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纳入妇女人权和性别公平观：暴力侵害妇女

暴力侵害妇女、其原因及后果问题特别报告员
亚肯·埃蒂尔克女士提交的报告

增 编 *

对萨尔瓦多的访问
(2004 年 2 月 2 日至 8 日)

* 内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文和西班牙文分发。

内 容 提 要

我作为暴力侵害妇女、其原因及后果问题特别报告员，于 2004 年 2 月 2 日至 8 日对萨尔瓦多进行了正式访问；本报告载有我的访问结果。报告说明了该国对妇女各种形式的暴力，并查明了为确保保护和促进妇女权利、消除侵害妇女的暴力行为所需采取的关键措施和行动。

虽然在 1980 至 1992 年萨尔瓦多惨遭的内战中以及在随后开展的和平谈判中，妇女权利都不是一项中心问题，但妇女大量参加了反对派武装部队，从而取得了经验和政治意识，使她们能够对社会上的歧视性做法提出挑战。因此，冲突后时期在男女平等方面取得了显著和进步，尤其是在立法层面。其他令人鼓舞的事态发展有：成立了萨尔瓦多提高妇女地位署，在国家民警内设立了一个人权方案，并采取了其他一些体制上的举措来保护妇女不受暴力侵害。

尽管取得了这些成就，但当局未能对犯有针对性别的暴力行为者进行调查、提起诉讼并给予惩处，这促成了一种有罪不罚的环境，让人对司法制度缺乏信心。有罪不罚、社会经济差距悬殊以及大男子主义的文化造成了一种普遍的暴力状况，使妇女不断遭到谋杀、强奸、家庭暴力、性骚扰和商业性剥削等多种暴力行为。

鉴于仍然存在的各项挑战，我向萨尔瓦多政府、国际社会和民间社会提出建议。

我要求政府采取以下五大类行动：(a) 创建一个意识到性别问题的资料 and 知识库；(b) 通过立法、调查和司法改革，确保妇女得到保护；(c) 加强体制基础设施；(d) 开展培训和提高认识方案；(e) 特别是在非正规部门加强和监测国际劳工标准。

我促请国际社会支持保护和监测人权的活动；加强联合国国家工作队；并为关于性别问题的研究、宣传和项目提供资金。

我呼吁民间社会，包括妇女非政府组织、人权团体和新闻媒体对暴力侵害妇女问题进行面向政策的研究；与国家一起重申其国际承诺，批准《消除对妇女一切形式歧视公约附加议定书》；制定共同战略，让政府为促进和保护妇女权利工作负责；监测司法系统对暴力侵害妇女案件实施法律的情况；通过提高新闻媒体的认识等办法，承担起宣传工作，避免形成性别陈规定型观念和展现妇女的负面形象。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST
WOMEN, ITS CAUSES AND CONSEQUENCES, ON HER MISSION TO
EL SALVADOR (2-8 February 2004)**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 3	5
II. THE NATIONAL SETTING	4 - 22	5
A. Socio-economic disparities	4 - 8	5
B. Process towards peace and democracy	9 - 17	6
C. Family patterns and <i>machista</i> culture	18 - 22	8
III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN	23 - 44	9
A. Murder	24 - 27	9
B. Domestic violence and sexual abuse of girls	28 - 32	10
C. Violence and sexual harassment in the workplace	33 - 39	11
1. <i>Maquila</i> plants in export processing zones (EPZs)	34 - 37	11
2. Domestic work in private homes	38 - 39	12
D. Police-related violence	40 - 42	13
E. Violence related to commercial sexual exploitation	43 - 44	13
IV. ACHIEVEMENTS IN THE RESPONSE TO VIOLENCE AGAINST WOMEN	45 - 65	14
A. Government initiatives	45 - 58	14
1. Legislative	45 - 52	14
2. Institutional	53 - 54	15
3. Programmatic	55 - 58	16

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
IV. B. Civil society initiatives (<i>cont'd</i>)	59 - 63	17
C. United Nations initiatives	64 - 65	18
V. REMAINING CHALLENGES	66 - 76	18
A. Effective implementation of the law	66 - 72	18
B. Access to reproductive health and rights	73 - 76	20
VI. CONCLUSIONS AND RECOMMENDATIONS	77 - 84	20

I. INTRODUCTION

1. At the invitation of the Government, in response to my request, I visited El Salvador from 2 to 8 February 2004. The request was partly in response to allegations of an emerging pattern of murders of young women in the Central America region and systematic impunity for perpetrators.¹

2. The scope of the report is limited to my mandate and provides my observations about the general human rights situation in El Salvador, to the extent that it contributes to an understanding of the causes of violence against women and offers intervention strategies for their prevention. Therefore, the report starts with an analysis of the socio-economic and political dynamics of the country in order to place the trends of violence against women as well as the impunity with which these acts are committed, within a wider context.

3. I wish to thank the Government of El Salvador for inviting me to visit the country. The invitation itself is a sign of the Government's will to address the issue of violence against women. I consulted with and received information from governmental authorities, members of the judiciary and the police, members of parliament, representatives of human rights and women's organizations, academics, survivors of violence and families of victims, as well as United Nations agencies. I held meetings in San Salvador and visited women in the Usulután and La Paz departments, and the female prison in San Salvador.

II. THE NATIONAL SETTING

A. Socio-economic disparities

4. Historically a small privileged class has monopolized land, wealth and power in El Salvador, resulting in a polarized society.² These inequalities underlie current social unrest in the country, and constitute the factors, along with military repression, that triggered the 12 years of civil war from 1980 to 1992. The civil war was rooted in class and ideological divisions, in an economic system whereby a small number of landed elites controlled the State in alliance with a powerful military.

5. Despite the series of agrarian reforms initiated in the 1980s, access to land in general, and for women in particular, continues to be a problem. Only 3 per cent of the economically active population has benefited from the reforms, with women constituting only 11.7 per cent of that 3 per cent minority. The agrarian policy promoted in the 1989-1994 period made no reference to rural women.³ In 1997, 62 per cent of all farmers had access to only 8 per cent of the cultivatable land,⁴ putting the country's main resource, the coffee plantations, in the hands of the few large landowners.

6. Although the agricultural sector accounted for only 8.7 per cent of the gross domestic product in 2000, it employed the largest percentage of the population, 21 per cent, a significant drop from 34.8 per cent in 1992.⁵ The sector has suffered in recent years due mostly to a decline in cash crop prices, mainly coffee. The deterioration of the earnings from cash crops has further

stimulated the exodus from El Salvador, which had begun in earlier decades. An estimated 525,250 people migrated between 1980 and 1992, representing 68.3 per cent of all Salvadorans that migrated prior to 1992.⁶ About 59 per cent of migrants during this time were men, which had direct impacts on increasing the number of female-headed households. Today, about 2 million Salvadorans live abroad, mainly in the United States. The remittances averaging US\$ 2 billion per year from immigrants make up the backbone of El Salvador's foreign exchange earnings; 31.52 per cent of female-headed households reportedly rely on remittances, the majority of which is used for consumption purposes.⁷

7. The deterioration of agriculture has also increased the hardship of those remaining in the country. Rural women and girls took jobs in the informal sector, namely as domestic workers in private homes and in the *maquila* plants of the export processing zones (EPZs). Although female unemployment rates (3.75 per cent) remained below national (6.35 per cent) and male averages (9.18 per cent), employment contributed little to the improvement of their standard of living due to poor work conditions, domestic responsibilities and the sex wage gap.⁸

8. The concentration of wealth, therefore, is a structural contributor to the unequal distribution of income and entitlements in El Salvador, resulting in an increase in the percentage of the population living below the poverty level from 36.1 per cent in 2001 to 38.8 per cent in 2002.⁹ The inability of the Government to adopt a just income tax law and effective social security measures prevent them from tackling the growing disparities.

B. Process towards peace and democracy

9. On 16 January 2004, El Salvador commemorated 12 years since the signing of the Peace Accords that ended the civil war and started the process towards democracy. In 1992, President Cristiani acknowledged that the causes of conflict lay in the absence of democratic political space and the lack of economic opportunities.¹⁰ The State assumed responsibility for building democratic institutions, the rule of law and the protection of the human rights of its citizens. The Government has since initiated legislative reforms, some of which directly address gender-based discrimination.

10. Despite the reforms, obstacles remain for ensuring human rights. Impunity for past and current violence, poverty, gender-based discrimination, *machista* culture, the possession of arms by non-State actors, and institutional impotence are all factors reportedly linked with the perpetuation of violence against women in the country. Furthermore, there is resistance to change from various stakeholders.

11. The role of women during the civil war and its resolution are important in shedding light on the current status of women in El Salvador.¹¹ Women composed 30 per cent of the combatants and 40 per cent of the leadership of the Frente Farabundo Martí para la Liberación Nacional (FMLN) throughout the duration of the civil war. However, women's rights were not central to the struggle that was, rather, rooted in the long-standing friction between the rich and the poor. While many of the demands of FMLN were included in the peace agreements, thus giving them a legitimate voice in the post-conflict era, women and women's issues were largely excluded in the peace agreements.

12. The reconstitution of the FMLN as a political party in the new political order allowed women within its ranks to participate in the political party structures, the parliament, trade unions, etc. However, *machista* culture remained largely intact with the return to peace. Women's non-traditional experience in the conflict, as well as their frustration with the discriminatory treatment in the reintegration process, gave them a new sense of feminist consciousness. They challenged discriminatory practices within FMLN and within the society. As a result, the effort women invested in building political coalitions for change in the post-conflict era has generated gender-equality achievements, particularly at the legislative level, notwithstanding the continuing resistance from the conservative forces in society.

13. Despite the return to peace and the establishment of democratic institutions, the causes of the conflict have not been eliminated. Power remains in the hands of the elite and the military reportedly continues to protect the powerful families. The truth and reconciliation commission (Commission on the Truth for El Salvador) found persons responsible for human rights violations, but granted amnesty that prevented the investigation of high-ranking officials for their alleged war crimes. Furthermore, poverty, unemployment, and lack of public safety and justice pose major challenges to the consolidation of democratization in El Salvador.

14. Many Salvadorans feel that peace has not been truly achieved as political crime has been replaced by common crime. Government officials attributed the problems to the actions of *maras* (gangs)¹² and have since introduced a get-tough initiative which includes the Anti-Maras Act (AMA) approved by Decree 158 on 9 October 2003.¹³ There have been allegations that the Government used the murders for political purposes to launch the AMA. It was reported that 60 gang members were killed in 1997 in what was thought to be a "social cleansing" exercise. Reportedly, investigations revealed the involvement of police and businessmen, but no perpetrator was brought to justice.

15. There is no doubt that the *maras* are a source of violence, including violence against women. The initiations of women into, and women's roles within, the *maras* create high likelihoods of sexual and other forms of violence. There is need, therefore, for comprehensive research on socialization, violence and the *maras* to guide sound policy. A report from the Economic Commission for Latin America and the Caribbean (ECLAC) suggests a positive correlation between domestic violence and gang activity, citing the fact that the mothers of 8 out of 10 gang members have been victims of intrafamily violence.¹⁴ Therefore, by failing to take into account violence in the home, the Anti-Maras Act can only hope to touch the symptoms of the social problem of gang violence, not the root causes.

16. A Salvadoran sociologist attributes the aggressive tendencies of males to the tensions created by economic marginality. She argues that, under economic and social pressures, men in particular are threatened by dislocation and become enticed with "... alcohol as a means of asserting manhood, and with violence as a method of solving conflict".¹⁵

17. Notwithstanding the continuing problems, the most promising aspects of El Salvador's experience in the transition to peace and democracy is the representation of the opposition (ex-combatant interests) in the legitimate political order and the growing strength of the women's movement in shaping public discourse.

C. Family patterns and *machista* culture

18. There is a consensus in Salvadoran society that gender discrimination is attributable to a *machista* culture. Research shows that in many *machista* societies, masculinity is in part measured by a man's virility. Hence, men often father children in an effort to establish masculinity at an age before they can support a family. This often results in abandoning their partners to pursue other endeavours or to start families elsewhere. In the wake of weak paternal responsibility and unstable family structure, the brunt of the economic and emotional burden of providing and caring for the children falls on women and the extended family. This situation is said to be particularly acute in rural areas where the unions between women and men are often not formalized in matrimony.¹⁶

19. It is estimated that women head 31 per cent of households in El Salvador. While some of these may be women who choose to live as a single mother or may be left-behind wives of migrants, the vast majority are women who are abandoned by their partners and may mother children with different fathers. They typically have little education, few skills or resources, and little support and power to protect themselves against male sexual pressure, which puts them at risk of unwanted pregnancies, violence and financial hardship. Female-headed households, in rural and urban areas alike, make up 39 per cent of families living below the poverty line.¹⁷

20. In 1997 Las Dignas, a women's NGO, conducted a study that found that 87.5 per cent of women interviewed received no economic assistance from the father of their children, while 61 per cent reported that the father had never provided emotional support when raising their families.¹⁸ Only 0.9 per cent of mothers interviewed received economic support on a regular basis. Although the Constitution provides that alimony entitlement should be based on the imbalanced situation resulting from divorce and a new law has been adopted to punish deadbeat fathers, in practice, men continue to dodge their alimony obligations. Paternity in El Salvador is considered to be more "extended" than "exclusive", which means that others in the family or community often shoulder paternal responsibilities. Often, however, the only support system available for single mothers comes from their own mothers, who themselves have most likely shared similar experiences.

21. Factors such as the breakdown of kinship networks, a greater age-dependency ratio, inferior earnings, low time availability for jobs and lack of sufficient formal and informal support mechanisms contribute to the general impoverishment and vulnerability of female-headed households in El Salvador.¹⁹ Even when men are present at home, the instability of the conjugal union caused by the unemployment and/or alcoholism of a male partner often puts women in a precarious position of having to assume the household responsibilities. The social costs of the instability, often accompanied by domestic violence, may actually offset the male contribution to household income.

22. Although there is no research indicating with certainty that children are better off living with both parents, studies do show that, depending on the quality of time spent, a father's presence is generally positive for children's development, household sustenance and for the

couples themselves.²⁰ The nurturing of fathers is likely to reduce the propensity of boys for domestic violence later in life. Considering these findings, improving the quality of time spent between fathers and families can contribute to reducing the perpetuation of violence within the home and the society.

III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN

23. The socio-economic pressures, a weak legal sector that fosters impunity and *machista* culture - all combined - reinforce a generalized state of violence, which manifests itself in diverse forms. Some of the most pervasive forms of violence against women and girls reported to me in El Salvador are reviewed below.

A. Murder

24. During 2002 and 2003, El Salvador witnessed an increase in extremely violent murders of women. The majority of the cases followed a general pattern in which victims were between the ages of 15 and 20 years of age, they disappeared and were later found murdered in public parks and wasteland around San Salvador. The mutilated corpses showed signs of rape and torture, and in some cases decapitation. According to interlocutors the pattern to the killings was reminiscent of executions by death squads operating in the 1970s, when bodies were left in the street with signs of torture to terrorize the communities. The newspaper publicity given to these horrific murders has heightened anxiety, particularly among young women.

25. I received conflicting data with regard to murder cases of women. The Women's Division of the Office of the Public Prosecutor²¹ reported 306 cases of first-degree murder of women and 280 cases in the second degree between January and November 2003. In total, during this period 813 women were murdered. However, according to the PNC,²² during the same period, 202 cases of murder of women and girls were reported to the PNC. The discrepancies in the data raise concerns about the accuracy of data collection by the different institutions.

26. I requested information from the justice sector regarding the number of murder prosecutions, instances of family compensation and the general status of murder cases; I regrettably did not receive any such information.

27. Las Dignas did an analysis of crimes reported in national newspapers that involved female victims. Their research showed that a total of 153 cases of violence against women were reported in the newspapers in 2003, of which 77 were murder and the remainder rape.²³ In 22 of the murder cases, the victim had also been raped or sexually abused. Only 62 of the 153 cases identified the perpetrator;²⁴ of these, 32.3 per cent of the crimes were committed by professionals versus 16.1 per cent for which gang members were responsible. Furthermore, the majority of the perpetrators were family relations to the victim. These findings challenge official claims that gangs are the primary perpetrators of violence against women. This also suggests that the AMA's strategy for curbing violence against women overlooks the majority of cases in which men known to the victim are the perpetrators of violence against women.

The unsolved rape and murder of Katia Miranda, aged 9, is reflective of the complexities involved in these crimes. The crime occurred in April 1999 during a family camping trip with Katia's father and uncle (both high-ranking security force members) and grandfather (an attorney). Katia's mother, having not been present on the camping trip, was first told that her daughter had drowned; however, when she learned the facts of the case in October 1999, she sought justice for her daughter's murder, citing a history of domestic violence and child abuse within the family. The grandfather was accused of rape and homicide, her father for not preventing the crime and others for a cover-up. However, due to many procedural errors and delays, the accused were acquitted. Strangely, public opinion reportedly blamed the mother for not going camping with the family and, therefore, not being a good mother. For reasons of security, the mother claimed political asylum in the United States.

B. Domestic violence and sexual abuse of girls

28. Salvadoran law prohibits domestic violence and calls for sentences ranging from six months to one year upon conviction. However, because laws are not consistently applied, domestic violence is widespread and tolerated. The cases attended to by the National Institute for the Advancement of Women (ISDEMU) and the Forensic Medicine Institute in 1998 reveals that women are the main victims of intrafamily violence.²⁵ ISDEMU reported receiving 3,786 complaints of domestic violence in 2002 and 4,706 in 2003. The Family Relations Improvement Programme (PSRF) registered 4,222 females subjected to domestic violence in 2003. Women's organizations estimate that 9 out of 10 women have suffered from domestic violence.

29. Women reported that justices of the peace and police do not take complaints seriously and fail to promptly issue protection orders. The courts are said to favour reconciliation and family reunification over the prosecution of perpetrators, which further exposes victims to their abusers and may ignite reprisal. Violence that does not leave marks lasting for 10 days is classified as a misdemeanour rather than a crime. During the waiting period, a victim must return to her aggressor, having already reached her tolerance limit for the abuse and risking reprisal for having gone to the authorities. The authorities indicated that efforts are being made to strengthen women's access to justice through law reform, policies and programmes.

30. Data on child abuse and incest is limited owing to the social taboo attached to such crimes. I did receive specific testimonies revealing that such abuses are disturbingly widespread. The PNC figures for 2003 indicate that sexual violence and incest are areas of concern. The relatively unstable nature of matrimonial unions puts children particularly at risk of abuse by their natural or stepfathers. A daughter may also be perceived as a legitimate sexual replacement for her mother if the mother is sterile.

31. A 10-year-old girl, raped and impregnated by her father, due to the anti-abortion law had to keep her baby. Another case, of a 12-year-old girl raped and impregnated by her stepfather, in which the Procurator General for Human Rights took action, was first defined as aggravated rape, then reduced to seduction of a minor, then further reduced to conciliation and finally closed

when the stepfather agreed to marry his stepdaughter. Such a clause in the Penal Code that exonerates rapists for marrying their victims not only reinserts the victim into the same abusive situation, but it locks her into a lifestyle of rape and abuse in the absence of a law prosecuting marital rape.

32. Women's organizations believe that domestic violence and sexual abuse of girls in the private sphere is severely underreported. The reasons cited include: societal pressure; fear of reprisal; fear of publicity and stigmatization; discriminatory responses by authorities; and low confidence in the justice system.

Following are two testimonies taken during my mission:

T. was married for 12 years. After the first two years, her husband started to subject her to physical and psychological abuse. She threatened him with prison, to which he responded that the police would do nothing. Following a particularly violent episode that resulted in an injury to her spine, she reported the case to the police and obtained medical proof from the forensic institute. However, she was told that the case was not valid as they needed to catch him in the act. Later, the police did catch him abusing his children and removed him from the home. Although he threatened that he would return and kill her, the judge at the hearing persuaded her to give him another chance for the sake of the children and released him after only five days in detention.

D.'s boyfriend physically and psychologically abused her and regularly threatened her with a firearm. After giving birth to five children, she wanted to be sterilized, but needed approval from her partner for the procedure by law (*note: the law was reformed in 2001 and permission is no longer required*). When she tried to discuss it with him, he beat her up so severely that she had to be admitted to the hospital. Although she reported the case to the PNC, he was never prosecuted because he was a police officer. The couple is now separated, but the father does not pay child support and D. continues to live in fear of his return.

C. Violence and sexual harassment in the workplace

33. Salvadoran laws guarantee the legal equality of men and women workers pursuant to the provisions of articles 3 and 38.1 of the Constitution in relation to articles 12 and 123 of the Labour Code (see CCPR/C/SLV/2002/3). However, the areas in which women work tend to escape regulation and therefore often entail poor working conditions, low wages, little job security, and the potential risk of exploitation and violence. The two employment arenas in which women most commonly work are the *maquilas* and domestic labour in private houses.

1. Maquila plants in export processing zones (EPZs)

34. There are roughly 240 *maquila* (assembly) plants located in the 15 EPZs. According to the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM),²⁶ 80,000 women work in *maquilas* in El Salvador: 40-50 per cent of these women have an education of between grades 1 and 6; 70 per cent are unmarried mothers; and 75 per cent

are between 18 and 25 years of age, while the remaining 25 per cent are between the ages of 40 and 50. They receive a salary averaging US\$ 150 a month, of which roughly 15 per cent goes to rent and 7 per cent to pensions. The majority of *maquila* employees work for about 10 years, after which many suffer serious health problems such as respiratory disease, urinary infections due to low water consumption, allergies, and joint problems caused by repetitive movement.

35. The women interviewed testified that, despite paying insurance/pension contributions throughout their employment, they did not receive benefits or leave when they became ill or pregnant as they were coerced to sign documents that relieved employers of their legal obligations. Furthermore, they reported that the Ministry of Labour did not conduct regular visits to the *maquilas* to enforce international labour standards. Women working in the *maquilas* expressed the view that while the Government promoted the *maquilas* as an alternative to agriculture and a solution to the unemployment problem in the rural areas, it has neglected measures to protect labour rights, which allowed, “the greedy and abusive” *maquila* owners, to monopolize the terms of employment. This situation puts women at risk of sexual harassment, rape, beatings and exploitation. Many women do not report violent incidents out of fear of being dismissed and being blacklisted from working elsewhere. The CLADEM data shows that the majority of women employed in the *maquilas* is of rural origin, unmarried or living in unstable conjugal relationships, and have a low level of education that limits their employment options.

36. I raised some of these concerns, including the dismissal of women on grounds of pregnancy, with government officials; dismissal on the ground of pregnancy has no basis in the Labour Code. They assured me that the law is enforced and any injured party dismissed under such circumstances could apply to the Ministry of Labour with a medical certificate confirming the pregnancy. Proceedings would therein be instituted against the employer for violation of the law, and compensation and/or reinstatement for the victim would be sought. They said that a draft amendment to the Labour Code was tabled in the Legislative Assembly in January 2004 stipulating that a medical examination and confirmation of condition may not be required, and that dismissal on grounds of pregnancy is prohibited.

37. Despite the testimonies I received regarding violations of women’s rights in the EPZs - including sexual harassment, subjection to pregnancy tests and denial of employment of pregnant women among others, no cases of withdrawal of free-zone privileges for companies due to such violations were reported.

2. Domestic work in private homes

38. According to the ILO International Programme on the Elimination of Child Labour (IPEC) projections of Salvadoran census bureau data, there were an estimated 21,500 children between the ages of 14 and 19 working in domestic service in 2001, of whom 95 per cent were female. Nearly one quarter began working between the ages of 9 and 11 and over 60 per cent were working by the age of 14.²⁷

39. The condition of domestic workers, many of whom are live-in maids in private homes, escape labour codes, namely the 8-hour workday and the 44-hour workweek guaranteed to other workers. Domestic workers may work up to 16 hours a day and in some cases every day of

the week. El Salvador is the only country in Central America to participate in the ILO-IPEC Time-Bound Programme to eliminate the worst forms of child labour. However, the Government has not included domestic labour in this programme.²⁸ Girls are particularly vulnerable to physical abuse and sexual harassment from members of the household in which they live and work. An ILO-IPEC study in 2002 found that 60 per cent of girl domestics surveyed reported physical and sexual abuse. Of those who had held more than one position as a domestic worker, 15.5 per cent reported leaving their position because of sexual harassment or sexual abuse. Human Rights Watch reports that girls receiving payment earned between \$40 and \$100 per month. The IPEC study found wages to range from zero to US\$ 114.29.

D. Police-related violence

40. Women's rights organizations asserted that sexual harassment within the National Police Force (PNC) is widespread.²⁹ Seven per cent of the police force is made up of women (1,164 women out of a force of 16,474), with a high proportion of female police officers having reportedly been subjected to sexual harassment and violence. Since women police officers subjected to such violence may suffer from emotional trauma related to psychological coercion, blackmail, manipulation or threats, their professional performance can be severely compromised. Victims report strong repercussions in their job stability that may involve transfers and arbitrary punishments, greater work burdens, or obstruction from future professional and promotional opportunities.

41. Victims also suffer greater marginalization and discrimination after reporting a violation to authorities or rejecting an aggressor's intentions. All of these repercussions re-victimize those affected and support a climate of impunity, while sending a message that eliminating these behaviours is not an institutional priority. The women's studies institute CEMUJER (Centro de Estudios para la Mujer) trains police officers in women's rights and counsels female employees subjected to harassment in the PNC. Although exact figures were not made available, I was informed that sexual harassment charges are generally dismissed by the courts.

42. The Procurator General for Human Rights informed me that she has also received complaints regarding allegations of the ill-treatment and sexual violence of women under custody by the PNC. There was no indication of such violence within the prison system. At the time of my visit there were 650 female prisoners. The female prisoners whom I spoke to at the women's prison in San Salvador were mainly concerned with improving detention conditions and receiving more vocational training.

E. Violence related to commercial sexual exploitation

43. El Salvador's geographical location is attractive to undocumented persons as a transit route to the United States and other countries in Central America; such traffic has increased in recent years. The lack of opportunities pushed people into the migration stream and put them at risk of trafficking and exploitation. According to NGOs, persons reportedly pay between US\$ 4,000 and 5,000 to be smuggled into the United States of America; however, many women and children do not make it to their final destination and instead have disappeared. Many are

trafficked into commercial sex exploitation, and some are raped and/or found murdered near the Mexico/United States border. The migration policy of the United States since 11 September 2001 has exacerbated the problem as more migrants are forced to enter the country clandestinely, becoming easy targets for traffickers.

44. Another dimension of trafficking involves the abduction and fraudulent adoption of children. International adoptions have reportedly been taking place in El Salvador since 1982. The Government considered it to be a viable option for the country's "orphan" crisis during the war years.³⁰ According to the NGO Save the Children, many infants, the majority of whom are girls, are taken from El Salvador for commercial or fraudulent adoptions in the North and in Europe. Women's sexuality and reproductive capacity have thus gained a commercial value. As a result, criminal networks have made a business of coercing young and poor women to have babies for sale. The Government is well aware of the multifaceted trafficking and informed me of a regional agreement, which was due to be signed in March 2004, providing legal guarantees for the victims of trafficking. The authorities are working with the International Organization for Migration to create a shelter for victims of trafficking.

The case of Mr. Nelson Garcia is illustrative of another form of commercial sexual exploitation. It also reveals how the justice system fails to effectively address such cases. Mr. Nelson Garcia, Dean of the Law Faculty, Director of the Bar Association and candidate for the Supreme Court of Justice was accused of the commercial sexual exploitation of girls by allegedly filming and taking pornographic photographs of them. Police reportedly found pornographic material at his home, but did not arrest him. He went into hiding and was later captured, but detained in a hospital rather than a standard detention facility. He allegedly received special treatment due to his social standing. Many other powerful persons are thought to be involved in similar activities, suggesting that the Garcia case is only the tip of the iceberg. The media was insensitive in the way it reported the case by showing photographs of the victims despite legislation to protect minors. The victims now face sexual stigmatization and are taunted as the "porno girls" at school. At the time of my visit in February 2004, Mr. Garcia's lawyers were challenging the legality of the process.

IV. ACHIEVEMENTS IN THE RESPONSE TO VIOLENCE AGAINST WOMEN

A. Government initiatives

1. Legislative

45. El Salvador's Constitution establishes the equality of all persons without distinction as to race, sex or religion. The country is party to all major international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), effective since 1981, and the Optional Protocol signed in 2001 but yet to be ratified. As a signatory to the Optional Protocol, the Government has demonstrated its positive disposition towards ratification. The major obstacle to the ratification of the Optional Protocol is the influence of conservative groups in the House of Representatives.

46. El Salvador is also party to the Convention on the Political Rights of Women (ratified in 1994); the Inter-American Convention on the Granting of Civil Rights to Women (1951); the Inter-American Convention on the Granting of Political Rights to Women (1951); and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (1995). As party to these instruments, the Government of El Salvador further shows its commitment to taking the appropriate measures to curb violence against women.

47. A considerable number of reforms have been introduced to strengthen domestic legislation and bring it into line with relevant international instruments. The 1996 Law against Intrafamily Violence was revised on 27 June 2002. The Domestic Violence Act is a preventive law enacted to punish acts of violence within the family and defines domestic violence as any direct or indirect act or omission that causes injury or physical, sexual or psychological suffering to or the death of a family member. Family courts and justices of the peace exercise jurisdiction for the application of this Act. The Act stipulates that any person with knowledge of an act constituting domestic violence may report it or bring it to the attention of the PNC, the competent courts and the Office of the Procurator General of the Republic.

48. Importantly, article 16 of the Domestic Violence Act, as amended, provides that conciliation is provided when the victim so requests or when it is appropriate, and relates only to elements such as housing, children and custody, and economic aspects. It states that acts of violence are not subject to conciliation; rather, the appropriate protection measures must be requested.³¹

49. In 1998, a new Penal Code entered into force that incorporated several provisions to protect women's rights, including crimes of sexual harassment and domestic violence.

50. On 25 November 2003, a number of decrees were approved to increase the penalties for crimes against sexual freedom and those related to sexual commercial enslavement.³² On 8 January 2004, the Government further reformed the Penal Code, criminal procedures and the Family Code in order to encourage greater paternal responsibility and the provision of child support by introducing penalties for non-compliance with alimony payments.³³

51. Trafficking in women is classified as an offence under the Penal Code³⁴ and El Salvador has approved the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.³⁵

52. The effective application of the legal framework for the prevention and prosecution of violence against women, however, remains a challenge and is explored below.

2. Institutional

53. The National Institute for the Advancement of Women (ISDEMU) was established³⁶ as a national mechanism for incorporating gender issues in public policy, promoting the advancement of women, establishing gender equality and removing obstacles to women's participation in

social, economic, cultural and political spheres. The creation of ISDEMU facilitated the development of a National Policy for Women (PNM) to promote equality of opportunity between women and men. A new action plan for 2000-2004 has been drafted and introduced under the "New Alliance" programme of Government. Its programmes include gender as a cross-cutting issue in all the activities of the public sector and aims to secure the cooperation of the various organs of the State (executive, legislative and judicial); local authorities; autonomous institutions; and political and civil organizations, especially women's associations.³⁷ In 2000, the Inter-institutional Legal Commission was set up to identify gaps, inconsistencies, rules and regulations that discriminate against women. It is also responsible for aligning domestic legislation with ratified international treaties and proposing necessary reforms to the governing board.³⁸

54. Regrettably, ISDEMU does not have the legal or budgetary capacity to comply with its mandate as a national machinery to coordinate a comprehensive policy for the advancement of women and gender equality; instead, it undertakes fragmented projects. Nor does it possess the political power to enforce the commitments assumed under the Convention on the Elimination of All Forms of Discrimination against Women. The most concrete example is the inability to push forward the adoption of the CEDAW Optional Protocol, which has been in the Legislative Assembly for the past two years.

3. Programmatic

55. ISDEMU has implemented a number of campaigns with the aim of ensuring the equality of rights between men and women and eliminating stereotypes, including events to prevent intrafamily violence. Radio campaigns and awards for good reporting on violence were among their activities. One temporary shelter for victims of violence with specialized professional staff is in operation. At the time of my visit, ISDEMU was planning to open a second shelter in the North of the country in May 2004.

56. ISDEMU's Family Relations Improvement Programme is an inter-institutional initiative to coordinate activities to control, prevent, treat and monitor cases of sexual and domestic violence. It is an effort to raise awareness about sexual and domestic violence, as well as to prevent and deal with cases of violence. As part of the programme, a family-friendly telephone line (TAF)³⁹ is available to offer the following services: (a) crisis intervention to help victims of domestic violence; (b) psychological monitoring of victims during the initial episode of the crisis; (c) telephone counselling, support and monitoring of victims during the legal proceedings; (d) follow-up treatment in cases of individual and group violence, crisis management and monitoring of aggressors; and (e) selection and monitoring of cases in which victims require shelter. According to ISDEMU, 102,784 domestic violence victims used the phone line and 224,931 persons benefited from the preventative action at national level between 1999 and 2003. Additionally, 1,723 victims used the shelter between 2000 and 2003.

57. In December 2003, the Salvadoran Institute for the Protection of Children and Adolescents (ISNA) opened a home in Ahuachapan Department particularly for the care of girls who have become pregnant and given birth as a result of rape. It currently provides services to 12 girls and their children. They cooperate with police to search for minors in the red-light

districts, rescuing 65 children in 2003. With the support of ILO, the Salvadoran Institute has been able to develop a programme for the prevention of commercial sexual exploitation of children. The institute plans to work at the municipal level throughout 2004 to eliminate the worst forms of child labour, particularly involving girls.

58. The Police Academy has developed a human rights programme that conducts modules on “Policing and women’s rights” designed to raise awareness among public security professionals about women’s historically rooted inequality and social vulnerability warranting special consideration from police. The Women’s Association for Dignity and Life generated generally positive attitudes from PNC authorities about the ways in which it organized and implemented measures to tackle domestic violence and to publicize the function of the police in such matters.

B. Civil society initiatives

59. A network of women’s organizations works with the police, the Attorney-General and the Procurator General’s office to improve the criminal justice system’s response to cases of violence against women. They are also in the process of developing a manual of implementation standards to prevent violence against women with the support of UNDP. The manual aims to sensitize criminal justice institutions on violence against women issues and victim assistance. The network has looked into complaint registration protocols and developed a follow-up system to observe the effectiveness of procedures in preventing violence against women. NGOs have attempted to gain a better understanding of the perception of violence against women cases within the courts by reviewing how judges analyse cases (see below).

60. CEMUJER, founded in 1980, provides services to women and girl victims of violence. The institute has a clinic that offers legal, psychological, and social support. It also offers legal representation to ensure that women receive improved access to justice. CEMUJER provides training for judges and technical advice in an effort to develop a national plan to combat domestic violence. The organization documents abortion cases to support proposals to amend the Penal Code to allow for therapeutic abortion.

61. The Fundación de Estudios Para la Aplicación de Derechos (FESPAD) monitors institutions with the view to curb criminality, particularly the criminal justice system’s response to violence against women.

62. Las Dignas has formed mutual assistance groups and given legal literacy training to empower women to make informed decisions about how to proceed in the legal system. The organization helps victims prepare for court and provides support services throughout the legal process.

63. Reportedly, women’s associations in rural communities have been successful in providing a support network. Movimiento Melida Anaya Montes is one organization that provides safe houses for women victims of violence, legal literacy training and psychosocial treatment.

C. United Nations initiatives

64. During the negotiation and implementation of Peace Accords in El Salvador, the United Nations played instrumental roles in mediating negotiations, verifying peace agreements according to international human rights standards, and providing financial and technical assistance to promote institutional development. The United Nations Observer Mission in El Salvador (ONUSAL) was particularly crucial in the peace process as an observer and monitor of the peace agreements and elections in El Salvador between 1991 and 1995.⁴⁰

65. Today, the United Nations country team continues to provide support for the development and human rights endeavours in the country. Each United Nations entity promotes women's advancement within the context of their own mandate. The Inter-Agency Gender Group (GIGNU) promotes the expansion and deepening of gender components within United Nations programmes and coordinates with the government entities and women's groups to execute the international agenda on gender issues and to mark International Women's Day. The Inter-Agency Programme for the Empowerment of Adolescent Women (PIEMA), an offshoot of the GIGNU initiative, works to resolve problems facing young women by providing programming on leadership training, HIV/AIDS awareness, gender-based violence, maternal health and prenatal care.⁴¹

V. REMAINING CHALLENGES

A. Effective implementation of the law

66. Despite the generally positive legal frameworks, institutions and programmes outlined above, the Government of El Salvador is failing in its obligations under international law to effectively prevent, investigate and prosecute crimes of violence against women, mainly due to gender discrimination in the criminal justice system and inconsistencies in the interpretation and application of the law. NGO findings show that judges do not take into account the gender discrimination that women experience, nor do they consider the unequal power relationship between men and women when making their adjudications.

67. The common perception among the judges assigned to cases of violence against women is that the woman must have provoked the violence committed against her. Due to these stereotypes and the belief that gender-based violence is not a serious matter, judges incorrectly apply or interpret the law, often opting for reconciliation rather than prosecutorial processes in domestic violence cases. The new domestic violence act, mentioned above, strengthens protection and clearly prohibits reconciliation to avoid returning victims to situations of abuse. To be fully effective, article 32 of the Code of Criminal Procedure must also be revised.⁴²

68. Victims and their families have reported that when they seek justice they are subjected to further abuse and discrimination by the criminal justice system. In San Salvador, I spoke with several families whose daughters and sisters were among the victims of brutal murders. They all felt that the police and judicial authorities had treated their requests for investigation into the murders with complete disregard. In many of the cases, police conducted only cursory

investigations, if any at all. Some family members reported being treated with indifference by the authorities and some female relatives were even sexually harassed by police officers. Furthermore, women's organizations working to assist the victims' families said that they had received anonymous death threats and that the police had refused to protect them.

69. The Fundación de Estudios para la Aplicación de Derecho (the Foundation for Studies on the Application of Law, or FESPAD) recognized some improvements in the criminal justice system's response to violence against women. It argues, however, that the police have not been trained to investigate cases of violence against women, nor to collect evidence with the necessary sensitivity and knowledge of the laws on victims' rights. Some types of violence receive more thorough investigations, such as kidnappings when investigations have been granted more resources and have, therefore, reduced the incidence of such crimes. For other types of offences such as murder, the number of perpetrators brought to justice is very low. Reportedly, of the 10,000 sexual offence cases registered with the police each year, only 2 in every 100 cases reach a judge.

70. Impunity still exists for perpetrators with high political or social status, which obstructs justice. The case of Katia Miranda is a particularly illustrative example of the need to strengthen institutional accountability to prevent impunity. The Office of the Human Rights Procurator strongly condemns the way in which the case had been handled even at the highest level and NGOs continue to fight for the full investigation and prosecution of this and similar crimes. While it is beyond my mandate to examine or determine the facts of the case, the information at hand does suggest disconcerting irregularities and omissions in the investigation and trial that indicate the need for further review and probable systemic reform.

71. The Ombudsman's office has developed a data collection system to follow assistance provided to women, and to monitor police and court treatment of women's cases to put pressure on authorities to comply with international obligations. However, since 1999, this system has encountered obstacles. As peace accords paved the way for the development of democratic institutions and society, powerful conservative forces that view such monitoring practices as dangerous to their interests have reportedly started to neutralize/weaken the powers of the Ombudsman's office, specifically shutting down the subdivision of the office promoting women's rights. The appointment of a new ombudsman with an alleged record of human rights violations further damaged the credibility of the office. Although he was eventually removed from office, his deputy remained on duty, which reduced confidence in the office even further.

72. I also received worrisome reports⁴³ of attacks launched against the judiciary by senior government officials due to decisions relating to the implementation of the AMA. Such interference is an infringement of the peace agreements, the recommendations of the Commission on the Truth and standards and principles regulating the separation of powers at national levels. Such attacks on the independence of the judiciary must be prevented to ensure institutional strength capable of serving all people without discrimination and upholding the rule of law. All steps should be taken to preserve the international standard guaranteeing that judges shall resolve the matters before them "without improper influence (...), pressures, threats or interferences, direct or indirect, from any quarter or for any reason".⁴⁴

B. Access to reproductive health and rights

73. While many of the legislative reforms provide greater protection for women's rights, the area of reproductive rights in particular is a serious concern. Induced abortion has always been an unlawful act in El Salvador; however, therapeutic abortion and abortion following rape or abortion on eugenic grounds was legal until 1999 when the Constitution was amended to recognize the human person from the moment of conception. The right to life of embryonic human beings is also protected in articles 133-141 of the Penal Code, which makes violating this right a criminal act.⁴⁵ In this amendment, the rights of the foetus have been prioritized over a woman's right to life, health and well-being.

74. Consequently, women and girls impregnated as a result of rape are condemned to further emotional, social and economic victimization as they are forced to either keep the child, face criminal charges or risk death. Furthermore, a manual that contained information for adolescents regarding sexual and reproductive health was withdrawn from the educational system in 2000, thus revoking efforts made by the Ministries of Health and Education to raise awareness and prevent unwanted pregnancies.

75. The criminalization of abortion denies women the right to control their bodies and their lives, and the right to reproductive health services that enable them to enjoy full and healthy lives. Unwanted pregnancies put women in a particular bind since they cannot legally terminate the pregnancy, yet face stigma, hardship and dismissal at work for being pregnant. The failure to protect the rights of pregnant women and single mothers and the criminalization of abortion creates a systemic double standard that abandons women to meet the difficulties alone. The life that awaits children thus born is another dimension of the dilemma. In this context, teenage pregnancies have become particularly worrisome. Reportedly, 23 per cent of registered births are delivered by teenagers. Most of these women are forced to start families before they have the means to do so, putting both mother and child into precarious circumstances.

76. The criminalization of abortion is discriminatory primarily for poor women, as women of higher social standing are said to have access to other options for dealing with unwanted pregnancies. The majority of cases involving illegal abortions brought before the courts involve poor, under-educated young women who induced abortions by using unsafe methods in unsanitary environments, which contributes to health complications or deaths.⁴⁶

VI. CONCLUSIONS AND RECOMMENDATIONS

77. **The representation of the opposition in the legitimate political order in the post-war era, the influence of the women's movement in shaping public discourse and the improvements in the legal protection of women's rights are most promising aspects of the Salvadoran transition to peace and democracy. Moreover, it is commendable that the Government of El Salvador has recognized the problem of violence against women and has brought legislation into line with international standards to a large extent. Since the establishment of the human rights unit within the PNC, progress is being made in the collection of sex-disaggregated data on cases of violence against women (victim, perpetrator, location).**

78. The consolidation of democracy in the country, however, is hampered by lack of justice and security. The resistance of various stakeholders makes change particularly slow as a small elite class continues to control the wealth and resources with influence over security forces, politicians and the judiciary. This situation is an obstacle to achieving an inclusive and just society.

79. During the last five years, there has been a backlash against the protection and promotion of women's rights that has weakened certain institutions that promote women's rights. The reform of the Constitution and Penal Code to remove therapeutic abortion is a fundamental setback in this regard. I share the Human Rights Committee's concluding observations on El Salvador⁴⁷ regarding the severity of the current law against abortion in its violation of women's right to adequate health care and right to life. Woman's right to make decisions involving her reproductive life without risk to her life, health and integrity must be respected. The resistance to the ratification of the Optional Protocol to CEDAW on the grounds that it is unconstitutional needs to be addressed and challenged.

80. Poverty, impunity for the perpetrators of violence against women; sex and class discrimination in the application of law; overall ineffectiveness in protection of women's rights; *machista* culture; the possession and use of arms; and institutional impotence are all factors that require urgent attention. In this context, there is need for research and sex-disaggregated data to guide policy and monitor progress in all sectors.

81. In view of the remaining gaps and challenges, I would like to make the following recommendations directed to the Government of El Salvador, the international community and civil society.

82. First, I recommend that the Government of El Salvador:

(a) Create an information and knowledge base:

- Support research on the links between family structure, paternity, child development and domestic violence and their implications for violent behaviour, including gang activity;
- Enhance collection and analysis of sex-disaggregated statistics in all sectors particularly related to labour, health and the criminal justice system;
- Develop a systematic method of recording and disseminating data on all forms of violence against women at all stages - from complaint to closure;

(b) Ensure protection by legislative, investigative and judicial reforms:

- Ratify the CEDAW Optional Protocol; bring legislation in line with CEDAW and ICCPR regarding the protection of life and access to health care;
- Amend article 32 of the Code of Criminal Procedure;

- **Remove all obstacles to the effective implementation of the law for the protection of women's rights and their access to justice and install effective investigation and monitoring mechanisms;**
- **Investigate all instances of alleged violence against women whether it occurs in the home, in the community, or workplace; prosecute perpetrators; and grant adequate compensation and support to survivors or victims' families;**
- **Adopt necessary laws to provide protection to victims of trafficking in accordance with international human rights standards including the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), and prosecute the users and abusers of trafficked persons;**

(c) Strengthen institutional infrastructures:

- **Support the Office of the Procurator and provide it with full institutional backing, as well as the needed resources, so as to ensure its independence and operations; take additional steps to guarantee the security of all members of the Office in the performance of their functions;**
- **Provide sufficient shelters/safe houses and counselling for women survivors of violence;**
- **Strengthen ISDEMU's capacity towards adopting a holistic strategy of work; to promote and monitor the national action plans for women in all ministries; and to outreach to civil society to better represent the priorities of diverse women's groups in the country;**
- **Provide ISDEMU with adequate budgetary allocations to enable its participation in relevant international and regional events, particularly the annual meetings of the Commission on the Status of Women, as well as to support the participation of a wide range of women's NGOs in its activities;**

(d) Initiate training and awareness-raising programmes:

- **Support training of the justice sector and the police on new legislation for the protection of women's rights, investigative techniques and sensitivity to needs of survivors of violence and their families;**
- **Conduct legal literacy campaigns to inform women of their rights and places to go to submit complaints;**

- Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for recruitment of women, and assistance with health care;
- Conduct awareness-raising campaigns to generate zero tolerance for violence against women and behavioural change promoting non-violent masculine values;
- Integrate gender equality and human rights norms into school curricula and books that focus on equality in parenthood with particular emphasis on responsible fatherhood;

(e) **Enforce and monitor international labour standards:**

- Ensure that the Ministry of Labour exercises due diligence to violence and violations of labour standards in workplaces, particularly in the *maquilas* and private homes where girls and women work without any protection;
- Monitor the labour standards in the *maquilas*, investigate complaints and bring perpetrators to justice; and
- Include domestic work in the ILO/IPEC “worst forms of child labour” definition and take measures towards its elimination.

83. **Further, I recommend that the international community:**

- Expand the OHCHR mandate from technical cooperation to human rights protection and monitoring so that cases can be followed through the criminal justice system;
- Provide, through bilateral and multilateral funding, sufficient resources to strengthen the OHCHR capacity to support the Government’s initiatives for effective implementation of international, regional and domestic law for the protection of women’s rights with the aim of eliminating impunity for acts of violence against women, which would include training for judges and magistrates in international human rights instruments, introducing mechanisms for applying these principles in the domestic judicial process from a gender perspective;
- Provide sufficient resources to strengthen the capacity of the United Nations country team to integrate the promotion and protection of women’s rights into all of its activities; and
- Provide funding for research, advocacy and projects on gender issues to the women’s NGOs, research institutes and academics.

84. **Finally, I recommend that civil society, including women's NGOs, human rights groups and the media:**

- **Conduct policy-oriented research in the area of violence and women and human rights violations;**
- **Work with the State to reaffirm its international commitments and ratify the Optional Protocol to CEDAW to signal that women's human rights are recognized and considered a priority;**
- **Examine viability of presenting women's rights violation cases before international human rights protection systems such as the Inter-American system;**
- **Join efforts to develop common strategies and campaigns to hold the Government accountable for the promotion and protection of women's rights;**
- **Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with local authorities to develop policies to address the problems;**
- **Adopt a strong lobbying and advocacy role, including through sensitizing the media to raise awareness about the gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes, and show sensitivity to the needs of the victims and their families when reporting violent crimes. In collaboration with other civil society actors, the media can promote equal sharing of paternal responsibilities and demand State accountability to investigate and prosecute perpetrators of violence.**

Notes

¹ In this regard I visited Guatemala in February 2004 and will visit Mexico in February 2005.

² In 1978, before the outset of war, families constituting the richest 20 per cent of the population earned 67 per cent of the country's total income, while the earnings of the poorest 40 per cent of families constituted only 7.5 per cent. In 2000, the poorest 20 per cent of the Salvadoran population earned only 2.9 per cent of national income, while the richest 20 per cent earned 57.1 per cent (Human Development Report, 2004). The top 10 per cent of landowners at that time controlled 78 per cent of the arable land (Inter-American Commission on Human Rights; see www.cidh.oas.org/countryrep/ElSalvador78sp/cap11.htm).

³ CEDAW/C/SLV/3-4, p. 21.

⁴ FAO, Sustainable Development Department. 1997. "Fact sheet: women, agriculture and rural development: El Salvador" (www.fao.org/WAICENT/FAOINFO/SUSTDEV/WPdirect/WPre0037.htm).

⁵ CEDAW Shadow Report 2003.

⁶ CEDAW/C/SLV/3-4 (2001), p. 3.

⁷ Encuesta de Hogares y Propósitos Múltiples del 2003, ISDEMU, “Datos sobre mujeres jefas de hogar en El Salvador”, (www.isdemu.gob.sv/Principal/OpcionesMenu/Promocion/comunicados/Comunicados.htm).

⁸ Women in the service sector earn 43 per cent of what men earn and this goes up to 77 per cent in the professional and technical fields (CEDAW/C/SLV/3-4, pp. 4-5).

⁹ The increase in 2002 in the percentage of the population under the poverty line may in part be related to the impact of the devastating earthquake in 2001.

¹⁰ Call, Charles T., 2000. “Assessing El Salvador’s Transition from Civil War to Peace”. In S.J. Stedman et al. (eds.). *Ending Civil Wars*. London: Lynne Rienner Publishers, p. 384.

¹¹ Ertürk, Y., “Women, conflict and peace in El Salvador and Guatemala”, presentation at panel *Affirmative Action and 1325*, organized by OHCHR and Government of Germany, 5 April 2004. Also see Luciak, I.A., 2003. “Peace agreements as a means for promoting gender equality and ensuring participation of women: El Salvador and Guatemala”. Ottawa (UNDAW, EGM/PEACE/2003/EP.7).

¹² Ten thousand gang members were registered by the National Civil Police (NCP) in 2003. The gangs are male-dominated but also have female members, estimated at 2 per cent of the total.

¹³ A review request was filed with the constitutional court by the Procurator General for Human Rights on the grounds that the AMA is unconstitutional. Concerns have been raised that the new law would penalize people on the basis of their appearance and social background and that it breeches several general standards of protection. I share some of the concerns in this regard and urge that the rule of law and international norms are not compromised.

¹⁴ ECLAC, 2001. “Diagnóstico sobre paternidad responsable y propuestas para un programa nacional en El Salvador”, LC/MEX/L.477, 6 July, p. 27.

¹⁵ Karla Hanais de Varela. “Domestic violence and rights for childhood”. Paper presented at First Congress on the Rights of Children and Adolescents. Margarita Island, Venezuela. November 2003, pp. 23-29.

¹⁶ Sprenkels, Ralph, 2002. *Lives Apart - Family Separation and Alternative Care Arrangements during El Salvador’s Civil War*. Save the Children, p. 14.

¹⁷ “Gender profile of the conflict in El Salvador”, UNIFEM, 2004 (www.womenwarpeace.org).

¹⁸ ECLAC, LC/MEX/L.477, p. 27.

¹⁹ Ibid.

- ²⁰ Barker, Gary. "Men's participation as fathers in the Latin American and Caribbean region: a critical literature review with policy consideration", World Bank, May 2003, p. 6.
- ²¹ Information provided during a meeting in San Salvador on 2 February 2004.
- ²² Information about violence against women in El Salvador (1993-1994) related to murder and acts of violence, submitted by the Permanent Mission of El Salvador, 18 November 2004.
- ²³ Las Dignas, Asociacion de Mujeres por la Dignidad y la Vida, "La violencia contra las mujeres en el 2003 a traves de la prensa", San Salvador, January 2004.
- ²⁴ Father/father-in-law, 17 cases; lawyer, 10; gang members, 10; partner, 8; uncle, 4; doctor, 4; teacher, 2; police, 2; and son, cousin, grandfather, priest, boss, 1 case each.
- ²⁵ In the reported cases of domestic violence, 91.74 per cent of the victims were women. In 1998 the Forensic Medicine Institute found that countrywide in 87 per cent of the cases of domestic violence in which it carried out medical examinations the victims were women.
- ²⁶ Information provided during my visit to El Salvador, February 2004.
- ²⁷ "No rest: abuses against child domestics in El Salvador", Human Rights Watch, January 2004, vol. 16, No. 1 (B), p. 9.
- ²⁸ Ibid.
- ²⁹ The peace accords instated the PNC as a new national security force outside the jurisdiction of the Ministry of Defense.
- ³⁰ Save the Children 2002, p. 15.
- ³¹ Letter from the Permanent Mission of El Salvador to the United Nations, 19 March 2004.
- ³² See Decrees 210 and 211 approved on 25 November 2003, and in force since 8 January 2004.
- ³³ The law foresees 24 to 48 weekends of imprisonment if alimony obligations are not fulfilled and for fraudulent acts to elude alimony obligations one to three years of prison and special disqualifications. In both cases the person found guilty should attend a course of responsible paternity and maternity.
- ³⁴ Trafficking in persons is punishable by a prison term of four to eight years.
- ³⁵ Executive Decision No. 027 (Foreign Affairs), *Official Gazette* No. 215, volume 361, 18 November 2003.
- ³⁶ Legislative Decree No. 644 of 29 February 1996.

³⁷ The ISDEMU board of directors consists of a president, who is the head of the National Secretariat for the Family (the First Lady of the Republic) and representatives of the Ministries, the Attorney-General, the Procurator General and the Procurator for the Protection of Human Rights, two representatives of women's NGOs, and El Salvador's representative on the Inter-American Commission on Women.

³⁸ The Commission's work includes: (a) a consolidated study of the reform of the Domestic Violence Act; (b) a review of the amendments to the Criminal Code, the Family Code and the Domestic Violence Act; (c) an analysis of the measures for the protection of the family home and a revision of article 46 of the Family Code; (d) a revision of the HIV/AIDS Act proposed by the Health Ministry.

³⁹ It went into operation in San Salvador on 17 March 1995, in San Miguel on 17 May 1999, and in Santa Ana on 20 January 1999.

⁴⁰ Call, Charles T., 2002, pp. 383-4.

⁴¹ For more information regarding United Nations gender initiatives in El Salvador, see UNIFEM's "Gender profile of the conflict in El Salvador", online at WomenWarPeace.org.

⁴² Article 900 of the Penal Code has been broadened in line with the Domestic Violence Act and the process has started to amend article 32 of the Code of Criminal Procedure. At the time of my visit, amendments were before the legislative assembly.

⁴³ Amnesty International, El Salvador: Open Letter on the Anti-Maras Act, AI INDEX: AMR 29/09/2003, 1 December 2003.

⁴⁴ See Principle 2 of the Basic Principles on the Independence of the Judicature adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁴⁵ See Legislative Decree No. 541 of 3 February 1999.

⁴⁶ Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis, Center for Reproductive Rights and Policy, 2001.

⁴⁷ See CCPR/CO/78/SLV.

Appendix

LIST OF SELECTED PERSONS/ORGANIZATIONS MET DURING THE VISIT

Government officials

Sr. Eduardo Calix, Vice-Minister for Foreign Affairs

Sr. Gregorio Sánchez Trejo, Attorney-General

Dr. Herbert Betancourt, Minister of Health

Lic. Lourdes de Flores, First Lady of the Republic and Secretary of the National Family Institute

Sra. Milena Escalón, Delegate to CIM/OEA at the Legislative Assembly

Sr. José Pedro Avalos Laguardia, Deputy General Attorney for Human Rights

Sra. María Elena Muñoz Cisneros, AG office (Women Division)

Lic. Ovidio Portillo, Chief of Division for Society Interest

Dr. Beatrice Alamanni de Carrillo, Ombudsperson

Sra. Raquel Caballero, Deputy Ombudsperson for Women/ Procuradora Adjunta de los Derechos de la Mujer y la Familia - Procuraduría para la Defensa de los Derechos Humanos

Lic. René Dominguez, Vice-Minister of Citizen Security

Dr. Rodolfo Garay Pineda, Director of Prisons

Lic. Nadine Alvergue de Moina, Director of Migration and Foreigner

Sr. Jorge Santibáñez, Director of Citizen Security

Sr. Ricardo Mauricio Meneses, General Director of National Civil Police (PNC)

Lic. Zoila de Innocenti, Executive Director of ISDEMU (Salvadoran Institute for Women)

Sr. Efrén Arnoldo Bernal Chévez, President of Justice and Human Rights Commission

Sra. Blanca Flor Bonilla, President and Secretariat of the Commission of the Family, Woman and Child

Ing. Ismael Rodríguez Batres, Executive Director of "Salvadoran Institute for the Attention of Children and Adolescents"

Dra. Marina de Avíles, Judge Supreme Court of Justice

Sra. Emma Dinora de Avelar, Secretaria General - Supreme Court

Representatives of United Nations and international organizations

Sr. Beat Rohr, United Nations Resident Coordinator and UNDP Resident Representative

Sr. Peter Grohmann, UNDP Resident Representative a.i.

Lic. Luis Ramirez, National Technical Coordinator Protection and Promotion of Human Rights in El Salvador, OHCHR

Representatives from WFP, FAO, PAHO/WHO, UNOPS, UNFPA, UNICEF and ILO

Civil society representatives

Lic. América Romualdo, Representative of the Network Against Gender Violence Red contra la Violencia de Género

Lic. Yolanda Guirola, CEMUJER Conducción del Instituto de Estudios de la Mujer “Norma Virginia Guirola de Herrera” (CEMUJER)/Norma Virginia Guirola de Herrera Institute for Women’s Studies Management Team Member of “Instituto de Estudios de la Mujer Virgiiia Guirola de Herrera”

Lic. Alma Benítez, Coordinator of the Women’s Human Rights Committee for Latin America and the Caribbean

Lic. Gloria Guzmán, Director of Asociación de las Mujeres por la Dignidad y la Vida “Las Dignas”

Lic. Jaime Martínez, Director of Penitentiary Studies in El Salvador

Lic. María Silvia Guillén, Executive Director of Fundación de Estudios para la Aplicación del Derechos, FELPAD

Lic. Rosibel Flores, Director of the NGO “Movimiento Mélida Anaya Montes”

Lic. Benjamín Cuellar, Executive Director of Instituto de Derechos Humanos de la Universidad Centroamericana “José Simeón Cañas” IDHUCA

Comité Latinoamericano y del Caribe para la Defensa de los Derechos Humanos de las Mujeres (CLADEM)

Sr. Mauricio Gaborit, Jefe del Departamento de Psicología, Director de la Maestría en Psicología Comunitaria de la Universidad José Simeón Cañas y Director del Programa de Violencia Representantes de las Agencias del Sistema de Naciones Unidas

Lic. Jayne Orba Lyons, Director of Save the Children.
