



# EL SALVADOR: MEMORANDUM TO THE PRESIDENT

INITIAL RECOMMENDATIONS TO THE NEW GOVERNMENT ON HUMAN RIGHTS

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# INTRODUCTION

El Salvador faces a number of major challenges in the field of human rights. Despite advances made during the period of transition that followed the end of the civil war in 1992, significant obstacles to the exercise of even the most basic rights persist.

Amnesty International believes that the new administration under President Nayib Bukele has a responsibility to promote and implement major and transformative changes in order to realize the international commitments made by El Salvador in the field of human rights. The government of President Bukele must begin its term of office with firm steps that shape a new direction for El Salvador, one in which human rights are central to decision-making and to the design and implementation of public policies.

In this brief document, Amnesty International sets out some of its main concerns about the human rights situation in El Salvador. The organization hopes that the new government will address these, as well as other human rights challenges, with determination in order to promptly bring about the changes needed to make human rights a reality in the country.

## JUSTICE, TRUTH AND REPARATION FOR THE VICTIMS OF THE ARMED CONFLICT

Almost 30 years since the signing of the Peace Accords, the rights of victims to justice, truth and reparation are still not being fully guaranteed in El Salvador. Amnesty International publicly voiced its concern at a recent attempt by some members of the Legislative Assembly to support approval of a new normative framework, the Special Law for Transitional and Restorative Justice for National Reconciliation (*Ley Especial de Justicia Transicional y Restaurativa para la Reconciliación Nacional*).<sup>1</sup> The text of this bill was described by human rights groups as a threat to the right of access to justice for victims and a mechanism for perpetuating impunity. Further, the President of the Inter-American Court of Human Rights asked El Salvador to suspend the legislative progress of the bill and the United Nations High Commissioner for Human Rights, Michelle Bachelet, warned that the draft bill<sup>2</sup> contained a series of provisions that could translate into a *de facto* amnesty.<sup>3</sup>

El Salvador must fulfil its international commitments in good faith and implement the recommendations and resolutions issued by international human rights bodies on justice, truth and reparation for the immense tragedy caused by the armed conflict. A better future for El Salvador is only possible if the new authorities make a decision to confront and remedy the past.

Amnesty International therefore calls on the new authorities to:

- Use the president's power of veto during the process of enacting legislation to ensure that no new laws are created that endanger victims' rights to truth, justice and reparation.
- Promote and ensure, in the context of jurisdiction and legal powers, that victims and their representatives are consulted and enabled to participate effectively in decision-making processes that could affect the exercise of their rights.
- Submit a bill guaranteeing access to justice and comprehensive reparation for victims of crimes under international law and human rights violations committed during the armed conflict for

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<sup>1</sup> Amnesty International, 'El Salvador: Victims of armed conflict must not wait any longer for truth, justice and reparation', 15 May 2019.

<sup>2</sup> Inter-American Court Human Rights, *Case of the Massacres of El Mozote and surrounding areas v. El Salvador, Urgent Measures and Monitoring Compliance with Judgment*, 28 May 2019 (Spanish only).

<sup>3</sup> OHCHR, *El Salvador: Bachelet urges Legislative Assembly to refrain from re-establishing amnesty for serious human rights violations*, 22/23 May 2019.

legislative debate, following meaningful consultation with the victims and taking into account their proposals as well as the recommendations and resolutions of international human rights organizations.

- Ensure access to information requested by national authorities or victims that is contained in the files of government agencies, including military records for the years of armed conflict, on crimes committed during the armed conflict and the possible perpetrators.
- Promote and design a state policy that addresses in a comprehensive manner delays in access to justice, truth and reparation and in complying with obligations imposed by the Constitutional Chamber of the Supreme Court of Justice of El Salvador and international human rights law.
- Review the successes and challenges of the reparation measures that have been implemented to date and adopt complementary actions to design and implement a comprehensive compensation policy for victims in line with international human rights standards.

## THE RIGHTS OF WOMEN AND GIRLS

Persistent discrimination and gender inequality in Salvadoran society prevent women and girls from exercising their human rights. This manifests itself in beliefs about what constitutes acceptable behaviour for women and girls, in stereotypes which portray women's primary role as motherhood and girls as potential child-bearers, and in attitudes towards the premarital sex.<sup>4</sup>

The year 1998 was a watershed for Salvadoran women's ability to exercise their human rights. That year, while most countries around the world were moving towards the liberalization of restrictive laws on abortion, El Salvador decided to criminalize abortion in all circumstances, without exception, removing the previous legal grounds allowing abortion where the woman's life was at risk or where pregnancy was the result of rape or statutory rape and in cases of serious foetal malformation.<sup>5</sup>

The 1988 amendment to the law has been widely condemned not only by national and international human rights organizations, but also by protection bodies of the United Nations and the Inter-American Human Rights System. For example, last year, following her visit to El Salvador, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that "the death of a woman, where it can be medically linked to a deliberate denial of access to life-saving medical care because of an absolute legal ban on abortion, would not only constitute a violation of the right to life and an arbitrary deprivation of life, but would also amount to a gender-based arbitrary killing at the hands of the State, only suffered by women, as a result of discrimination enshrined in law."<sup>6</sup>

The legal framework, in addition to criminalizing all women who have an abortion, creates an environment of suspicion against those who have miscarriages or other obstetric emergencies without medical treatment. As a consequence, women who have suffered obstetric complications, most living in poverty, have been prosecuted and accused of having an abortion or, in the worst cases, of aggravated homicide, and face prison sentences of up to 40 years.<sup>7</sup>

Therefore, Amnesty International calls on the new authorities to:

- Promote repeal of the laws that criminalize abortion and guarantee access to safe and legal abortion, free from coercion, violence or discrimination. This will also have an impact on ending the unjust criminalization of women who have been imprisoned for having obstetric emergencies.
- Ensure access to education, information and comprehensive sexual and reproductive health services, including modern and quality contraception methods and access to safe and legal abortion, for all women.

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<sup>4</sup> Amnesty International, *On the brink of death: Violence against women and the abortion ban in El Salvador* (Index number AMR 29/003/2014).

<sup>5</sup> Amnesty International, *Separated families, broken ties: El Salvador: Women imprisoned for obstetric emergencies and the impact on their families* (Index number AMR 29/2873/2015).

<sup>6</sup> Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador*, A/HRC/38/44/Add.2, 7 December 2018, para. 90.

<sup>7</sup> Amnesty International, *Separated families, broken ties: El Salvador: Women imprisoned for obstetric emergencies and the impact on their families* (Index number AMR 29/2873/2015).

- Ensure that doctors and other health-care personnel adhere to their professional duty of patient confidentiality in the event that they discover, in the exercise of their profession, that a patient has had an abortion or when obstetric complications suggest that this may be the case.
- Seek reparation measures for women who have been released after being accused of abortion or aggravated homicide and ensure that the rights of family members, especially the children of convicted women, are respected and reparations provided for the harm caused.
- Immediately release all women imprisoned for having an abortion or obstetric complications, including those convicted of abortion, homicide, aggravated homicide or any other crime and pending amendment of the relevant laws, stop investigating, charging and criminalizing women and girls for having abortions or miscarriages.

## HUMAN RIGHTS DEFENDERS

The right to defend human rights is enshrined and protected in international human rights law as an autonomous and independent right. Human rights defenders are people who through their actions bring to light and document human rights violations and abuses, support victims and their families and collaborate with them to seek justice, truth, reparation and non-repetition of such actions. The exercise and enjoyment of the right to defend human rights is fundamental to the effective enjoyment of many other human rights. Therefore state recognition of the relevance, autonomy, independence and multidimensional aspect of this right is central and necessary.<sup>8</sup>

When the authorities prevent, limit, punish or repress the actions and activities of human rights defenders or do not take steps to prevent or end such actions, they are failing to fulfil their obligations. In previous years, Amnesty International has documented and criticized actions that stigmatize and discredit defenders of sexual and reproductive rights in El Salvador. Statements that stigmatize or undermine their legitimacy are among the factors that create an environment which is not conducive to the development of their work and increase the risks they may face.<sup>9</sup> Amnesty International has also received reports of attacks and threats against LGBTI defenders.

Last year, the Inter-American Commission on Human Rights (IACHR) noted that the safety situation for women human rights defenders has worsened according to reports it had received from civil society organizations. Furthermore, it added that women who defend land or rights related to the environmental continued to be threatened, denigrated and even criminalized.<sup>10</sup>

Amnesty International therefore calls on the new Salvadoran authorities to:

- Publicly recognize the important role played by human rights defenders and ensure that they can carry out their work in a safe and supportive environment; special attention should be paid to women human rights defenders, LGBTI defenders and any other human rights defenders who face multiple challenges and interrelated forms of discrimination and marginalization and steps taken to ensure their effective protection against gender-specific threats and violence or other threats and acts of violence they face because of their work or who they are.
- Promote the adoption of legislation that recognizes and effectively protects all human rights defenders.
- Ensure thorough, prompt and independent investigations into all complaints of human rights violations against human rights defenders.
- Cooperate fully with the various different United Nations human rights mechanisms on this issue and, in particular, invite the Special Rapporteur on the situation of human rights defenders to

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<sup>8</sup> Amnesty International, *Defending human rights in the Americas: necessary, legitimate and dangerous* (Index number AMR 01/003/2014).

<sup>9</sup> Amnesty International, *Defenders under attack! Promoting sexual and reproductive rights in the Americas* (Index number AMR 01/2775/2015).

<sup>10</sup> Inter-American Commission on Human Rights, *Conclusions and Observations on the IACHR's Working Visit to El Salvador*, 29 January 2018.

undertake visits, without restrictions on their duration and scope, and ensure that they are allowed to meet defenders without hindrance.

- Implement, in consultation with defenders, a comprehensive public policy for the protection of human rights defenders, in such a way that measures are taken to combat the structural causes that increase the risks and attacks against defenders, such as impunity, stigmatization and discrimination.

## PUBLIC SECURITY POLICY AND HUMAN RIGHTS

The end of the armed conflict in 1992 and the signing of the Peace Accords paved the way for a process of significant institutional reform that included the dissolution of security force bodies accused of involvement in serious human rights violations and the creation of the National Civilian Police (Policía Nacional Civil, PNC). This entailed the development of a new police doctrine and an organization answerable to the civilian authorities. Despite this, the track record of the PNC is one of repeated complaints of excessive use of force and other human rights violations.

While it is true that violence in El Salvador has reached alarming levels in recent years, this does not exempt state security forces from accounting for their actions or complying with El Salvador's obligations under international law. In recent years, both national civil society organizations and international human rights mechanisms have expressed concerns about human rights violations committed during the implementation of the state's strategy to combat and eradicate crime.

Both the former United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, the IACHR and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, have expressed concern about reports of extrajudicial executions carried out by the security forces. The re-emergence of death squads,<sup>11</sup> the increasing military presence in public security operations,<sup>12</sup> the half-hearted and inadequate institutional response regarding effective investigations into allegations of extrajudicial executions and excessive use of force and the need for the "Extraordinary Security Measures" to respect human rights standards<sup>13</sup> have provoked concern among the international community. Recently, the Human Rights Institute of the Central American University "José Simeón Cañas" (Instituto de Derechos Humanos de la Universidad Centroamericana "José Simeón Cañas", IDHUCA) expressed concern about the suitability of some of those newly appointed to senior positions in the PNC. In addition, they reported that in the last two years they had received information about six cases of human rights abuses, including cases of possible extrajudicial executions and torture allegedly perpetrated by members of the police forces<sup>14</sup>

Amnesty International therefore calls on the new authorities to:

- Design and implement policies and strategies that move beyond repressive approaches and include measures focused on the root causes of violence, prevention, reintegration and rehabilitation.
- Strengthen the technical capabilities of the PNC, providing them with appropriate financial resources, tools, training and working conditions to enable them to perform their functions.
- Ensure the orderly withdrawal of armed forces personnel from involvement in public security operations and strengthen the capabilities of the PNC.
- Ensure that any state official, regardless of rank, who is suspected of criminal responsibility for the commission of serious human rights violations is suspended, immediately and in compliance with

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<sup>11</sup> OHCHR, *Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador*, November 2017.

<sup>12</sup> Inter-American Commission on Human Rights, *Conclusions and Observations on the IACHR's Working Visit to El Salvador*, 29 January 2018

<sup>13</sup> Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador*, A/HRC/38/44/Add.2, 7 December 2018.

<sup>14</sup> See

[https://www.laprensagrafica.com/idhuca\\_el\\_comisionado\\_arriaza\\_chicas\\_no\\_es\\_la\\_persona\\_mxs\\_indicada\\_para\\_hacer\\_las\\_reformas\\_que\\_la\\_pnc\\_necesita-vf20190606mp4.html](https://www.laprensagrafica.com/idhuca_el_comisionado_arriaza_chicas_no_es_la_persona_mxs_indicada_para_hacer_las_reformas_que_la_pnc_necesita-vf20190606mp4.html) (Spanish only), and interview with Manuel Escalante, deputy director of IDHUCA, June 2019.

international human rights standards, pending the outcome of an independent and impartial investigation.

- Ensure that police monitoring and oversight mechanisms are strengthened and that there is effective scrutiny of police conduct in order to prevent impunity and arbitrary actions.
- Review and evaluate the successes and challenges of measures implemented in previous years to address the high levels of violence and, taking into account the opinion and input of national and international human rights organizations, develop measures that comply with international human rights standards.
- Ensure that those who hold senior and strategic positions in the PNC have the skills and abilities necessary to carry out their work in accordance with international human rights law and standards.

## MIGRANTS AND REFUGEES

In a regional context in which violence has intensified and poverty and inequality continue to prevail, some Central American governments, including the government of El Salvador, have to date failed to protect their citizens. The precarious socioeconomic conditions and generalized violence have forced a record number of people to flee their communities. In addition, governments have failed to protect people who are deported and returned to same dangers from which they fled. They have also failed to fulfil their obligation to provide effective assistance to migrants subjected to abuses *en route*.<sup>15</sup>

During October and November 2018, Amnesty International conducted several research visits on both sides of the border between Mexico and Guatemala. During these visits, Amnesty International was able to document first hand the experiences of large caravans of people from Central America who had recently left their homes. This exceptional phenomenon was of a scale unprecedented since the exodus of refugees caused by the civil wars in Guatemala and El Salvador in the 1980s. The fact that over such a short period of time thousands of people in the region left their countries shows that people continue to flee in a desperate attempt to safeguard their lives and seek protection.<sup>16</sup>

There are also concerns about the situation of LGBTI people in the country; they are frequently the targets of discrimination, exclusion and various types of violence, such as intimidation, attacks and killings. Amnesty International has documented the lack of an effective response by the authorities and how this has forced many LGBTI people to leave the country and put them at particular risk because of their gender identity and/or sexual orientation. Amnesty International reminds the government of El Salvador that it has an obligation to protect the rights of all people, without discrimination.<sup>17</sup>

Amnesty International therefore calls on the new government to:

- Urgently address the factors that drive people to flee El Salvador, including widespread violence, human rights violations, inequality, endemic impunity and situations that particularly affect LGBTI people, women and children.
- Devise protocols to provide better and ongoing assistance to the families of migrants who have been the victims of serious crimes or human rights violations abroad. This should include more advocacy work on their behalf with foreign authorities, developing and strengthening transnational justice mechanisms, keeping families informed of current investigations and providing psychological assistance when necessary.
- Put in place mechanisms to determine whether people sent back to El Salvador are in danger in their communities of origin and, if this is found to be the case, provide them with adequate and immediate protection.

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<sup>15</sup> Amnesty International, *Home sweet home? Honduras, Guatemala and El Salvador's role in a deepening refugee crisis* (Index number AMR 01/4865/2016).

<sup>16</sup> Amnesty International, *Americas: Stuck at the door – the urgent need for protection of Central American refugees, asylum seekers and migrants in the caravans* (Index number AMR 01/9447/2018).

<sup>17</sup> Amnesty International, *Americas: 'No safe place' – Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual orientation and/or gender identity* (Index number AMR 01/7258/2017).

- Improve coordination between consular services abroad and reception centres for people who have been deported or returned in order to identify people in need of protection and ensure that all reception, reintegration and protection programmes for deported migrants take into account the rights and the specific needs of LGBTI people.
- Assess the risks faced by LGBTI people who have been deported or returned so that, where there is a potential risk, a fast-track system with third countries can be activated to support asylum applications by LGBTI people as a protection measure.
- Using all available diplomatic and political channels, demand that the rights of Salvadoran migrants and asylum seekers are respected and protected in the countries where they live and through which they travel.

## FOREIGN POLICY AND HUMAN RIGHTS

Amnesty International believes that it is important for El Salvador to participate in multilateral forums on human rights. It believes that a decision by El Salvador to promote respect for and guarantees of human rights as a central consideration in decision making by the Central American Integration System (Sistema de Integración Centroamericana, SICA) would be of benefit to the regional integration mechanism, particularly given the current rapid deterioration in the human rights situation in Central America, especially in Guatemala, El Salvador, Honduras and Nicaragua.

In addition, Amnesty International believes that the new authorities should work towards the early accession by El Salvador to important human rights treaties that are not yet part of the national protection system.

Amnesty International therefore calls on the new authorities to:

- Comply fully and completely with the judgments of the Inter-American Court of Human Rights and the resolutions and recommendations of other international human rights mechanisms.
- Undertake diplomatic efforts, within the framework of the Central American Integration System, to promote respect for human rights in Central America, with special attention to contexts of extreme emergency such as those in Guatemala, Honduras and Nicaragua.
- Cooperate with the various different human rights protection mechanisms and extend an invitation to the Inter-American Commission on Human Rights so that it can carry out an on-site visit during the first year of the new government's administration.
- Adhere promptly and without reservations to human rights treaties that are not yet part of the national normative framework, including: the International Convention for the Protection of All Persons against Enforced Disappearances, the Inter-American Convention on Forced Disappearance of Persons, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These treaties should also be incorporated into national law.
- Recognize the competence of the treaty bodies to receive and consider any communication alleging that a human rights violation has been committed in any territory subject to the jurisdiction of El Salvador.



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info@amnesty.org



+44 (0)20 7413 5500

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