

San Salvador and Washington D.C.
30 August 2021

Working Group on Enforced or Involuntary Disappearances
Office of the United Nations High Commissioner for Human Rights
Palais des Nations CH-1211, Geneva 10, Switzerland.

Re: El Salvador - On Disappearances in the Armed Conflict
and Current Disappearances in the Context of Criminality
and Militarized Security

Dear Working Group members:

Greetings from the undersigned organizations. We are writing to you today in relation to the recommendations issued by this Working Group, in its A/HRC/7/2/Add.2 from 2007 and A/HRC/22/45/Add.3 from 2013 reports, concerning the cases of forced disappearance registered in El Salvador.

Forced disappearances and other forms of disappearances continue to occur in El Salvador. On one hand, hundreds of cases of people who disappeared during the armed conflict remain unresolved; and on the other, there have been reports of disappearances allegedly committed by gangs and other forms of organized crime, sometimes in complicity with state actors, in recent years. In both circumstances, impunity prevails.

a. Disappearances Occurring in the Context of the Armed Conflict

First, **regarding the search for disappeared persons**, this Working Group urged the Salvadoran State to create an institutional program to search for disappeared persons in both of the aforementioned reports. The Working Group proposed that this institutional search program be sanctioned by the Legislative Assembly and provided with sufficient resources to effectively carry out its search. We provided these recommendations in addition to those of the victims, who also asked the State to create a body to find persons who disappeared during the armed conflict.

Finally, in 2010 and 2017 respectively, the El Salvadoran government established the **National Commission to Search for Disappeared Children (*Comisión Nacional de Búsqueda de Niños y Niñas Desaparecidos, CNB*)** and the **National Commission to Search for Disappeared Adults (*la Comisión Nacional de Búsqueda de Personas Adultas Desaparecidas, CONABÚSQUEDA*)** through Executive Decrees -not the Legislative Assembly- in order to comply with the recommendations of this Group and judgements of the Inter-American Court of Human Rights (*Corte Interamericana de Derechos Humanos, IACHR*). Both search institutions were created with the mandate to search for, locate, identify, and enable the reunion of persons who disappeared during the armed conflict - or their mortal remains - with their families. These Commissions operate as a single mechanism with autonomy, but within the structure of the Ministry of Foreign Affairs.

So far, the CNB has solved 113 cases of people who disappeared as children, out of 349 documented cases, while CONABÚSQUEDA has 267 investigations in process, out of a total of approximately 5,000 missing adults.¹

The work of searching for those who disappeared decades ago, and whose whereabouts remain hidden, is complex and requires complete understanding of all available technical knowledge in the topic, as well as strong political support. In particular, it requires that the search institutions, and the representatives of the victims and their relatives, have any information or documentation that may be useful in finding the whereabouts of the disappeared person at their disposal. This undoubtedly includes access to the military archives which continue to be shielded by high state authorities.²

Both the **Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-repetition and the IACHR** expressed the necessity for political support and dedication of resources to these search commissions in order for them to be successful during their respective on-site visits in April and December of 2019. Both recognized the importance of **both commissions** for the knowledge and recognition of the truth and the search for disappeared persons, and therefore **urged the Salvadoran State to ensure their institutional and budgetary autonomy**, as well as the necessary resources to carry out their important mission.

In terms of **criminal prosecution** of wartime disappearances, in July 2016, the Constitutional Chamber of the Supreme Court of Justice declared the 1993 General Amnesty Law unconstitutional. This ruling thereby removed all legal obstacles to the prosecution of serious human rights violations or international crimes that occurred in the context of the armed conflict, including forced disappearances. For its part, **the Attorney General's Office (*Fiscalía General de la República*, FGR) created a Special Group of prosecutors to investigate war cases and issued a Criminal Prosecution Policy on the subject.**³ Despite these advances in the institutional framework, impunity continues to be the rule; **no case regarding forced disappearances has advanced, and no person has been criminally convicted for these acts.**

b. Disappearances in the Context of Criminality and the Implementation of Militarized Security Policies

The disappearance of persons in El Salvador has not been a practice exclusive to the past armed conflict. **Since the beginning of this century, the country has faced a growing number of disappearances allegedly committed by gangs and other forms of organized crime operating in the country**, which many experts believe includes members of the public security or military forces, as well as an almost immediate increase in gender-based violence against women.

Although there is no composite and/or validated statistics on the number of missing persons, records from institutional sources speak to several thousand disappeared people. **Between 2014 and 2019 alone, the National Civil Police (*Policía Nacional Civil*, PNC) reported more than 12,000 people missing, a figure higher**

¹ Information provided by CNB and CONABÚSQUEDA, in April 2021.

² See, for example: CNN. *Military in El Salvador prevent justice from accessing civil war archives on El Mozote massacre*, published September 21, 2020. Available at: <https://cnnespanol.cnn.com/2020/09/21/militares-en-el-salvador-impiden-a-la-justicia-acceder-a-archivos-de-la-guerra-civil-sobre-masacre-de-el-mozote/>

³ Available at: <https://www.fiscalia.gob.sv/fgr-lanza-politica-de-persecucion-penal-de-crmenes-de-guerra-y-lesa-humanidad-en-el-contexto-del-conflicto-armado-en-el-salvador/>

than the estimates of those who disappeared during the armed conflict.⁴ This number worsens if we look at the statistics of the FGR, which in the same period received more than 22,000 complaints, which represents an average of more than 3,600 reports per year, that is, an average of 10 complaints per day.⁵ For the most recent period, during 2020, despite being a year characterized by mandatory house confinement caused by the COVID-19 pandemic,⁶ there were more than 2,270 reported disappearances which is a rate of 6 missing persons per day.⁷ Furthermore, between January and April 2021, the FGR reported that the number of missing persons doubled between 2020 and 2021 from 198 to 424 in the same four-month period.⁸

This criminal phenomenon has a differentiated impact based on an individual's gender. The recent reviews of official records show that "reports and filed complaints regarding **disappeared girls and women** represent between 30 and 40 percent of the total number of cases reported", and they are rarely found alive or dead.⁹ At the same time, **the disappearance of women as an act prior or subsequent to femicide is a recurrent practice**, as multiple cases in various media outlets warn.¹⁰ On many occasions, the aggressors are well-known and close to the victim. **However, the alert and search systems for missing persons still do not specifically consider this dimension or aspect of violence as "disappeared"; therefore, the official results are ineffective and not in accordance with the standards on the matter.**

As if this were not enough, in territories dominated by violent male groups -such as gangs- women and girls face a process of continuous subjugation, with disappearance being one of its most serious expressions. In these cases, the search alerts are often overshadowed by the justification of living in gang-controlled territories, claiming -in practice- that these disappearances are the result of "their involvement" with these criminal structures.¹¹

In relation to these "current" disappearances, **the FGR is responsible for the investigation: both in searching for the missing person and the determination of those responsible and the prosecution of the case.** For these purposes, since December 2018, the country has had the **Urgent Action Protocol (Protocolo de Acción Urgente, PAU)** and a Strategy for the Search for Missing Persons.¹² In July 2019, the Specialized Unit for

⁴ Foundation of Studies for the Application of Law (FESPAD). 2021. *La desaparición de personas y el contexto de la violencia actual en El Salvador: una aproximación inicial*. San Salvador: FESPAD EDICIONES; pp.19. Available at: <https://www.fespad.org.sv/investigacion-desaparicion-de-personas-en-el-salvador/>

⁵ El Faro. *El Salvador criminalizes its disappeared women*. Published July 14, 2021. Available at: <https://elfaro.net/es/202107/columnas/25601/El-Salvador-criminaliza-a-sus-desaparecidas.htm>

⁶ La Prensa Gráfica. *In the midst of the pandemic, Sara searches for Miguel. Séptimo sentido*, published July 5, 2020. Available at: <https://7s.laprensagrafica.com/en-medio-de-la-pandemia-sara-busca-a-miguel/>

⁷ El Diario de Hoy. *More than 2,200 people disappeared in 2020, according to data from the Attorney General's Office*. Published February 6, 2021. Available at: <https://bit.ly/3ibmkGh>

⁸ La Prensa Gráfica. *Figures of missing persons has doubled in 2021*. Published on June 17, 2021. Available at: <https://www.laprensagrafica.com/elsalvador/Cifras-de-desaparecidos--se-ha-duplicado-en-2021-20210616-0105.html>

⁹ FESPAD. 2021. *La desaparición de personas y el contexto de la violencia actual en El Salvador: una aproximación inicial*. *Supra note 4*, pp.32-3.

¹⁰ See news on the **femicide of Karla Turcios** at: <https://www.laprensagrafica.com/asesinato-de-karla-turcios-t17906>; on the **femicide of Jocelyn Abarca** at: El Diario de Hoy. *He dismembered her and threw her body into a river, judge sentences Jocelyn Abarca's ex-partner*. Published on August 7, 2020. Available at: <https://www.elsalvador.com/noticias/nacional/feminicidio-jocelyn-abarca/740273/2020/>; and, in Arpas. *Jocelyn Abarca's family awaits justice two years after her femicide*. Published June 20, 2020. Available at: <https://arpas.org.sv/2020/06/familia-de-jocelyn-abarca-espera-justicia-a-dos-anos-del-feminicidio-de-la-joven/>. On the case of the **femicide of Flor García**, see: La Prensa Gráfica. *Capturan a esposo de Flor García, desaparecida en marzo, en Cojutepeque*. Published June 25, 2021. Available at: <https://www.laprensagrafica.com/elsalvador/-Capturan-a-esposo-de-Flor-Garcia-quien-desaparecio-en-marzo-en-Cojutepeque-20210625-0055.html>.

¹¹ El Faro. *Alison in the land of missing teenage girls*. Published September 7, 2020. Available at: https://elfaro.net/ES/202009/EL_SALVADOR/24786/ALISON-EN-EL-PA%C3%ADS-DE-LAS-ADOLESCENTES-DESAPARECIDAS.HTM

¹² This tool was developed with support from UNODC and the Government of Canada.

Missing Persons was created within the FGR,¹³ as well as the Internal Instructions for the Search.¹⁴ Additionally, the FGR in coordination with the Supreme Court of Justice, created the **National System of Missing Persons and Cadaver Registries**.¹⁵ A month later, in December 2019, the reform to article 148 of the Criminal Code came into force, creating the crime of disappearance of persons, which is a new criminal figure aimed at prosecuting disappearances committed by private individuals,¹⁶ designed especially for gang members.

In addition, one of the most important challenges facing the State of El Salvador in responding to disappearances today is to articulate an inter-institutional response that functions as an early warning and intervention system. The current system is fragmented, dispersed, and centralized in the capital city (San Salvador), and is not very empathetic to the circumstances faced by those who are searching. Therefore, **despite all these institutional innovations, progress in cases remains minimal**. Thus, in short, **the State response to these serious crimes is still slow and deficient**, as evidenced by the fact that, in recent years, only four cases have resulted in judicial convictions.¹⁷

Based on all of the above, we ask you to:

1. Pay special attention to the situation of disappeared women, which appears to be on the rise, and to the implementation of the "Urgent Action Protocol and Strategy for the Search for Missing Persons in El Salvador" and the Special Unit for Missing Persons of the Attorney General's Office, which are mechanisms created for the immediate search of missing persons.
2. Follow up on the functioning of the CNB and CONABÚSQUEDA to ensure that they act in accordance with international standards in this area, and that they have sufficient resources to carry out their mission.
3. Invite the Government of El Salvador to a meeting with the Working Group during its next session, in order to receive information on the above; or if not possible, request information in writing.

Likewise, we submit for your consideration the possibility of **requesting a visit to the country**, either by the Working Group as a whole or by one of its members, as soon as possible. The recent and important changes in El Salvador that we have described fully justify the presence of the Working Group in the country in order to observe, support progress and recommend measures for the prevention and investigation of disappearances.

If you have any concerns, questions or further clarifying questions, we are happy to provide any additional information that you may require. It is our firm conviction that support from the Working Group is crucial in this stage that El Salvador and the victims of disappearances of yesterday and today find themselves in.

¹³ The World. *Prosecutor's office launches specialized unit for missing persons*. Published July 16, 2019. Available at: <https://diario.elmundo.sv/fiscalia-lanza-unidad-especializada-para-personas-desaparecidas/>

¹⁴ FGR. *Attorney General presented Instructivo para la Búsqueda de Personas Desaparecidas (Instructions for the Search of Missing Persons)*. Published August 12, 2019. Available at: <https://www.fiscalia.gob.sv/fiscal-general-presento-instructivo-para-la-busqueda-de-personas-desaparecidas/>

¹⁵ La Prensa Gráfica. *The new system that will help the Prosecutor's Office find missing people in El Salvador*. Published November 20, 2019. Available at: <https://www.laprensagrafica.com/elsalvador/El-nuevo-sistema-que-ayudara-a-la-Fiscalia-a-encontrar-personas-desaparecidas-en-El-Salvador-20191120-0514.html>

¹⁶ La Prensa Gráfica. *Will punish with penalties 15 to 25 years the crime of disappearance*. Published on November 1, 2019. Available at: <https://www.laprensagrafica.com/elsalvador/Castigaran-con-penas-15-a-25-anos--el-delito-de-desaparicion-20191031-0747.html>

¹⁷ Gato Encerrado Magazine. *Relatives of the disappeared become detectives in the face of impunity*. Published on May 31, 2021. Available at: <https://gatoencerrado.news/2021/05/31/los-familiares-de-los-desaparecidos-se-convierten-en-detectives-ante-la-impunidad/>

Sincerely yours,

- Citizens' Group for the Decriminalization of Abortion (*Agrupación Ciudadana por la Despenalización del Aborto*)
- Communicating and Training Trans El Salvadoran Women Association (*Asociación Comunicando y Capacitando a Mujeres Trans El Salvador, COMCAVIS TRANS*).
- Febe Elizabeth Velasquez Association (*Asociación Febe Elizabeth Velásquez, ASOFEBE*).
- Dissapeared Children Search Association (*Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos, Pro-Búsqueda*).
- Feminist Collective for Local Development (*Colectiva Feminista para el Desarrollo Local*)
- Christian Mothers and Family Committee (*Comité de Madres y Familiares Cristianos, COMAFAC*).
- Committee of Relatives of Victims of Human Rights Violations Marianella García Villas (*Comité de Familiares de Víctimas de las Violaciones de los Derechos Humanos Marianella García Villas, CODEFAM*).
- Committee of Mothers and Relatives of Prisoners, Disappeared and Political Martyrs of El Salvador (*Comité de Madres y Parientes de Prisioneros, Desaparecidos y Mártires Políticos de El Salvador, COMADRES*).
- Committee of Former Political Prisoners of El Salvador (*Comité de Ex Presos y Presas Políticos de El Salvador, COPPES*).
- Fundación Comunicándonos.
- Cristosal Foundation.
- Foundation of Studies for the Application of Law (*Fundación de Estudios para la Aplicación del Derecho, FESPAD*).
- Due Process of Law Foundation (*Fundación para el Debido Proceso, DPLF*).
- Institute of Human Rights of the Central American University José Simeón Cañas (*Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas, IDHUCA*).
- Organization of Salvadoran Women for Peace (*Organización de Mujeres Salvadoreñas por la Paz, ORMUSA*).
- Salvadoran Network of Women Human Rights Defenders (*Red Salvadoreña de Defensoras de Derechos Humanos*).
- Passionist Social Service (*Servicio Social Pasionista, SSPAS*).