 39.7 homicides per 100,000 inhabitants,<sup>70</sup> which is six times the world average and four times the rate considered by the Pan American Health Organization to constitute an epidemic of violence.<sup>71</sup> The homicide rate appeared to drop from 2012 to 2014 during a \*15 negotiated gang truce,<sup>72</sup> but it rose precipitously again once the truce came to an end.<sup>73</sup>

These high levels of violence have a gender dimension: El Salvador is one of the most dangerous places in the world to be a woman.<sup>74</sup> It ranks among the countries with the highest femicide rates in the world.<sup>75</sup> The numbers of violent killings of women has steadily increased since the early 2000s, with the only exception being the temporary slight downturn in homicide rates during the gang truce.<sup>76</sup> As discussed *infra* Part II.C, Salvadoran women are in fact victims of a range of forms of violence, including intrafamilial violence, sexual violence, incest, sex trafficking, and sexual harassment, both in the home and in society at large.

## ***B. Underlying Causes***

Many ascribe the high levels of violence in El Salvador to the proliferation of gangs and organized crime,<sup>77</sup> although there is some controversy over the \*16 percentage of homicides attributable to gang violence.<sup>78</sup> However, if gangs *are* one of the predominant causes of violence, it is important to determine why El Salvador has proved such fertile ground for their emergence. José Miguel Cruz, who has written extensively about the phenomenon of criminal violence in Central America, argues convincingly that the nature of the transition from war to peace is a strong determinant.<sup>79</sup> Key questions Cruz asks include whether human rights violators are purged and punished pursuant to law and whether there are true institutional reforms to consolidate democracy.<sup>80</sup> One might also ask how decades of structural violence affect a population and its susceptibility to criminal violence. Furthermore, the immediate causes of the conflict in El Salvador--economic inequalities and marginalization--have never been adequately ameliorated. The failure to address those realities may well contribute to the current situation. Finally, it is important to consider the particular impact that these socio-historical factors have had on the perpetuation of long-standing patriarchal norms and gender violence. The following section discusses these factors.

### ***1. Structural Violence, the Civil War, and Impunity***

Historically, the Salvadoran state routinely deployed extreme violence to maintain the exploitative status quo at the service of economic elites. The *Matanza* of 1932 remains "etched into the nation's collective memory."<sup>81</sup> During the civil war, state security and paramilitary forces used assassination, torture, mutilation, and forced disappearances against the FMLN and its supporters.<sup>82</sup> Students, trade activists, and peasant organizers were kidnapped, disappeared, tortured, and murdered. "The civilian population in disputed or guerrilla-controlled areas was automatically assumed to be the enemy,"<sup>83</sup> leading to mass \*17 executions in rural areas.<sup>84</sup> Numerous religious leaders were killed, with the highest-profile incidents being the assassination of Archbishop Oscar Romero in March 1987 and the killings of six Jesuit priests, their cook, and the cook's daughter at the UCA in 1989.<sup>85</sup>

State security forces engaged in widespread sexual brutality. Women were targeted for sexualized forms of violence, including mass rape.<sup>86</sup> These acts often took place during attacks on rural communities where "[p]regnant women were ... routinely tortured and their babies were taken from them [and] [w]omen's bodies were mutilated by cutting off their breasts or ramming objects into their vaginas."<sup>87</sup> The sole survivor of the 800-person massacre at *El Mozote* recounted that assailants raped women and girls before killing them.<sup>88</sup> Women held in state detention also frequently suffered rape, sexual torture, and humiliation.<sup>89</sup>

Many Salvadorans have commented that the violence of the war has contributed to the contemporary situation.<sup>90</sup> Those who were trained to fight and kill reentered society, and the violence has had a transgenerational effect.<sup>91</sup> \*18 Salvadorans who were traumatized by witnessing extreme levels of violence became inured to it<sup>92</sup> and in many cases began to see it as a normal means of problem solving.<sup>93</sup> Exacerbating the situation was the easy availability of illegal arms and the knowledge of widespread impunity allowing violence to go unpunished.<sup>94</sup>

The negotiated settlement that brought El Salvador's conflict to an end failed to meaningfully address the massive human rights violations that had taken place during the war. The majority of individuals responsible for these acts were not removed from government or the military, nor were they even punished.<sup>95</sup>

Pursuant to the Peace Accords, an Ad Hoc Commission was formed and tasked with reviewing the files of military officers. The Commission's purpose was to recommend the removal of officials who had been involved in abuses during the war.<sup>96</sup> Faced with the daunting task of evaluating the records of 2,293 army officers, the Commission made the decision to "focus on the army's upper echelons and those individuals about whom it had obtained information, approximately 10 percent of the total."<sup>97</sup> It ultimately called for the "discharge \*19 or transfer of 103 officers."<sup>98</sup> But then-Salvadoran President Alfredo Cristiani resisted taking action against these officers. It was only with sustained international pressure that they were removed, but even then they were not required to admit wrongdoing and were "allowed to take their normal retirement and honorable discharges."<sup>99</sup> Although the work of the Ad Hoc Commission was important, it has been characterized largely as a "symbolic cleansing" since the "process could not possibly constitute a thorough or systematic review of the entire officer corps."<sup>100</sup> Many officers who had participated in atrocities, or who had extensive involvement in death squads, were allowed to continue in official positions with no accountability for their egregious acts.<sup>101</sup>

The Peace Accords also created the UN Truth Commission, whose role it was to investigate "serious acts of violence" committed between 1980 and 1991, and to attribute responsibility for those violations.<sup>102</sup> It was given a six-month mandate, and limited resources.<sup>103</sup> In light of these constraints, it was not contemplated that the Truth Commission would attempt to compile a comprehensive report on the thousands of violations committed throughout the conflict. To the contrary, both the FMLN and the government intended for the Commission to select a limited number of "notorious and representative cases."<sup>104</sup> Although the Truth Commission did receive over 22,000 complaints regarding violent acts,<sup>105</sup> it ultimately focused on only 32 cases, which one of the members of the Truth Commission noted was consistent with "the wishes of the [FMLN and the Salvadoran government,] who wanted an 'investigation that focused on some of the most egregious acts and a set of recommendations to help ensure that the past would not repeat itself.'"<sup>106</sup>

The Truth Commission's report identified by name those it considered to be perpetrators of these most egregious acts, and there was an assumption that the report would lead to further investigations, prosecution, and punishment in these cases.<sup>107</sup> In fact, a reference to the Truth Commission in the Peace Accords stated that the perpetrators must be "the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found \*20 responsible."<sup>108</sup> But, notwithstanding this aspirational statement, the reality was that the Truth Commission itself did not think prosecutions were likely. Throughout the conflict there had been virtually no prosecutions in the face of massive human rights violations,<sup>109</sup> and the judiciary was considered responsible for this impunity.<sup>110</sup> In its report, the Truth Commission stated that "El Salvador has no system for the administration of justice which meets the minimum requirements of objectivity and impartiality so that justice can be rendered reliably."<sup>111</sup> The deficiencies in the Salvadoran justice system were not a product of the civil war--rather, "[a]n independent, efficient, accessible, and impartial justice system had never existed in El Salvador."<sup>112</sup>

The possibility of prosecutions, already unlikely given the compromised state of the country's justice system, was even more severely undercut by the passage of the Ley de Reconciliación Nacional [Law of National Reconciliation<sup>113</sup> and then the Ley de Amnistía General para la Consolidación de la Paz [General Amnesty Law for the Consolidation of Peace (Amnesty Law)].<sup>114</sup> The Law of National Reconciliation, which constituted a "partial amnesty,"<sup>115</sup> was enacted in January 1992, shortly after the signing of the Peace Agreement. It was intended to "legalize the situation of the FMLN leaders who were returning to the country and would be involved in implementing the [P]eace [A]ccords[.]"<sup>116</sup> It excluded from its scope individuals who had been convicted by a jury and persons named in the Truth Commission's report "as being responsible for serious human rights violations,"<sup>117</sup> leaving open the possibility of some prosecutions. However, this was not to come to pass.

The Truth Commission made its report public on March 15, 1993. Among its findings was the fact that approximately 85 percent of the reported acts of violence had been committed by governmental and paramilitary forces, and death squads allied with them, and that only 5 percent of the violence was attributable to the FMLN.<sup>118</sup> The report drew the immediate and harsh criticism \*21 of President Cristiani and other high-level executive officials.<sup>119</sup> On March 20, 1993, five days after the publication of the Truth Commission report, the Legislative Assembly approved the Amnesty Law, which went into effect eight days later, on March 28, 1993.<sup>120</sup> The Amnesty Law was extremely broad in its reach, providing for "[f]ull, absolute and

unconditional amnesty.”<sup>121</sup> It applied regardless of the stage of criminal proceedings and mandated the release of anyone sentenced and imprisoned; it also “extinguish[ed] civil responsibility in all cases.”<sup>122</sup>

The Truth Commission’s report included the names of those individuals (governmental and non-governmental) who had directly participated or been complicit in the acts of violence it had registered.<sup>123</sup> The Commission asked the government to dismiss those who occupied posts in the “armed forces, the civil service, or the judiciary.”<sup>124</sup> It also recommended that the government disqualify these individuals “from holding any public office or post for at least ten years and permanently from any activity related to public security or national defense.”<sup>125</sup> Because of the judiciary’s failure to respond to the gross human rights violations, the Commission called on all the justices of El Salvador’s Supreme Court of Justice (CSJ) to give up their positions.<sup>126</sup> The government refused, with representatives stating that the Commission had “exceeded its mandate.”<sup>127</sup> The CSJ also refused, “explicitly reject[ing] the commission’s findings regarding members of the judiciary.”<sup>128</sup>

\*22 As a consequence, many of those named in the Truth Commission’s report continued to hold positions of power and influence.<sup>129</sup> In addition, the many more who had committed human rights violations but were not named in the Commission report were able to incorporate themselves into new bodies created pursuant to the Peace Accords.<sup>130</sup> The incorporation of members of the former security bodies into new institutions, coupled with the blanket amnesty, has had far-reaching consequences for the rise of crime and violence in El Salvador.

With the conflict over, some of these ex-security members simply “switched to criminal activities, preserving close links to state structures, including the new civilian police force.”<sup>131</sup> As scholars have commented, although the creation of the National Civil Police (PNC) “was one of the greatest achievements of the peace accords,”<sup>132</sup> this force faced numerous challenges, in addition to the incorporation of human rights violators, that undermined its ability to perform its role. The PNC had poor leadership, insufficient resources, difficulties with recruitment, inadequate training, and no internal “discipline mechanisms.”<sup>133</sup> Cumulatively, these factors hobbled the police force’s ability to function effectively. Declining confidence in police and law enforcement ultimately resulted in less effective policing.

Neighboring Nicaragua provides a helpful contrast to El Salvador. The Sandinistas, who ruled Nicaragua from 1979 to 1990 after ousting that country’s dictator, Anastasio Somoza, eradicated “all vestiges of the security apparatus of the old regime” and created new institutions.<sup>134</sup> These institutions were “committed to institutional rules” and the police developed an “institutional culture based more on community needs.”<sup>135</sup> This is one of the key factors in explaining why Nicaragua “stands as a special case with its relatively low levels \*23 of crime” in comparison to the Northern Triangle countries of El Salvador, Guatemala, and Honduras.<sup>136</sup>

There are many commentators who see a connection between historical impunity for acts of violence in El Salvador, going back to the 1932 *Matanza*,<sup>137</sup> and the contemporary high levels of violence.<sup>138</sup> The enactment of a blanket amnesty,<sup>139</sup> the refusal to root out and punish human rights violators,<sup>140</sup> and the failure to create institutions to assure public security<sup>141</sup> contributed to the creation of an environment where violent criminal activity could flourish.

In an encouraging development, after many unsuccessful challenges to the Amnesty Law over the years,<sup>142</sup> on July 13, 2016, the Constitutional Chamber of the CSJ ruled the Amnesty Law unconstitutional, opening the door for the \*24 prosecution of crimes committed during the civil war.<sup>143</sup> This ruling’s potential impact on the country’s pervasive and persistent levels of impunity remains to be seen, but the CSJ’s decision is certainly a welcome development in affirming the principle that the state has the obligation to investigate, prosecute, and punish those who have committed crimes. However, as many in-country sources have continued to observe, the Salvadoran people have very little confidence in the judiciary as a whole. Judges pose an especially significant obstacle to justice in cases involving gender violence, where their biases, rather than the law, determine their decision-making.

## 2. Economic Inequalities and Social Exclusion

The conflict in El Salvador was fought in response to the concentration of wealth in the hands of an economic elite that had exploited the majority of Salvadorans for decades. The Peace Accords, however, did not meaningfully “address the underlying economic inequalities that underscored the war.”<sup>144</sup> To the contrary, the neoliberal economic policies that were

adopted toward the end of and after the conflict deepened poverty and inequality. As many have observed, the absence of “economic alternatives for vast swathes of the population ... has created the opportunity for crime and violence to flourish.”<sup>145</sup>

The United States played a significant role in El Salvador’s adoption of the neoliberal economic policies that led to greater poverty and marginalization among the Salvadoran population. Beginning in 1985, the United States “began to attach conditions to support the Salvadoran government, demanding structural adjustment toward a more open economy.”<sup>146</sup> The plan for economic liberalization, which was developed by the Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES) [Salvadoran Foundation for \*25 Economic and Social Development], a United States Agency for International Development (USAID)-funded Salvadoran think tank, involved “eliminating price controls, deregulating interest rates, and cutting public spending, especially in public services such as education and health care.”<sup>147</sup> The plan also involved reprivatizing banks and “granting autonomy to the Central Reserve Bank, a move that allowed the financial sector to concentrate its power[.]”<sup>148</sup>

When Alfredo Cristiani, of the right-wing ARENA party, gained the presidency in 1989--two years before the war ended--his government “immediately launched” FUSADES’ economic program and began implementing structural adjustment measures promoted by the International Monetary Fund and the World Bank.<sup>149</sup> It was that same year that reportedly marked the beginning of the rise in crime, with an 83 percent increase over the amount of crime reported in 1988.<sup>150</sup>

More than two decades later, the high levels of violence continue, as do the conditions of poverty and inequality. Although poverty levels have temporarily declined at times,<sup>151</sup> more than 30 percent of Salvadorans now live below the poverty level, and more than half of the country’s income goes to the wealthiest 20 percent of the population.<sup>152</sup> The most basic necessities for human development--such as nutrition, early childhood health care, and education--are impacted by this economic reality.<sup>153</sup> The “poorly performing education system fails to provide the necessary skills” for Salvadorans to obtain employment, which further deepens poverty and social exclusion, both contributing factors to the emergence of gangs.<sup>154</sup> As one Salvadoran expert observed, “[e]xclusion ... leads to violence. Although there is no direct relationship between poverty and violence, and not all poor people are violent, where there’s poverty, there are no opportunities, and [therefore] a higher incidence of violence.”<sup>155</sup>

### **\*263. Gangs and Organized Crime**

Two rival gangs operate in El Salvador--Barrio 18 (the 18th Street Gang) and Mara Salvatrucha-13 (MS-13). Estimates of the total number of gang members in El Salvador vary from 20,000<sup>156</sup> to 60,000.<sup>157</sup> The deportation from the United States of many Salvadoran youth who had joined gangs and committed crimes in 1990s Los Angeles is often cited as a principal cause for the emergence of gangs in El Salvador.<sup>158</sup> However, as José Miguel Cruz has written, “[y]oung people joined the gangs not because of the influx of United States deportees, but because the local conditions in post-war El Salvador were ripe for the affiliation of hundreds of teenagers with these organizations.”<sup>159</sup>

\*27 Cruz’s analysis is shared by many who look to the decades of structural violence, the civil war, and the war’s aftermath to explain the emergence of the gangs and related criminal activity.<sup>160</sup> The society was “shattered by poverty, social inequality and political violence,” and the civil war had “left a fragmented and traumatized civil society, with tens of thousands of internally displaced inhabitants making their way into the major cities and the flooding of the streets with weapons[.]”<sup>161</sup> Families had been torn apart by the conflict, and conditions in the home were often punishing and violent. Youth lacked opportunity for education or employment. In addition, strong societal norms of patriarchy and machismo contributed to the idealization of a gang identity that adopted and exaggerated these norms.

The government of El Salvador failed to address the conditions that had led to the proliferation of gangs. Instead, it enacted a series of harsh and punitive laws, generally referred to as the “Mano Dura” [Iron Fist] laws.<sup>162</sup> Although human rights groups criticized the Mano Dura laws, they were popular with a public that was weary of violent crime.<sup>163</sup> But the Mano Dura laws are generally \*28 perceived as having strengthened the gangs<sup>164</sup> and stigmatized many innocent youth, making them more susceptible to gang recruitment.

El Salvador’s gangs contribute to the high rates of homicides, although there is a difference of opinion as to the percentage of

killings that are gang-related.<sup>165</sup> One can infer a high percentage is attributable to the gangs from the notable drop in killings during the time period that the Salvadoran government, assisted by the church, brokered a truce between the warring gangs in 2012.<sup>166</sup> The number of homicides per day reportedly dropped by almost two-thirds during the gang truce, from 14 homicides a day (in the period immediately preceding the truce) to 5 a day (during the truce).<sup>167</sup> The annual homicide rate decreased from 70.3 homicides per 100,000 people in 2011, (before the truce), to 41.5 in 2012, (during the truce).<sup>168</sup> After the truce came to an end in March of 2014, homicide \*29 rates skyrocketed, with El Salvador once again occupying first place with a homicide rate of 104.2 homicides per 100,000 people.

In addition to homicides, gangs perpetrate a wide range of other violent crimes, including kidnapping, extortion, sex trafficking, and labor trafficking.<sup>169</sup> A recent report addressed the extent of gang extortion: “All businesses[,] from street vendor[s] to transnational companies, pay extortion[.]”<sup>170</sup> No one escapes gang extortion--“teachers, students, telecommunication companies, judicial workers, bus drivers, and businesses” are targeted, as are “residents who are receiving remittances from abroad, and people who are successful in obtaining employment with higher pay.”<sup>171</sup> The gangs attempt to obtain information about the revenue of a targeted business and set their demands at 20 to 30 percent of that amount.<sup>172</sup> It is estimated that gangs engage in extortion valued at 30 to 60 million dollars per month.<sup>173</sup>

Although the entire Salvadoran society has been impacted by their proliferation, gangs have singled out certain groups. Gangs recruit young children and force them to participate in gang activities under threat of “being killed or having family members killed in reprisal.”<sup>174</sup> And not all children confront equal risk; “[g]angs target children from poor and broken families, or who live with their grandparents, children who have relatives in the US, or those who have psychological problems or mental disabilities.”<sup>175</sup>

There are also “serious” levels of violence at schools, with both teachers and students being threatened and killed at high numbers.<sup>176</sup> The control of neighborhoods by the gangs has impacted school children in an additional way: because the gangs do not permit individuals living in an area controlled by one gang to enter or travel through the territory of the opposing gang, children cannot \*30 attend a school--even if it is just several blocks away--if it happens to lie in the territory of the opposing gang.<sup>177</sup>

The high levels of gender violence, including femicides, also are linked to the proliferation of gangs. Patriarchal norms and machismo, discussed *infra* Part II.B.4, are even more intense within gang culture and are more lethal because “gang members have access to deadly weapons and vast criminal networks.”<sup>178</sup> Women and girls are considered to be the property of gangs<sup>179</sup> and may be killed for refusing to become the sexual partner of a gang member,<sup>180</sup> for being suspected of cheating, or simply for being seen “accompanied by other men.”<sup>181</sup> They are used for whatever purposes gang members dictate--from carrying out extortion, to delivering drugs, to serving as the sex partner to imprisoned gang members.<sup>182</sup> Vendettas between warring gangs are also played out on the bodies of women and girls, who may be killed as a way of exacting revenge on an opposing gang member.<sup>183</sup>

The gangs in El Salvador have, according to some analysts,<sup>184</sup> transformed into what are referred to as “third generation”<sup>185</sup> gangs, characterized by \*31 participation in transnational criminal operations<sup>186</sup> and the imposition of territorial control supplanting state authority. In their early days, the gangs had mostly an urban presence, but they are now “present throughout the country, including in rural areas.”<sup>187</sup> The gangs utilize the strategies of “plata o plomo” (money or bullets)<sup>188</sup> in pursuit of geographic dominance--they attempt to bribe corrupt governmental authorities and resort to violence when that fails. It is not difficult to understand why, “confronted with the choice between an easy payout and a gruesome death, law enforcement personnel often opt for the former [.]”<sup>189</sup> Gang strategy in El Salvador has evidently worked. In an increasing number of regions, gangs have become the “de facto”<sup>190</sup> authorities, dictating who can enter or exit the area as well as the procedures to follow when coming into a neighborhood, imposing curfews, and otherwise controlling the lifestyle of the inhabitants.<sup>191</sup>

Impunity for crimes committed by gangs is extremely high. Lack of confidence in the weak and corrupt justice system, coupled with the very realistic fear of being killed for reporting, has led many Salvadorans to remain silent.<sup>192</sup>\*32 In those limited cases that are prosecuted, only five to seven percent result in sentences.<sup>193</sup> This is notwithstanding El Salvador’s creation of special courts to hear gang-related cases; the caseload of these special courts is so high that it only “contributes to the inefficacy of the justice system.”<sup>194</sup>

#### 4. Patriarchy, Machismo, and Gender Violence

The high levels of violence in El Salvador include exceptionally elevated levels of violence against women. The factors discussed above--structural violence, economic inequalities, and the proliferation of gangs and organized crime--paint an incomplete picture when it comes to understanding the prevalence and consequent normalization of gender violence. Patriarchy, understood as a system in which men hold the power and women are subordinate,<sup>195</sup> and machismo, a particularly aggressive manifestation of patriarchy characterized by hypermasculinity,<sup>196</sup> are central to the phenomenon of violence against women in El Salvador.<sup>197</sup> Patriarchy and machismo underpin men's belief that they have the prerogative to regard women as property and to use violence against them as they see fit.

Aracely Bautista Bayona, a Salvadoran lawyer and expert on women's rights, has identified the impact of patriarchy and machismo in Salvadoran society on women:

Patriarchal norms define the fundamental sociopolitical structure of El Salvador and disadvantage women in every aspect of Salvadoran society. Among the most entrenched characteristics of Salvadoran society is machismo, a system of patriarchal gender biases which subject women to the will of men.<sup>198</sup>

\*33 Literature discussing the origins of patriarchy and *machismo* in El Salvador is scant. Bautista Bayona has traced the norm to the early 16th century and the Spanish conquest of El Salvador.<sup>199</sup> In his study of Salvadoran culture, *La Cultura del Diablo [The Culture of the Devil]*, philosopher José Humberto Velásquez also emphasizes that machismo tendencies in Latin American and Salvadoran society are rooted in Christianity and were "strengthened by the brutality of the Spanish and Portuguese colonizers."<sup>200</sup>

Archaeologists and anthropologists have undertaken extensive research on gender relations among indigenous societies in the Americas.<sup>201</sup> Their research reveals wide variation in the status of women among different groups.<sup>202</sup> For example, by the time of the Conquest, both the Inca and Aztec Empires' dominant deities were depicted as male, which is one sign of male domination within these societies.<sup>203</sup> Other groups, such as the Kalapalo of Central Brazil, exhibited more egalitarian tendencies with respect to gender relations.<sup>204</sup>

While many indigenous groups may have exhibited patriarchal tendencies, there is evidence that the Conquest of the Americas contributed to the development of a particularly virulent form of sexism. For example, Michael Hardin argues that the origins of Latin American machismo are related to "the degree to which sexuality was made part of the [Spanish] conquest."<sup>205</sup> Hardin makes the connection between the Spanish colonizers' reliance on indigenous populations for slave labor and sex and higher incidents of rape of indigenous women by Spanish colonizers compared to the English Puritans, who "strove to create isolated communities."<sup>206</sup> While the English colonizers, like the Spaniards, clearly relied on indigenous peoples to survive in the Americas, they were more likely to have arrived with women and children. In addition, they were motivated by specific religious biases against indigenous people that led them to push indigenous peoples out of the territories they colonized rather than to incorporate them in any way.<sup>207</sup> The fact that the early English colonies lacked \*34 the gold and silver deposits found in Spanish territories also resulted in less reliance on indigenous slave labor during this early period in American history.<sup>208</sup> These factors contributed to the development of an agricultural economy in the early English colonies that was less reliant on extractive activities and indigenous slaves than its Spanish counterpart.<sup>209</sup>

The Spanish conquistadors, on the other hand, were driven to conquer the indigenous peoples at least in part by their desire to integrate them as slaves in the colonial economy, and they used sexual violence and humiliation in order to do so. For the Spanish conquistadors, "masculinity [in the Americas] meant permission to rape and abuse, something that was not permitted in Spain or with Spanish women."<sup>210</sup> In turn, the violent treatment of women, along with their conceptualization as the property of men,<sup>211</sup> became part of a new model of "Christian" masculinity imposed on the indigenous male population by force.<sup>212</sup> At least one contemporaneous account supports Hardin's assertion that violence against women among the indigenous population increased as a result of the Conquest.<sup>213</sup>

Violeta Sara-Lafosse also traces the origins of machismo in Latin America to the gender dynamics of the Conquest.<sup>214</sup> For Sara-Lafosse, the primary difference between patriarchy and machismo as forms of sexism is the tendency of males to abandon their children within machista societies.<sup>215</sup> In highly patriarchal societies, boys growing up in fatherless homes tend

to develop \*35 exaggerated masculine identities and exhibit aggressive and forceful behavior.<sup>216</sup> Sara-Lafosse, like Hardin, explains that the development of machismo was related to the relatively small number of Spanish women who migrated to the Americas during the colonial period and the sexual violence wrought on the indigenous population.<sup>217</sup> Spanish men felt no compulsion to recognize the children born of rapes or unions with indigenous women, resulting in high rates of illegitimacy during the colonial period. This phenomenon of fathers not recognizing their children has continued through modern times and perpetuates the development of machista tendencies in men.<sup>218</sup>

Although machismo is generally described as a set of behaviors that emphasize “hypermasculinity,”<sup>219</sup> its expression varies from country to country. In El Salvador, machismo has been described as “an understanding of accepted masculine behavior ... which emphasizes control, physical force and the treatment of women as possessions lacking rights of their own.”<sup>220</sup> The “use and experience of violence appears bound up with dominant notions of what it means to be a man.”<sup>221</sup> One Salvadoran feminist underscored the additional element of misogyny--hatred for, or ingrained prejudice against, women.<sup>222</sup> In a society where machismo is deeply entrenched, violence against women is not just tolerated, it is unquestioned and accepted as the norm. It becomes “so routine and entrenched in everyday relations that it is expected as an inevitable and culturally sanctioned element of growing up or being a woman.”<sup>223</sup> This helps \*36 explain the high levels of gender violence, as well as El Salvador’s frequent ranking as number one worldwide in its rate of femicide.

### *C. Forms and Prevalence of Gender Violence*

This section provides an overview of the most prevalent forms of gender violence--violent killings of women, intrafamilial violence, rape and other forms of sexual violence, incest, and human trafficking. Statistics regarding incidence and trends are provided where available, but two caveats concerning these data are in order. First, there is significant underreporting by victims given the high levels of impunity and lack of confidence in the system.<sup>224</sup> Lack of knowledge \*37 about their rights has also contributed to victims’ underreporting.<sup>225</sup> Second, there are serious deficiencies in governmental collection and analysis of relevant data, compromising the statistics’ reliability.<sup>226</sup> This is compounded by El Salvador’s failure to establish the centralized national statistical system on violence against women that is required by law.<sup>227</sup> So although the statistics provide some useful information, they should be understood to paint an incomplete--and perhaps even inaccurate--picture.

#### *1. Violent Deaths of Women and Femicides/Feminicides*

In this section, the term “violent killings of women” is used because it is a more inclusive term than “femicide” or “feminicide.” As discussed *supra*,<sup>228</sup> in the international context, the terms femicide and feminicide denote a gender-motivated killing of a woman, while feminicide adds the additional element of government complicity. A number of Latin-American countries,<sup>229</sup> including El Salvador, have understood femicide or feminicide as separate crimes and have incorporated different elements in their definitions.<sup>230</sup> Where such laws exist, classification of a woman’s death into one of these categories is a legal determination that can be made only by specifically empowered governmental \*38 actors, which in El Salvador include prosecutors and judges.<sup>231</sup> If proof of the required elements cannot be established, a killing will not be categorized as a femicide or feminicide. Therefore, the use of the broader term “violent killings of women” is likely a more accurate measure of the actual number of deaths.

As Figure 1 demonstrates, with few exceptions, violent killings of women in El Salvador have increased significantly since 1999,<sup>232</sup> when statistics first became available. The only exception was from 2012 to 2014, during the gang truce, when El Salvador’s overall homicide rate significantly declined. However, as discussed *supra* Part II.B.3, the increase in forced disappearances<sup>233</sup> and the \*39 subsequent discovery of clandestine graves, in which women’s bodies made up more than half those interred,<sup>234</sup> bring into question whether the number of killings of women did in fact drop during this period. Putting that aside, it is clear that the number of annual killings has not gone below 193, the number recorded in 2000, and in 2015 and 2016 it remained above 500.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

**Figure 1. Annual killings of women in El Salvador, Jan. 1999-Dec. 2016.**

Another way to examine trends in the violent killings of women is to look at them in terms of El Salvador's homicide rate for women in those years for which the data is available (2003 through 2015). Figure 2 shows the same drop in the years 2012 and 2013 as the raw numbers in Figure 1 do, but the rate of violent deaths of women has generally been rising and is still among the highest in the world.<sup>235</sup> Furthermore, although the homicide rate for women is lower than that for men, the proportion of homicide victims who are female increased from 10 percent in the early 2000s to 15 percent in recent years.<sup>236</sup>

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

**Figure 2. Annual killings per 100,000 women in El Salvador, 2003-2015.**

\*40 The killings of women tend to be carried out in a particularly brutal manner when compared to the killings of men.<sup>237</sup> "A man is killed with a bullet to the head[,] but women in addition are raped, beaten and tortured ... women are mutilated, their breasts are cut, they are bitten, they are assaulted, they are cut."<sup>238</sup> Numerous in-country sources reiterated the extreme violence that characterizes the killings of women:<sup>239</sup> dismemberment and other forms of mutilation, often including signs of gang involvement, are the norm.<sup>240</sup> The intent is to cause "more suffering and terror,"<sup>241</sup> reflecting the misogyny discussed *supra* Part II.B.4.

Victims of femicide tend to be disproportionately young. Data show that 64 percent of the total number of femicide victims from 2012 to June 2015 were women aged 10 to 39.<sup>242</sup> Women aged 18 to 30 made up almost 34 percent of victims in 2014, according to the PNC data.<sup>243</sup>

Because of the high levels of impunity for femicide in El Salvador, there are only very limited data on the circumstances and contexts surrounding the \*41 violent killings of women. However, numerous in-country sources share the opinion that many of the killings are the consequence of escalating intrafamilial violence.<sup>244</sup> In fact, some experts believe that the majority of murders of women are the result of domestic violence.<sup>245</sup> This observation does not deny the relationship between gangs and the escalating killings of women. Many women and girls are forced to become the partners of gang members,<sup>246</sup> and their murders represent the intersection of intrafamilial and gang violence. However, the lack of reliable data makes it impossible to precisely quantify the overlap.<sup>247</sup>

## 2. Intrafamilial Violence

One of the most common forms of violence against women is intrafamilial or partner violence.<sup>248</sup> It is a product of deeply entrenched patriarchy, discussed *supra* Part II.B.4. As one expert observed, "[m]achismo--the set of misogynistic gender biases that relegate women to being the property of men--is engrained in the country's history and culture, creating a patriarchal society that justifies domestic violence."<sup>249</sup>

\*42 Caveats regarding under-reporting are especially pertinent to incidents of intrafamilial violence. Despite their "alarming impact on victims and the society at large,"<sup>250</sup> cases of intrafamilial violence are often not denounced because of "shame, fear of retaliation, [or] normalization [of domestic violence] by the patriarchal society, or due to the relationship the victim has with the aggressor."<sup>251</sup> Notwithstanding those limitations, the available data still indicate a high incidence of partner violence. A 2015 study reported that an estimated 54.4 percent of the 1,274 Salvadoran women between the ages of 15 and 64 who were interviewed had been the victims of intimate partner violence (including physical, sexual, and psychological forms of violence).<sup>252</sup> The United States State Department's most recent report on human rights in El Salvador also recognized the prevalence and gravity of violence in the home.<sup>253</sup>

The level of violence inflicted in these incidents is serious, often leading to physical injuries. In its 2015 report, the Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU) [Salvadoran Institute for the Development of the Woman], the lead Salvadoran government agency on women's rights, reported that the Instituto de Medicina Legal (IML) [Institute of Legal Medicine] attended to a total of 11,012 physical injuries from violent attacks between January 2013 and June 2015.<sup>254</sup> Of

these attacks, 61 percent, or almost 7,000, were attributed to intrafamilial violence.<sup>255</sup> More recent data show that from January 2013 to June 2016, 85 percent of the complaints of physical violence received by the Procuraduría General de la República (PGR) [Office of the Procurator General of the Republic] were for violence committed in the home; the other 15 percent were for workplace violence.<sup>256</sup>

Rates of intrafamilial violence in El Salvador remain drastically higher than in most other countries in the region.<sup>257</sup> While 2015 and the first months of 2016 \*43 saw a substantial and unexplained decrease<sup>258</sup> in reports of intrafamilial violence made to the PNC,<sup>259</sup> this dip came after a nearly 500 percent increase in hospitalizations resulting from intrafamilial violence over the four-year period from 2009 to 2013, as reported by the national health ministry.<sup>260</sup>

It is not only adult women who are the victims of violence in the home. According to a 2008 survey, three out of ten women between the ages of 15 and 59 reported suffering physical abuse prior to their 18th birthdays,<sup>261</sup> and nearly one in three adolescent girls ranging in age from 15 to 19 reported experiencing intimate partner violence of some type.<sup>262</sup> Child abuse committed by parents is also prevalent in Salvadoran homes, where “the patriarchal structure places female children and female adolescents in an especially vulnerable position, leading to a high incidence of sexual violence and abuse at home[.]”<sup>263</sup>

### 3. “Crimes Against Sexual Liberty”--Rape and Other Forms of Sexual Violence

The Salvadoran Penal Code establishes the category of “crimes against sexual liberty.”<sup>264</sup> This category includes twenty separate crimes, with the most violent being rape and sexual assault of adults and rape and sexual assault of \*44 minors or incapacitated individuals.<sup>265</sup> Intrafamilial violence, discussed above, and sexual violence are the two most prevalent forms of gender-based violence. These categories of violence have been so widespread that when the Salvadoran government established specialized courts to improve access to justice for women,<sup>266</sup> it excluded these forms of violence from the courts’ jurisdiction in order to avoid “collapse” of the system.<sup>267</sup>

The Fiscalía General de la República (FGR) [Office of the Prosecutor General of the Republic] reported 21,478 cases of crimes against sexual liberty from January 2013 through June 2016. Although there was a slight downturn in registered cases from 2013 to 2016, ISDEMU cautioned against drawing a conclusion that there had actually been a reduction in these crimes, pointing to the many factors that result in under-reporting.<sup>268</sup> Data collected by the PGR demonstrate that sexual violence is common not only in the home but also in the workplace. From January 2012 through June 2016, 42 percent of all complaints received by the PGR were for incidents occurring in the workplace. Salvadoran law criminalizes *acoso sexual* [sexual harassment], which includes sexual harassment by a superior,<sup>269</sup> but government enforcement of the law is ineffective.<sup>270</sup> Due to the lack of employment opportunities, women feel they have no option but to continue in their positions even if they have been the victims of harassment.<sup>271</sup>

\*45 Surveys have also revealed high levels of sexual harassment in schools, which adversely impacts girls’ access to education.<sup>272</sup> In-country sources recounted numerous occasions in which teachers and school administrators had engaged in sexual harassment of their students but had either failed to suffer the consequences or had been supported by their colleagues, while their young accusers were blamed.<sup>273</sup>

Statistics tracking the various forms of sexual violence demonstrate that the victims are disproportionately young or incapacitated.<sup>274</sup> In 2016, out of the 3,947 cases of sexual violence reported by the PNC, 1,873 (47.5 percent) involved minors or incapacitated victims.<sup>275</sup> The vulnerability of girls and adolescents has been consistently documented. In her report from a visit to El Salvador in 2011, the United Nations Special Rapporteur on Violence against Women, Rashida Manjoo, cited to a report from the UN’s Committee against Torture found that “over half of the complaints involving rape and incest (in El Salvador) come from victims who were minors when the offense was committed.”<sup>276</sup>

In her report, Manjoo also noted that “incest remains a serious concern.”<sup>277</sup> Many in-country sources have confirmed the prevalence of incest and observed that it arises from the patriarchal view that the father “owns” the rest of the family and therefore has the unrestricted right to sexual relations within it.<sup>278</sup> In many cultures, incest is taboo and remains largely hidden, but Salvadoran sources referred to the “general tolerance [of incest] in society and in the state”<sup>279</sup> and provided

examples of acts of incest being committed openly.<sup>280</sup> Although the \*46 true dimensions of incest may not be known due to underreporting<sup>281</sup> and a lack of reliable record keeping, a recent study of government data by the Universidad Tecnológica de El Salvador (UTEC) [Technological University of El Salvador] indicated that nearly a quarter (22.8 percent) of all cases of sexual aggression reported by the IML in 2013 involved perpetrators who were the father, the stepfather, or another family member of the victim.<sup>282</sup>

#### *4. Human Trafficking*

Human trafficking, especially sex trafficking, is a significant problem in El Salvador.<sup>283</sup> According to the United States State Department, “El Salvador is a source, transit, and destination country for women, men, and children subjected to sex trafficking and forced labor.”<sup>284</sup> Much of the trafficking is at the hands of gangs and organized crime,<sup>285</sup> who find it more profitable than weapons or drug trafficking because “arms and drugs you sell just one time, but a woman or a child can be held for [years] and be sold multiple times.”<sup>286</sup>

\*47 El Salvador enacted the Ley Especial contra la Trata de Personas [Special Law Against Human Trafficking] in October 2014, and the law went into effect on January 14, 2015.<sup>287</sup> The Special Law provides for penalties of ten to fourteen years’ imprisonment.<sup>288</sup> It also permits the prosecution of those who purchase illegal services.<sup>289</sup>

The United States State Department classifies El Salvador as a Tier 2 country, meaning that the country is not meeting the minimum standards of its Trafficking Victims Protection Act but is making substantial efforts to address the issue.<sup>290</sup> Given the volume of trafficking and the low number of arrests--just 96 arrests for human trafficking in the last four years<sup>291</sup>--the assessment that El Salvador is making “substantial efforts” is open to question. In addition to the small number of arrests, the Salvadoran government identified fewer victims of sex trafficking in 2015 than 2014-- reporting only 49 victims compared to 87 in the prior year.<sup>292</sup>

“Corruption, particularly within the judiciary,” has been cited as a major barrier to the prosecution and conviction of traffickers.<sup>293</sup> An additional barrier to enforcement has been governmental officials’ complicity with traffickers.<sup>294</sup> “[P]ublic officials[,] including legislators, political party officials, and a mayor,” have purchased commercial sex acts from victims of trafficking.<sup>295</sup> Impunity in these cases has been the norm, with the government failing to investigate, prosecute, or convict any of the accused governmental officials.<sup>296</sup>

There are very limited protections for victims of trafficking. Victim and witness protection is insufficient to prevent retaliation from traffickers, and the government maintains only one shelter for female victims.<sup>297</sup> Although the law permits compensation to trafficking victims, the procedures to seek reparations are unwieldy, and very few people have actually received awards.<sup>298</sup>

### **\*48 III. LEGAL FRAMEWORK TO ADDRESS VIOLENCE AGAINST WOMEN: EVOLUTION, IMPLEMENTATION AND IMPACT**

#### *A. Overview*

There are five laws that are most relevant to addressing violence against women in El Salvador. They are, in order of adoption: the 1996 Ley contra la Violencia Intrafamiliar (LVI) [Law against Intrafamiliar Violence], the 1998 amendment to Penal Code article 200 (addressing domestic violence), the 2010 Ley Especial Integral para una Vida Libre de Violencia para las Mujeres (LEIV or Integral Law) [Special Integral Law for a Life Free of Violence against Women], the 2011 Ley de Igualdad, Equidad y Erradicación de la Discriminación contra las Mujeres (LIE or Law of Equality) [Law of Equality, Equity, and Eradication of Discrimination against Women] and Decreto 286 para la Creación de los Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres (Decree 286) [Decree 286 for the Creation of Specialized Courts for a Life Free of Violence and Discrimination against Women].<sup>299</sup>

These five laws remain in force, with each successive law intended to broaden the scope of the legal framework to address gender violence. The earliest law, the LVI, addressed domestic violence; further, it sought only to prevent the violence rather than punish it. Penal Code article 200 purported to focus on punishment<sup>300</sup> by providing for a one- to three-year prison sentence for the commission of domestic violence. The Integral Law and the Law of Equality are much more expansive and ambitious. The Integral Law defines a number of acts as crimes and sets up new governmental bodies, imposing specific responsibilities on each to carry out the law's objectives. Similarly, the Law of Equality creates an extensive governmental structure--spanning numerous state ministries--with the objective of securing genuine gender equality.

The following sections discuss each of these laws in detail, examining their scope, structure, and objectives, as well as their implementation. The statistics on gender violence in El Salvador do not show a significant reduction in the levels of violence or in the impunity for its perpetrators. Based on literature as well as interviews with a wide range of in-country experts, the following sections attempt to identify and explore reasons for the failure of these laws to impact the persistence of gender violence in El Salvador.

#### ***\*49B. The Law Against Intrafamilial Violence and Penal Code Article 200***

##### ***1. Scope of the LVI***

The first significant law in El Salvador to address violence against women was the Law against Intrafamilial Violence, or LVI, enacted in December 1996. A principal catalyst for the LVI's adoption was El Salvador's ratification of the Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer (Convención de Belém do Pará) [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)].<sup>301</sup> The Convention of Belém do Pará represented a "powerful consensus among both state and non-state actors concerning the need to eradicate gender violence" in the Americas.<sup>302</sup>

The Convention of Belém do Pará defines violence against women as physical, psychological, and sexual violence occurring in either the private or public sphere<sup>303</sup> and proclaims a woman's right to a life free of violence, as well as the right to have prompt recourse to a competent court for protection against acts that violate this and other related rights.<sup>304</sup> It also requires all State parties to include in their laws measures necessary to punish any act of violence against women,<sup>305</sup> as well as to create programs to promote the eradication of violence against women.<sup>306</sup> States must include in their report to the Inter-American Commission of Women "information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women."<sup>307</sup>

El Salvador signed and ratified the Convention of Belém do Pará in August and November of 1995, respectively.<sup>308</sup> The enactment of the LVI shortly after its ratification was understood to be pursuant to Convention obligations. The LVI defined intrafamilial violence<sup>309</sup> and listed the forms in which it could occur as \*50 physical, psychological, and sexual.<sup>310</sup> The LVI's overarching purpose, according to women's rights advocates involved in its drafting, was to create a prompt, efficient, and accessible process for women to obtain orders of protection and compensation.<sup>311</sup> It attempted to do so by providing that a woman, or an individual acting on her behalf, could denounce violence (i.e., file a complaint) and obtain protective orders through any one of three routes. First, she could file a complaint directly with the courts--with jurisdiction provided either in the tribunales de paz [peace courts] or the tribunales de familia [family courts],<sup>312</sup> which could issue an order of protection<sup>313</sup> and order compensation for harm suffered.<sup>314</sup> Second, a woman could denounce to the PNC, who would have the obligation to bring the case to a competent tribunal.<sup>315</sup> Third, the woman could denounce to the PGR,<sup>316</sup> which could undertake a process of conciliation, seek an order of protection on behalf of the woman, or bring the case to the courts.<sup>317</sup> Cases brought to the peace or family courts were to be resolved expeditiously in one or two hearings.<sup>318</sup>

Under the 1996 version of the LVI, the only entities empowered to issue protective measures were the peace and family court judges. The LVI was \*51 reformed in 2002, giving authority to the police to issue special temporary protective orders not to exceed eight hours.<sup>319</sup> The LVI was reformed again in 2004<sup>320</sup> and 2014.<sup>321</sup> The 2004 reform, whose preamble described intrafamilial violence as a "complex social phenomenon," focused on the incorporation of psychologists and social workers

throughout the LVI process.<sup>322</sup> The 2014 reform, enacted after the passage of the Integral Law and the Law of Equality, stated that its purpose was to strengthen the protection afforded to victims of intrafamilial violence. It obliges the PNC to provide information to the victim about her rights and the range of services available to her, and increases from eight to 48 hours the length of the special temporary protective orders that the police have authority to issue.<sup>323</sup>

## 2. *The Failure of the LVI to Reduce Intrafamilial Violence*

### a. Institutional Biases

Notwithstanding its symbolic importance as the first law of its kind, the LVI is universally considered to have failed in its objective of reducing intrafamilial violence. In a 2010 interview, legal expert and women's rights activist Aracely Bautista Bayona observed that in the nearly fifteen years since the LVI had been in effect, "the phenomenon of beatings, rapes, and murders of women ha[d] continued to increase in both frequency and brutality."<sup>324</sup> Bautista Bayona and \*52 other experts pointed to deeply entrenched patriarchy as an overarching factor for the failure of the LVI to have any discernible positive impact.<sup>325</sup> Stereotypes and gender biases translated into the failure of governmental officials--from the police, to prosecutors, to the peace and family court judges with key roles pursuant to the law--to fulfill their responsibilities under the LVI.<sup>326</sup> Although governmental actors across agencies were criticized, judges have consistently been singled out for being particularly resistant and not interested in gender.<sup>327</sup>

A comprehensive 2007 Oxfam study underscored the role of patriarchy in thwarting the LVI's effectiveness. The study identified a number of other contributing factors to the failure of the law, including institutional weaknesses that resulted in a lack of coordination between the courts, which were charged with issuing protective measures, and the police, who were charged with enforcing them.<sup>328</sup> The Oxfam report also pointed to the LVI's requirement of conciliation.<sup>329</sup> Although subsequently amended, article 16 of the 1996 version \*53 of the LVI required the PGR to schedule a meeting between the parties in an LVI proceeding to attempt conciliation.<sup>330</sup> The 2002 LVI reforms modified the language so that the PGR was to proceed with conciliation only if "requested by the victim or if it were appropriate,"<sup>331</sup> but it was reported long after 2002 that the PGR as well as judges continued to pressure parties to "resolve their differences and reconcile."<sup>332</sup> Oxfam criticized the use of any kind of "conciliation," as well as the "conscious and unconscious tendency of judges" to use it, noting that it is inappropriate in cases involving intrafamilial violence because there cannot be "negotiation between unequals."<sup>333</sup>

### b. Design Flaws

Although the LVI's lack of success can be attributed in large part to patriarchal attitudes, there were also problems inherent in the LVI's conception and design. The LVI is a "special law"; it stands alone, as opposed to being a provision of an existing code, such as the Penal or Family Code. Conflicts between or confusion about the interplay of the LVI and other codes had unintended adverse consequences.<sup>334</sup> One of the most significant of these arose \*54 from facially contradictory language between the LVI and Penal Code article 200, which addresses intrafamilial violence. At the time the LVI was enacted in 1996, domestic violence was not recognized as a crime, and the LVI did not change this. Beginning in 1997, Penal Code article 200, as amended in 1998 and 2004, appeared to recognize domestic violence as a distinct crime. Article 200 states that a family member who commits violence, as defined within article 3 of the LVI,<sup>335</sup> will be punished with a one- to three-year prison sentence.<sup>336</sup>

Notwithstanding the reasonable facial interpretation of Penal Code article 200 that acts of domestic violence are punishable crimes, Salvadoran experts explain that this is not how it has been interpreted; acts that constitute physical, psychological, or sexual violence constitute crimes *only* if they are recognized as such under *other* provisions of the Penal Code.<sup>337</sup> For example, for acts of physical violence to constitute crimes under the Penal Code, they must result in lesions that incapacitate an individual for a set period of time and that, in most cases, require medical treatment.<sup>338</sup> Psychological violence is not defined as a crime anywhere in the Penal Code; criminal prosecution for such action could only take place if the psychological harm met the criteria for other defined crimes, such as those that affect the dignity or personal autonomy of the \*55 person,<sup>339</sup> constitute slander<sup>340</sup> or defamation,<sup>341</sup> or are an insult.<sup>342</sup> The same would be true for sexual violence (i.e., sexual

violence would have to be defined as a separate crime under the Penal Code).<sup>343</sup> Therefore, in reality, Penal Code article 200 did nothing to move Salvadoran law forward in its recognition of intrafamilial violence as a crime. Acts that were already defined as crimes continued to be crimes, and those not so defined remained outside the scope of the law--whether in the context of intrafamilial violence or not.

Penal Code article 200 did, however, have a pernicious effect, as it includes a clause that has impeded prosecution of even those acts of intrafamilial violence that are independently recognized as crimes within the Penal Code. This clause states that criminal prosecutions may be initiated only once the judicial proceedings established in the LVI are exhausted.<sup>344</sup> On its face, this provision appears to require that a woman exhaust her request for protective measures under the LVI (which are the only judicial proceedings established in the LVI) before she can file a criminal complaint seeking prosecution of her abuser.

Interpreting the clause to require exhaustion under these circumstances--which is how it is commonly understood--puts a woman at greater risk. During the time required for a woman to exhaust protective measures, a violent aggressor could continue and/or escalate his abuse, free from detention. While experts acknowledge the existence of confusion over this clause--perhaps a result of poor drafting--they maintain that the exhaustion requirement applies only when a woman seeks criminal prosecution of her abuser for violation of a protective order,<sup>345</sup> and in the case of any other crime, a woman should be able to go directly to the FGR to file a complaint and request prosecution. However, this is not the common interpretation. Therefore, Penal Code article 200, lauded for addressing domestic violence, did very little to advance protection. It not only failed to criminalize domestic violence per se--it is also read to impose an \*56 additional procedural requirement, not required for any other crime, before criminal proceedings can be commenced against a violent aggressor.<sup>346</sup>

The failure of the LVI to result in greater protection for women has led women's rights activists, such as Aracely Bautista Bayona, to call for a different approach--one that was "integrated" and "holistic."<sup>347</sup> This widely held view resulted in the enactment of the Integral Law and the Law of Equality.

### *C. The Integral Law and the Law of Equality*

#### *1. Background*

The Integral Law, which focuses on violence against women, was enacted on November 25, 2010, and went into effect on January 1, 2012. The Law of Equality, addressing gender equality, was enacted on March 17, 2011, and went into effect on April 8, 2011. The passage of both laws was celebrated as a victory for the women's rights movement, with special pride for the fact that female Diputadas [Assembly Members] of the Asamblea Legislativa [Legislative Assembly] crossed party lines and unified in support of the laws.<sup>348</sup> This is all the more remarkable in the context of El Salvador, where the right-wing ARENA party and the left-wing FMLN party represent those factions that were literally in pitched battle throughout the country's civil war. Some commentators have observed, however, that the compromises that were made in order to obtain a consensus between conservative and more liberal members of the Legislative Assembly resulted in the exclusion of some important issues. For example, in relation to the Law of Equality, there was resistance to including the concept of separation of church and state,<sup>349</sup> which is significant because church tenets are \*57 invoked in areas such as reproductive choice (abortion is criminalized in El Salvador),<sup>350</sup> sexual orientation, and gender identity. Protections based on sexual orientation and sexual diversity were originally included in drafts of the law, but they were ultimately removed.<sup>351</sup> Efforts to provide protection for sex workers failed for similar reasons.<sup>352</sup>

Notwithstanding these compromises, the passage of the Integral Law and the Law of Equality raised expectations among activists and experts alike, lauding their potential to bring about significant improvements in the lives of women.<sup>353</sup> \*58 However, as we pass the four- and five-year marks since the respective laws' enactment, levels of violence against women--which may have dipped during the gang truce--are on the rise again, and high levels of impunity for all crimes--including gender crimes--continue, while key indicators of inequality continue unabated.<sup>354</sup> Reports, as well as interviews conducted in Fall 2013 and 2016, point to the persistence of deeply entrenched patriarchal attitudes, the lack of political will and of adequate funding, and--most significantly--the failure of key governmental bodies to implement, in full or in part, the two laws' most essential provisions. Most recently, and in an apparent response to criticisms regarding the

government's failure to take effective action relating to gender violence, the Legislative Assembly enacted Decree No. 286,<sup>355</sup> creating specialized courts on violence and discrimination against women. As discussed *infra*, the likelihood that these special courts will have any positive impact is seriously in question. The following sections provide an overview of the Integral Law, the Law of Equality, and Decree 286.

The Integral Law and the Law of Equality are lengthy documents--the former is comprised of 58 separate articles and the latter of 41, and many of the articles have numerous subsections. These various provisions set forth guiding principles, define or expound on relevant terms and concepts, and assign extensive new responsibilities across governmental entities. However, not all obligations and responsibilities are of equal importance. There are indisputably some provisions that are essential to advancing the laws' objectives. They include: 1) the allocation of sufficient funding to those government agencies charged with new responsibilities under the laws; 2) the establishment of a reliable system to track violence and discrimination against women; 3) the creation of an adequate shelter system; 4) the implementation of measures to remove gender bias and improve the justice system's response to crimes against women; and 5) the adoption by State agencies of internal norms consistent with the requirements of the two laws.

Although the discussion that follows will describe the overall framework of both laws, the focus will be on the failure of the government to carry out these key requirements in a meaningful way.

### **\*592. The Integral Law**

The introductory paragraphs to the Integral Law state that it is an expression of the State's obligation to enact legislation addressing violence against women, including measures for detection and prevention, the provision of services, reparations to women victims, and punishment of perpetrators.<sup>356</sup> The Integral Law contains two principal sections (títulos, or titles), which are divided into sub-sections (capítulos, or chapters), each of which contains a number of artículos, or articles. Title I creates the overall framework for accomplishing the law's stated objectives, while Title II addresses prosecution and punishment.

#### **a. Title I**

##### **i. Scope of Title I**

Article 1 reiterates that the law's objective is to guarantee a woman's right to a life free of violence,<sup>357</sup> which includes the right to be free of all forms of discrimination as well as from social and cultural practices based on concepts of inferiority or subordination.<sup>358</sup> Subsequent articles make the connection between gender inequality and violence, stating that violence has its origins in "unequal power relations."<sup>359</sup> The law defines key terms such as sexism (discrimination based on sexual differences)<sup>360</sup> and misogyny (hatred, rejection, aversion, or contempt for women).<sup>361</sup> Violence against women is defined as any action "based in gender that cause[s] death, harm or physical, sexual or psychological suffering ... in the public as well as private sphere."<sup>362</sup> Article 9 of the Integral Law recognizes and defines a broad range of acts as constituting violence against women--from symbolic violence to feminicides at the extreme end of the continuum.<sup>363</sup> However, it should be noted that article 9 does not criminalize these acts, and those which are not separately and independently identified as crimes (in Title II) are not subject to prosecution and punishment.

**\*60** The Integral Law assigns responsibilities to numerous governmental agencies,<sup>364</sup> but it designates ISDEMU as the institución rectora, or the lead State entity responsible for the execution and fulfillment of the law.<sup>365</sup> ISDEMU's overarching role is to "assure, monitor, and guarantee" compliance with and implementation of the law.<sup>366</sup> A Comisión Técnica Especializada (STC) [Special Technical Commission], under the direction of ISDEMU, is to facilitate the implementation of the law.<sup>367</sup> The Integral Law mandates that ISDEMU formulate a National Policy for Access of Women to a Life Free of Violence, develop a Plan of Action,<sup>368</sup> and present annual reports to the Legislative Assembly on the state of violence against women.<sup>369</sup> Responsibilities are assigned at the municipal level, with each municipality required to develop a plan every three years for the prevention of violence against women.<sup>370</sup> The law also requires the creation of Unidades Institucionales de Atención Especializada para la Mujeres [Institutional Units of Specialized Attention for Women] in those **\*61** governmental

offices that receive women seeking assistance in order to centralize information and services and reduce re-victimization.<sup>371</sup>

## ii. Barriers to and Failures in Implementation

### A. Budgeting

As described above, the Integral Law imposes a number of responsibilities across governmental bodies. In order for these agencies to take on additional responsibilities, they require adequate funding. In recognition of this need, the law states that the General Budget<sup>372</sup> should allocate monies every year to each government agency. However, this statement is aspirational<sup>373</sup> and not binding on decisions made as part of El Salvador's normal budgetary process.<sup>374</sup>

Sources in El Salvador have repeatedly noted that the government has simply failed to allocate adequate funding to government institutions that were given significant new responsibilities under the gender laws.<sup>375</sup> Although El \*62 Salvador is not a wealthy country, many see the insufficient funding as related not so much to sparse resources as to lack of political will.<sup>376</sup> Budgetary allocations are a clear indicator of "commitments and political priorities,"<sup>377</sup> and "while laws are an important component"<sup>378</sup> in addressing gender violence, it is not enough to approve them without assigning sufficient funds for their application--which is what has happened in El Salvador.

However, it would be an error to attribute all failures in the implementation of the law to insufficient funding, even assuming that the lack of funding indicates lack of political will. In some instances, insufficient funding played little or no part; the resources were there, but the willingness to implement was not. The following discussion of the failure to establish a national database is one such example, where resistance, rather than resources, has stymied implementation.

### B. The Stalled Creation of a National System on Violence Against Women

The Integral Law mandates the creation of a comprehensive national statistical system on violence against women: the Sistema Nacional de Datos, Estadísticas e Información de Violencia contra las Mujeres ("National System") [National System of Data, Statistics and Information on Violence against \*63 Women].<sup>379</sup> This system is to capture a wide range of information, including categories of violence, demographics pertaining to victims and perpetrators (geographic location, age, marital status, occupation, level of education), data on government services provided to women victims, and resources expended in providing services to women. Reports are to be issued based on these data evaluating the impact of State policies on eradication of violence.<sup>380</sup>

The Ministerio de Justicia y Seguridad Pública (MJSP) [Ministry of Justice and Public Security] is responsible for managing the system, working in coordination with the Dirección General de Estadísticas y Censos (DIGESTYC) [General Directorate on Statistics and Census] of the Ministerio de la Economía [Ministry of the Economy].<sup>381</sup> Every governmental institution<sup>382</sup> that possesses relevant information is to submit it to DIGESTYC and to the MJSP for the publication of detailed annual reports.<sup>383</sup>

The importance of collecting such data has been repeatedly affirmed by international organizations addressing violence against women and gender equality.<sup>384</sup> The ongoing maintenance of high-quality data is necessary to \*64 measure progress, to evaluate the efficacy of governmental policies, to assure the provision of necessary services, and to inform legislation and the development of public policy.<sup>385</sup> The "availability of accurate and inclusive information is also of crucial importance to strengthening social condemnation of violence against women, and expanding consensus around the necessity of eradicating it."<sup>386</sup>

In a 2012 interview, Edgardo Alberto Amaya Cobar, an official with the MJSP involved in the development of a pilot program for the National System, acknowledged that El Salvador did not have much of a "tradition" of collecting and maintaining data.<sup>387</sup> Available data were inconsistent and unreliable because each institution--the PNC, the FGR, the IML, and the Órgano Judicial (OJ) [Judiciary]--had its own methodology and did not agree on the format or variables for data

collection.<sup>388</sup> Amaya Cobar lauded the Integral Law for pushing the government to create a reliable system of information and explained that key elements of the new system would be: 1) use of a single database, 2) with agreed-upon variables that would be used by all government institutions,<sup>389</sup> and 3) the creation of a “unique code” to identify victims.<sup>390</sup> Amaya Cobar predicted that the pilot would be launched in 2013 and hoped that it would be put into operation by 2014.<sup>391</sup>

As of the end of 2016, however, the National System had yet to be launched, and numerous in-country sources affirmed that this failing was the result not of resources or technical barriers but of the refusal of State agencies to cooperate in its creation.<sup>392</sup> Jeanette Aguilar, Director of the IUDOP of the UCA and the \*65 author of many publications on various aspects of El Salvador’s justice system, noted that resistance to creating a unified system of data was not new; calls to create such a system were first made more than twenty years ago but were not realized.<sup>393</sup> Government institutions would rather hide their data because, given how bad things are, there is a “political cost to transparency.”<sup>394</sup> Aguilar noted that in the absence of a harmonized National System, it is virtually impossible to track a criminal case from denunciation through investigation, prosecution, and sentencing, which makes it difficult to evaluate the performance of governmental actors-- police, prosecutors, and judges--in the various stages of the judicial process.

Notwithstanding the difficulty of assessing the operation of the justice system, the UN Population Fund (UNFPA), working with the UN Development Program (UNDP), recently completed a study on access to justice in cases of gender violence.<sup>395</sup> The UN agencies obtained access to case files by agreeing to give the government the final say on publication of their findings. A principal objective of the report was to determine why fewer femicide cases than homicides resulted in sentences. The researchers identified cases of interest and followed each one through its various procedural steps.<sup>396</sup>

\*66 Their conclusions were critical of the governmental actors, finding failings on the part of the authorities in the investigation and prosecution of the cases and in the lack of adequate protocols guiding subsequent action. The report and its identification of deficiencies could have served as a useful blueprint of high-priority areas for improvement. Unfortunately, consistent with its preference for hiding inconvenient truths, the government refused to allow the report to be published.<sup>397</sup>

As an aside, it is important to note that this is not the first time that the government has opted to bury a study because it revealed problems and high levels of impunity in the justice system. Nearly a decade ago, the UNDP commissioned a report to examine homicides with the objective of identifying the causes of high levels of impunity.<sup>398</sup> The study focused on homicides committed in 2005, and its researchers examined individual files as each case moved through the system.<sup>399</sup> The study’s principal finding was that there was a 97 percent impunity rate.<sup>400</sup> The report identified serious deficiencies at every stage of the process, committed by the PNC, the FGR, and the courts.<sup>401</sup> When the report was first released, the press praised it for allowing the country to have a “real picture” of the situation.<sup>402</sup> Within a few days, however, the government began to harshly criticize the report, accusing the researchers of improprieties.<sup>403</sup> Shortly afterward, the UNDP withdrew the report so that it was no longer publicly available.<sup>404</sup> The UNDP explained its actions by saying that “it has to work with the government” and if a report they release “damages relations with \*67 the government, it adversely affects UNDP’s ability to constructively work” with them.<sup>405</sup>

Given the Salvadoran government’s preference for hiding unfavorable information, it seems unlikely that the Integral Law’s mandate of creating a National System to allow greater transparency will be fulfilled. And unfortunately, as some knowledgeable sources have observed, there is no way to force the government to do what it does not want to do.<sup>406</sup>

### C. Shelters and a “Special Fund”

Article 26 of the Integral Law requires the creation of a shelter program coordinated by ISDEMU.<sup>407</sup> The law is silent on specific requirements as to capacity, geographic distribution, or other factors that would assure that women, along with their children, could access a safe refuge. Five years after the enactment of the Integral Law, shelter capacity remains extremely limited. There are only two government shelters in the entire country, one for victims of domestic violence and the other for victims of trafficking.<sup>408</sup> The shelter for women fleeing domestic violence can accommodate only 15 women; the capacity of the other shelter is unknown. Neither shelter accepts women with daughters over 18 or sons over nine years old or women in need of medical attention.<sup>409</sup>

There is some dispute regarding the length of time women can remain in these two government shelters; ISDEMU has reported that the shelter for women fleeing intrafamilial violence allows stays of two to twelve months and that trafficking victims may stay a maximum of three years. The women's NGO Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] contradicts this information, stating that neither shelter allows women to remain for more than five days.<sup>410</sup> In light of the high levels of intrafamilial violence, the lack of shelters is a serious gap in protection. An expert to the judiciary expressed frustration that the Integral Law did not require the development of a national network of shelters, which could interface \*68 with the justice system so that judges could provide women at risk with information about where they might go.<sup>411</sup>

Other measures in the Integral Law that are intended to assist women in need of support have also failed to come to fruition. For example, the law provides for the establishment of a Fondo Especial para Mujeres Víctimas de Violencia [Special Fund for Women Victims of Violence].<sup>412</sup> Special Fund monies are supposed to finance measures such as social assistance or subsidies to women victims,<sup>413</sup> presumably for necessities such as housing. A serious limitation to the design of the Special Fund is that sanctions imposed for violations of the Integral Law constitute its sole source of funding.<sup>414</sup> However, to date, no sanctions have been levied, meaning that zero funding is available for these purposes.

## b. Title II

### i. Scope of Title II

As mentioned above, the Integral Law also includes provisions criminalizing specified acts of violence against women. Title II defines a range of acts as crimes,<sup>415</sup> beginning with femicide<sup>416</sup> and aggravated femicide.<sup>417</sup> A femicide is defined as the killing of a woman for reasons of "hatred or contempt because she is a woman," and lists five criteria for making that determination.<sup>418</sup> A femicide may be considered aggravated if committed under certain enumerated circumstances, including if there were multiple perpetrators or if the \*69 victim was a minor or physically or mentally disabled.<sup>419</sup> Femicides are to be punished by sentences of 20 to 50 years, while aggravated femicides carry sentences of 30 to 50 years.

Other criminalized acts include inducing or assisting a woman to commit suicide if preceded by violence or control over the victim,<sup>420</sup> the publication or distribution of erotic or pornographic images of a woman without her consent,<sup>421</sup> and the distribution of personal information that damages a woman's honor or privacy.<sup>422</sup> The law also criminalizes verbal or non-verbal expressions of violence against women in a range of contexts.<sup>423</sup> Several provisions address economic rights; it is a crime for an intimate partner to steal a woman's property,<sup>424</sup> to steal profit or income derived from family economic activities,<sup>425</sup> or to refuse to provide information about the income of a person who has the obligation to provide economic assistance to a woman.<sup>426</sup> The law makes it a punishable crime to block access to justice: any public official who "causes, promotes or tolerates impunity or barriers to investigation" can be sentenced to a two- to four-year sentence and terminated from employment.<sup>427</sup>

Notable in its absence from the list of crimes in the Integral Law is intrafamilial or domestic violence, which, as explained *supra* Part III.B, was not criminalized by the LVI or as a separate crime in various Penal Code reforms. The Integral Law does, however, address one issue that was first raised in the context of the LVI: the issue of whether conciliation is appropriate in cases of gender violence where there are unequal power relations. The Integral Law explicitly prohibits any form of conciliation or mediation for its enumerated crimes.<sup>428</sup>

In apparent response to consistent criticisms of bias and insensitivity in the justice system, the law requires the FGR to formulate special policies for the \*70 prosecution of crimes of violence against women.<sup>429</sup> These protocols are to include measures to protect and support the victim<sup>430</sup> and to assure her privacy by prohibiting the use of information regarding her prior sexual history.<sup>431</sup> To date the FGR has only very partially complied with article 56's requirement that it issue protocols on the range of gender crimes included in the law. The FGR has published but one set of protocols, the Protocolo de Actuación para la Investigación del Femicidio [Protocol for Performance in the Investigation of Femicide, or Femicide Protocol], in 2012.<sup>432</sup>

A significant objective of the Femicide Protocol is to assure that prosecutors consider those factors that differentiate a femicide from a homicide.<sup>433</sup> This was prompted by the concern that the gender dimension of these killings was being ignored. Although the Femicide Protocol has been praised for its content and approach, its efficacy has been greatly limited because a majority of prosecutors simply do not follow its procedures, though they affirm \*71 that they do.<sup>434</sup> And as of 2015, many of them (41 percent) had still not received training in the application of the Protocol.<sup>435</sup>

The categorization of a killing as a femicide rather than as a homicide may have more symbolic than practical significance. Regardless of how the prosecutor classifies the case, he or she must still be able to marshal the evidence to persuade the judges hearing the case that the killing is in fact a femicide, and they must be able to successfully prosecute it. A telling statistic is that between January 2012, when the Integral Law went into effect, and June 2014, 628 women were reported killed, “of which only 34 cases arrived at the stage of public [prosecution] with the classification of femicide or aggravated femicide.”<sup>436</sup> We do not have the statistics as to how many cases that arrived were resolved or whether they resulted in conviction or acquittal.

## ii. Persistent Impunity

As discussed above, the lack of a reliable national system of statistics precludes the ability to track a case from start to finish in order to evaluate levels of impunity. However, there are some telling statistics that demonstrate that only a very small percentage of denounced gender crimes are subsequently investigated, prosecuted, and sentenced. For example, a 2015 study by the IUDOP concluded that only 6.5 percent of all categories of crimes that were prosecuted between 2009 and 2013 resulted in a sentence.<sup>437</sup> The IUDOP study was not specific to crimes of gender violence, but one can infer similarly high levels of impunity for those crimes from ISDEMU’s 2016 report.<sup>438</sup> Although ISDEMU was unable to track a particular case from start to finish, its 2016 report included a chart with numbers of violent killings of women by year--from 2013 to 2015. In that time period, there were 688 cases brought to the FGR. During \*72 that same time period a total of 556 cases (80 percent) were dismissed because they were deemed to have insufficient evidence to move forward.<sup>439</sup> Because cases may pend from year to year, the 556 cases which were dismissed are not necessarily a subset of the 688 cases brought between 2013 to 2015, but they still give some idea of the high number of cases in which prosecution does not move forward because of failures in the investigation and gathering of evidence, resulting in impunity.

The limited data available regarding the prosecution of acts classified as crimes under the Integral Law other than femicide/aggravated femicide also demonstrate high levels of impunity. From January 2013 to June 2016, the FGR registered 3,702 criminal cases arising under the Integral Law.<sup>440</sup> The OJ reported that prosecution in only 743 cases (approximately 20 percent) had been initiated in the peace courts, with no indication of how had many proceeded past that initial stage to the juzgados de instrucción [courts of instruction] and then to the tribunales de sentencia [sentencing courts] for trial and resolution. As discussed above, cases can be--and often are-- dismissed for insufficient evidence, and that can occur at both the peace court and instruction court levels. Therefore, to report that 20 percent of cases registered by the FGR were initiated in peace courts is far less meaningful than to report how many of those cases survived dismissal, proceeded to trial, and were resolved--a number that is not available. Furthermore, 20 percent is a relatively low number, so even if all of these cases went to trial and reached a verdict-- which is certainly not the case the impunity rate would still be 80 percent.

As discussed above, intrafamilial violence is not classified as a crime in the Integral Law or in the Penal Code. However, a discussion of the prosecution and impunity rates for gender crimes would be incomplete without mention of the justice system’s handling of intrafamilial violence. Unsurprisingly, data pertinent to outcomes in cases of intrafamilial violence are simply not available. ISDEMU reported on numbers provided by the courts as to cases which entered (ingresos) the system by the beginning of 2015 (10,104), the number of cases which left (egresos) the peace courts (10,295), and the number which remain pending (415).<sup>441</sup> However, there is absolutely no information provided as to the resolution of those cases that “left” the system--i.e., whether they were dismissed or continued to trial and, if so, what the outcomes were. Individuals and organizations in a position to speak credibly about outcomes share the firm opinion that impunity for violence against women, including domestic violence, \*73 remains high.<sup>442</sup> For example, the women’s rights organization ORMUSA reported that, out of 978 cases of violence against women in 2014, only 4 resulted in a conviction.<sup>443</sup>

However, the overall weakness of the Salvadoran judicial system does not fully explain the failure to respond effectively to intrafamilial and other forms of violence against women. A broad range of sources attribute these high levels of impunity to gender bias among personnel of key state institutions-- the PNC, the FGR, and the judiciary. Women who go to report violence continue to be blamed by police or prosecutors for “provoking [the] assault” against them.<sup>444</sup> Judges are often considered to be the worst offenders.<sup>445</sup> It was in an attempt to circumvent systemic patriarchy that the original draft of the Integral Law included the creation of specialized courts, with trained personnel, to hear crimes of violence against women. The proposal for specialized courts was removed from the law due to budgetary considerations.<sup>446</sup> Their omission was considered by many as a serious gap,<sup>447</sup> an opinion only reinforced by the subsequent lack of appreciable progress in the justice system. In February 2016, the Legislative Assembly approved a decree to establish a limited number of specialized courts.<sup>448</sup> The Decree will be discussed in detail *infra* Part III.D.

### 3. The Law of Equality

#### a. Scope of the Law

The Law of Equality begins by invoking the domestic and international guarantees of gender equality, citing El Salvador’s Constitution and various \*74 regional and international treaties and conventions.<sup>449</sup> Its introductory paragraphs proclaim the necessity of a “legal instrument that develops the constitutional principles of equality.”<sup>450</sup> The passage of the Law of Equality was seen as a major step forward because “[i]n 200 years the Legislative Assembly ha[d] never enacted laws governing anti-discrimination.”<sup>451</sup> The law is divided into seven sections (capítulos, or chapters) that set forth its overarching objectives and guiding principles (Chapters I & II) and then address the law’s application in the spheres of education and political participation (Chapter III); economic and labor rights (Chapter IV); health, social, and cultural rights (Chapter V); and rural development (Chapter VI). The concluding chapter (Chapter VII) assigns responsibility for the guarantee of equality to the PGR.

The law only applies to state institutions; it does not apply to acts of discrimination committed by private actors,<sup>452</sup> and some see this as a serious gap. It defines the principles of equality,<sup>453</sup> equity,<sup>454</sup> and non-discrimination,<sup>455</sup> stating that equality encompasses equal opportunity as well as equal treatment.<sup>456</sup> As with the Integral Law, ISDEMU is designated as the lead state entity with the responsibility to “promote and assist” in the implementation of the law,<sup>457</sup> including advising state institutions on compliance.<sup>458</sup> In addition, ISDEMU is tasked with the development of a National Plan for Equality.<sup>459</sup> Local governments are also required to develop plans for equality.<sup>460</sup>

Similar to the Integral Law, the Law of Equality recognizes the importance of maintaining relevant data. All state institutions are required to disaggregate relevant data by gender.<sup>461</sup> The DIGESTYC is directed to incorporate the \*75 variable of sex into its national system of statistics,<sup>462</sup> and ISDEMU, together with the DIGESTYC, is to administer the national system.<sup>463</sup>

Each of the chapters addressing particular societal ambits (e.g., education, labor, etc.) articulate ambitious principles and criteria relevant to the achievement of equality in their respective areas.<sup>464</sup> In the areas of education and economic and labor rights, the goals are equal access and opportunity. In the health arena, the focus is on access to information as well as equality in the receipt of services,<sup>465</sup> including those regarding sexual and reproductive health.<sup>466</sup> The paragraphs on social and cultural rights call for, *inter alia*, the recognition of the value of domestic work, the establishment of special programs to support women in economically vulnerable situations,<sup>467</sup> and facilitation of access to housing.<sup>468</sup> The state is to develop programs for trafficking victims in order to eliminate discrimination, stigmatization, or punishment.<sup>469</sup> The section Women in Rural Development states that women are also to be assured a role in decision-making in rural development projects.<sup>470</sup>

Although ISDEMU is the lead agency for the Law of Equality, the law assigns to the PGR the responsibility for the “defense and guarantee” of women’s rights through a separate office to be created within the PGR.<sup>471</sup> The law directs the PGR to carry out its role as guarantor and defender of rights through a wide range of activities--from proposing reforms, to receiving and responding to complaints, to publishing an annual progress report regarding compliance with the law.<sup>472</sup>

Finally, the law addresses the punishment of those who violate the rights it sets forth. Each governmental institution is given

six months to come up with internal norms regarding sanctions.<sup>473</sup> No guidance is given regarding the sanctions themselves, which leaves a substantial margin of discretion to each governmental institution.

## **\*76 b. Status of Implementation of Key Provisions**

### **i. Budgeting**

As with the Integral Law, the Law of Equality cannot allocate resources for its implementation, although it does urge the appropriation of necessary funds.<sup>474</sup> ISDEMU is the only entity specifically named as a recipient of funding; article 13 states that the budgetary allocation should take into account the resources ISDEMU needs to implement the law.<sup>475</sup> The Law of Equality creates new governmental bodies (such as a special office within the PGR), but in apparent recognition that these new offices can operate only to the degree they are funded, it states that they will operate “in conformance with the resources that are approved in the next general national budget.”<sup>476</sup> Although there have been funds allocated to various state entities, governmental and NGO sources report that funding has not been sufficient given the substantial new responsibilities assigned by the law.<sup>477</sup>

### **ii. Statistics--The Creation of New Systems for Tracking Gender Data**

The collection of gender-disaggregated data, whether on violence or other relevant factors, is critical to measuring progress towards women’s rights. Under the Law of Equality, ISDEMU, working with DIGESTYC, a specialized office within the Ministry of the Economy, is assigned the responsibility of creating a system that will enable the comprehensive monitoring of gender conditions.<sup>478</sup> There are several tiers to this system. The top tier is the Gerencia de Estadísticas de Género [Office of Gender Statistics]; the second tier is the Sistema de Estadísticas y Monitoreo para la Igualdad (SEMI) [the System of Statistics and Monitoring for Equality], whose creation is the responsibility of ISDEMU. A key component of SEMI is the Sistema Nacional de Estadísticas e Indicadores de Género (SNEIG) [National System of Statistics and Indicators of Gender], which is to collect data in seven areas.<sup>479</sup>

\*77 The creation of the required framework, and publication of statistical information, has been slow. The Office of Gender Statistics was established only in 2016--nearly five years after the Law of Equality went into effect. The delay was attributed to lack of resources as well as lack of political will.<sup>480</sup> It was not until March 2017 that a report was published addressing the areas required by article 14 of the Law of Equality.<sup>481</sup> Although this publication is a clear step forward, the absence of data on violence against women is notable.

### **iii. Incorporation of the Law of Equality into Governmental Agency Norms**

The Law of Equality is intended to bring all governmental offices into compliance with its bedrock principles of equality and non-discrimination. Each state institution is to develop internal norms harmonizing its policies and practices with the law.<sup>482</sup> Violations of these internal norms are to be subject to administrative sanctions but are not punishable as crimes.<sup>483</sup>

In the immediate aftermath of the law’s adoption, three government institutions--the Legislative Assembly, the OJ, and the PGR--adopted internal norms aimed towards harmonization. However, these are most likely the *only* institutions<sup>484</sup> that have done so, according to reliable sources.<sup>485</sup> The lack of transparency around institutional compliance with the law is underscored by the \*78 fact that the PGR, which has a special role in relation to these norms,<sup>486</sup> was unable to provide information as to which institutions had developed them. The PGR was attempting to obtain this information by carrying out an “investigation,” but it did not plan to publicize its findings because of the sensitivity of the issue.<sup>487</sup> The absence of internal norms is not the only barrier to women obtaining redress when government institutions violate rights under the Law of Equality; an additional obstacle is that a legal framework for the adjudication of administrative sanctions has not yet been developed.<sup>488</sup> The absence of norms and the lack of procedures explain why, to date, there has been not a single sanction levied against government officials for failure to comply with the Law of Equality.

## ***D. Decree 286 for the Creation of Specialized Courts for a Life Free of Violence and Discrimination Against Women***

### ***1. Origin of the Specialized Courts***

There is near unanimity that the principal obstacle to justice for women is the deep-seated patriarchy that pervades all levels of the system. Initial drafts of the Integral Law in 2010 included the creation of specialized courts with jurisdiction over crimes of violence against women,<sup>489</sup> which was an attempt to take cases out of the traditional system. However, the provision for specialized courts did not survive; it was removed from the final version of the Integral Law because of resistance to its cost.<sup>490</sup>

Six years later, in February 2016, the Legislative Assembly approved Decree 286, providing for the establishment of specialized courts.<sup>491</sup> However, as discussed below, the jurisdiction of these courts is limited, excluding the two most frequently committed acts of violence: intrafamilial and sexual violence. In addition, the specialized courts are actually a hybrid of regular and specialized courts, with all cases still being initiated in regular peace courts. If and when cases move forward from the peace courts to the specialized courts, there will also be geographic challenges because the specialized courts are located in only \*79 three departments and so are not easily accessible to women throughout the country.

Although some in-country experts see the creation of the specialized courts as a positive step, there are many who express deep reservations given these significant limitations in their jurisdiction and structure.<sup>492</sup> Other critics of the newly created courts go even further, seeing them as diverting focus from the need to strengthen El Salvador's justice system as a whole.<sup>493</sup>

### ***2. Jurisdiction and Structure of the Specialized Courts***

The specialized courts will have jurisdiction over the eleven crimes established in the Integral Law,<sup>494</sup> failures to comply with protective orders, and a handful of crimes in the Penal Code, including labor discrimination.<sup>495</sup> They will *not* have jurisdiction to hear cases involving intrafamilial and sexual violence, which are indisputably the two most prevalent forms of violence against women.<sup>496</sup> (As noted earlier, intrafamilial violence does not even exist per se as a "crime" under Salvadoran law.) The reaction of in-country experts to the exclusion of these crimes from the specialized courts' jurisdiction was consistent: they agreed that it was "absurd" to exclude them.<sup>497</sup> When asked why the Legislative Assembly chose to exclude them, the experts explained that the volume of intrafamilial and sexual violence cases would cause the specialized courts to be "saturated" and to "collapse."<sup>498</sup> The exclusion of these cases \*80 severely undercuts the contribution that the specialized courts can make towards improving women's access to justice.

As described *supra* note 396, once the FGR initiates a prosecution, the case follows a procedural path that starts at a peace court, continues to a court of instruction, and proceeds to a public trial at a sentencing court, after which the decision may be challenged in higher tribunals. Ideally, a system of specialized courts addressing violence and discrimination against women would involve the establishment of specialized courts at each of these three levels-- peace, instruction, and sentencing--as well as at the appellate level. However, Decree 286 does not do this; rather, all cases subject to the jurisdiction of the specialized courts will have to pass through a regular peace court before proceeding on to the specialized courts of instruction, sentencing, and appeal.

This structure has been roundly criticized for its potential to undermine the specialized court system;<sup>499</sup> lack of sensitivity and professionalism of peace judges will continue to serve as a strong disincentive for women pursuing their cases, and the peace courts' high volume of cases will cause a bottleneck.<sup>500</sup> In the instances where a case successfully moves from a peace court to the specialized system, there are obstacles to pursuing the case due to the limited number and location of the specialized courts of instruction and sentencing courts. In the entire country, there are only three courts of instruction and three sentencing courts and each covers multiple departments.<sup>501</sup> Women, especially those in rural areas and of limited resources, will find it very difficult to attend court proceedings if a significant amount of travel is involved. It should be noted \*81 that the original proposal for specialized courts placed one in each of the country's fourteen departments.<sup>502</sup>

The Legislative Assembly's decisions to incorporate the peace courts into the specialized system and to limit the number and location of the specialized courts reflect resource allocation, and many interpret it as demonstrative of a lack of commitment to creating a fully integrated and accessible specialized system. The government's failure to meet Decree 286's deadline for opening the first set of courts reinforces this skepticism about the government's commitment. Decree 286 stated that the special courts of instruction, sentencing, and appeal that are to be in San Salvador would begin functioning on June 1, 2016, and the remaining courts no later than June 1, 2017. As of December 2016, the courts slated to begin operation in El Salvador on June 1, 2016 had yet to be opened.<sup>503</sup>

### 3. *Are Specialized Courts the Solution?*

There is broad agreement that there are serious deficiencies in the Salvadoran justice system, especially in cases of gender violence, where cultural norms and deep bias pose especially great obstacles. However, there is less of a consensus as to whether the creation of specialized courts is the best solution. Jeanette Aguilar, of the IUDOP, suggests that rather than create specialized systems, "we need to strengthen the existing courts," and observes that "we always create special courts when the regular system does not function."<sup>504</sup> Aguilar also points out that the creation of the specialized courts adds to the existing confused, patchwork system--with peace courts having jurisdiction over sexual violence crimes, family courts over intrafamilial violence, and specialized courts over the enumerated crimes in the Integral Law and Penal Code--with no connection among these tribunals. América Romualdo Cárcomo, a legal expert on gender violence, is unequivocal in her opposition to the creation of specialized courts, which she contends "remove the responsibility of the regular penal court judges" to dispense justice in cases involving women.<sup>505</sup>

Some opposition to the specialized courts is more ambivalent. Mélida Guevara of Oxfam observed that "in an ideal world" you would be able to train personnel in the regular courts rather than have to create specialized courts.<sup>506</sup> But in light of the overwhelming deficiencies in the functioning of the regular \*82 system, it is "very necessary" to have specialized courts with trained personnel.<sup>507</sup> Vilma Vaquerano of ORMUSA supports the specialized courts but echoes the concern that they may create the perception that violence against women is "only the responsibility" of the specialized courts, which could result in even more minimal efforts to improve the responsiveness of the regular courts.<sup>508</sup> Representatives from the Procuraduría para la Defensa de los Derechos Humanos (PDDH) [Office of the Procurator for the Defense of Human Rights, or Human Rights Ombudsman Office] expressed qualified support for the courts but voiced concern about the lack of procedure to guide the progress of cases. A PDDH source noted that peace judges are likely to be obstacles to cases that should pass to the specialized courts because they will be making the threshold determination of whether an act meets the criteria of one of the crimes enumerated in Decree 286. He posited that violence against women is so normal to these judges that they will not see acts brought before them as punishable gender crimes that should be remitted to the specialized courts.<sup>509</sup>

## CONCLUSION

Historical and contemporary factors have given rise to the extremely high levels of violence that persist in El Salvador today. Many of the Salvadorans interviewed for this article referred to a "culture of violence" going back to the brutal Spanish Conquest and continuing into more recent history, including the 1932 *Matanza* and the atrocities of the country's 12-year civil war. Gender violence exists within this broader context. However, as almost every Salvadoran source noted, violence against women is even more deeply rooted than other expressions of societal violence as the result of patriarchal norms that tolerate and affirm the most extreme forms of domination and abuse of women.

Over the past two decades, women's rights activists have advocated for, and sometimes been the architects of, new laws to address the dire situation of gender violence. As discussed above, the first significant law, the 1996 LVI, was narrow in scope and aimed at prevention, not punishment. The next legal development, the amendment of Penal Code article 200, purported to do what the LVI had not--criminalize intrafamilial violence--but it did not in fact do so.<sup>510</sup> It was so \*83 poorly drafted that it was interpreted as putting the additional obstacle of exhaustion of LVI processes in the way of potential prosecution of abusers.<sup>511</sup> For its part, the LVI failed to prevent or reduce violence because the prevailing cultural norms resulted in the failure of government officials to carry out their responsibilities under the law.<sup>512</sup>

The 2010 Integral Law and 2011 Law of Equality represent a much more ambitious initiative and demonstrate the understanding that women's rights activists developed about the need not only to punish gender violence but to address its roots by eradicating gender inequality and entrenched discriminatory practices. Seen in that light, the Law of Equality, which calls for equality and non-discrimination across sectors such as education, health, labor, and governance, is the natural complement to the Integral Law, with its principal focus on ending violence and impunity for such acts. Taken together, the two laws express a belief that law can change culture.<sup>513</sup>

The need to transform the culture was repeatedly affirmed by in-country sources interviewed for this article. Many of them spoke about the importance of education in reaching children and in helping to bring about a generational shift in attitudes. As they noted, and as the Law of Equality reflects, reforms are necessary not only in the educational sphere but across public institutions because "[i]nstitutions are the foundation of society[,] and if those institutions don't change, then society won't change[,] even if we spend millions of dollars."<sup>514</sup>

These sources were not under the illusion that change would come about as a consequence of the enactment of new laws. They spoke of the need for a "bottom up and top down" approach-- recognizing that "[s]ocietal change has to come from both the popular society demanding the change and ... from government authorities [carrying out their roles]."<sup>515</sup> Unfortunately, as this article has detailed, due to an overwhelming lack of political will, the government has not carried out its role in implementing the two laws' key provisions. The Integral Law's mandate to create a national statistical system on **\*84** violence against women has been flouted.<sup>516</sup> The government has not created the promised shelter program<sup>517</sup> or provided money for a Special Fund intended to make resources available to women in need.<sup>518</sup> One of the central requirements of the Law of Equality, that state agencies adopt internal norms to assure equality and non-discrimination, has been largely ignored.<sup>519</sup> And, to date, no government employee has been sanctioned for failure to comply with any aspect of these laws.<sup>520</sup> The lack of governmental political will has been exacerbated by a desire to hide the reality of these shortcomings, which is perhaps demonstrated nowhere more clearly than in the government's stifling of reports detailing deficiencies in its justice system.

Levels of violence, including the killings of women, have continued to rise, while impunity has remained a constant. Criticism of the persistent impunity for gender violence resulted in El Salvador's most recent legal development: the enactment of Decree 286, which created specialized courts. However, the exclusion of the most commonly committed gender crimes--intrafamilial violence and sexual violence--from the specialized courts' jurisdiction, and the courts' hybrid structure, which requires that cases still be initiated in the peace courts, do not inspire optimism for positive outcomes.

Notwithstanding these considerable obstacles, the Salvadorans interviewed for this article, who have long struggled for access to justice and gender equality, maintain the hope and the belief that change is possible. In the course of multiple interviews over a six-year period (2010 to 2016), Salvadoran sources have expressed deep frustration and disappointment but have not articulated resignation or defeat.

It is not difficult to understand why surrendering to the status quo is not an option for Salvadorans where the status quo is rising violence, prevailing impunity, and gross inequalities. And they recognize that the legal framework imperfect as it might be-- provides a vehicle for improvement. In multiple interviews, Salvadoran sources repeatedly recommended the following as *baseline* improvements necessary to address the inadequacies in the legal framework discussed in this article:

- government allocation of sufficient funds to fully implement the country's laws addressing gender-based violence and gender equality

- \*85** • creation of a social service network, including an adequate system of shelters distributed throughout the

country, to provide safety for girls and women fleeing violence

- creation of a comprehensive national statistical system on violence against women, providing a reliable method to evaluate trends and assess the efficacy of government policies
- collection and analysis of data from the key actors in the justice system (police, prosecutors, judges) to evaluate access to justice and to identify gaps and barriers in the system
- adoption of a system to evaluate and sanction (and dismiss where appropriate) individuals in the justice system who fail to carry out their obligations under the law

These recommendations primarily address the functioning of El Salvador's justice system, which has been the focus of this article. However, as numerous Salvadorans stressed, other fundamental changes must also take place if gender equality is to become a reality, including better access to education, paths to economic self-sufficiency, and increased reproductive health services and choice.

The Salvadorans who I interviewed for this article have provided information, insights, and perspectives that are simply not available in written reports or studies. Although they come from a range of backgrounds--governmental and non-governmental; legal professionals as well as grassroots activists--they all acknowledge the complex causes of societal violence. As discussed throughout this article, they also have specific critiques and prescriptions for what must be done in order to see any real progress. Discussions of the country's crisis, as well as of the international community's response, must start by listening to the voices of the Salvadorans who, despite the seemingly intractable situation of violence and impunity in which they live, have refused to abandon the struggle for justice and equality. They are inspiring in their courage and resilience. By quoting extensively from these sources, this article has sought to amplify their voices.

#### \*86 APPENDIX A: ABBREVIATIONS

AMS:	Asociación para la Autodeterminación y Desarrollo de Mujeres Salvadoreñas [Association for Self-Determination and Development of Salvadoran Women]
ARENA:	Alianza Republicana Nacionalista [Nationalist Republican Alliance]
BPR:	Bloque Popular Revolucionario [Popular Revolutionary Block]

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CDM:	Centro de Derechos de la Mujer [Center for Women’s Rights]
CEDAW:	Committee on the Elimination of Discrimination against Women
CEPAL:	La Comisión Económica para América Latina y el Caribe [United Nations Economic Commission for Latin America and the Caribbean]
ECLAC:	La Comisión Económica para América Latina y el Caribe [United Nations Economic Commission for Latin America and the Caribbean]
CEMUJER:	Instituto de Estudios de la Mujer “Norma Virginia Guirola de Herrera” [Norma Virginia Guirola de Herrera Institute for Women’s Studies]
CGRS:	Center for Gender and Refugee Studies, University of California Hastings College of the Law
CNJ:	Consejo Nacional de la Judicatura [National Judiciary Council]
CONNA:	Consejo Nacional de la Niñez y de la Adolescencia [National Council for Childhood and Adolescence]
CSJ:	Corte Suprema de Justicia [Supreme Court of Justice]
DIGESTYC:	Dirección General de Estadísticas y Censos [General Directorate on Statistics and Census]
ERP:	Ejército Revolucionario del Pueblo [People’s Revolutionary Army]
FAPU:	Frente de Acción Popular Unificada [United Popular Action Front]
FECCAS:	Federación Cristiana de Campesinos Salvadoreños [Christian Federation of Salvadoran Peasants]
FGR:	Fiscalía General de la República [Office of the Prosecutor General of the Republic]
FPL:	Fuerzas Populares de Liberación Farabundo Martí [Popular Liberation Front]
FMLN:	Frente Farabundo Martí para la Liberación Nacional [Farabundo Martí National

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	Liberation Front]
FUSADES:	Fundación Salvadoreña para el Desarrollo Económico y Social [Salvadoran Foundation for Economic and Social Development]
GPM:	Grupo Parlamentario de Mujeres [Parliamentary Group of Women]
IDHUCA:	Instituto de Derechos Humanos de la Universidad Centroamericana “José Simeón Cañas” [Institute of Human Rights, José Simeón Cañas Central American University]
IML:	Instituto de Medicina Legal [Institute of Legal Medicine]
ISDEMU:	Instituto Salvadoreño para el Desarrollo de la Mujer [Salvadoran Institute for the Development of the Woman]
ISNA:	Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia [Salvadoran Institute for the Comprehensive Development of Childhood and Adolescence]
IUDOP:	Instituto Universitario de Opinión Pública [University Institute of Public Opinion]
LEIV:	Ley Especial Integral para una Vida Libre de Violencia para las Mujeres [Special Integral Law for a Life Free of Violence against Women]
LIE:	Ley de Igualdad, Equidad y Erradicación de la Discriminación contra las Mujeres [Law of Equality, Equity, and the Eradication of Discrimination against Women]
LVI:	<a href="#">Ley contra la Violencia Intrafamiliar [Law against Intrafamilial Violence]</a>
MJSP:	Ministerio de Justicia y Seguridad Pública [Ministry of Justice and Public Security]
OJ:	Órgano Judicial [Judiciary]
ORMUSA:	Organización de Mujeres Salvadoreñas por la Paz [Organization of Salvadoran Women for Peace]
PC:	Partido Comunista [Communist Party]

PCN:	Partido de Conciliación Nacional [Party of National Reconciliation]
PCS:	Partido Comunista Salvadoreño [Salvadoran Communist Party]
PDC:	Partido Demócrata Cristiano [Christian Democratic Party]
PDDH:	Procuraduría para la Defensa de los Derechos Humanos [Office of the Procurator for the Defense of Human Rights, or Human Rights Ombudsman's Office]
PGR:	Procuraduría General de la República [Office of the Procurator General of the Republic]
PNC:	Policía Nacional Civil [National Civil Police]
PRTC:	Partido Revolucionario de los Trabajadores Centroamericanos [Revolutionary Party of Central American Workers]
PSD:	Partido Social Democrata [Social Democratic Party]
RHRC:	Refugee and Human Rights Clinic, University of California, Hastings College of the Law
RLVI:	Reformas en la Ley contra la Violencia Intrafamiliar [Reforms in the Law against Intrafamilial Violence]
RN:	Resistencia Nacional [National Resistance]
SEMI:	Sistema de Estadísticas y Monitoreo para la Igualdad [System of Indicators and Monitoring for Equality]
SNEIG:	Sistema Nacional de Estadísticas e Indicadores de Género [National System of Statistics and Indicators of Gender]
STC:	Comisión Técnica Especializada [Special Technical Commission]
UCA:	Universidad Centroamericana "José Simeón Cañas" [José Simeón Cañas Central American University]

UNDP:	United Nations Development Program
UNFPA:	United Nations Population Fund
UNICEF:	United Nations Children's Fund
UNODC:	United Nations Office on Drugs and Crime
USAID:	United States Agency for International Development
UTEC:	Universidad Tecnológica de El Salvador [Technological University of El Salvador]

**\*89APPENDIX B: EL SALVADOR INTERVIEW LIST<sup>521</sup>**

*April 2010*

América Joaquina Romualdo Cárcomo, Coordinadora de Programas [Program Coordinator], Asociación Mujeres por la Dignidad y la Vida ("Las Dignas") [Women's Association for Dignity and Life] (Apr. 28, 2010).

Ana Madaly Sánchez, Coordinadora [Coordinator], Área de la Violencia de Política Nacional de la Mujer, Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU) [National Women's Policy on Violence, Salvadoran Institute for the Development of the Woman] (Apr. 28, 2010).

Aracely Bautista Bayona, Consultora Legal [Legal Consultant], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly] (Apr. 27, 2010).

Benjamin Cuellar, Director [Director], and Roxana Marroquin, Coordinadora para Defensa de Niños y Adolescentes [Coordinator for Defense of Children and Adolescents], Instituto de Derechos Humanos de la Universidad

Centroamericana "José Simeón Cañas" (IDHUCA) [Institute of Human Rights, José Simeón Cañas Central American University] (Apr. 27, 2010).

Carlos Ernesto Méndez Rivera, Director [Director], Instituto de Medicina Legal de Santa Tecla [Institute of Legal Medicine of Santa Tecla] (Apr. 29, 2010).

Glenda Vaquerano Cruz, Jefa de la Unidad de la Realidad Nacional [Chief of the Unit of National Reality], Procuraduría para la Defensa de los Derechos Humanos (PDDH) [Office of the Procurator for the Defense of Human Rights, or Human Rights Ombudsman's Office] (Apr. 28, 2010).

José Alberto Franco Castillo, Coordinador de Derecho de Familia y Género [Family Law and Gender Coordinator], Escuela de Capacitación del Consejo Nacional de la Judicatura (CNJ) [School of Judicial Training of the National Judiciary Council] (Apr. 29, 2010).

Maria Margarita Velado, Presidenta [President], Comisión de Justicia y Derechos Humanos, Asamblea Legislativa

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[Commission for Justice and Human Rights, Legislative Assembly] (Apr. 28, 2010).

Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam (Apr. 29, 2010).

\*90 Mirna Antonieta Perla Jimenez, Juez [Justice], Sala de lo Civil de la Corte Suprema de Justicia (CSJ) [Civil Chamber of the Supreme Court of Justice] (Apr. 29, 2010).

Nidia Hidalgo Celarié, Coordinadora de la Oficina de Género [Coordinator of the Gender Office], Programa de las Naciones Unidas para el Desarrollo (UNDP) [United Nations Development Program] (Apr. 29, 2010).

Salvador Eduardo Menéndez Leal, Procurador Adjunto para la Defensa de los Derechos Humanos [Deputy Procurator for the Defense of Human Rights], and Raquel Caballero de Guevara, Procuradora Adjunta para la Defensa de Mujeres y la Familia [Deputy Procurator for the Defense of Women and the Family], Procuraduría para la Defensa de los Derechos Humanos (PDDH) [Office of the Procurator for the Defense of Human Rights, or Human Rights Ombudsman's Office] (Apr. 27, 2010).

Sandra Edibel Guevara, Directora Ejecutiva [Executive Director], Asociación y Movimiento de Mujeres Mélida Anaya Montes ("Las Mélicas") [Mélida Anaya Montes Women's Movement] (Apr. 30, 2010).

Sidney Blanco Reyes, Juez, Sala de lo Constitucional de la Corte Suprema de Justicia (CSJ) [Justice, Constitutional Chamber of the Supreme Court of Justice] (Apr. 30, 2010).

Silvia Ivette Juarez Barrios, Abogada [Attorney], Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] (Apr. 30, 2010).

Yanira Argueta, Directora Ejecutiva [Executive Director], Asociación para la Autodeterminación y Desarrollo de Mujeres Salvadoreñas (AMS) [Association for Self-Determination and Development of Salvadoran Women] (Apr. 28, 2010).

**October 2010**

América Joaquina Romualdo Cárcamo, Coordinadora de Programas [Program Coordinator], Asociación Mujeres por la Dignidad y la Vida (Las Dignas) [Women's Association for Dignity and Life] (Oct. 18, 20, 2010).

Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly] (Oct. 21, 2010).

Blanca Nidia Alas de Lopez, Coordinadora Nacional de Centros de Atención Psicosocial [National Coordinator of Psychological Attention], Corte Suprema de Justicia (CSJ) [Supreme Court of Justice] (Oct. 19, 2010).

\*91 Doris Montenegro, Presidenta [President], and Ima Rocío Guirola, Instituto de Estudios de la Mujer "Norma Virginia Guirola de Herrera" (CEMUJER) [Norma Virginia Guirola de Herrera Institute for Women's Studies] (Oct. 19, 2010).

Edgardo Alberto Amaya Cobar, Asesor [Consultant], Ministerio de Justicia y Seguridad Pública (MJSP) [Ministry of Justice and Public Security] (Oct. 22, 2010).

Mario Francisco Mena Méndez, Jefe de la División de Admisión, Evaluación y Diagnostico [Head of the Division of Admission, Evaluation, and Diagnostics], Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia (ISNA), Salvadoran Institute for the Comprehensive Development of Childhood and Adolescence] (Oct. 20, 2010).

Milena Calderón de Escalón, Diputada--ARENA [Assembly Member--ARENA], Asamblea Legislativa [Legislative

Assembly] (Oct. 21, 2010).

Silvia Ivette Juarez Barrios, Abogada [Attorney], Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] (Oct. 19, 2010).

Vilma Guadalupe Portillo, Coordinadora del Proyecto Regional sobre Violencia Sexual [Coordinator of the Regional Project on Sexual Violence], Fondo de Población de las Naciones Unidas (UNFPA) [United Nations Population Fund] (Oct. 21, 2010).

Zaira Navas, Inspectora General [Inspector General], Policía Nacional Civil (PNC) [National Civil Police] (Oct. 21, 2010).

### ***October 2012***

Alba Evelyn Cortez de Alvarenga, Jefa de la Unidad de Género [Head of the Gender Unit], Asamblea Legislativa [Legislative Assembly] (Oct. 12, 2012).

América Joaquina Romualdo Cárcamo, Coordinadora de Programas [Program Coordinator], Asociación Mujeres por la Dignidad y la Vida (Las Dignas) [Women's Association for Dignity and Life] (Oct. 8, 2012).

Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly] (Oct. 8, 2012).

Edgardo Alberto Amaya Cobar, Asesor de Despacho [Dispatch Advisor], Ministerio de Justicia y Seguridad Pública (MJSP) [Ministry of Justice and Public Security] (Oct. 10, 2012).

\*92 Emely Flores and Ruth Polanco, Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU) [Salvadoran Institute for the Development of the Woman] (Oct. 8, 2012).

Ima Rocío Guirola, Coordinadora de Relaciones Públicas [Public Relations Coordinator], Instituto de Estudios de la Mujer "Norma Virginia Guirola de Herrera" (CEMUJER) [Norma Virginia Guirola de Herrera Institute for Women's Studies] (Oct. 11, 2012).

Jeanette Tobar de Cortez, Coordinadora [Coordinator], and Vanessa Lara, Asistente Legal [Legal Assistant], Unidad de Género de la Procuraduría General de la República (PGR) [Gender Unit of the Office of the Procurator General of the Republic] (Oct. 11, 2012).

José Alberto Franco Castillo, Coordinador de Derecho de Familia y Género [Family Law and Gender Coordinator], Escuela de Capacitación del Consejo Nacional de la Judicatura (CNJ) [School of Judicial Training of the National Judiciary Council] (Oct. 9, 2012).

Julio Quinteros and Carlos Amaya, Unidad Técnica Ejecutiva del Sector de Justicia [Technical Executive Unit of the Judicial Sector] (Oct. 10, 2012).

Rosicela Rivas de Perdomo, Coordinadora de la Unidad de Víctimas de Violencia Intrafamiliar, Abuso Sexual, y Maltrato Infantil [Coordinator of the Unit of Victims of Intrafamilial Violence, Sexual Abuse and Infant Mistreatment], and Claudia Maria Rebollo Perez, Asistente Jurídico [Judicial Assistant], Centro de Atención de la Corte Suprema de Justicia [Attention Center of the Supreme Court of Justice] (Oct. 11, 2012).

Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam (Oct. 9, 2012).

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Miguel Velasquez-Velasquez, Jefe Técnico de Estadísticas [Technical Head of Statistics], Instituto de Medicina Legal (IML) [Institute of Legal Medicine] (Oct. 10, 2012).

Nery Diaz, Diputada [Assembly Member], Carmen Elena Calderon de Escalon, Diputada [Assembly Member], and Lorena Pena Mendoza, Diputada [Assembly Member], Grupo Parlamentario de Mujeres (GPM) [Parliamentary Group of Women] (Oct. 11, 2012).

Vilma Vaquerano Cruz, Directora de Comunicaciones [Director of Communications], Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] (Oct. 11, 2012).

**\*93 October 2013**

Adolfo Vidal, Gerente de Apoyo del Programa/Presidente de la Junta Directiva [Program Support Manager/President of Board of Directors], Consejo Nacional de la Niñez y de la Adolescencia (CONNA) [National Council for Childhood and Adolescence] (Oct. 15, 2013).

Alma Cruz, Diputada [Assembly Member], Comisión de la Familia, la Niñez, Adolescentes, Adultos Mayores y Personas con Discapacidades [Commission for Family, Childhood, Adolescents, Seniors, and Disabled Persons] (Oct. 18, 2013).

América Joaquina Romualdo Cárcomo, Concertación Feminista Prudencia Ayala [Prudencia Ayala Feminist Coalition] (Oct. 17, 2013).

Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly] (Oct. 13, 2013).

Blanca Figueroa, Jefa de la Unidad de Juvenil y Familia [Chief of the Unit for Children and Family], Policía Nacional Civil (PNC) [National Civil Police] (Oct. 17, 2013).

Claudia Hermannsdorfer, Abogada [Attorney], Centro de Derechos de la Mujer (CDM) [Center for Women's Rights] (Oct. 18, 2013).

Emma Julia Fabian Hernandez, Diputada--FMLN [Assembly Member--FMLN], Patricia Iraheta, Asesora [Consultant], and Maria Luz, Asistente [Assistant], Comisión de la Mujer y la Igualdad de Género [Commission for Women and Gender Equality] (Oct. 18, 2013).

Luis Salazar, Director Ejecutivo [Executive Director], and Mario Francisco Mena Méndez, Jefe de la División de Admisión, Evaluación y Diagnostico [Head of the Division of Admission, Evaluation, and Diagnostics], Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia (ISNA) [Salvadoran Institute for the Comprehensive Development of Childhood and Adolescence] (Oct. 16, 2013).

Maria De Fortín, Juez [Justice], Ruth Martínez Agreda, Juez Especializada de Niños y Adolescentes [Specialized Justice of Children and Adolescents], and Claudia Maria Rebollo Perez, Abogada [Attorney], Corte Suprema de Justicia (CSJ) [Supreme Court of Justice] (Oct. 18, 2013).

Maria Teresa Delgado de Mejia, Especialista en Protección Infantil [Child Protection Specialist], Fondo de las Naciones Unidas para la Infancia (UNICEF) [United Nations Children's Fund] (Oct. 17, 2013).

**\*94** Marlon Montoya, Asesor de Protección Nacional [Consultant for National Protection], Visión Mundial [World Vision] (Oct. 16, 2013).

Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam

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(Oct. 17, 2013).

Nori Flores and Cecilia Viviana Bonilla, Unidad de Menores y Mujeres [Unit for Minors and Women], Fiscalía de la República (FGR) [Office of the Prosecutor General of the Republic] (Oct. 14, 2013).

Ondina Castillo, Coordinadora de Género [Gender Coordinator], Fondo de Población de las Naciones Unidas (UNFPA) [United Nations Population Fund] (Oct. 16, 2013).

Roberto Rodriguez Meléndez, Director de la Escuela de Capacitación Judicial [Director of the Judicial Training School], Departamento de Ciencias Jurídicas de la Universidad Centroamericana “José Simeón Cañas” (UCA) [Legal Sciences Department, José Simeón Cañas Central American University] (Oct. 14-15, 2013).

Zaira Navas, Directora Ejecutiva [Executive Director], Consejo Nacional de la Niñez y de la Adolescencia (CONNA) [National Council for Childhood and Adolescence] (Oct. 15, 2013).

***Summer 2014***<sup>522</sup>

Roberto Rodriguez Meléndez, Director de la Escuela de Capacitación Judicial [Director of the Judicial Training School], Departamento de Ciencias Jurídicas de la Universidad Centroamericana “José Simeón Cañas” (UCA) [Legal Sciences Department, José Simeón Cañas Central American University] (May 2, 2014).

Vilma Vaquerano Cruz, Directora de Comunicaciones [Director of Communications], Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] (July 31, 2014).

***November 2016***

Alba Evelyn Cortez de Alvarenga, Jefa de la Unidad de Género [Head of the Gender Unit], Asamblea Legislativa [Legislative Assembly] (Nov. 15, 2016).

América Joaquina Romualdo Cárcamo, Concertación Feminista Prudencia Ayala [Prudencia Ayala Feminist Coalition] (Nov. 15, 2016).

\*95 Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comité Directivo del Grupo Parlamentario de Mujeres (GPM) [Executive Committee of the Parliamentary Group of Women] (Nov. 15, 2016).

Elena Marisol Gómez Luna, Directora de la Unidad de Género [Director of the Gender Unit], Ministerio de la Economía [Ministry of the Economy] (Nov. 16, 2016).

Ima Rocío Guirola, Coordinadora de Relaciones Públicas [Public Relations Coordinator], Instituto de Estudios de la Mujer “Norma Virginia Guirola de Herrera” (CEMUJER) [Norma Virginia Guirola de Herrera Institute for Women’s Studies] (Nov. 17, 2016).

Jeanette Aguilar, Directora [Director], and Laura Andrade, Investigadora [Researcher], Instituto Universitario de Opinión Pública (IUDOP) de la Universidad Centroamericana José Simeón Cañas (UCA) [University Institute of Public Opinion, José Simeón Cañas Central American University] (Nov. 16, 2016).

Jeanette Tobar de Cortez, Coordinadora [Coordinator], Unidad de Género de la Procuraduría General de la República (PGR) [Coordinator, Gender Unit of the Office of the Procurator General of the Republic] (Nov. 15, 2016).

EL SALVADOR--A PEACE WORSE THAN WAR:..., 30 Yale J.L. &...

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Lorena Morales, Directora de la Unidad de Atención Especializada para las Mujeres [Director of the Unit of Specialized Attention for Women], Fiscalía General de la República (FGR) [Office of the Prosecutor General of the Republic] (Nov. 28, 2016).

Maria Antonieta Josa de Parada, Presidenta [President], Consejo Nacional de la Judicatura (CNJ) [National Board of the Judiciary] (Nov. 17, 2016).

Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam (Nov. 16, 2016).

Ondina Castillo, Coordinador de Género [Gender Coordinator], and Maria LaFuente Funes, Oficial de Alianzas [Officer of Alliances], Fondo de Población de las Naciones Unidas (UNFPA) [United Nations Population Fund] (Nov. 17, 2016).

Ricardo José Gómez Guerrero, Procurador Adjunto [Deputy Procurator], Procuraduría para la Defensa de los Derechos Humanos (PDDH) [Office of the Procurator for the Defense of Human Rights, or Human Rights Ombudsman's Office] (Nov. 17, 2016).

Roberto Rodríguez Meléndez, Subjefe de Partido de la Iniciativa Regional de Derechos Humanos y Democracia para Centroamérica [Deputy Chief of Party for the Regional Human Rights and Democracy Initiative for Central America], \*96 Departamento de Ciencias Jurídicas de la Universidad Centroamericana "José Simeón Cañas" (UCA) [Legal Sciences Department, José Simeón Cañas Central American University] (Nov. 15, 18, 2016).

Roxana Delgado, Economista de la Unidad de Análisis Presupuestaria de la Asamblea Legislativa [Economist with the Budgetary Analysis Unit of the Legislative Assembly] (Nov. 18, 2016).

Vilma Vaquerano Cruz, Directora de Comunicaciones [Director of Communications], Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] (Nov. 15, 2016).

Xochitl Bendeck and Lizeth Marlene Ayala Rodríguez, Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU) [Salvadoran Institute for the Development of the Woman] (Nov. 14, 2016).

**\*97APPENDIX C: DATA AND STATISTICS SYSTEMS IN EL SALVADOR**

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Footnotes

<sup>d1</sup> Karen Musalo is Professor of Law, Bank of America Foundation Chair in International Law, and Director of the Center for Gender and Refugee Studies (CGRS) at the University of California Hastings College of the Law. I thank students of the Refugee and Human Rights Clinic (RHRC), who, along with my CGRS colleague Blaine Bookey, participated in in-country fact-finding in El Salvador over the years. These students include Maria Juliana Escobar Gutierrez (Apr. 2010), Alexandra Grayner and Alan Delamora (Oct. 2010), Stewart Pollack and Elva Linares (Oct. 2012), and Giovanni Macías and Janelle Walker (Oct. 2013). I am indebted to my team of excellent research assistants; Daniel Werner, who researched and drafted the majority of the section in the article entitled *Patriarchy, Machismo, and Gender Violence*; Elyssa Correia and Emily Milstein, who carried out research and painstakingly checked citations and authorities; and Maria Angelica De Gaetano, Gabriella Rodezno, and Dustin Hovda, who assisted with research, much of it with Spanish-language sources. I am grateful to my CGRS colleagues Blaine Bookey and Claire Clayton for their participation in in-country fact-finding trips, with Blaine participating in October 2012, October 2013, and November 2016 and Claire Clayton in November 2016. I also thank Elisabeth Wood and Blaine Bookey for their review and

helpful comments on this article. My special gratitude goes to my CGRS colleague Annie Daher who edited final drafts. Her meticulous review, input, and revisions contributed immeasurably to this piece. Last, but not least, I thank my colleague and husband, Richard A. Boswell, whose support and patience has undergirded every aspect of my work.

- <sup>1</sup> See EL SALVADOR AGREEMENTS: THE PATH TO PEACE, Dep't of Pub. Info., U.N. Doc. DPI/1208-92614 (1992) [hereinafter "Peace Accords"]. The Peace Accords consist of a series of agreements negotiated between 1989 and 1992. Two of these agreements, published in the aforementioned volume and cited in this article, are: 1) the Mexico Agreements, April 27, 1991, at 13-31 [hereinafter "Mexico Agreements"]; and 2) the Peace Agreement, Jan. 16, 1992, at 46-145 [hereinafter "Peace Agreement" or "Chapultepec Agreement"]. See also *The United Nations Truth Commission for El Salvador*, 27 VAND. J. TRANSNAT'L L. 497, 498-99 (1994) (describing the Peace Accords). For an abbreviated overview of the civil war and the role of the United States in the Peace Accords, see Karen Musalo & Eunice Lee, *Seeking a Rational Approach to a Regional Refugee Crisis: Lessons from the Summer 2014 "Surge" of Central American Women and Children at the US-Mexico Border*, 5 J. MIGRATION AND HUM. SECURITY 137, 154-55 (2017).
- <sup>2</sup> The Farabundo Martí National Liberation Front [hereinafter FMLN] was formed in October 1980 as an umbrella group for five left-wing constituent groups: Fuerzas Populares de Liberación (FPL) [Popular Liberation Front], Ejército Revolucionario del Pueblo (ERP) [People's Revolutionary Army], Resistencia Nacional (RN) [National Resistance], Partido Comunista Salvadoreño (PCS) [Salvadoran Communist Party], and Partido Revolucionario de los Trabajadores Centroamericanos (PRTC) [Revolutionary Party of Central American Workers]. ELLEN MOODIE, EL SALVADOR IN THE AFTERMATH OF PEACE: CRIME, UNCERTAINTY, AND THE TRANSITION TO DEMOCRACY 33 (2010).
- <sup>3</sup> Argentine sociologist Elizabeth Jelin describes the term "disappeared" in this context as "those who were clandestinely abducted, their fate never disclosed nor their bodies recovered." ELIZABETH JELIN, STATE REPRESSION AND THE STRUGGLES FOR MEMORY 34 (2003). "Enforced disappearance," its full name in the legal context, is used as a fear tactic that creates insecurity. *Disappearances*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/disappearances/> [<https://perma.cc/4PUC-PRC4>]. This strategy was widely used by military regimes to repress political opposition during Latin America's conflicts in the 1960s, 1970s, and 1980s. AMNESTY INT'L, ENFORCED DISAPPEARANCES IN THE AMERICAS ARE A CRIME OF THE PRESENT (2012), available at <https://reliefweb.int/report/colombia/enforced-disappearances-americas-are-crime-present> [<https://perma.cc/6RJP-JWNT>].
- <sup>4</sup> See MOODIE, *supra* note 2, at 1; From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, U.N. Doc. S/25500, Annexes (1993) [hereinafter "Truth Commission Report"]. See also Musalo & Lee, *supra* note 1, at 154.
- <sup>5</sup> ELISABETH J. WOOD, FORGING DEMOCRACY FROM BELOW: INSURGENT TRANSITIONS IN SOUTH AFRICA AND EL SALVADOR 50 (2000).
- <sup>6</sup> Musalo & Lee, *supra* note 1, at 154. See also ELISABETH J. WOOD, INSURGENT COLLECTIVE ACTION AND CIVIL WAR IN EL SALVADOR 20-24 (2003).
- <sup>7</sup> Musalo & Lee, *supra* note 1, at 154-55. WOOD, *supra* note 5, at 106-07 (referring to the "remarkable changes" brought about by the Peace Accords, including the transformation of the FMLN into a political party that participated in the general elections of March 1994).
- <sup>8</sup> See discussion *infra* Part II.B.2 on economic inequalities and social exclusion.
- <sup>9</sup> U.N. Office of Drugs and Crimes, Intentional Homicide Statistics Database, Intentional Homicides (Per 100,000 People), <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5> (showing 2009 homicide rate); *The World's Most Dangerous Cities*, ECONOMIST (Mar. 31, 2017), <https://www.economist.com/blogs/graphicdetail/2017/03/daily-chart-23> (listing El Salvador as top murder capital in 2015 and 2016).

<sup>10</sup> MOODIE, *supra* note 2, at 2, 21.

<sup>11</sup> INSTITUTO UNIVERSITARIO DE OPINIÓN PÚBLICA (IUDOP), UNIVERSIDAD CENTROAMERICANA “JOSÉ SIMEÓN CAÑAS” (UCA) [UNIVERSITY INSTITUTE OF PUBLIC OPINION, JOSÉ SIMEÓN CAÑAS CENTRAL AMERICAN UNIVERSITY], LA SITUACIÓN DE LA SEGURIDAD Y LA JUSTICIA 2009-2014 [THE SITUATION OF SECURITY AND JUSTICE 2009-2014], at 3 (Jeannette Aguilar ed., 2014), [http://www.uca.edu.sv/iudop/wp-content/uploads/libro\\_la\\_situación\\_de\\_la\\_seguridad.pdf](http://www.uca.edu.sv/iudop/wp-content/uploads/libro_la_situación_de_la_seguridad.pdf) [<https://perma.cc/LUB9-8SB6>].

<sup>12</sup> See discussion *infra* Part II.C. In this article, I use the terms “gender-based violence,” “gender violence,” and “violence against women and girls” interchangeably, consistent with the definition of gender-based violence adopted by the Committee on the Convention for the Elimination of Discrimination against Women [hereinafter CEDAW]. CEDAW, through its adoption of General Recommendation No. 19 on Violence against Women, defined gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” CEDAW General Recommendation No. 19, A/47/38 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> [<https://perma.cc/V453-AY7D>].

<sup>13</sup> The term “femicide” is generally understood to denote the gender-motivated killing of a woman. The term “feminicide” adds an additional element of state complicity, demonstrated by the fact that the killings are carried out in a context of virtually total impunity. See Karen Musalo et al., *Crimes Without Punishment: Violence Against Women in Guatemala*, 21 HASTINGS WOMEN’S L.J. 161, 172 (2010). There is no internationally accepted definition of these terms; however, a number of countries have enacted laws classifying femicides or feminicides as crimes. In these cases, the terms would have the specific definitions set forth in each country’s laws. GENEVA DECLARATION ON ARMED VIOLENCE AND DEV., GLOBAL BURDEN OF ARMED VIOLENCE 2015: EVERY BODY COUNTS 89 (May 8, 2015), <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2015.html> [<https://perma.cc/2UER-UYWY>]. Throughout this article, I use the more inclusive term “femicide,” rather than the narrower term “feminicide,” which includes proof of the additional element of government complicity. I use the term “feminicide” only when quoting from or referring to a law or primary source that uses it.

<sup>14</sup> Hannah Stone, *El Salvador Sees Epidemic of Violence Against Women*, INSIGHT CRIME (May 23, 2011), <http://www.insightcrime.org/news-analysis/el-salvador-sees-epidemic-of-violence-against-women> [<https://perma.cc/G3Q5-7HNA>].

<sup>15</sup> GLOBAL BURDEN OF ARMED VIOLENCE 2015: EVERY BODY COUNTS, *supra* note 13.

<sup>16</sup> Ley contra la Violencia Intrafamiliar [LVI] [Law against Intrafamilial Violence] Decreto [Decree] 902, Diario Oficial [D.O.] No. 241, Tomo [Vol.] 333, Dec. 20, 1996 (El Sal.).

<sup>17</sup> Ley Especial Integral para una Vida Libre de Violencia para las Mujeres [LEIV] [Special Integral Law for a Life Free of Violence against Women] Decree 520, D.O. No. 2D.O. No. 2, Vol. 390, Jan. 4, 2011 (El Sal.).

<sup>18</sup> Ley de Igualdad, Equidad y Erradicación de la Discriminación contra las Mujeres [LIE] [Law of Equality, Equity, and the Eradication of Discrimination against Women] Decree 645, D.O. No. 70, Vol. 391, Jan. 4, 2011 (El Sal.).

<sup>19</sup> Ley Especial contra la Trata de Personas [Law Against Human Trafficking] Decree 824,  D.O. No. 213, Vol. 405, Nov. 14, 2014 (El Sal.).

20 See discussion *infra* Part III.

21 Decreto para la Creación de los Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres [Decree 286] [Decree for the Creation of Special Courts for a Life Free of Violence and Discrimination against Women] Decree 286, D.O. No. 60D.O. No. 60, Vol. 411, Apr. 4, 2016 (El Sal.).

22 Paradoxically, the jurisdiction did not include the most pervasive crimes of violence against women, namely sexual violence and intrafamilial violence. See discussion *infra* Part III.D.

23 See discussion *infra* Part II.C.1.

24 *Id.*

25 The in-country fact-finding, which was a collaborative initiative undertaken by the author and her colleagues and students at the CGRS and at the RHRC at UC Hastings, took place in April and October 2010, October 2012, October 2013, and November 2016. (Two interviews were also conducted telephonically in summer 2014.) We met with and interviewed a range of individuals--representatives of non-governmental organizations (NGOs), especially those working on women's rights, government officials charged with relevant responsibility for addressing violence and impunity, and personnel of United Nations bodies, such as the United Nations Development Program (UNDP) and the United Nations Population Fund (UNFPA). Although the questions we asked varied over time, we consistently asked these sources their opinions as to the levels and root causes of violence, the measures they were familiar with in combating violence, their assessment of the efficacy of these measures, and their recommendations for an improved approach. Over the course of the five visits, we carried out 74 interviews, interviewing some individuals more than once. (See Appendix B for a list of the individuals interviewed during each visit.)

26 See generally WOOD, *supra* note 5, at 25-51; MOODIE, *supra* note 2, at 23-30; IRINA C. SILBER, EVERYDAY REVOLUTIONARIES: GENDER, VIOLENCE, AND DISILLUSIONMENT IN POSTWAR EL SALVADOR 33-37 (2011).

27 WOOD, *supra* note 5, at 27.

28 *Id.* at 28.

29 WOOD, *supra* note 5, at 29 (quoting ROBERT G. WILLIAMS, STATES AND SOCIAL EVOLUTION: COFFEE AND THE RISE OF NATIONAL GOVERNMENTS IN CENTRAL AMERICA (1994)).

30 MOODIE, *supra* note 2, at 24.

31 WOOD, *supra* note 5, at 31.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.* at 32.

36 Kenneth E. Sharpe & Martin Diskin, *Facing Facts in El Salvador: Reconciliation or War*, 1 WORLD POL'Y J. 517, 521 (1984).

37 *Id.*

38 The Partido de Conciliación Nacional (PCN) [Party of National Reconciliation] represented the interests of the landed oligarchy and their military allies. The PCN used “patronage, fraud and coercion” to assure its electoral victories. *Id.* at 521-22. The Partido Demócrata Cristiano (PDC) [Christian Democratic Party], in alliance with the Partido Social Demócrata (PSD) [Social Democratic Party] and the Partido Comunista (PC) [Communist Party], won the 1972 presidential elections against the PCN. However, the “military intervened in the vote counting and declared the PCN candidate the victor.” *Id.* at 522.

39 In the February 1977 elections, the PCN claimed that its candidate, General Carlos Humberto Romero Mena, had won 67 percent of the votes cast. Claims of fraud and mass protests erupted, and the government responded by firing on and killing protestors as well as calling a state of siege. MOODIE, *supra* note 2, at 31.

40 WOOD, *supra* note 5, at 44.

41 WOOD, *supra* note 6, at 119.

42 *Id.* at 43. Wood also points to the organizing carried out by the Christian Democratic Party in rural areas and notes that the United States Agency for International Development (USAID) contributed funding for organizing in this period. *Id.*

43 MOODIE, *supra* note 2, at 31.

44 WOOD, *supra* note 5, at 45.

45 *Id.* at 46.

46 *El Salvador: Chronology*, KELLOGG INST. CHRONOLOGY ONLINE,  
<https://kellogg.nd.edu/archbishop-oscar-romero#tab-1491> [<https://perma.cc/XV7U-HCFK>].

47 Truth Commission Report, *supra* note 4, at 172-80.

48 Truth Commission Report, *supra* note 4.

49 Raymond Bonner, *Bringing El Salvador Nun Killers to Justice*, DAILY BEAST (Nov. 9, 2014, 8:30 PM), <http://www.thedailybeast.com/articles/2014/11/09/bringing-el-salavador-nun-killers-to-justice.html> [<https://perma.cc/QZ6B-CJJV>]; Truth Commission Report, *supra* note 4, at 81-88.

50 Sharpe & Diskin, *supra* note 36, at 526.

51 *Id.* at 535.

- <sup>52</sup> Juan de Onis, *U.S. Giving Salvador Combat Equipment*, N.Y. TIMES (Jan. 18, 1981), <http://www.nytimes.com/1981/01/19/world/us-giving-salvador-combat-equipment.html> (last visited July 8, 2017); Kevin Sullivan & Mary Jordan, *In Central America, Reagan Remains a Polarizing Figure*, WASH. POST (June 10, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A29546-2004Jun9.html> [<https://perma.cc/9KND-S2GF>].
- <sup>53</sup> LISE M. HOWARD, UN PEACEKEEPING IN CIVIL WARS 93-94 (2007). It should be noted that the Salvadoran government had the ability to control and reduce the violence, and did so for a short period of time after a December 1983 visit by United States Vice President Bush, who “warned of decreases in US aid if murders continued and death squad leaders were left unpunished.” World Peace Foundation, *El Salvador, MASS ATROCITY ENDINGS* (Aug. 7, 2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/el-salvador/> [<https://perma.cc/P6JB-Q23P>].
- <sup>54</sup> WOOD, *supra* note 5, at 47.
- <sup>55</sup> Five “political military” organizations consolidated to become the FMLN. *See supra* note 2 and accompanying text.
- <sup>56</sup> The FMLN took its name from Agustin Farabundo Martí, a leader in the Communist party killed during the 1932 *Matanza*. WOOD, *supra* note 5, at 24.
- <sup>57</sup> *Id.* at 47.
- <sup>58</sup> *Id.* at 48.
- <sup>59</sup> Alberto Martín Álvarez, *From Revolutionary War to Democratic Revolution: The Farabundo Martí Liberation Front (FMLN) in El Salvador*, in BERGHOF TRANSITIONS SERIES: RESISTANCE/LIBERATION MOVEMENTS AND TRANSITION TO POLITICS 7 n.1 (Véronique Dudouet & Hans J. Giessmann eds. 2010), [http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Papers/Transitions\\_Series/transitions9\\_elsalvador.pdf](http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Papers/Transitions_Series/transitions9_elsalvador.pdf) [<https://perma.cc/EB9Q-VKGG>]. Martín Álvarez described the guerrillas’ strategy as follows: [O]n January 10, 1981, the FMLN launched a “final” national-scale offensive with the aim of defeating the armed forces and taking power. The Front intended to do so before Republican candidate Ronald Reagan took office, as guerilla commanders anticipated that this would bring greater US support for the Salvadoran government and, eventually, a US military occupation. The Front was now around 2,500 men strong, all armed and trained. There was also an indeterminate number of militia who would protect the local population and take part in local actions. The offensive was launched from safe camp sites in the rural area, and two thirds of the country witnessed a series of severe clashes. *Id.* at 18. Martín Álvarez’s article also describes the guerrillas’ failure: However, the lack of arms and training, as well as the lack of coordination among the different organisations, stopped the FMLN from reaching its strategic goal. Also, the mass popular insurgency that the guerilla groups had expected did not take place. The very severe repression implemented by the regime had a demobilising effect on the population. One week after the launch of the offensive, the FMLN began a tactical retreat. From that moment on, the guerilla organisations retreated to the rural north and northeast areas of the country, and the conflict turned into a grand-scale civil war. *Id.* at 18.
- <sup>60</sup> *Id.*
- <sup>61</sup> *Id.* at 19-20.
- <sup>62</sup> WOOD, *supra* note 5, at 50.

63 *Id.*

64 Martín Álvarez, *supra* note 59, at 21.

65 MOODIE, *supra* note 2, at 39. By this point the core business interest of the elites had moved from agricultural export to commerce and services. WOOD, *supra* note 5, at 62-67.

66 MOODIE, *supra* note 2, at 38. The UCA had often been classified as a “refuge of subversives” by some in the Salvadoran Armed Forces. Truth Commission Report, *supra* note 4, at 49. According to the country’s Truth Commission, this idea of the Jesuits being linked to the FMLN came from the work of the UCA’s Jesuits with the poor in El Salvador. *Id.*

67 MOODIE, *supra* note 2, at 46. Charles Call notes that there were actually three different phases regarding the increase in crime in El Salvador in the decade following the Peace Accords. From 1991 to 1995, “crime skyrocketed”; from 1996 to 2000, “crime stayed at high levels, with kidnappings and robberies dipping then surging once more”; and from 2000 to the end of 2002, there was a “slight decline.” Charles T. Call, *Democratisation, War and State-Building: Constructing the Rule of Law in El Salvador*, 35 J. LATIN AM. STUD. 827, 841 (2003).

68 MOODIE, *supra* note 2, at 46. In 1995, the Salvadoran government reported “a murder rate of 138.9 per 100,000 population--more than the annual wartime violent death rate, the highest in the Americas and second only to South Africa in the world.” Moodie notes that some are skeptical about these figures, with “one recent estimate [suggesting] that the rate was about 80 per 100,000.” *Id.*

69 UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL STUDY ON HOMICIDE 2013, at 24 (Mar. 2014), [https://www.unodc.org/documents/data-and-analysis/statistics/GSH2013/2014\\_GLOBAL\\_HOMICIDE\\_BOOK\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/GSH2013/2014_GLOBAL_HOMICIDE_BOOK_web.pdf) [https://perma.cc/E2RX-4ZBH]. The IUDOP of the UCA issued a study in 2014 with homicide rates for those years with available data from 1990 to 2013. The years and corresponding rates (the number of homicides per 100,000 people) are as follows: 1990--69.8; 1994-- 138.2; 1996--117.4; 2003--36; 2004--48.7; 2005--63; 2006-- 64.6; 2007--57.3; 2008--51.9; 2009--71.2; 2010--64.8; 2011--70.3; 2012-- 41.6; 2013--39.7. The study’s authors note that questions have been raised about the reliability of the statistics, especially those for the years 1994 and 1996. IUDOP, *supra* note 11, at 3.

70 IUDOP, *supra* note 11, at 3.

71 *Id.*

72 Kyra Gurney, *El Salvador Homicides Skyrocket After Gang Truce Unravels*, INSIGHT CRIME (Jan. 9, 2015), <http://www.insightcrime.org/news-analysis/el-salvador-homicides-skyrocket-after-gang-truce-unravels> [https://perma.cc/4FX9-9XAJ]. The drop in reported homicides during the truce coincided with a rise in disappearances, and the subsequent discovery of clandestine graves holding many bodies, which has brought into question whether there really was a drop in killings during this period. The relationship between disappearances and the homicide rate is further discussed *infra* note 168.

73 The homicide rate in El Salvador was 43.7 per 100,000 people in 2013 and 68.6 per 100,000 in 2014. *Id.* In 2015, the rate rose to 104 per 100,000. Joshua Partlow, *Why El Salvador Became the Hemisphere’s Murder Capital*, WASH. POST (Jan. 5, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/> [https://perma.cc/SKR6-ZEHH]. In the first two months of 2016, there were 1,399 murders, more than double the number for the same period in 2015. *El Salvador’s Already Horrific Murder Rate is Getting Much Worse*, VICE NEWS (Mar. 3, 2016, 12:50 PM), <https://news.vice.com/article/el-salvadors-already-horrific-murder-rate-is-getting-much-worse> [https://perma.cc/U3NR-LXE8]. However, preliminary numbers show a drop to 81.7 homicides per 100,000 people in 2016. Nelson Renteria, *Murders in*

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*Notoriously Violent El Salvador Drop 20 Percent in 2016: Police*, REUTERS (Jan. 2, 2017), <http://www.reuters.com/article/us-elsalvador-violence-idUSKBN14M15F> [<https://perma.cc/4DN3-4PLG>].

- <sup>74</sup> Two studies published pursuant to the adoption of the Geneva Declaration on Armed Violence and Development, a diplomatic initiative aimed at addressing the relationship between armed violence and development, show that El Salvador has exceedingly high levels of violence against women. GLOBAL BURDEN OF ARMED VIOLENCE 2015: EVERY BODY COUNTS, *supra* note 13; Alvazzi del Frate, *Femicide: A Global Problem*, SMALL ARMS SURVEY RESEARCH NOTES (2012).
- <sup>75</sup> Mimi Yagoub, *Why Does Latin America Have the World's Highest Female Murder Rates?*, INSIGHT CRIME (Feb. 11, 2016), <http://www.insightcrime.org/news-analysis/why-does-latin-america-have-the-world-s-highest-female-murder-rates> [<https://perma.cc/6SM6-HGGN>].
- <sup>76</sup> GLOBAL BURDEN OF ARMED VIOLENCE 2015: EVERY BODY COUNTS, *supra* note 13.
- <sup>77</sup> Roque Planas, *How El Salvador Became The World's Most Violent Peacetime Country*, HUFFINGTON POST (Mar. 4, 2016, 5:30 PM), [http://www.huffingtonpost.com/entry/el-salvador-most-violent-country\\_us\\_56d9e239e4b0000de4047fbe](http://www.huffingtonpost.com/entry/el-salvador-most-violent-country_us_56d9e239e4b0000de4047fbe) [<https://perma.cc/EK7Z-39E4>]; Arron Daugherty, *El Salvador is Most Violent Nation in Western Hemisphere*, INSIGHT CRIME (Jan. 4, 2016), <http://www.insightcrime.org/news-briefs/el-salvador-is-most-violent-nation-in-western-hemisphere> [<https://perma.cc/Y9SY-2MH4>]; Partlow, *supra* note 73.
- <sup>78</sup> David Mungía Payés, the former Minister of Justice and Public Security, attributed 90 percent of the homicides to gangs. In contrast, police data put the number at 10.4 percent for 2009 and 11.3 percent for 2010, with an increase to 26.4 percent by 2011. IUDOP, *supra* note 11, at 19-20.
- <sup>79</sup> José Miguel Cruz, *Democratization Under Assault: Criminal Violence in Post-Transition Central America* at 22, presented at Am. Political Sci. Ass'n, 2009 Annual Meeting & Exhibition (Sept. 3-6, 2009), <http://ssrn.com/abstract=1450237> [<https://perma.cc/3DNH-BY8T>].
- <sup>80</sup> *Id.*
- <sup>81</sup> Mo Hume, *Contesting Imagined Communities: Gender, Nation, and Violence in El Salvador*, in POLITICAL VIOLENCE AND THE CONSTRUCTION OF NATIONAL IDENTITY IN LATIN AMERICA 73, 80 (Will Fowler & Peter Lambert eds. 2006).
- <sup>82</sup> The UN Truth Commission examined “serious acts of violence” by the state or rebel forces committed between 1980 and 1991. Truth Commission Report, *supra* note 4; Call, *supra* note 67, at 851.
- <sup>83</sup> MARK FREEMAN, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 344 (2006).
- <sup>84</sup> Truth Commission Report, *supra* note 4, at 27.
- <sup>85</sup> *Id.* at 19, 45, 127.
- <sup>86</sup> Elisabeth J. Wood, *Armed Groups and Sexual Violence: When Is Wartime Rape Rare?*, 37 POL. & SOC'Y 131, 152 (2009). Wood notes that there were no cases reported to the UN Truth Commission of sexual violence committed by the FMLN: “Of the 450 cases of sexual violence listed by the Truth Commission in the unpublished annexes to its report (270 cases were reported directly to the Commission by victims, family members or friends; 180 were reported directly by human rights groups, churches, or other

organizations) no case was attributed to FMLN cadre.” *Id.* at 152.

87 MOHUME, THE POLITICS OF VIOLENCE: GENDER, CONFLICT AND COMMUNITY IN EL SALVADOR 58 (2009).

88 MICHELE LEIBY, STATE-PERPETRATED WARTIME SEXUAL VIOLENCE IN LATIN AMERICA 238 (2011).

89 *Id.* at 246.

90 CGRS/RHRC Interview with Salvador E. Menéndez Leal, Procurador Adjunto para la Defensa de los Derechos Humanos [Deputy Procurator for the Defense of Human Rights], Procuraduría para la Defensa de los Derechos Humanos (PDDH) [Office of the Procurator for the Defense of Human Rights, or Human Rights Ombudsman’s Office], in San Sal., El Sal. (Apr. 2010) (on file with author). Menéndez commented that the amnesty, which resulted in impunity for crimes as atrocious as the massacre at El Mozote, contributed to the culture of impunity, noting that the “historical impunity is a factor in the impunity currently existing.” Roberto Rodriguez Meléndez, an expert on human rights and children’s rights observed that “El Salvador’s drawn out and intensely violent civil war had lasting effects in the country, including a cultural acceptance of violence and an institutionally weak and unstable government.” Declaration of Roberto Rodriguez Meléndez, Director de la Escuela de Capacitación Judicial [Director of the Judicial Training School], Departamento de Ciencias Jurídicas de la Universidad Centroamericana “José Simeón Cañas” (UCA) [Legal Sciences Department, José Simeón Cañas Central American University] (2014) (on file with author). Zaira Navas, a human rights attorney who served as Inspector General of the Policía Nacional Civil (PNC) [National Civil Police] in 2010 pointed to the “culture of war” and the consequent “dehumanization” as well as social disintegration and migration as contributing factors. CGRS/RHRC Interview with Zaira Navas, Inspectora General [Inspector General], Policía Nacional Civil (PNC) [National Civil Police], in San Sal., El Sal. (Oct. 2010) (on file with author).

91 CGRS/RHRC Interview with Blanca Figueroa, Jefa de la Unidad de Juvenil y Familia [Chief of the Unit for Children and Family], Policía Nacional Civil (PNC) [National Civil Police], in San Sal., El Sal. (Oct. 2013) (on file with author). Blanca Figueroa stated: There was so much violence during the war. The psychological impact of the war was left untreated and trickled down to children who are now adults .... The war left families disintegrated .... These issues are not addressed by the State, so violence is repeating itself with people living in fear.  
*Id.*

92 CGRS/RHRC Interview with Doris Montenegro, Presidenta [President], and Ima Rocío Guirola, Instituto de Estudios de la Mujer “Norma Virginia Guirola de Herrera” (CEMUJER) [Norma Virginia Guirola de Herrera Institute for Women’s Studies], in San Sal., El Sal. (Oct. 19, 2010) (on file with author). Doris Montenegro, who has criticized the amnesty, observed, “To kill is to kill and there should not be amnesty for killing. The entire society is sick, it is used to violence, and this is not just all the fault of the gangs.” *Id.*

93 CGRS/RHRC Interview with Maria T. Delgado de Mejia, Especialista en Protección Infantil [Child Protection Specialist], Fondo de las Naciones Unidas para la Infancia (UNICEF) [United Nations Children’s Fund] at 5-6, in San Sal., El Sal. (Oct. 17, 2013) (on file with author). Delgado de Mejia observed that as a result of the conflict and the lesson it taught “we [Salvadorans] have a serious problem of resolving disputes,” without violence, and that eight percent of the homicides were over “trivial incidents[.]” *Id.* Doris Montenegro made the same point, asking “How can we possibly understand why someone can kill another person just because he stole your parking space; the rage and violence is that extreme.” CGRS/RHRC Interview with Doris Montenegro and Ima Rocío Guirola, CEMUJER, *supra* note 92.

94 CGRS/RHRC Interview with Salvador E. Menéndez Leal, PDDH, *supra* note 90; CGRS/RHRC Interview with Benjamin Cuellar, Director [Director], and Roxana Marroquin, Coordinadora para Defensa de Niños y Adolescentes [Coordinator for Defense of Children and Adolescents], Instituto de Derechos Humanos de la Universidad Centroamericana “José Simeón Cañas” (IDHUCA) [Institute of Human Rights, José Simeón Cañas Central American University], in San Sal., El Sal. (Apr. 2010) (on file with author).

95 MARGARET POPKIN, PEACE WITHOUT JUSTICE: OBSTACLES TO BUILDING THE RULE OF LAW IN EL SALVADOR 106-09, 150-59 (2000).

96 *Id.* at 95-97.

97 *Id.*

98 *Id.*

99 *Id.* at 108.

100 *Id.* at 107.

101 *Id.*

102 *Id.* at 94.

103 *Id.* at 134.

104 *Id.* at 112.

105 *Id.* at 112 n.14.

106 *Id.* at 112.

107 *Id.* at 110.

108 Chapúltepec Agreement, *supra* note 1, at 8.

109 Prosecutions for politically motivated killings were limited to those in which the victims were U.S. citizens. POPKIN, *supra* note 95, at 47.

110 *Id.* at 126.

111 *Id.* at 140.

112 *Id.* at 97.

113 Ley de Reconciliación Nacional [Law for National Reconciliation] Decree 147, D.O. 14, Vol. 314, Jan. 23, 1992 (El Sal.).

- 114 Ley de Amnistía General para la Consolidación de la Paz [General Amnesty Law for the Consolidation of Peace] Decree 486, D.O. 56, Vol. 318, Mar. 22, 1993 (El Sal.).
- 115 POPKIN, *supra* note 95, at 151.
- 116 *Id.*
- 117 This provision was intended to preclude amnesty for two officers who had been convicted for the murder of the Jesuit priests, their housekeeper, and her daughter. *Id.*
- 118 *Id.* at 112 n.14.
- 119 President Cristiani voiced his dissatisfaction with the Truth Commission's report and urged an immediate and total amnesty. His military commanders took to the airwaves to denounce the Commission's report, as did the entire Supreme Court. Minister of the Presidency Oscar Santamaria, who headed the government's negotiating team, termed the report "an insult to Salvadoran society ... and very explosive." *Id.* at 121. General Mauricio Vargas, who represented the military on the negotiating team, called the report "biased, incomplete, unfair, totally unacceptable"; Nelson Garcia, then president of the Salvadoran Lawyers Federation, found that the Commission's report did "not even meet the requirements of the Inquisition," and the entire leadership of the armed forces appeared on national television to blast the report as "unfair, incomplete, illegal, unethical, partisan and insolent." *Id.*
- 120 Ley de Amnistía General para la Consolidación de la Paz [General Amnesty Law for the Consolidation of Peace], *supra* note 114.
- 121 *Id.* art. 1. The Amnesty Law did exempt a small category of crimes committed for profit, or related to kidnapping or extortion, from the amnesty. *Id.* art. 3.
- 122 *Id.* art. 4.
- 123 POPKIN, *supra* note 95, at 126.
- 124 *Id.*
- 125 *Id.*
- 126 *Id.*
- 127 *Id.* at 127.
- 128 *Id.*
- 129 Popkin describes how a number of those listed in the report were elected to the Legislative Assembly, while Rodolfo Parker, "who had been named by the commission for his purported role in altering suspects' statements in the Jesuit murder investigation," was the Christian Democratic Party's presidential nominee in 1999. POPKIN, *supra* note 95, at 128.

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- <sup>130</sup> One of the new bodies was the National Civil Police force. It was to replace those security forces that had committed egregious abuses--the Treasury Police, National Guard, National Police, and paramilitary defense patrols. The newly formed National Civil Police was to be constituted of 20 percent former police, 20 percent FMLN, and 60 percent civilians. Call, *supra* note 67, at 831-33.
- <sup>131</sup> Cruz, *supra* note 79, at 24. Numerous Salvadoran sources share the analysis that violent civil war elements have incorporated into current criminal enterprises. For example, in a 2010 interview, Sandra Edibel Guevara commented that the “right wing forces that were tied to the death squads during the civil war are linked to organized crime[.]” CGRS/RHRC Interview with Sandra Edibel Guevara, Directora Ejecutiva [Executive Director], Asociación y Movimiento de Mujeres Mélida Anaya Montes (“Las Mélidas”) [Mélida Anaya Montes Women’s Movement], in San Sal., El Sal. (Apr. 2010) (on file with author).
- <sup>132</sup> POPKIN, *supra* note 95, at 175.
- <sup>133</sup> *Id.* at 176.
- <sup>134</sup> Cruz, *supra* note 79, at 27.
- <sup>135</sup> *Id.* at 31.
- <sup>136</sup> *Id.* at 3. The homicide rate in Nicaragua for 2013 was 9 per 100,000 people. U.S. DEP’T OF STATE OVERSEAS SEC. ADVISORY COUNCIL (OSAC), NICARAGUA 2015 CRIME AND SAFETY REPORT (June 12, 2015), <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17797> [<https://perma.cc/M822-LQCJ>]. In 2014, the rate dropped slightly to 8.7 per 100,000. David Gagne, *InSight Crime 2014 Homicide Round-Up*, INSIGHT CRIME (Jan. 12, 2015), <http://www.insightcrime.org/news-analysis/insight-crime-2014-homicide-round-up> [<https://perma.cc/PF29-JYYQ>]. In 2015, the rate further dropped to 8 per 100,000 people. David Gagne, *2015 Latin America Homicide Round-Up*, INSIGHT CRIME (2016), <http://www.insightcrime.org/news-analysis/insight-crime-homicide-round-up-2015-latin-america-caribbean> [<https://perma.cc/5SAQ-XSYA>].
- <sup>137</sup> CGRS/RHRC Interview with Benjamin Cuellar and Roxana Marroquin, IDHUCA, *supra* note 94.
- <sup>138</sup> Robin Maria DeLugan, *Amnesty No More*, NACLA (July 20, 2016), <http://nacla.org/news/2016/07/20/amnesty-no-more> [<https://perma.cc/CV4X-KRGU>].
- <sup>139</sup> Doris Montenegro, President of CEMUJER, commented that the “Amnesty Law was a historical atrocity,” and that it was politically expedient, but “no one anticipated the damage it would do to Salvadoran society, how the violence and impunity would destroy the Salvadoran populace.” CGRS/RHRC Interview with Doris Montenegro and Ima Rocío Guirola, *supra* note 92.
- <sup>140</sup> Benjamin Cuellar noted that contemporary “impunity dates back to the war.” He observed that “[t]hose who kill once (and are not punished)[] will kill again.” CGRS/RHRC Interview with Benjamin Cuellar and Roxana Marroquin, IDHUCA *supra* note 94.
- <sup>141</sup> Aracely Bautista Bayona, whose work as a lawyer began during the Salvadoran armed conflict, points to the weakness and corruption of key institutions as factors strongly contributing to impunity. CGRS/RHRC Interview with Aracely Bautista Bayona, Consultora Legal [Legal Consultant], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly], in San Sal., El Sal. (Apr. 2010) (on file with author).
- <sup>142</sup> The first decision was on May 20, 1993, when the Constitutional Chamber of the CSJ ruled inadmissible a request to review the constitutionality of the Amnesty Law because the law was an “eminently political act.” Sala de lo Constitucional de la CSJ

[Constitutional Chamber of the CSJ], 11-93, May 20, 1993, 6-7 (El Sal.), <http://www.jurisprudencia.gob.sv/VisorMLX/Documento/Documento.aspx?Data=EPT7LjRUxiC4kACPe1ngIvsAKXNiKp6iT75mgGD+yKHlu/0q3FvwhEl9G1tmu1NQPtGJrGPdC5ul3uOKxGJ7BH+ncAJTa03PADue92LpxelwG2djRZ5wYkTZwECcKwZ/ToDg==> [https://perma.cc/DNW7-FCGM]. Subsequently, on September 26, 2000, the Constitutional Chamber of the CSJ once again upheld the constitutionality of the Amnesty Law but qualified its application. Sala de lo Constitucional de la CSJ [Constitutional Chamber of the CSJ], 24-97/21-98, Sept. 26, 2000, 36-37 (El Sal.), <http://www.jurisprudencia.gob.sv/VisorMLX/Documento/Documento.aspx?Data=ELBRdoiBpvszbpUgwgkWDiGQRLHYsCN4Y1Z0FtW6+EqAKUabIwo65MJSz/zziwT1tuujsvfhhOmlSfjIEjTVD910AKqgrWsXus/DJDeiz0xF/GSHYSG7/wcgCAj7zry54I21wTNIQBRDfIJW68bNLxdipIAZg==> [https://perma.cc/X42V-A6SH].

- <sup>143</sup> Sala de lo Constitucional de la CSJ [Constitutional Chamber of the CSJ], 44-2013/145-2013, July 13, 2016, 48-51 (El Sal.), <http://www.jurisprudencia.gob.sv/VisorMLX/Documento/Documento.aspx?Data=EOUtZxhDzQFfir6sJUYIrYFkzozzrdzkPi60qwBnc+MQVSjtp/tGtgcd7P6RsH7WA0YIWzmjRWnUuQFddLWDe5bsVZ+2Ds3SUj2LQjJK3hVxWDbUUpDN47AH9FkLwdRwvea+GCBME4xrhAX6++VRrCzY7dJuA==> [https://perma.cc/LY7N-KCBG].
- <sup>144</sup> IRINA C. SILBER, EVERYDAY REVOLUTIONARIES: GENDER, VIOLENCE, AND DISILLUSIONMENT IN POSTWAR EL SALVADOR 16 (2011). *See also* HUME, *supra* note 87, at 61 (noting that “[t]he 1992 peace accords are widely recognized as having put an end to the twelve-year war, although they have failed to build a new and more equal society”).
- <sup>145</sup> HUME, *supra* note 87, at 171 (noting that “simplistic linkages between crime and poverty should be avoided”). A former justice of the CSJ has commented that the violence is tied to the “neoliberalism of ARENA that excluded people.” CGRS/RHRC Interview with Mirna A. Perla Jimenez, Juez [Justice], Sala de lo Civil de la CSJ [Civil Chamber of the CSJ], in San Sal., El Sal. (Apr. 2010) (on file with author). This perspective was repeated by other sources. Sandra Edibel Guevara said that neoliberal policies, such as privatization, had been adopted to help big business but had harmed “poor people” and led to the country’s economic crisis. CGRS/RHRC Interview with Sandra Edibel Guevara, Las Méridas, *supra* note 131.
- <sup>146</sup> MOODIE, *supra* note 2, at 42.
- <sup>147</sup> *Id.*
- <sup>148</sup> *Id.*
- <sup>149</sup> *Id.*
- <sup>150</sup> *Id.* at 67.
- <sup>151</sup> Elisabeth J. Wood, *Challenges to Political Democracy in El Salvador*, in THE THIRD WAVE OF DEMOCRATIZATION IN LATIN AMERICA: ADVANCES AND SETBACKS 179, 199 (Frances Hagopian ed., 2005).
- <sup>152</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, CENTRAL AMERICA: INFORMATION ON MIGRATION OF UNACCOMPANIED CHILDREN FROM EL SALVADOR, GUATEMALA, AND HONDURAS 2-3 (Feb. 2015), <http://www.gao.gov/assets/670/668749.pdf> [https://perma.cc/7C5D-YW3W].
- <sup>153</sup> *Id.* at 3.
- <sup>154</sup> *Id.* at 5. Blanca Figueroa, of the PNC, commented on the importance of investing in education in order to bring about social change and the reduction of violence. CGRS/RHRC Interview with Blanca Figueroa, Unit for Children and Family, PNC at 5, *supra* note

91.

- 155 CGRS/RHRC Interview with Maria T. Delgado de Mejia, *supra* note 93. In a 2013 interview, Mélida Guevara of Oxfam commented on the way in which poverty and its consequences, combined with other factors, rendered youth susceptible to gang recruitment, stating:  
[T]he combined effect of poverty, the absence and abandonment of parents, the absence of early stimulation and play, the absence of nutrition and health services and violence at home and at school generate conditions of vulnerability. The result is that more than half of all children abandon school and become vulnerable to recruitment by criminal organizations.  
CGRS/RHRC Interview with Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam, at 4, in San Sal., El Sal. (Oct. 17, 2013) (on file with author). Mario Mena Méndez, who works with children who have come into conflict with the law, commented on the difference that exposure to art and music could have on children. He emphasized the importance of sending youth the message that they are not “irredeemable” and that society is willing to invest in them. He illustrated this point by telling the following anecdote:  
I have a friend who studied in Sweden, he’s Salvadoran and went to Sweden when he was five. He was in the typical situation of an immigrant who couldn’t find his place in the country. He would go to the market and steal bags and he would take off running just for the thrill of being chased by the security guards. He was brought before the judge and the judge asked him “what do you want to do in life?” Half as a joke he said “I want to play the drums.” So the judge sentenced him to become the best drummer in the city. When he robbed the bags again he was brought before the judge again and the judge asked him the same question. Again as a joke, he said “I want to play guitar.” So the judge sentenced him to learn guitar at the conservatory in Stockholm. And this really had an effect on him, and he was very moved, and that’s when he understood that “they wanted to make me a citizen and that just because I committed a crime didn’t mean I was irredeemable.”  
CGRS/RHRC Interview with Mario F. Mena Méndez, Jefe de la División de Admisión, Evaluación y Diagnostico [Head of the Division of Admission, Evaluation, and Diagnostics], Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia (ISNA) [Salvadoran Institute for the Comprehensive Development of Childhood and Adolescence] at 7, in San Sal., El Sal. (Oct. 16, 2013) (on file with author).
- 156 UNODC, TRANSNATIONAL ORGANIZED CRIME IN CENTRAL AMERICA AND THE CARIBBEAN: A THREAT ASSESSMENT, 78 fig.79 (Sept. 2012), [https://www.unodc.org/documents/data-and-analysis/Studies/TOC\\_Central\\_America\\_and\\_the\\_Caribbean\\_english.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf) [<https://perma.cc/6MEG-TLRJ>].
- 157 Edgardo Ayala, *El Salvador’s New Government to Inherit Hot Potato of Gang Truce*, INTER PRESS SERV. (May 10, 2014), <http://www.ipsnews.net/2014/05/el-salvadors-new-government-inherit-hot-potato-gang-truce/> [<https://perma.cc/RTY6-3643>].
- 158 José Miguel Cruz, *Global Gangs in El Salvador: Maras and the Politics of Violence*, presented at Centre on Conflict, Development, and Peacebuilding, 2009 Global Gangs Workshop (May 14-15, 2009), [http://www.academia.edu/1451010/Global\\_Gangs\\_in\\_El\\_Salvador\\_Maras\\_and\\_the\\_Politics\\_of\\_Violence](http://www.academia.edu/1451010/Global_Gangs_in_El_Salvador_Maras_and_the_Politics_of_Violence) [<https://perma.cc/T3L7-X4BY>].
- 159 *Id.* at 6-7.
- 160 In her book *El Salvador in the Aftermath of Peace*, Ellen Moodie quotes a psychologist, América Tenorio, who interviewed Salvadorans who had turned to crime after the war came to an end. Tenorio explained:  
Most of the people in prison ... had been dehumanized by deep structural violence long before their arrests. The majority of ex-soldiers ... had become drug addicts in the military .... They came into treatment traumatized and even brain-damaged. Many others had lived long lives of deprivation .... What can you expect in a country that has never known a durable democracy, that has a long, troubled history of authoritarianism, repression, exploitation, and murder?  
MOODIE, *supra* note 2, at 167. In-country sources have underscored the need for treatment as opposed to harsh and draconian punitive measures. Mirna Antonieta Perla Jimenez, a judge on El Salvador’s Supreme Court, stated that there were “other options that could work,” including “better treatment for those addicted to drugs” and fostering “positive leadership” for youth.  
CGRS/RHRC Interview with Mirna A. Perla Jimenez, Civil Chamber of the CSJ, *supra* note 145.

<sup>161</sup> Cruz, *Global Gangs in El Salvador*, *supra* note 158, at 5.

<sup>162</sup> Draconian anti-gang laws were adopted by the Salvadoran government, along with the governments of the other Northern Triangle countries. El Salvador enacted its first harsh anti-gang “Mano Dura” law in 2003. *See* Ley Anti Maras [Anti-Gang Law], Decree 158, D.O. 188, Vol. 361, Oct. 10, 2003 (El. Sal.). This law allowed for the arrest and imprisonment of youth suspected of gang membership and “included rounding up thousands of youth based on their appearance, associations or address.” Steven Dudley, *How ‘Mano Dura’ is Strengthening Gangs*, INSIGHT CRIME (Nov. 21, 2010), <http://www.insightcrime.org/investigations/how-mano-dura-is-strengthening-gangs> [https://perma.cc/8377-J2YR]. The law was struck down as being unconstitutional, but it was followed by the passage of “Super Mano Dura” in July 2004. *See* Ley para el Combate de las Actividades Delincuenciales de Grupos o Asociaciones Ilícitas Especiales [Law for Combating the Delinquent Activities of Special Illicit Groups or Associations], Decree 305, D.O. No. 65, Vol. 363, Apr. 2, 2004 (El. Sal.). Super Mano Dura gave the police expanded power to search and arrest suspected gang members and increased penalties. CLARE R. SEELKE, CONG. RESEARCH SERV., GANGS IN CENTRAL AMERICA 10 (2016), <https://fas.org/sgp/crs/row/RL34112.pdf> [https://perma.cc/RAN4-95AX].

<sup>163</sup> SEELKE, *supra* note 162, at 10 (anti-gang policies put into effect in response to “popular demands and media pressure for the government to ‘do something’ about an escalation in gang-related crime”).

<sup>164</sup> The mass incarceration overwhelmed the prison system, and conflicts between MS-13 and Barrio-18 broke out in the jails, resulting in hundreds dying in riots. This led to the separation of the rival gangs in prison, which had the unintended consequence of strengthening them. In jail the “leaders of these gangs had more time to organize, strategize and plan their activities.” Dudley, *supra* note 168. Ironically, once the rival gangs were housed separately, the members “were safer in jail” than they would have been on the outside, and they “could communicate easier.” *Id.* It was in this time period that they expanded their operations, “entering new criminal territory, specifically extortions and kidnappings.” *Id.* They directed these operations while imprisoned; the “Salvadoran prosecutor in charge of the anti-extortion unit estimates that 84 percent of all extortion operations are run from the jail.” *Id.* This point was affirmed by many in-country sources. For example, in an October 2010 interview, Edgardo Alberto Amaya Cobar observed:

[Mano Dura was] reactionary and repressive and strengthened the identity and capacity of the gangs .... It was key in the transformation of gang members into hardened criminals .... The gangs became stronger and they developed stronger vertical characteristics and methods of control. The leaders expanded gang territory and gained control of criminal activities on a national level, directing homicides and kidnappings anywhere in the country.

CGRS/RHRC Interview with Edgardo A. Amaya Cobar, Asesor [Consultant], Ministerio de Justicia y Seguridad Publica (MJSP) [Ministry of Justice and Public Security], in San Sal., El Sal. (Oct. 22, 2010) (on file with author).

<sup>165</sup> IUDOP, *supra* note 11, at 18-20.

<sup>166</sup> Gurney, *supra* note 72. *But see* IUDOP, *supra* note 11, making the opposite claim.

<sup>167</sup> Hannah Stone, *El Salvador Sees Almost 60% Drop in Murders in April, as Gang Truce Holds*, INSIGHT CRIME (May 1, 2012), <http://www.insightcrime.org/news-briefs/el-salvador-sees-almost-60-drop-in-murders-in-april-as-gang-truce-holds> [https://perma.cc/YH9B-TNFZ]. *See also* Juan Carlos Garzon, *How to Strengthen the Fragile Gang Truce in El Salvador*, INSIGHT CRIME (July 18, 2013), <http://www.insightcrime.org/news-analysis/el-salvador-homicides-gang-truce-breakdown> [https://perma.cc/58TD-6WJZ].

<sup>168</sup> IUDOP, *supra* note 11, at 4 tbl.1.1. Notwithstanding these numbers, questions have been raised as to whether killings were actually reduced during the truce. During that time period there was a rise in disappearances, followed by the discovery of clandestine graves. Many of the individuals reported as disappeared may have actually been killed, but until their bodies were uncovered, their deaths did not contribute to the homicide rates. IUDOP, *supra* note 11, at 21-22; Mike LaSusa, *El Salvador Disappearances Down from Post-Gang Truce Peak*, INSIGHT CRIME (Sept. 16, 2016), <http://www.insightcrime.org/news-briefs/el-salvador-disappearances-down-from-post-gang-truce-peak> [https://perma.cc/T54N-56CZ]. Experts attributed the disappearances and killings to gangs and organized crime. Gurney, *supra*

note 72; Steven Dudley, *Mass Graves Burying the Truth about El Salvador Gang Truce*, INSIGHT CRIME (Jan. 1, 2014), <http://www.insightcrime.org/news-analysis/homicides-mass-graves-and-truth-about-el-salvador-gang-truce> [<https://perma.cc/9692-C26E>].

169 SEELKE, *supra* note 162, at 19.

170 IMMIGRATION AND REFUGEE BD. OF CANADA, EL SALVADOR: INFORMATION GATHERING MISSION REPORT--PART 1: GANGS IN EL SALVADOR AND THE SITUATION OF WITNESSES OF CRIME AND CORRUPTION § 4.5.1 (2016).

171 *Id.*

172 *Id.*

173 *Id.*

174 *Id.* § 4.3.

175 *Id.*

176 *Id.* § 4.5.3. “[I]n 2014, 38 students and 9 teachers were killed; in 2015, 75 students and 15 teachers were killed; and from 1 January to 20 April 2016, 20 students and 5 teachers were killed.” *Id.* Blanca Figueroa, with the Unit for Children and Family of the PNC, underscored the degree of gang infiltration in the schools, saying, “Schools are contaminated; they are centers for gang recruitment. The schools are a very harmful environment, with much violation of rights, drugs, sex, and gangs.” CGRS/RHRC Interview with Blanca Figueroa, PNC, *supra* note 91, at 2.

177 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 1, *supra* note 170, § 4.1.1. Mélida Guevara of Oxfam commented that the problem of violence in schools was so bad that the number of students attending had been dropping. CGRS/RHRC Interview with Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam, in San Sal., El Sal. (Nov. 2016) (on file with author).

178 Declaration of Aracely Bautista Bayona, Consajera Legal [Legal Consultant], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly] at 9 (2011) (on file with author).

179 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 1, *supra* note 170, § 4.3.1.

180 Girls as young as 12 years old may be targeted in this manner. *Id.*

181 *Id.*

182 *Id.* Yanira Argueta, current Director of the Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU) [Salvadoran Institute for the Development of the Woman], recounted that gang members take photographs of girls and women on the street, show them to their jailed confederates so they can “choose,” and then tell the selected female that if she does not agree to visit the jail and have sexual relations, she or her family will suffer violence. CGRS/RHRC Interview with Yanira Argueta, Directora Ejecutiva

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[Executive Director], Asociación para la Autodeterminación y Desarrollo de Mujeres Salvadoreñas (AMS) [Association for Self-Determination and Development of Salvadoran Women], in San Sal., El Sal. (Apr. 2010) (on file with author).

183 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 1, *supra* note 170, § 4.3.1.

184 MAX G. MANWARING, A CONTEMPORARY CHALLENGE TO STATE SOVEREIGNTY: GANGS AND OTHER ILLICIT TRANSNATIONAL CRIMINAL ORGANIZATIONS IN CENTRAL AMERICA, EL SALVADOR, MEXICO, JAMAICA, AND BRAZIL (2007), available at <http://ssi.armywarcollege.edu/pdffiles/pub837.pdf> [<https://perma.cc/SW6Z-V586>]; John P. Sullivan & Robert J. Bunker, *Third Generation Gang Studies: An Introduction*, 14 J. GANG RES. 5 (2007); HAL BRANDS, SMALL WARS JOURNAL, THIRD GENERATION GANGS AND CRIMINAL INSURGENCY IN LATIN AMERICA (2009), available at <http://smallwarsjournal.com/jrnl/art/third-generation-gangs-and-criminal-insurgency-in-latin-america> [<https://perma.cc/TH4P-994F>].

185 First-, second-, and third-generation gangs are described and distinguished as follows:  
First-generation gangs, which make up the largest of the three categories, are street gangs. They focus mainly on protecting their turf--normally no more than a few city blocks, from equally parochial rivals. Their criminal activities--assault, robbery, and petty extortion--are small-scale and opportunistic .... Second-generation gangs are larger and more complex .... Frequently organized around illicit economies like drug trafficking, second-generation gangs operate across several cities or even internationally. They have links to transnational criminal organizations (TCOs) like drug cartels, and feature a more centralized leadership and a more hierarchical structure than first-generation gangs.  
Third-generation gangs are sophisticated TCOs in their own right .... While they participate in many of the same activities as first- and second-generation gangs, they operate on a grander scale .... Most important, third-generation gangs stand astride the line separating crime and insurgency. These organizations go to such lengths to protect their highly lucrative economic activities that they end up undermining the authority and legitimacy of the state. They murder police officers, soldiers, and other authorities that try to interfere with their business; they infiltrate, corrupt, or otherwise weaken government institutions: they use intense, calculated violence to carve out geographic zones where they can dominate the population and operate completely free of state control.  
BRANDS, *supra* note 184, at 2.

186 As early as 2011 there were indications that the Zetas, one of the more violent Mexican drug cartels, had a presence in El Salvador. Douglas Farah, *Organized Crime in El Salvador: The Homegrown and Transnational Dimensions*, WOODROW WILSON INT'L CENTER FOR SCHOLARS: LATIN AM. PROGRAM (2011). It has also been reported that the Salvadoran gangs were developing ties with the Zetas and had a strong interest in expanding into the international drug trade. Garzon, *supra* note 167.

187 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 1, *supra* note 170, § 4.1.

188 BRANDS, *supra* note 184, at 5.

189 *Id.*

190 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 1, *supra* note 170, § 4.1.

191 *Id.*

192 The territorial control gang members possess has facilitated their ability to determine who has gone to the authorities; in some neighborhoods, gangs "surveil police stations through cameras clandestinely posted in trees located at the front of these stations" to identify who has gone to the police. *Id.* at 19. El Salvador's witness protection program has been ineffective, and "[t]here are many cases of protected witnesses that have been killed." *Id.* at 21.

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193 *Id.* at 19.

194 *Id.*

195 According to sociologist Sylvia Walby, patriarchy can be defined as “a system of social structures, and practices in which men dominate, oppress and exploit women.” Sylvia Walby, *Theorising Patriarchy*, 23 SOC. 214 (1989).

196 Michael Hardin, *Altering Masculinities: The Spanish Conquest and the Evolution of the Latin American Machismo*, 7 INT’L J. SEXUALITY AND GENDER STUD. 1, 1-22 (2002). Hardin describes machismo as a “stereotype that emphasizes hypermasculinity.” *Id.* at 2.

197 Virtually every source interviewed in El Salvador acknowledged the widespread acceptance of violence and its relationship to men’s belief that “women are pieces of property and that they have the right to do [to them] whatever they want.” CGRS/RHRC Interview with Mélida Guevara, Coordinadora del Programa de la Justicia del Género [Coordinator of the Gender Justice Program], Oxfam, in San Sal., El Sal. (Apr. 2010) (on file with author).

198 Declaration of Aracely Bautista Bayona, *supra* note 178, at 5. In explaining how deeply entrenched these attitudes are, Bautista Bayona commented that many people believe that submission of the woman to the man was absolutely necessary for society to exist--it was an “untouchable” principle that could not be questioned; to do so would lead to the apocalyptic destruction of society. *Id.* at 6.

199 *Id.* at 5. “[C]onquistadors subjected indigenous groups to the patriarchal Spanish imperial order. The *conquistadors* systematically raped indigenous women .... Spanish colonialism also brought with it the Roman principle of the *pater familias* (the rule that a male head of household owned legal title to all the women in his family).” *Id.*

200 JOSÉ HUMBERTO VELÁSQUEZ, LA CULTURA DEL DIABLO [THE CULTURE OF THE DEVIL] 48 (1986).

201 *See generally* June Nash, *Gender Studies in Latin America*, in GENDER AND ANTHROPOLOGY: CRITICAL REVIEWS OF RESEARCH AND TEACHING, 228, 228-45 (Sandra Morgen, ed., 1989).

202 *Id.*

203 *Id.* at 229 (citing June Nash, *The Aztecs and the Ideology of Male Dominance*, 4 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 349, 349-62 (1978) and IRENE SILVERBLATT, MOON, SUN, AND WITCHES: GENDER IDEOLOGIES AND CLASS IN INCA AND COLONIAL PERU (1987)).

204 *Id.* at 230 (citing ELLEN B. BASSO, THE KALAPALO INDIANS OF CENTRAL BRAZIL (1973)).

205 Hardin, *supra* note 196.

206 *Id.* at 6.

207 *Id.* at 5-6.

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- 208 *Id.* at 6; EDUARDO GALEANO, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT* (1997).
- 209 Hardin, *supra* note 196, at 5-6.
- 210 *Id.* at 16.
- 211 Hardin recounts an episode in which the Aztec leader Cuauhtémoc confronted Hernan Cortés, a Spanish conquistador, regarding the kidnapping of indigenous women by Cortés' men. Cortés responded by "answer[ing] that it would be difficult to take them away from their present masters." *Id.* at 16-17 (quoting BERNAL DÍAZ DEL CASTILLO & J. M. COHEN, *THE CONQUEST OF NEW SPAIN* (1963)). For Hardin, the use of the word "masters" "indicat[es] that there was no pretense of social acceptance for these women: they were the property of men." Hardin, *supra* note 196, at 17. *See also* Declaration of Aracely Bautista Bayona, *supra* note 178, at 5 (explaining women's legal status as the property of men during the colonial period).
- 212 Hardin, *supra* note 196, at 16-17.
- 213 *Id.* at 16 ("[A Spanish] priest, [Friar Diego] de Landa, noticed [an increase in violence against women] among the Maya: 'they are very jealous, and do not lightly suffer infidelity on their wives' part; and now that they see the Spaniards kill their wives for this reason, they are beginning to maltreat and even to kill them.'" (internal citations omitted)).
- 214 Violeta Sara-Lafosse, *Machismo in Latin America and the Caribbean*, in *WOMEN IN THE THIRD WORLD: AN ENCYCLOPEDIA OF CONTEMPORARY ISSUES* 107, 107-14 (Nelly P. Stromquist & Karen Monkman eds. 1998).
- 215 *Id.* at 107. Bautista Bayona also identified paternal abandonment as a trait of El Salvador's *machista* society, noting that "[p]aternal irresponsibility is a cultural phenomenon--it is socially acceptable for men to be absent from the home and have multiple sexual relationships, leaving the women with total responsibility for maintaining the home and raising children." Declaration of Aracely Bautista Bayona, *supra* note 178, at 6.
- 216 Sara-Lafosse, *supra* note 214, at 108-09.
- 217 *Id.* at 110 (citing ASUNCIÓN LAVRIN, *WOMEN, FEMINISM, AND SOCIAL CHANGE IN ARGENTINA, CHILE, AND URUGUAY: 1890-1940* (1995)).
- 218 *Id.* at 111, 107-09.
- 219 Hardin, *supra* note 196, at 2.
- 220 L.J. Madrigal & W.V. Tejada, *Facing Gender-based Violence in El Salvador: Contributions from the Social Psychology of Ignacio Martin-Baro*, 19 *FEMINISM & PSYCHOL.* 368, 368-74 (2009).
- 221 Mo Hume, *Researching the Gendered Silences of Violence in El Salvador*, 40 *I.D.S. BULLETIN* 83 (2009). Maria Teresa Delgado de Mejia, child protection specialist with UNICEF, pointed to patriarchal norms as a root cause of epidemic levels of violence across the country:  
There are many explanations [for violence]. A transcendent factor is the way in which children are raised. Parenting is very violent. This is because of a patriarchal heritage, of the power that men have within the family, how fathers behave at home. It's authoritarian. The father beats the mother, the mother beats the children, the eldest child beats the youngest, and the youngest beats

the dog. It's a cycle of violence.

CGRS/RHRC Interview with Maria Teresa Delgado de Mejia, *supra* note 93, at 5.

- 222 América Joaquina Romualdo Cárcomo referred to *machismo* as a “set of misogynistic gender biases that relegate women to being the property of men ... creating a patriarchal society that justifies ... violence.” Declaration of América J. Romualdo Cárcomo, Coordinadora de Programas [Program Coordinator], Asociación Mujeres por la Dignidad y la Vida (Las Dignas) [Women’s Association for Dignity and Life] (May 16, 2011) (on file with author), at 3.
- 223 Mo Hume, “*It’s As If You Don’t Know, Because You Don’t Do Anything About It*”: *Gender and Violence in El Salvador*, 16 ENV’T AND URBANIZATION 67 (2004). Lawyer and women’s rights expert Alba Evelyn Cortez de Alvarenga expounded on the concept of “pater familia” and its influence on Salvadoran culture and its legal system: We took our patriarchal system from Spain .... The laws come from the Spanish monarchy .... They come from Roman concepts of “pater familia” where power is the power of the man. First a father has power over a woman and then he passes it to the husband to have power over the woman .... In 1921 we gained our independence from Spain. While we may have been independent, we still took Spanish law [with us] .... For example, the law gave [the man] the right to correct the woman up until the point of killing her. It allowed for [the man] to take away her kids if he wants, to make her pregnant if he wants. The idea of marital rights did not exist. CGRS/RHRC Interview with Alba E. Cortez de Alvarenga, Jefa de la Unidad de Género [Head of the Gender Unit], Asamblea Legislativa [Legislative Assembly], in San Sal., El Sal. (Nov. 2016) (on file with author).
- 224 Underreporting of violent crime in general is pervasive in El Salvador, and the problem is likely higher in cases of violence against women. See ELIZABETH SHRADER, *METHODOLOGIES TO MEASURE THE GENDER DIMENSIONS OF CRIME AND VIOLENCE* 8 (2001). Numerous in-country sources reiterated that normalization of violence, lack of confidence in the system, and fear of retribution are significant factors for failure to report. For example, Jeanette Aguilar stated: “Owing to fear of the victim, fear of reprisal, many cases are not reported .... Only 30 percent of crimes are denounced, 70 percent are not ... in cases of gender violence [there is] even less denunciation than for other crimes.” CGRS/RHRC Interview with Jeanette Aguilar, Directora [Director], Instituto Universitario de Opinión Pública (IUDOP) de la Universidad Centroamericana José Simeón Cañas (UCA) [University Institute of Public Opinion, José Simeón Cañas Central American University], in San Sal., El Sal. (Nov. 2016) (on file with author). She recalled cases of women “who had been mistreated for decades, and it took the woman being almost to the point of death for her to denounce” noting that the violence was normalized, even by the victims themselves. *Id.*; see also OXFAM AM., *REPORT ON PERCEPTIONS OF GENDER VIOLENCE: RESULTS OF PUBLIC OPINION SURVEYS IN EL SALVADOR* 45-46 (2008) (specifically addressing intrafamilial violence and noting that 63.5 percent of respondents believed that victims do not report abuse because of fear of reprisal). Vilma Vaquerano Cruz of the Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace] cautioned against inferring a reduction in violence from official statistics; she noted that denunciations were down because women are scared to report, they have no confidence in the system, and, in areas where gangs control the territory, there are even fewer complaints “because police are not allowed to go into the communities.” CGRS/RHRC Interview with Vilma Vaquerano Cruz, Directora de Comunicaciones [Director of Communications], Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) [Organization of Salvadoran Women for Peace], in San Sal., El Sal. (Nov. 2016) (on file with author).
- 225 A 2010 Oxfam survey conducted in six of El Salvador’s departments reported that 80 percent of women were unfamiliar with how to access the criminal justice system for protection. CGRS/RHRC Interview with Mélida Guevara (Apr. 2010), *supra* note 197.
- 226 Salvadoran officials have called into question the validity of statistics on violence against women. Vanda Pignato, El Salvador’s Secretary for Social Inclusion stated in November 2015 that government statistics on gender violence “are not real,” pointing out that women do not report “because of fear, because of shame ... and above all because they lack confidence in the judicial system.” Susana Peñate, *Pandillas Segunda Causa de Violencia Contra Mujer* [Gangs Second Cause of Violence Against Women], GRAPHIC PRESS (Nov. 13, 2015), <http://www.laprensagrafica.com/2015/11/13/pandillas-segunda-causa-de-violencia-contra-mujer> [https://perma.cc/N369-B27S]. Salvador E. Menéndez Leal, Deputy Procurator of the PDDH, commented that statistics are not reliable because the various government agencies (including the PNC, the Instituto de Medicina Legal (IML) [Institute of Legal Medicine], and the Fiscalía General de la República (FGR) [Office of the Prosecutor General of the Republic]), as well as the NGOs, did not share a uniform approach. CGRS/RHRC Interview with Salvador E. Menéndez Leal, PDDH, *supra* note 90.

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227 See discussion *infra* Part III.C.2.A.ii.B.

228 See *supra* note 13.

229 Chile, Ecuador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic use the term “femicide” in their penal classification, while Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Mexico, and Peru have codified the crime as “feminicide.” GENDER EQUAL. OBSERVATORY FOR LATIN AM. AND THE CARIBBEAN, ECON. COMM’N FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC), UNITED NATIONS, FEMICIDE OR FEMINICIDE AS A SPECIFIC TYPE OF CRIME IN NATIONAL LEGISLATIONS IN LATIN AMERICA: AN ON-GOING PROCESS (July 2015), [http://oig.cepal.org/sites/default/files/noteforequality\\_17\\_0.pdf](http://oig.cepal.org/sites/default/files/noteforequality_17_0.pdf) [<https://perma.cc/7WR6-E7HD>].

230 The LEIV defines a feminicide as the killing of a woman for reasons of “hatred or contempt” and lists various factors that may indicate the presence of those reasons. LEIV, *supra* note 17, art. 45. For example, the killing might be classified as a feminicide if it was preceded by a violent act by the perpetrator against the victim or if the death was caused by mutilation. *Id.*

231 The categorization of a killing as one or the other is not without its controversy, with many commenting on the reluctance, or refusal, of authorities to recognize or treat the killing of a woman as a feminicide as opposed to as homicide more generally. IUDOP, *supra* note 11, at 8-9. José Alberto Franco Castillo gave the example of a businessman who shot his unarmed wife five times and was charged with feminicide. The defense counsel argued that the couple had been married for 20 years, and he had supported and taken care of her, so he could not have killed her for reasons of “hatred.” On the basis of this argument the judge categorized the case as a homicide, rather than a feminicide. CGRS/RHRC Interview with José A. Franco Castillo, Coordinador de Derecho de Familia y Género [Family Law and Gender Coordinator], Escuela de Capacitación Judicial del Consejo Nacional de la Judicatura (CNJ) [School of Judicial Training of the National Judiciary Council], in San Sal., El Sal. (Oct. 9, 2012) (on file with author).

232 The statistics from 1999 to 2008 and for 2016 are from ORMUSA, *Indicadores de Violencia Intrafamiliar* [Indicators of Intrafamilial Violence], OBSERVATORIO DE LA VIOLENCIA DE GÉNERO CONTRA LAS MUJERES [OBSERVATORY OF GENDER VIOLENCE AGAINST WOMEN], <http://observatoriodeviolencia.ormusa.org/index.php> [<https://perma.cc/Z95Q-ECHW>]. The statistics from 2009 to 2013 are from IUDOP, *supra* note 11, at 22. The statistics from 2014 to 2015 are from ISDEMU. ISDEMU, INFORME SOBRE EL ESTADO Y SITUACIÓN DE LA VIOLENCIA CONTRA LAS MUJERES EN EL SALVADOR: JULIO 2015 - JUNIO 2016 [REPORT ON THE STATE AND SITUATION OF VIOLENCE AGAINST WOMEN IN EL SALVADOR: JULY 2015--JUNE 2016] 7, [http://www.transparencia.gob.sv/system/documents/documents/000/149/812/original/libro\\_web\\_25.11.pdf?1500375224](http://www.transparencia.gob.sv/system/documents/documents/000/149/812/original/libro_web_25.11.pdf?1500375224) [<https://perma.cc/X4C4-Z3EF>].

233 A study of police statistics conducted by the UCA showed that, from 2009 to 2013, reports of missing individuals increased by 161 percent from 436 to 1,140. IUDOP, *supra* note 11, at 22.

234 A criminologist with the Fiscalía General de la República (FGR) [Office of the Prosecutor General of the Republic] involved in the excavation of these graves reported that over half of those uncovered in the last 12 years have contained women’s remains. *El Salvador’s Horrifying Culture of Gang Rape*, N.Y. POST (Nov. 6, 2014 11:57 AM), <http://nypost.com/2014/11/06/the-youth-are-theirs-el-salvadors-horrifying-culture-of-gang-rape/> [<https://perma.cc/SB9L-DG8P>] (reprinted from the Associated Press). An official with the MJSP estimated that 80 percent of bodies found in clandestine graves were women’s. CGRS/RHRC Interview with Edgardo A. Amaya Cobar, Asesor de Despacho [Dispatch Advisor], MJSP, in San Sal., El Sal. (Oct. 10, 2012) (on file with author). See also Edward Fox, *How the Drug Trade Fuels Femicide in Central America*, INSIGHT CRIME (July 19, 2012), <http://www.insightcrime.org/analysis/how-the-drug-trade-fuels-femicide-in-central-america> [<https://perma.cc/98BD-AC3Y>] (“In the first six months of this year [2015] seventeen clandestine graves were discovered in El Salvador, containing 48 bodies, 70 percent of whom were females, according to the Attorney General’s Office (FGR). All were aged under 25, and 90 percent are thought to have had links to criminal gangs, reported La Prensa Grafica.”).

- 235 The rates from 2003 through 2013 are reported by the IUDOP, while those from 2014 and 2015 are from ISDEMU. *See* IUDOP, *supra* note 11, at 7; ISDEMU, *supra* note 232 at 8.
- 236 IUDOP, *supra* note 11, at 7.
- 237 ISDEMU, EL FEMINICIDIO EN EL SALVADOR: OBSTÁCULOS PARA EL ACCESO A LA JUSTICIA [FEMICIDE IN EL SALVADOR: OBSTACLES TO ACCESS TO JUSTICE] (2015), [http://www.isdemu.gob.sv/index.php?option=com\\_phocadownload&view=category&id=199%3Ainvestigaciones\\_2015&download=901%3Afeminicidio-en-el-salvador-obstaculos-para-el-acceso-a-la-justicia&Itemid=0&lang=es](http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=199%3Ainvestigaciones_2015&download=901%3Afeminicidio-en-el-salvador-obstaculos-para-el-acceso-a-la-justicia&Itemid=0&lang=es) at 49 [<https://perma.cc/79JZ-ZDQC>]; IUDOP, *supra* note 11, at 8.
- 238 ISDEMU, *supra* note 237 (translated by author).
- 239 *See, e.g.*, CGRS/RHRC Interview with Glenda Vaquerano Cruz, Jefa de la Unidad de la Realidad Nacional [Chief of the Unit of National Reality], PDDH, in San Sal., El Sal. (Apr. 2010) (on file with author). Lorena Morales, a prosecutor with the Unit of Specialized Attention for Women, described the differences in killings of men and women: For men, if they are killed, there is usually just one gunshot and then they [the perpetrator] will just run away. In cases involving women, there are power relations between aggressor and victim. There is not just an injury, there is usually a destruction of their face, lots of beatings or other injuries on their body and vagina. There could be sexual violence too, before or after the death. They might have left an object in the vagina or left some sort of mark or note on the body. CGRS/RHRC Interview with Lorena Morales, Directora de la Unidad de Atención Especializada para las Mujeres [Director of the Unit of Specialized Attention for Women], FGR, in San Sal., El Sal. (Nov. 2016) (on file with author).
- 240 Bautista Bayona recounted how a group of women were killed and cut into thirteen pieces, sending a message regarding involvement of the MS-13. CGRS/RHRC Interview with Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly], in San Sal., El Sal. (Oct. 21, 2010) (on file with author).
- 241 CGRS/RHRC Interview with Zaira Navas, PNC, *supra* note 90.
- 242 ISDEMU, INFORME SOBRE EL ESTADO Y SITUACIÓN DE LA VIOLENCIA CONTRA LAS MUJERES EN EL SALVADOR: NOVIEMBRE 2015 [REPORT ON THE STATE AND SITUATION OF VIOLENCE AGAINST WOMEN IN EL SALVADOR: NOVEMBER 2015] 18 (2015), [http://www.isdemu.gob.sv/index.php?option=com\\_phocadownload&view=category&id=137%3Ainformes-nacionales-de-violencia-contra-las-mujeres&download=851%3Aisdemu-presenta-informe-anual-sobre-el-estado-y-situacion-de-la-violencia-contra-las-mujeres-2015&Itemid=0&lang=es](http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=137%3Ainformes-nacionales-de-violencia-contra-las-mujeres&download=851%3Aisdemu-presenta-informe-anual-sobre-el-estado-y-situacion-de-la-violencia-contra-las-mujeres-2015&Itemid=0&lang=es) [<https://perma.cc/W54GG56A>].
- 243 ORMUSA, *supra* note 232.
- 244 CGRS/RHRC Interview with Zaira Navas, PNC, *supra* note 90; Declaration of América J. Romualdo Cárcamo, *supra* note 222 (“[M]any, if not the majority, of murders of women in El Salvador are related to domestic violence.”). Aracely Bautista Bayona has estimated that 40 percent of the femicide victims were “previously victims of domestic violence, and the system failed them.” CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240.
- 245 CGRS/RHRC Interview with Zaira Navas, PNC, *supra* note 90.

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- 246 CGRS/RHRC Interview with América J. Romualdo Cárcomo, Coordinadora de Programas [Program Coordinator], Asociación Mujeres por la Dignidad y la Vida (Las Dignas) [Women's Association for Dignity and Life], in San Sal., El Sal. (Oct. 8, 2012) (on file with author) (women are forced to have relationships with gang members who treat them as their property; a gang member will claim a woman is his, whether she wants to be with him or not). Edgar Alberto Amaya Cobar emphasized the impact of patriarchy on gang predation of women:  
Women are the victims of gangs because of the patriarchal culture, the machismo that exists, and because they are considered the property of men. For women who are in gangs, the risk is much more dangerous compared to men. While men are at risk from the members of other [rival] gangs, women are at risk from these other gangs too, but also at risk from the members in their own gang .... If a woman is thought to have been unfaithful to a gang, or her partner in the gang, they will kill her. This is extreme.  
CGRS/RHRC Interview with Edgardo A. Amaya Cobar, Asesor de Despacho [Dispatch Advisor], MJSP, in San Sal., El Sal. (Oct. 22, 2010) (on file with author).
- 247 CGRS/RHRC Interview with Vilma Vaquerano Cruz (Nov. 2016), *supra* note 224.
- 248 United Nations High Comm'r for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador 37 (Mar. 15, 2016), *available at* <http://www.refworld.org/docid/56e706e94.html> (last visited July 9, 2017); Peñate, *supra* note 226.
- 249 Declaration of América J. Romualdo Cárcomo, *supra* note 222. Romualdo Cárcomo went on to say that, "Women are often blamed for the violence they encounter ... a recent prominent national survey glaringly illustrates this phenomenon. When asked how women should avoid domestic violence, the majority of men said that women should 'behave well,' and the majority of women replied they should not give men any 'reason' to beat them." *Id.*
- 250 IUDOP, *supra* note 11, at 26.
- 251 *Id.*
- 252 La Universidad Tecnológica de El Salvador (UTEC) [Technological University of El Salvador], *Presentación de Investigación: "Violencia contra las Mujeres en El Salvador, Estudio Poblacional--2014"* [Presentation of Research: "Violence against Women in El Salvador, Population Study-- 2014"], MINISTERIO DE SALUD [MINISTRY OF HEALTH] (Nov. 23, 2015), <http://www.salud.gob.sv/23-11-2015-presentacion-de-investigacion-violencia-contra-las-mujeres-en-el-salvador-estudio-poblacion-al-2014-utec/> [<https://perma.cc/BR68-24Z3>].
- 253 U.S. DEP'T OF STATE, HUMAN RIGHTS REPORTS: EL SALVADOR 21-24 (2016).
- 254 ISDEMU, *supra* note 237, at 10.
- 255 *Id.*
- 256 ISDEMU, *supra* note 232, at 24.
- 257 Daugherty, *supra* note 77; Rita Beamish, *Thousands of Women Flee Central America to Escape Deadly Violence*, N.Y. TIMES (Nov. 4, 2015), <http://nytlive.nytimes.com/womenintheworld/2015/11/04/thousands-of-women-fleeing-central-america-to-escape-deadly-violence/> [<https://perma.cc/EWR3-2H99>].
- 258 The dip indicated in government data should be contrasted with survey data indicating that levels of domestic violence remained

relatively stable from 2008 to 2014. Twenty-four percent of women aged 15 to 49 surveyed in 2008 reported having lived in a home where men repeatedly abused women. UNICEF, 2014 INFORME DE SITUACIÓN DE LA NIÑEZ Y ADOLESCENCIA EN EL SALVADOR [2014 REPORT ON THE SITUATION OF CHILDREN AND ADOLESCENTS IN EL SALVADOR]] 102 (2014) (citing to FESAL 2008 survey); *see also supra* note 252 (UTECH study showing that 1 in 4 women surveyed reported physical or sexual abuse in 2014).

259 ORMUSA, *supra* note 232.

260 IUDOP, *supra* note 11, at 32.

261 UNICEF, *supra* note 258, at 20.

262 UNICEF, HIDDEN IN PLAIN SIGHT: A STATISTICAL ANALYSIS OF VIOLENCE AGAINST CHILDREN 140 (2014). Overall rates of intrafamilial violence, as opposed to those related solely to intimate partner violence, are likely even higher. For example, in another survey 7 out of 10 children reported being a victim of abuse in the home. Rashida Manjoo, United Nations Special Rapporteur on Violence against Women, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc A/HRC/17/26/Add.2 (Feb. 14, 2011) [http://www2.ohchr.org/english/issues/women/rapporteur/docs/A.HRC.17.26.Add.2\\_en.pdf](http://www2.ohchr.org/english/issues/women/rapporteur/docs/A.HRC.17.26.Add.2_en.pdf) [<https://perma.cc/Q7Y7-FTB8>].

263 Declaration of Roberto Rodríguez Meléndez, *supra* note 90, ¶ 19. Nori Flores, a prosecutor with the Unit for Minors and Women, stated that the “highest incidence of sexual violence occurs in the home, by step-fathers or even by the natural fathers,” and that the majority of these cases “involve girls who are age ten or younger.” CGRS/RHRC Interview with Nori Flores, Unidad de Menores y Mujeres [Unit for Minors and Women] at 1, FGR, in San Sal., El Sal. (Oct. 14, 2013) (on file with author).

264 Código Penal [C.P.] [Penal Code] Decree 1030, D.O. 105, Vol. 335, June 10, 1997, Title IV, art. 158-173B (El Sal.) (as amended). The Código Penal has been amended many times. Unless otherwise indicated, all references to the Código Penal in this article are to the version of the law in effect as of the date of publishing, a copy of which is available on the Asamblea Legislativa’s website at <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf> [<https://perma.cc/C5HV-7T5Z>] (last visited May 4, 2018).

265 *Id.* arts. 158-64.

266 *See* Decree 286, *supra* note 21; *see also* further discussion *infra* Part III.D.

267 CGRS/RHRC Interview with Alba E. Cortez de Alvarenga (Nov. 2016), *supra* note 223 (stating that the new court system would collapse if sexual violence had been included because “it is the largest problem in the country”); CGRS/RHRC Interview with Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comité Directivo del Grupo Parlamentario de Mujeres (GPM) [Executive Committee of the Parliamentary Group of Women], in San Sal., El Sal. (Nov. 2016) (on file with author) (stating that sexual violence was “not included because they didn’t want the courts to collapse”). The United States State Department has also affirmed the pervasive incidence of sexual violence, noting in its 2015 report that “rape and sexual crimes against women were widespread.” U.S. DEP’T OF STATE, HUMAN RIGHTS REPORTS: EL SALVADOR 17 (2015).

268 ISDEMU’s 2016 report lists a number of reasons for failure to denounce, such as “lack of trust that women and society in general have in [government] institutions ...; the normalization of sexual violence or the minimization of the impact of sexual violence on the lives of women and girls; the view of victims as having provoked the violence and the fear of exposure to the community.” ISDEMU, *supra* note 232, at 19 (translated by author).

269 C.P., *supra* note 264, art. 165.

- 270 “As of August 28, the ISDEMU reported 11 cases of alleged sexual harassment and referred five cases to the FGR ....” U.S. DEP’T OF STATE, HUMAN RIGHTS REPORTS: EL SALVADOR 17 (2014). One in-country source noted that sexual harassment is so normalized that neither the victim nor the aggressor recognize it as impermissible conduct. CGRS/RHRC Interview with Elena M. Gómez Luna, Directora de la Unidad de Género [Director of the Gender Unit], Ministerio de la Economía [Ministry of the Economy], San Sal., El Sal. (Nov. 2016) (on file with author).
- 271 CGRS/RHRC Interview with Mélida Guevara (Apr. 2010), *supra* note 197. Aracely Bautista Bayona observed that domestic employees are particularly vulnerable because the women come from rural areas and are living with their employers--and often end up being impregnated by them. CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240.
- 272 CGRS/RHRC Interview with Mélida Guevara (Apr. 2010), *supra* note 197.
- 273 *Id.* (discussing the case of a teacher who had been imprisoned for rape but continued teaching); CGRS/RHRC Interview with Yanira Argueta, AMS, *supra* note 182 (discussing the case of a school director who was jailed for sexual harassment of a fifteen-year-old but continued to be supported by his colleagues and members of his church, who instead “persecuted” his victim).
- 274 ORMUSA, *supra* note 232. Art. 159 of the Penal Code defines being incapacitated as being mentally weak or in an unconscious state or otherwise unable to resist. C.P., *supra* note 264.
- 275 ORMUSA, *supra* note 232.
- 276 Special Rapporteur on Violence against Women, *supra* note 262, at 7 (citing U.N. Doc. CAT/C/SLV/CO/2). As a consequence, El Salvador has experienced a high rate of adolescent pregnancy; in 2013 one out of every 200 girls aged 10 to 14 had given birth at least once. ISDEMU, *supra* note 232, at 23.
- 277 Special Rapporteur on Violence against Women, *supra* note 262, at 7 (citing U.N. Doc. CAT/C/SLV/CO/2).
- 278 Declaration of América J. Romualdo Cárcamo, *supra* note 222, at 4. Sources provided examples based on their personal knowledge. One source recounted an incident in which a father impregnated the mother of his child and that 15-year-old child at the same time. Due to fear and dependency the mother did not report the crime. CGRS/RHRC Interview with Mélida Guevara (Apr. 2010), *supra* note 197.
- 279 CGRS/RHRC Interview with Glenda Vaquerano Cruz, PDDH, *supra* note 239.
- 280 *Id.* (describing the case of a twelve-year-old who went with her family to visit her father in prison; the father took her aside and raped her in the prison). Ondina Castillo of the United Nations Population Fund observed that people “do not think it is wrong for a stepfather to abuse his stepdaughter, and get her pregnant. Incest is seen as normal. Rather, because a stepfather is providing food and helping the girl, he is not seen as a bad person .... Everyone sees that the girl is pregnant, including teachers, but no one denounces because they do not see the abuse as a crime.” CGRS/RHRC Interview with Ondina Castillo, Coordinadora de Género [Gender Coordinator], Fondo de Población de las Naciones Unidas (UNFPA) [United Nations Population Fund], in San Sal., El Sal. (Oct. 16, 2013) (on file with author).
- 281 Fear of or economic dependence on the father may contribute to under-reporting. Nori Flores, of the FGR, stated that when a “child is abused sexually by her father, because of men’s control over women in this country, the mother feels she must allow it. She may do this out of fear, or economic dependency.” CGRS/RHRC Interview with Nori Flores, *supra* note 281, at 4. Flores further noted that sometimes even doctors or teachers who are aware of sexual violence will not report because they “fear retribution for

reporting crimes on the part of the father or other aggressor.” *Id.*

282 See IUDOP, *supra* note 11, at 28 fig.1.11 (showing that 11.2 percent of cases of sexual aggression were perpetrated by family members of the victim and 11.67 percent by the father or step-father.). Aracely Bautista Bayona commented that “[m]any women have borne children from their fathers, uncles, brother or cousins” and that there are cases of children who “bear three or four children with their fathers or stepfathers.” CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240.

283 Jaime Armando Lopez & Xiomara Orellana, *The Crime No One Fights: Human Trafficking in the Northern Triangle*, INSIGHT CRIME (June 4, 2015), <http://www.insightcrime.org/news-analysis/human-trafficking-northern-triangle> [<https://perma.cc/735X-3P4R>].

284 U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 162 (2016).

285 *Id.* In-country sources have discussed how girls and young women who try to escape from the gangs often end up as trafficking victims: “The leader of gangs pick out girls from the community thought to be the most beautiful. These girls are called ‘jaina’ and they are forced to become ‘girlfriends’ of gang members. If they say no, they are killed. The jaina are also used to introduce drugs into the jails .... [They] become at risk for sex trafficking .... There are several cases that we know of like this. It is common for them to start out as jainas as adolescents, and in trying to leave the mara, fall into the control of the trafficker.” CGRS/RHRC Interview with Mario F. Mena Méndez, ISNA, *supra* note 155.

286 CGRS/RHRC Interview with Yanira Argueta, AMS, *supra* note 182. Raquel Caballero de Guevara of the PDDH also observed that in El Salvador “[h]uman trafficking is actually a worse problem than trafficking in arms and drugs.” CGRS/RHRC Interview with Raquel Caballero de Guevara, Procuradora Adjunta para la Defensa de Mujeres y la Familia [Deputy Procurator for the Defense of Women and the Family], PDDH, in San Sal., El Sal. (Apr. 2010) (on file with author).

287 Ley Especial contra la Trata de Personas [Law Against Human Trafficking] (enacted Oct. 16, 2014; entered into force Jan. 13, 2015), *supra* note 19.

288 *Id.*

289 Ley Especial contra la Trata de Personas [Law Against Human Trafficking], *supra* note 19, art. 56.

290 U.S. DEP’T OF STATE, *supra* note 284, at 162, 39.

291 Jaime Armando Lopez & Xiomara Orellana, *The Crime No One Fights: Human Trafficking in the Northern Triangle*, INSIGHT CRIME (June 4, 2015), <https://www.insightcrime.org/news/analysis/human-trafficking-northern-triangle/>.

292 U.S. DEP’T OF STATE, *supra* note 284, at 163.

293 *Id.* at 162.

294 *Id.*

295 *Id.*

296 *Id.* at 163.

297 *Id.*

298 In 2015, there were no awards of compensation; in 2014 there were only 3. *Id.*

299 Decree 286, *supra* note 21.

300 Penal Code article 200 provided that a family member who committed acts of violence as defined within the LVI, would be subject to punishment. However, as discussed *infra* Part III.B.2.b, the LVI did not criminalize domestic violence, and although Penal Code article 200 was touted as doing so, it did not. What it did do was make punishment of domestic violence contingent on a finding that the act separately and independently meets the criteria of an existing crime in the Penal Code.

301 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, 27 U.S.T. 3301, 1438 U.N.T.S. 63, <http://www.oas.org/juridico/english/treaties/a-61.html> [<https://perma.cc/4NJK-ZR6K>] [hereinafter “Convention of Belém do Pará”].

302 Berta E. Hernández-Truyol, *Law, Culture, and Equality--Human Rights' Influence on Domestic Norms: The Case of Women in the Americas*, 13 FLA. J. INT'L L. 33, 35-36 (2000).

303 Convention of Belém do Pará, *supra* note 301, art. 2.

304 *Id.* art. 3.

305 *Id.* art. 7(c).

306 *Id.* art. 8.

307 *Id.* art. 10.

308 Convention of Belém do Pará, Signatories and Ratifications, *available at* <http://www.oas.org/juridico/english/sigs/a-61.html> [<https://perma.cc/6223-FMFD>].

309 LVI, *supra* note 16, art. 3. Intrafamilial violence is any action or omission, direct or indirect, that causes physical, sexual, or psychological suffering or death to family members. *Id.*

310 Patrimonial violence was not originally included in the forms of harm recognized by the LVI, but it was incorporated through 2002 reforms to the law. Reformas en la Ley contra la Violencia Intrafamiliar [Reforms in the Law against Intrafamilial Violence] [hereinafter RLVI] Decree 892, D.O. No. 137, Vol. 356, July 24, 2002 (El Sal.). Patrimonial violence is defined as any “action or omission of one who affects or impedes proper care of the needs of the family or any of the persons referred to in this Law; damages, loses, removes, destroys, retains, embezzles or appropriates objects, instruments or assets.” *See id.* art. 2.

311 Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 6.

- 312 LVI, *supra* note 16, art. 21. Peace Courts are located in every municipality; Family Courts are located only in departmental capitals.
- 313 *Id.* art. 23.
- 314 *Id.* art. 28(e).
- 315 *Id.* art. 11.
- 316 The PGR is a component agency of the Public Ministry. Among other services, it provides legal assistance and representation to individuals of limited resources in civil (including family and labor) and criminal matters. It also provides mediation and conciliation services. Ley Orgánica de la Procuraduría General de la República [Organic Law of the Office of the Procurator General of the Republic] Decree 775,  D.O. No. 241, Vol. 381, Dec. 22, 2008, art. 3 (El Sal.). América Romualdo has been particularly critical of the PGR's conciliation and mediation services, saying that they go "on and on and never come to an end" with victims caught in an "endless revolving cycle." CGRS/RHRC Interview with América J. Romualdo Cárcomo, Coordinadora de Programas [Program Coordinator], Asociación Mujeres por la Dignidad y la Vida (Las Dignas) [Women's Association for Dignity and Life], in San Sal., El Sal. (Oct. 18, 20, 2010) (on file with author).
- 317 LVI, *supra* note 16, art. 16.
- 318 According to América J. Romualdo Cárcomo, who helped draft the LVI, a judge can issue an order of protection or compensation after a single hearing if the abuser does not deny the facts. If the abuser contests the facts, the judge is supposed to schedule a second hearing at which additional evidence is given. At the conclusion of that hearing, the judge is to decide if the abuser is responsible for domestic violence, whether orders of protection should be issued, and whether the abuser must compensate the victim for any injuries suffered. Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 10.
- 319 RLVI, Decree 892, *supra* note 310. Art. 9 added art. 10(f) to the LVI, permitting the police to order the aggressor to stay away for a maximum of eight hours. The 2002 reforms also expanded the LVI's focus on children and adolescents and assigned additional responsibilities to governmental bodies. *Id.* art. 1. For example, the ISDEMU, which was created in 1996 prior to the passage of the LVI (*see* Ley del Instituto Salvadoreño para el Desarrollo de la Mujer [Law of the Salvadoran Institute for the Development of the Woman], Decree 644, D.O. No. 43, Vol. 330, Mar. 1, 1996 (El Sal.)), and which was designated as the ente rector [lead entity] for the implementation of the LVI, was to "promote the participation of government organizations and non-governmental organizations, local governments, private companies, churches, international organizations and others ... to establish mechanisms of necessary coordination in order to integrate the different institutions of the State and the society to prevent, attend to, protect and contribute to resolving the issue of intrafamilial violence." RLVI, Decree 892, *supra* note 310, art. 6.
- 320 RLVI, Decree 403, D.O. No. 178, Vol. 364, Sept. 27, 2004 (El Sal.).
- 321 RLVI, Decree 591, D.O. No. 11 D.O. No. 11, Vol. 402, Jan. 20, 2014 (El Sal.).
- 322 Pursuant to these reforms, personnel from these multidisciplinary teams could provide forensic services as well as treatment, to both victims as well as perpetrators. RLVI, Decree 403, *supra* note 320 (reforming arts. 24 and 28 of the LVI). Anecdotal evidence indicates that psychologists are not immune to the patriarchy and gender bias that exist throughout the system. One in-country source described the situation of a woman seeking economic support from her former spouse following a divorce: her children were sent to see a psychologist during the process, and "[i]nstead of the psychologist helping, she asked the children if their mother had a lover." CGRS/RHRC Interview with Nidia Hidalgo Celarié, Coordinadora de la Oficina de Género [Coordinator of the Gender Office], UNDP, in San Sal., El Sal. (Apr. 2010) (on file with author).

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- 323 RLVI, Decree 591, *supra* note 321, Preamble VII, art. 2 (reforming arts. 10(d) and (f) of the LVI).
- 324 CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240.
- 325 *Id.*; Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 7, 13; CGRS/RHRC Interview with Silvia I. Juarez Barrios, Abogada [Attorney], ORMUSA, in San Sal., El Sal. (Oct. 2010) (on file with author); CGRS/RHRC Interview with Doris Montenegro and Ima Rocío Guirola, *supra* note 92; CGRS/RHRC Interview with Benjamin Cuellar and Roxana Marroquin, IDHUCA, *supra* note 94; CGRS/RHRC Interview with José A. Franco Castillo (Oct. 9, 2012), *supra* note 231.
- 326 Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 7, 13.
- 327 CGRS/RHRC Interview with José A. Franco Castillo, Coordinador de Derecho de Familia y Género [Family Law and Gender Coordinator], Escuela de Capacitación del Consejo Nacional de la Judicatura (CNJ) [School of Judicial Training of the National Judiciary Council], in San Sal., El Sal. (Apr. 29, 2010) (on file with author). Franco Castillo commented that under many circumstances, such as a woman's failure to have dinner ready when her husband comes home from work, judges see violence as "justifiable." *Id.* He commented that 30 to 40 percent of judges have this mentality, "including men and women [judges] of all ages." CGRS/RHRC Interview with José A. Franco Castillo (Oct. 9, 2012), *supra* note 231; *see also* CGRS/RHRC Interview with Ondina Castillo (Oct. 16, 2013), *supra* note 280 (referring to the "deep cultural biases" held by judges). Alba E. Cortez de Alvarenga commented on the "sexist" attitudes of judges, who believe that "women like to be beaten by their husbands." CGRS/RHRC Interview with Alba E. Cortez de Alvarenga, Jefa de la Unidad de Género [Head of the Gender Unit], Asamblea Legislativa [Legislative Assembly], in San Sal., El Sal. (Oct. 2012) (on file with author).
- 328 The Oxfam report found that the justice system was unresponsive to the needs of victims: officials not only demonstrated insensitivity in their interactions but failed to carry out their responsibilities under the law. OXFAM AM., CONCLUSIONES DE LA INVESTIGACIÓN DE LA APLICACIÓN DE LA LEY CONTRA LA VIOLENCIA INTRAFAMILIAR, EL SALVADOR [CONCLUSIONS OF THE INVESTIGATION OF THE APPLICATION OF THE LAW AGAINST INTRAFAMILIAR VIOLENCE, EL SALVADOR] 3-7 (2007) (El Sal.). According to Aracely Bautista Bayona, there is no coordination among the courts that issue the orders and the prosecutors and police who are supposed to follow-up. She commented on the cultural dimension of failed implementation:  
Culturally embedded *machismo* interferes with law enforcement officers' sense of obligation or vision. A judicial or police officer may feel that women don't deserve the order of protection. They let their personal feelings or ideas from their own lives influence the way they think about women victims they encounter, and they treat victims the way they would treat their own wives, saying to themselves "these women do nothing but complain all the time."  
CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240.
- 329 The requirement of conciliation has been attributed to "beliefs about family unity that run deep in Salvadoran culture." Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 10. These attitudes have often had the result of pressuring women to "continue in relationships with abusive partners." *Id.*
- 330 Article 16 of the original LVI, provided in relevant part: "The [PGR], when it has knowledge of facts which constitute intra-familial violence ... will schedule the persons in conflict for the purposes of seeking conciliation." LVI, *supra* note 16, art. 16.
- 331 RLVI, Decree 892, *supra* note 310, art. 13 (reforming art. 16 of the LVI).
- 332 América Romualdo has pointed out that the term "conciliation" in the LVI was misunderstood, with the distinction being blurred between "conciliation" and "reconciliation." The former, according to Romualdo, refers to a process of determining if there are facts or areas which are uncontested or agreed upon by the parties, while the latter refers to a resolution of differences leading to the parties reuniting. Conciliation should never be used when there has been physical violence, which should be addressed by an order of protection and criminal prosecution. Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 10; CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 18, 20, 2010), *supra* note 316.

333 OXFAM AM., *supra* note 328.

334 For example, judges thought that they were to apply principles set forth in their governing Codes (Penal Code for the Peace Courts and Family Code for the Family Courts), rather than those set forth in the LVI. This meant that judges in Peace Courts would “often place a burden of proof on victims” that was drawn from criminal proceedings, which was higher than that intended in civil LVI proceedings and difficult for victims to meet. Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 10. The LVI does not require victims to be represented, which exacerbates the difficulties they would have in meeting this heightened evidentiary burden imposed by Peace Court judges. The issue of representation itself was another one leading to confusion; judges in the Family Courts were unaccustomed to parties being unrepresented (since parties in Family Court are required to have an attorney) and would require that they obtain counsel, “despite a contrary provision in the LVI intended to increase accessibility for poor victims who cannot afford an attorney.” *Id.* at 10. The PGR does provide free representation, but it “usually represents the first party to request an attorney,” which means that if aggressors “contact the PGR preemptively, [they] can prevent their victims from getting representation and accessing the legal process.” Declaration of América J. Romualdo Cárcomo, *supra* note 222, at 10. Aracely Bautista Bayona has explained that legislative approval of special laws is often easier to obtain than amendments of existing codes, which explains why advocates resort to the special law route. CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240. José Alberto Franco Castillo recounted how women without attorneys who appear in Family Court are adversely impacted when they are unable to meet the judge’s request that they submit evidence or present witnesses. CGRS/RHRC Interview with José A. Franco Castillo, School of Judicial Training of the CNJ (Apr. 29, 2010), *supra* note 327.

335 Art. 3 of the LVI defined intrafamilial violence as acts causing physical, psychological, or sexual suffering. *See supra* note 309 and accompanying text.

336 Article 200 provides as follows: “Any family member ... who commits violence in any of the forms mentioned in Art[icle] 3 of the [LVI] shall be punished with one to three years of imprisonment.” C.P., *supra* note 264, art. 200; *see also* Código Penal [C.P.] [Penal Code] Decree 345, D.O. 143, Vol. 340, July 30, 1998 (El Sal.); Código Penal [C.P.] [Penal Code] Decree 210, D.O. 4, Vol. 362, Jan. 8, 2004 (El Sal.).

337 CGRS/RHRC Interview with Ima Rocío Guirola, Coordinadora de Relaciones Públicas [Public Relations Coordinator], CEMUJER, in San Sal., El Sal. (Oct. 11, 2012) (on file with author).

338 The Penal Code includes four articles defining crimes on the basis of length of time the victim is incapacitated, and/or in need of medical treatment. Article 375, entitled Lesiones y Golpes [Injuries and Blows], applies to instances where the victim is incapacitated or requires medical assistance for a period less than five days; the punishment is detention for “fifteen to twenty weekends.” Article 142, entitled Lesiones [Injuries], requires incapacitation or medical treatment for five to twenty days; the punishment is imprisonment for one to three years. Article 143, entitled Lesiones Graves [Grave Injuries], requires incapacitation or medical treatment for more than twenty days; the punishment is three to six years imprisonment. Article 144, entitled Lesiones Muy Graves [Very Grave Injuries], requires grave or permanent physical injury, or serious psychological disturbance; the punishment is four to eight years imprisonment. C.P., *supra* note 264, arts. 375, 142-44.

339 Penal Code articles 153 and 154 could be invoked in this context. Penal Code article 153 criminalizes the use of coercion to prevent an individual from exercising his or her fundamental rights, while article 154 makes it a crime to use threats in order to harm an individual in the exercise of personal and sexual autonomy, honor, or patrimonial rights. *Id.* arts. 155, 154.

340 *Id.* art. 177.

341 *Id.* art. 178.

342 *Id.* art. 179.

343 *See supra* notes 264-282 and accompanying text (discussing crimes against sexual liberty and crimes of sexual violence). C.P., *supra* note 264, art. 200.

344 This clause of Penal Code 200 states: “For the exercise of penal action, it is necessary to exhaust judicial proceedings under the aforementioned law [LVI].” (The clause in its original Spanish is as follows: “Para el ejercicio de la acción penal, será necesario el agotamiento del procedimiento judicial establecido en la ley antes mencionada.” (translated by author))

345 Penal Code article 338A criminalizes the failure to comply with an order of protection; the punishment is one to three years of prison or its equivalent in public service. C.P., *supra* note 264, art. 338A.

346 The Oxfam report noted that even when an act constitutes a crime under the Penal Code, there is a troubling failure of government officials to refer it for prosecution. OXFAM AM., *supra* note 328.

347 *Id.*

348 In an interview that took place in October 2010, prior to the passage of the two laws, congressmember Milena Calderón de Escalón of the ARENA party, who is also the sister of former Salvadoran president Armando Calderón Sol, stated, “[t]he women ... of the Legislative Assembly come from many backgrounds, but we are unified in working together for a life free of violence for the women of El Salvador.” CGRS/RHRC Interview with Milena Calderón de Escalón, Diputada--ARENA [Assembly Member--ARENA], Asamblea Legislativa [Legislative Assembly], in San Sal., El Sal. (Oct. 2010) (on file with author). In an interview in October 2012, women’s rights expert América J. Romualdo Cárcomo noted the strategic value of cross-party unity, stating that “[t]he law wasn’t the result of one party’s efforts but was the result of bipartisan efforts of women in the Legislative Assembly. This is important for the strength of the law; we did not want polarization because that would have made it more difficult to implement the law.” CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246.

349 CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246. Romualdo Cárcomo also commented that these laws were “20 years in the making,” referring to the fact that El Salvador’s feminists had been making “proposals going back to the time of the Peace Accords.” Roxana Delgado, an advisor to the Legislative Assembly, echoed Romualdo Cárcomo’s comment, stating that even with the “intense polarization” in the system, the Integral Law was passed with a consensus of the women members of the Assembly. CGRS/RHRC Interview with Roxana Delgado, Economista de la Unidad de Análisis Presupuestaria de la Asamblea Legislativa [Economist with the Budgetary Analysis Unit of the Legislative Assembly], San Sal., El Sal. (Nov. 2016) (on file with author).

350 Penal Code article 133 through 136 address various abortion-related crimes. C.P., *supra* note 264, arts. 133-36. Prior to 1997, abortion was permitted in El Salvador in circumstances of rape or genetic defect; however, 1998 reforms to the Penal Code eliminated these exceptions. Pressure to prohibit abortion under all circumstances came from conservative Catholic groups, such as Opus Dei, as well as conservative evangelical churches. CGRS/RHRC Interview with Aracely Bautista Bayona (Apr. 2010), *supra* note 141. It has often been noted that women accused of having an abortion are treated far more harshly than men who have committed “multiple homicides.” CGRS/RHRC Interview with Ondina Castillo (Oct. 16, 2013), *supra* note 280. Ondina Castillo observed the following:

In cases of rape where a woman has sought an abortion, she will go to jail but her rapist is absolved ... [a] woman might arrive to the hospital bleeding [from a miscarriage], be suspected of aborting, and end up in jail.

There is a study of women called “From the Hospital to the Jail” (*Del Hospital a la Cárcel*) that is looking at the abortion cases. Abortion is treated as a homicide and a woman could spend even 30 years in jail. These cases are treated more harshly than even multiple homicides .... We have tracked 146 cases-- some with convictions [for homicides in cases of abortion] and others in process--over a ten-year period. Most of these women are from rural areas with little education. These women go to jail while men who may have killed 7 or 8 people are not even prosecuted.

*Id.*

- 351 CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246. On May 12, 2010 the Legislative Assembly issued Decree No. 56, which prohibits discrimination on the basis of gender identity and sexual orientation. Notwithstanding this Decree, it is reported that “LGBTI persons in El Salvador are discriminated against, ill-treated, marginalized, and persecuted.” IMMIGRATION AND REFUGEE BD. OF CANADA, EL SALVADOR: INFORMATION GATHERING MISSION REPORT--PART 2, THE SITUATION OF WOMEN VICTIMS OF VIOLENCE AND OF SEXUAL MINORITIES IN EL SALVADOR § 5.1 (2016).
- 352 CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246.
- 353 Aracely Bautista Bayona and América J. Romualdo Cárcomo, both attorneys and women’s rights activists, expressed optimism. Bayona commented that the laws “could help empower women” and stated that she was giving the Integral Law and the Law of Equality the “benefit of the doubt” with respect to their abilities to effectuate change. CGRS/RHRC Interview with Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly], in San Sal., El Sal. (Oct. 2012) (on file with author). Romualdo Cárcomo stated that she was “optimistic” about the laws. CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246. Whereas the LVI only applied in the private sphere of domestic relationships, the new laws were to apply in the public sphere, which represented significant progress. CGRS/RHRC Interview with Emely Flores and Ruth Polanco, ISDEMU, in San Sal., El Sal. (Oct. 2012) (on file with author).
- 354 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 2, *supra* note 351, § 3 (citing a Department of State statistic that women are paid 55 percent of what men are paid for comparable work). Women also suffer higher levels of unemployment and lack of educational opportunities than men; 80 percent of Salvadorans who do not go to school or work are women. CGRS/RHRC Interview with América J. Romualdo Cárcomo, Concertación Feminista Prudencia Ayala [Prudencia Ayala Feminist Coalition], in San Sal., El Sal. (Nov. 2016) (on file with author).
- 355 Decree 286, *supra* note 21.
- 356 LEIV, *supra* note 17.
- 357 *Id.* art. 1.
- 358 *Id.* art. 2.
- 359 *Id.* art. 7 (translated by author).
- 360 *Id.* art. 8(j).
- 361 *Id.* art. 8(d).
- 362 *Id.* art. 8(k) (translated by author).
- 363 The other enumerated forms of violence against women are economic, physical, psychological, emotional, patrimonial and sexual. *Id.* art. 9.

<sup>364</sup> For example, the Ministerio de Educación [Ministry of Education] is to promote the principles of the law throughout the educational system (*id.* art. 20); the Ministerio de Salud Pública y Asistencia Social [Ministry of Public Health and Social Assistance] is to guarantee methods in public health services for the prevention, early detection, attention to, and intervention in cases of violence against women, to incorporate measures for follow-up for women affected by violence, giving special attention to their mental and emotional health, and to prepare an annual report on the number of women assisted who were in situations of violence (*id.* art. 23); and the Ministerio de Trabajo y Previsión Social [Ministry of Labor and Social Security] is directed to implement sensitivity training at work centers, to consider absences from work by victims of violence to be justified, and to protect the labor rights of those who suffer violence (*id.* art. 24).

<sup>365</sup> *Id.* art. 12.

<sup>366</sup> *Id.* (translated by author).

<sup>367</sup> The STC is made up of representatives of the following key governmental bodies: Órgano Judicial (OJ) [Judiciary], the Ministerio de Hacienda [Treasury], Ministerio de Gobernación [Ministry of Governance], Ministerio de Relaciones Exteriores [Ministry of Exterior Relations], Ministerio de Economía [Ministry of the Economy], Ministerio de Agricultura y Ganadería [Ministry of Agriculture and Livestock]. *Id.* art. 14.

<sup>368</sup> *Id.* art. 16.

<sup>369</sup> *Id.* art. 13(e).

<sup>370</sup> The Integral Law also requires municipalities to convene and coordinate institutions to implement the municipal plan, to budget money for this purpose, to report progress to its citizenry as well as ISDEMU, and to submit gender violence statistics to the MJSP. *Id.* art. 29. A report published by ISDEMU in 2015 shows that municipalities have failed to implement responsibilities in key areas. Less than a quarter of the municipalities (22.7 percent) had developed a municipal plan for the prevention of gender violence, and provision of services to women victims, and only 14.6 percent had developed a municipal plan for equality and the eradication of gender discrimination. ISDEMU, INFORME DE MONITOREO SOBRE EL CUMPLIMIENTO DE COMPETENCIAS MUNICIPALES PARA LA IGUALDAD, NO DISCRIMINACIÓN Y VIDA LIBRE DE VIOLENCIA [MONITORING REPORT ON COMPLIANCE OF MUNICIPAL COMPETENCIES FOR EQUALITY, NON-DISCRIMINATION AND A LIFE FREE OF VIOLENCE] 24, 26 (2015), [http://www.isdemu.gob.sv/index.php?option=com\\_phocadownload&view=category&id=199%3Ainvestigaciones\\_2015&download=951%3Ainforme-de-monitoreo-sobre-el-cumplimiento-de-competencias-municipales-para-la-igualdad&Itemid=0&lang=es](http://www.isdemu.gob.sv/index.php?option=com_phocadownload&view=category&id=199%3Ainvestigaciones_2015&download=951%3Ainforme-de-monitoreo-sobre-el-cumplimiento-de-competencias-municipales-para-la-igualdad&Itemid=0&lang=es) [https://perma.cc/X39G-7FJG]. Less than a fifth of the municipalities (19.3 percent) reported that they maintained statistical information regarding violence against women. *Id.* at 25.

<sup>371</sup> The Units for Specialized Attention are intended to provide integrated services so that a woman who has been victimized does not have to go from office to office seeking information. These Units are to be located in the capital and in the departmental offices of the Judiciary, the Fiscalía General de la República (FGR), the Procuraduría General de la República (PGR), the Procuraduría para la Defensa de los Derechos Humanos (PDDH), the Policía Nacional Civil (PNC), the Institute de Medicina Legal (IML), and the Ministerio de Salud Pública y Asistencia Social [Ministry of Public Health and Social Assistance], and in other offices “that have competence in this subject matter.” LEIV, *supra* note 17, art. 25.

<sup>372</sup> The law also states that monies can come from national, regional, and international sources. *Id.* art. 33.

<sup>373</sup> Julio Quinteros of the Unidad Técnica Ejecutiva del Sector de Justicia [Technical Executive Unit of the Judicial Sector] lamented the fact that El Salvador is not like other countries that, when they pass a law, make “sure that there is enough in the budget to implement” it. CGRS/RHRC Interview with Julio Quinteros and Carlos Amaya, Unidad Técnica Ejecutiva del Sector de Justicia [Gender Board Coordinator, Technical Executive Unit of the Judicial Sector], in San Sal., El Sal. (Oct. 2012) (on file with author).

In a 2012 interview, Ima Rocío Guirola of CEMUJER commented that El Salvador has a “tradition of passing laws and not giving them adequate funding,” pointing to the country’s failure to sufficiently fund programs included in the country’s child protection law, the Ley de Protección de la Niñez y Adolescencia [Law for the Protection of Childhood and Adolescence] (El Sal.). CGRS/RHRC Interview with Ima Rocío Guirola (Oct. 11, 2012), *supra* note 337.

374 Requests for funding are initiated by governmental institutions, which submit their requests to the Ministerio de la Hacienda [Treasury]. The Treasury approves or denies requests before sending them on to the relevant commission of the General Assembly, in this case the Treasury Commission. After the Commission review, budgets are presented to the full Assembly for a vote. CGRS/RHRC Interview with Vilma Vaquerano Cruz, Directora de Comunicaciones [Director of Communications], ORMUSA, in San Sal., El Sal. (Oct. 2012) (on file with author).

375 In-country sources pointed to various areas where insufficient funding had hobbled the implementation of the new laws. José Alberto Castillo noted that a promised shelter system never materialized and that although the PGR was given extensive new responsibilities, it had not received funding commensurate with its expanded role. CGRS/RHRC Interview with José A. Franco Castillo (Oct. 9, 2012), *supra* note 231. In a 2013 interview, Aracely Bautista Bayona commented on the inadequate funding of ISDEMU, which had resulted in slow and difficult implementation of both the Integral Law and the Law of Equality. CGRS/RHRC Interview with Aracely Bautista Bayona, Consajera Legal [Legal Advisor], Comisión de Familia, la Mujer, y la Niñez de la Asamblea Legislativa [Commission on Family, Women, and Children of the Legislative Assembly] at 3, in San Sal., El Sal. (Oct. 2013) (on file with author). She commented again on the inadequate funding in a Nov. 2016 interview. CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267.

376 In a 2012 interview, Vilma Vaquerano Cruz of ORMUSA observed:  
The problem is that when it comes down to laws that protect women and children there is always the excuse that there is no money. That is because the rights of women are not valued equally to men. As a poor country, budget will always be a problem, but really the problem is that violence against women is not prioritized and the limited budget is just an excuse.  
CGRS/RHRC Interview with Vilma Vaquerano Cruz (Oct. 2012), *supra* note 374. Lack of political will, along with limited resources, was cited by many sources as the reason for insufficient funding. *See, e.g.*, CGRS/RHRC Interview with Jeanette Tobar de Cortez, Coordinadora [Coordinator], Unidad de Género de la PGR [Gender Unit of the PGR], San Sal., El, Sal. (Nov. 2016) (on file with author) (stating that the Legislative Assembly does not give the Gender Unit sufficient “importance” or sufficient resources). Mérida Guevara of Oxfam commented that “[g]ender issues get the least amount of people and resources because of this [cultural] resistance. And this is from a leftist government. But it is still men who make the decisions.” CGRS/RHRC Interview with Mérida Guevara (Apr. 2010), *supra* note 197.

377 COMISIÓN ECONÓMICA PARA AMÉRICA LATINA Y EL CARIBE DE LAS NACIONES UNIDAS (CEPAL), SI NO SE CUENTA, NO CUENTA: INFORMACIÓN SOBRE LA VIOLENCIA CONTRA LAS MUJERES [UNITED NATIONS ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC), IF IT IS NOT COUNTED, IT DOES NOT COUNT: INFORMATION ON VIOLENCE AGAINST WOMEN] 156 (2012).

378 *Id.*

379 LEIV, *supra* note 17, arts. 30, 31. The National System is a component of an overarching statistical system whose creation is mandated by article 14 of the Law of Equality. This overarching system is called the Sistema de Estadísticas y Monitoreo de Igualdad (SEMI) [System of Indicators and Monitoring of Equality]. A 2015 Report of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) stated that ISDEMU developed SEMI with the objective of complying with Art. 14 of the LEIV. CEDAW, SURVEY OF REPORTS PRESENTED BY STATE PARTIES UNDER ART. 18 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN ¶ 43 (June 12, 2015), <http://www.refworld.org/type,STATEPARTIESREP,CEDAW,,56e7bf994,0.html> [<https://perma.cc/VVR9-LURL>]. SEMI is under the aegis of the Dirección General de Estadística y Censos (DIGESTYC) [General Directorate on Statistics and Census] within the Ministry of the Economy. A key component of SEMI is SNEIG (Sistema Nacional de Estadísticas e Indicadores de Género [National System of Statistics and Indicators of Gender]). Art. 14 of the LEIV mandates the creation of SNEIG but refers to it by a shorter name, calling it the Sistema de Indicadores. The 2014 CEDAW report, mentioned above, refers to it by its full, current name, the Sistema Nacional de Estadísticas e Indicadores de Género. *Id.* SNEIG is to maintain data in seven distinct areas,

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including, as mentioned above, the National System of Data, Statistics and Information on Violence against Women. *See infra* notes 478-479 and accompanying text for a description of the other six areas to be maintained under SNEIG. See Appendix C for a chart displaying the structures of and relationships among the Ministry of Economy, DIGESTYC, SEMI, and SNEIG.

380 LEIV, *supra* note 17, art. 30.

381 *Id.* art. 30. DIGESTYC's Organic Law, art. 5, states that it is an agency located within the Ministry of Economy. *Ley Orgánica del Servicio Estadístico*, DIGESTYC, available at <http://www.digestyc.gob.sv/index.php/institucion/marco-institucional/ley-organica-del-servicio-estadistioo.html> [https://perma.cc/L62M-XPZF] (last visited May 21, 2018).

382 DIGESTYC is in charge of soliciting and receiving information. The Integral Law directs the Instituto de Medicina Legal (IML), whose primary role is to provide forensic expertise to governmental entities, such as the police, prosecutors, and the courts, to present an annual diagnostic that includes information on the prevalence of femicide; the effects of physical, psychological, and sexual violence on women; and the effects of exposure to violence on children. LEIV, *supra* note 17, art. 32.

383 LEIV, *supra* note 17, art. 30.

384 In a 2013 interview, Ondina Castillo, Gender Coordinator of the UNFPA, noted that without a unified system of data collection on violence against women, it was "hard to understand the phenomenon of violence and what the numbers could tell us." CGRS/RHRC Interview with Ondina Castillo, Coordinadora de Género [Gender Coordinator] UNFPA, in San Sal., El Sal. (Oct. 16, 2013) (on file with author). *See also* CEPAL, *supra* note 377, at 33.

385 CEPAL, *supra* note 377, at 33.

386 *Id.*

387 CGRS/RHRC Interview with Edgardo A. Amaya Cobar (Oct. 10, 2012), *supra* note 240. Amaya underscored the importance of reliable statistics to the development of policy, noting that historically the government did not "develop policy based on statistics and hard facts" and instead often adopted policies "without having the data to support them." He expressed his hope that the development of a well-designed system in the area of gender would "positively stimulate other parts of government to keep reliable statistics." *Id.*

388 *Id.*

389 In a 2013 interview, Ondina Castillo, Gender Coordinator with the UNFPA, explained how the use of different variables led to confusion, giving the example that one institution might register a particular incident as pornography while another records it as sexual violence. Castillo was encouraged that government agencies had signed an inter-institutional agreement to develop and use consistent variables; she characterized this as a significant advance since institutions were not "accustomed" to working so collaboratively. CGRS/RHRC Interview with Ondina Castillo (Oct. 16, 2013), *supra* note 384.

390 CGRS/RHRC Interview with Edgardo A. Amaya Cobar (Oct. 10, 2012), *supra* note 240.

391 *Id.*

392 CGRS/RHRC Interview with Jeanette Aguilar, Directora [Director], and Laura Andrade, Investigadora [Researcher], IUDOP de la

UCA [IUDOP of the UCA], in San Sal., El Sal. (Nov. 2016) (on file with author).

- 393 *Id.* The advantages of a unified system, and the resistance to establishing one, have been noted over the years. For example, in an April 2010 interview, Mirna Antonieta Perla Jimenez noted how a unified system would benefit victims, who would no longer need to go from office to office if information about the violence they suffered had been entered into a database across governmental agencies. She stated that such a change “could be implemented administratively, but it would be better to do it legislatively.” CGRS/RHRC Interview with Mirna A. Perla Jimenez, Civil Chamber of the CSJ, *supra* note 145. Unfortunately, the legislative mandate has not resulted in government compliance. In October 2010, Vilma Guadalupe Portillo noted the institutional resistance to creating a unified database; she singled out the PNC, FGR, PGR, IML, and the courts. Vilma Guadalupe Portillo, Coordinadora del Proyecto Regional sobre Violencia Sexual [Coordinator of the Regional Project on Sexual Violence], Fondo de Población de las Naciones Unidas (UNFPA) [United Nations Population Fund] (Oct. 21, 2010).
- 394 *Id.* Jeanette Aguilar elaborated on this point, stating that government authorities do not want to produce the type of data that would allow them to be evaluated: “They do everything possible to avoid providing the data. There is a failure of interest on the part of the government and institutions; they just want [to do enough] to show that they need to get more money.” CGRS/RHRC Interview with Jeanette Aguilar, IUDOP of the UCA, *supra* note 224. Edgardo Aberto Amaya Cobar also commented on the resistance to keeping data because of “political sensitivities,” citing the low proportion of cases--only 20 percent--that the FGR sends to the courts for prosecution, which “doesn’t look good for the prosecutor.” CGRS/RHRC Interview with Edgardo A. Amaya Cobar (Oct. 10, 2012), *supra* note 240. Accusations and suspicions abound regarding the institutional tendency to distort the numbers; Miguel Velasquez-Velasquez, head of statistics of IML commented that the PNC might want to reduce numbers for “political reasons.” CGRS/RHRC Interview with Miguel Velasquez-Velasquez, Jefe Técnico de Estadísticas [Technical Head of Statistics], IML, San Sal., El Sal. (Oct. 2012) (on file with author).
- 395 CGRS/RHRC Interview with Jeanette Aguilar, IUDOP of the UCA, *supra* note 224. One other source, who requested anonymity, also described this study and the government’s refusal to permit its publication.
- 396 *Id.* Generally, a criminal case begins with information being submitted to a Justice of the Peace, the PNC, or the FGR. The FGR has the responsibility to investigate and, depending on the sufficiency of the evidence, either to request that the judge initiate a penal process or to terminate proceedings. If the Justice of the Peace does not terminate proceedings, the case proceeds to the Judge of Instruction, where the FGR continues developing the evidence. The Judge of Instruction can provisionally dismiss the case if the evidence is insufficient or can send it on to the Sentencing Court for trial. IUDOP, *supra* note 11, at 42-44.
- 397 CGRS/RHRC Interview with Jeanette Aguilar, IUDOP of the UCA, *supra* note 224. One source, who chose to remain anonymous, commented that the government was “resistant to publishing because there were so many details about all the weaknesses” in the system although in reality the report did not reveal anything new. This same source lamented that two years had been invested--and ultimately wasted--on research connected to the study.
- 398 One of the principal authors of the report was Sidney Blanco Reyes, who currently sits on the CSJ.
- 399 UNDP, DEFICIENCIAS POLICIALES, FISCALES O JUDICIALES EN LA INVESTIGACIÓN Y JUZGAMIENTO CAUSANTES DE IMPUNIDAD [POLICE, FISCAL OR JUDICIAL DEFICIENCIES IN INVESTIGATION AND PROSECUTION CAUSING IMPUNITY] 6 (2007); CGRS/RHRC Interview with Sidney Blanco Reyes, Juez [Justice], Sala de lo Constitucional de la CSJ [Constitutional Chamber of the CSJ], in San Sal., El Sal. (Apr. 2010) (on file with author). The research entailed direct review of files at the prosecutor’s office and at the courts. The researchers listed the responsibilities of the governmental actors (i.e. police, prosecutors, judges, medical forensic experts) and identified the most common deficiencies in fulfilling their obligations. They found “grave mistakes” during investigations, such as failure to interview witnesses or even to carry out autopsies.
- 400 UNDP, *supra* note 399, at 36.

401 *Id.*

402 CGRS/RHRC Interview with Sidney Blanco Reyes, Constitutional Chamber of the CSJ (Apr. 2010), *supra* note 399.

403 *Id.*

404 *Id.*

405 CGRS/RHRC Interview with Nidia Hidalgo Celarié, UNDP (Apr. 2010), *supra* note 322.

406 This source asked to remain confidential because she did not want to appear critical of the government. She also observed that within the last year the Committee on the Elimination of Discrimination against Women (CEDAW) had issued a confidential report for the government of El Salvador that identified the lack of statistics as a major obstacle.

407 LEIV, *supra* note 17, art. 26.

408 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 2, *supra* note 351, § 4.5.2.

409 *Id.*

410 *Id.*

411 CGRS/RHRC Interview with José A. Franco Castillo (Oct. 9, 2012), *supra* note 231. At the time of his interviews, José Alberto Franco Castillo was a trainer at the CNJ; however, he was recently appointed as a judge.

412 LEIV, *supra* note 17, art. 35.

413 *Id.* It is widely recognized that women's economic dependence on their abusive partners causes them to not pursue their rights or denounce violence, making the need for social assistance or subsidies all the more important. CGRS/RHRC Interview with Yanira Argueta, AMS, *supra* note 182; CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 2012), *supra* note 353. Bautista Bayona observed that women may even lack the money to travel to governmental institutions--the courts, the prosecutor's office, or the IML-- which is necessary for a denunciation.

414 LEIV, *supra* note 17, art. 35.

415 Articles 44-55 of the Integral Law define the crimes; articles 56-61 lay out the procedural measures. *Id.* arts. 44-55, 56-61.

416 *Id.* art. 45.

417 *Id.* art. 46.

418 The criteria are: 1) the killing was preceded by acts of violence committed by the perpetrator whether or not the victim had

denounced it; 2) the perpetrator took advantage of physical or psychological vulnerability of the victim; 3) the perpetrator took advantage of superiority he had by virtue of unequal power relations based on gender; d) prior to the killing the perpetrator committed acts considered to be crimes against sexual liberty; or e) the death was caused by mutilation. *Id.* art. 45.

419 Article 46 provides that a femicide is “aggravated” if committed under any of the following circumstances: 1) by a government official or employee; 2) by two or more persons; 3) in the presence of the victim’s family; 4) against a victim who was under eighteen, was a senior, or suffered physical or mental incapacity; or 5) by a perpetrator who took advantage of a superior position arising from confidence, friendship, or a relationship arising from school or work. *Id.* art. 46.

420 *Id.* art. 48.

421 *Id.* arts. 49, 51.

422 *Id.* art. 50.

423 This includes transmission of images or messages that contain hatred or contempt toward women; ridiculing or otherwise degrading women in places of work or education or at community gatherings; and impeding or limiting women’s participation in educational or work settings. *Id.* art. 55.

424 *Id.* art. 53.

425 *Id.* art. 54.

426 *Id.* art. 52.

427 *Id.* art. 47.

428 *Id.* art. 58.

429 *Id.* art. 56. The procedural rights are to be extended to immigrant victims of trafficking, who additionally cannot be removed from El Salvador and have immunity from immigration law sanctions and access to free immigration legal assistance. *Id.* art. 57.

430 Protective measures are to be issued; the assistance and protection of the police or other governmental entities are to be provided; the victim is to receive medical attention and treatment; and she is to be permitted to give her testimony under special conditions of protection and care, including taking evidence in advance of the trial so that it can be submitted at the trial in lieu of her in-person testimony (referred to as “anticipo de prueba”). *Id.* arts. 57(k), (l), (h), and (m).

431 *Id.* arts. 57(a), (d).

432 OFICINA DEL ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS DERECHOS HUMANOS & FGR, PROTOCOLO DE ACTUACIÓN PARA LA INVESTIGACIÓN DEL FEMINICIDIO [OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS & FGR, ACTION PROTOCOL FOR THE INVESTIGATION OF FEMICIDE] (2012), <http://www.oacnudh.org/wp-content/uploads/2012/07/Protocolo-femicidios-20042012-FINAL-2.pdf> [<https://perma.cc/3S7D-APN5>].

- 433 *Id.* at 7. Between 2013 and 2014, there was an increase in the number of killings classified by the FGR as a femicide; however, that number dropped in 2015. In 2013, the FGR classified 45.16 percent of violent deaths as femicides; in 2014, 62.24 percent; and in 2015, 47.91 percent. ISDEMU, *supra* note 242, at 9. Edgardo Amaya noted that the characterization of a killing as a femicide was a “complicated and delicate issue.” The FGR makes the initial determination, but a judge can subsequently recharacterize a femicide as a homicide. The IML has a role because it “identifies sexual violence, mutilation or other physical indicators of femicide” when it does its forensic exam. Some sources have commented that the characterization of a killing as a homicide is seen as a “strategic” decision based on the belief that prosecuting a femicide is more difficult. CGRS/RHRC Interview with América J. Romualdo Cárcomo, Concertación Feminista Prudencia Ayala [Prudencia Ayala Feminist Coalition] at 2, in San Sal., El Sal. (Oct. 17, 2013) (on file with author). Sources have consistently noted the resistance of many judges to categorizing the killing of a woman as a femicide. *See, e.g.*, CGRS/RHRC Interview with Emma J. Fabian Hernandez, Diputada--FMLN [Assembly Member--FMLN], Comisión de la Mujer y la Igualdad de Género [Commission for Women and Gender Equality] at 5, in San Sal., El Sal. (Oct. 18, 2013) (on file with author).
- 434 ISDEMU, *supra* note 237. The methodology of the ISDEMU report included self-reporting (asking the prosecutors if they followed certain procedures) as well as file review to determine whether the files affirmed that prosecutors were following certain procedures. *Id.* at 9-10. In many cases a high percentage of the prosecutors asserted that they had followed procedures while an equally high percentage of the files demonstrated that those procedures had not, in fact, been followed. For example, 69 percent of the prosecutors surveyed stated that as part of their investigation and gathering of evidence, they took samples of bodily fluids and examined the genital areas of the victims. However, such measures had not been taken in 85 percent of the files. *Id.* at 22 fig.8.
- 435 *Id.* at 23.
- 436 ISDEMU, *supra* note 243, at 7. ISDEMU has identified the following factors as contributing to the relatively low number of cases prosecuted and sentenced as femicides: gaps and irregularities relating to treatment and investigation of evidence, the lack of use of prosecutorial challenges to judicial decisions finding that a killing was not a femicide, deficiencies in judges’ evaluation of evidence, the lack of a gender-sensitive focus by officials in setting sentences, the lack of effective violence prevention mechanisms, and the absence of reparation mechanisms for victims and their family members. *Id.* at 34-46.
- 437 IUDOP, *supra* note 11, at 53.
- 438 ISDEMU, *supra* note 232, at 34-46.
- 439 These cases are subject to a process akin to dismissal: “definitive archiving” (archivo definitivo). IUDOP, *supra* note 11, at 51. When a case is definitively archived, there is no possibility of continuing with the investigation. *Id.*
- 440 ISDEMU, *supra* note 232, at 27 tbl.6.
- 441 *Id.* at 30.
- 442 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 2, *supra* note 351, § 4.4.4.
- 443 *Id.* Roberto Rodriguez Meléndez, a Salvadoran human rights expert, has commented that acts of violence against women and children enjoy the highest levels of impunity. He noted that the existence of special laws for women and children constitute an acknowledgement that those populations have not been protected. CGRS/RHRC Interview with Roberto Rodriguez Meléndez, Director de la Escuela de Capacitación Judicial [Director of the Judicial Training School], Departamento de Ciencias Jurídicas de la UCA [Legal Sciences Department of the UCA], in San Sal., El Sal. (Oct. 2013) (on file with author).
- 444 *Id.*

445 CGRS/RHRC Interview with José A. Franco Castillo (Oct. 9, 2012), *supra* note 231. José Alberto Franco Castillo stated that judges have “defied the law by not implementing it correctly .... For example, if a woman is attacked because her husband believes she was unfaithful, a lot of judges think that attack is justified” (translated by author). *Id.* See also CGRS/RHRC Interview with Emma J. Fabian Hernandez, Commission for Women and Gender Equality, *supra* note 433 (“Judges have been resistant to apply the law [Ley Integral] especially *feminicidio*, which they classify as homicide.”) (translated by author).

446 CGRS/RHRC Interview with José A. Franco Castillo (Oct. 9, 2012), *supra* note 231.

447 *Id.*

448 IMMIGRATION AND REFUGEE BD. OF CANADA--PART 2, *supra* note 351, § 4.4.2.

449 LIE, *supra* note 18, parts I, II.

450 *Id.* part VI.

451 CGRS/RHRC Interview with Alba E. Cortez de Alvarenga (Oct. 2012), Legislative Assembly, *supra* note 327. In a 2016 interview, Cortez de Alvarenga underscored the lack of experience or precedent of any kind in cases involving discrimination or hate crimes. CGRS/RHRC Interview with Alba E. Cortez de Alvarenga (Nov. 2016), *supra* note 223. Jeanette Tobar de Cortez, Coordinator of the Gender Unit of the PGR, states that there is a clear causal connection between discrimination and violence, stating that “[a]ll violence against women starts with discrimination.” CGRS/RHRC Interview with Jeanette Tobar de Cortez, *supra* note 376.

452 LIE, *supra* note 18, art. 3 (stating in relevant part that “[S]tate entities and organizations ... are obliged to what the law provides ....”). *Id.*

453 *Id.* art. 6(1).

454 *Id.* art. 6(2).

455 *Id.* art. 6(3).

456 *Id.* arts. 6(1)(d), (e).

457 *Id.* art. 7.

458 *Id.* art. 11(b).

459 *Id.* art. 8.

460 *Id.* art. 12.

461 *Id.* art. 14.

462 *Id.*

463 LIE, *supra* note 18, art. 14.

464 For example, the chapter on education includes four guiding principles (art. 16) and 13 separate criteria (art. 17), with additional criteria applying to higher education (art. 18) and professional, vocational, artistic, and sports training (art. 19). *Id.* arts. 16-19.

465 *Id.* art. 26.

466 *Id.* art. 26(c). As discussed *supra* note 350, abortion is criminalized, prosecuted, and harshly punished; the Law of Equality does nothing to change that.

467 LIE, *supra* note 18, arts. 27-29.

468 *Id.* art. 33.

469 *Id.* art. 31.

470 *Id.* arts. 36-37.

471 *Id.* art. 38.

472 *Id.* art. 39.

473 *Id.* art. 41.

474 The law declares that the “State should incorporate in its budget the necessary resources.” *Id.* art. 13.

475 *Id.*

476 *Id.* art. 40.

477 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267; CGRS/RHRC Interview with Jeanette Tobar de Cortez, *supra* note 376.

478 LIE, *supra* note 18, art. 14.

479 Elena Marisol Gómez Luna, the director of the Gender Unit in the Ministry of Economy, stated that data pertinent to women would be collected on these seven issues: economic autonomy, inclusive education, social care and protection, environmental risk,

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integral health, living a life free of violence, and political participation of women. According to Gómez Luna, the inclusion of violence is not duplicative of the National System on Violence Against Women required by the Integral Law; it is intended to incorporate the National System's data into SNEIG. CGRS/RHRC Interview with Elena M. Gómez Luna, Ministry of the Economy, *supra* note 270.

480 CGRS/RHRC Interview with Vilma Vaquerano Cruz (Nov. 2016), *supra* note 224.

481 *ISDEMU Lanza Compendio de Estadísticas e Indicadores de Género 2009-2014* [ISDEMU Launches Compendium of Statistics and Indicators of Gender 2009-2014], ISDEMU (Mar. 29, 2017), [http://www.isdemu.gob.sv/index.php?option=com\\_content&view=article&id=5571%3A2017-04-03-14-50-52&catid=1%3Anoticias-ciudadano&Itemid=77&lang=es](http://www.isdemu.gob.sv/index.php?option=com_content&view=article&id=5571%3A2017-04-03-14-50-52&catid=1%3Anoticias-ciudadano&Itemid=77&lang=es) [https://perma.cc/6KLR-Z8RD].

482 LIE, *supra* note 18, art. 41. Some commentators lamented the fact that the law “left it to each institution to assume responsibility for developing internal regulations,” and although the PGR was tasked with coordinating this process, it wasn't given sufficient funding. CGRS/RHRC Interview with Ima Rocio Guirola (Oct. 11, 2012), *supra* note 337. The requirement that each agency develop its own norms--rather than having one set of norms--has made the implementation of this aspect of the law quite difficult. CGRS/RHRC Interview with Jeanette Tobar de Cortez, *supra* note 376.

483 LIE, *supra* note 18, art. 41. One commentator noted that whether violations of the Law of Equality were to be punishable as crimes or only subject to administrative sanctions was a matter of extended discussion during the law's drafting. CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246, at 3.

484 Although it may not be representative, the Ministry of the Economy provides an example of foot-dragging in relation to the development of internal norms. It was not until 2014 that the Ministry created a Gender Unit tasked with harmonization, and it was not until 2015 that the Gender Unit was given a budget to begin operation. It is an extremely small unit, consisting of just one attorney and her secretary. CGRS/RHRC Interview with Alba E. Cortez de Alvarenga (Oct. 2012), *supra* note 327.

485 CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 2013), *supra* note 375.

486 Once norms have been adopted, complaints that governmental institutions have not imposed sanctions for their violation can be brought to the PGR. The role of the PGR in those cases is determine if non-compliance by a governmental official constitutes a failure to carry professional obligations within the meaning of the Ley de Servidor Publico [Law of Public Servants] (El Sal.). CGRS/RHRC Interview with América J. Romualdo Cárcomo (Oct. 8, 2012), *supra* note 246.

487 CGRS/RHRC Interview with Jeanette Tobar de Cortez, *supra* note 376.

488 *Id.*

489 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267.

490 *Id.*

491 Decree 286, *supra* note 21.

492 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267; CGRS/RHRC Interview with Vilma Vaquerano Cruz (Nov. 2016), *supra* note 224; CGRS/RHRC Interview with Ima Rocio Guirola, Coordinadora de Relaciones

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Públicas [Public Relations Coordinator], CEMUJER, in San Sal., El Sal. (Nov. 17, 2016) (on file with author). Ima Rocío Guirola was particularly critical of the decision not to give the specialized courts jurisdiction over all crimes of gender-based violence. *Id.*

493 CGRS/RHRC Interview with América J. Romualdo Cárcomo (Nov. 2016), *supra* note 354; CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 2013), *supra* note 375.

494 LEIV, *supra* note 17, arts. 45-55. The crimes are as follows: (1) femicide (art. 45), (2) aggravated femicide (art. 46), (3) preventing access to justice (art. 47), (4) inducing or assisting suicide (art. 48), (5) inducing sexual or erotic acts (art. 49), (6) illegal diffusion of personal information (art. 50), (7) diffusion of pornography (art. 51) (8) assisting an individual's non-compliance with the payment of economic assistance (art. 52), (9) theft of assets (art. 53), (10) theft of assets resulting from family economic activity (art. 54), and (11) expressions of violence towards women (art. 55).

495 Article 246 of the Penal Code prohibits labor discrimination on the basis of "sex, pregnancy, origin, civil status, race, social or physical condition, religious or political beliefs, membership or lack of membership in a labor union, or relationship with other workers" at the place of employment. The specialized courts will also have jurisdiction to oversee any other "administrative or judicial" measures which arise from the Integral Law or the Law of Equality--which one commentator observed is quite vague in that administrative and judicial measures under the two laws have yet to be established. CGRS/RHRC Interview with Xochitl Bendeck, ISDEMU, in San Sal., El Sal. (Nov. 2016) (on file with author).

496 The prevalence of these forms of violence is discussed *supra* at Parts II.C.2-3.

497 CGRS/RHRC Interview with Ima Rocío Guirola (Nov. 17, 2016), *supra* note 492.

498 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267.

499 *Id.*; CGRS/RHRC Interview with Vilma Vaquerano Cruz (Nov. 2016), *supra* note 224.

500 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267. Sources repeatedly commented that among governmental actors, judges are the most resistant to accepting gender equality and taking gender violence seriously. For example, Jeanette Tobar de Cortez of the Gender Unit of the PGR stated that although there is resistance within the PGR and "throughout the country," the "courts especially have a machista attitude," and women judges are not immune to having the "same attitude" as their male counterparts. CGRS/RHRC Interview with Jeanette Tobar de Cortez, *supra* note 376. *See also supra* note 327 and accompanying text. Lorena Morales of the FGR noted that "[j]udges and magistrates have not taken to the law well." CGRS/RHRC Interview with Lorena Morales, *supra* note 239. Xochitl Bendeck, a representative of ISDEMU, provided the following example which demonstrated these pernicious attitudes. A married 42-year-old professor had sexually abused his underage student and she became pregnant. The professor was charged with statutory rape, but during the trial the judge suggested that the man leave his wife and marry the young girl, since he was the father of her child. CGRS/RHRC Interview with Xochitl Bendeck, *supra* note 495.

501 The locations of the courts of instruction and the courts of sentencing, and their coverage, are as follows: (a) San Salvador, with coverage of cases from the departments of San Salvador, La Libertad, Chalatenango, La Paz, Cabañas, Cuscatlán, and San Vicente; (b) Santa Ana, with coverage of cases from Santa Ana, Ahuachapán, and Sonsonate; and (c) San Miguel, with cases over Usulután, San Miguel, La Unión and Morazán. IMMIGRATION AND REFUGEE BD. OF CANADA--PART 2, *supra* note 351, § 4.4.2.

502 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267.

503 *See, e.g.*, CGRS/RHRC Interview with Vilma Vaquerano Cruz (Nov. 2016), *supra* note 224.

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- 504 CGRS/RHRC Interview with Jeanette Aguilar, *supra* note 224. Aguilar gave the example of the specialized courts for cases involving the environment, which still lacked “resources and capacity” two years after their creation, and the specialized courts for organized crime, which “cannot handle all the cases that come in.” *Id.*
- 505 CGRS/RHRC Interview with América J. Romualdo Cárcomo (Nov. 2016), *supra* note 354.
- 506 CGRS/RHRC Interview with Mélida Guevara (Nov. 2016), *supra* note 177.
- 507 *Id.*
- 508 CGRS/RHRC Interview with Vilma Vaquerano Cruz (Nov. 2016), *supra* note 224.
- 509 One PDDH source noted that control over and domination of women is not only normalized among judges, it is perceived as an expression of love: “Judges say ... that if a man will not let a woman go out of the house, or work ... it’s because [he] loves her ... he is looking after her.” CGRS/RHRC Interview with Ricardo J. Gómez Guerrero, Procurador Adjunto [Deputy Procurator], PDDH, in San Sal., El Sal. (Nov. 2016) (on file with author).
- 510 As discussed *supra* § 3(B)(2)(b), article 200 of the Penal Code did not create a new crime of intrafamilial violence, although on its face it appeared to do so.
- 511 *See supra* notes 344-346 and accompanying text.
- 512 Multiple sources commented on the LVI’s failure. *See supra* note 325 and accompanying text.
- 513 This need to transform the culture was repeatedly affirmed by in-country sources who talked about the importance of a generational shift in attitudes. *See, e.g.*, CGRS/RHRC Interview with Maria Teresa Delgado de Mejía, *supra* note 93. Delgado de Mejía gave the example of 1994 changes to El Salvador’s Civil Code, addressing the rights of “illegitimate” children. *Id.* Prior to the 1994 revisions, children born out of wedlock could be denied the right to any support whatsoever, and they could be prohibited from taking the last name of their father. The law eliminated those distinctions and children born out of wedlock were to have the same rights as those born within a marriage, which ultimately led to greater social acceptance.
- 514 CGRS/RHRC Interview with Mélida Guevara (Oct. 17, 2013), *supra* note 155.
- 515 CGRS/RHRC Interview with Aracely Bautista Bayona (Oct. 21, 2010), *supra* note 240.
- 516 *See supra* notes 379-395 and accompanying text.
- 517 *See supra* notes 407-411 and accompanying text.
- 518 *See supra* notes 412-414 and accompanying text.
- 519 Only the Legislative Assembly, the OJ, and the PGR have adopted internal norms. *See supra* notes 482-488 and accompanying text.

- 520 CGRS/RHRC Interview with Aracely Bautista Bayona (Nov. 2016), *supra* note 267.
- 521 All interviews took place in person unless otherwise indicated.
- 522 Interviews in the summer of 2014 took place by telephone.
- 523 This is not a complete chart of the Ministry of Economy; this chart includes the entities involved in the keeping of statistics. The structure and function of these entities are further discussed *supra* Part III.C.
- 524 This is discussed in more detail *supra* Part III.C.2.a.
- 525 The creation of SEMI is the responsibility of the ISDEMU. Article 14 of the Law of Equality requires the creation of this overarching gender data system. *See supra* Part III.C.2.a.ii.b.
- 526 The SNEIG is to be developed by DIGESTYC and ISDEMU. *See supra* Part III.C.3.b.ii.
- 527 This will be contained in the Sub-System of Statistics and Information on Violence Against Women as required by Article 30 of the Integral Law. *See supra* Part III.C.2.a.ii.B.

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