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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER article 40 OF THE COVENANT

Third periodic reports of States parties due in 1995

EL SALVADOR*

[8 July 2002]

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* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

CONTENTS

ABBREVIATIONS

ANSP	National Public Security Academy
AD	Democratic Action (Party)
ARENA	Nationalist Republican Alliance
CIHD	Commission for the Investigation of Organized Crime
CONCULTURA	Council for Culture and the Arts
CD	Democratic Convergence (Party)
DICO	Department for the Investigation of Organized Crime
DIGESTYC	Directorate-General for Statistics and Censuses
DIC	Criminal Investigation Division
DUI	Single Identity Document
FMLN	Frente Farabundo Martí para la Liberación Nacional
FESPAD	Study Foundation for the Application of Law
GTC	Joint Task Groups
ILO	International Labour Organization
ISPM	National Institute for the Protection of Children
ISDEMU	National Institute for the Advancement of Women
MAC	Authentic Christian Movement
MAS	Authentic Social Movement
MSN	National Solidarity Movement
MU	Unity Movement
MNR	National Revolutionary Movement
ONUSAL	United Nations Observer Mission in El Salvador
NGO	Non-governmental organization
PAN	National Action Party
PAR	Action for Renewal Party
PCN	National Conciliation Party
PD	Democratic Party
PDC	Christian Democrat Party
PLD	Liberal Democrat Party
PNC	National Civil Police
PNM	National Policy for Women
PPL	Free People's Party
PUNTO	United People's New Deal Party
PRSC	Christian Socialist Renewal Party
SNF	National Secretariat for the Family
TAF	Family-friendly telephone line
UID	Disciplinary Investigation Unit
UNDP	United Nations Development Programme
UP	People's Union
USC	Christian Socialist Union

THIRD, FOURTH AND FIFTH PERIODIC REPORTS OF THE REPUBLIC OF EL SALVADOR SUBMITTED TO THE HUMAN RIGHTS COMMITTEE OF THE UNITED NATIONS

INTRODUCTION

1. The Government of El Salvador, pursuant to article 40 of the International Covenant on Civil and Political Rights, submits to the Human Rights Committee its third, fourth and fifth periodic reports on human rights, which contain information for the period from July 1992 to December 2001.

2. This document has been prepared in accordance with the Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights (CCPR/C/66/GUI/Rev.2) and with the Comments of the Human Rights Committee on El Salvador (CCPR/C/79/Add.34). The Committee's General Observations on the application of the Covenant have also been kept in mind.

3. The information presented here is the result of the work of an interinstitutional team coordinated by the Ministry of Foreign Affairs and made up of the following bodies: the Supreme Court of Justice; the Supreme Electoral Tribunal; the Office of the Attorney-General; the Office of the Procurator-General; the Ministry of Defence; the Ministry of Labour and Social Insurance; the Ministry of Health and Social Welfare; the Ministry of Education; the National Secretariat for the Family; the National Institute for the Protection of Children; the National Institute for the Advancement of Women; the National Civil Police; the Inspectorate-General of the National Civil Police; the Directorate-General for Migration; the Directorate-General for Prisons; and the National Council for Culture and the Arts.

4. For El Salvador the period under review has been one of profound legal and institutional changes resulting from the Peace Accords signed in Chapultepec, Mexico, on 16 January 1992. Among other changes the Accords have promoted ideological and political tolerance and the development and consolidation of democracy. These changes have brought into being an environment favourable to the exercise and enjoyment in El Salvador of all the human rights, in particular the civil and political ones.

5. Difficulties of various kinds, some more substantial than others, have arisen during the post-conflict period, but the advances made during the peace process have been consolidated - a demonstration of the efforts of the State and of civil society itself to secure substantial progress in the enjoyment of the civil and political rights and freedoms.

6. The revised version of the Constitution which resulted from the Peace Accords corresponds to a modern conception of a State based on the rule of law and it provides fundamental guarantees of the constitutional and judicial protection of human rights in El Salvador. The 1992 reform of the Constitution in respect of *habeas corpus*, which extended the scope of this remedy to review of the conditions of detention, and the entry into force in 1998 of a new system of criminal-prosecution and prison procedures, backed by guarantees, together with the new roles of the armed forces and the electoral system, are some of the most pertinent examples of the introduction of modern laws and institutions in order to achieve true respect for human rights and to build democracy and peace in El Salvador.

7. It is true that the enjoyment of human rights does not depend exclusively on their protection by substantive law but also on the functioning of democratic institutions; nevertheless, significant progress has been made in this area.

8. It may be pointed out here that while the complaints and the statistics on complaints recorded by various institutions constitute an indicator of the existence of violations they do not necessarily establish the presumption that the violations occurred. It would thus be wrong to create an analogical or mechanical relationship between the number of complaints received and the actual number of violations. On the contrary, it must be kept in mind that the number of complaints usually exceeds the number of verified violations.

9. As pointed out in other reports submitted by El Salvador to United Nations human rights treaty-monitoring committees, the institutional structure of the State has also been altered in many respects: public security, with the separation of the armed forces from this function and the references in the Constitution to the defence of the sovereignty of the State and of territorial integrity; the replacement of the former public-security bodies by the National Civil Police (PNC) with an express constitutional mandate to respect human rights and with its members trained in a National Public Security Academy, also committed to human rights; and the creation of new mechanisms for controlling the behaviour of the police in the shape of the PNC disciplinary and monitoring units and its Inspectorate-General.

10. Another institutional change resulting from the Peace Accords was the creation, as part of the reform of the Constitution, of the Office of the Procurator for the Protection of Human Rights with extremely broad powers to supervise the activities of the entire apparatus of the State. Over the years there have been advances, but sometimes retreats as well which at times have undermined the Office's work and threatened the arrangements for building a peaceful and democratic society. Prevention of the erosion of this institution has required the support not only of the State but also of civil society as a whole; the aim is to ensure that in the coming years it acquires the best possible working rhythm.

11. It must also be pointed out, still in the context of institutional change, that January 2002 saw the creation of the Ministry of the Interior to administer areas of national importance such as the prison system, control of migration, etc.

12. Another new institution warranting special mention is the National Council of the Judiciary created following the 1992 Peace Accords as a body which is independent of the Supreme Court of Justice and responsible for nominating candidates for the posts of judges of the Court itself, the courts of second instance, the courts of first instance and the municipal courts *(juzgados de paz*). Its responsibilities also include the organization and operation of the Judiciary Service Training School, the purpose of which is to improve the professional training of judges and other court officials. The Council provides theoretical and practical training of magistrates and judges and the personnel of the courts and the Department of Public Prosecutions, as well as carrying out research and investigation in order to identify defects and irregularities in the system of the administration of justice, their causes and possible remedies. It is also responsible for preparing refresher courses and courses to improve the professional performance of magistrates and judges.

13. The judicial system plays a decisive role in securing the exercise of human rights and prompt attention to violations, and the effort to strengthen the administration of justice has accordingly been sustained: it has remained independent of the political authorities and endeavours to provide effective responses to the challenges which the new reality poses.

14. The processes of legal, administrative and institutional reform have generated changes, some having a more substantial effect than others on public opinion. This is clearly demonstrated by the fact that, even with the failures that may occur in the course of these processes, improvements have been secured in the conditions of the exercise and enjoyment of the civil and political rights and of human rights in general.

15. It should be pointed out with respect to secondary criminal legislation that a mixed modern system of criminal procedure was adopted in 1998.

16. Thus, the subsequently abrogated legislation from 1974 was based on a mixed traditional criminal system having clear elements of the inquisitorial approach, with the result that some of the investigations carried between 1991 and 1998 violated the right of material defence, which every accused person must enjoy as a minimum procedural guarantee: situations occurred in which public hearings were held without the attendance of the accused or the victim; and abuses of pre-trial detention occurred, with such detention becoming the general rule for suspects caught red-handed or arrested by virtue of administrative or judicial warrants.

17. All these situations impaired the defence of accused persons and the fulfilment by the State and its law-enforcement agencies of their obligations under the Covenant. However, this criminal legislation was repealed in 1998 and replaced by modern rules including guarantees, which this report will try to illustrate.

18. In juvenile cases, the legislation based on the doctrine of the irregular situation (Juvenile Code) was repealed in 1995 on the entry into force of the Juvenile Offenders Act, which is based on the doctrine of comprehensive protection and is consistent with El Salvador's international commitments.

19. It should also be mentioned that the freedom of expression is respected, that political tolerance among the various actors on the national stage is tending to increase, that the free exercise of the right to vote under normal conditions has made it possible to hold a number of ballots which have produced democratically elected governments, and that considerable advances have been made with respect to equality of opportunities between men and women and in the treatment of children. And all of this has taken place in a State governed by the rule of law which is growing stronger while recognizing that much remains to be done.

20. Over the past decade El Salvador has adopted a number of regional and international human rights instruments in order to give practical effect to the principle of its Constitution that the human person is the origin and the end of the activity of the State. These instruments include: the Inter-American Convention to Prevent and Punish Torture, ratified on 5 December 1994; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), ratified on 26 January 1996; the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, adopted on 8 June 1999; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), ratified on 5 June 1995; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, which entered into force for El Salvador one month after the date of the deposit of its instrument of ratification, i.e. on 18 May 2002.

21. It should also be pointed out that in June 1995 El Salvador acceded to the Optional Protocol to the International Covenant on Civil and Political Rights, monitored by the Human Rights

Committee. This instrument provides for the receipt and consideration, in accordance with the Protocol, of communications from individuals claiming to be victims of any of the rights enunciated in the Covenant once all domestic remedies have been exhausted. El Salvador made the following express reservation:

> "...That its provisions mean that the competence of the Human Rights Committee is recognized solely to receive and consider communications from individuals solely and exclusively in those situations, events, cases, omissions and legal occurrences or acts the execution of which began after the date of deposit of the instrument of ratification, that is, those which took place three months after the date of the deposit, pursuant to article 9, paragraph 2, of the Protocol; the Committee being also without competence to examine communications and/or complaints which have been submitted to other procedures of international investigation or settlement".

22. To date nobody has used this remedy to bring proceedings against the State for violation of the rights contained in the Covenant.

23. A number of cases found receivable by the Inter-American Commission on Human Rights are being dealt with under the "amicable settlement" procedure, thus demonstrating the political will of the State to bring alleged violations before the international bodies competent to examine such cases once all domestic remedies for dealing with the alleged violations have been exhausted.

24. Persons under the jurisdiction of the State of El Salvador thus have access to a system which, although not perfect, does endeavour to provide the best possible constitutional guarantees of and respect for rights and democratic freedoms.

25. It must be stressed that the rule of law is being consolidated in El Salvador and that the serious and systematic violations committed during the armed conflict have been eradicated. Some non-systematic serious violations did occur during the period immediately following the cessation of armed hostilities but they were investigated and tried in accordance with the applicable legislation by the competent courts.

26. Accordingly, cases of politically motivated summary and arbitrary executions, forced disappearances, death threats and torture are not a systematic or widespread practice in Salvadoran society. Such cases have become virtually unknown. This assertion is corroborated by the records kept by the National Civil Police (PNC), the Attorney-General's Office, the Office of the Procurator for the Protection of Human Rights, and a number of NGOs.

27. In the first years of the post-conflict period the cases of death threats, torture and ill-treatment which came to light indicated a problem of the abuse of power by the PNC and the municipal police forces; suitable disciplinary and corrective measures were taken by the administrative and judicial authorities in the cases in which proceedings were brought. Action has also been taken to improve internal administrative police procedures for the investigation of cases and punishment of the officers responsible for such violations.

28. With regard to the inclusion of all the rights set out in the Covenant, although the Constitution does not give a specific definition of torture or of other cruel, inhuman or degrading treatment or punishment, the Committee is referred to the information on the definition of torture

in the Constitution given by El Salvador in paragraphs 54-58 of the report submitted in 1999 (document CAT/C/37/Add.4 of 12 October 1999).

29. The Government, through the Ministry of Foreign Affairs, is currently negotiating a draft text on cooperation with the Office of the United Nations High Commissioner for Human Rights with a view to helping to strengthen the Office of the Procurator for the Protection of Human Rights. This will constitute a follow-up to the technical cooperation projects executed by the High Commissioner, completed in 1998, which were designed to strengthen the police and improve training and documentation to consolidate the system for the protection of human rights.

30. The following institutions benefited from these projects: the Ministry of Public Security, the PNC and its Inspectorate-General, and the National Public Security Academy. The aim was to consolidate the Salvadoran model of public security in these institutions, within the framework of a State governed by the rule of law, by encouraging the application of the international human rights standards in the work of law-enforcement officers.

31. Other bodies to benefit from these cooperation projects included: the Ministry of Foreign Affairs, the Legislative Assembly, the armed forces, the National Institute for the Protection of Children and the National Institute for the Advancement of Women. The aim was to consolidate the system for the protection of human rights in these bodies with a view to strengthening democracy and the rule of law by guaranteeing all members of the population effective protection and full exercise of their fundamental rights and freedoms.

ARTICLE 1

32. The State of El Salvador is aware that the exercise of the right of self-determination of peoples is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and consolidation of these rights; it again reiterates its firm attachment to this fundamental principle of international law.

Paragraph 1: Right of peoples to self-determination

33. In the words of article 83 of its Constitution, El Salvador is a sovereign State whose capacity to govern resides in the people, which exercises that capacity in the prescribed manner and within the limits of the Constitution.

34. One of the ways in which the people exercises the right to self-determination is by electing its rulers on a democratic and periodic basis. There have been four elections since the signature of the Peace Accords: two Presidents and two Vice-Presidents of the Republic were democratically elected (1994 and 1999), together with the Legislative Assembly and municipal councils nation-wide on three occasions (1994, 1997 and 2000) and members of the Central American Parliament on two occasions (1994 and 2000).

35. The people's right of insurrection is recognized in the Constitution (art. 87) for the sole purpose of restoring the constitutional order if it is disturbed by the infringement of the rules on the established form of government or political system or in the event of serious violations of the rights embodied in the Constitution.

36. This right has been recognized in order to accord to the people the right and the option of taking direct measures, for example in cases when it is necessary to remove the officials

committing the offences and replace them temporarily until new officials are appointed in the manner laid down in the Constitution.

37. The Constitution also enshrines individual rights, in the sense that everyone has the right to life, physical and moral integrity, liberty, security, work and ownership and possession of property, as well as the right to be protected in the preservation and defence of these rights.

38. Article 4 of the Constitution states:

> "Everyone is free in the Republic. Nobody entering its territory shall be a slave, and nobody who trades in slaves shall be a citizen. Nobody may be subjected to servitude or to any other status that impairs his dignity".

39. Article 29 of the Constitution, on emergency situations, provides that in the event of war, invasion of the national territory, rebellion, sedition or other general calamity or in the event of serious disturbances of public order some of the safeguards established in the following articles may be suspended: article 5 (freedom to enter, remain in, and leave the territory of the Republic, and freedom of domicile or residence); article 6.1 (freedom of expression and thought); article 7.1 (freedom of association and peaceful assembly, with the exception of meetings held for religious, cultural, economic or sporting purposes); article 24 (inviolability of correspondence); article 12.2 (right to be informed of the reasons for detention and right to a defence lawyer); article 13.2 (administrative detention). The purpose of these exceptions is to cope with situations which endanger the nation's stability and security and which may therefore affect its right to self-determination.

Free determination of political status

40. The national Government is republican, democratic and representative; the political system is pluralist and operates through political parties which constitute the sole method of exercising the representation of the people within the Government. And accordingly the existence of a one-party system is incompatible with the democratic system and the form of government established by the Constitution.

41. The Government is republican in the sense that the sovereign power resides in the people, which delegates it to the various organs of the State to be exercised on the people's behalf. It is democratic because the people exercises sovereignty by deciding on the form of the Government and on its composition. And it is representative because the administration of the Government and the creation of the laws which regulate it are responsibilities of the representatives which the people freely elects. Being pluralist, the political system facilitates the organization, development and participation of all ideologies and doctrines through political parties, with a view to the exercise of government.

42. The organs of the Government are independent and function within their respective powers and spheres of competence as established by the Constitution and within the laws of the public power, which emanates from the people. Accordingly, each organ of the State exercises sovereignty through public officials. The fundamental organs of the Government are the Legislature, the Executive and the Judiciary. The three basic functions of the State are distributed among them: to legislate, to administer, and to adjudicate.

43. In addition to the principal organs of the Government, the Constitution establishes other important bodies: the Office of the Procurator for the Protection of Human Rights, which promotes and monitors compliance with the fundamental rights and freedoms of all the persons under the jurisdiction of the State without distinctions of any kind; the Office of the Attorney-General, which is responsible for directing judicial investigations; the Office of the Procurator-General, which attends to the interests of society; the Supreme Electoral Tribunal, which is the highest authority in electoral matters; the Court of Audit, which ensures that the expenditures of State bodies are legal; and others.

44. The rotation of the presidency of the Republic is essential to the maintenance of the established form of government and political system.

Paragraph 2: Free disposition of natural wealth and resources

45. Article 84 of the Constitution indicates the limits of the territory of the Republic over which El Salvador exercises jurisdiction and sovereignty and which is irreducible; El Salvador also exercises sovereignty over its air space and territorial waters, the sea, the continental shelf, the sea bed and its subsoil, and the island territories and their territorial waters, as well as over the Gulf of Fonseca in conjunction with Honduras and Nicaragua.

46. The economic order seeks to comply with the principles of social justice, with the State playing a subsidiary role and the productive sector pursuing that same end, thus providing all the country's inhabitants with a suitable means of securing an existence worthy of a human being. Since 1989 the State has been promoting a model which facilitates economic development and has a positive impact on the people's quality of life.

47. Accordingly, the country's economic order is based on the free-market system, promoting the equality of all inhabitants and giving special protection to small-scale trade, industry and services as the patrimony of native-born Salvadorans and Central Americans (art. 115 of the Constitution).

48. According to article 101.2 of the Constitution, the State is obliged to promote economic and social development by increasing production, productivity and the rational use of resources. To that same end it must support the various production sectors and ensure the protection of the interests of consumers. In this latter area safeguards are provided by the Consumer Protection Act and its institution, the Directorate-General for Consumer Protection of the Ministry of the Economy, to which application may be made by any inhabitants of the Republic who consider that their rights as consumers have been violated.

49. The subsoil belongs to the State, which may grant concessions for its exploitation.

50. The State encourages and protects private ownership with a view to augmenting the nation's wealth and bringing its benefits to the greatest possible number of the country's inhabitants.

51. A programme for the privatization of public entities such as telecommunications and pension funds has been introduced; this has resulted in a significant improvement in access to modern communications media by the population at large; furthermore, the privatization of pension funds will increase considerably the access of retirees to a fairer and more decent pension.

Paragraph 3: Promotion of and respect for the realization of the right of self-determination of peoples

52. Throughout its history as an independent State El Salvador has been an unbending advocate of strict compliance with the principle of the self-determination of peoples in its relations with other States, both in bilateral matters and in the international bodies and forums in which it takes part, and it has always been quick to condemn any acts of foreign interference.

53. In this context El Salvador encourages in its foreign relations mutual respect, peaceful co-existence, democratic solidarity and economic cooperation on the basis of the principles of non-intervention, the self-determination of peoples, rejection of the use of force, the legal equality of States, the peaceful settlement of disputes, and respect for human rights.

54. In internal matters the armed forces are responsible for safeguarding the sovereignty of the State and the integrity of its territory. Accordingly, the President of the Republic may use the armed forces to enforce the Constitution in order to maintain internal peace or in emergency situations, provided that the other established means of action have been exhausted.

ARTICLE 2

Paragraph 1: Undertaking to respect and to ensure to all individuals within the territory of the State and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

55. We reiterate that the Constitution states as a fundamental principle the recognition of the human person as the origin and the end of the activity of the State. One of the most recent amendments to the Constitution incorporated recognition of the human person from the moment of conception (Legislative Decree No. 541 of 3 February 1999, published in the *Diario Oficial,* No. 32, Vol. 342, of 16 February 1999).

56. Title II of the Constitution ("Fundamental rights and safeguards of the person") establishes the principle of the equality of all persons without distinction as to race, sex or religion, and it posits the obligation of the State to accord to the inhabitants of the Republic the universal rights to life, physical and moral integrity, liberty, security, work, and ownership and possession of property, including the right to be protected in the preservation and defence of these rights, as well as the enjoyment of health, culture, economic well-being and social justice. The State must also safeguard the right to honour, personal and family privacy and self-image; any injury of a moral nature must be made good in accordance with the law.

57. The Constitution is clear as to the protection which the State ensures not just to nationals but to all the inhabitants of the Republic, for the rights which it recognizes and safeguards are accorded by virtue of the fact that they are inherent in the human person and therefore not subject to any differentiation. This interpretation is clear from the text of article 3:

> "All persons are equal before the law. The enjoyment of civil rights shall not be subject to restrictions based on differences of nationality, race, sex or religion".

58. This guarantee is found throughout the text of the Constitution; for example, in the case of the freedom of association:

> "Private employers and workers, without distinction as to nationality, sex, race, religion or political beliefs, and irrespective of their activity and the nature of their work, shall have the right to associate freely for the protection of their respective interests by forming professional associations or trade unions. Workers in autonomous public institutions shall have the same right" (art. 47).

With regard to nationality the Constitution states:

> "From the moment of their entry into the territory of the Republic foreigners shall be strictly obliged to respect its authorities and obey its laws and they shall acquire the right to be protected by them" (art. 96).

On labour and social security it states:

> "In the same enterprise or establishment and under identical circumstances workers shall receive equal remuneration for equal work, irrespective of their sex, race, religion or nationality" (art. 38.1).

The Constitution states with respect to education:

> "All the inhabitants of the Republic have the right and the duty to receive preschool and basic education to train them to be useful citizens. The State shall promote the establishment of special education schools" (art. 56.1).

And in the case of health and social welfare it provides:

> "The health of the inhabitants of the Republic constitutes a public good. The State and individuals shall be obliged to ensure its maintenance and restoration" (art. 65.1).

59. The secondary legislation safeguards the legal equality of all persons in article 17 of the Criminal Code:

> "The criminal law shall be applied equally to all persons who at the time of the facts were aged over 18 years. Persons below that age shall be subject to a special regime.
>
> Notwithstanding the provision contained in the preceding paragraph, the criminal law of El Salvador shall not apply when the person in question enjoys privileges under the Constitution of the Republic and international law or when he enjoys immunity in certain matters, in accordance with the Constitution of the Republic".

60. Furthermore, article 246 of the Constitution characterizes discrimination in labour matters as criminal conduct:

> "Anyone who causes serious discrimination in labour matters on the ground of sex, pregnancy, origin, civil status, race, social or physical status, religious or political beliefs, membership or non-membership of a trade union or adherence to its agreements, or family connection to other workers in the enterprise and who does not re-establish the situation of equality before the law following the imposition of administrative requirements or sanctions to make good any economic damage which has resulted shall be sentenced to imprisonment for a term of between six months and two years".

61. The State of El Salvador is a signatory to Conventions Nos. 29 and 105 of the International Labour Organization concerning forced or compulsory labour and its abolition. Convention No. 105 was incorporated in the Republic's legislation in November 1958, while No. 29 was ratified on 14 July 1994.

62. Since ratification El Salvador has not received any complaints or reports of failure to comply with these two pieces of international labour law or of violation of their provisions since their entry into force.

63. Exceptions are made for certain activities reserved exclusively for nationals of El Salvador: exercise of political rights (art. 72 of the Constitution); exercise of the function of "public notary" (art. 4 of the Notaries Act); recourse to the legal remedy of unconstitutionality (art. 183 of the Constitution); small-scale trade, industry and services, since these activities are the patrimony of native-born Salvadorans and Central Americans (art. 115); and the acquisition of rural real estate by foreigners in whose countries of origin Salvadorans do not have this right, except in the case of land for industrial establishments (art. 109).

Paragraph 2: Undertaking by the State to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant

64. The Office of the Procurator for the Protection of Human Rights, with financing from the United Nations Development Programme (UNDP), executed a project on strengthening the Office's observation, monitoring and investigation techniques; one of the results was the establishment of an investigation procedure based on a legal characterization of the individual human rights to be protected by the Office. A "Handbook on the characterization of human rights violations" was produced as a back-up for this procedure; it describes the violations to which each right may be subjected and also supplies a summary of the current national and international legislation providing protection of the right in question.

Paragraph 3 (a): Undertaking that any person whose rights or freedoms as recognized in the Covenant are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity

65. The following legal instruments are available as means of ensuring that persons may enjoy the rights established in the Convention: the Constitutional Procedure Act; the Code of Civil Procedure; the Judicial Review Act; the Family Court Procedure Act; the Labour Code; and the Administrative Disputes (Review) Act. These instruments regulate the available remedies and the manner in which they may be used by persons who consider that their rights have been violated.

66. The Committee is referred here to the information given in paragraphs 28-30 of the second periodic report (CCPR/C/51/Add.8 of 3 November 1993), which mentions *inter alia* the constitutional foundation of the universal procedural principles: the principle of petition and the principle of reply.

67. The remedies available to persons who consider that their basic rights have been violated are described below in their respective legal contexts.

A. *Constitutional Procedure Act*

68. This Act establishes the following constitutional remedies: (1) the unconstitutionality of laws, decrees and regulations; (2) *amparo*; (3) production of the person or *habeas corpus.*

A.1 *Remedy of unconstitutionality*

69. The Committee is referred to the information given in paragraph 51 of the second periodic report, which mentions article 183 of the Constitution; it must be pointed out that under article 71 of the Constitution: "Citizens are all Salvadorans aged over 18 years": it is thus clear that only citizens may use the remedy of unconstitutionality.

70. In this connection article 2 of the Act provides: "Any citizen may petition the Constitutional Division of the Supreme Court of Justice to declare laws, decrees or regulations unconstitutional in their form or content, with general and binding effect". Such petitions must be accompanied by documents certifying that the petitioner is a citizen (art. 6, last para.).

71. The details of this procedure are set out in Title II of the Act: once a petition has been submitted in writing in accordance with the established requirements, a detailed report is requested from the authority which issued the provision claimed to be unconstitutional; this report must be submitted within 10 days and accompanied, when deemed necessary, by certified copies of documents, records of discussions, background information and other evidence which may justify the act in question. Copies of the petition and the report must be sent within a reasonable period, which may not exceed 90 days, to the Attorney-General's Office, which is obliged to deal with the matter within a stated time limit. After consideration by the Office, and on completion of any inquiries deemed necessary, a decision is handed down. A final decision is not subject to any appeal or other remedy and is binding, with general effect, on the State, its officials and authorities, and on all natural and juridical persons.

72. If the decision states that the law, decree or regulation is not unconstitutional in the alleged respect, no judge or official may decline to comply with it under protection of the powers conferred by articles 185 and 235 of the Constitution. Final judgements are published in the *Diario Oficial.*

73. During the period under review the Constitutional Division recorded the following statistics on petitions of unconstitutionality:

	1992	***1993***	***1994***	***1995***	***1996***	***1997***	***1998***	***1999***	***2000***	***Total***
Petitions received	9	10	9	20	45	24	24	27	44	212
Interlocutory judgements with final force	4	3	2	1	10	13	6	26	19	84
Final Judgements	2	2	2	2	1	2	8	16	14	51

74. This table shows that between 1992 and 2000 the Constitutional Division received 212 petitions claiming laws to be unconstitutional and that it handed down 135 judgements (51 final and 84 interlocutory with final force).

75. The final judgements included the decision of 26 September 2000 in respect of petitions 24-97 and 21-98 submitted by several citizens concerning articles 1 and 4 of Legislative Decree No. 486 of 20 March 1993, which contained the General Amnesty (Consolidation of the Peace) Act, requesting the Court to declare the Act unconstitutional.

76. After considering the requests the Court issued the following ruling:

> "1. The Court orders the cessation of the present proceedings relating to the petition claiming the unconstitutionality of articles 1 and 4 of the General Amnesty (Consolidation of the Peace) Act in that they contravene articles 1-4 of the Convention on the Prevention and Punishment of the Crime of Genocide, articles 1, 2 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 1-6 of the Inter-American Convention to Prevent and Punish Torture, and article 1, paragraphs 1 and 2, and article 25, paragraph 1, of the American Convention on Human Rights on the ground that it is beyond the material competence of this Court to consider the incompatibility of such international instruments with the General Amnesty (Consolidation of the Peace) Act.
>
> 2. The Court declares that articles 1 and 4 of the Act, issued by Legislative Decree No. 486 of 20 March 1993 and published in the *Diario Oficial*, No. 561, Vol. 318, of 22 March 1993, do not contain the alleged violations of the Constitution to the effect that article 1 of the Act violates article 244 and the first paragraph of article 2 of the Constitution and that article 4 (e) of the Act contravenes the third paragraph of article 2 and article 245 of the Constitution, for these provisions of the Act are susceptible of interpretation in accordance with the Constitution in the sense stated in this Judgement.
>
> 3. This Judgement shall be published in the *Diario Oficial* within 15 days from this date, a copy of the Judgement having been transmitted to the Editor of that official organ.
>
> 4. The present Judgement shall be notified to the petitioners, to the President of the Republic, to the Legislative Assembly, and to the Attorney-General of the Republic".

A.2 *Remedy of amparo*

77. Articles 3 and 12 of the Constitutional Procedure Act state: "Any person may submit a petition of *amparo* to the Constitutional Division of the Supreme Court of Justice in respect of violation of the rights accorded by the Constitution"; the constitutional basis for this provision is found in article 247.1.

78. On the subject of *amparo* the Committee is referred to the information contained in paragraphs 48-50 of the second periodic report. When the injured party is the State, the Constitutional Division is obliged to order the discontinuation of the act in question.

79. *Amparo* proceedings are inadmissible in cases of a purely civil, commercial or labour nature or with respect to enforceable final judgements in criminal cases. An application for *amparo* may be submitted by the injured party personally or through his legal representative or his agent. The Department of Public Prosecutions acts in the proceedings as defender of constitutionality.

80. If the application is declared receivable the court rules in the same decision on the suspension of the act in question, even when the applicant does not so request. In any event, such suspension applies only to acts which produce or may produce practical effects. The court must order the immediate provisional suspension of the act if its commission may produce irreparable damage or damage which it will be difficult to make good in the final judgement.

81. A judgement granting *amparo* orders the offending authority to restore the situation to what it was prior to the commission of the act. If such restoration is partly or totally impossible, civil proceedings have to be instituted against the official personally liable and, on a subsidiary basis, against the State for compensation for the damage or injury.

82. When an *amparo* application is admissible because an official or authority is impeding by an act, delay or omission the exercise of a right accorded by the Constitution, the judgement specifies the action to be taken by the offending official or authority; the official or authority is obliged to take the steps indicated and if they do not do so within the stated time limit, they commit the offence of disobedience of the court, which will then order proceedings to be instituted against them. The judgement also contains an award in respect of costs, damages and injury against an official who has denied in his report the commission of the act in question or who has failed submit a report or falsified the facts stated therein. This part of the judgement is enforced by ordinary proceedings.

83. The Constitutional Division recorded the following figures on applications for *amparo* during the period covered by this report:

	1992	***1993***	***1994***	***1995***	***1996***	***1997***	***1998***	***1999***	***2000***	***Total***
Applications received	162	282	378	331	379	465	596	959	707	4259
Interlocutory judgements with final force	187	226	205	202	346	335	494	963	615	3573
Final judgements	30	27	20	18	39	72	104	120	84	514

A.3 *Remedy of habeas corpus*

84. The Committee is referred to the information given in paragraphs 42 to 44 of the second periodic report. It is important to stress in connection with this remedy that the 1996 reforms of the Constitution included an amendment to article 11.2 to extend the right of *habeas corpus* in conformity with Legislative Decree No. 743 of 27 June 1996, published in the *Diario Oficial*, No. 128, Vol. 332, of 10 July 1996: "...when any authority impairs the dignity or physical, psychological or moral integrity of a detained person". This remedy may be sought under article 247.2 of the Constitution.

85. The Constitutional Procedure Act establishes in principle with regard to *habeas corpus* that "everyone has the right to use his person as he wishes without being subjected to anyone else". If this right is infringed by detaining a person against his will within certain limits, either by threats, fear of injury, coercion or other physical constraint, it must be understood that the person is confined by and in the custody of the authority or individual detaining him. In all cases, regardless of their nature, involving detention, confinement, custody or restriction which is not

authorized by law or which is applied in a manner or to a degree not authorized by law the injured party has the right to be protected by a writ of *habeas corpus*.

86. A writ of *habeas corpus* may be requested by direct written application to the secretariat of the Constitutional Division of the Supreme Court of Justice or to the secretariat of any of the courts of second instance which do not sit in the capital, or by letter or telegramme, by the person whose liberty is being improperly restricted or by any other person. The applicant must state, if possible, the type of confinement, imprisonment or restriction suffered by the victim, the place, and the person in whose custody he is being held, and he should request the issue of a writ of *habeas corpus* and swear that what is stated in the application is the truth.

87. The issue of a writ of *habeas corpus* means that the executing officer requires that the person who is the subject of the writ must be presented to him by the court, authority or individual having custody of him and that the executing officer must be informed of the procedure or the ground according to which the person was detained or confined or subjected to some other restriction. The authority or individual having custody of the person or subjecting him to restriction must immediately bring him before the executing officer, indicating the proceedings in question or giving the ground for the detention or restriction if no proceedings have been initiated. The action to be taken by the executing officer in the following non-exhaustive list of cases is established in the Constitutional Procedure Act:

(a) When the subject of the writ is in the custody of a private individual acting without authorization;

(b) When an individual is acting by virtue of a power accorded to him in the Code of Criminal Procedure in cases when an offender is caught *in flagrante delicto*;

(c) When the authority exercising custody or imposing the restriction is different from the authority which is to try the case;

(d) When the individual exercising custody of another person is his parent, guardian or the person responsible for his discipline in the home and the said individual acts far beyond the limits of that responsibility;

(e) When custody is being exercised by a competent authority and the period allowed for investigation has not expired. On the expiry of that period the executing officer may proceed in the following cases:

(1) When the authority is competent but the proceedings have not commenced;

(2) When the proceedings have commenced but an arrest warrant has not been issued within the legal time limit and the facts of the case do not provide grounds for issuing a warrant;

(3) When an arrest warrant has been issued but without legal justification;

(f) When a court or any other competent authority proceeds in accordance with the law;

(g) When a person is in custody by virtue of an enforceable judgement;

(h) When a judgement has been enforced and the convicted person has served his sentence;

(i) When the detainee, prisoner or convicted person is subjected to greater constraint or restriction than allowed by law or held incommunicado in contravention of the law;

(j) When the subject of the writ is held solely under the restraint of another person;

(k) When it appears from a sworn statement of a reliable witness or from any other item of evidence accepted by a competent court or by an executing officer that a person is being held in prison or in unlawful custody and there are justified grounds for believing that he will be deported or suffer irreparable harm or that he is being held incognito before he can be assisted in the normal course of the law or in all cases when a writ of *habeas corpus* has been disregarded, the competent court shall issue an order empowering the executing officer to take carge of the person subjected to detention or other restriction and move him to another place of detention stipulated by the court which issued the writ and then to present him to that same court, which shall immediately order whatever measures may be necessary for his protection in accordance with the law;

(l) When the individual or authority in question no longer has the subject of the writ in his or its custody or under restraint but has moved him to another place or has done so at the order of another individual or authority, or when the said subject has been deported from the territory of the Republic;

(m) In cases of disobedience;

(n) In cases involving one of the officials mentioned in articles 236 and 238 of the Constitution (President and Vice-President of the Republic, deputies, persons appointed to the Office of the President, ministers and deputy ministers of State, the president and judges of the Supreme Court of Justice, the Attorney-General, the General, the Procurator for the Protection of Human Rights, the president and judges of the Supreme Electoral Tribunal, and members of the diplomatic corps);

(o) When the subject of a writ of *habeas corpus* has died before the writ is notified;

(p) When a death has occurred from natural causes.

88. If a ruling by a court of second instance rejects the release of the subject of a writ, the subject or the person who requested his appearance may lodge an application for review by the Constitutional Division of the Supreme Court within five working days from the notification of the ruling; the Constitutional Division court must base its decision solely on an examination of the facts. If a judge fails to comply with a decision of a court of second instance or of the Constitutional Division, the Supreme Court is immediately notified and it removes the judge from office and orders proceedings to be taken against him. If the disobedient official belongs to some other organ of the Government, the Supreme Court proceeds in the manner prescribed in subparagraph (k) above. No authority, court or jurisdiction may enjoy any privilege in this matter. In all cases a writ of *habeas corpus* must be enforced as the primary safeguard for the individual, regardless of his nationality or place of residence.

89. Except in the case described in the preceding paragraph, decisions are not subject to any legal remedy, and the officials which make them bear the corresponding liability.

90. The Supreme Court has recorded the following figures on *habeas corpus* applications received during the period covered by this report:

	1992	***1993***	***1994***	***1995***	***1996***	***1997***	***1998***	***1999***	***2000***	***Total***
Applications received	216	226	320	374	688	581	602	457	423	3887
Interlocutory judgements with final force	73	81	75	3	69	62	89	83	71	606
Final judgements	207	217	207	381	455	468	478	388	282	3083

B. *Code of Civil Procedure*

B.1 *Remedy of appeal*

91. Appeal is an ordinary remedy which the law accords to any litigant who believes himself to have been injured by a judgement of a lower court to enable him to appeal against that judgement before a higher court. An application for leave to appeal must be submitted in writing to the same court which handed down the judgement and never orally or in the notification. The time limit for appealing against any judgement is three days counted from the day following the notification.

92. Once an application has been made, the court is obliged, before anything else and without any other proceedings, to grant or reject it in accordance with the law, and it must state in the order whether the application is admissible with one or both effects: evolutive and suspensive. If the court totally rejects the application its jurisdiction remains in force even if its ruling is irregular, and it shall bear responsibility for the ruling in accordance with the law; in such cases the applicant may use the remedy of proceedings for review of leave to appeal. If the application is admitted for evolutive effect alone, the court's jurisdiction remains in force for purposes of enforcement of its rulings until they are revoked or suspended by a higher court; but if it admits the application without qualification or for both effects, its jurisdiction is totally suspended and any measure which it orders shall be deemed unlawful.

93. If the court of appeal finds the application admissible, it must so rule within 24 hours; the case is passed to the court office so that the parties may avail themselves of their rights and the procedure established by law may be initiated. The court's final judgements shall be limited specifically to the points raised in the appeal and to those points which should have been decided but were not decided in the first instance although raised by the parties. The court of second instance may admit evidence whose production had been ordered in the court of first instance but was not made available to the judge in time.

B.2 *Proceedings for review of leave to appeal*

94. If an application which should have been granted has been rejected by the court, the applicant may present himself to a higher court, within three days counted from the day following the notification of the rejection plus an allowance for distance, and request that the application be

admitted. Within three days the court must order the lower court to transmit the documents, except when a mere reading of the application indicates the illegality of the appeal.

95. Once the proceedings have begun, the court must reach its decision within six days; if the appeal is found to be illegal, the court rules in its decision that the documents shall be returned to the lower court so that it may proceed with its measures. Use of this remedy does not stay the enforcement of the judgement or the proceedings until the documents are requested by the higher court.

B.3 *Remedy of special complaint proceedings*

96. This remedy is available against: (1) an illegality; and (2) judicial delay. It may be used only when an illegality or legal delay has occurred and the principal proceedings are before an immediately higher court. If the illegality or delay is duly proved, the court, regardless of the status of the principal proceedings, must order a discontiuation and return to the *status quo*; it also makes an order for costs and damages against the lower court responsible for the illegality or delay.

B.4 *Remedy of annulment*

97. The principle is that no proceedings or procedural act shall be declared null unless the annulment is specifically allowed by law. And even in this case there may be no declaration of annulment if it appears that the infringement in question has not caused and could not cause harm to the rights or the defence of the party alleging the infringement or the party benefiting from it. A declaration of annulment may be made in the course of the proceedings or secured by means of a special annulment action.

C. *Code of Criminal Procedure*

C.1 *Remedy of reconsideration*

98. This remedy is admissible during a hearing only if the matter can be decided immediately without suspension of the proceedings. An application for reconsideration also signifies notice of intention to seek judicial review if the defect indicated in the application is not corrected and the judgement causes harm to the applicant. This remedy is available only against decisions on a legal point or interlocutory matter raised in the proceedings, when the court which handed down the decision is able to revoke or amend it.

C.2 *Remedy of appeal*

99. This remedy is available against decisions of municipal courts and examining magistrates, provided that such decisions are appealable and also cause harm to the applicant. It is also available against decisions of an examining court in cases of preliminary proceedings for judicial misconduct and against court decisions on award of costs. The application must be submitted in writing with due supporting arguments to the court which handed down the decision within a time limit of five days. If the defendant is involved the application may be made orally in the respective notification.

C.3 *Remedy of judicial review*

100. This remedy is available when the judgement is based on disregard or incorrect application of a legal rule. When the incorrect application of the cited rule constitutes a procedural error the remedy is admissible only if the applicant has sought correction of the error in due time or has given notice of his intention to apply for judicial review, except in the case of an annulment which cannot be revoked, in cases involving a defect in the judgement, and in cases of the annulment of the panel's verdict.

101. Apart from the specific cases provided for by law, this remedy is available only against final judgements or acts terminating proceedings or a sentence, or which make it impossible for them to be continued, or which reject the quashing of a sentence, and against decisions terminating abbreviated proceedings. The application must be made to the court which handed down the judgement or decision. When the time limit has expired or when all the argumentation has been submitted, the court immediately transmits the matter to the Criminal Division or to the Supreme Court of Justice without further proceedings.

102. If the application is declared admissible and none of the parties has requested a hearing, or if the court does not deem a hearing necessary, it includes in the same ruling on admissibility a decision correcting the violation of the law; when direct reparation is impossible this decision may partially or totally annul the judgement or the disputed act and order the case or the judgement to be reconsidered by another court. In the case of partial annulment this decision indicates the specific purpose of the reconsideration by another court. Errors of law in the explanation of the grounds for a disputed judgement or decision which have not influenced the operative part do not entail annulment but they are corrected, as are material errors in the calculation of the penalty.

C.4 *Remedy of judicial review of the facts*

103. This remedy is available against an executory sentence, at any time but only for the benefit of the accused, in the following cases: (1) when the facts forming the basis for the sentence are incompatible with the facts established therein or in another executory sentence; (2) when the disputed sentence is based on documentary evidence or the evidence of witnesses which has been declared false in a subsequent judgement; (3) when the sentence has been handed down as a result of a perversion of the course of justice, bribery or violence or any other improper act whose commission has been declared in a subsequent judgement; (4) when the sentence directly and manifestly violates a constitutional guarantee; (5) when subsequent to the sentence new facts or evidence come to light which separately or in conjunction with the facts and evidence already examined in the proceedings make it clear that the offence did not take place, that the accused did not commit it, or that it is not a punishable act; and (6) when a more favourable criminal law should be applied.

104. Applications for this remedy are heard by the court which handed down the judgement. During the review proceedings the court may suspend the enforcement of the sentence and order the release of the convicted person on bail or a precautionary measure which does not restrict his liberty. In its decision the court may annul the sentence and order a new hearing when the case so requires, or it may pronounce judgement in the case directly. In this judgement the court rules of its own motion on compensation for the damage or injury caused by the annulled sentence. This compensation is paid by the State, except when the accused has contributed wilfully or culpably

to the judicial error. Rejection of an application for judicial review of the facts does not prevent the submission of another application based on different grounds.

D. *Judicial Review Act*

D.1 *Judicial review in civil cases*

105. This remedy is available in the following cases: (1) against final and interlocutory judgements which terminate proceedings and make it impossible for them to be continued and which are handed down on appeal by courts of the second instance; (2) against judgements in non-contentious jurisdiction when the case cannot be discussed in administrative judicial proceedings; (3) against decisions of friendly arrangers.

106. It must be based on one of the following grounds: (a) violation of the law or of legal doctrine; (b) exhaustion of one of the essential forms of the proceedings; (c) friendly arrangers have given their decision after the time limit laid down in the arbitration agreement or points remain which were not submitted to them for adjudication.

107. If an application on the ground of exhaustion of form is to be admissible, it is essential for the party submitting it to have sought correction of the error by having recourse at the appropriate time and according to the relevant procedure to the remedies which must be heard by a court immediately higher in status, except when application to such a court was impossible or no remedy was available.

108. The application must be submitted, within an absolute time limit of 15 working days counted from the day following the day of the notification, to the court which handed down the judgement against which remedy is sought. Having examined the case, the court may make good or correct any errors or omissions of law which it may find in the applicant's case, provided that in the court's view there is a reasonable doubt as to the legality of the judgement in question. In its final decision the court states the rule or rules infringed and the reason for the infringement.

109. If the application is rejected, the judgement stands and the documents of the case are returned to the original court, with a certified statement of the findings, so that it may issue an executory copy of the judgement. If the disputed judgement is annulled, the correct legal judgement is pronounced, provided that the application for judicial review was lodged in respect of an error on the merits; but if the annulment results from incompetence in respect of the conduct of the case, the court declares only the annulment.

110. If an annulment is based on exhaustion of form, the case is ordered to be reheard from the first valid act, at the expense of the culpable official; the documents are returned for this purpose, with a certified copy of the judgement. If the application is based equally on exhaustion of form and on the merits, the court rules first on the exhaustion of form, and only if the judgement is not annulled on this ground does the court consider the application on the merits.

111. This remedy is not admissible in oral proceedings concerning a violation of the law or legal doctrine or exhaustion of form. In enforcement, possession and other summary proceedings and in proceedings in non-contentious jurisdiction when a new action may be brought in the same matter, only applications on the ground of exhaustion of form are admissible, except in summary procedures concerning failure to pay maintenance, when applications on the ground of violation of the law or legal doctrine are also admissible. Furthermore, applications against judgements of

courts of second instance handed down under a judicial review are not admissible, except in the case of consideration of points of substance not argued in the proceedings or ruled on in the judgement or points which are in manifest contradiction with the judgement.

112. The remedy of judicial review of decisions of friendly arrangers may be used against the arrangers themselves. If the arbitrators give their decision after the expiry of the time limit set in the arbitration agreement, this decision is annulled; if they have ruled on a point or points other than the ones submitted to them for decision, the decision is annulled only in respect of such point or points.

E. *Family Court Procedure Act*

113. The remedies of reconsideration and appeal are available against judgements in family matters. The remedy of judicial review is also admissible; applications are lodged and dealt with in accordance with the rules of judicial review in civil cases.

E.1 *Remedy of reconsideration*

114. This remedy is available against procedural orders, interlocutory judgements and final judgements in subsidiary matters. Applications must be lodged within 24 hours of the notification, except when the notification is issued in court or during the proceedings, in which case the application must be lodged orally immediately after the proceedings. A ruling on an application for reconsideration is not subject to any remedy, except when it covers points not decided in the initial proceedings, in which case the available remedies may used, but only with respect to the new points.

E.2 *Remedy of appeal*

115. This remedy is available against final judgements handed down in the first instance and against the following judgements: (a) a judgement declaring an application or its amendment or amplification inadmissible; (b) a ruling on the intervention of third parties or procedural successors or disallowing the representation of one of the parties; (c) a judgement disallowing the postponement of a hearing; (d) a ruling on the consolidation of proceedings; (e) a ruling on a dilatory plea; (f) a judgement ordering, amending, replacing or annulling precautionary measures; (g) a judgement rejecting the suspension of proceedings; (h) a judgement disallowing the hearing of evidence requested in good time; (i) a judgement disallowing the raising of an interlocutory matter or a judgement ruling on such a matter; (j) a judgement declaring the termination of proceedings in special circumstances; and (k) a judgement rejecting the amplification or amendment of a final decision in a subsidiary matter.

116. Applications must be lodged in writing within three days from the notification of an interlocutory judgement; if it relates to a final judgement it must be lodged within five days from the notification of the judgement.

117. Within five days of receipt of the documents the court of second instance must rule on the admissibility of the remedy and on the matter raised, except when already admitted. In its decision the court may confirm, amend, revoke or annul the judgement in question.

E.3 *Proceedings for review of leave to appeal*

118. If an application for appeal is improperly rejected, the applicant may apply to a competent higher court requesting the admission of the remedy. The applicant must submit his petition within three days of the day following the notification of the rejection.

119. Once these proceedings have begun, the higher court must rule on the admissibility of the remedy and on the matter raised within five days; if it finds that leave to appeal has been improperly refused, it admits the appeal and orders the case to be transmitted to the court secretariat for processing. If the court finds that the appeal is inadmissible it declares the petition to lack merit and orders the return of the documents to the lower court for continuation of the proceedings. Such petitions do not entail a stay of enforcement of the judgement or a suspension of the proceedings before the moment when the higher court requests the documents of the case.

F. *Labour Code*

120. The following remedies are available against court decisions in labour matters: (a) judicial review of the facts; (b) appeal; and (c) annulment.

F.1 *Remedy of judicial review of the facts*

121. This remedy is available before a court in the following cases: (1) final judgements in single-instance proceedings; (2) judgements handed down in accordance with article 448 (decision of a judge amending or declining to amend a judgement in the context of a procedure for the review of awards in proceedings relating to occupational hazards); (3) judgements handed down under article 475 and decisions declaring petitions concerning collective legal disputes inadmissible when all that is sought is the mere interpretation of a rule; and (4) decisions declaring petitions inadmissible in single-instance proceedings; decisions declaring the defence of jurisdictional incompetence inadmissible; and decisions declaring the whole proceedings void and ordering the case to be re-heard.

122. Applications may be made orally or in writing, on the same day as or within three working days of the notification, to the court which heard the case in the first instance. If the application is found admissible and the case accepted, the court, without any further proceedings other than a hearing of the case, confirms, amends or revokes the judgement or decision and hands down its own decision within three days of the day on which it received the documents.

F.2 *Remedy of appeal*

123. This remedy is available before a court or chamber against the following decisions: (1) decisions declaring a petition inadmissible; (2) decisions declaring the defence of jurisdictional incompetence admissible; (3) decisions terminating the proceedings and making their continuation impossible; (4) decisions annulling the proceedings and ordering the case to be re-heard; and (5) final decisions. This remedy is also available before the labour tribunals in respect of: (1) decisions declaring petitions concerning collective legal disputes inadmissible when what is sought is compliance with a rule; and (2) decisions handed down under article 474.2 (decisions by which the court orders compliance with a rule or rules that have been infringed).

124. Applications must be lodged in writing with the court which heard the case in first instance on the same day as or within three working days of the notification.

125. The remedy is admissible in second instance only in the following cases: (1) in the cases envisaged in articles 577 and 580 (pleas of new defences based on facts, occurrences or cases subsequent to the closure of the proceedings in first instance, and pleas of falsification of documents submitted by the other party); (2) to try facts which were brought forward in first instance but found inadmissible; and (3) to examine witnesses designated by name during the preliminary proceedings but not examined in first instance owing to sickness, absence or other reasons beyond the party's control; but in such cases examination is allowed only of witnesses who were not examined in first instance and on the points brought forward in the preliminary proceedings in which the witnesses were designated by name.

126. On the expiry of the time limit for submission of evidence and once the evidence brought forward has been verified, the appealed judgement or decision is confirmed, amended or revoked, and the court hands down its own decision within the next five days.

F.3 *Remedy of annulment*

127. This remedy is available only against final judgements handed down on appeal in cases in which the sum directly or indirectly claimed in the petition amounts to more than 5,000 colones and provided that such judgements are inconsistent in the main with those handed down in first instance.

128. The application must be based on one of the following grounds: (1) violation of a law or legal doctrine; (2) exhaustion of one of the essential forms of the proceedings.

129. Applications must be lodged, within an absolute time limit of five days from the day following the notification, with the court which handed down the judgement in question.

F.4 *Proceedings for review of leave to appeal*

130. If the remedies of review or appeal are not admitted by the lower court, an applicant may lodge a petition in writing with a higher court, within a time limit of three days from the day following the day on which the rejection was notified, requesting that the remedy be admitted.

131. When the documents have been transmitted to the higher court it rules within the next two days on the admissibility of the remedy. If it finds the rejection by the lower court to be in conformity with the law, it returns the documents with a certified copy of its decision. If it finds that the remedy has been rejected improperly, it so rules and notifies the parties that the remedy is admissible, so that they may avail themselves of their rights, if they wish, within the next three days and proceed in the established manner for reviews and appeals.

Paragraph 3 (b): Authority competent to determine the right of any person claiming a remedy

132. Article 172 of the Constitution States: "The Supreme Court of Justice, the courts of second instance and the other courts which establish secondary laws comprise the Judiciary"; and further: "The Judiciary has the exclusive power to try cases and to enforce judgements in constitutional, civil, criminal, commercial, labour and agrarian matters, as well as in administrative disputes and other matters specified by law".

133. The Judiciary (Organization) Act establishes that the Supreme Court shall consist of 15 judges and be organized in four divisions: Constitutional, Civil, Criminal, and Administrative Disputes.

134. The Constitutional Division consists of the President of the Supreme Court and four members appointed by the Legislative Assembly. The Civil and Criminal Divisions each consists of a president and two members and the Administrative Disputes Division of a president and three members appointed by the Supreme Court from among its member judges.

135. The Constitutional Division is responsible for: (1) hearing and adjudicating in the following constitutional matters: (a) unconstitutionality of laws, decrees and regulations; (b) *amparo*; (c) *habeas corpus*; (2) settlement of disputes between the Legislature and the Executive (in relation to the unconstitutionality of draft legislation); (3) considering the grounds for suspension or loss of civil rights in the cases mentioned in article 74 (2) and (4) and in article 75 (1), (3), (4) and (5) of the Constitution (suspension of rights by reason of mental disturbance or for failing without just cause to take up an elective post, and loss of rights by reason of notoriously immoral conduct, for selling votes in elections, or for signing documents, proclamations or messages to promote or support the reelection or the continuation in office of the President of the Republic or taking direct action to that end), and the grounds for restoration of these rights.

136. The Civil Division is responsible for: (1) considering applications for annulment in civil, family, commercial and labour matters and appeals against judgements of the civil courts of the First Section of the Central Court, the labour courts, and the family courts of the Central Section relating to cases which these courts heard in first instance; (2) considering applications for the remedy of proceedings for review of leave to appeal and the remedy of special complaint proceedings; (3) hearing challenges to titular and alternate judges of the courts of second instance; and (4) considering impediments and excuses brought forward by the officers mentioned in (3) above.

137. The Criminal Division is responsible for: (1) considering applications for annulment and appeals against judgements of the Criminal Division of the First Section of the Central Court handed down in proceedings of first instance; (2) considering applications for the remedy of proceedings for review of leave to appeal and the remedy of special complaint proceedings; (3) considering applications for review when the Division itself handed down the judgement in respect of which remedy is sought; (4) considering challenges to titular and alternate judges of the courts of second instance; and (5) considering impediments and excuses brought forward by the officers mentioned in (4) above.

138. The Administrative Disputes Division is responsible for hearing disputes arising in relation to the legality of acts of the public administration and other matters specified by law. The Committee is referred to the information given in paragraphs 53-57 of the second periodic report (CCPR/C/51/Add.8 of 3 November 1993).

139. This Division hears disputes arising in relation to the legality of acts of the public administration, this term being understood to mean: (a) the Executive and its agencies, including autonomous and semi-autonomous institutions and other decentralized State bodies; (b) the Legislature and the Judiciary and independent bodies to the extent that in exceptional cases they perform administrative acts; and (c) local government authorities.

140. Depending on their jurisdiction, the courts of second instance are competent to hear: (1) matters arising in the territory assigned to them which have been considered in first instance by the relevant courts: (a) appeals; (b) applications for proceedings to review leave to appeal; (c) automatic reviews; and (d) applications for review; (2) special complaint proceedings alleging judicial delay or an illegality; (3) in first instance, the matters specified by law; and (4) other matters specified by law.

141. The courts of first instance are single-judge courts. They hear in first instance, in accordance with their jurisdiction, all judicial matters brought forward within the territory under their jurisdiction; and in second instance they hear the cases and matters specified by law. They are also competent to hear non-contentious matters in which a specific law requires judicial intervention. Judges of first instance may intervene, in matters falling within their jurisdiction, only at the request of a party, except in the cases when the law empowers them to proceed on their own motion.

142. The municipal courts (*juzgados de paz*) are single-judge courts which hear matters of lesser importance in the civil and commercial branches. The jurisdiction of these courts is limited to the territory of the municipality in which they have their seat; they hear in first instance civil and commercial cases in which the sums at issue do not exceed 10,000 colones or, while not exceeding that limit, cannot be determined at the time. In criminal matters they are competent to hear: preliminary steps in all proceedings relating to offences subject to ordinary jurisdiction committed within their territorial area; minor offences; and matters assigned to them by courts of first instance or other courts of justice, as well as other matters specified by law. The municipal courts are the only courts competent to hear conciliation proceedings.

Paragraph 3 (c): Undertaking to ensure that the competent authorities enforce the established remedies when granted

143. With regard to the binding force of decisions in proceedings of unconstitutionality, the Committee is referred to the information contained in paragraphs 49-51 of the second periodic report.

144. In the case of enforcement of judgements in administrative disputes, article 35 of the Administrative Disputes (Jurisdiction) Act states:

> "The authorities or officials responsible for enforcement of judgements may not excuse a failure to enforce a judgement on the ground of compliance with instructions from a superior".

ARTICLE 3

Equality between men and women in the enjoyment of the civil and political rights set forth in the Covenant

145. The Committee is referred to the information given in paragraph 52 of the report concerning the equality of persons in the enjoyment of civil rights without any restrictions based on sex, among other differences (CCPR/C/14/Add.7 of 17 October 1986).

146. El Salvador is a party to the Convention on the Elimination of All Forms of Discrimination against Women, with effect from 1981; the Convention on the Political Rights of Women, with

effect from 1994; the Inter-American Convention on the Granting of Civil Rights to Women, with effect from 1951; the Inter-American Convention on the Granting of Political Rights to Women, with effect from 1951; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), which entered into force for El Salvador in 1995.

147. With respect to equality in the enjoyment of civil and political rights, the Committee is referred to the information on the measures adopted by the Ministry of Education to promote education in values, which will be found in paragraphs 199-203 of document CAT/C/37/Add.4 of 12 October 1999.

Organs and instruments specially designated to apply the principle of equality between men and women

148. The National Institute for the Advancement of Women (ISDEMU) was established by Legislative Decree No. 644 of 29 February 1996, published in the *Diario Oficial*, No. 43, Vol 330, of 1 March 1996, as part of the Social Plan of Government 1994-1999 and as a national mechanism for incorporating the gender perspective in public affairs, promoting the advancement of women and improving their status, establishing gender equality in El Salvador, and removing the obstacles to women's participation in the various spheres: social, economic, cultural and political.

149. The creation of ISDEMU served as the basis for the development of a National Policy for Women (PNM) to facilitate equality of opportunities between women and men. article 3 of the Act establishing ISDEMU obliges it and other State institutions to draft and to implement the PNM.

150. The PNM was drawn up in 1996 and approved in 1997, constituting the first Action Plan, for the period 1997-1999; a new Action Plan 2000-2004 has now been drafted and introduced under the "New Alliance" Programme of Government; its institutional programmes include gender cross-cutting in all the activities on the public agenda. Both Plans were designed to secure the implementation of measures in the following areas: legislation, education, civil participation, the family, work, domestic violence, agriculture, livestock, fisheries, communication media and culture, and the environment.

151. The PNM is intended to improve the status and elevate the position of Salvadoran women by ensuring that their participation in the nation's development takes place in a context of equality of opportunities with men and encourages shared responsibility between the sexes.

152. Specific PNM objectives include: (1) to increase women's social and political participation by encouraging them to exercise their civil and political rights and promoting leadership among women in order to secure equal access to power for women and men; (2) to achieve equality before the law for women and men at the various levels of the judicial system on the basis of the corresponding principle of the Constitution. To this end it is necessary to amend legislation, improve the functioning of the administration of justice, and overcome the difficulties encountered by women in gaining access to the regulatory and judicial system; (3) to contribute to women's comprehensive development by encouraging the sharing out of responsibilities among family members, to improve the living conditions of women heads of family, and to popularize the exercise of women's rights as a means of strengthening the family; (4) to help to secure equality of opportunities in the participation of women and men in the labour market by

eliminating the discrimination which creates wage differentials based on sex, broadening women's access to decision-making posts, and increasing the training of women in the various occupational branches and sectors of economic production; (5) to encourage the mass media to project an image of women based on non-discrimination and the elimination of sexual stereotypes, to promote through the media and cultural activities gender equality and women's contribution to social, cultural, political and economic life, and to respect the diversity of women's identities and experiences; (6) to detect and prevent the phenomenon of violence against women by providing protection and care for the victims in the form of concrete actions based on the international and national legislation on violence.

153. The PNM was designed 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.

154. 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 the heads of the Ministries of Labour and Social Insurance, Health and Social Welfare, the Interior, Agriculture and Livestock, and Education, 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.

155. The investment made by ISDEMU in the training of the State's human resources was an urgent and indispensable measure for creating the conditions to guarantee a just and equitable society in respect of the relations between men and women. Training has been promoted in order to ensure the implementation of the 10 areas of the PNM.

156. The plan is for ISDEMU to implement the project "Incorporation of the gender perspective in the Government's national statistics" in three stages: (1) personnel training: (a) concerning the ISDEMU information technology unit on gender theory and its approach to applied statistics; (b) concerning the 40 or so governmental agencies which will be responsible for the modernization of statistical services to incorporate the gender perspective; (c) concerning the Directorate-General for Statistics and Censuses (DIGESTYC) on gender theory and its use in applied statistics; (2) production of an analysis of statictical services and a plan for their modernization by incorporating the gender perspective in the light of the specific situation in each agency; and (3) creation of a metropolitan statistical data system with a gender perspective.

157. The Inter-Agency Juridical Commission created in 2000 draws its membership from ISDEMU, the Supreme Court of Justice, the National Council of the Judiciary, the Office of the Attorney-General, the Office of the Procurator for the Protection of Human Rights, the Legislative Assembly, the Ministry of Health and Social Welfare, the Ministry of Education, the Ministry of Labour and Social Insurance, and the Ministry of Agriculture and Livestock. Other agencies may eventually be incorporated, depending on the matter under study.

158. The Commission's main purpose is to study the social and juridical sectors in order to identify gaps and inconsistencies and rules and regulations which discriminate against women; it is also responsible for bringing forward proposals for reform of legislation with a view to eliminating any provisions which may facilitate discrimination and prevent women from exercising the constitutional principles of equality before the law and non-discrimination on the ground of sex.

159. 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.

Participation of women in political life

160. Females make up more half of El Salvador's total population and they slightly outnumber males in rural areas.

161. The following points should made in connection with women's participation in political life: (a) the Constitution enshrines the principle of legal equality and the principle of non-discrimination on the ground of sex; (b) El Salvador has ratified important international instruments on women's rights; (c) women have been taking an active part in the electoral system and in the elections for public posts.

162. Women's participation in governmental and party politics has been restricted by a number of factors, including: (a) a political system that favours men's participation in public affairs by making it more difficult for women to hold public office; (b) a party political system which does not facilitate participation by women, for women occupy a secondary place in the candidate lists or are appointed to managerial posts where the decisions to be taken are not of primary importance. Only one of the political parties has incorporated in its statutes a quota of 33 per cent of women in its management bodies and in the lists of candidates for elective posts, but even here women's participation remains limited.

163. In the light of all these factors, women's participation in political affairs in recent years in terms of their presence in governmental agencies can be illustrated as follows:

Participation of women and men in the Legislative Assembly by period, 1982-2003

Legislative period		***1982-1985***	***1985-1988***	***1988-1991***	***1991-1994***	***1994-1997***	***1997-2000***	***2000-2003***
Men	Number	53	57	53	77	75	71	76
	%	88.33	95.0	88.33	91.67	89.29	84.52	90.48
Women	Number	7	3	7	7	9	13	8
	%	11.67	5.0	11.67	8.33	10.371	15.48	9.52
Total titular deputies		60	60	60	84	84	84	84

Participation by sex in the cabinet by period, 1994-1999 and 1999-2004

Posts	***1994-1999***			***1999-2004***		
	M	*W*	*Total*	*M*	*W*	*Total*
Ministers	12	1	13	8	3	11
Deputy ministers	14	3	17	12	1	13
Total	26	4	30	20	4	24
% of total	87%	13%	100%	83%	17%	100%

Participation by sex in the Central American Parliament, 2000-2003

Deputies	*Period 2000-2003*		*Total*
Titular	H	M	
	16	4	20
Alternate	14	6	20
% of total	80	20	100

Municipal councils, 1997-2003

Period	*1997-2000*	*%`of total*	*2000-2003*	*% of total*
Mayors	240	91.7	239	91.23
Mayoresses	22	8.3	23	8.77
Total	262	100	262	100

164. The National Association of Women Judges and the National Association of Lawyers are very active in this area at the national level: both associations nominate candidates for judgeships of the Supreme Court of Justice, and as a result the Court currently has two women members. The National Council of the Judiciary is also chaired by a woman, and a woman lawyer is director of the Judiciary Service Training School. A large number of women hold posts as judges of municipal courts, judges of first instance, and judges of the central divisions of the Judiciary.

165. The current Ministers for Foreign Affairs, Education, and Environment and Natural Resources are women. Since its creation in 1992 two women have held the post of Procurator for the Protection of Human Rights, including the current Procurator, whose term of office runs until 2004.

166. In the judicial sector, women doctors are members of the team of professionals of the Institute of Forensic Medicine; a number of women psychologists and social workers are also employed in this sector. Women hold posts in other public and private sectors as well.

Participation of women in economic life

167. A number of studies show that women are mainly responsible for food production for household consumption.

168. The perception exists that Salvadoran women do not enjoy the same conditions as men with respect to integration in the labour market, for the informal urban sector and micro-enterprises are coming to comprise an increasingly large segment of the market, and these are the areas in which women work. The indicators show that women workers are in the majority in these areas: nation-wide, women account for 65 per cent of total workers in micro-enterprises and 51 per cent in the informal sector. As pointed out earlier, the PNM is seeking to increase women's presence in economic life.

Total micro-businesspersons by sex and occupational category

Occupational category	*Total*	*Men*	*Women*
Total	100.00 %	35.0 %	65.0 %
	(46,8717)	(163.994)	(304.723)
Own-account	100.00 %	30.0 %	70.0 %
Employers	100.00 %	61.1 %	38.9 %

Source: FOMMI/DIGESTYC, 1998 micro-enterprise survey.

169. Most of the women in micro-enterprises do not work as heads or managers but rather as self-employed persons, i.e. generating a monthly income on their own account and at their own risk and usually without the benefit of regulations that provide protection against occupational hazards, sickness and death. This situation is markedly different from the situation of men in micro-enterprises, for men work as employers managing paid or unpaid male and female workers.

170. Women are the majority presence in subsistence enterprises, while there is a relatively more balanced participation of women and men in micro-enterprises producing a simple or an extensive surplus. In total, 53.7 per cent of the economically active female population works in the informal sector, while only 41 per cent of the economically active male population does so.

Participation by sex in subsistence micro-enterprises, 1995 and 1998
FOMMI I and DIGESTYC II

Category	*1995*			*1998*		
	Women	*Men*	*Difference*	*Women*	*Men*	*Difference*
Subsistence	70.2	28.8	+41.4	67.0	33.0	+30
Simple surplus	53.0	47.0	+6.0	50.4	49.6	+0.9
Extensive surplus	25.0	75.0	-50	45.8	54.2	-8.4

171. According to the available official information on public-sector wages, the wage gap between men and women is tending to maintain itself at the various levels of the scale, depending on the degree of advanced education.

172. Furthermore, despite the fact that some of the indicators of equity in access to jobs have improved in favour of women, there are still occupations in which women's presence is nil or very small: for example, construction workers, mechanics and fitters, electricians, etc.

173. Most Salvadoran women workers are employed in services, professional work, factories, assembly plants and domestic service, principally in the informal sector. Their main problems are unemployment, low wages and in some cases unjustified dismissals.

174. El Salvador now guarantees the legal equality of men and women workers pursuant to the provisions of article 3 and article 38.1 of the Constitution in relation to articles 12 and 123 of the Labour Code.

Participation of women in the military and in public-security bodies

(a) *The military*

175. According to the Constitution, the legal regime governing the armed forces consists of the laws and regulations thereon and the special provisions adopted by the President of the Republic to regulate their role in national life. There is no gender differentiation in this area, for the rights and duties inherent in military service are the same for all members of the armed forces.

176. Women are not barred from military careers: women graduates from various national and international schools and academies are currently following such careers; they enjoy their respective prospects of promotion in accordance with the law.

176. To give an example of the active participation of Salvadoran women in military life: on 31 December 1996 Lieutenant Colonel Josefa Adriana Herrera de Hayem, who has qualifications in health and sociology, was promoted to the rank of Colonel of the Armed Forces, having satisfied the requirements of the Military Careers Act and its corresponding regulations. On 31 June 2000 she joined the ranks of retired officers, having met the pension requirements of the Act governing the Armed Forces Social Insurance Institute.

178. The year 2000 saw the establishment of suitable infrastructure arrangements for the first class of female cadets to enter the Captain-General Gerardo Barrios military school. There are currently 35 young women taking first- and second-year courses of study for a military career, in addition to three scholarship-holders from the Dominican Republic.

179. The administrative personnel of the armed forces includes more that 1,500 women in various occupations, ranging from sensitive or managerial posts to jobs in offices and kitchens and in the manufacture of uniforms.

180. Pregnant female personnel have access, entirely free of charge, to the medical facilities of the Military Hospital, as do their minor children.

(b) *Public-security bodies*

181. The creation of the National Civil Police (PNC) in 1993, following the signature of the Peace Accords, offered an opportunity for women to join the police and take up an occupation traditionally reserved exclusively for men. By the end of 1999 the PNC already had 1,101 (6.37 per cent) women officers, and by the end of 2001 the figure had risen to 1,167 (7.1 per cent).

182. The PNC is aware that an institution is democratic to the extent that its members put into practice democratic values and make the principle of equality into a reality; it has supported and carried out various measures designed to ensure regional integration of the policy of equality of working conditions and opportunities for men and women in police bodies, combined with a gender approach.

183. The activities have included: participation in two meetings of senior women police officers from Central America, Panama and the Dominican Republic, held in Nicaragua (1998) and El Salvador (2001), at which it was agreed *inter alia*: to incorporate a gender approach as an organizational principle: to introduce policies for the admission of women to police forces; to

draw up policies for the promotion of women officers to managerial posts; to allocate resources for these purposes; to carry out in every police agency a study of the factors encouraging and discouraging women's participation in police work in Central America, including the reasons for their joining and leaving the police; and to create a regional coordination committee under the Central American Association of Chiefs of Police in order to follow up on the gender work and determine activities for the police services. Two senior women police chiefs were appointed to this committee as representatives of the PNC of El Salvador.

184. At the end of 2001 the PNC had a total of 16,327 officers; statistics on the ranks held are given in the following table.

PNC manning table by rank

Rank	*M*	*%*	*W*	*%*	*Total*	*%*
SENIOR LEVEL						
Commissioners	16	84.2 %	3	15.8 %	19	100%
Deputy commissioners	46	85.2 %	8	14.8 %	54	100%
Subtotal	62	84.9 %	11	15.1	73	100%
EXECUTIVE LEVEL						
Inspectors	24	88.9 %	3	11.1%	27	100%
Deputy inspectors	207	88.1%	28	11.9 %	235	100%
Subtotal	231	88.2 %	31	11.8 %	262	100%
BASIC LEVEL						
Sergeants	726	94 %	46	6 %	772	100%
Corporals	1,156	94.8 %	63	5.2 %	1,219	100%
Ordinary officers	12,985	92.7 %	1016	7.3 %	1,401	100%
Subtotal	14,867	93 %	1,125	7 %	15,992	100%
OVERALL TOTAL	15,160	92.9%	1,167	7.1%	16,327	100%

185. As this table shows, women police officers have gained ground at all levels - an indication that their work is important and necessary for the country's police.

186. At the senior level 84.9 per cent of staff are male and 15.1 per cent female; at the executive level the percentage of females falls to 11.8 per cent and it falls even further, to seven per cent, at the basic level.

187. However, the PNC is trying to create the conditions to allow women to progress in accordance with the provisions of the national and international human rights regulations and it therefore offers a number of special benefits and services for pregnant women, including the following:

1. They must not undertake strenuous physical exercise of any kind;

2. They must not be assigned to patrol duties on foot or in a vehicle once their pregnancy has been confirmed;

3. From the third month of pregnancy they are required to wear formal maternity clothing;

4. All chiefs of police units are required to cooperate to ensure that any pregnant women under their command undergo a monthly obstetrical check;

5. During their pregnancy all operational and administrative personnel employed by the PNC, without exception, must be assigned to an administrative department, section or office where they will not be exposed to great risk either to themselves or to the unborn child; they must work the following hours: Monday to Friday from 08.00 to 17.00, with a 60-minute lunch break from 12.00 to 13.00. It is absolutely forbidden for them to be required to work hours different from the ones just indicated;

6. All chiefs of operational or administrative units are required to issue the necessary authorizations for pregnant women to go for their monthly checks, without prejudice to any emergency situations when they have to attend a health facility of the National Social Insurance Institute or the PNC medical services unit.

Right to abortion

188. The amendment made to article 1 of the Constitution in February 1999 established the protection of the right to life from the moment of conception, recognizing the human being from that moment.

189. It must be stressed that in international bodies the Government has maintained its position on abortion and the right to life; in 1994 at the International Conference on Population and Development in Cairo the official delegation of El Salvador entered reservations on chapters VII and VIII of the Programme of Action, on reproductive rights and on health, morbidity and mortality respectively.

190. Induced abortion has always been an unlawful act in El Salvador; up until 1998 the criminal legislation did not penalize therapeutic abortion, abortion following rape or abortion on eugenic grounds; but from April 1998, when the new Criminal Code came into force, all types of abortion became offences (arts. 133 *et seq.*): except for culpable abortion and attempted abortion the sanctions for these offences are much more severe than the ones provided for in the former Code.

191. Lastly, as in other countries, Salvadoran women are faced with the problem of domestic violence, despite the efforts made by various government agencies and NGOs to check this phenomenon.

ARTICLE 4

192. The Committee is referred to the information given in paragraphs 81-93 and 98 of the second periodic report, where the rules governing emergency situations are described.

ARTICLE 5

193. The State of El Salvador points out that the provisions of this article of the Covenant are guaranteed for all persons under its jurisdiction, as can be seen from the arguments set out throughout this report.

194. In addition, since the State regards the human person as the origin and the end of its activities, it takes all necessary measures to ensure that the various international standards which it has ratified are consistent with the constitutional precepts by which its actions are governed. As already pointed out, these precepts view the human person as the reason for the State's existence and they guarantee and accord a series of fundamental rights and freedoms which are inherent in the human person, so that there may be no restriction or reduction of the human rights and freedoms thus recognized.

ARTICLE 6

195. The Government of El Salvador informs the Human Rights Committee that the Constitution provides that the National Civil Police (PNC) shall perform the functions of urban and rural policing and shall ensure public order, security and peace, as well as collaborating in the procedures for the investigation of crime, all of this in accordance with the law and with strict observance of human rights. It further informs the Committee that the National Civil Police (Organization) Act, on the creation, organization and powers of the PNC, was issued in Legislative Decree No. 269 of 25 June 1992, published in the *Diario Oficial*, No. 144, Vol. 316, of 10 August 1992.

196. For the purposes of this report the Government draws the Committee's attention to the fact that this Act was revoked pursuant to the provisions of article 37 of Legislative Decree No. 653 of 6 December 2001, published in the *Diario Oficial*, No. 240, Vol. 353, of 19 December 2001, which also promulgated a new National Civil Police (Organization) Act corresponding to the current requirement for streamlined and effective administration of police functions. However, the citations contained in the present report are taken from the revoked Act, which was in force during the reporting period.

Paragraph 1: Protection of the right to life against arbitrary acts

197. The State of El Salvador recognizes the right to life as a fundamental value which must be protected and guaranteed; accordingly, anyone who seeks to damage this right commits an offence under articles 128 *et seq.* of the Criminal Code, which are based on articles 2 and 11 of the Constitution.

198. The right to life of embryonic human beings is also protected, for a series of criminal offences has been created, in articles 133-141 of the Code, to punish persons who violate this right, including as new criminal offences genetic engineering and injury to unborn babies.

199. With regard to arbitrary deprivation of the right to life, it must be pointed out that the criminal legislation provides that the crime of homicide is aggravated when committed by a civil or military authority, acting in that capacity, and it establishes a penalty of 20 to 25 years' imprisonment. The commission of this crime has not been frequent or systematic since the signature of the Peace Accords, but such criminal acts are specified in the legislation in order to punish offences committed by the civil or military authorities.

200. The Criminal Code also covers the following offences: (a) forced disappearance of persons: "Any public official or employee or a person in authority or a public authority lawfully or unlawfully detaining a person without stating the grounds for holding him shall be sentenced to imprisonment for four to eight years and shall be absolutely prohibited from holding his post or employment for a similar period"; (b) forced disappearance committed by a private individual:

"Anyone engaging in the conduct described in the preceding article when acting on the orders of a public official or employee, a person in authority or a public authority shall be sentenced to imprisonment for three to six years and to a fine of 180 to 200 days"; and (c) wrongfully authorized disappearance of persons: "Anyone who wrongfully permits another person to commit the offence of forced disappearance of persons shall be sentenced to imprisonment for two to four years and to a fine of 100 to 180 days. If he is a public official or employee, a person in authority or a public authority he shall also be barred from holding his post or employment for a similar period".

201. Following the 1992 Peace Accords and as one of the commitments undertaken therein, the State assumed its responsibility for strengthening democratic institutions, the rule of law and the protection of human rights. The main institutions to be created were the PNC, the National Public Security Academy (ANSP) and the Office of the Procurator for the Protection of Human Rights.

202. The PNC is responsible for public security and it is required to ensure the protection of life as a fundamental value. An effort has been made to ensure that this right is kept in mind in all policing work, and therefore the vocational training provided at the ANSP imparts at all levels instruction consistent with the doctrine of human rights, in accordance with article 3 of the Academy's Organizational Act.

203. As the only armed force having nation-wide jurisdiction in the area of public security the PNC is empowered to use force and firearms in the performance of its duties, specifically for the protection of the lives of all persons. This power is embodied in the national and international legislation on this matter, as stated in article 27 of the National Civil Police (Organization) Act.

204. In addition, article 31.1 of this Act states with regard to the duties of police officers that they must "respect human rights, the Constitution and the law regardless of the circumstances in which they have to perform their duties".

205. The reports of the Commission on the Truth and of the joint group for the investigation of politically motivated illegal armed groups recommended the creation of the Department for the Investigation of Organized Crime (DICO) to continue the investigations initiated by the joint group and the investigations into politically motivated conduct and activities which might constitute crimes in that they directly impaired the Salvadoran peace process.

206. DICO was established in 1995 with UNDP technical support in order to follow up the cases recommended by the joint group; this required cooperation with the Procurator for Human Rights and the Attorney-General, and with the Human Rights Institute of the José Simeón Cañas University of Central America, amongst other bodies. The investigations carried out by this police unit included the case of the Sombra Negra extermination commando, which had taken upon itself the elimination of alleged criminals, as well as attempting to blow up the SISA insurance company, and the case of the murder of Ramón Mauricio García Prieto.

207. In 2001, in a context entirely different from the one in which kidnapping was a common manifestation of organized crime, DICO and its functions were taken over by the Elite Organized Crime Division (DECO).

208. Attention may be drawn, by way of an example of the action taken against impunity and the arbitrary acts of police officers, to the events of 25 October 1993, when Francisco Vélis Castellanos, a former commandant and member of the FMLN political party, was murdered. The

case was declared admissible by the Second Criminal Court of El Salvador and by the Commission for the Investigation of Crime (CIHD); after several years of investigation Sergeant Carlos Romero Alfaro, an investigator in the Criminal Investigation Division who used the cover-name "Zaldaña", was captured. After a long period on the run this former police officer was arrested, deported from the United States and delivered up to the judicial authorities, which recently sentenced him to several years' imprisonment. In addition, a disciplinary investigation initiated in the PNC led to the temporary suspension from duty in May 1995 of the chiefs of the Criminal Investigation and Public Security Divisions for failing promptly to execute the arrest warrant on Sergeant Romero Alfaro.

209. Another criminal investigation case concerned the Sombra Negra commando, an extermination or social cleansing group which appeared at the end of 1994 and was responsible for a score of executions of alleged offenders. The investigation of these murders led in July 1995 to the capture of 16 persons connected to the Sombra Negra, including four members of the PNC: a deputy commissioner, a deputy inspector, a sergeant and an ordinary officer; all were attached to the San Miguel police station; according to the 1997 report on public security and human rights in El Salvador of the Foundation for Studies for the Application of the Law, an NGO, the detainees were found not guilty of criminal responsibility because their participation in the murders was not proved. Administrative disciplinary action was declared inapplicable because the period during which the relevant disciplinary measures could be imposed had expired.

210. Despite the successes in the investigation and punishment of police officers involved in criminal activities, some human rights organizations take the differing view that the PNC has not always facilitated the objective investigation of such activities. This view is based on cases such as the murder of Manuel Adriano Villanova Velver on 2 September 1995 in Planes de Renderos in the jurisdiction of Panchimalco; seven police officers attached to the local station were brought to trial. Five of them were found guilty and are now in prison; one died during the trial; and the other, who had given evidence to clarify the facts of the case, was excluded from the proceedings.

211. The criticism in this case was based on the alleged misdirection of the investigation and concealment of the alleged perpetrators. The PNC disciplinary tribunal decided to dismiss the five police officers in question on the ground that they had been deprived of the right to hold any kind of public employment or post by the San Marcos examining magistrate.

212. Changes in the PNC Act were called for in June 2001 as part of the effort made within the PNC to maintain discipline among its personnel and to ensure the correct functioning of its departments; this led to the approval of a new Organizational Act in December 2001, which contained *inter alia* three new articles expanding the former article 34 with the aim of:

1. Assigning a new role to the PNC Inspectorate-General and laying the foundations for chiefs to take responsibility for discipline in their units;

2. Streamlining and strengthening the disciplinary procedures for the dismissal of police officers. Provision is made for oral proceedings and for considerations of common sense and the moral force of evidence to be taken into account.

213. Approval was also given to new disciplinary regulations which take into account the points made above, enabling unit chiefs to exercise their authority to investigate and punish misdemeanours and making them responsible for investigating serious offences and submitting the cases to a disciplinary tribunal.

214. As a result of the new approach to discipline in the PNC, between January and September 2001 the disciplinary tribunals heard 1,627 cases and delivered decisions in 1,461 of them; penalties were imposed in 1,149 (78.64 per cent). It should also be mentioned that these tribunals heard and handed down sentences in 293 cases of "commission of acts constituting crimes".

215. The implementation of Legislative Decree No. 101 produced the following results: 1,000 notices of dismissal, of which 925 were served; the notices were not served in the other 75 cases for various reasons (mainly the separation of personnel from the police force, together with deaths, etc.). The final data are not yet available because some of the decisions and dismissals have been appealed and the decisions of the appeals tribunal are not yet in.

216. Police investigation and other procedures have been improving over the years, and this has produced greater confidence in the police among the population at large, as was revealed by the latest opinion poll published in January 2002 by the Public Opinion Institute of the José Simeón Cañas University of Central America.

217. Although reports of violation of article 6 of the Covenant alleging responsibility of members of PNC are still received, according to information supplied by the Legal Protection Office of the Archbishopric and the PNC Inspectorate-General, these reports have been handled within the corresponding legal framework and in accordance with procedures to identify the individual responsibility of the persons involved, and the necessary corrective measures have been taken.

Violations of the right to life alleged against PNC personnel

Verified reports	*Years*									
	1992	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*
Summary killings (premeditated)	4*	16*	8* 9	10	21	4	4	2	1	0
Arbitrary killings (excessive use of force)	5*	1* 1	0	5	4	5	8	9	10	4
Attempted killings	0	6*	0	2	2	0	2	1	4	0
Total	9	24	17	17	27	9	14	12	15	4

Source: Legal Protection Office of the Archbishopric, an NGO.
* These cases were proved against members of the former National Police.

218. In the effort to control the activities of members of the PNC administrative arrangements have been made for internal oversight to be exercised by the Secretariat for Disciplinary Matters, which reports directly to the Directorate-General and coordinates the internal oversight units: the Monitoring Unit, the Disciplinary Affairs Unit, the Internal Affairs Unit and the most recently created - the Human Rights Division.

219. In order to ensure respect for the right to life and guarantee public security both in the towns and in rural areas, the PNC has been carrying out over the years a number of operational plans to prevent and combat the commission of offences. These plans include:

(a) Firstly, plans relating to specific periods which are repeated every year throughout the country, such as the general safety plan for Holy Week, the general safe-holidays plan in August, the general safety plan for Independence Day, the general safety plan for All Saints' Day, the general safe-holidays plan for Christmas and New Year, etc.;

(b) Plans relating to specific activities, such as the "Production triangle plan" carried out over the period of the coffee and sugar-cane harvests;

(c) Permanent plans, such as the "Watch plan", begun in 1995 and continued to date, which consists of rural patrols carried out with the support of members of the armed forces and designed to cover the whole of the country.

These rural patrols conducted jointly by the PNC and the armed forces were an initiative of the President of the Republic designed to combat the high crime rates in rural areas and to provide them with protection under the powers conferred by article 212 of the Constitution. The armed forces were called in to support the PNC in this undertaking. The principal commanding authority of the joint task groups (GTC), which have the status of a police division, is the Joint Central Public Security Command; the task groups operate under departmental branches of this agency.

The main GTC objectives are to conduct deterrent and preventive patrols and to carry out measures to extend the cover of the operation to reach those specific areas in which crimes against the physical integrity and the property of the rural population are on the increase. A set of standard operational regulations was drawn up to regulate GTC activities; these regulations establish the functions and tasks of each of the members of a task group, which is made up of two police officers and three members of the armed forces, as well as stipulating that every eight days a group must receive instructions as to their operations from the corresponding commander. The application of these regulations also ensures that the armed forces members work in support of the police personnel.

The magnitude of the crime problem and the PNC's lack of sufficient police officers and logistic resources to cover all rural areas effectively are the main reasons for the continuing recourse in recent years to the support of the armed forces working under police supervision;

(d) Contingency plans to cover special visits or events, such as the visit of Pope John Paul II, visits of heads of State and presidents, etc;

(e) Specific plans dealing with different tasks or areas of PNC work, such as the "Glow-worm" plan, which is specific to the Land Transit Division and designed to reduce traffic accidents by means of regular supervision of the condition of vehicles, and the "Truck safety" plan carried out by the road patrols and the Finance Division;

(f) Special operational plans relating to police operations to combat crime and carried out in the light of investigations; and plans which are used in emergency situations resulting from social or political problems, such as the "Prisons search" and "Shackles" plans designed to cope with the emergencies caused by the protests of members of the former police force.

Paragraph 2: Death penalty

220. The Committee is referred to the information contained in paragraphs 59- 62 of the report dated 17 October 1986 (CCPR/C/14/Add.7) to the effect that the death penalty was revoked as a punishment for ordinary crimes by the 1983 Constitution and that this penalty can be imposed only in the cases envisaged in military legislation during a state of international war.

221. Article 1 of the 1964 Code of Military Justice as amended in 1985 and 1992 states that its provisions apply exclusively to the members of the armed forces on active service and in respect of purely military crimes and offences; this Code also regulates the imposition of the death penalty, stating that it constitutes the supreme penalty in the military order. The death penalty is carried out by firing squad in the place designated by the court which hands down the sentence.

222. Article 10 of the Code establishes that when in the same case and in the same sentence the death penalty is imposed on two or more convicted persons, not all of them shall suffer it, although all must be condemned to death in the sentence. If their number is five or fewer, only one is executed; 10 or fewer - two; 20 or fewer - three; and over 20 - an additional one for each 10 or fraction of 10. For this purpose the court lists the convicted persons in the sentence in the order of their degree of wrongdoing, placing first the chiefs or ringleaders; next come those who have incurred the death sentence for one more offence than the others condemned to the same fate; and in third place follow those against whom very manifest aggravating circumstances have been proved. The penalty is carried out on those listed first in the sentence, and the others have their sentences replaced by imprisonment.

223. In time of peace, military jurisdiction for crimes is exercised by: military examining magistrates; military judges of first instance; courts martial; courts of second instance; the Commander-in-Chief of the armed forces; and the Supreme Court of Justice.

224. In time of international war, the standing peacetime courts function as far as possible within the constraints of international war, but they are subject to the special procedure established in the Code for circumstances of international war.

225. For units on active service, military jurisdiction is exercised by: the Commander-in-Chief of the armed forces; emergency courts martial; chiefs of campaign operations; and commanders of units, ships or aircraft when operating independently or incommunicado.

226. Persons subject to military jurisdiction in time of international war who commit treason are liable to be sentenced to death. When an act of treason is committed in peace time the penalty is death if the act endangered the independence or integrity of the Republic or caused serious damage to the armed forces; if the act did not produce any of these effects, the penalty is 20 to 25 years' imprisonment. The acts considered to constitute treason are set out in article 55 of the Code of Military Justice.

227. In time of international war, spies are liable to be sentenced to death, and in peacetime to 12 to 20 years' imprisonment. The acts considered to constitute espionage are set out in article 64 of the Code.

228. In the event of rebellion, in time of international war the death sentence may be imposed on members of the armed forces who incited the rebellion and on those acting as the principal ringleaders. The penalty for rebellion in peace time is reduced to imprisonment for 20 to 25 years

for all the guilty parties. The acts constituting rebellion are set out in articles 76 and 77 of the Code.

229. If a conspiracy to desert during an operation against the enemy or in time of international war is proved, the death sentence may be imposed on the chiefs or ringleaders; the other participants are liable to imprisonment for 15 to 20 years. A conspiracy to desert exists when four or more individuals commit the offence jointly and by agreement.

230. It must be pointed out that all accused persons subject to military jurisdiction have the right to conduct their own defence or to be defended by one or more defenders appointed by themselves. If an accused person has not availed himself of this right within 24 hours of the notification of the committal order, a defence counsel is appointed automatically by the judge hearing the case.

231. Persons tried before the military courts may appoint as their defence counsel or counsels persons who are qualified to conduct a trial defence under ordinary law; they may also elect to be defended by officers of the armed forces. When defence counsel is appointed automatically by the court, preference is given to members of the armed forces on active service who are of equal or higher rank that the defendant. The conduct of such defence by members of the armed forces is an act of service, but before making an appointment the court may first request the Ministry of Defence to transmit to it a list of officers competent to conduct the defence in question.

232. A defence counsel who does not provide due assistance in the defence of his client or does not discharge the duties of his office with due diligence incurs criminal liability; but if the defence counsel is a member of the armed forces, his dereliction is reported to the Ministry of Defence so that it may impose the disciplinary measure it deems fit. The provisions of ordinary legislation on the conduct of trial defences apply to defence counsel in military cases, except for the differences established in the Code of Military Justice. In all cases the accused is guaranteed his right to have his defence counsel present when he makes his statement before the examining magistrate; the accused may not be required to swear an oath or give a promise to tell the truth; questions must always be put directly and may on no ground be put in a deceitful or suggestive manner; nor may the accused be subjected to any kind of coercion, threat, etc.

233. In October 1996 the Legislative Assembly approved a motion for the amendment of article 27 of the Constitution in order to extend the death penalty to the crimes of kidnapping, rape and aggravated homicide committed at any time. This was a response to the rising crime rate and the desire of some groups of society, which were exercising political pressure to secure amendment of the Constitution and bring in the death penalty. This proposed constitutional amendment did not prosper in 2000 or 2001, having encountered strong resistance based on the State's constitutional and international obligations to preserve human life; the result was that the amendment did not pass.

Paragraph 3: Deprivation of life constituting the crime of genocide

234. In Book II, Title XIX, of the Criminal Code ("On crimes against mankind") article 361 establishes the crime of genocide as a punishable offence subject to severe and imprescriptible penalties in accordance with article 99 of the Code:

> "Article 361: Anyone who, with the purpose of partially or totally destroying a specific human group by reason of its nationality, race or religion, murders or causes

> serious bodily or mental injury to members of the group or subjects them to conditions which make it difficult for them to survive or imposes upon them measures designed to prevent them from reproducing or effects the forcible displacement of persons to other groups shall be sentenced to imprisonment for 10 to 20 years. This sentence may be increased to 30 years if the person responsible for any act of genocide is a civilian official or military officer. The proposal of acts of genocide and conspiracy for their commission shall be punished by imprisonment for six to 12 years; and public incitation to commit genocide shall be punished by imprisonment for four to eight years".
>
> "Article 99: Penalties shall not be subject to prescription in the following cases: torture, acts of terrorism, kidnapping, genocide, violation of the laws and customs of war, forced disappearance of persons, and political, ideological, racial, sexual or religious persecution, provided that the initiation of the act in question occurred subsequent to the entry into force of this Code".

235. These regulations guarantee the right to life of all human groups without distinctions on the grounds of nationality, race or religion.

Paragraph 4: Right to seek pardon or commutation of a sentence. Concession of amnesty, pardon or commutation of a sentence

236. The enforcement of a death sentence is stayed when amnesty, pardon or commutation has been requested until a ruling is made on the application; the commutation or pardon of the penalty imposed on a traitor leaves in place the accessory penalty of dismissal from the military, and the traitor may at no time rejoin the armed forces; stay of execution may also be ordered by the Commander-in-Chief of the armed forces (the President of the Republic).

237. The rights of application and replication are regulated by article 18 and article 6.5 of the Constitution respectively.

Paragraph 6: Abolition of capital punishment

238. Earlier reference was made to the abolition of capital punishment for persons committing offences under ordinary law in accordance with the provisions of articles 27 and 250 of the Constitution, which state:

> "Article 27: The death penalty shall be imposed only in the cases prescribed by military law during a state of international war".
>
> "Article 250: Pending the modification of the secondary legislation in this matter, the offences which had been subject to the death penalty which are not covered by article 27 of this Constitution shall carry a maximum sentence of deprivation of liberty. This provision shall apply to persons condemned to death in an executory judgement".

239. Following the repeal of the old criminal legislation, which included capital punishment for certain offences, and the entry into force of the new criminal legislation, article 250 lost its *raison d'être* as a transitional clause.

Observations on the Committee's General Comment No. 14 in connection with article 6 of the Covenant

240. Pursuant to article 29 of the Constitution, El Salvador does not envisage the suspension of the right to life in exceptional circumstances.

241. During the period immediately after the armed conflict conventional weapons remained in the hands of the civilian population, constituting a threat to human life and a grave concern for the State to the extent that these weapons could continue to be used in the commission of crime, including kidnapping and killing. In order to deal with these concerns the Government promulgated in 1993 the Weapons, Explosives and Other Similar Artifacts (Control) Act, which replaced the Firearms, Ammunition and their Accessories (Control) Act.

This Act emerged as an imperative necessity following the Peace Accords in order to facilitate social pacification; the Act contains regulations on the possession, keeping and carrying of firearms, ammunition, explosives and their accessories; it is founded on article 217 of the Constitution. The Executive, acting through the Ministry of National Defence, is responsible for the direct authorization and supervision of all activities connected with the manufacture, import, export, trading, keeping, carrying, modification, repair and recharging of firearms, ammunition, explosives, accessories and similar and related items; the function of preventing and combating violations of the Act was assigned to the PNC, with a view to guaranteeing public security.

In 1999 the Act was replaced by the Firearms, Ammunition, Explosives and Similar Articles (Control and Regulation) Act (Legislative Decree No. 655 of 1 July 1999, published in the *Diario Oficial*, No. 139, Vol. 344, of 26 July 1999), which entered into force on 27 May 2000, constituting a response to the need to help to reduce the crime rate and facilitate the search for calm and true social peace by filling a number of gaps in the earlier legislation and bringing it into line with the country's new realities.

The PNC is implementing the Act through its Arms and Explosives Division in coordination with the Defence Ministry, which has personnel specializing in these matters.

The Division has recorded the confiscation of weapons from keepers or carriers for various violations of the Act throughout the national territory, as described in the following table.

Confiscation of weapons nation-wide from keepers and carriers for violations of the act

Years	***Quantity of weapons confiscated***	***Years***	***Quantity of weapons confiscated***
1993	271	1998	5 808
1994	2 954	1999	5 959
1995	4 540	2000	5 568
1996	7 405	Up to June 2001	2 368
1997	6 274	Total	41 147

Source: PNC Arms and Explosives Division.

In addition, civil society firmly supported the "Consumer goods for firearms" programme. And 1995 saw the appearance of the Patriotic Movement against Crime, an NGO consisting mainly of persons from the country's private sector, which initially thought to carry out a programme for the exchange of weapons in civilian hands for toys on the basis of the experience of other countries. However, after assessing the conditions in El Salvador itself it decided to introduce a programme for the exchange of consumer goods for such weapons.

The programme was therefore called "Consumer goods for firearms"; the aim was to collect firearms circulating in the country and hand them over to the corresponding authorities in order to help to cut the crime rate.

The first collection day was in September 1995, and 341 firearms - rifles and handguns - and almost 3,000 rounds of ammunition were taken in. Between then and 1999, when the programme ended, 9,527 weapons of all kinds were collected, together with 3,157 magazines and 129,696 rounds of ammunition. the programme's success resulted from the financial support of the various sectors of the national and international community, and from the decision to use Catholic churches as the collection centres, which generated greater confidence among the population at large. The programme involved the disbursement of a little over 10 million colones for the collection of the armaments.

Weapons collected under the "consumer goods for firearms" programme

Items	*Year*				*Total*
	1996	*1997*	*1998*	*1999*	
Handguns	718	275	273	88	1 354
Rifles	1 340	744	777	182	3 043
Grenades	1 334	786	801	259	3 180
Grenade launchers	18	7	12	7	44
Low rockets	167	80	34	9	290
Fuses	73	1	10	0	84
Detonators	422	341	276	3	1 042
TNT packs	105	75	95	2	277
C-4 explosives	79	27	25	16	147
Mines	15	20	13	7	55
Mortars	2	0	2	0	4
RPG-7 launchers	4	0	1	1	6
Sam-7 missiles	0	1	0	0	1
Subtotal	4 277	2 357	2 319	274	9 527
Magazines	1 589	713	744	111	3 157
Ammunition (rounds)	52 993	35 332	34 197	7 174	129 696
Total	58 859	38 402	37 260	7 859	142 380

Source: Patriotic Movement against Crime.

242. With regard to the prohibition of the manufacture, testing, possession, deployment and use of nuclear weapons, El Salvador is a party to several international treaties designed to prevent what is one of the greatest threats to the right to life:

Comprehensive Nuclear-Test-Ban Treaty: Legislative Decree No. 296 of 30 April 1998, published in the *Diario Oficial,* No. 109, Vol. 339, of 15 June 1998;

Protocol containing amendments to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco): Legislative Decree No. 48 of 29 August 1991, published in the *Diario Oficial,* No. 184, Vol. 313, of 3 October 1991;

Treaty on the Non-Proliferation of Nuclear Weapons: Legislative Decree No. 538 of 18 May 1972, published in the *Diario Oficial,* No. 103, Vol. 235, of 5 June 1972;

Treaty of Tlatelolco: Legislative Decree No. 558 of 12 January 1968, published in the *Diario Oficial,* No. 19, Vol. 218, of 29 January 1968;

Partial Nuclear Test Ban Treaty: Legislative Decree No. 122 of 28 October 1964, published in the *Diario Oficial,* No. 202, Vol. 205, of 4 November 1964.

243. These treaties form part of domestic law, in accordance with the provisions of articles 144 *et seq.* of the Constitution.

ARTICLE 7

Prohibition of subjecting individuals to torture or to cruel, inhuman or degrading treatment or punishment. In particular, to be subjected without free consent to medical or scientific experimentation

244. the Committee is referred to the information given in paragraph 123 of the second periodic report (CCPR/C/51/Add.8 of 3 November 1993) concerning the provisions of article 27.2 of the Constitution, which also protects the physical and moral integrity of the human person in articles 2, 4, 9, 10 and 11.

245. Where torture is concerned, the criminal legislation has undergone profound changes to bring it into line with the international treaties and conventions ratified by the State; in specific terms, torture was incorporated in article 297 of the Criminal Code as a criminal offence:

> "Any public official or employee who, in performing the functions of his post, subjects another person to physical or mental torture or who, being in a position to avoid or prevent such torture does not do so, shall be liable to imprisonment for three to six years and shall be disqualified from holding the same post or employment for a similar period of time".

246. The concepts of public and municipal official and employee, public authority and agent of authority are defined in article 39 of the Criminal Code.

247. A reading of this article confirms that it is consistent with the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

248. Furthermore, article 320 of the Criminal Code criminalizes arbitrary acts of the public administration:

> "An official or public employee or person responsible for a public service who, in the performance of his functions, commits any unlawful or arbitrary act, harasses or humiliates a person or damages property or uses unlawful or unnecessary pressure in the performance of his duties or functions, or permits a third person to do so, shall be liable to two to four years' imprisonment and specific disqualification from holding the same post for a similar period of time".

249. Again with regard to torture the Committee is referred to the information supplied in paragraphs 84-90 of El Salvador's initial report submitted to the Committee against Torture (CAT/C/37/Add.4 of 12 October 1999) and in paragraphs 136-150 of that report, in relation to the criminalization of acts of torture and other similar acts.

250. The definition of torture in criminal legislation will be found in paragraphs 66-68 of the same report.

251. With regard to the treatment of persons detained under the Prisons Act, the Committee is referred to paragraphs 72-75, 100, 101 and 282-289 of that report. It must be stressed that the prison system is now a responsibility of the Ministry of the Interior as a result of the incorporation referred to earlier of the Ministry of Public Security and Justice into the Ministry of the Interior under the new Administration.

252. With regard to the armed forces and the obligation to respect the guarantee contained in this article of the Covenant, the Committee is again referred to that same initial report on torture, paragraphs 102-110.

253. Article 68 of Chapter III ("On offences against the law of nations, destruction, plunder and sabotage") of the Code of Military Justice (in Book II, "On military offences and penalties", Title I, "On offences against the international personality of the State"), published in the *Diario Oficial*, No. 97, Vol. 203, of 29 May 1964, states:

> "A member of the armed forces who in time of international or civil war, without being so required by operations of international war, burns or destroys ships, aircraft, buildings or other property or plunders the inhabitants of towns or rural areas or commits acts of violence against persons shall be liable to imprisonment for 15 to 20 years".

254. Article 69 goes on to state *inter alia*:

> "A member of the armed forces who in time of international war commits any of the following acts shall be liable to imprisonment for 10 to 15 years:
>
> 1. Compels prisoners of international war to fight against their own colours, maltreats them physically, injures them seriously or fails to provide the necessary treatment and food when in a position to do so".

255. Legislative Decree No. 1030 containing the Criminal Code was adopted on 26 April 1997; article 362 criminalizes violations of the laws and customs of war. This develops the rule left blank in articles 49 and 50 of the first Geneva Convention of 12 August 1949, which cover torture, for it is considered that the legal asset protected is the law of war and that its violation should lead to sanction by the State. Since the offence is one of ordinary law, anyone may be the perpetrator and the victim is the community; hence the offence is considered to be a crime against

humanity. Accordingly, El Salvador has criminalized the offence of torture in its legislation both from the military standpoint and from the standpoint of ordinary law.

256. The Ministry of Education has produced documents containing methodological guidelines for teachers concerning the teaching/learning process based on policies of instruction which enable schools to develop in their students a participatory and democratic approach to learning that allows individual differences and learning capacities to be taken into account. The documents cover curricula, methodological handbooks, planning guidelines, and student assessment.

257. Chapter II of the General Education Act, on the rights of students, sets out in article 90 (c), (g), (i) and (j) the treatment to be accorded to students in all educational establishments: respect and justice, and elimination of any kind of physical or mental punishment and negligence. It also establishes the right of students to avail themselves of the protection of their rights before the board of management of their institution, the Schools Management Council, the education boards and their tribunals, the Procurator for the Protection of the Rights of the Child, and the Constitutional Division of the Supreme Court.

258. Chapter IV of the Teaching Profession Act establishes the powers of head teachers, deputy heads and teachers with respect to: (a) their responsibility to protect the safety of their students, both in the classroom and on school trips and at public events and during breaks from the classroom; (b) to encourage harmony and respect among the teaching staff, students and parents; and (c) to determine and allocate to the teaching staff the zones where they are to supervise the students during breaks. The education boards and their tribunals are responsible for ensuring compliance with all these rules and for applying the sanctions contained in the General Education Act and the Teaching Profession Act.

259. With regard to the specific ban on subjecting individuals without their free consent to medical or scientific experimentation, El Salvador has introduced legislation on organ donations. article 128 of section 19 of Chapter II, Title II ("On organ and tissue transplants") of the current Health Code has been amended pursuant to Legislative Decree No. 291 of 12 February 2001, published in the *Diario Oficial*, No. 40, Vol. 350, of 23 February 2001, by the addition of articles 128-A to 128-R on the regulation of organ transplants:

> "Article 128-A. The National Transplants Council shall be created as the consultative and advisory body for national transplants policy; it shall be presided over by the Minister of Health and Social Welfare or his deputy. The Council shall consist of five members, one appointed by the Ministry of Health and Social Welfare, one by the Higher Public Health Council, one by the Medical Profession Control Board, one by the National Social Welfare Institute, and one by the Association of Private Hospitals. The Council's functions and powers shall be set out in regulations.
>
> Article 128-B. Organ and tissue transplants shall take place in strict compliance with the ethical rules and on the basis of the principles of equity, justice, solidarity and freedom of choice without distinctions of any kind.
>
> Article 128-C. The following definitions shall apply for the purposes of this Code:

Organ and tissue bank	Store of human materials or tissues for future use by other individuals or for scientific research.
Live donor	A person who makes a donation while alive of organs or parts of organs whose extraction is compatible with his survival and which can be compensated for by his organism in an adequate and sufficiently safe manner.
Death	The irreversible cessation of the cardio-respiratory functions or the complete and irreversible loss of the functions of the brain and the brain stem.
Brain death	The complete and irreversible loss of the functions of the brain and the brain stem.
Organ	A discrete part of the human body constituted by various tissues which maintains its structure, vascularization and capacity to perform physiological functions with a major degree of autonomy and self-sufficiency.
Medical protocol	The scientific/medical rules which must be applied to the conduct of transplants of organs or tissues or to their extraction from human beings.
Tissue	A structure of several similar cells which act together to perform a common function.
Organ or tissue transplant	The therapeutic use of human organs or tissues to replace a sick organ or tissue or its function by a healthy organ or tissue.

Article 128-D. Organs or tissues for transplant may be taken from living persons or from dead persons who in life have stated their wish to donate in the manner specified in the following article. In the case of dead persons, authorization must also be given by whichever of the relatives survive, in the following order: parents, spouses, children, siblings, grandparents.

Article 128-E. The wish to be an organ or tissue donor may be expressed either in a current driving licence or personal identity document or by means of a document certified by a public notary.

Article 128-F. The diagnosis and certification of a person's death shall be based on the irreversible cessation of the cardio-vascular functions or on a demonstration of the loss of the functions of the brain and the brain stem as specified in the corresponding protocol.

Article 128-G. The transplant of organs or tissues from living or dead persons may be carried out only in the institutions so authorized by the Higher Public Health Council. The National Transplants Council shall keep a record by speciality of health professionals who carry out transplants.

Article 128-H. An institution authorized to carry our organ and tissue transplants and to remove, preserve, store and transport organs and tissues must have suitable facilities for these purposes and suitably qualified staff.

Such institutions must appoint a house technical committee. This committee shall be responsible for the execution of national transplants policy within the institution. In the case of specialized clinics which carry out only one type of transplant the committee must consist of at least three professionals qualified in the institution's speciality. The regulations shall establish the requirements to be satisfied by institutions and the functions and powers of the house technical committee. The committee shall consist of at least five professionals specializing in this area and shall be presided over by the institution's director.

Article 128-I. Transplant operations may be carried out when other methods or treatment are incapable of improving the patient's quality of life, subject to the prior authorization of the house technical committee.

Article 128-J. Authorization to remove organs or tissues from living persons shall always be revocable, even at the moment before the surgical intervention. In no case shall revocation entail any legal consequences for the donor.

Article 128-K. Persons aged over 18 years who have full use and enjoyment of their mental faculties and are in an adequate state of health in the light of the nature of the procedure in question shall be accepted as donors.

Article 128-L. The personnel carrying out the surgery shall fully inform the donor and the recipient of the organ or tissue about the procedure and the risks involved and about the therapeutic and side-effects of the drugs and other chemicals to be used in the treatment; this information shall be entered in the clinical record.

Article 128-M. The movement of organs or tissues into or out of El Salvador for therapeutic purposes and their movement within the national territory may be authorized only by the Ministry of Health and Social Welfare on the advice of the National Transplants Council.

Article 128-N. Administrative, civil or criminal responsibility shall rest on:

(a) The health team which carries out the transplant of organs or tissues, in respect of mistakes attributable to it;

(b) The director of the institution in which the transplant is carried out, or his deputy, and on a subsidiary basis the State in the case of mistakes attributable to a public institution; and

(c) The executive board and the director when the institution is a private one.

Article 128-O. All procedures connected with the transplant of organs or tissues must be carried out in conformity with the provisions of the corresponding regulations and the medical protocols, which shall be approved and kept up to date by the Ministry of Health and Social Welfare.

Article 128-P. The removal of organs or tissues whose extraction may cause the partial or total incapacity or the death of the donor is absolutely prohibited.

Article 128-Q. The removal of organs or tissues for profit or for other non-scientific or non-therapeutic purposes is prohibited.

Article 128-R. The education of the public to encourage it to donate and accept organs and tissues shall be conducted permanently and solely by the Ministry of Health and Social Welfare; in so doing it shall offer no kind of reward or remuneration".

260. There have been no cases to date of the conduct of medical or scientific experimentation without the free consent of the persons or patients concerned.

261. The Criminal Code was also amended in the light of the changes described above. The following articles were inserted following article 147-A in Title II, Chapter II, on offences endangering the life or integrity of the person, pursuant to Legislative Decree No. 297 of 12 February 2001, published in the *Diario Oficial*, No. 40, Vol. 350, of 23 February 2001: article 147-B on trafficking in and unlawful holding of human organs and tissues; and article 147 C on misinformation:

> "Article 147-B. Anyone who removes or transplants human organs or tissues without being duly authorized to do so in accordance with the Health Code shall be liable to imprisonment for four to eight years. A similar penalty shall be imposed on anyone who traffics in human organs or tissues. Anyone having in his possession human organs or tissues without due authorization in accordance with the provisions of the Health Code shall be liable to imprisonment for three to five years.
>
> Article 147-C. A health professional taking part in a diagnostic assessment for a surgical intervention for the removal or transplant of human organs or tissues who provides false or distorted information in order to influence a decision to donate or receive the said organs or tissues shall be liable to imprisonment for three to five years. If the donor or the recipient dies as a result of the action referred to above, the penalty shall be increased by up to one third of the maximum penalty indicated".

Institutions involved in ensuring respect for the dignity of the person and having an obligation to treat persons in a proper manner

National Public Security Academy

262. The vocational training furnished at the Academy includes among its human rights programmes all matters connected with the Code of Police Conduct, the use of firearms, and the arrest of persons.

263. With regard to this training, the Committee is referred to the information supplied by El Salvador in paragraphs 93-95 and 204-205 of its initial report to the Committee against Torture (CAT/C/37/Add.4 of 12 October 1999).

264. The vocational training provided by the Academy includes in its Human Rights II programme a module on "Policing and women's rights", which is designed to make public security professionals more aware of the special treatment and consideration which women should receive from the police in view of their social vulnerability.

265. The Academy's achievements in 2002 included an improvement in academic standards as a result of the updating of the curriculum. In that year, 349 police officers graduated from the Academy, leaving 708 students still undergoing training; the fifth executive-level course was held, for 41 deputy inspectors, together with the first courses for promotion to the ranks of commissioner (20), inspector (28) and sergeant (586); the year saw the introduction of the first course for promotion to corporal, which had 633 students. In the case of specialized courses, 3,279 officers graduated in the areas of administration and supervision, road patrols, tourism police, motorized police, police intelligence, robbery and theft of livestock, etc. The Academy also trained 5,028 officers on its courses on community patrolling.

266. The plans for 2002 include: application of the findings of the forum on improvement of police training to the basic, executive and specialized courses; implementation of new organizational arrangements; creation of the Police Education System; incorporation of the various levels of the police career in the accreditation system of the Ministry of Education; construction of a roofed and mechanized a firing range; and rebuilding of the facilities at Nueva San Salvador damaged by earthquake in 2001.

National Civil Police

267. The National Civil Police (Organization) Act included provisions relating to the Code of Conduct for Law-enforcement Officers adopted by the General Assembly of the United Nations on 17 December 1979 in resolution 34/169; most of the Code's principles were thus incorporated in the Act, including principles 2 and 4 to the effect that in the performance of their duties members of the PNC must respect and protect human dignity and support and defend the human rights of all persons. Furthermore, no member of the PNC may commit, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, or cite the orders of a superior or special circumstances, such as a state of war or a threat of war, a threat to national security, internal political instability, or any other public emergency, as justification for torture or other cruel, inhuman or degrading treatment.

268. New PNC disciplinary regulations were introduced by Executive Decree No. 72 of 15 August 2000, published in the *Diario Oficial*, No. 153, Vol. 348, of 18 August 2000, articles 36 and 37 of which characterize minor and serious offences. Some of the serious offences envisaged in the former regulations have become minor ones, and the chiefs of police units have been empowered to punish officers committing this type offence; this has resulted in firmer control of the conduct of police officers.

269. Article 37 of the new regulations establishes three serious offences relating to the principles mentioned in paragraph 267 above: subparagraph (3), "Damaging the physical integrity of persons as a result of excessive use of weapons or force or by any other means"; subparagraph (4), "Seriously impairing the dignity and integrity of persons, within or outside the service, with the offence regarded as aggravated in the latter case"; subparagraph (5), "Abuse of powers and imposition of inhuman, degrading or discriminatory treatment or harassment on officers of equal rank or subordinates or on any other person, with the offence regarded as aggravated when the victim is under arrest or in custody"; and subparagraph (8), "Commission of acts constituting culpable or malicious offences".

270. Despite the efforts made by the PNC to ensure that its members safeguard and respect the integrity of the individual, the Legal Protection Office of the Archbishopric documented 231 cases of cruel, inhuman or degrading treatment in the period covered by this report; these cases imputed violation of article 7 of the Covenant against PNC personnel. Two cases of torture were investigated in 1997 and four cases in 1999; there were no reports of torture in the other years.

Alleged against pnc personnel (NGO reports)

Verified violations	*Years*									
	1992	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*
Victims of wounding, beating and threats	0	6	16	14	27	27	26	7	8	45
Victims of torture	0	0	0	0	0	2	0	4	0	0
Cruel, inhuman or degrading treatment	0	0	1	0	3	0	3	36	3	9
Total	0	6	17	14	30	29	29	47	11	54

Source: Legal Protection Office of the Archbishopric, an NGO.

271. In addition, between 1996 and 2001 the PNC Inspectorate-General received 1,222 reports of cruel, inhuman or degrading treatment inflicted by police officers; the trend was clearly upwards.

Violations of the right to physical and moral integrity alleged against PNC personnel

Verified violations	*Years*									
	1992	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*
Deaths	0	0	0	0	4*	5**	5	14***	40	22
Cruel, inhuman or degrading treatment	0	0	0	0	57*	74**	214	35***	352	232
Total	0	0	0	0	61*	79**	219	49***	392	254

Source: PNC Inspectorate-General.
* The 1996 data are for May to December.
** The 1997 data are for January to June.
*** The 1999 data are for July to December.

272. The PNC Internal Affairs Unit investigated one case of torture committed on 15 March 2000 against Jerónimo Alvaro Castellanos, Arnulfo Menjívar López and Luis Humberto Guerrero in the town of Apopa; the facts were laid against 10 police officers stationed in Apopa. According to information supplied by the Unit, the Attorney-General issued arrest warrants against the officers.

273. On 22 September 2000 the PNC appeals tribunal decided that the 10 police officers should be dismissed for having committed acts constituting a deliberate or malicious offence pursuant to article 7.6 of the disciplinary regulations, Executive Decree No. 48 of 7 June 1995 being in force at the time.

274. Another case recorded by the PNC occurred on 6 November 1999 in the municipality of Aguilares, when René Oswaldo Criollo Arteaga, known as "Viruta", was arrested during a police operation. He was then taken under arrest to the Aguilares police station, where, according to his statement, he was seriously assaulted by police officers.

275. The PNC appeals tribunal decided to dismiss one officer for violation of article 7.4 of the disciplinary regulations, which establishes as a very serious offence the abuse of powers and the

imposition of inhuman, degrading or discriminatory treatment or harassment on officers of equal rank or subordinates or on persons under arrest or in custody, pursuant to Executive Decree No. 48 of 7 November 1995. The tribunal decided to dismiss the charges against three other officers for lack of evidence of their participation in the facts. This same case was investigated by the Legal Protection Office of the Archbishopric, which confirmed that a violation of articles 7 and 10 of the Covenant had taken place.

276. In another case documented by the Office it is alleged that on 12 February 1999 Gladis Marina López, aged 35, was subjected to cruel, inhuman or degrading treatment by four police officers stationed in the municipality of Citalá, Chalatenango. The reported facts occurred when police officers arrested Señora López for smuggling in the frontier sector known as El Poy. As a result of the blows and injuries inflicted on her the woman was taken to hospital and given a medical examination at the request of the Citalá municipal court; the matter was reported by the court to the subregional office of the Attorney-General for it to take the proceedings against the PNC officers required in cases of arbitrary acts.

277. The Office adds that its investigation revealed that the officers involved had already committed similar violations, in particular Corporal Reinaldo Antonio Godoy Blanco, who was identified, together with officers Salvador Mauricio Ramírez Hernández, Ricardo Alberto Torres Brizuela and Silvia Irene Gutiérrez Pérez, as a member of the police patrol which violated the rights of of Señora López. In its argumentation the Office states that "the present case constitutes clear criminal conduct amounting to arbitrary acts, during which the PNC officers abused the power invested in them by the State to maintain public order and security". It concludes that in this case the police officers violated articles 4, 7 and 10 of the Covenant.

278. At the internal administrative hearing in the case of Señora López the disciplinary tribunal decided on 18 May 2001 to impose 90 days' suspension from duty without pay on Corporal Godoy Blanco and 30 days on officers Torres Brizuela and Ramírez Fernández for having contravened article 8.27 of the disciplinary regulations in force at the time. The penalty was not notified to Corporal Godoy because he had been dismissed from the service on 24 May 2000 for abandonment of duty after having taken three months' leave without pay. The two other officers were notified and the sentence declared final; officer Gutiérrez Pérez was tried for commission of a minor offence.

279. According to the research carried out by the Study Foundation for the Application of the Law (FESPAD), many of these violations of human rights are due to the system for selecting candidates for the police but above all to the growth of a secret subculture with an unwritten code of loyalty and obedience (1998 FESPAD report on public security and human rights in El Salvador).

280. This same report states that the results of the FESPAD annual evaluation of the PNC Inspectorate-General with respect to knowledge of human rights indicate that police personnel are well informed on the subject. It concludes that the problem is more one of attitude than of ignorance of the legislation.

281. It is worth noting that despite all the efforts made to date much remains to be done, especially if a change of professional attitude on the part of PNC officers is to be secured.

282. In this context, the Human Rights Institute of the José Simeón Cañas University of Central America, CEMUJER and the Women's Association for Dignity and Life report that in 1999-2001

they took up three cases of PNC women who had accused senior police chiefs of harassment. The relevant judicial and disciplinary proceedings are in hand in these cases.

283. On the other hand, attention may be drawn to the information supplied by the Women's Association for Dignity and Life which offers a positive assessment of the attitude of the PNC authorities with which the Association organized and carried out measures to tackle the problem of domestic violence and publicize the function of the police in this matter.

284. Violation of this article of the Covenant is an area in which the police are particularly vulnerable in view of the nature of their duties, for the use of force and firearms is necessary in some cases. The line between professional use of force and abuse of authority when tackling offenders is easy to cross, and it is therefore essential to provide ongoing training in these matters and to improve the police's working conditions.

285. Another point to keep in mind when evaluating these violations is the general public's lack of respect for and knowledge of the law, for it is predisposed to see the police as an inherent violator of human rights. These factors, combined with the lack of professionalism of some members of the police, mean that the PNC is the State agency most frequently denounced as a violator of human rights, according to the annual reports of the Procurator for the Protection of Human Rights.

286. Throughout its existence the PNC has made constant efforts to secure protection of and respect for fundamental human rights by modernizing its regulations, organization and personnel training.

287. It is continuing to work to establish a culture of respect for human rights in police practice. For example, in June 2000 it created its Human Rights Division as a means of securing compliance with the provisions of the five-year plan for 1999-2004, which stipulates respect for human rights as the primary institutional value. The Division's general objective is to secure respect for human dignity and to protect and promote human rights in the performance of police duties, ensuring that police officers embrace the fundamental human values and undergo a change of attitude.

288. The PNC also established its Secretariat for Disciplinary Matters, which reports directly to the Directorate-General, as a body responsible for coordinating the PNC internal oversight units with a view to streamlining and monitoring the procedures for supervision and correction of police conduct. The following units are coordinated by the Secretariat: Control Unit, Disciplinary Investigation Unit, Internal Affairs Unit, and Human Rights Division.

289. In addition, the PNC created its Community Policing Unit and its Juvenile and Family Services Division in order to bring the police closer to the community, prevent specific problems of social groups, and enhance the awareness of these problems on the part of police personnel. It also created its Vocational Training Unit with a view to the introduction of permanent staff training programmes in coordination with the Academy and other bodies.

290. Lastly, it should be noted that the PNC has made a commitment to identify the underlying causes of the commonest violations committed by its members in respect of torture and cruel, inhuman or degrading treatment and to find the means of eliminating such violations.

Inspectorate-General of the National Civil Police

291. The Inspectorate-General was established following the Peace Accords specifically to ensure respect for human rights on the part of the members of the PNC. article 4.8 of the Inspectorate's regulations stipulates as one of its responsibilities the supervision and control of the conduct of PNC personnel with a view to ensuring strict observance of human rights.

292. The Inspectorate carries out a number of activities pursuant to its mandate, including the production of reports to the Procurator for the Protection of Human Rights, conduct of public opinion surveys on police performance, and annual evaluations of the knowledge of the question of respect for human rights on the part of police personnel. These reports are submitted every six months, although the evaluations are made annually.

293. Up until 2001 the Inspector-General operated under the direct authority of the Ministry of Public Security and Justice, and his appointment was subject to the approval of the Procurator for the Protection of Human Rights and the Attorney-General; his mandate is to supervise and control police performance in operational and managerial matters and with regard to human rights and police conduct in general. Pursuant to article 26 of the new National Civil Police (Organization) Act, the Inspector-General now reports directly to the PNC Director-General, but the requirement of approval of the Procurator and the Attorney-General remains in place:

> "Article 26. The Inspectorate-General of the Police shall operate under the authority of the Director-General; it shall be responsible for supervising and controlling the activities of the Police's operational services. The Inspector-General shall be appointed by the Director-General, subject to the prior approval of the holders of the offices of Attorney-General of the Republic and Procurator for the Protection of Human Rights. The Inspectorate shall have its own budgetary allocation within the budget of the National Civil Police".

294. The Inspectorate has 39 professional and 47 administrative staff members to supervise and control the conduct of a police force with somewhat over 16,000 members stationed throughout the country.

295. Since September 1995 it has had a Complaints and Reports Office to handle complaints, reports and communications received from public or private bodies and from individuals concerning the functioning of the operational and managerial services and the conduct of PNC personnel. In other words, if a citizen's rights are violated by the police the injured party may apply to the Inspectorate for the initiation of a preliminary disciplinary investigation with a view to referral to the PNC disciplinary bodies; this constitutes an administrative remedy.

296. Following a complaint or acting on its own motion in respect of facts constituting an offence the Inspectorate may also inform the Office of the Attorney-General and transmit the findings of its preliminary investigation with a view to the initiation of criminal proceedings. The payment of damages is recommended when required.

297. Some of the measures taken by the Inspectorate to give effect to the rights recognized in the Covenant are described below.

(a) *Constant supervision*

298. In November 1995 the Inspectorate-General appointed four professionals as heads of its regional offices, in the West (Santa Ana), the Centre (San Salvador), the Subcentral zone (San Vicente) and the East (San Miguel); they are responsible for supervising PNC activities by means of inspections and to ensure respect for human rights. Subsequently, in April 1996, 28 professionals were appointed as departmental representatives (two for each of the country's 14 departments) to supervise and control police activities in the operational and managerial services and in matters connected with human rights.

299. In January 1998 inspections were carried out in 18 police gaols and a systematic analysis was produced with a view to submitting recommendations to improve the situation in the gaols. The following recommendations were made on the basis of this analysis: detainees should not be kept for long stays but immediately removed to a prison; the physical conditions in the gaols should be improved in order to safeguard the minimum fundamental rights of detainees; special treatment should be accorded to women detainees; proper medical treatment should be provided; and the registers of female visitors should be kept by female police officers.

300. The conditions of detention are kept under constant supervision; this facilitates the detection of any irregularity and the assignment of disciplinary liability if necessary.

301. At present the personnel of every police unit is subject to supervision, as are the implementation of the Plan of Work and of special or embryonic plans to combat crime, work assignments and transfers, and in particular the disciplinary units with regard to compliance with time limits in disciplinary proceedings concerning minor offences (in other words, due process); this latter aspect has received greater attention since the amendment of article 34 of the National Civil Police (Organization) Act.

(b) *Human rights assessments*

302. The Inspectorate-General produces an annual assessment of police personnel's knowledge of human rights. This is used as the basis for recommendations on instruction in human rights to the National Public Security Academy. This assessment also results in recommendations to the PNC with a view to improving respect for such rights.

303. With the help of the Office of the Procurator for the Protection of Human Rights, the Academy, the technical cooperation project of the Office of the United Nation High Commissioner for Human Rights and FESPAD, a civil organization concerned with education in human rights, an effort has been made over the years to improve the quality of these annual assessments of police personnel.

(c) *Investigation of complaints*

304. In its early days the Inspectorate-General carried out preliminary inquiries to verify complaints before instituting a formal investigation but these inquiries were unsystematic and cumbersome. Later, in order to eliminate duplication of work, it was decided that a complaint should be transmitted to the Control Unit if it concerned an irregular police procedure or to the Disciplinary Investigation Unit (UID) if a disciplinary offence had been committed. The result was that many of the complaints were shelved by these units owing to lack of evidence.

305. With the assistance of the International Advisory Office (ICITAP), a better-structured system of preliminary inquiries was introduced in order to establish the facts and the involvement of police officers; in some cases the resulting report included the findings of medical examinations and other documents which might help to clarify the facts. The UID could then be recommended to begin a formal investigation. As a result the Inspectorate-General was able to exercise firmer control over disciplinary procedures relating to violations of human rights. The recommendations were acted upon and the whole procedure became more streamlined.

306. In 2000, following the implementation of the amendments to the PNC Act, the Inspectorate-General was invested with broader powers which now allow the UID to be involved in preliminary inquiries if necessary; if there is sufficient evidence the Inspector-General may lay a charge against the person concerned before the competent disciplinary tribunal. Disciplinary hearings are conducted orally, and the alleged offender may conduct his own defence or be defended by counsel.

307. The Inspector-General or his representative is the official responsible for ensuring compliance with the police disciplinary regulations, and to this end he may require disciplinary proceedings to be initiated and intervene in them as a supervising party; he is also empowered to appeal against a decision of a disciplinary tribunal, if necessary, for the parties to disciplinary proceedings are the accused, his representative, and the representative of the Inspector-General. This change has helped to speed up the proceedings, while safeguarding the accused person's right to a defence.

308. Seven departmental offices have been opened, in Chalatenango, Cabañas, La Paz, Cuscatlán, Usulután, Morazán and La Unión, in order to provide the citizenry with easier access to the Inspectorate-General for the purpose of reporting violations of human rights. Members of the Inspectorate not assigned to these departments are based in the corresponding regional office, from which they travel to the area under their supervision. Other departmental offices are currently being opened.

(d) *Distribution of materials on human rights*

309. Pursuant to article 57 of its regulations the Inspectorate-General may obtain and distribute to the PNC human rights and professional publications and any other kind of written or visual material. With help from the European Union it has produced a booklet to be distributed to all police officers containing the text of article 25 of the PNC Act, i.e. the PNC code of conduct, concerning respect for and protection of human rights. An order has been circulated by the PNC Directorate-General instructing all police officers to carry this booklet at all times.

310. Since 1995 the Inspectorate has been producing statistics on alleged violations of human rights. The complaints received have increased in number over the years, but it must be remembered that the number of police officers has also risen and that the citizenry has increasing confidence in the remedy of complaint to the competent authority.

311. It must be stressed that the more detailed recording of complaints of alleged violations of physical integrity, due process and liberty began only in 1999, so that it has been impossible to include in this report detailed figures for earlier years.

312. Between 1996 and 2001 the Inspectorate received 1,222 reports of cruel, inhuman or degrading treatment on the part of the police.

313. It should be noted that in the course of 2000, after realizing that some police officers did not present the profile required for performing public security duties, the PNC had to seek the means of solving this problem. Many officers had engaged in irregular conduct and demonstrated their unsuitability for police work; some had even committed criminal offences.

314. Legal measures were therefore taken, such as the amendment of article 34 of the PNC Act and the introduction of the new disciplinary regulations, which speeded up the punishment and dismissal of officers committing serious disciplinary offences.

315. In addition, the promulgation of Legislative Decree No. 101 of 23 August 2000, published in the *Diario Oficial* Vol. 348 of 20 August 2000, introduced special arrangements for the removal of PNC personnel engaging in irregular conduct: one deputy commissioner, 13 deputy inspectors, 51 sergeants, 70 corporals, 653 ordinary officers and 211 administrative staff members were removed from their posts, making a total of 999 dismissals, including 8.5 per cent women.

316. The disciplinary regulations allow for the regional decentralization of the disciplinary tribunals; between June 2000 and June 2001 a total of 1,150 officers of various ranks were dismissed and 969 suspended from duty without pay; 633 were acquitted of the charges against them.

Police personal dismissed, suspended or acquitted by PNC disciplinary tribunals, June 2000 to June 2001

	Outcome tribunal					
	Metropolitan	***Central***	***Subcentral***	***Eastern***	***Western***	***Total***
Dismissed	423	300	129	195	103	1 150
Suspended	188	276	85	345	75	969
Acquitted	217	210	41	135	30	633
Total	828	786	255	675	208	2 752

Source: PNC Inspectorate-General.

Police personnel removed under legislative decree No. 101 (dismissal)

Rank	***Sex***		***Total***
	Female	***Male***	
Deputy commissioner	0	1	1
Deputy inspector	0	13	13
Sergeant	0	51	51
Corporal	3	67	70
Ordinary officer	43	610	653
Administrative staff	39	172	211
Total	85	914	999

Source: PNC Inspectorate-General.

317. Since the amendment of the PNC Act the Inspectorate-General has taken on a new and combative role and it has made a start on the training of the personnel of the disciplinary units with a view to improving the coordination of the work of guaranteeing due process. This training is also provided for senior officers.

318. Approaches are made at the highest level in connection with the Inspector-General's half-yearly reports to the Procurator for the Protection of Human Rights in order to maximize their usefulness.

319. Coordination is being established with the new PNC Human Rights Division with a view to an exchange of data and implementation of the recommendations resulting from the annual human rights assessments.

320. In collaboration with the Technology Development Unit of the Ministry of the Interior, the Inspectorate-General is working on a computer system for keeping track of police personnel who repeatedly commit violations of human rights. In addition, the number of cases assigned to the departmental offices and area coordinators will be monitored, as will the progress of these cases and the outcomes.

321. It is in the nature of the inspection and evaluation functions of the Inspectorate-General that it should make recommendations on management, operations, conduct of officers, and human rights matters. Previously, these recommendations were made in general terms to the units and divisions in question or to the National Public Security Academy; in future, an effort will be made to present them under specific headings in order to obtain the most effective results and to identify progress in each of the areas mentioned.

ARTICLE 8

Paragraphs 1 and 2: Prohibition of slavery and the slave-trade in all their forms and of servitude

322. On this point the Committee is referred to the information contained in the second periodic report and in paragraphs 71-73 of document CCPR/C/14/Add.7 of 17 October 1986 concerning slavery, servitude and forced labour.

323. Article 4 of the Constitution states with regard to personal rights:

> "Everyone is free in the Republic. Nobody who enters its territory shall be a slave, and nobody who trades in slaves shall be a citizen. Nobody may be subjected to servitude or to any other status that impairs his dignity".

324. It is a firm constitutional rule to reject all forms of slavery, servitude and any other degrading status: article 4 of the Constitution even denies citizenship to anyone who trades in slaves.

325. No cases of slavery, trading in slaves, or servitude were recorded in El Salvador during the period covered by this report.

Paragraph 3 (a) and (b): Prohibition of forced or compulsory labour. Imposition of forced or compulsory labour as a punishment for a crime

326. El Salvador's labour legislation provides that "no use may be made of any form of forced or compulsory labour, that is to say of any work or service which is exacted under threat of some punishment and which the worker has not offered to perform voluntarily". However, there are some exceptions provided by article 13.3 of the Labour Code, which states that this prohibition does not cover: (a) any work or service which is required under the laws on compulsory military service and which is of a purely military nature; (b) any work or service which forms part of normal civic duties; (c) any work or service which is required under a sentence handed down in a judicial decision, provided that such work or service is performed under the supervision and control of the public authorities and that the person performing it has not been transferred or made available to a private individual or to a company or juridical person of a private nature; (d) any work or service which is required by circumstances of *force majeure*, that is to say war, disasters or threats of disasters such as fires, floods, famine, earthquakes, severe outbreaks of human or animal diseases, plagues of animals, insects or plant pests, or in general terms any circumstances which may jeopardize or threaten to jeopardize the lives or the normal conditions of life of all or part of the population; (e) small-scale communal work performed by the members of a community for its direct benefit, provided that the members have the right to give their opinions on the need for the work.

327. El Salvador's prison regime does not provide for the imposition of forced labour as a punishment for a crime.

ARTICLE 9

Paragraph 1: Right to liberty and security of person. Prohibition of arbitrary arrest or detention

328. The Constitution establishes to right to liberty as a fundamental principle, stating in article 11: "No one may be denied the rights to life, liberty, ownership and possession or any other of his rights without first having been tried and judged in accordance with the law; nor may a person be tried twice on the same charge". The Constitution also recognizes the rights of liberty and security of person in articles 1, 2, 10, 12 and 13.

329. Where arrest is concerned, the Code of Criminal Procedure reaffirms these principles in its article 1:

> "No one may be sentenced or subjected to a security measure except by virtue of an executory judgement handed down following a trial of the facts in an oral and public hearing conducted in accordance with the principles established in the Constitution of the Republic, in this Code and in other legislation and in strict compliance with the safeguards accorded to the person". The precautionary measure of pre-trial detention shall be used on an exceptional basis".

330. The secondary legislation recognizes the basic principles and the constitutional guarantees in article 2 of the Criminal Code and articles 6-15 of the Code of Criminal Procedure, and a series of criminal offences for infringement of these rights is established in articles 148-150 of the Criminal Code; when these offences are committed by public officials or employees the criminal responsibility is aggravated in accordance with articles 290, 291 and 298 of the Code.

331. The following statistical table on offences connected with the right to liberty and arbitrary arrest and detention illustrates this matter more clearly.

Criminal Code Offence	***Offences***	***Offences recorded by the Office of the Attorney-General***			
		1998	***1999***	***2000***	***2001***
Art. 148	Deprivation of liberty	243	883	1,141	993
Art. 149	Kidnapping	217	198	215	139
Art. 150	Aggravated offences against liberty of person	31	37	100	18
Art. 290	Deprivation of liberty by public official or employee, authority or agent of authority	0	3	5	12
Art. 291	Improper restraint of liberty of person	1	0	0	0
Art. 298	Offences against freedom of defence	0	1	1	0

Source: Office of the Attorney-General, Division for the Protection of the Interests of Society.

Paragraph 2: Right of an arrested person to be informed, at the time of arrest, of the reasons for his arrest and to be notified promptly of any charges against him

332. As stated before, pursuant to article 12 of the Constitution, when a person is arrested he has the right to be informed, immediately and in a form which he understands, of his rights and reasons for his arrest and that he is not required to make a statement; in all cases arrested persons are guaranteed the assistance of defence counsel in the proceedings before the auxiliary organs of the administration of justice and in court proceedings.

Paragraph 3: Right of a person arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and his entitlement to trial within a reasonable time or to release. Detention in custody

333. As stated before, the Constitution provides that no governmental organ, authority or official may issue a warrant for arrest or detention except in conformity with the law, and such warrants must always be issued in writing. When an offender is caught *in flagrante delicto* he may be arrested by any person but must be immediately handed over to the competent authority. He may not be held in custody for more than 72 hours, during which period he must be brought before a competent judge, who must be furnished with a record of any action taken in the case. Detention pending inquiries shall not exceed 72 hours, and the court is obliged within that period to notify the detainee in person of the reasons for his detention, hear his statement and order his release or pre-trial detention.

334. For purposes of protection of society, any person whose antisocial, immoral or harmful activities reveal him to be in a dangerous condition and constituting an imminent risk to society or to individuals may be subjected to security measures of a re-educational or rehabilitative nature. Such safety measures must be strictly regulated by law and made subject to the authority of the Judiciary. All of these provisions are based on article 13 of the Constitution.

335. The current criminal legislation provides for precautionary measures, which are imposed by a judicial order accompanied by a statement of reasons and last only for the time absolutely indispensable for the attainment of their purpose. It should be pointed out that a decision by which a precautionary measure is ordered or denied may be revoked or amended, even without an application, at any stage of the proceedings.

336. No precautionary measures may be imposed if the offence carries a penalty of imprisonment for a maximum period of three years or less and, in the light of the circumstances of the case, the court considers that the offender's oath to appear for trial is sufficient to guarantee his presence.

337. On this subject the Committee is referred to the information given in paragraphs 158-163 of document CAT/C/37/Add.4 of 12 October 1999.

338. The rules which must be followed in connection with arrest and detention are contained in Book II, Title I, Chapter VIII of the Code of Criminal Procedure. These rules are described below.

Arrest in flagrante delicto

339. The police must arrest anyone found *in flagrante delicto*. In such cases all persons are authorized to make the arrest and prevent any subsequent consequences of the offence but the offender must be handed over immediately to the National Civil Police (PNC) for the initiation of inquiries.

340. A person is deemed to be *in flagrante delicto* when he is found at the moment of attempting to commit an offence or immediately thereafter or when he is found in possession of objects or articles with which he has committed an offence or when he is being pursued by the authorities or private individuals.

Arrest by the Attorney-General/administrative arrest

341. The Attorney-General may order the administrative arrest of a suspect before any charges are laid when he believes that there are sufficient grounds for pre-trial detention. In all such cases he must bring charges. Once a suspect has been arrested, he must be brought before a judge within 72 hours. In addition to the other requirements of the Code of Criminal Procedure, the charges must be accompanied by a record of any action taken in the case.

Other cases of arrest

342. In addition the cases described above, the police may arrest a person even without a judicial warrant in the following cases: (1) when he has escaped from a prison or other place of detention; (2) if by virtue of a written order of the Attorney-General, only in the cases envisaged in articles 289 and 289-A of the Code of Criminal Procedure; (3) when the person is in possession of objects whose possession may imply that he has committed a criminal offence or when he cannot justify his possession of the objects, or when he bears marks or signs which indicate that he has taken part in a criminal offence. In cases (1) and (2) the PNC must immediately bring the arrested person before the judicial authority or the Attorney-General; in case (3) the police must initiate an investigation; in all cases the Procurator for the Protection of Human Rights must be notified.

Detention for the duration of the inquiry

343. When a person accused of having committed an offence is brought before a judge, the judge must order him detained for the duration of the inquiry and transferred to the appropriate prison with a written notice to the prison governor.

344. On completion of the inquiry the judge must order pre-trial detention or release of the accused as appropriate, subject to liability to criminal responsibility. The inquiry may last no longer than 72 hours from the time the accused was brought before the judge.

Special case of detention for inquiries

345. If at the commencement of the investigation of an offence in which several persons may have participated it is impossible to identify the perpetrators immediately or to suspend the proceedings without impairing the instruction, the judge may order that none of the suspects may leave the place where the offence was committed and he may order their detention for inquiries if necessary; such detention may not last for longer than is needed for taking the statements and never for longer than 72 hours.

Pre-trial detention

346. The following requirements must be satisfied for the purposes of an order of pre-trial detention: (1) it must be shown that an act characterized as a criminal offence has been committed and that there are substantial grounds for a reasonable belief that the accused is probably the perpetrator or a participant; and (2) the offence must carry a maximum prison term of over three years or, if less, the judge deems pre-trial detention necessary given the circumstances of the offence, the alarm which it has caused to society or the frequency with which similar offences are committed, or if the accused is subject to some other precautionary measure.

347. The accused may be ordered to be detained in a care institution when the following requirements are met: (1) verification that an act characterized as a criminal offence has been committed and that there are sufficient grounds for a reasonable belief that the accused is probably the perpetrator or a participant; (2) verification by means of an expert report that the accused is suffering from a severe disturbance of his mental faculties or that these faculties are deficient and that this condition makes him a danger to himself or to others; and (3) there are sufficient grounds for believing that the accused will not cooperate in the proceedings or obstruct a specific act of investigation.

348. Persons in pre-trial detention must be kept in special establishments different from the ones used for convicts serving prison sentences or, at least, in places entirely separate from the latter type of establishment and they must be treated as innocent at all times, for they are being detained for the sole purpose of ensuring that they appear for trial or for enforcement of sentence. Such detention must not acquire the characteristics of a punishment or entail any restrictions other than those required for preventing flight or obstruction, and it must comply strictly with the law and the prison regulations.

349. Decisions imposing pre-trial detention or other intervention or an alternative measure are subject to appeal. The lodging of an appeal does not suspend the enforcement of the measure against which the appeal is lodged. The judge must remit the appeal application and the necessary

documents within 24 hours. The court hearing the appeal hands down its decision within three days without further proceedings.

350. The accused and his counsel may request reconsideration or substitution of a precautionary measure at any stage of the proceedings and whenever they deem it appropriate, subject to the counsel's being held professionally liable when the application is notoriously dilatory or repetitive. Every three months, without prejudice to any other occasions on which specific action is ordered, the judge must consider the continuation of the pre-trial detention and, when necessary, order it to be replaced by another measure or by release. This examination takes place in an oral hearing to which all the parties are summoned, but the hearing may proceed without all the parties being present. It must be held within 48 hours of an application.

Other cases of pre-trial detention

351. Pre-trial detention may also be ordered in the following cases: (1) when the accused does not appear without legitimate grounds on the first occasion deemed necessary by the court; (2) when it is considered that the accused may obstruct a specific act of investigation, there being grave suspicion that he will destroy, alter, conceal, suppress or falsify evidence or that he will induce fellow defendants, victims, witnesses or experts to give false information or to behave in a dishonest or misleading manner or that he will induce other persons to behave in such a manner or commit other similar acts; (3) when in the light of the accused's conduct during the proceedings or during other earlier proceedings the judge has a grave suspicion that he will continue to commit criminal offences; and (4) when the accused has failed to comply with the conditions of measures ordered in substitution of pre-trial detention.

Substitution of pre-trial detention

352. Notwithstanding any pre-trial detention measures ordered, and even when the offence carries a prison term of more than three years, pre-trial detention may be replaced by another precautionary measure if the accused is not subject any other such measure and it is reasonable to believe that he will not attempt to evade justice and if, in addition, the offence has not caused any alarm in society.

353. Substitution is not available in the following criminal cases: simple homicide, aggravated homicide, kidnapping, sexual rape of any kind, sexual assault on a minor or a legally incompetent person, aggravated sexual assault, aggravated robbery, extortion, defraudation of the public exchequer, the offences envisaged in the Drug-related Activities Regulation Act, and the offences envisaged in the Money and Asset Laundering Act.

Substitution measures

354. When pre-trial detention may be replaced by another measure which is less burdensome for the accused, the competent judge or court, on its own motion or on application, may order such detention to be replaced by one of the following measures: (1) house arrest, in the accused's own home without any supervision or in the custody of another person; (2) an obligation to submit to the care or supervision of a specified person or institution, who or which reports periodically to the judge; (3) an obligation to appear periodically before the judge or an authority designated by him; (4) a prohibition on leaving the country, the place of residence or an area specified by the judge; (5) a prohibition on attending certain meetings or visiting certain places; (6) a prohibition on communicating with specified persons, provided that this does not affect the right to defence;

and (7) the deposit of a suitable amount of bail, by the accused himself or by another person, in the form of cash, securities, taking of a loan or mortgage, handing-over of property, or a guarantee provided by one or more suitable persons.

355. The judge may impose only one of these measures or a combination of several of them, as best suits the case, and he orders the necessary measures and communications for ensuring compliance. In no case may any of these measures be imposed or enforced in such a way as to distort their purpose or render compliance impossible; in particular, bail must not be ordered when the accused's poverty or lack of means makes it impossible for him to provide surety.

356. When necessary, the judge sets the type and amount of bail and rules on the reliability of any guarantor. If the surety is provided by another person that person assumes in conjunction with the accused the obligation to pay the amount set by the court. With the prior authorization of the court the accused and the guarantor may replace the surety by another of equal value. In the event of default or when the accused seeks to evade the enforcement of the judgement, a time limit of not less than five days is set for him to appear or to comply with the judgement. The accused and the guarantor are notified of this time limit and warned that if the accused does not appear or comply with the judgement without offering a defence of *force majeure*, the surety will be forfeited on the expiry of the time limit.

357. The bail is cancelled and any property returned, provided that the surety has not already been forfeited: (1) when the accused is placed in pre-trial detention or custody; (2) when the decision giving rise to the bail is revoked; (3) when the accused is acquitted or the case is dismissed in an executory judgement; (4) when the enforcement of a sentence of deprivation of liberty has been commenced or when it is not enforceable; and (5) on payment of the fine imposed in the judgement.

358. An order imposing pre-trial detention or custody or a substitution measure must contain: (1) the personnel details of the accused or other details serving to identify him; (2) a brief statement of the alleged offence or offences and their legal characterization; (3) the grounds for the measure with a specific indication of all the underlying requirements; and (4) the operative part with a reference to the applicable law.

Termination of pre-trial detention

359. Deprivation of liberty is terminated: (1) if fresh evidence shows that the grounds for this measure do not lie or renders its substitution by another measure appropriate; (2) when it exceeds or is equal to the length of the expected sentence, taking into account the application of rules on the suspension or remission of sentences and on conditional release; and (3) when its duration exceeds 12 months for less serious offences or 24 months for serious ones.

360. The treatment of persons held in pre-trial detention is monitored by the competent supervising judge; any licence, temporary release or transfer must be authorized by the judge before the event. If the competent supervising judge finds that the detention has acquired the characteristics of an anticipated punishment, he must immediately so inform the judge in charge of the case so that he may take any necessary action.

Paragraph 4: Entitlement of a person deprived of liberty by arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful

361. As explained earlier, the Constitutional Division of the Supreme Court of Justice is competent both under the Constitution and under the Constitutional Procedure Act to hear *habeas corpus* proceedings in cases in which an individual or authority has unlawfully restricted the liberty of a detained person or when an authority has impaired his dignity or physical or moral integrity.

362. The Committee is further referred to the statistics given earlier on use of this remedy by persons who consider that their rights have been infringed.

Paragraph 5: Enforceable right to compensation of a person unlawfully arrested or detained

363. The Constitution establishes the principle that in the event of revision of a decision in a criminal case the State must compensate in accordance with the law the victims of duly verified judicial errors and that compensation for judicial delay must also be paid, the direct responsibility of an official and, on a subsidiary basis, of the State having been established. No records are kept of cases of compensation of victims for judicial errors.

364. The Committee is referred to the information on compensation given in paragraphs 263-271 of document CAT/C/37/Add.4.

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365. As already pointed out, the human being is the origin and the end of the activity of the State; hence the recognition of the State's duty to safeguard the integrity and dignity of the country's inhabitants, with special attention to persons deprived of their liberty. The Constitution establishes these principles in articles 1, 10, 11 and 13.

Paragraph 1: Right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person

366. The entry into force of the new criminal, procedural and prisons legislation on 20 April 1998 streamlined the administration of justice in El Salvador. The Prisons Act created new posts such as the judges appointed to supervise prisons and the enforcement of sentences, who are responsible for monitoring the legality of the enforcement of sentences and security measures and the proper operation of the prisons, in the sense of providing protection for prisoners' rights. Furthermore, the Prisons Supervision and Sentence Enforcement Division and the Probation and Conditional Release Department were created in order to assist these judges.

367. Pursuant to the provisions of article 37 of the Prisons Act, the prisons supervision and sentence enforcement judges have the following functions:

1. To monitor the enforcement of sentences and security measures;

2. To grant the benefit of conditional release and to revoke it when appropriate;

3. To rule on the imposition, amendment and suspension of security measures in accordance with the provisions of the Criminal Code;

4. To process and rule on interlocutory applications made by prisoners serving sentences for criminal offences, except for the offences listed in subparagraphs (1), (3), (4) and (5) of article 75 of the Constitution;

5. To keep a record of sentences served;

6. To process and rule on the complaints and interlocutory matters referred to in articles 45, 46 and 46 (1), (2) and (3) of this Act;

7. To grant or refuse special suspension of the enforcement of a sentence as appropriate pursuant to this Act;

8. To declare the extinction of sentences when appropriate pursuant to the Criminal Code;

9. To make periodic visits to the prisons within their territorial jurisdiction and conduct personal interviews with prisoners who so request;

10. To order release on completion of sentences or the benefit of the applicable periods of release on probation, when appropriate, and to amend the rules and conditions imposed or extend the period of probation, always in conformity with the provisions of the Criminal Code; and to issue the corresponding certificates;

11. To monitor compliance with the conditions or rules of conduct imposed in connection with the enjoyment of one of the alternative forms of enforcement of a prison sentence and to revoke periods of probation, in accordance with the provisions of the Criminal Code;

12. To monitor compliance with the conditions or rules of conduct imposed in connected with the conditional suspension of criminal proceedings, and to process any applications that may be lodged, in accordance with the rules contained in the Code of Criminal Procedure;

13. To take special care to ensure that the prisons are not holding any person detained unlawfully, and if it is found that pre-trial detention has acquired the characteristics of anticipated punishment, in accordance with the rules set out in the Code of Criminal Procedure, so to inform the judge in charge of the case without delay, so that he make take whatever action may be necessary;

14. To monitor the enforcement of the criminal sanctions provided for in the Criminal Code which do not entail deprivation of liberty;

15. To secure decisions, by means of appeal, on the placement of prisoners in the appropriate establishment and under the appropriate regime, in the light of their personal status, in accordance with the law and the regulations and parameters previously established by the respective criminological council and without applying

any criteria which may impair human dignity or treating the situation of any prisoner with improper favour; and

16. The other functions assigned to them by law".

368. The new structure of the prisons system makes it possible to comply with two basic conditions which criminal procedures must satisfy: the effective prosecution of criminal offences; and the provision of safeguards in a system for protecting and securing respect for human rights.

369. The following are the fundamental principles underpinning the new prisons legislation: (a) the purpose of imprisonment, which includes according the prisoner those conditions which will nurture his personal development and enable him to resume his place in society on his final release; (b) the legality of enforcement, which means ensuring that sentences and security measures are enforced in accordance with the legal rules; (c) humanity and equality, which means preventing any kind of abuses of prisoners which may damage their fundamental rights - hence the absolute ban on the use of torture or any injurious practices or procedures in the enforcement of sentences and on discrimination of any kind on the ground of a prisoner's nationality, sex, race, religion, political leanings or opinions, or economic or social situation; (d) judicial control, which provides a counterbalance between judicial decisions and their enforcement by the prison administration and is designed to ensure effective judicial monitoring of all the rights and safeguards of persons detained in prison; (e) payment of the minimum wage for work in order to prevent prisoners from becoming the passive targets of the possibly arbitrary actions and decisions of the prison administration; and (f) participation in the community, which by its very nature has the effect of breaking down the various barriers between the man and offender and the institution responsible for his rehabilitation and his relations with the community.

370. The legislation is based on the principles listed above, pursuant to the mandate conferred by article 27 (3) of the Constitution:

"The State shall operate prisons with a view to correcting offenders and educating and training them in habits of work, in an effort to secure their rehabilitation and prevent crime".

371. It must be pointed out that the Prisons Act recognizes the rights of all prisoners on the basis of the Constitution and the Standard Minimum Rules for the Treatment of Prisoners: (1) right to be accommodated in decent facilities; (2) right to food; (3) right to respect for identity; (4) right to respect for dignity; (5) right to adequate clothing; (6) right to work; (7) right to freedom of movement within the prison, subject only to the restrictions of the regime under which the sentence is being served; (8) right to information; (9) right to family visits and intimate visits; (10) right to privacy; (11) right to assistance from qualified professionals; and (12) right to enjoy a prison regime, treatment and benefits based on technical and scientific criteria and examinations.

372. Articles 2, 10 and 27.3 of the Constitution stipulate respect for the human person, and articles 34 and 35 establish the protection of minors and a special juridical regime for minors: they must be tried as minors for the offences which they commit, in accordance with the special Juvenile Offenders Act.

373. The human rights training courses run with the assistance of the Office of the High Commissioner for Human Rights from 1998 to 2000 provided training for personnel of the prison

system in technology, security and custody, and administration of the country's various prisons, making them more aware of the need to respect the human rights of persons deprived of their liberty; as a result, there have been no reports in recent years of torture or other acts violating such rights.

374. One of the benefits of this technical cooperation has been its multiplier effect: for example, the Study and Training Department of the Prisons School has run training courses for a total of 500 staff members.

Paragraph 2 (a): Segregation of accused persons from convicted persons, save in exceptional circumstances, and separate treatment appropriate to their status as unconvicted persons

375. The Act classifies prisons in accordance with their function into: (1) reception centres for persons entering the prisons system, where they undergo observation and initial diagnosis; (2) preventive detention centres exclusively for the holding and custody of persons subjected to pre-trial detention by judicial order; these centres have several sections: section for the accommodation of adults aged up to 21 years; section for adults aged over 21; secure section; and medical treatment section; (3) centres where sentences are served (for prisoners who are at the stage of enforcement of their sentences); and (4) special centres (for care and treatment of prisoners' physical and mental health).

376. These centres may be accommodated, in conformity with the law, in a single group of buildings, subject to the segregation requirements. Women are housed in separate facilities.

377. The Act provides for a further classification of prisons where sentences are served: (1) ordinary prisons, for prisoners serving sentences of deprivation of liberty under the progressive regime established by the Act; open prisons, for prisoners exhibiting no significant problems of adaption in ordinary prisons. These prisoners are subject to a regime based on trust and self-management; (3) auxiliary prisons, for serving of sentences of up to one year and the remaining part of a sentence when a substitution order is revoked in accordance with the Criminal Code rules or a sentence is converted to imprisonment; and (4) high-security prisons, for prisoners exhibiting serious problems of adaption in ordinary and open prisons and constituting a danger to themselves, the other prisoners, and the other persons connected with the prison.

378. With respect to the modernity of the prisons system, the Prisons Act establishes in its articles 1, 2, 8, 18, 33, 40, 87, 105, 114 and 115 the system's purposes, the rights and duties of prisoners, work and education arrangements, prison regimes, disciplinary measures, intervention by the Department of Public Prosecutions in the event of incidents, and the administrative and judicial enforcement agencies.

379. Pre-trial detention is regulated in articles 303 and 307 of the Act:

> "Article 303. Persons undergoing pre-trial detention shall be accommodated in special establishments different from the ones used for persons sentenced to imprisonment or, at least, in places absolutely separate from the ones designated for convicted prisoners, and they must be treated as innocent at all times, for they are under detention for the sole purpose of ensuring their appearance for trial or enforcement of sentence. Such detention shall be effected in such a way that it does not acquire the characteristics of punishment or impose restrictions other than the ones essential to prevention of flight or obstruction, in strict conformity with the prisons acts and

regulations. The treatment of persons held in pre-trial detention shall be monitored by the corresponding supervising judge, but any licence, temporary release or transfer shall be authorized by the judge in charge of the proceedings. If the supervising judge finds that the detention has acquired the characteristics of an anticipated punishment, he shall so inform the judge in charge of the case so that he may take whatever action is necessary".

"Article 307. Every three months, without prejudice to any expressly ordered occasions, the judge shall consider whether the pre-trial detention or custody should continue and, where appropriate, he may order it to be replaced by another measure or by release. This examination shall be conducted in an open hearing to which all the parties have been summoned; but the hearing must take place within 48 hours of the application, and the judge shall then give his ruling. The hearing provided for in the preceding article shall take place within 48 hours of the application.

380. Prisons are classified in accordance with their function, as stipulated in the Prisons Act and its regulations. Convicted prisoners are classified by stage of adaptation: ordinary, trust and partial liberty, in accordance with the progressive prisons regime; this facilitates the progressive, integrated, individualized and voluntary treatment of prisoners determined by means of a criminological diagnosis based on the single record file and additional interviews, as stipulated in the Act.

381. The prison population was classified during the first months of 2002 and assigned to prisons on the basis of legal status:

Preventive detention centres, holding only unconvicted prisoners:
- Sonsonate Prison
- Ilobasco Prison
- Jucuapa Prison
- La Unión Prison

Sentence enforcement centres, holding only convicted prisoners:
- San Miguel Prison
- Usulután Prison
- Eastern Penitentiary at San Vicente
- Western Penitentiary at Santa Ana
- Sesuntepeque Prison

382. Work is currently proceeding on the classification of prisons in the country's Central region, as well as on the classification of sections in mixed prisons.

Paragraph 2 (b): Obligation to keep accused juvenile persons separate from adults and bring them as speedily as possible for adjudication

383. Article 35 of the Constitution regulates matters connected with juvenile offenders:

"The State shall protect the physical, mental and moral health of minors and shall guarantee their rights to education and assistance. Antisocial behaviour of minors constituting misdemeanours or crimes shall be subject to a special juridical regime."

The provisions of articles 13 and 27 also apply to minors.

384. The articles cited above indicate that if adults are entitled to fair justice, then this entitlement is due with even greater reason to minors; this implies: different treatment from the treatment accorded to adults, starting with separation from adults and accommodation before trial in facilities separate from those housing juveniles sentenced to detention; presumption of innocence until found guilty; and appointment of a legal representative, who may be a juvenile procurator, among other persons. Minors are also accorded the other rights and safeguards set out in the Juvenile Offenders Act and the Act establishing the National Institute for the Protection of Children.

385. The purposes of the Juvenile Offenders Act is to regulate the rights of minors who are alleged or declared to be the perpetrators of or participants in a criminal offence, to determine the measures which should be applied to minors who have committed a criminal offence, and to establish the procedures for safeguarding the rights of minors subjected to such measures.

386. The Act applies to minors aged between 12 and 18 years whose responsibility as perpetrators of or participants in a criminal offence is alleged or proven. Antisocial behaviour of minors aged between 12 and 16 years which constitutes a misdemeanour or crime is subject to the procedures set out in the Act.

387. Children aged under 12 years who exhibit antisocial behaviour are not subject to this special legal regime or to the ordinary regime; they are exempt from criminal responsibility and, when necessary, their cases must be reported immediately to the National Institute for the Protection of Children with a view to their comprehensive protection.

388. Minors covered by the Act enjoy the rights and guarantees recognized in the Constitution and the treaties, conventions, covenants and other international instruments signed and ratified by El Salvador and in the other legislation applicable to persons aged over 18 years accused of committing or participating in a criminal offence, including specifically: (a) to be treated with due respect for the inherent dignity of the human person, including enjoyment of the right to protection of the integrity of the person; (b) to enjoy respect for personal privacy and thus not to be the subject of the publication of any information which directly or indirectly affects their identity; (c) to enjoy due oral, private and prompt process before the juvenile courts, in the light of their responsibility for the acts in question; (d) not to be deprived of their liberty unlawfully or to suffer any limitation of the exercise of their rights beyond the purposes, scope and content of any measure which may have to imposed upon them under the Juvenile Offenders Act; (e) not to be confined in an institution except by written order of a competent judge as an exceptional measure and for the briefest possible time; (f) not to have any limitation or restriction imposed on their rights except by judicial order; (g) to receive clear and accurate information from the juvenile court concerning the meaning of each step of the proceedings conducted in their presence and concerning the content and grounds of decisions, including the social grounds, so that the proceedings fulfil their educational function; (h) compliance with the rules of due process, in particular the presumption of innocence and the right to be assisted by counsel from the outset of an investigation; (i) to be informed of the reasons for their detention and of the authority responsible for it and to request the presence of parents, guardians or other responsible persons; (j) not to be obliged to give testimony or to make statements against themselves, and the right to be assisted by an interpreter if they do not understand or speak Spanish; (k) the right to the benefit of a conciliatory settlement; (l) not to be declared a perpetrator of or participant in an offence not provided for in criminal law and, when appropriate, to be found free of responsibility on the ground of not having committed the offence, and to be accorded the benefit of the

provisions excluding criminal responsibility; (m) benefit of the provision that any measure imposed should have the primary purpose of their education; (n) to challenge judgements or findings and to request review of measures imposed on them; and (n) not to be confined in any case in places or centres of detention intended for persons subject to ordinary criminal law.

389. Only the following measures may be imposed on minors who commit acts characterized as misdemeanours or offences in criminal law:

Social and family guidance and support: the minor is given social and family guidance and support in order that he may receive the necessary attention in his home and normal environment.

Warning: the call for attention which a judge delivers orally to a minor. In such cases the judge informs the parents, guardians or other persons responsible for the minor about the offence committed and warns them that they must comply with the rules of life in the family and coexistence in society.

Imposition of rules of conduct: the determination of the obligations and prohibitions which the judge may order for a juvenile, such as: (1) to attend school, workplace or both; (2) to spend free time in previously determined programmes; (3) not to frequent certain places reserved for persons aged over 18 years and to avoid the company of persons who may incite the juvenile to engage in acts harmful to his physical, mental or moral health, which are specified in the decision; and (4) not to take alcoholic beverages or hallucinogenic, enervating, narcotic or toxic substances which are addictive or habit-forming.

Community service: work of general benefit which a minor must perform without pay. The tasks must be assigned in public places or institutions or under community programmes which do not entail any risk or danger for the minor or impairment of his dignity during hours which do not interfere with his schooling or work.

Probation: release of a minor subject to attendance at educational programmes and acceptance of the court's guidance and monitoring, with the assistance of specialists and persons with knowledge or skills in the treatment of juveniles; it is set for a minimum period of six months.

Detention: deprivation of liberty ordered by a judge in exceptional cases as a measure of last resort and for the shortest possible period when the established conditions for deprivation of liberty by judicial order have been satisfied. As part of the enforcement of this measure the judge may authorize attendance at activities outside the detention centre, provided that the specialists so recommend; and he may order weekend detention. The detention of a juvenile may be replaced by probation with the imposition of rules of conduct or community service. If the offender does not comply with the probation order, the judge may revoke it and order return to detention.

390. When an offence has been committed by a minor who was at least 16 years old at the time of the facts, the judge may order detention for a period whose minimum and maximum limits are one half of the terms of deprivation of liberty established for each offence in the criminal legislation. In no case may such a sentence exceed seven years.

391. The primary purpose of the measures described above must be education; they are supplemented, when necessary, by intervention in the family and the support of specialists if the judge so determines. The application of these measures may be ordered on a provisional or final basis and they may be suspended, revoked or replaced by other measures, subject to the advice, where necessary, of the persons made responsible for supporting the juvenile during their application. The judge may order the application of measures envisaged in the Act simultaneously or in succession or alternation.

392. Article 4 of the Act establishing the National Institute for the Protection of Children stipulates among the Institute's functions:

> "(f) To carry out and supervise the measures ordered by the juvenile courts with respect to children under its authority and to inform the courts periodically about any changes in behaviour and the other results of the application of the measures".

393. The National Institute, as the agency responsible for the detention centres for juvenile offenders, performs and monitors the functions conferred by its Act; it also has an obligation to carry out its activities in compliance with the fundamental principles and rules for the safeguard of life and integrity, especially of minors at a stage of formation and development, in accordance with the Juvenile Offenders Act and the regulations governing special detention centres. The Institute has introduced activities and working methods to encourage the social reintegration of young persons deprived of their liberty.

394. There are special centres for juvenile offenders where these measures can be applied and monitored by the courts as required under article 119 of the Act. article 120, on the operation of the centres, states that they must promote vocational training, schooling, family links and positive reintegration in family and society.

395. Article 9 of the regulations governing the centres stipulates that all juveniles joining a centre must be interviewed by its specialists for the purposes of compiling the necessary psycho-social profile, which also takes into account the earlier analyses of the juvenile; a medical examination is also carried out, and in the light of the diagnosis of the multidisciplinary team (psychologist and social worker) a decision is taken on the most suitable placement of the juvenile and on the type and level of any treatment programmes that may be needed.

396. In all the centres the juveniles are segregated on the basis of age, sex and physical and mental condition, and in the light of whether the detention is provisional or final or for protection purposes.

397. Article 10 of the regulations stipulates that the administration must design and operate programmes to encourage children's integrated training and their reintegration in their families and society, as well as to make good the damage done to them.

398. These provisions illustrate the primary objectives of the imposition of a detention measure on a juvenile. Since the aim is for him to eliminate his antisocial behaviour, he must be offered reintegration and rehabilitation programmes which foster his self-esteem and creativity in order to make him into a citizen useful to society. For these purposes the centres employ professionals specializing in caring for this type of young person.

399. The programmes mentioned in the preceding paragraph are specified in articles 17-20 and 22-23 of the regulations and they cover education, vocational training, work, leisure and cultural activities, general and specialized medical care, and contacts with the community.

400. Since responsibility for the centres has been conferred upon the National Institute, it should be emphasized that the principal aim of its work is the comprehensive protection of children in accordance with the Constitution and the international commitments assumed by El Salvador which guarantee such protection.

401. Viewed from this perspective, detention must remain the measure of last resort; the Act establishing the National Institute therefore stipulates the procedures to be followed at its administrative headquarters, involving the participation of a juvenile procurator, and the need to extend the coverage to the whole of the national territory through offices in the Eastern and Western regions of the country.

402. The administrative procedures under which the Institute implements measures of protection are described in articles 33-42 of the Act, which deal with such matters as investigation and provisional measures, hearings, summonses, summonses issued via the communications media, presumption of the facts investigated, determination of the situation of juveniles, reasoned decisions, personal notification, and notification by judicial edict.

403. There is also a list of protection measures which may be exhausted before a decision for detention is taken; these measures are the ones contained in article 45 of the Act.

404. The officers supervising the execution of measures ordered against juvenile offenders are responsible for:

- Supervising and monitoring the execution of the measures which may be imposed by the juvenile courts in such as way as to provide the best possible protection of children's rights;

- Ensuring compliance with the rules governing the execution of these measures;

- Fining officials who in executing the measures damage or threaten these rights by act or omission and informing the competent authority with a view to any criminal or disciplinary proceedings that may be required;

- Ensuring that the rights of juveniles are respected during the execution of any measure imposed by the juvenile courts, especially detention;

- Monitoring the execution of measures and ensuring that they are being carried out in conformity with the order imposing them; measures of family and social support and guidance, rules of conduct, community service and probation must be executed in the manner which best ensures their effectiveness;

- Conducting automatic reviews of the measures imposed every six months, with the assistance of the specialists, in order to verify that they are achieving the purposes for which they were ordered;

- Amending, replacing and revoking measures imposed on a child, of their own accord or on the application of a party, when these measures are not achieving the purposes for which they were ordered or when they are working against the child's reintegration, having sought the advice, where necessary, of the persons responsible for supporting the child during the application of the measures. In no case is the child's situation to be aggravated;

- Replacing a measure imposed by a juvenile court under the Juvenile Offenders Act by one of the measures envisaged in the Act establishing the National Institute for the Protection of Children. In no case is such substitution to result in a more severe measure;

- Ordering the termination of measures when necessary, especially in the cases mentioned in the final paragraph of article 17 of the Juvenile Offenders Act;

- Revoking the substitution of a measure when the juvenile fails to comply with it and reimposing the former measure;

- Keeping a record of measures and declaring their extinction when appropriate;

- Processing and ruling on complaints and applications arising during the execution of measures;

- Ordering the juvenile's release when appropriate and issuing the corresponding certificates;

- Paying special attention to ensuring that the centres are not holding juveniles unlawfully deprived of their liberty and, if it is verified that the custody provided by the centres has acquired the characteristics of an anticipated detention measure, communicating the case immediately to the juvenile court so that it may take whatever action is necessary;

- Securing decisions by means of application on the placement of detained juveniles under the correct regime, in accordance with the Act and the regulations governing the detention centres.

405. Article 2, 5, 6, 57 and 58 of the detention centre regulations deal with the deprivation of the liberty of juveniles, with regard to whom, by their very nature as persons whose personalities are in the process of formation, it is doubly essential to respect human dignity: under no circumstances must they be subjected to any kind of torture or harassment or other form of maltreatment.

Application of measures to juveniles by the courts

	1995	*1996*	*1997*	*1998*	*1999*	*2000*	*Total*
Probation	48	46	42	37	61	62	296
Detention	19	61	76	49	93	71	369
Rules of conduct	45	39	26	15	31	35	191
Family/social guidance	19	61	42	76	57	66	321
Warnings	3	3	1	2	4	6	19
Community service	7	6	5	13	3	0	34
Family placement	0	0	1	0	0	0	1
Total	141	216	193	192	249	240	1 231

Source: Supreme Court of Justice, 2001.

Paragraph 3: Essential aim of the penitentiary system to be the reformation and social rehabilitation of prisoners

406. With regard to practices intended to promote rehabilitation and reintegration, the Prisons Act stipulates that work performed in prison shall have the following purposes: (1) to maintain or enhance the prisoners' training, creativity and work habit in order to improve their prospects when they return to life on the outside; (2) to rehabilitate prisoners by means of training in various occupations; and (3) to provide prisoners with cash earnings.

407. Article 107 of the Prisons Act states:

> "Work performed in prison must not constitute a punishment. Every possible effort must be made to ensure that prison work has the same characteristics as outside work. All the rights envisaged in the labour legislation shall be applicable in prisons, provided that they do not clash with the rules contained in the present Act".

408. Persons subject to pre-trial detention may work on their own account or for persons from outside the prison, but if they so request they may also work under the auspices of the prison administration; in this event the administration must provide them, as far as possible, with the means to do the work in question.

409. In addition, articles 303 and 307 of the Code of Criminal Procedure stipulate special treatment for persons subject to pre-trial detention and for a compulsory review of precautionary measures of pre-trial detention.

410. Convicted prisoners are obliged to perform work suited to their physical and mental capacities, except that, with the authorization of the regional criminological council, they may spend their time on regular courses of education or other useful activities; this benefit is also available to: (1) persons disabled by illness or accident, subject to certification by the prison doctor; (2) pregnant women during the month preceding delivery and for two months thereafter, subject to certification by the prison doctor; (3) persons who for mental reasons are incapable of performing any kind of work; and (4) persons who cannot work for reasons beyond their control.

411. Prisoners aged over 60 and physically disabled prisoners are not obliged to perform any work but they may opt to do so by application to the prison administration. They are provided with work suited to their condition.

412. The work performed by prisoners, except for domestic work to ensure the prison's proper functioning, must always be remunerated. The remuneration must not be lower than the minimum wage established by law for each type of work. It may be withheld in conformity with the law.

413. Prisoners who perform work for private individuals shall be kept at all times under the supervision of the prison's staff, and such private individuals must pay the prisoners not less than the minimum wage for each type of work.

414. Farm work may be organized in prisons having land available for cultivation, in accordance with the internal regulations of the prison in question.

415. Every prison has an office responsible for assigning work to the prisoners. The assignments take into account prisoners' outside occupations, their aptitudes and capacity for work, and the regime they are subject to, as well as the prison's possibilities. If a prisoner acquires an occupational skill or becomes specialized in some type of work the Ministry of Labour, at the request of the head of the prison's work office, issues him with a certificate of his qualification, which does not mention his status of prisoner.

416. In its section on education as a means of rehabilitation and social reintegration the Prisons Act stipulates that every prison must have a school providing the inmates with basic education. The official curricula are followed, so that prisoners may continue their studies following release (art. 27.3 of the Constitution and art. 114.1 of the Prisons Act). In addition, the prison administration provides prisoners who have taken secondary, higher, technical or university courses with opportunities to continue their studies.

417. Provided that the regional criminological council so decides, prisoners who have completed their basic education satisfactorily and those having a profession or a technical qualification enabling them to contribute to the prison's education system may participate as teachers or auxiliaries.

418. Every prison has a library stocked with books suited to the prison's educational requirements, and inmates may engage in cultural, sporting and religious activities. The Prisons Act regulations set out the conditions and modalities for the provision of these services.

419. In order to comply with the requirements of the Constitution and the Prisons Act, every prison has a school certified by the education authorities and employing teachers appointed by the Education Secretariat; these schools offer basic and in some cases secondary education, as can be seen from the relevant tables ("Summary of the education census of the national prison population, 2002" and "Summary of the current situation in the prison education system").

420. An education census taken early in 2002 shows the gradual progress made: only 10 per cent of the population is illiterate, as against 54 per cent in 1993, a reduction of 44 per cent; the illiteracy rate among the prison population has ranged between eight and 12 per cent since 1996, a year in which great efforts were made to eradicate this evil (see the table "Enrolment in schools attached to prisons up to January 2002").

421. In the case of the medical care provided for persons deprived of their liberty, in addition to the prison health facilities there are the prisoners wards in the Rosales and Pneumology hospitals, as well as a prisoners ward in the National Psychiatric Hospital. All these wards have the services of the technical staff and specialists in each of the hospitals, together with security and custodial staff from the Directorate-General for Prisons (see the table "Ratio of employees in each prison to medical, dental and psychiatric staff caring for inmates").

422. It should be made clear that the medical and paramedical staff caring for persons deprived of their liberty in these hospital wards are employees of the national health system operated by the Ministry of Health and Social Welfare, except for the Pneumology Hospital, which employs two private pneumologists recruited and paid by the Directorate-General for Prisons. Unfortunately, there have been difficulties in recruiting nursing staff to care for the prisoners in these wards.

423. With regard to the prisoners' food, following public bidding in May 2002 the Directorate-General awarded the catering contract for the country's prisons to a private company. A supervisory committee of nutritionists was appointed for each of the plants where the meals are prepared in order to ensure an adequate diet for prisoners and proper monitoring of purchases, weights, calories, packaging, hygiene, dispatch and delivery of the precooked meals. The menus have to be approved every month by the Directorate-General in order to ensure that the inmates are offered a varied diet.

424. For the purposes of the reform and social rehabilitation of prisoners article 3 of the Prisons Act states:

> "The fundamental objective of the penitentiary institutions established under the present Act is to promote the social rehabilitation of convicted prisoners and the prevention of crime, as well as to provide custody of persons subject to pre-trial detention. The inmates of these institutions are deemed to be all those persons who have been deprived of liberty pursuant to a pre-trial detention order, a sentence of imprisonment, or a security measure".

425. With a view to securing the reintegration and rehabilitation of prisoners the Directorate-General, as the body responsible for applying and ensuring compliance with the Prisons Act and its regulations, created a committee on the planning and coordination of the new prison system, pursuant to article 136 of the Act, to take care of all the measures required for the new system's entry into operation.

Summary of the education census of the national prison population, 2002
Total number of prisoners covered: 8,573

Prison	*Illiterate*	*Grade*									*Baccalaureate*			*Higher technical*	*University*	*Professional*	*TOTAL*
		1st	*2nd*	*3rd*	*4th*	*5th*	*6th*	*7th*	*8th*	*9th*	*1st*	*2nd*	*3rd*				
Central	123	111	121	127	146	115	251	192	154	314	119	51	169	0	16	10	2,019
Western	5	18	18	26	18	11	21	24	17	10	23	17	20	0	0	0	228
Eastern	61	62	61	56	30	39	39	35	24	32	33	12	13	0	0	0	497
Apanteos	173	127	210	157	140	121	167	152	111	207	79	31	80	2	16	16	1,789
Metapán	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Chalatenango	64	16	45	25	34	15	34	13	21	38	7	4	18	0	2	3	339
Sonsonate	0	9	5	2	10	0	9	4	4	5	4	0	5	2	0	0	59
Ilobasco	7	13	24	11	18	8	23	24	17	20	2	6	17	0	1	0	191
Sensuntepeque	43	4	16	10	9	16	15	13	33	25	1	5	7	0	4	0	201
Cojutepeque	57	74	59	57	56	46	91	83	78	108	15	13	10	0	1	1	749
Ilopango	47	30	25	25	29	26	51	20	31	81	10	20	22	0	0	0	417
Quezaltepeque	38	37	18	35	38	23	61	49	37	66	20	17	13	0	0	0	452
Usulután	30	39	43	16	17	11	26	21	19	21	10	6	19	0	0	0	278
Berlin	8	0	3	2	0	2	3	0	2	2	0	1	0	1	0	0	25
Jucuapa	0	10	13	11	8	3	8	20	11	14	6	2	2	0	0	0	108
Ciudad Barrios	0	38	32	19	32	7	37	53	21	25	13	7	10	0	0	0	294
San Miguel	106	40	32	16	62	12	66	31	21	35	27	7	11	0	1	1	468
Sn. Fco. Gotera	68	24	32	20	12	11	17	17	16	20	6	3	16	0	2	0	264
La Unión	40	26	22	8	15	12	31	7	7	17	2	3	4	0	1	0	195
Overall total	870	678	779	623	674	478	950	758	624	1,040	377	205	436	5	44	31	8,573
Percentage per grade	10.10	7.91	9.08	7.27	7.86	5.58	11.08	8.84	7.28	12.13	4.40	2.39	5.09	0.06	0.51	0.35	100.0

Source: National Coordination Office of the Prison Education System, Directorate-General for Prisons, Ministry of the Interior.

Summary of the current situation in the prison education system

No.	*School*	*Prison*	*Current numbers of teachers*												*Classrooms*	*Capacity per shift*	*Prisoners*	*Teachers*
			Turno		*Basic*						*Secondary*		*Distance*					
			M	*T*	*1° N*	*2° N*	*3° N*	*7°*	*8°*	*9°*	*B. G.*	*B. T.*	*3° C*	*B. G*				
	Gral. Francisco Menéndez	Central	X	X	X	X	X	X	X	X	X				11	440	2 262	12
	Arturo Ambrogi	Western	X	X	X	X	X	X	X	X	X				9	360	278	16
	Prof. Justo Cardoza	Eastern	X	X	X	X	X	X	X	X	X				8	280	528	17
	Distance only	Metapán												X			141	
	Dr. Manuel Enrique Araujo	Chalatenango	X	X	X	X	X	X	X	X				X	4	120	341	5
	Mons. Marco René Revelo	Apanteos	X	X	X	X	X	X	X	X				X	4		2 076	14
	Prof. Miguel Ángel González	Sonsonate	X	X	X	X	X							X	6	240	56	3
	Prof. Alberto Masferrer	Quezaltepeque	X	X	X	X	X	X	X	X				X	4	160	494	6
	Ana Eleonora Roosvelt	C. R. P. M. Ilopango	X		X	X	X	X	X	X				X	6	280	493	7
	Prof. José Maximiliano Díaz	Cojutepeque	X	X	X	X	X	X	X	X				X	4	120	405	5
	Dr. Lucio Alvarenga	Ilobasco	X	X	X	X	X								2	50	209	2
	Lic. Manuel Méndez	Sensuntepeque	X	X	X	X	X	X	X	X				X	3	120	198	4
	Dr. Rodolfo Jiménez Barrios	Jucuapa	X	X	X	X	X	X	X	X				X	5	150	151	7
	Distance only	Berlín															24	
	Lic. Carlos Wilfredo Mejía C.	Usulután	X	X	X	X	X	X	X	X				X	6	240	285	8
	Prof. Judith Celina Monroy	Ciudad Barrios	X	X	X	X	X	X	X	X				X	4	160	300	6
	Prof. Abraham Mena	San Miguel	X	X	X	X	X	X	X	X	X				6	240	483	14
	Prof. Samuel Córdova	San Fco. Gotera	X	X	X	X	X	X	X	X					3	120	292	4
	Gral. Francisco Morazán	La Unión	X	X	X	X	X	X							3	80	230	3
TOTAL															88	3 160	9 246	133

Source: National Coordination Office of the Education System, Directorate-General for Prisons, Ministry of the Interior.

Enrolment in schools attached to prisons up to January 2002

(Total prisoners as of 21 January 2002: 9,656)

Prison	*School*	*First and second cycle*							*TOTAL*	*Third cycle*			*TOTAL*	*Baccalaureate*			*TOTAL*	*Overall total*	*%*	*Comments*
		Level I			*Level II*		*Level III*			*7°*	*8°*	*9°*		*1°*	*2°*	*3°*				
		Section			*Section*		*Section*			*A*	*A*	*A*		*A*	*A*	*A*				
		A	*B*	*C*	*A*	*B*	*A*	*B*												
Central	Gral. Francisco Menéndez	55	53	0	40	45	57	50	300	101	72	80	253	40	35	0	75	628	6.50	Bacc.
Western	Arturo Ambrogi	10	20	0	38	24	14	19	143	23	17	22	62	26	19	0	45	250	2.59	Bacc.
Eastern	Prof. Justo Cardoza	64	30	30	55	29	41	37	286	40	27	34	101	35	8	0	43	430	4.53	Bacc.
Apanteos	Mons. Marco René Revelo	80	40	40	80	80	80	40	440	80	40	40	160	90	0	0	90	690	7.15	Brto. A dist.
Sonsonate	Prof. Miguel Ángel González	8	0	0	6	0	10	0	24	17	0	0	17	0	5	1	6	47	0.49	Brto. A dist.
Chalatenango	Dr. Manuel Enrique Araujo	20	22	0	25	28	18	13	131	10	10	16	36	16	6	10	32	199	2.06	Brto. A dist.
Quezaltepeque	Prof. Alberto Masferrer	30	30	0	45	0	52	0	157	48	32	30	110	29	20	16	65	332	3.44	Dist. Bacc.
C. R. P. M. Ilopango	Ana Eleonora Roosvelt	32	23	0	35	20	23	23	156	16	21	12	49	0	0	0	0	205	2.12	
Cojutepeque	Prof. José Maximiliano Díaz	33	0	0	25	0	29	0	87	28	34	24	86	22	7	11	40	213	2.21	Dist. Bacc.
Ilobasco	Dr. Lucio Alvarenga	36	24	0	30	0	26	0	116	3	9	4	16	3	4	9	16	148	1.5	3rd. Cycle and Dist. Bacc
Sensuntepeque	Lic. Manuel Méndez	30	0	0	29	0	19	0	78	38	20	23	81	1	2	2	5	164	1.70	Dist. Bacc.
Usulután	Lic. Carlos Wilfredo Mejía C.	25	20	0	30	0	18	0	93	15	15	16	46	0	0	0	0	139	1.44	Dist. bacc.
Berlín	NONE	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	2	2	0.02	Dist. Bacc.
Jucuapa	Rodolfo J. Barrios	14	0	0	15	0	35	0	62	20	9	15	44	13	5	5	23	129	1.34	Dist. Bacc.
Ciudad Barrios	EDUCACIÓN BÁSICA	36	28	0	19	24	7	28	142	45	20	23	88	13	7	0	20	250	2.59	Dist. Bacc.
San Miguel	Prof. Abraham Mena	85	0	0	90	0	75	0	250	60	30	25	115	35	20	0	55	420	4.35	Bacc.
San Fco. Gotera	Prof. Samuel Córdova	45	0	0	31	0	25	0	101	25	20	18	63	5	1	3	9	173	1.79	Dist. Bacc.
La Unión	Gral. Francisco Morazán	41	0	0	42	0	34	0	117	0	0	0	0	0	0	0	0	117	1.21	
Overall total		652	290	70	635	250	563	225	2683	569	376	382	1327	328	141	57	526	4536		
Percentages		6.8	3	0.7	6.6	2.6	5.8	2.3	27.8	5.9	3.9	3.9	13.7	3.4	1.5	0.6	5.6	47.03	47.03	

Source: National Coordination Office of the Education System, Directorate-General for Prisons, Ministry of the Interior.

Ratio of employees in each prison to medical, dental and psychological staff caring for inmates

Prison	*No. of staff*	*No. of medical staff*
Santa Ana	92	2 doctors, 1 dentist, 3 psychologists
Apanteos	198	3 doctors, 2 psychologists
Metapán	51	1 doctor, 1 psychologist
Sonsonante	87	1 doctor, 1 dentist, 2 psychologists
Chalatenango	76	1 doctor, 1 dentist, 1 psychologist
Cojutepeque	78	1 doctor, 1 dentist, 1 psychologist
Sensuntepeque	56	1 doctor, 1 dentist
San Vicente	67	1 doctor
Ilobasco	57	1 doctor
San Miguel	73	1 doctor, 1 psychologist
Jucuapa	50	1 doctor, 1 psychologist
Usulután	54	1 psychologist
Berlín	26	1 psychologist
Gotera	69	1 psychologist
Quezaltepeque	76	2 doctors, 2 dentists, 1 psychologist
La Unión	36	2 doctors, 1 dentist, 1 psychologist
Barrios	79	1 doctor, 1 dentist, 2 psychologists
Ilopango	97	3 doctors, 1 dentist, 2 psychologists
Psychiatric Hosp.	20	1 doctor
Rosales Hosp.	12	1 doctor
Pneumology Hosp.	15	1 doctor
Mariona	199	6 doctors, 4 dentists, 3 psychologists

426. The following bodies and officials are involved in the new system: Directorate-General for Prisons; Office of the Attorney-General; Office of the Procurator-General; Office of the Procurator for the Protection of Human Rights; Supreme Court of Justice; Probation Department; Department for Unsentenced Prisoners; prison supervision judges and sentence enforcement judges; National Criminology Council; regional criminology councils (Western, Central, Subcentral, and Eastern); and prison professional criminology teams. All these bodies and officials have responsibilities in the rehabilitation of persons deprived of their liberty.

427. There are a number of measures to help offenders resume their place in society, including: (1) training agreements with public and private institutions, such as INSAFORP, FEPADE and CARITAS EL SALVADOR, under which training has been provided in tailoring, operation and repair of industrial machinery, carpentry, bakery, etc., for a large number of prison inmates; (2) measures connected with the donation of materials and machinery for prison workshops; and (3) construction and extension of prison workshops.

428. The entry into force of the progressive regime established by the Act has made it necessary to build and equip open prisons, known as "*Casas de Paso*", which accommodate prisoners granted semi-release: this means that they work during the day but return to the prisons at night to sleep and that they are able to visit their families at weekends. At present there is one open prison for women at Ilopango and one for men attached to La Esperanza central prison at Mariona. Open prisons are under construction in the Western and Eastern regions.

429. The annual operational plan, which is produced by the National Criminology Council, monitored by the regional criminology councils and implemented by the prison criminology teams, contains the following programmes *inter alia* for women deprived of their liberty: comprehensive mother and child care; treatment for women of the third age, which is coordinated with the National Secretariat for the Family, the National Third-Age Foundation and the health units; domestic violence; criminological diagnosis; prison classification; operation of the open prison for women; psycho-social skills, drug addiction and emergency responses; and work training and formal education.

430. There has not been any kind of rioting in the system's prisons in the past two years, but there have been some fights between inmates, attacks on officers and attempted escapes - and even some successful escapes. The measures adopted to prevent such incidents in the future include: (a) appointment of governors with skill and experience in prison management; (b) training of personnel having direct contact with inmates; (c) confinement of problem prisoners in special units; (d) segregation of members of gangs; (e) upgrading of the physical security of prisons; (f) increase of the supervision and control measures carried out by the Inspectorate-General; (g) reaction to intelligence in good time in order to prevent incidents which impair the stability of the prison system; and (h) improvement of the internal infrastructure of prisons.

431. With regard to the Emergency Act to deal with the problem of unconvicted defendants, which was described in paragraphs 176-180 of the second periodic report (CCPR/C/51/Add.8), it should be pointed out that a new Emergency Act, which incorporates the text of the 1991 Act, was promulgated in 1994 pursuant to Decree No. 753.

432. Another provision of great benefit to unconvicted defendants is contained in article 48 of the Criminal Code, which has resulted in the release of many defendants. This article was revoked from the Criminal Code and transferred to the Code of Criminal Procedure as article 441-A pursuant to Legislative Decree No. 426 of 24 September 1998, published in the *Diario Oficial*, No. 198, Vol. 341 of 23 October 1998. As of 30 April 1998 the records of the Supreme Court's Unconvicted Defendants Department listed 2,586 such defendants; as a result of the application of article 48 this figure had fallen to 1,595 by 31 December of that year, i.e. 991 detainees had been released. article 441-A was finally revoked from the Code of Criminal Procedure by Legislative Decree No. 487 of 18 July 2001, published in the *Diario Oficial*, No. 144, Vol. 352, of 31 July 2001 (see the tables below on "Prison population by legal status" and "Prison population in relation to installed capacity of prisons up to May 2001").

Prison population by legal status

Establishment	*Convicted*			*Unconvicted*			*Total per establishment*
	M	*W*	*Total*	*M*	*W*	*Total*	
Central Prison	763		763	1 665		1 665	2 428
Western Prison	267		267	31		31	298
Eastern Prison	212		212	233		233	445
Sonsonante Prison (under reconstruction)	65		65	3		3	68
Quezaltepeque Prison	235		235	253		253	488
Women's Rehabilitation Centre, Ilopango		160	160		289	289	449
Chalatenango Prison	132	12	144	174	10	184	328
Sensuntepeque Prison	130		130	115		115	245
Cojutepeque	215		215	151		151	366
Ilobasco Prison	79		79	110		110	189
Psychiatric Hospital	1		1	36	5	41	42
Rosales Hospital			0	0		0	0
Pneumology Hospital	2		2	2		2	4
Usulután Prison	110		110	167		167	277
San Miguel Prison	183	29	212	211	35	246	458
La Unión Prison	82		82	114		114	196
San Francisco Gotera Prison	150		150	96		96	246
Jucuapa Rehabilitation Centre	91		91	80		80	171
Metapán Prison	73		73	69		69	142
Apanteos, Santa Ana	628		628	1 175		1 175	1 803
Women's Rehabilitation Centre, Berlín		6	6		10	10	16
Barrios Prison	142		142	112		112	254
OVERALL TOTAL	3 560	207	3767	4797	349	5 146	8 913

Source: Directorate-General for Prisons, 2001.
Prison population at 29 December 2000: 7,820.
Prison population at 13 June 2001: 8,913.
Prison population increase: 1,093.

Prison population in relation to installed capacity of prisons up to may 2001

Establishment	*Capacity*	*Population*	*Difference*
Central Prison	800	2 428	-1 628
Western Prison	350	298	52
Eastern Prison	400	445	-45
Sonsonante Prison (under reconstruction)	200	68	132
Quezaltepeque Prison	200	488	-288

Establishment	*Capacity*	*Population*	*Difference*
Women's Rehabilitation Centre, Ilopango	220	449	-229
Chalatenango Prison	300	328	-28
Sensuntepeque Prison	220	245	-25
Cojutepeque	350	366	-16
Ilobasco Prison	200	189	11
Usulután Prison	300	277	23
San Miguel Prison	180	458	-278
La Unión Prison	104	196	-92
San Francisco Gotera Prison	200	246	-46
Jucuapa Rehabilitation Centre	120	171	-51
Metapán Prison	200	142	58
Apanteos, Santa Ana	2 000	1 803	197
Women's Rehabilitation Centre, Berlín	60	16	44
Barrios Prison	1 000	254	746

Source: Directorate-General for Prisons, 2001.

Rehabilitation of juvenile offenders

433. The programmes run by the National Institute for the Protection of Children for the reeducation of juvenile offenders subject to detention measures include the provision of: psycho-social treatment (group, family and individual); (b) medical care (general, dental, psychiatric and gynaecological, and special treatment when required); (c) formal education; (d) technical and vocational training; (e) leisure activities; (f) religious activities; and (g) physical training and sports.

434. There are also five schools within the rehabilitation centres; they are attached to the Ministry of Education and offer education from first to ninth grades. Advancement to the Baccalaureate level is available under distance-learning arrangements.

435. The meals service for the juveniles is contracted out to private catering companies, and the nutritional standard of 2,500 calories a day stipulated for adolescents is guaranteed by means of supervision by National Institute nutritionists.

436. Health services for the juvenile detainees are provided by means of permanent coordination with the institutes of the national health system and by the centres' multidisciplinary teams, which also include psychologists. Psychiatric care is provided by specialists by arrangement with the health system institutes.

437. A system of weekend visits has been adopted in order to facilitate the juveniles' reintegration in their families. This system was based on a study conducted in the centres; it is working satisfactorily and having a positive effect on the reeducation of the inmates.

438. In addition to the programmes mentioned above, other alternative programmes are run for juvenile offenders subject to detention measures: formal education programmes, technical and vocational training and assistance with finding jobs. These programmes take approaches based on the individual, group and family which facilitate the transfer from the detention centre to the outside world. They have been operating since the entry into force of the Juvenile Offenders Act in 1995 and have been improved in the light of the conduct of the activities and the urgent need to satisfy the requirements of the beneficiaries. The purpose of all these programmes is to offer the juveniles integrated treatment to enable them to develop their personalities to the full and readapt to life in society.

Post-release coordination centre

439. The Act establishes the obligation to create a post-release coordination centre to be responsible for coordinating and promoting all post-release measures. It has particular responsibility for helping former detainees to find jobs and for maintaining flexible links with all the institutions and persons involved in post-release assistance work.

440. It has not been possible so far to implement this provision of the Act, but future staff members who meet its requirements are already being selected.

Segregation of juvenile offenders from adults and their right to treatment appropriate to their age and legal status

441. On the subject of the treatment of juvenile offenders the Committee is referred to the information given under paragraphs 2 (b) and 3 of this article.

442. There are four juvenile protection centres providing a technical service: holding juvenile offenders for a maximum of 72 hours while their criminal responsibility and possible sanctions are being determined; they are located throughout the country:

- Isidro Menéndez legal centre (San Salvador);
- Sonsonante;
- In the Tonacatepeque juvenile reeducation centre;
- In the Rosa Virginia Pelletier juvenile reeducation centre (girls only).

443. In addition, the National Institute for the Protection of Children has five reeducation centres:

- Sendero de Libertad reeducation centre, Cantón Sitio Viejo, Calle al Cerrón Grande, Ilobasco, Department of Cabañas. There are 59 employees: 30 persons working directly with the children; and nine service, 13 administrative and seven technical staff;
- El Espino reeducation centre, Llano el Espino, Department of Ahuachapán. There are 47 employees: 26 persons working directly with the juveniles; and eight service, seven administrative and six technical staff;

- Rosa Virginia Pelletier reeducation centre, attached to the women's prison in Ilopango, Department of San Salvador. There are 22 employees: 11 persons working directly with the juveniles; and three service, four administrative and four technical staff;

- Ilobasco reeducation centre, Barrio de Calvario, Tonacatepeque, Department of San Salvador. There are 61 employees: 34 persons working directly with the juveniles; and four service, 13 administrative and 10 technical staff (this centre accepts only persons aged over 18 years);

- Ciudad Barrios reeducation centre. There are six employees: three persons working directly with the juveniles; and one administrative and two technical staff.

444. There are two criteria for the segregation of juvenile offenders in the reeducation centres:

- Legal status, with two classifications: (a) subject to provisional measures and (b) subject to final measures;

- Administrative status, which depends on the reeducation regime; the juveniles are grouped accordingly to age, sex and personal behaviour in the centre.

ARTICLE 11

445. On this article the Committee is referred to the information contained in paragraphs 102-105 of document CCPR/C/14/Add.7 of 17 October 1986 and in paragraph 188 of the second periodic report (CCPR/C/51/Add.8 of 3 November 1993), which mention the prohibition on imprisonment for debt established in article 27.2 of the Constitution: "Imprisonment for debt, life imprisonment, infamous punishments, proscriptive penalties, and all kinds of torture are prohibited".

ARTICLE 12

Paragraph 1: Right to liberty of movement of everyone lawfully within the territory of a State

446. The Committee is referred to the information given in paragraphs 189-192 of the second periodic report in connection with the right to liberty of movement. Attention is also drawn to article 5 of the Constitution, which states: "All persons shall be free to enter and remain in the territory of the Republic and to leave it, subject to the restrictions established by law".

447. Attention is further drawn to the information given in paragraphs 111-114 of the initial report to the Committee against Torture (CAT/C/37/Add.4 of 12 October 1999). It should be made clear in this connection that the Directorate-General for Migration is now an integral part of the Ministry of the Interior, following the merger of ministries referred to earlier.

448. The entry of foreigners into El Salvador is regulated by the Migration Act, promulgated in Legislative Decree No. 2772 of 19 December 1958 and published in the *Diario Oficial*, No. 240, Vol. 181, of 23 December 1958, and the Aliens Act, promulgated by Legislative Decree No. 299 of 18 February 1986 and published in the *Diario Oficial*, No. 34, Vol. 290, of 20 February 1986; these Acts establish the legal qualifications restricting the exercise of this right within the national territory.

449. Article 60.2 of the Migration Act states with regard to irregular entry:

> "...the agents of public security and the other administrative authorities of the Republic have an obligation to inform the Directorate-General for Migration of cases which arise and to supply all possible information about the offenders, so as to enable the Directorate-General to carry out investigations and, when necessary, request expulsion orders, which shall be issued by the Ministry of the Interior".

450. Article 23.10 of the National Civil Police (Organization) Act establishes as a police function the supervision of the movement of people on the public roads; and article 23.11 stipulates that the PNC shall guard all routes of land, sea and air communication. The Frontiers Division created in order to perform this function is responsible under article 14 of the Act for assisting the migration authorities in supervising and controlling the entry and exit of foreigners, in registering their activities in the country and, when necessary, expelling them.

451. The Frontiers Division is currently drafting an in-house handbook on how to proceed with cases of undocumented foreigners; the aim is to streamline the Division's procedures for dealing with such foreigners.

452. El Salvador's geographical location means that it is used by undocumented persons as a transit route to the United States of America; such traffic has been increasing in recent years.

453. Foreigners without documents or a visa who are found by the Frontiers Division are deported through the appropriate consular channels.

454. Persons from Honduras, Nicaragua and Guatemala, countries with which Convention CA-4 has been signed, are repatriated to their country of origin across the corresponding border. Nicaraguan nationals are repatriated across the border at El Amatillo. The repatriation procedures are executed by the Frontiers Police, using police vehicles.

455. Undocumented migrants found in the national territory are placed at the disposition of the Directorate-General for Migration, and their cases are immediately communicated to the consular authorities of their country of origin, whether or not the persons so request, in accordance with article 36 of the Vienna Convention on Consular Relations.

456. The handling of cases of undocumented persons is coordinated with the consulates of the countries of origin, with a view to ensuring their safe conduct, and their repatriation is supervised by the Directorate-General. The Directorate-General, an agency of the Ministry of the Interior, is responsible for making arrangements to obtain the necessary funds to pay the cost of air travel to the country of origin, food and accommodation costs, and the cost of transport to El Salvador's international airport.

457. Some Christian Churches and NGOs provide support with the feeding of these persons, in collaboration with the PNC. They have also established some temporary shelters, with a view to offering more humane treatment for undocumented immigrants and for nationals who have been returned in similar circumstances.

458. There is no general restriction on the exercise of the right of liberty of movement in the national territory by persons suffering from an infectious disease, except in the special cases envisaged in articles 131, 132 and 136 of the current Health Code:

"SECTION XXI. Mandatory declaration of diseases.

Article 131. It is mandatory for the following diseases to be declared: amoebiasis with liver abscess; amoebiasis without liver abscess; streptococcal angina; hookworm; roundworm; botulism; brucellosis; carbunculosis; cysticercosis; white chancre; dengue; diphtheria; bacillary disentry; toxic effects of medicines; toxic effects of heavy metals; toxic effects of other pesticides, phosphorates, carbamates and chlorinates; encephalitis; diarrhoea; scabies; paratyphoid fever; recurrent fever transmitted by lice; rheumatic fever without cardiac complications; rheumatic fever with cardiac complications; typhoid fever; inguinal granuloma; infectious hepatitis; simple genital herpes; acute gonococcal infection of the genito-urinary tract; infections caused by cestodes; food poisoning due to various causes; staphylococcal poisoning; cutaneous and visceral Leishmaniasis; leprosy; leptospirosis; venereal lymphogranuloma; meningococcal and other forms of meningitis; pneumonia and bronchopneumonia; other gonococcal infections; other intestinal helminthiasis; acute poliomyelitis with or without other paralysis; bulbar poliomyelitis; malaria; parasitosis transmitted by fish; epidemic parotiditis; human rabies; German measles; measles; syphilis in all its forms; acquired immune deficiency syndrome (AIDS); neonatal and other forms of tetanus; epidemic typhus transmitted by lice; infections caused by botflies; whooping cough; toxoplasmosis; genital trichomoniasis; trichuriasis (tricocephaliasis); tripanosomiasis; tuberculosis of the respiratory apparatus; tuberculosis in other locations; and chickenpox. This list may be amended by the addition or deletion of diseases, as ordered by the Ministry".

"SECTION XXII. Diseases subject to quarantine.

Article 132. The following diseases are subject to international health regulations: smallpox, sylvan and urban yellow fever, plague and cholera. It is mandatory to declare these diseases within 24 hours of their certain or probable diagnosis. This information must be communicated to the Ministry or to its nearest office".

"SECTION XXV. Isolation, quarantine, observation and monitoring.

Article 136. Persons suffering from a disease subject to mandatory declaration or from a disease subject to quarantine, and persons who, while not presenting clinical symptoms of such a disease, host or spread its germs or have been exposed to contagion by it, may be placed in isolation or quarantine or under observation and monitoring for a period and in the manner determined by the Ministry in accordance with the applicable regulations".

Undocumented persons found in El Salvador, June 1995 to December 2001

Year/Month	*Jan.*	*Feb.*	*March*	*April*	*May*	*June*	*July*	*Aug.*	*Sep.*	*Oct.*	*Nov.*	*Dec.*	*TOTAL*
1996	0	0	0	0	0	12	20	51	121	77	81	71	433
1996	91	108	139	149	147	98	118	121	112	132	81	97	1 393
1997	212	111	100	94	89	197	117	80	74	76	84	45	1 279
1998	25	4	64	22	22	24	29	27	42	84	50	33	426
1999	31	27	62	22	24	100	42	67	161	96	144	125	901
2000	203	294	390	264	290	161	230	171	251	286	277	233	3 050
2001	230	226	243	432	391	551	376	296	267	309	117	74	3 512
TOTAL	792	770	998	983	963	1143	932	813	1 028	1 060	834	678	10 994

Source: PNC Frontiers Division.

Undocumented persons found in El Salvador, June 1995 to December 2001

Country	*1995**	*1996*	*1997*	*1998*	*1999*	*2000*	*2001 **	*Total*
African continent							1	1
Bangladesh							4	4
Belize	1	1		2		3		7
Bolivia							3	3
Brazil	8		2				1	11
Bulgaria		2	1					3
Cameroon							1	1
Canada	1	1				7		9
Chile						1	1	2
China			10					10
China (Taiwan)		17			5	1	4	27
Colombia	73	81	10	5	2	4	35	210
Costa Rica	1	2	1		1		2	7
Cuba			3	1	4	4	9	21
Denmark						1		1
Dominican Republic	3	2	2			10	23	40
Ecuador	10	10	5	57		130	418	630
Egypt			5					5
Finland							1	1
France						1		1
Germany		1				1	1	3
Ghana		1		2		1		4
Guatemala	32	355	179	69	156	310	85	1186
Haiti		1						1
Honduras	69	539	561	127	502	1948	2080	5826
India	13	11			5		4	33
Indonesia				2				2
Iraq		1						1
Ireland					1	1		2
Italy							1	1
Japan			3					3
Jordan			2					2
Korea			1			4	7	12
Lebanon		1						1

Country	*1995**	*1996*	*1997*	*1998*	*1999*	*2000*	*2001 **	*Total*
Mexico	12	39	61	47	76	140	119	494
Nicaragua	148	321	420	109	131	439	554	2122
Nigeria			2					2
Pakistan				1				1
Panama	1	1			2	1	7	12
Peru	58	3	7		3	25	135	231
Puerto Rico				1		2	1	4
Russian Fed.		1				2		3
Saudi Arabia					1			1
Senegal			1					1
Somalia							1	1
South Africa	1							1
Spain	1		1		1	1	1	5
United States	1	2	2	1	11	11	12	40
Uruguay							1	1
Venezuela						2		2
Total	433	1 393	1 279	426	901	3 050	3 512	10 994

Source: PNC Frontiers Division.

* From June 1995 to December 1995, the period when the recording of the information was initiated.

** Includes the whole of 2001, from January to December.

Right to free choice of residence within the national territory

459. The Committee is referred to the information given in paragraphs 193-195 of the second periodic report.

Paragraph 2: Right of all persons to be free to leave the country

460. The Committee is referred to the information given in paragraphs 196-198 of the second periodic report.

Paragraph 3: Restrictions on the right to enter and leave the country provided by law to protect national security, public order, public health or morals or the rights and freedoms or others. Consistency with the other rights recognized in the Covenant

461. Any restriction of the movement of undocumented migrants is effected in accordance with the constitutional principle of administrative arrest, which is permissible for a maximum period of five days; it is difficult to comply with this time limit because before a foreigner can be deported the Directorate-General must complete the necessary expulsion formalities; this constitutes a procedural gap in the law regulating this question, for the law does not take account of the realities of the situation.

462. The PNC is taking action to improve the conditions of persons subject to restriction of their movement as a result of illegal entry, such as provision of meals from police funds; any necessary health care is provided by the institutional clinics; support is furnished in communicating with countries of origin and the notification of families is arranged through the diplomatic or consular offices; in special cases the Office of the Procurator for the Protection of Human Rights is called upon to verify the situations of undocumented persons and support the steps taken to improve their conditions.

463. The factors affecting article 12 of the Covenant include gaps in the law and the budgetary limitations of the Directorate-General for Migration and the PNC, which make it difficult for them to deal with undocumented persons in the optimum manner where food, medical care, communications, etc., are concerned.

Paragraph 4: Prohibition on arbitrary deprivation of the right to enter one's own country

464. Article 5 of the Constitution, on the rights of the person, states

> "All persons shall be free to enter and remain in the territory of the Republic and to leave it, subject to the limitations established by law. Nobody shall be obliged to change his domicile or residence except by order of a judicial authority in the special cases and subject to the requirements established by law. No Salvadoran shall be expatriated, or prohibited from entering the territory of the Republic, or denied a passport for his return or other identification papers. Nor shall he be prohibited from leaving the territory except by decision or judgement of a competent authority handed down in accordance with the law".

ARTICLE 13

Expulsion of aliens lawfully in the territory of the State in pursuance of a decision reached in accordance with law; and right, except where compelling reasons of national security otherwise require, to submit the reasons against their expulsion for review by the competent authority or a person or persons especially designated by the competent authority and to be represented for the purpose before them

465. The Committee is referred to the information contained in paragraphs 199-205 of the second periodic report.

466. The Committee is likewise referred to the information given in paragraphs 115-118, concerning the expulsion of foreigners, and in paragraphs 125-132 and 168-179, concerning extradition, of the initial report to the Committee against Torture.

467. The legal grounds for the expulsion of aliens lawfully in the territory of El Salvador are to be found in the Migration Act and the Aliens Act.

468. The Aliens Act provides that aliens enjoy the personal guarantees in the national territory on an equal footing as nationals, subject to the exceptions established by law. From the moment of entry into the national territory aliens are obliged to respect the Constitution, the secondary laws and the authorities, acquiring in turn the right to be protected thereby.

469. In the event of suspension of the personal guarantees, aliens are subject to the provisions of the suspension order. It must also be stressed that aliens who directly or indirectly participate in

the country's internal politics lose the right to reside in it. This loss must be confirmed by an administrative order of the Ministry of the Interior, which is enforced by the migration authorities or by the auxiliary organs of the administration justice.

470. Aliens who commit punishable offences in the territory of the Republic or in other places under its jurisdiction are subject to the country's criminal law and tried by its courts and judges. However, Salvadoran law does not apply to foreign heads of State who are in the national territory or to diplomatic personnel accredited to El Salvador or to other persons who enjoy immunity under the international conventions and treaties in force for El Salvador.

471. The Migration Act states with regard to the expulsion of aliens: "The Ministry of the Interior may approve at its discretion the expulsion of any alien whose presence is contrary to the national interest. The procedure shall be governmental".

472. From the moment of their entry into the country aliens enjoy the right to invoke the treaties and conventions signed between El Salvador and their respective States when the rights recognized therein have been violated, and the right of recourse to the diplomatic channel in the event of denial of justice, once all the legal remedies which they have sought have been exhausted, as well as the benefit of reciprocity.

ARTICLE 14

Paragraph 1: Equality of all persons before the courts and tribunals. In the determination of any criminal charge or of rights and obligations, the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal established by law

473. The Constitution regulates the following matters: equality of all persons before the law; right of all persons to a hearing and to defend their rights in court; presumption of innocence until proved guilty in an oral and public hearing; right not to be tried twice on the same charge; right to be tried by courts and tribunals previously established by law; retroactivity in criminal cases when a new law is more favourable to the offender; and the obligation of the State to pay compensation in accordance with the law to victims of duly verified judicial errors; all these mattes are addressed in articles 3, 11, 12, 15, 16, 17 and 21.

474. The Committee is referred on these points to the information given in paragraphs 109 and 110 of document CCPR/C/14/Add.7 of !7 October 1986.

475. Article 3 of the Constitution states that all persons are equal before the law and that the exercise of civil rights shall not be subject to any restrictions based on differences of nationality, race, sex or religion and that no hereditary positions or privileges shall be recognized.

476. The Constitutional Division of the Supreme Court established a legal precedent concerning this constitutional precept in its judgement of 26 August 1998 (*Amparo* 317-97):

> "...equality is a subjective right to obtain equal treatment which is possessed by all citizens, which imposes restrictions on the public power and obliges it to respect this right, and which requires that the adjudication of equal facts shall be identical in its legal consequences and ensure equality in the application of the law, so that in substantially equal cases a jurisdictional body may not arbitrarily modify the import of its judgements, except when its departure from precedent has a sufficient and justified foundation. When unequal

> decisions are handed down by several different bodies, the jurisdictional organs are competent to establish the necessary uniformity in the application of the law, with a view to legal safety. It may therefore be concluded that the right to equality has two constitutional elements: (a) equality before the law; and (b) equality in the application of the law. In the first case, the consequences of the adjudication of equal facts must be the same, with no arbitrary or subjective inequality. In the second case, when judgements are made [principally] in the courts, the judicial decisions must be the same with respect to the analysis of the same facts, even when the case is heard by different jurisdictional organs, and there must be no divergence producing the result that one and the same legal rule is applied in equal cases with manifest inequality".

477. The Committee is referred to the information given in paragraphs 238-242 of the initial report to the Committee against Torture (CAT/C/37/Add.4 of 12 October 1999).

478. The National Civil Police (PNC), as an auxiliary institution of the administration of justice in El Salvador, must at all times comply with its mandate to respect due process with regard to all persons alleged to have committed a criminal offence. Articles 12 and 13 of the Constitution establish the principles governing the rights of persons implicated in acts of a criminal nature; these principles are developed in the current Code of Criminal Procedure, specifically in article 87.

479. Furthermore, article 23.5 of the PNC Act stipulates with regard to the functions of the police that it must implement the rules on arrest established by law. The Act also stipulates that all police intervention in the arrest of suspects and investigation of crime must comply with the rules set out in the legislation in force.

480. Although the law prescribes that criminal proceedings shall be conducted in public, there are some exceptions to this rule: the judge may order in a reasoned decision that the proceedings should be partially or totally closed when public morals or interests or national security so require or when such a procedure is envisaged in a specific rule (arts. 272 and 327 of the Code of Criminal Procedure) or when the privacy of the parties so requires or when, to the extent deemed strictly necessary by the court, owing to the special circumstances of the case any publicity may damage the interests of justice.

481. Proceedings in the preliminary stages of an investigation are closed: only the parties or persons who so request and have an entitlement to intervene are allowed to participate in them.

Paragraph 2: Right of all persons charged with a criminal offence to be presumed innocent until proved guilty according to law

482. Article 12 of the Constitution establishes the principle of the presumption of innocence until guilt is proved according to law and in a public hearing conducted in accordance with law in which the accused is accorded all the guarantees necessary for his defence.

483. Article 4 of the Code of Criminal Procedure states with regard to the presumption of innocence:

> "Any person charged with a criminal offence shall be presumed innocent until his guilt is proved in accordance with law and in a public hearing in which he is accorded the guarantees of due process. The burden of proof rests on the accusers".

484. The Constitutional Division of the Supreme Court established a precedent in this matter in its judgement of 10 November 1999 (*Amparo* 360-97):

> "This Court has established in its jurisprudence that all persons subjected to proceedings or trial are innocent and shall be regarded as such during the proceedings or trial until their guilt has been determined in a final judgement or reasoned decision and in accordance with the principles of due courtroom, judicial or administrative process. The Court therefore considers that no person - natural or juridical - may be denied any right by automatic or isolated "presumptions of guilt", either legal or judicial, for such presumptions are unconstitutional unless backed by other proof which leads to an objective determination of guilt".

Paragraph 3: Right of all persons to minimum guarantees in the determination of any criminal charge, in full equality

485. On this point the Committee is referred to the information contained in paragraph 164 of the initial report to the Committee against Torture.

(a) Right of all persons to be informed promptly and in detail in a language which they understand of the nature and cause of the charge; and (f) *Right to the free assistance of an interpreter if they cannot understand or speak the language used in court*

486. Article 12.2 of the Constitution provides that all arrested persons must be informed, immediately and in a form which they understand, of their rights and the reasons for their arrest and that they are not required to make a statement.

487. In the light of this constitutional guarantee, article 11 of the Code of Criminal Procedure provides that a defendant who does not understand Spanish properly is entitled to choose a translator or interpreter whom he trusts to assist him in all the procedures necessary for his defence. If a defendant does not avail himself of this right, a translator or interpreter is appointed automatically.

488. The Juvenile Offenders Act also stipulates that minors have the right to be informed of the reason for their arrest and the authority responsible for it and to request the presence of their parents, guardians or other responsible persons, as well as the right to be assisted by an interpreter if they do not understand or speak Spanish.

(b) Right of all persons to have adequate time and facilities for the preparation of their defence and to communicate with a counsel of their own choosing; and (d) *Right of all persons to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed of this right if they do not have legal assistance and to have legal assistance assigned, in any case where the interests of justice so require, and without payment if they do not have sufficient means to pay*

489. The last part of article 12.2 of the Constitution states:

> "All arrested persons shall be informed, immediately and in a form which they understand, of the reasons for their arrest and that they are not required to make a statement. They shall have the assistance of counsel in proceedings before the auxiliary organs of the administration of justice and in judicial proceedings on the terms established by law".

490. In development of this principle articles 9 and 10 of the Code of Criminal Procedure stipulate the inviolability of the accused's defence:

> "Article 9. The conduct of the defence in the proceedings shall be inviolable. The accused shall have the right to intervene in all stages of the proceedings where evidence is produced and to enter any requests and make any comments which he deems appropriate, without prejudice to the exercise of its disciplinary powers by the judicial authority if such intervention impairs the normal conduct of the case. If an accused person is deprived of his liberty, the person responsible for his custody shall transmit to the judge within 24 hours any requests or comments that the defendant may make and shall at all times facilitate the accused's communication with his counsel. Any authority which intervenes in the proceedings shall ensure that the accused is informed immediately of the rights accorded to him by the Constitution of the Republic, international law and this Code".
>
> "Article 10. All accused persons shall have the inviolable right to the assistance of and defence by a lawyer from the moment of arrest until the end of the enforcement of sentence. If an accused person held in custody does not appoint a defence counsel, the Procurator-General of the Republic shall immediately be requested to make this appointment, and the counsel so appointed must appear within 12 hours of receipt of the request. If the accused is a lawyer he may conduct his own defence. An accused person not held in custody may appoint a defence counsel or request the appointment of a public defendant at any stage of the inquiries or the trial".

491. A legal precedent was established in connection with the right to a hearing in the judgement of 13 October 1998 (*Amparo* 150-97):

> "Article 11 of the Constitution states in essence that in order to be legally valid the denial of rights must necessarily be preceded by a trial "in accordance with the law". This reference to the law does not imply that any infringement of the law in a trial or other proceedings entails of itself a violation of the Constitution, but it does imply that the right to be heard must be respected. The general - generic and non-exhaustive - elements of this right include: (a) that the person who is to be deprived of his rights must be accorded a trial, not necessarily a special one but one established for each case by the relevant provisions of the Constitution; (b) that this trial shall take place before previously established bodies, which implies in administrative cases a hearing before a competent authority; (c) that the essential procedural formalities must be observed in the trial; and (d) that the judgement must be handed down in accordance with laws existing before the commission of the offence giving rise to the trial.
>
> ...
>
> The requirement of prior process is intended to accord the defendant and all other persons intervening in the trial a full opportunity to state their arguments and defend their rights. The requirements that the person against whom proceedings are being taken must be made aware of these proceedings and given an opportunity to defend himself are essential to the unrestricted exercise of the right to be heard. For all these reasons, this Court has repeatedly held that the constitutional right to be heard is violated when the person affected by the State's decision has not had a real opportunity to defend himself, when he has been deprived of a right without a trial, or when the trial has not been conducted in accordance

with the essential procedural formalities established in the laws which develop the right to a hearing".

492. With regard to the provision of assistance free of charge, the Committee is referred to the information given in paragraph 92 of the initial report to the Committee against Torture.

493. The Supreme Court created a legal precedent in connection with this principle in its judgement of 6 June 1995 (*Habeas corpus* 21-R-94):

> "...The assistance of counsel accorded to accused persons in article 12 of the Constitution implies in fact a professional defence, (...) in other words a defence conducted by persons whose profession is the performance of this technical judicial function of the defence of parties to criminal proceedings in order to secure the exercise of their rights. Such professional defence is justified by certain specific circumstances of criminal trials, such as the position of inferiority which the accused may feel himself to be in during the trial, for lack either of professional knowledge or of experience of the courts, his feeling of insignificance before the power of the authority of the State embodied by the prosecutor and the judge, his difficulty in understanding the implications of the steps of the trial process, his nervousness because his liberty is at stake, the difficulty of taking action in good time as a result of detention, and the limitation in any event of detainees' opportunities to communicate".

(c) Right to be tried without undue delay

494. Title VI of the Code of Criminal Procedure, on procedural time limits, deals with the question of trial without undue delay, establishing time limits and sanctions for judicial delays:

> "Article 155. Procedural acts shall be completed within a time limit of three days, unless the judge or the court orders a longer period. This time limit shall run from the beginning of the day following the day of the notification and shall expire 24 hours from the final day. If more than one time limit applies, the period shall run from the day of the last notification to the parties. The Supreme Court of Justice shall establish a permanent office to receive written submissions from parties outside working hours. In the Departments of the interior of the country written submissions may be delivered in person to the secretary of other employee of the municipal court for immediate transmission to the competent court".

495. For the purposes of calculation of time limits article 156 states:

> "At no stage of the proceedings shall the calculation of time limits include holidays, weekends or other non-working days; if a time limit expires on a non-working day, it shall be deemed extended until the next working day".

496. The calculation of time limits affecting an accused person's liberty is established in article 157:

> "Notwithstanding the provisions contained in the preceding article, time limits affecting an accused person's liberty shall run without interruption and may not therefore be extended by discounting holidays, weekends or other non-working days".

497. Procedural time limits in criminal cases may not be extended, subject to the exceptions established in the Code of Criminal Procedure. A party in whose favour a time limit has been set may waive it or consent to a shorter period by making an express statement to that effect.

498. The time limits for adjudication are set out in article 160 of the Code:

> "Applications of the parties shall be adjudicated within the next three days, unless expressly provided otherwise. In the case of interlocutory matters and procedural pleas the decisions shall be handed down within the next five days".

499. On the expiry of the time limit for a decision the party concerned may request an immediate ruling and if he does obtain such a ruling within three days he may report the delay to a court of second instance if it is caused by a court of first instance or to an examining magistrate if it is caused by a municipal court; the court or magistrate must take whatever action is then necessary, having first given oral notice to the court against which the report was made.

500. If the delay is due to a member or the whole panel of a court of second instance, the matter is forwarded to the Criminal Division; if the delay is due to a member or the whole panel of a Criminal Division court, the matter is heard by a plenary session of the Supreme Court of Justice, which the court which caused the delay may not attend.

(e) Right to examine, or have examined, hostile witnesses and to obtain the attendance and examination of witnesses on one's own behalf under the same conditions as hostile witnesses

501. The criminal legislation in force since 1998 posits the principle of equality, to the effect that the prosecution, the defendant and his counsel, the plaintiff and his representatives, and the other persons intervening in the proceedings have the same opportunities to avail themselves of the powers and rights envisaged in the Constitution, the Code and other laws. Thus, Salvadoran law makes no distinction as to the form in which prosecution and defence witnesses give their evidence; it simply establishes general rules on the form in which the statements of general witnesses should be taken.

(g) Right not to be compelled to testify against oneself or to confess guilt

502. As already indicated, article 12.2 of the Constitution sets out the principle that arrested persons may not be required to make a statement; article 12.3 goes into greater detail on this point: "Statements obtained against the will of the person concerned shall be invalid, and anyone so obtaining or using a statement shall be held criminally responsible".

503. In this connection, the preamble to the 1983 Constitution, which according to the Constitution itself is a reliable source for the interpretation of the Constitution, states:

> "Any statements obtained from an arrested person without his consent shall be invalid, for the Constitution enshrines the principle of the right to remain silent. In order to render the exercise of these rights effective, an arrested person shall be guaranteed the assistance of a lawyer from the very moment of his arrest; this matter is one of those which must be attended to by the police".

504. Pursuant to this principle the Code of Criminal Procedure contains provisions to guarantee this right in respect of the following matters: legality of evidence; rights of the accused; option of self-disqualification; duty of self-disqualification; judicial confessions; extra-judicial confessions; inviolability of defence; material defence; defence counsel; and professional defence.

505. Evidence is admissible only if obtained by lawful means as part of the proceedings in accordance with the provisions of the Code of Criminal Procedure. Evidence is inadmissible if obtained by virtue of an information having its origin in an unlawful procedure or act. All kinds of torture, maltreatment, coercion, threat or deception are prohibited, together with any other means which affects or diminishes the will or violates the fundamental rights of the person concerned. All of the foregoing is without prejudice to any criminal responsibility which may arise.

506. The accused is entitled to decline to make a statement and not to be subjected to acts which impair his dignity or to techniques or methods which affect or alter his free will. An arrested person must be informed of these rights immediately and in a form which he understands by the prosecutors, judges or police officers, who shall have this caution evidenced in writing under the exclusive responsibility of the prosecutor in charge of the preliminary steps of the investigation or, as appropriate, of the judge.

507. The following persons may not be required to give evidence against the accused: spouses, common-law spouses or live-in partners, ascendant or descendant relatives, siblings, adopted children and adoptive parents. However, these persons may testify if they so wish. Nor may testimony against the accused be demanded from his collateral relatives up to the fourth degree of consanguinity or second degree of affinity, or from a guardian or ward, unless the witness is an informer or plaintiff or the punishable offence appears to have been committed to their detriment or to the detriment of one of their relatives of an equal or closer degree of kinship. In the summons, or before they begin their statements, the judge must inform witnesses of their right not to testify; the proceedings may otherwise be annulled.

508. Facts which have come to their knowledge by virtue of their status, position or profession may not be disclosed, subject to annulment of the proceedings, by ministers of a Church which has juridical personality, lawyers, notaries, doctors, pharmacists and obstetricians, in accordance with the requirements of professional confidentiality; public officials may not disclose State secrets. However, these persons may not decline to testify when they are released by the accused from the duty of professional confidentiality.

509. A clear, spontaneous and conclusive confession of commission or participation in the commission of a criminal offence made by an accused person before a competent judge may be admitted as evidence in accordance with the rules of common sense. Confessions are indivisible and both their favourable and their unfavourable elements must be accepted.

510. A confession of participation in a criminal offence made by an accused person but not before a competent judge shall be admissible as evidence if the following requirements are met: (1) the confession is consistent with the other evidence in the proceedings concerning the offence; (2) its content is corroborated to the judge by one or more reliable witnesses, even when the confession was made before each of these witnesses at different times and in different places; and (3) one or all of the witnesses testify that the accused, when making or signing the confession, was not subjected to physical or moral violence. A confession made before an administrative

authority may be admissible as evidence if, in addition to satisfying the requirements listed above, it is made with the assistance of defence counsel.

511. Moreover, all accused persons enjoy the inviolable right to the assistance of counsel and to have their defence conducted by counsel, from the moment of arrest or laying of charges to the end of the enforcement of sentence. If an accused person in custody does not appoint counsel, the Procurator-General must immediately be requested to appoint a public defender, who must appear within 12 hours of receipt of the request. If the accused is a lawyer, he may conduct his own defence.

Paragraph 4: Desirability of promoting the rehabilitation of juvenile persons

512. Article 5 of the Juvenile Offenders Act stipulates that juveniles in conflict with the law shall enjoy the same rights and safeguards under the Constitution, the treaties, conventions, covenants and other international instruments signed and ratified by El Salvador, and the other applicable legislation as are accorded to persons over the age of 18 years who are charged with committing or participating in a criminal offence, and in particular that their personal privacy must be respected. Accordingly, juveniles must not be the subject of any published information which directly or indirectly makes their identity known; administrative and judicial juvenile proceedings are therefore conducted in private, and no certificates or statements of the action taken during the proceedings may be issued, except when requested by the parties.

513. This provision thus prohibits judges, parties, officials, employees and authorities from publishing details of proceedings or supplying information which may reveal a juvenile's identity, and it establishes an additional rule to safeguard juveniles in this situation: persons involved in juvenile proceedings must maintain the confidentiality of the investigations and other acts which they carry out. The Act also prohibits other administrative bodies with policing functions from disclosing information about offences attributed to juveniles.

514. Lastly, juvenile detention centres must have adequate premises and trained social, teaching and legal personnel. They must provide education, vocational training and leisure activities, as well as giving special attention to the juveniles' families in order to preserve and strengthen the juveniles' links with their relatives and their reintegration in family and society.

515. Accordingly, the juridical regime applicable to juvenile offenders ensures their reeducation through the involvement of the family, society and the State; the guiding principles of this activity stipulate that the measures imposed on juvenile offenders shall be designed to educate them in their responsibilities as subjects of rights and secure their reintegration in society.

Paragraph 5: Right of all persons convicted of a crime to review of their convictions and sentences by a higher tribunal according to law

516. Judicial decisions under ordinary criminal law are subject to review only by means of the remedies and in the cases expressly established in legislation. The right of review is available only to persons to whom it is expressly accorded. If the law makes no distinction between the parties, the review may be requested by any of them. If the law accords a remedy to the defendant, it is understood that this remedy is available to defence counsel as well. In all cases, if the remedy is to be admissible the decision whose review is sought must cause harm to the applicant.

517. The remedy of reconsideration is admissible only against rulings on a procedural or interlocutory matter, so that the court which made the ruling is the one to revoke or amend it. During the hearing, the only admissible applications for reconsideration are ones which can be decided immediately without suspension of the proceedings. Recourse to this remedy also signifies capacity to seek a judicial review if the alleged defect is not corrected and the ruling on the application causes harm to the applicant.

518. The remedy of appeal is admissible against decisions of municipal courts and examining magistrates, provided that such decisions are subject to appeal, which terminate proceedings or make it impossible for them to be continued and in addition cause harm to the applicant party. It is also available against annulments ordered by an appeal court, decisions of examining magistrates in preliminary proceedings for judicial misconduct, and court decisions on the award of costs.

519. This remedy is admissible against judgements based on a failure to comply with or mistaken application of a legal rule. When this constitutes a procedural defect, the remedy is admissible only if the applicant applied for the defect to be corrected in good time or stated his intention to appeal, except in the case of annulments which cannot be corrected, defects in the judgement, or annulment of the verdict of a panel. Apart from the special cases envisaged in legislation, this remedy is available only against final judgements and orders which terminate proceedings or a sentence or make it impossible for them to be continued or reject the extinction of a sentence handed down by an appeal court, and against decisions terminating abbreviated proceedings.

520. Review is admissible against final judgements at all times but only in favour of the defendant in the following cases: when the facts on which the judgement is based are incompatible with the facts established therein or in another final judgement; when the appealed sentence is based on documentary evidence or testimony of witnesses found to be false in a subsequent final judgement; when the sentence is the result of a perversion of the course of justice, coercion, violence or other improper act, the existence of which is declared in a subsequent final sentence; when the sentence directly and manifestly violates a constitutional safeguard; when subsequent to the sentence new facts or evidence come to light which separately from or jointly with the facts and evidence already examined in the case make it clear that the offence did not take place, that the defendant did not commit it, or that the act was not a punishable offence; and when a more favourable criminal law is applicable.

521. The Committee is referred to the information given in this report under article 2 of the Covenant for more details of the remedies available to persons who consider that their rights have been infringed.

Paragraph 6: Right of a person convicted in a final decision to be compensated according to law when the conviction has subsequently been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him

522. Article 17 of the Constitution states:

> "No organ, official or authority may remove pending proceedings or reopen concluded trials or proceedings. In the event of reversal of conviction the State shall compensate

> according to law the victims of duly proven judicial errors. Compensation shall be paid for judicial delay. The law shall provide for the direct responsibility of the official and of the State on a subsidiary basis".

523. This article was amended by Legislative Decree No. 745 of 27 June 1996, published in the *Diario Oficial*, No. 128, Vol. 332, of 10 July 1996; this amendment guaranteed, on the basis of the fundamental rule, compensation for judicial delay.

524. On the question of the correction of judicial errors, article 439 of the Code of Criminal Procedure states:

> "The new judgement shall automatically rule on compensation for the injury and damage caused by the annulled judgement. This compensation shall be paid by the State, unless the defendant contributed maliciously or culpably to the judicial error. Civil damages may be awarded only in favour of the defendant or his heirs".

Paragraph 7: No one may be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure

525. Article 11 of the Constitution states the principle that no one may be tried twice on the same ground [see para. 527 below].

526. This principle is also found in article 7 of the Code of Criminal Procedure:

> "No one shall suffer criminal prosecution more than once for the same offence. Final acquittals handed down abroad in respect of facts which may be heard by the national courts shall produce the effect of *res judicata*".

527. With regard to the principle *non bis in idem* the Constitutional Division of the Supreme Court set down a precedent in its judgement of 4 May 1999 (*Amparo* 231-98):

> "This principle - indisputably linked to the right of personal security - is established in its essence in article 11.1 of the Constitution of El Salvador by two words which invest it with its meaning: "tried" (*enjuicado*) and "ground" (*causa*). Indeed, all discussion and criticism has revolved around the correct semantic formulation of the principle in order to establish its real meaning. With regard to the term "tried", the various constitutions and laws have used different words to refer to the beneficiary of the principle: "prosecuted", "accused", "defendant", etc. (...). It is therefore necessary to set aside semantic niceties and establish the principle's true meaning. If the aim is to guarantee, without hypocrisy, a true State based on the rule of law and avoid injustices in the practical application of the principle, then it must be said that the word "tried" refers to the rational and logical functioning of the court through which a ruling is finally made on the merits of the case in question; and that the term "on the same ground" refers to an absolute identity of charges. Now, the purpose of this principle when in general terms it produces a right "not to be tried twice on the same ground" is to establish a prohibition on the pronouncement of more than one final judgement in respect of one charge; for second judgement, logically, would violate the principle's essential content by affecting - also on a final basis - the juridical sphere of the convicted person. Indeed, the principle *non bis in idem*, in its essence, refers to the right of all persons not to be the object of two judgements which affect

on a final basis their juridical sphere on the same ground, this latter term being understood - although we do not have a natural definition - to mean the same charge: *eadem personam* (identity of subjects), *eadem res* (identity of object or property) and *eadem causa petendi* (identity of charge: factual basis and legal ground); in other words, the principle is designed to prevent one charge from giving rise to a double final jurisdictional decision, in harmony with the concepts of *res judicata* and *lis alibi pendens*".

ARTICLE 15

Paragraph 1: Prohibition of conviction for any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law. Principle of legality

528. With regard to the principle of legality, El Salvador has opted for the legalist juridical system, which allows for sufficient development of the codification of law and provides greater legal certainty and safety for society at large. This principle of legality develops the constitutional structure of guarantees on the basis of the dignity of the human person by acting as a constraint on the punitive powers of the State and stipulating the requirement that any penal sanction applied to a given offence must be established in legislation at the time of commission of the offence, which must also be so established.

529. The Committee is referred to the discussion of the principle of legality in paragraphs 123-126 of document CCPR/C/14/Add.7 of 17 October 1986.

530. This principle is set out in article 15 of the Constitution:

"Nobody may be tried except in conformity with laws promulgated prior to the commission of the offence in question and by the courts previously established by law".

531. The principle of legality is regulated in the Criminal Code in the following articles:

"Article 1. Nobody shall be punished for an act or omission not previously described as a misdemeanour or crime in criminal law specifically and unambiguously, and nobody shall be subjected to penalties or measures of security not previously established by law. No act or omission shall be treated as a misdemeanour or crime and no penalty or measure of security shall be imposed as a result of application of the law by analogy".

"Article 13. Offences shall be punished in accordance with the law in force at the time of their commission. This rule shall also apply to the imposition of measures of security".

532. The Code of Criminal Procedure states with regard to this same principle:

"Article 2. All persons charged with a misdemeanour or crime shall be tried in accordance with the laws in force prior to the commission of the offence in question and before a competent court previously established by law. This principle shall also govern the enforcement of sentences and the application of measures of security".

Prohibition of the imposition of a more severe penalty than the one applicable at the time of commission of the offence. Principle of non-retroactivity of laws. Application of the law most favourable to the offender

533. The principle of applicable punishment is stated in article 13 of the Criminal Code: "Offences shall be punished in accordance with the law in force at the time of their commission. This rule shall also apply to the imposition of measures of security".

534. The general rule is that laws are not retroactive, except for the legal exceptions relating to public order and some criminal matters when they are more favourable to the offender. Accordingly, a person may be subjected to criminal prosecution only when the offence alleged against him was characterized as a crime at the time of commission of the act, but if the subsequent criminal law holds that the act is no longer a crime or imposes a lighter penalty, then it is applicable, being more favourable to the offender.

535. The non-retroactivity of laws is also established in article 21 of the Constitution:

> "Laws shall not have a retroactive effect except in matters of public order, and in criminal cases when the new law is more favourable to the offender. The Supreme Court of Justice shall always have the power to determine, within its jurisdiction, whether a law relates to public order".

536. The Criminal Code addresses retroactivity in the following articles:

> "Article 14. If the law in force at the time of commission of the act is different in content from the subsequent laws on the same subject, the provisions more favourable to the offender shall be applied in the particular case in question".
>
> "Article 15. If the promulgation of the new law whose application will be more favourable to the offender occurs before the completion of the sentence, the competent court shall amend the sentence in accordance with the provisions of the new law. If the conviction was based on the commission of an act characterized as an offence by the earlier law but the new law does not regard it as such, the immediate release of the prisoner shall be ordered, and he shall enjoy the right of restitution".

ARTICLE 16

Right to recognition as a person before the law

537. As pointed out earlier, article 1 of the Constitution recognizes the human person as the origin and the end of the activities of the State.

538. Furthermore, the secondary legislation - specifically articles 52, 53 and 55 of the Civil Code - establishes the division of persons and the exercise of civil rights without differentiation between Salvadorans and aliens:

> "Article 52. Persons are natural or juridical. Natural persons are all the individuals of the human race, irrespective of their age, sex, race or status. Juridical persons are fictitious persons capable of exercising rights and contracting obligations and of being represented judicially and extra-judicially".

"Article 53. Natural persons are divided into Salvadorans and aliens".

"Article 55. The exercise of civil rights does not depend on the status of citizen; accordingly, the law does not recognize any differences between Salvadorans and aliens in respect of the acquisition and exercise of the civil rights regulated by this Code".

539. The Committee is referred to the information given in paragraphs 209 and 210 of the second periodic report (CCPR/C/51/Add.8 of 3 November 1993) concerning the personality of legal entities.

ARTICLE 17

Paragraph 1: Right to privacy and inviolability of the family, home and correspondence, and respect for honour and reputation

540. The Committee is referred to the information given in paragraphs 145-148 of document CCPR/C/14/Add.7 of 17 October 1986 concerning the protection of the privacy, family, home, correspondence and honour of all the inhabitants of the Republic.

541. The Constitution recognizes the right to inviolability of the home or dwelling place in its articles 5 and 20:

"Article 5. All persons shall be free to enter and remain in the territory of the Republic and to leave it, subject to the limitations established by law. Nobody shall be obliged to change his domicile or residence except by order of a judicial authority in the special cases and subject to the requirements established by law. No Salvadoran shall be expatriated or prohibited from entering the territory of the Republic or refused a passport for his return or other identification papers. Nor shall he be prohibited from leaving the territory except by decision or judgement of a competent authority handed down in accordance with the law".

"Article 20. The dwelling place shall be inviolable and may be entered only with the consent of the person living there, or by judicial warrant, or in cases of *flagrante delicto* or imminent danger of the commission of an offence, or in the event of a grave risk to persons. The violation of this right shall give rise to a claim for compensation for any damage or injury caused".

542. It should be emphasized that special institutions and courts have been established for the protection of the family on the basis of modern legislation.

Paragraph 2: Protection of the rights to privacy and the inviolability of the family, the home, correspondence, honour and reputation

543. A series of offences has been established in order to provide effective protection of these rights against violators.

544. With regard to offences established in the Criminal Code we may cite, by way of example, articles 177-179 and 299-302:

"Article 177. Any one who falsely accuses another person of committing or participating in an offence shall be liable to imprisonment for one to three years. If such calumny is made

public, the penalty shall be imprisonment for two to four years. If a calumny is repeated against the same person, the penalty shall be imprisonment for two to four years and a fine of 50 to 100 days. If such repeated calumny is made public, the penalty shall be imprisonment for two to four years and a fine of 100 to 200 days".

"Article 178. Any one who accuses another person in his absence of conduct or status which may impair his dignity, reputation of self-esteem shall be liable to imprisonment for six months to two years. If such defamation is made public, the penalty shall be imprisonment for one to three years. If a defamation is repeated against the same person, the penalty shall be imprisonment for one to three years and a fine of 50 to 100 days".

"Article 179. Any one who offends by word or deed the dignity or honour of a person in his presence shall be liable to imprisonment for six months to two years".

"Article 299. A public official or employee, agent of authority or public authority who keeps a record, conducts an inquiry, performs an act or makes an accusation other than for the purposes of preventing or investigating crimes or misdemeanours, or who orders or permits such actions shall be liable to imprisonment for six months to two years and suffer special disqualification from holding his post or employment for the same period".

"Article 300. A public official or employee, agent of authority or public authority who enters another person's dwelling place without the consent of the occupier or a person acting on his behalf or who orders or permits such entry shall be liable to imprisonment for one to three years and shall suffer special disqualification from holding his post or employment for the same period".

"Article 301. A public official or employee, agent of authority or public authority who, except in the cases envisaged in the Constitution of the Republic or in the course of a police or judicial investigation, violates private correspondence or who orders or permits such violation shall be liable to imprisonment for one to three years and suffer special disqualification from holding his post or employment for the same period".

"Article 302. A public official or employee, agent of authority or public authority who intercepts or interferes with telephone conversations or who uses technical devices to listen to or record such conversations or who orders or permits such acts shall be liable to imprisonment for two to four years and shall suffer special disqualification from holding his post or employment for the same period. In all cases, if the interception of or interference with a telephone conversation takes place in the course of a police or judicial investigation, the penalty shall be augmented by one third of its upper limit".

ARTICLE 18

Paragraph 1: Right of all persons to freedom of thought, conscience and religion, including freedom to have or to adopt a religion or belief of their choice and freedom, either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching

545. The Committee is referred to the information given in paragraphs 212, 213, 215 and 216 of the second periodic report, which contains comments on the freedom of worship and the recognition of the juridical personality of Churches.

546. The Constitution contains the following provisions on this matter:

> "Article 25. This Constitution recognizes the free exercise of all religions, subject to no other limitation than the requirements of public morals and order. No act of religion shall be used to establish the civil status of persons".
>
> "Article 26. This Constitution recognizes the juridical personality of the Catholic Church. Other Churches may obtain recognition of their juridical personality in accordance with the law".
>
> "Article 58. No educational establishment shall refuse to admit pupils on the ground of the nature of their parents' or guardians' union or on the ground of social, religious, racial or political differences".

547. Roman Catholicism is the dominant religion in El Salvador, but the country has other Churches and religions faiths of a Christian Protestant persuasion, such as Evangelical Baptists, Anglicans, Adventists, Presbyterians, Mormons, etc., which all enjoy these freedoms; a centre for Islamic worship was recently opened.

Paragraph 2: Right not to be subjected to coercion which impairs the freedom to have or to adopt a religion or belief of one's choice

548. Offences against the freedom of religion are regulated in article 296 of the Criminal Code:

> "Any one who in any manner impedes, interrupts or disturbs the free exercise of a religion or who publicly offends the feelings or beliefs of its adherents shall be liable to a fine of 50 to 100 days".

Paragraph 3: Freedom to manifest one's religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others

549. The Committee is referred to the information given in paragraphs 150-153 of document CCPR/C/14/Add.7 of 17 October 1986.

550. It should be pointed out that the principal religious faiths have their own periodical publications, radio stations and television channels.

Paragraph 4: Liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions

551. The Committee is referred to the information given in paragraph 217 of the second periodic report, which points out that the Constitution provides that parents have a preferential right to choose the form of education of their children:

> "Article 36. Children born within or out of wedlock and adopted children shall have equal rights in respect of their parents. Parents have an obligation to provide their children with protection, support, education and security".

ARTICLE 19

Paragraphs 1 and 2: Right to freedom of opinion and expression, including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice

552. Article 6 of the Constitution states in this connection:

> "All persons may freely express and impart their thoughts, provided that they do not disturb public order or damage the morals, honour or privacy of others. Exercise of this right shall not be subject to prior examination, censorship or security, but any person who in exercising it breaks the law shall be held liable for the offence committed. In no case shall printing presses or their accessories or any other means of disseminating thoughts be confiscated as instruments of an offence. Enterprises engaging in communication by print, radio or television and other communication enterprises shall not be subjected to take-over by the State or to nationalization either by expropriation or by any other procedure. This prohibition shall apply to the stocks and shares owned by their proprietors. The enterprises mentioned above shall not apply different tariffs or engage in any other kind of discrimination on the basis of the political or religious nature of the material published or broadcast.
>
> The Constitution recognizes the right of reply as a means of protecting the fundamental rights and guarantees of the person.
>
> Public performances shall be subject to censorship in accordance with the law".

553. The Committee is referred to the information given in paragraph 219 of the second periodic report concerning the full exercise of the freedom of expression.

Paragraph 3: The freedom of expression may be subject to restrictions, but these shall only be such as are provided by law and are necessary for ensuring respect for the rights or reputations of others, or for the protection of national security or public order, or public health or morals

554. This right may be suspended only on the ground of an emergency. Article 29 of the Constitution states:

> "In the event of war, invasion of the national territory, rebellion, sedition, a disaster, epidemic or other general calamity, or a serious disturbance of public order, the safeguards established in articles 5, 6.1, 7.1 and 24 of this Constitution may be suspended, except in the case of religious, cultural, economic or sports meetings or associations. Such suspension may apply to the whole or part of the territory of the Republic and shall be effected by a decree of the Legislature or the Executive as the case may be.
>
> The safeguards contained in articles 12.2 and 13.2 may also be suspended when the Legislature so votes by a majority of three quarters of the elected deputies; administrative detention shall not exceed 15 days".

555. Article 293 of the Criminal Code establishes as a crime any encroachment on the freedom of expression:

"An official or a public authority who, except in the cases authorized by the Constitution of the Republic, requires prior examination, censorship or security in respect of a medium of social communication engaging in the dissemination of thoughts, either in print or by radio or television, shall be liable to imprisonment for two to four years and shall suffer special disqualification from his post or employment for the same period".

556. Article 272 of the Code of Criminal Procedure establishes the cases in which confidentiality of criminal proceedings applies:

"As a general rule criminal proceedings shall be conducted in public, but the judge may order in a reasoned decision that they shall be partly or totally closed when public morality, the public interest or national security so require or when closed proceedings are permitted under a specific rule. The proceedings during the initial stages of an investigation shall be conducted in private and open only to the parties and to persons so requesting who are authorized to intervene in the proceedings".

ARTICLE 20

Prohibition of all propaganda for war and of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence

557. With regard to these prohibitions the Criminal Code in force since 1998 states in Title XVIII (Offences against the survival, security and organization of the State):

"Article 352. Any Salvadoran or alien exercising any public or professional employment, post or function who takes up arms against El Salvador under an enemy flag, unites with enemies of El Salvador, or renders them any assistance of a political, military, professional, economic or propagandist nature or assistance of any other kind, or engages in trade which promotes or facilitates the war aims or capacity to wage war of a State which is at war with El Salvador shall be liable to imprisonment for 15 to 20 years.

The provisions of the preceding paragraph shall apply to aliens who are in El Salvador to exercise a public or professional employment, post or function in the service of international organizations and who commit any of the acts mentioned in that paragraph".

"Article 354. Any one who engages in El Salvador in recruitment or any other hostile act against a foreign State in such a way that the Salvadoran State is exposed to the danger of war shall be liable to imprisonment for five to 10 years or if war occurs to imprisonment for 10 to 15 years.

If the acts envisaged in the preceding paragraph lead to disruption of the friendly relations of the Government of El Salvador with a foreign Government or to serious disturbance of the country's internal order or if such acts expose the Salvadoran State, its inhabitants or Salvadorans living abroad to the risk of reprisals or other hostile acts or harassment, the term of imprisonment shall be from three to seven years; and if as a consequence diplomatic relations are broken off or reprisals or other hostile acts or harassment occur, the penalty shall be imprisonment for five to 12 years".

558. The Criminal Code also provides for the punishment of discrimination and attacks on the free exercise of religion:

"Article 153. Any one who by violent means compels another person to commit or tolerate some act or to refrain from committing it shall be liable to imprisonment for one to three years. If the coercion is designed to impede the exercise of a fundamental right, the term of imprisonment shall be from two to four years".

"Article 246. Any one who commits an act of serious discrimination in the workplace on the basis of sex, pregnancy, origin, social status or physical condition, religious or political beliefs, membership or non-membership of a trade union or adherence or non-adherence to its agreements, or kinship with other workers in the enterprise and who does not restore the situation of equality before the law in accordance with the requirements or administrative sanctions imposed and does not make good the economic damage caused by such an act shall be liable to imprisonment for six months to two years".

"Article 296. Any one who in any manner impedes, interrupts or disturbs the free exercise of a religion or who publicly offends the feelings or beliefs of its adherents shall be liable to a fine of 50 to 100 days".

ARTICLE 21

Right of peaceful assembly, the exercise of which may be subject to restrictions imposed in conformity with the law which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others

559. Articles 7 and 47 of the Constitution recognize the right of peaceful assembly and the freedom of association for the protection of interests by formation of professional associations and trade unions. The Committee is referred in this connection to the information given in paragraphs 223-227 of the second periodic report.

560. Article 27.5 of the National Civil Police (Organization) Act states on this point:

"[The members of the PNC] shall protect the right of assembly and demonstration. When, acting on legal orders, they are obliged to disperse a demonstration or a meeting they shall use the least dangerous means and only to the minimum extent necessary. The members of the PNC shall refrain from using firearms on such occasions, except in the case of violent meetings when all other means have been exhausted and only if the circumstances envisaged in the second paragraph of this article obtain".

561. Any one who infringes the right of association or the right of peaceful assembly commits the offence established in article 294 of the Criminal Code, which reads:

"A public official or employee, agent of authority or public authority who, except in the cases envisaged by law, dissolves or suspends a legally constituted association, trade union or cooperative society or obstructs their legal activities shall be liable to imprisonment for one to three years and shall suffer special disqualification from holding his post or employment for the same period. The same penalty shall be imposed on any one who impedes or obstructs the formation of such a group".

562. The period covered by this report did witness some cases of this kind connected with the work of the PNC: on 20 May 1993 members of the anti-riot squad of the former National Police

fired at and killed a man during a demonstration by disabled ex-servicemen in San Salvador (eighth report, for May-June 1993, of the head of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) to the Secretary-General of the United Nations); a warrant was issued for the arrest of the police officers involved in this incident.

563. On 14 November 1994 the Government decided to use the armed forces to support the PNC in dispersing a demonstration by transport workers who had blocked the access roads to the town of San Miguel. There was a sharp confrontation between the demonstrators and the police backed by the army; as a result three people died and several were wounded (thirteenth report, for October 1994 to March 1995, of the head of the ONUSAL Human Rights Division to the Secretary-General of the United Nations). These events highlighted the lack of experience of the PNC and the army in dealing with this kind of situation.

564. In the case of the demonstration on 14 December 1994 by peasants in the former conflict zones who were calling for implementation of the Peace Accords in respect of the transfer of land, the PNC worked together with the demonstration's organizers to ensure that it passed off peacefully.

565. At the end of 1994 and throughout 1995 there was a series of protest demonstrations, some of them resulting in violence. It must be stressed that in some cases the PNC proceeded cautiously and opened up channels for dialogue and a search for peaceful resolution of the crisis situations, thus safeguarding the freedom of assembly.

566. In mid-1995 the Unit for the Maintenance of Order was created within the PNC so that police officers would be able to specialize in the maintenance of public order within a framework of respect for democratic principles and safeguards of the free exercise of civil rights. The Unit was provided with the necessary equipment for attaining these objectives.

567. In 1995 the Ministry of Public Security signed a memorandum of understanding with the Procurator for the Protection of Human Rights with a view to enhancing the protection of human rights in the event of social tensions likely to lead to violence. Subsequently, on 16 February 1996, an agreement was signed by the Procurator and the Ministry approving a procedural handbook on management of emergencies.

568. Over the years the Unit has sought to secure constant improvements in its work in order to carry out its mandate in compliance with the principles of democracy and respect for human rights. This task has not been easy, especially as the social problems have been worsening.

569. In the light of all these developments and with a view to further improvement of the Unit's professional standards, all its members currently take a course sponsored by the Government of France at the National Academy of Public Security; this course gives emphasis to the obligation to respect at any cost the integrity of the human person when performing the duty of maintaining public order,

570. Another important institutional initiative was the creation of the Police Liaison Unit, whose basic function is to maintain permanent communication and coordination links with all organizations of civil society in order to ensure a mediation or negotiation capacity in moments of crisis and thus reduce the likelihood of violent clashes.

ARTICLE 22

Paragraph 1: Right of all persons to freedom of association with others, including the right to form and join trade unions for the protection of their interests

571. El Salvador recognizes the right of association and trade union freedom both for employers and workers in the private sector, regardless of their nationality, sex, race, religious or political beliefs and whatever their activity or the nature of their work. This right extends to workers in the autonomous institutions.

572. The Committee is referred to the information contained in paragraphs 158-160 of document CCPR/C/14/Add.7 of 17 October 1986.

573. The country's trade unions must obtain juridical personality in order to enjoy legal status, in accordance with article 7 of the Constitution and articles 205 and 219 of the Labour Code:

"Article 205. Nobody may:

(a) Coerce another person to join or leave a trade union, except in the case of expulsion on grounds previously established in the statutes;

(b) Obstruct anyone who wishes to form a trade union or coerce anyone to do so;

(c) Discriminate against workers by reason of their trade union activities or take reprisals against them for the same reason;

(d) Commit acts designed to prevent the formation of a trade union, to have it dissolved or to subject it to the control of employers; and

(e) Commit any kind of offence against the legitimate exercise of the right of association".

"Article 219. A trade union constituted in accordance with this Code must obtain juridical personality in order to enjoy legal status. For this purpose the persons designated by the trade union must submit to the Ministry of Labour and Social Insurance:

(a) A duly certified copy of the record of the trade union's founding meeting, in accordance with the provisions of articles 213 and 214;

(b) Two copies of the trade union's statutes, with a certified copy of the record of the meeting or meetings at which they were adopted".

574. Within five working days of this submission the Ministry must send an official letter to the employer or employers concerned requesting them to certify that the founder members of the trade union are wage earners, except in the case of associations of independent workers. The employer or employers must reply within five working days of receipt of this letter; failure to do so is deemed to be certification of the status of wage earner.

575. Within 10 working days of their submission the Ministry must examine the statutes in order to determine whether they are in conformity with the law. This examination is not required if the

trade union submits statutes based on a model which has already been approved as complying with the law.

576. If the Ministry finds any defects of form or infringements of the law, it so informs the persons concerned, who must put the situation to rights within 15 working days. If they fail to do so, the application for juridical personality is deemed to be withdrawn.

577. If the Ministry finds no irregularities or if any irregularities have been corrected, it grants juridical personality and orders the trade union to be entered in the appropriate register.

578. If a period of 30 working days has elapsed since the submission of the application for juridical personality or since the applicants have corrected any irregularities but the Ministry has not issued a decision, the trade union is deemed to be registered for all legal purposes and it acquires juridical personality.

579. The decision granting juridical personality, or a notice of the Ministry's silence, and the trade union's statutes are published free of charge in the *Diario Oficial*.

580. The trade union may, at its own expense, publish the decision or the notice in a national newspaper with a bigger circulation. The existence of the trade union is proved by the notice in the *Diario Oficial* or by a notice issued by the Ministry stating: (1) the officials on whom the statutes confer the union's legal representation; (2) the number, date and volume of the *Diario Oficial* in which the decision and the statutes were published; and (3) the book and entry numbers of the union's registration.

581. To date, no complaints of discrimination in the exercise of workers' rights on the grounds of nationality, sex, race, beliefs or social origin have been received in the Ministry of Labour and Social Insurance.

582. There is currently a total of 130 registered trade unions with 137,202 members, of whom 125,161 are male and 12,041 female.

583. There is currently a total of 318 collective contracts in force, covering 67,093 workers, of whom 57,243 are male and 9,850 female.

584. With regard to the review and conclusion of collective labour contracts, 34 contracts have been submitted and decisions taken on 17 of them, relating to trade, enterprise and industry unions.

585. There have been 38 strikes by a total 17,684 workers, with the loss of 621,186 working days.

Paragraph 2: No restrictions on the exercise of the right of free association other than those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the rights and freedoms of others. Permissibility of the imposition of lawful restrictions on members of the armed forces and of the police

586. Article 221 of the Constitution states: "Strikes by public and municipal workers are prohibited, as is the collective abandonment of their posts".

587. The specific restrictions on trade unions include the prohibition of:

- Involvement in any kind of religious struggle, but without the implication of restriction of the individual freedom of union members;
- Distributions of dividends or distributions of the union's assets;
- Limitation of members' right to work and coercion of persons to persuade them not to leave a union or not to join another union.

588. The Constitution, the National Civil Police (Organization) Act and the Military Careers Act do not accord members of the PNC or the armed forces the right to form and to join trade unions for the protection of their interests.

Paragraph 3: Prohibition of the adoption of legislative measures which would prejudice or of the application of the law in such a manner as to prejudice the guarantees contained in the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize

589. The State of El Salvador has never restricted the guarantees contained in ILO Convention No. 87 and has never taken legislative measures to that end.

590. Moreover, it has continued to facilitate the formation of trade unions, in accordance with the Labour and Social Insurance (Organization and Functions) Act: one of the principal functions of the Directorate-General for Social Insurance and Labour Management is to facilitate the formation of trade unions and carry out the mandate entrusted to it by the Labour Code and other legislation with respect to trade union regulation and registration.

ARTICLE 23

Paragraph 1: Right of the family to protection by society and the State as the natural and fundamental group unit of society

591. The State's principal duty towards the family is protect it as the foundation stone of society, as stipulated in the Constitution. The family is protected not only from the legal standpoint through the adoption of the necessary legislation to regulate its relations and provide it with safeguards but also through a set of measures designed to secure the family's cohesion, well-being and social, cultural and economic development; all these measures constitute duties of the State with respect to the protection of the family.

592. Article 32 of the Constitution recognizes the family as the foundation stone of society and stipulates the duty to adopt the necessary legislation for its protection, cohesion, well-being and social, cultural and economic development.

593. One of the measures taken to develop the constitutional precepts on the social rights of the family was the enactment in October 1994 of the Family Code and the Family Court Procedure Act pursuant to Legislative Decrees Nos. 677 and 133, published in the *Diario Oficial*, No. 231, Vol. 321, of 13 December 1993 and No. 173, Vol. 324, of 20 September 1994 respectively. The purpose of this legislation was to establish a legal regime governing the family, minors, and the

elderly; it regulates the relations of family members with each other and with society and State agencies.

594. This legislation develops the legal foundation of the family - marriage - which in turn rests on the legal equality of the spouses; the legislation establishes the validity of non-marital unions, together with regulations governing the personal and property relations between spouses and between spouses and their children, stipulating reciprocal rights and duties based on legal equality; it also addresses the rights of minors and the equality of children born within or out of wedlock and adopted children.

595. Article 2 of the Family Code establishes the concept of the family and its scope in society: "The family is the permanent social group constituted by matrimony, a non-marital union or kinship". The scope of this concept indicates that a family must be a permanent grouping and that it may be constituted not only by matrimony but also by a non-marital union; this marks a big step forward in the legislation, for the previous position held that the family was constituted solely by matrimony or kinship.

596. The previous concept of the family was based on the Salvadoran social reality and it covered both nuclear and extended families. It also took account of El Salvador's particular means of bringing benefit to a greater number of persons.

597. International human rights law holds that the right to found a family entails the right to marry or not to marry and the right to choose a partner. As already noted, the Family Code recognizes the right to establish a family within or without matrimony and the right to choose a partner, in order to ensure that marriage is based on the mutual consent of the parties. The Code provides that the absence of the consent of either of the parties is a ground for the absolute nullity of a marriage (arts. 12 and 90.2).

598. The Family Court Procedure Act was adopted in order to give effect to the rights and obligations established in the Family Code; the Act embraces *inter alia* the principles of immediate, oral and speedy proceedings, thus streamlining the conduct of cases and making the settlement of family conflicts as objective as possible, for the courts are empowered to seek the truth and to apply the criterion of common sense in their assessment of the evidence.

599. Pursuant to the provisions of the Constitution, article 397 of the Family Code stipulates:

> "The State shall promote by all means the stability of the family and its well-being in terms of health, work, housing, education and social security in order that the family may fully assume its responsibilities in the upbringing and protection of its children and the whole family unit".

Clearly, this article establishes that the State has duties towards the family in respect of the promotion of its stability and well-being in the areas of health, housing, education and social security.

600. Articles 398 and 399 of the Family Code establish systems for the effective discharge of the State's duties and for the effective exercise of the rights recognized in the Code and other family legislation: (1) a national system for the protection of the family and persons of the third age, coordinated by the National Secretariat for the Family (SNF), which must keep in mind the fact that the family constitutes the linkage between individuals and society; (2) a national system for

the protection of children, coordinated by the National Institute for the Protection of Children, which must promote the implementation of all the measures and policies designed to secure the comprehensive protection of children. This system is constituted by the following bodies, in accordance with article 400 of the Family Code: the Office of the Procurator-General; the Office of the Procurator for the Protection of Human Rights; the Ministry of Justice; the Ministry of Education; the Ministry of Health and Social Welfare; the Ministry of Labour and Social Insurance; the Department of Housing and Urban Development; the National Secretariat for the Family; the National Institute for the Protection of Children; and community and service organizations and NGOs engaging in activities in this area.

601. The SNF functions include: (1) to assist and advise the President of the Republic in all matters connected with the taking of decisions on the protection, integration, well-being and social, cultural and economic development of women, children and the family; (2) to work with the President to ensure and monitor the application of the treaties, laws and other legal provisions regulating rights and duties connected with children, women, disabled persons, the elderly and the family, which are designed principally to solve the following problems: (a) high rates of malnutrition and infant mortality; (b) environmental pollution; (c) worsening shortage of housing for marginalized groups; (d) decline of moral values in the family group; (e) unemployment affecting families' cash incomes and the support of children, women, the disabled and the elderly; (f) low standards of education and poor health of women, children, the disabled and the elderly; and (g) failure to strengthen the social insurance systems in respect of incapacity to work, old age and death in order to protect vulnerable groups.

602. The institutions constituting the national systems for the protection of the family have an obligation to implement programmes, plans, projects and policies in their respective spheres of competence designed to benefit the family and the elderly and to satisfy the needs of children.

603. In this connection, in 1998 the SNF expanded and built leisure centres known as "family parks" in the departments of San Salvador, Santa Ana and Ahuachapán in order to provide the country's families with physical spaces for healthy recreation. In addition, training centres for women were constructed and equipped in the departments of Sonsonante, Santa Ana, San Miguel and elsewhere.

604. In 1999 the SNF coordinated the establishment of a national committee to support programmes for the elderly; its task is to implement all the measures designed to benefit this population group. A national policy in this area was approved, published and disseminated in that same year, which also saw the creation of the National Mental Health Council, composed of public and private institutions.

605. As coordinator of the National Council on the Integrated Care of the Disabled, the SNF encouraged the drafting and adoption of the policy, the Act and the regulations governing equality of opportunities for disabled persons by means of Legislative Decree No. 888 of 27 April 2000, published in the *Diario Oficial*, No. 95, Vol. 347, of 24 May 2000 and Decree No. 99 of 28 November, published in the *Diario Oficial*, No. 226, Vol. 349, of 1 December 2000.

606. The year 2001 saw the introduction of the national policy for the comprehensive development of children, which is focused on the development, enhancement and application of the rights and duties of the child.

607. Several programmes are currently being carried out, including "País Joven" (Young Country), which provides facilities for activities for children and young people and helps to strengthen the values of the family and society as a preventive measure, with two aims: (1) to promote marriage and benefit the family and children with families; and (2) to enhance awareness and prevent the break-up of marriages and separation of couples and thus to reduce the number of children without families.

608. Other measures have been carried out, including: (a) the "Healthy Schools" programme, which provides refrigeration equipment in rural areas and for some schools in poor urban areas; (b) the "Caring with Love" programme, which reaches out to the communities furthest from the towns and provides comprehensive health care, mainly for under-fives and pregnant women; continuity is ensured by the health units in each municipality, and foodstuffs and medicines are supplied; (c) the "Education for Life" programme, which has five components: life project; sex education; prevention of addictions; prevention of domestic and gang violence; and disaster prevention.

609. The SNF also has a Food Aid Division, which is responsible for the food distribution programmes for the schools, which supply daily food rations; the Division also has a component on "food for work". Work is also being done on programmes to strengthen values with a view to helping children to preserve those values which the country holds dear.

610. Attention may be drawn to the following achievements of the SNF during the reporting period: the production of policies for the elderly, the disabled, children, and women; the adoption of SNF-sponsored legislation, including the ISPM Act, the ISDEMU Act, and the Act on the Provision of Comprehensive Care for the Elderly, not to mention the current work on a draft children's code being conducted in conjunction with other State agencies (the Commission on the Family, Women and Children of the Legislative Assembly, and the Supreme Court of Justice); the production of action plans for women and the elderly; and the current drafting work on action plans for the disabled and for children.

611. The Office of the Procurator-General, being an agency of the Government, protects the family through its Unit for the Protection of Families and Children, which provides free legal assistance to all persons requesting help from its services; there 51 components, including: (a) setting the amounts of support and maintenance payments; (b) legal representation of minor orphans, abandoned children and children of unknown parentage; (c) personal care of children and visiting schedules; (d) conduct of marriage ceremonies; (e) establishment of paternity and maternity; (f) challenges to paternity and maternity; (g) adoptions; (h) declaration of non-marital or live-in unions; (i) registration of births and issue of birth certificates; (j) establishment of family status and registration of deaths; (k) domestic violence; and (l) guardianship.

612. In 1999, acting through its Real and Personal Rights Unit, the Office of the Procurator-General introduced these components in each of its auxiliary offices; it had previously maintained a presence only in the auxiliary office in San Salvador, the former Central Office.

613. The activities carried on by the Real and Personal Rights Unit throughout the country include: administrative conciliation; notarial assistance with the certification of contracts of sale, powers of attorney, wills, gifts, etc.; legal procedures concerning the acceptance of legacies, traffic accidents, tenancies, presumption of death, rights of way, and property boundaries. It is seen as an institution which seeks to prevent legal problems of every kind by offering legal advice and guidance to people of limited means who request its assistance.

614. The Unit also makes a contribution to family stability by ensuring respect for patrimonial rights, for a family threatened with the loss of its assets is a family whose social and emotional relationships are under attack.

615. A further move was the creation of family courts to attend to the protection and to the rights and duties of parents and children. article 3 of the Family Court Procedure Act stipulates that the following principles must be taken into account in the application of the Act: (a) proceedings are initiated at the request of a party, except when the law provides otherwise; (b) once proceedings have begun, they are directed and moved forward by the judge on his own motion, and the judge must avoid any unnecessary delay or formality; (c) the judge must be present during all the stages of the proceedings and he must try to keep them as short as possible; (d) hearings are oral and public, but the judge may order a closed hearing on his own motion or at the request of a party; (e) the judge must ensure equal treatment of the parties throughout the proceedings; (f) the parties must bring forward simultaneously all the facts and allegations on which their claims or defences are based, together with the supporting evidence; (g) the judge must rule solely on the points advanced by the parties and the points which need to be resolved for the purposes of the legal disposition of the case; and (h) the persons participating in the proceedings must act with honesty and integrity and in good faith.

616. The Constitution also addresses the personal and property relations of the spouses with each other and with their children; it establishes the right of children to live in conditions which foster their comprehensive development and their physical, mental and moral protection, as well as their equality of rights whether born within or out of wedlock, in accordance with the provisions of articles 33-36 of the Constitution.

Paragraph 2: Right of men and women of marriageable age to marry and to found a family

617. Being the guarantor of the rights of the individual, which have to do with his development, the State promotes the family as the fundamental social unit which gives rise to organized societies by furnishing broad support to marriage and the family and to the equality of the spouses within a marriage. The State has enacted laws designed to enhance the well-being of the family and its cohesion and to ensure the equality of the spouses.

618. Article 12 of the Family Code states with respect to the constitution of the state of matrimony:

> "The state of matrimony is constituted and consolidated by the free and mutual consent of the parties expressed before an authorized official in the form and in conformity with the other requirements established in this Code; the state of matrimony is understood to be entered into for the whole lifetimes of the parties and it produces effects from the moment of the celebration of the marriage".

619. The officials authorized to certify marriages throughout the national territory are the Procurator-General and notaries, and within their respective territorial constituencies departmental governors, municipal mayors and auxiliary departmental procurators. Heads of permanent diplomatic missions and career consuls in the places where they are accredited may certify marriages between Salvadorans, always subject to the provisions of the Family Code.

620. The Family Code establishes the age of matrimony: both contracting parties - bride and groom - must be at least 18 years of age; however, there is an exception: persons under this age

may marry if they are of the age of puberty and have had a child together or if the girl is pregnant (art. 14) article 26 of the Code defines the age of puberty as 14 years for boys and 12 years for girls.

621. In order to take advantage of the exception mentioned above minors must obtain the express consent of the persons exercising parental authority over them. If one of the parents is missing, the consent of the other is sufficient; if both are missing, consent may be given by the ascendant relatives of the closest degree of kinship, with preference accorded to those who live with the minor in question. If the minor is subject to guardianship or has no ascendant relatives, consent may be given by the guardian, and if the minor is orphaned, abandoned or of unknown parentage, by the Procurator-General. In addition, if the girl is pregnant she must produce a medical certificate to that effect issued by a public health body. If the persons authorized to give consent for a girl who wishes to marry refuse such consent, a judge may be requested to establish whether the refusal is valid; if it is not, the judge may authorize the marriage at the request of the boy or girl (arts. 18 and 19).

622. The legislation classifies the impediments to marriage as follows: (A) *absolute impediments*: marriage may not be contracted by: (1) persons aged under 18 years; (2) persons tied by a marriage bond; and (3) persons who are not in possession of the full use of their reason and persons who cannot express their consent to marry in an unequivocal manner. Notwithstanding provision (1), as pointed out above, persons aged under 18 may marry if they have reached the age of puberty and have had a child together or if the girl is pregnant (art. 14); and (B) *relative impediments*: marriage may not be contracted by: (1) blood relatives of any degree of kinship in the direct line or siblings; (2) an adoptive parent or his or her spouse may not marry an adopted child or any of his or her descendants; an adopted child may not marry an ascendant or descendant relative of the adoptive parent or another adopted child of the same adoptive parent; and (3) a person convicted of the deliberate homicide of the spouse of the prospective other party to the marriage. If a person is on trial for this offence, the marriage may not take place until his acquittal has been confirmed or the charge is dismissed (art. 15); (C) *special rules for*: (a) guardians (art. 16); (b) remarriage (art. 17); and (c) minors (art. 18).

623. There are at least two stages in the marriage process:

(1) *Pre-marriage stage*

The persons concerned must appear before an authorized official who, after reading out and explaining the relevant provisions of the law, records in a pre-marriage document their sworn intention to marry and the absence of any legal impediments or prohibitions.

This document must also include: all the necessary information for the full identification of the parties; the pre-nuptial property agreement if one has been concluded; the surname to be used by the woman after marriage; and, when applicable, the names of any children to be recognized in the marriage certificate; any relevant documents produced by the parties must be attached.

Having verified that the parties are legally qualified to marry and that no legal prohibition will be infringed, the official proceeds immediately to solemnize the marriage or to set in agreement with the parties the place, day and hour for the ceremony; this information is recorded in the document mentioned above.

(2) *Solemnization of the marriage*

Marriage ceremonies are conducted in public, and the authorized official seeks to invest the occasion with the solemnity that it warrants. He begins by informing the couple and the witnesses of the purpose of matrimony and refers in particular to the spouses' equality of rights and duties and their responsibilities towards their children; and he enjoins the couple to preserve the unity of the family. He then reads out articles 11, 12, 14, 15, 16, 17, 18, 36 and 39 of the Family Code. Having completed these preliminary formalities, he calls upon each of the parties by name and asks whether he or she wishes to be joined in matrimony to the other; they must answer, "Yes, I do". Once both bride and groom have stated their consent, the official addresses them as follows: "In the name of the Republic I declare that you are solemnly united in matrimony and that you have a duty to remain faithful to each other and to help each other in all the circumstances of life"; the ceremony is thus concluded.

624. If a marriage is to be regarded as valid, it must satisfy the following requirements *inter alia*: (a) solemnization before an authorized official; (b) presence of two witnesses; (c) absence of legal impediments; (d) absence of grounds for nullity; and (e) presentation of the documents required by law.

Paragraph 3: Full and free consent of the intending spouses

625. As already explained, the free and full consent of the parties is one of the main requirements for marriage.

626. One of the grounds for relative nullity of a marriage pursuant to article 93 of the Family Code is the use of sufficient physical or moral coercion to force a party to consent.

Paragraph 4: Guarantee of equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution

627. On the question of non-discrimination between men and women with regard to marriage, it can be stated in principle that equality is guaranteed in general terms in article 3.1 of the Constitution: "All persons are equal before the law. The enjoyment of civil rights shall not be subject to restrictions based on differences of nationality, race, sex or religion"; and in specific terms in article 32.2: "Matrimony is the legal basis for the family and rests on the equality of the spouses before the law".

628. This principle of the equality of men and women is developed specifically in article 36 of the Family Code: "Spouses have equal rights and duties; and by virtue of the life in common established between them they must live together, remain faithful to each other, help each other in all circumstances, and treat each other with respect, forbearance and consideration"; article 37 goes on to address residence and other domestic matters; article 38 refers to family expenditures; and article 39 deals with the cooperation which the spouses must offer each other without restriction of the right of either of them to engage in lawful activities or to undertake courses of study or further education, as well as stipulating that household tasks and care of children are responsibilities of both spouses.

629. The first provision of article 36 of the Code amounts to a significant change in the legal status of married women and it concludes a historical evolution from a situation in which a

woman was regarded as lacking any legal capacity, subjected to marital authority and submissive and obedient to her husband to one in which she is no longer subjected to this authority and instead enjoys equal status.

630. In recognizing the legal equality of spouses the Legislature was trying to strengthen the marital bonds and make marriage a more humane institution by allowing marital relations to be based primarily on the development of the human person as a means of consolidating the spouses' intimate life together. One of the consequences of equality is that the couple's life together and acceptance of each other are based on considerations of tolerance and reciprocity.

631. Another consequence of the legal equality of spouses in domestic matters is that it is no longer the husband alone who deals with household problems and decisions; both spouses now have the right and the duty, on a totally equal footing, to deal jointly with problems and all matters connected with the upbringing of their children.

632. When it comes to family expenditures, as a result of the reciprocal obligation of maintenance and the spouses' equality of rights the household costs must be shared between the two of them in proportion to their economic resources, as established in article 38 of the Family Code. However, as it can happen that only one of the spouses has an income while the other deals with domestic tasks and looks after the children, article 38 provides that the contributions of this latter partner (domestic work and care of children) have the same value as the contributions of the other.

633. Being concerned about the acts of psychological and moral abuse and disrespectful treatment of women and children which may occur in a household, on 28 November 1996 the State promulgated the Domestic Violence Act in Legislative Decree No. 902, published in the *Diario Oficial*, No. 241, Vol. 333, of 20 December 1996, pursuant to article 35 of the Constitution:

> "The State shall protect the physical, mental and moral health of minors and guarantee their right to education and assistance. Antisocial conduct of minors constituting a misdemeanour or crime shall be subject to a special juridical regime".

634. Domestic violence is defined as any direct or indirect act or omission which causes damage or physical, sexual or psychological suffering to or the death of a family member. The Domestic Violence Act is implemented by the Department of Public Prosecutions, the courts, the institutions of the Executive, and the municipalities.

635. Women remain the most frequent victims of violence in the family, as can be seen from the statistics on the cases attended to by the National Institute for the Advancement of Women in 1998. In the reported cases of domestic violence, 91.74 per cent of the victims were women, and in the cases of sexual assault the figure was 97.62 per cent.

636. In 1998 the Forensic Medicine Institute found that country-wide in 87 per cent of the cases of domestic violence in which it carried out medical examinations the victims were women.

637. Since the Domestic Violence Act is the legal basis for action and the basis of the State's policies to combat violence against women, and since sexual violence is one of the decisive factors in domestic violence, a continuing effort has been made to ensure that every day a family should try to regard itself as a space for generating equality of rights and opportunities between

men and women, as well as to eliminate the sexist practices of which women are the main targets within and outside the home.

638. The Act's entry into force was followed on 17 March 1995 by the introduction of the Family Relations Improvement Programme, which provides care for victims of rape and other sexual attacks, intervenes in critical situations and carries out preventive measures in respect of physical and mental health in order to make families stronger and more cohesive. This is an inter-institutional activity which coordinates the activities of the State, local governments, NGOs and private enterprises aimed at controlling, preventing, treating and monitoring cases of sexual and domestic violence and sexual attacks and other sexual offences; in other words, it is a joint effort to create awareness and to prevent and deal with cases of violence, as well as monitoring the work done under the Programme.

639. The family-friendly telephone line (TAF) is an integral operational component of the Programme; 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. The Programme offers the following services via the TAF: (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 corresponding 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. The following table shows the cases dealt with, disaggregated by sex and age.

CASES DEALT WITH, BY SEX AND AGE											
1999 (11 188 cases)			***2000 (8 815 cases)***			***2001 (4 822 cases)***			***2002 (1 654 cases)***		
	Adults	***Minors***		***Adults***	***Minors***		***Adults***	***Minors***		***Adults***	***Minors***
DV			DV			DV			DV		
Male	342		Male	392		Male	287		Male	104	
Female	4 073		Female	4 672		Female	2 988		Female	951	22
	4 415			5 064			3 275			1 055	22 *
Child abuse			Child abuse			Child abuse			Child abuse		
Male		3 045	Male		1 462	Male		518	Male	0	229
Female		3 536	Female		1 983	Female		748	Female	0	225
		6 581			3 445			1 266		0	454
Sexual offences			Sexual offences			Sexual offences			Sexual offences		
Male	1	31	Male	1	50	Male	3	36	Male		19
Female	42	118	Female	54	201	Female	47	195	Female	25	79
	43	149		55	251		50	231		25	98

* *Note:* Accompanied or separated minors, with children and who also pay maintenance, etc.

640. Under the National Policy for Women, the National Institute for the Advancement of Women attends to the question of violence, seeking to identify and prevent the phenomenon of violence against women and to protect and care for the victims by means of practical measures based on the current international and national legislation on violence. It concentrates on developing measures prevent violence against women and sexual aggression both within and outside the home and on activities to raise the awareness of the population and the providers of the services of the governmental and non-governmental organizations, local authorities and private enterprises involved.

641. In addition, in 2001 the National Institute, by means of consultation sessions with governmental and non-governmental organizations, initiated the design of a national plan for the prevention and handling of violence in the family. The plan includes the drafting of the regulations of the Domestic Violence Act and of an Act on the acknowledgement and compensation of victims of violence in the family.

642. The National Institute worked for the creation of a Juridical Commission, which has carried out an analysis and review of the Domestic Violence Act in the light of the failure of the executing agencies to put it into practice. The Commission has found gaps and technical and legal inconsistencies, for the lack of clarity in the Act's procedures often renders it ineffective.

643. The entry into force of the new Criminal Code, which incorporated domestic violence as a criminal offence punishable by law, impaired the application of the Act, with the result that the Criminal Code had to be amended.

644. The Family Code regulates divorce and the dissolution of marriage decreed by competent judges on the basis of article 105. Divorce may be obtained by means of judicial proceedings (art. 111) on the ground of separation for one or more consecutive years, or by means of administrative proceedings when it is sought by common accord (arts. 108 and 109); both these cases are governed by the provisions of article 204 of the Family Procedure Act.

645. On an exceptional basis and in accordance with article 54 of the Office of the Procurator-General (Organization) Act, the Procurator-General provides legal assistance for divorce proceedings, provided that the corresponding psycho-social investigation establishes that the marriage is causing genuine harm to the family entailing psychological, moral or physical deterioration with imminent consequences and that the marriage must therefore be dissolved.

646. Ordinary legal assistance requested by an applicant in divorce proceedings is not subject to any limit, except when such assistance is being furnished by the Procurator-General.

Adoption of provisions to provide the necessary protection for children in the event of divorce

647. The legislation on this matter stipulates that if the parents have not reached agreement as to which of them is to have custody of the children, the judge awards custody to the parent best able to ensure the children's well-being, bearing in mind age and circumstances of a moral, affective, family, environmental and economic nature. These considerations are all based on the best interests of the child, which means everything which fosters physical, psychological, moral and social development with a view to the full and harmonious flowering of the child's personality, in accordance with the provisions of article 350 of the Family Code.

648. Children aged over 12 years are given a hearing, and the opinion of the Procurator-General, which must be based on professional investigation, is always taken into account.

649. The relationships between children and parents are also subject to regulation; no discrimination is permitted, for although the father or mother does not live with the children he or she must maintain an affectionate relationship and behave with them in such a way as to favour the normal development of their personalities, all in accordance with article 217 of the Family Code.

650. In the event of divorce, both parents are obliged to support their children, which means making contributions to meet the needs of subsistence, housing, clothing, health, education and leisure (art. 247).

651. Again in the event of divorce, the legislation protects the family in such matters as: protection of the family home; special maintenance allowances; supplementary maintenance for the spouse economically affected by the divorce; and measures to protect the family against a spouse who behaves violently towards it, and psychological support for children and spouses affected in this way, as well as for the family in general. All these matters are attended to by the Procurator-General.

Requirement of religious marriage

652. The family legislation does not insist on religious marriage. article 25 of the Constitution states:

> "This Constitution recognizes the free exercise of all religions subject to no other limitation than the requirements of public morals and order. No act of religion shall be used to establish the civil status of persons".

653. This provision shows clearly that no religious act, such as a wedding ceremony, can establish a person's civil status, which can be established only by juridical acts.

Recognition and protection of families constituted by the permanent cohabitation of a couple without an official marriage

654. For the first time in the constitutional history of El Salvador there is a mandate (in the last part of article 33 of the Constitution) for regulating the family relations resulting from the stable union of a man and a woman. The Constitution also states (in the last paragraph of article 32) that the absence of an official marriage shall not affect the enjoyment of the rights established in favour of the family.

655. These constitutional provisions embody the right of all human beings to found a family in that they acknowledge a social reality which was in serious need of regulation. Title IV of the Family Code regulates de facto marriages on the basis of that reality; this represents a significant development and improvement of the country's family law.

656. Article 118 of the Code defines the legal concept of de facto marriage and establishes the elements and characteristics which must be present in order to produce the legal consequences envisaged by the law: heterosexuality, cohabitation, openness, permanence, exclusivity, and

capacity to marry (absence of impediments to formal matrimony). The union must have lasted for three years before it can be declared legally valid and produce its effects.

657. It must be stressed that the intention of this legislation was not to make de facto unions equivalent to formal marriage but to accord them for the first time important legal effects: in other words, couples cohabiting in a de facto union do not enjoy full equality with married couples.

ARTICLE 24

Paragraph 1: Right of every child, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, to such measures of protection as are required by his status as a minor, on the part of his family, society and the State

658. The Committee is referred to the information given in paragraphs 170-172 of document CCPR/C/14/Add.7 of 17 October 1986 concerning the principle of the protection of children without any distinction. The Committee is also referred to the information contained in paragraphs 241 and 242 of the second periodic report.

659. Article 34 of the Constitution states:

> "Every minor shall have the right to live in family and environmental conditions that permit his full development, for which purpose he shall enjoy the protection of the State. The law shall determine the duties of the State and shall create the institutions for the protection of mothers and children".

660. The State has a duty to protect the physical, mental and moral health of minors and to guarantee their right to education and support, in accordance with article 35 of the Constitution.

661. The Constitution also stipulates that work performed by minors shall be regulated by the Labour Code, together with the conditions under which their employment may be authorized (art. 38).

662. With regard to the minimum age for admission to employment, the legislation stipulates that work performed by minors must be consistent with their age, physical condition and development (art. 104 of the Labour Code) and prohibits their employment in hazardous or unhealthy work (arts. 105, 106 and 108). Work in cantinas, bars, billiard halls and other similar places is regarded as hazardous (art. 107).

663. Children aged under 14 may not be employed in any work until they have completed their compulsory education (art. 114). However, children may be authorized to work from the age of 12 provided that the work is light and does not harm their health or development or interfere with their attendance at school or the use they make of the education received (art. 114).

664. The hours worked by children aged under 16 may not exceed six hours a day or 34 hours a week; and children may not work more than two hours overtime in any one day (art. 116).

665. Generally speaking, children aged under 18 years may not do night work. Any employer who recruits minors to work for him must keep a register recording their date of birth, and the type of work, working hours and wages agreed with them (art. 117).

666. In addition to the provisions of the Labour Code just described, the following ILO Conventions are also applicable:

> Convention No. 138 concerning Minimum Age for Admission to Employment (Legislative Decree No. 82 of 14 July 1984, published in the *Diario Oficial*, No. 161, Vol. 324, of 1 September 1994);
>
> Convention No. 182 concerning the Worst Forms of Child Labour (Legislative Decree No. 28 of 15 June 2000, published in the *Diario Oficial*, No. 134, Vol. 348, of 18 July 2000).

667. In view of the fact that up until 1993 the attention given to children was fragmented and dispersed, the National Secretariat for the Family (SNF), in its capacity of guardian of the well-being of the family and its members, thought it necessary to create a State agency with broad powers and duties to organize, direct and coordinate an effective system for the comprehensive protection of children which would facilitate the normal development of their personalities on the basis of their rights, duties and needs; for this purpose it created the National Institute for the Protection of Children by Executive Decree No. 482 of 10 March 1993, which was published in the *Diario Oficial*, No. 63, Vol. 318, of 31 March 1993.

668. Being concerned to guarantee the effective exercise of the rights of the child, the State promotes the implementation of early-care programmes in child welfare and child development centres throughout the national territory, where external care services are provided by professionals specializing in psychology, social work, nutrition, medical care, etc.; these centres are open to the most needy population groups whose rights are most vulnerable.

669. Through its Admission, Assessment and Diagnosis Division, the National Institute operates a core programme for the protection of children under which it immediately investigates reports, verifies infringements of the rights of the child, and arranges the placement of any children found to be at risk. It also carries out child-protection measures by implementing the decisions and the transfer orders issued by its administrative headquarters or by the courts.

670. This programme operates in the following manner: an investigation is carried out, for example, into the problems affecting children caught up in prostitution or begging; this work is coordinated with the various other agencies involved, such as the Office of the Attorney-General, the National Civil Police, the Office of the Procurator for the Protection of Human Rights, the metropolitan police force, the Office of the Procurator-General, and NGOs; awareness and education campaigns are also aimed at society at large concerning sexual exploitation and other problems of El Salvador's children.

671. It must be made clear that no kinds of discriminatory measure are applied in the treatment of children on the basis of race, national origin or economic status.

672. The National Institution has introduced programmes designed to prevent discrimination on the ground of social or legal status with regard to the acceptance of young offenders for placement in jobs and vocational training; these programmes include the technical cooperation agreements signed with private enterprises and municipal institutions, and the arrangements made with official bodies in respect of education, health, leisure activities, etc.

673. Where religion is concerned, the National Institute carries out programmes of spiritual reflection and meditation which take account of the freedom of religion. All the programmes

operated in the various centres include a comprehensive care component, for under its Organizational Act the National Institute must take protection, legal and social factors into account in its administration of the centres.

Paragraph 2: Right of every child to be registered immediately after birth and to have a name

674. The State of El Salvador is most concerned to protect children from the moment of birth and it has created the legal instruments for guaranteeing children's rights; these matters were addressed initially in the Constitution in a desire to prevent stigmatization: article 36 states that no record shall be kept of the nature of filiation.

675. Pursuant to article 1 of the Natural Persons (Names) Act, every natural person is entitled to the name which he uses legitimately and by means of which he may be distinguished from other persons and identified. In addition to regulating on the names of natural persons, this Act also addresses the form of names and their acquisition and elements, changes of name, and the use and protection of names, on the basis of article 36.3 of the Constitution.

676. The scope of the protection provided by the State includes guaranteeing children a name irrespective of their origins or status (orphaned, disabled, etc.) and the exercise of the corresponding rights.

677. In October 1995 the Government introduced the National Register of Natural Persons to manage the systems for the registration of natural persons, together with the Single Identity Document Register. The purpose of this move was to modernize the registration of legal acts and deeds constituting, amending and extinguishing the status of natural persons through the introduction of standard forms for use by the registrars of family status in the country's 262 town halls.

678. The regulations governing the National Register of Natural Persons provide that it has jurisdiction throughout the national territory with respect to the civil registration and identification of citizens. It administers its own registration systems and those of the Single Identity Document Register, as well as any other registers established by law.

679. These arrangements indicate the importance of the registration of family status for natural persons and especially for newborn babies, for this facilitates the preservation, location and consultation of legal documents constituting, amending or extinguishing patrimonial regimes and their legal effects.

680. Pursuant to article 249 of the Municipal Code, the mayors of municipalities are responsible *inter alia* for keeping the following registers: births, deaths, adoptions, marriages, divorces, exclusions, reinstatements, and amendments, as well as special birth registers under Decree No. 205.

681. Article 351 of the Family Code stipulates that every child shall be entitled, from birth and at all other times, to have and to maintain a name, nationality, legal representation, and family relations and to enjoy the benefit of a system of identification which certifies his true maternal and paternal filiation, etc.

682. If a child is temporarily or permanently deprived of his name, nationality or legal representation, the Office of the Procurator-General, having been informed of the facts by

whatever means, automatically initiates the procedure for the restoration of identity. If the facts reported constitute a criminal offence, the Office completes the formalities for the initiation of the corresponding criminal proceedings.

683. Pursuant to the Natural Persons (Names) Act, the Office is also responsible for assigning a name in common use to babies whose parentage cannot be determined. If parentage is established at a later stage, the birth certificate is revoked and a new one issued.

Paragraph 3: Right of every child to acquire a nationality

684. Article 90 of the Constitution accords nationality by birth in the following cases: (a) persons born in the territory of El Salvador; (b) children born abroad to a Salvadoran father or mother: (c) persons originating in the other States which constituted the Federal Republic of Central America who, being domiciled in El Salvador, declare to the competent authorities that they wish to become Salvadorans (they are not required to renounce their nationalities of origin).

Participation of children in military activities

685. Compulsory military service is a duty of all Salvadorans between the ages of 18 and 30 years.

686. Children are excluded from this duty except in a few cases established by law, for only in the event of necessity such as public calamity, national emergency or armed conflict and as a result of a national mobilization decreed by the Legislative Assembly may children be considered liable to perform military service.

687. In the event of necessity, all Salvadorans having the capacity to engage in military activities are brought under arms, in accordance with the Military Service and Armed Forces (Reserve) Act contained in Legislative Decree No. 298 of 30 July 1992 and with article 215 of the Constitution.

688. Children aged 16 to 18 may volunteer for military service, in accordance with the provisions of articles 2 and 6 of the Act.

Adoptions

689. The Family Act which entered into force in October 1993 no longer allows for simple adoption but only full adoption, with the aim of protecting children in the family and in society.

690. The Government ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption in the belief that adoption by foreigners offers a means of protecting homeless children who are unlikely to be adopted by Salvadorans.

691. In this connection it designated the Office of the Procurator-General and the National Institute for the Protection of Children as the central authorities; they agreed to create an Adoptions Office, which is staffed by teams of professionals from the two agencies.

692. The Adoptions Office is responsible for carrying out all necessary measures for determining at the administrative stage whether a proposed adoption is appropriate as a means of protecting a child whose circumstances render him suitable for adoption (in the light of

investigation); this provision applies to adoption applications from individuals or married couples, either nationals or foreigners, who may be domiciled in El Salvador or abroad.

693. The Office has a duty to do everything possible to establish that applicants meet all the conditions for ensuring an adopted child's normal development and to verify that the measure is effective by monitoring adoptions decreed by law. The legal instruments are now available for ensuring that the adoption procedures constitute a guarantee that this protection measure will achieve its purposes.

694. One of the most positive changes made in the adoption procedures is that the Office of the Procurator-General and the National Institute have been assigned responsibility for determining the appropriateness of an adoption proposal as a protection measure on the basis of inquiries carried out by experts from the Adoptions Office. The former Adoptions Act, in contrast, required only that the Procurator-General should issue a merely descriptive and non-binding opinion in connection with the proposal, the final decision being the sole responsibility of the judge.

695. The social and psychological examinations of prospective intercountry adoptive parents are verified jointly by Procurator-General and the Executive Director of the National Institute. If these examinations are found to be favourable, the Procurator-General's placement committee designates a child in the light of the age and sex requested from among the children deemed suitable for adoption, who are notified to the Procurator-General by the National Institute. The Procurator-General then signs and issues the corresponding adoption order.

696. The figures in the following table are taken from the Procurator-General's records of children given in adoption:

Period	*Adopted children*	*Adoptive families*
1992-1993	285	285
1993-1994	3 549	2 226
1994-1995	323	323
1995-1996	90	90
1996-1997	97	97
1997-1998	91	91
1998-1999	99	99

697. The statistics of the Adoptions Office, which is the administrative agency of the central adoption authorities, give the following picture of intercountry adoptions:

Year	*Adopted children*	*Adoptive families*
1999	39	39
2000	30	30
2001	80	80

ARTICLE 25

Paragraph (a): Right of every citizen to take part in the conduct of public affairs, directly of through freely chosen representatives

698. The Committee is referred to the information given in paragraphs 263-267 of the second periodic report.

699. The most important innovations in electoral law include:

- The introduction of the National Register of Natural Persons;
- The internal reorganization of the Supreme Electoral Tribunal;
- The creation of a new voter registration unit with new functions and independent of the Tribunal;
- The considerable expansion of the legislation on regulation of political parties;
- The amendment of the elections calendar.

Paragraph (b): Right of every citizen to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors

700. Suffrage includes the right to vote in the free direct popular elections envisaged in the Constitution. In order to exercise the right to vote a citizen must satisfy the following legal requirements: (a) he must be listed on the electoral roll prepared by the Supreme Electoral Tribunal; and (b) he must obtain a voting card. The first of these requirements is found in article 77 of the Constitution and the second in article 40 of the Electoral Code.

701. The Committee is referred to the information given in paragraphs 269, 271 and 274 of the second periodic report concerning universal suffrage and voting procedures.

702. The Supreme Electoral Tribunal was created by the constitutional reform conducted on the basis of the Peace Accords in April 1991 to take the place of the Central Elections Council, which had existed since 1950.

703. The Tribunal originally consisted of five judges, four nominated by political parties and one by the Supreme Court of Justice. This transitional membership organized the legal and institutional life of the new election supervision body, remaining in office until the final declaration of the results of the 1994 presidential election.

704. At the end of the transitional period the Supreme Electoral Tribunal was constituted normally, in accordance with article 208 of the Constitution:

> "There shall be a Supreme Electoral Tribunal consisting of five judges, who shall be elected by the Legislative Assembly for a term of office of five years. Three of them shall be elected from the lists submitted by the three political parties or legal alliances which

obtained the largest number of votes at the last presidential election, one from each list. The remaining two shall be elected, with at least two thirds of the elected deputies voting in favour, from two lists submitted by the Supreme Court of Justice; each must have the requisite qualifications to be a judge of a court of second instance and must have no party affiliation.

There shall be five alternate judges, elected in the same manner as the titular judges. If for any reason a list is not submitted, the Legislative Assembly shall proceed to the election without the missing list.

The presiding judge shall be the one proposed by the party or legal alliance which obtained the largest number of votes at the last presidential election".

Developments in voter registration in El Salvador

705. The electoral roll was initially based on the personal identity cards issued by the municipal authorities throughout the country. This system was not very accurate or reliable because it lent itself to unsystematic meddling with the roll which had a serious impact on its scope and structure.

706. The Constitution stipulates that entry on the electoral roll prepared by the Supreme Electoral Tribunal is an essential condition for exercise of the right to vote. This Tribunal took over from the defunct Central Elections Council and it has encouraged by various means the compilation of a reliable electoral roll.

707. The Tribunal has made progress despite the legal and other difficulties: the roll used to depend on information from the 262 municipal town halls, especially with regard to the removal of names as a result of death; this situation caused delays and many inaccuracies.

708. In conformity with the elections legislation and on the basis of a comparison of the law of other countries concerning compilation of electoral rolls, as well as in the light of its own experience, the Tribunal introduced systems which have succeeded in meeting the suffrage requirements of the Constitution.

709. El Salvador now has a fairly reliable electoral roll which, while obviously not perfect, has ensured and facilitated the probity of recent elections. It can be improved, and little by little the Tribunal is overcoming the obstacles to the compilation of a virtually perfect electoral roll which will come ever closer to the desired standard. There has been constant recourse to the technical assistance of other countries which have made more rapid progress in this matter than El Salvador and Central America and which have exemplary electoral rolls.

710. El Salvador has made the compilation of the roll an independent exercise by creating an agency which operates in parallel with the Tribunal - the National Register of Natural Persons; since November 2001 this agency has been responsible for registration for the whole country and its records will be used for compilation of the electoral rolls for all elections from 2003.

El Salvador's electorate

711. Citizens, without distinction as to sex, become members of the electorate on acquiring the right to vote in all the elections organized by the Supreme Electoral Tribunal once they have

requested their inscription on the electoral roll and obtained their single identity document (DUI) from the National Register of Natural Persons; this document has superseded both the voting card and the personal identity card. However, it is not possible to give an exact figure for the size of the electorate for lack of accurate data on the country's population resident in El Salvador and in other countries. The latest population census was taken in 1992. There are other aggravating factors such the mobility of the population, temporary internal migration for work reasons, etc., and emigration to other countries. Where the resident population is concerned, every year some 125,000 young people reach the age of citizenship; such a large figure makes it difficult to compile a true register which in turn would give an accurate figure for the size of the electorate.

Estimated evolution of the size of the electorate

Year	*Electorate*
1988	2 000 000
1989	2 800 000
1991	3 200 000
1997	3 004 174
1999	3 171 224
2000	3 264 724

712. Up until 2001 one of the main activities of the Supreme Electoral Tribunal was to compile the electoral roll, seeking accuracy, reliability and probity in an effort to ensure that every Salvadoran, on reaching age stipulated by law, would be entered on the roll and thus be able to vote, as well as to make it clear that this participation in universal suffrage meant that every election would be an election by the mass of the people and to ensure that this guarantee was enjoyed by every citizen, subject to the legal restriction of casting only one vote. In future the electoral roll will be based on the lists provided by the National Register, which has recruited a specialized company to prepare the lists and issue the single identity document (DUI) throughout the country.

713. In accordance with the provisions of the 1983 Constitution as amended in 1991, the Act establishing the National Register stipulates the principle of the independence of the Supreme Electoral Tribunal in respect of the compilation of the electoral roll.

714. The electoral roll has evolved in step with the changes in the country's identity card system: the introduction of the DUI by legislative decree to take the place of the personal identity card and the voting card, marking the end of the old electoral roll.

715. The new roll will use the lists compiled from applications for the DUI, and November 2001 saw the start of the compilation of the new electoral roll on the basis of the records of the National Register of Natural Persons. Every month in the month of their birth citizens will attend a "DUI-centre" to obtain their identity document; anyone who does not do so will lose his entitlement to free issue of the document and will not be entered on the electoral roll.

716. The DUI will replace the voting card for election purposes.

Elected officials

717. The President and Vice-President of the Republic, the deputies to the Legislative Assembly and to the Central American Parliament, and the members of municipal councils are elected by popular vote of the citizenry.

718. In municipal council elections the winning party in each municipality fills all the posts on the council, from mayor down to aldermen and official receiver; there is no proportional representation on municipal councils.

719. A proportional representation system operates in the elections to the Legislative Assembly and the Central American Parliament. The Assembly has 84 deputies, who are elected in proportion to the percentage of the votes obtained by each party.

720. This system of proportional representation is based on constituencies: the national constituency elects 20 titular deputies and 20 alternates in proportion to the total vote for the whole country; the 40 departmental constituencies elect 64 deputies, the distribution being proportionate to the population of each department and to the number of votes obtained by each the political party; the alternates are elected according to the same formula.

Department	***No. of deputies***
San Salvador	16
La Paz	3
Santa Ana	6
Chalatenango	3
San Miguel	5
Cuscatlán	3
La Libertad	5
Ahuachapán	3
Sonsonante	4
Morazán	3
La Unión	4
San Vicente	3
Cabañas	3
Usulután	3

721. As far as ideological pluralism is concerned, the current Legislative Assembly is a clear example of pluralism in practice, for it has a multi-party membership representing different political doctrines; this means that the electorate is offered in the electoral marketplace a choice of ideological bargains, the deal being struck on election day.

Factors affecting the registration process

722. Whether citizens apply to the Supreme Electoral Tribunal or to the National Register of Natural Persons, there are still factors affecting the registration process: (a) the absence until now of a centralized national civil register and of legislation laying down mandatory standards, such as a model birth certificate, an established order for names, etc.; and (b) the enormous numbers of illegitimate affiliations in the municipalities, the indiscriminate use of the surname of the father or the mother, changes of name as a result of acknowledgement of paternity or adoption, etc.

Paragraph (c): Right of every citizen to have access, on general terms of equality, to public service in his country

723. The Constitution prohibits the single-party system and the sponsorship of any political party by the State.

724. The Constitution also guarantees the right of association to form political parties. This process begins with the wish of 100 citizens in full possession of their civil and political rights and their submission of a written application to the Supreme Electoral Tribunal for permission to carry out publicity and canvassing activities for a period of 60 days in order to gather a number of members equivalent to three per cent of the votes cast in the last presidential election. During these 60 days the qualification "under organization" must be attached to the party's name. The signatures of the members are examined by the Tribunal within a further 60-day period. When the requirements have been met, the Tribunal accords the party juridical personality and approves its statutes; the party comes legally into existence once its statutes have been published in the *Diario Oficial*, whereupon it is immediately entered in the register of political parties.

725. Ministers of any religion, members of the armed forces on active service and members of the National Civil Police may not belong to political parties or occupy posts subject to popular election; nor may they engage in any kind of political propaganda.

Brief chronological account of elections in El Salvador, 1989-2000

726. The massive participation of Salvadorans in elections has marked a significant step towards democracy, and one of the achievements of the peace process has been the participation of many political parties in the elections.

1989 elections

727. The election process was put to the test, on this occasion to elect the President and Vice-President of the Republic for the period 1989-1994. The voting took place on 19 March and produced the following results:

1989 Presidential election

Party	***Votes***	***Percentage***
National Republican Alliance (ARENA)	505 370	53.82
Christian Democrat Party (PDC)	338 369	36.03
National Conciliation Party (PCN)	38 218	4.07
Authentic Christian Movement (MAC)	9 300	0.99

Party	*Votes*	*Percentage*
Democratic Convergence (DC)	35 642	3.80
People's Union (UP)	4 609	0.49
Democratic Action (AD)	4 363	0.46
Action for Renewal (PAR)	3 207	0.34
Total	939 078	100.00

728. The results were clear and gave the victory to the ARENA candidate, who obtained an absolute majority of the votes cast in the first round.

1991 elections

729. These elections for deputies and municipal councillors were affected by a number of reforms, the most important of which are described below.

730. An increase in the number of deputies to the Legislative Assembly. Legislative Decree No. 670 introduced an important change in the Assembly's composition by increasing its membership from 60 to 84: 20 members to be elected by the national constituency and the remaining 64 by the departmental constituencies. This meant three extra deputies for the departments of San Salvador and La Libertad. But the real essence of this reform was the creation of the position of national deputy, which meant that each political party would be able to take advantage in the determination of the holders of these national seats of all the votes cast for it throughout the country, even votes cast in those departments in which it had had no opportunity to fight the election.

731. With regard to the distribution of seats by departmental constituency, the Committee is referred to the information given in paragraphs 298-300 of the second periodic report.

732. In addition, following the adoption of the Treaty establishing the Central American Parliament its relevant provisions were incorporated in the election system: the Parliament is a regional organ which considers, analyses and issues recommendations on political, economic, social and cultural matters of common interest. It is in permanent session and consists of: (1) 20 titular members elected with their alternates by each member State; (2) the presidents of each the Central American republics, on the conclusion of their terms of office; (3) the vice-presidents or presidents designate of each of the Central American republics, on the conclusion of their terms of office.

733. The representatives of El Salvador in the Central American Parliament are elected for a term of five years, in accordance with the provisions of the Treaty establishing the Central American Parliament and Other Political Bodies and the Electoral Code. The national legislative elections are held every three years. Accordingly, in order to take advantage of the voting facilities the national and Central American elections are sometimes held on the same date; this happened in 1991, 1994 and 2000, as described below.

734. Nine political parties fought the 1991 election, including the party resulting from the merger of the Christian Socialist People's Movement, the Social Democrat Party and the National Revolutionary Movement: Democratic Convergence (CD). The results were as follows:

1991 Legislative Assembly elections

Party	*Votes*	*Percentage*	*No. of deputies*
ARENA	466 091	44.33	39
PDC	294 029	27.96	26
PCN	94 531	8.99	9
CD	127 855	12.16	8
MAC	33 971	3.23	1
UDN	28 206	2.68	1
Democratic Action	6 798	0.65	-
Total	1 051 481	100.00	84

735. The deputies to the Central American Parliament are distributed in the same way as the deputies elected by the national constituency; the results were as follows:

1991 Central American Parliament elections

Party	*No. of deputies*
ARENA	9
PDC	6
PCN	2
CONVERGENCE	1
MAC	2

736. The results in the municipal council elections were as follows:

1991 Municipal Council elections

Party	*Votes*	*Percentage*	*No. of councillors*
ARENA	469 517	45.30	175
PDC	307 982	29.71	71
PCN	102 366	9.88	14
CONVERGENCE	94 697	9.14	1
MAC	36 095	3.48	1
UDN	22 954	2.21	0
AD	2 847	0.27	0
Total	1 036 458	100.00	262

1994 elections

737. The innovation in the 1994 elections was the participation of combatants demobilized from the Frente Farabundo Martí para la Liberación Nacional, which had become a political party under the FMLN banner following the Chapultepec talks of 16 January 1992. Substantial

amendments had to introduced in the Constitution in order to permit the new party's participation; a new Electoral Code was issued at the same time, which took these amendments into account in the electoral process. Elections to all the popularly elected posts were held on 20 March 1994: President and Vice-President, deputies to the Legislative Assembly and the Central American Parliament, and municipal councillors.

738. A second round, between ARENA and FMLN, had to be held to elect a President and Vice-President; the results of the presidential election were as follows:

1994 Presidential Election

Party	*Votes*	*Percentage*
Nationalist Republican Alliance (ARENA)	661 632	49.11
MNR, Democratic Convergence, FMLN coalition	331 629	24.99
Authentic Christian Movement (MAC)	10 901	0.82
Unity Movement (MU)	31 925	2.41
National Solidarity Movement (MSN)	13 959	1.05
National Conciliation Party (PCN)	70 854	5.34
Christian Democrat Party (PDC)	215 936	16.27

739. Once the results of the election of 20 March were known and had been declared final by the Supreme Electoral Tribunal, it was clear that no party had obtained a majority (50% plus 1), so that a second round had to be scheduled for 24 April between the two forces which had come first and second, in accordance with the Constitution; the results were as follows:

1994 Presidential Election (second round)

Party	*Votes*	*Percentage*
National Republican Alliance (ARENA)	818 264	68.34
MNR, Democratic Convergence, FMLN coalition	378 980	31.64

1994 Legislative Assembly elections

Party	*Votes*	*Percentage*	*No. of deputies*
ARENA	605 775	45.03	39
FMLN	287 811	21.39	21
Democratic Convergence	59 843	4.46	1
MNR	9 431	0.70	0
MAC	12 109	0.90	0
MU	33 510	2.49	1
MSN	12 827	0.95	0
PCN	83 520	6.21	4
PDC	240 451	17.87	18

1994 Municipal Council elections

Party	*Votes*	*Percentage*	*No. of councillors*
ARENA	598 391	44,48	207
FMLN	273 498	20.33	13
Democratic Convergence	48 763	3.62	2
MNR	7 131	0.53	0
MAC	10 012	0.53	1
MU	27 976	2.08	0
MSN	11 443	0.85	0
PCN	107 110	7.96	10
PDC	261 130	19.41	29

1994 Central American Parliament elections

Party	*No. of deputies*
ARENA	9
FMLN	4
Democratic Convergence	1
MU	1
PCN	1
PDC	4

1997 elections

740. A total of 14 political parties fought the 1997 elections to the Legislative Assembly and municipal councils, the largest number in the country's history despite the withdrawal of the People's Republican Party at the last moment owing to a legal irregularity. The results were as follows:

1997 Legislative Assembly elections

Party	*Votes*	*No. of deputies*
Nationalist Republican Alliance (ARENA)	396 301	28
Democratic Convergence (DC)	39 145	2
Frente Farabundo Martí para la Liberación Nacional (FMLN)	369 709	27
National Solidarity Movement (MSN)	7 012	0
Unity Movement (MU)	26 244	1
National Conciliation Party (PCN)	97 362	11
Democrat Party (PD)	13 533	0
Christian Democrat Party (PDC)	93 645	10
Free People's Party (PPL)	2 302	0
Liberal Democrat Party (PLD)	35 279	2
Christian Social Renewal Party (PRSC)	40 039	3
United People's New Deal Party (PUNTO)	0	0
Authentic Social Movement Party (MAS)	132	0

1997 Municipal Council elections

Party	*Votes*	*No. of councillors*
Nationalist Republican Alliance (ARENA)	403 537	160
Democratic Convergence (CD)	26 986	0
Frente Farabundo Martí para la Liberación Nacional (FMLN)	365 176	48
National Solidarity Movement (MSN)	26 947	0
Unity Movement (MU)	4 982	4
National Conciliation Party (NCP)	102 961	18
Democrat Party (PD)	11 519	1
Christian Democrat Party (PDC)	101 945	15
Free People's Party (PL)	469	0
Liberal Democrat Party (PLD)	24 271	0
Christian Social Renewal Party (PRSC)	42 693	6
United People's New Deal Party (PUNTO)	747	0
Authentic Social Movement Party (MAS)	57	0
FMLN-CD-MU coalition	186 544	3
PD-PDC coalition	9 096	4
FMLN-DC coalition	53 891	3

1999 elections

741. The last elections of the twentieth century to choose a President and a Vice-President were held on 7 March 1999: there were seven candidates from seven parties; 1,223,215 citizens voted and chose a President and a Vice-President in a single round; the votes were as follows:

1999 Presidential election

Party	*Votes*	*Percentage*
ARENA	614 268	51.96
CDU	88 640	7.50
FMLN-USC	343 472	29.05
LIDER	19 269	1.63
PCN	45 140	3.82
PDC	67 207	5.68
PUNTO	4 252	0.30

2000 elections

742. The first elections of the new millennium were held on 12 March 2000. The new members of the Supreme Electoral Tribunal were in office to supervise these elections; they were appointed to supervise three ballots, in 2000, 2003 and 2004.

743. The commendable innovation in the Legislative Assembly and municipal council elections was the widespread participation of blind persons, who were provided with special election materials in Braille; at the same time, orders were issued concerning special arrangements for citizens with other disabilities. The results of these elections are shown in the following tables:

2000 Legislative Assembly elections

Party	*Votes*	*Percentage*	*No. of deputies*
ARENA	436 190	438 850	29
CDU	65 072	41 549	3
FMLN	426 298	338 950	31
PAN	44 901	40 060	2
PCN	106 804	123 945	14
PDC	87 078	95 509	5
PLD	15 639	6 221	0
PPL	4 998	3 507	0
USC	23 333	30 000	0

2000 Municipal Council elections

Party	*Votes*	*No. of councillors*
ARENA	438 859	126
FMLN	338 950	64
FMLN-USC coalition	68 660	4
FMLN-PDC coalition	48 310	6
CDU-FMLN coalition	2 831	2
PDC-FMLN coalition	2 654	1
FMLN-PDC-USC coalition	1 586	3
PCN	123 945	33
PDC	95 509	16
CDU	41 549	4
USC	30 000	2
PAN	40 060	1

2000 Central American Parliament elections

Party	*No. of deputies*
ARENA	7
FMLN	7
PCN	2
PDC	2
PAN	1
CDU	1

744. It may be mentioned in conclusion that El Salvador's electoral processes are constantly being modernized; in future they will be supervised by independent monitoring bodies: the Supreme Electoral Tribunal backed by its legislation, and the National Register of Natural Persons, which will continue to operate the existing voter registration system and also introduce its own database in order to ensure automatic updating of the electoral roll.

ARTICLE 26

Right of all persons to equality before the law and to the equal protection of the law without any discrimination. Guarantee to all persons of equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

745. Articles 3 and 58 of the Constitution accord *inter alia* the right to equal treatment, as well as prohibiting any discrimination on the grounds of nationality, race, sex or religion. Anyone who infringes this right is liable to be punished in accordance with article 292 of the Criminal Code.

746. The Committee is assured that El Salvador has had no cases of discrimination against any person on such grounds.

ARTICLE 27

Right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and to practise their own religion, and to use their own language

747. Article 3 of the Constitution enshrines the principle of legal equality when it stipulates that all persons are equal before the law and that no restrictions based on differences of nationality, race, sex or religion shall be imposed on the exercise of civil rights.

748. It is thus a part of the national policy of the State to guarantee to members of ethnic minorities, in community with the other members of society, exercise of the right to seek the improvement of their living and working conditions; to this end the State addresses simultaneously all the factors which have prevented ethnic groups from integrating themselves fully in the nation's economic and social development.

749. This right includes the maintenance and dissemination of indigenous cultures and the profession of indigenous religions with no other restrictions than those required by public morals and public order.

750. Article 63 of the Constitution safeguards the country's cultural wealth:

> "The country's artistic, historical and archaeological wealth forms part of its cultural heritage, which is safeguarded by the State and subject to special laws for its preservation".

751. Article 62 states with regard to the protection of indigenous languages:

> "The indigenous languages spoken in the national territory form part of the cultural heritage and shall be preserved, disseminated and respected".

752. El Salvador's indigenous peoples and ethnic minorities are hard to recognize because of the large numbers of persons of mixed race. The indigenous peoples have lost virtually all use of

their ancestral languages (Nahuat, Lenca, Cacaopera) and many of their external cultural characteristics, such as traditional dress.

753. The estimated indigenous population is about 10 per cent of the total, i.e. 600,000 out of a total of 6,031,326, according to the study "The indigenous population of El Salvador" produced by the Directorate-General for Cultural Heritage in 1990 (Chapin, Mac).

754. In 1995 the National Council for Culture and the Arts (CONCULTURA) established an Indigenous Affairs Unit in order to work for the recognition of and provide support for the country's indigenous peoples and organizations, with a view to the dissemination and promotion of their cultures. National and international cultural and scientific activities have been carried out in order to make the population of more aware of the country's indigenous peoples and their cultural importance by raising their profile.

755. Five ethno-linguistic conferences have been held in San Salvador, in 1992, 1993, 1994, 1996 and 2001. In addition, the second Central American Indigenous Day (on land, environment and culture) was successfully held in 1999. In 2000 and 2001, the Indigenous Affairs Unit held 14 workshops throughout the country on the subjects of intercultural education and preventive health.

756. An intersectoral committee has been set up by the Ministries of Public Health and Social Welfare, Foreign Affairs, Education, Environment, and Agriculture and Livestock, in conjunction with the indigenous peoples led by CONCULTURA, with a view to a comprehensive approach to the social and cultural problems of indigenous peoples. The first task was to draw up an indigenous profile of El Salvador, which was completed in 2001 with support from the World Bank. This research work was open to general participation and its aim was to produce an initial study of the country's indigenous peoples.

757. Most the country's indigenous peoples are Catholics, but they do have some sects such as the Cofradías (Brotherhoods) and some of their own cultural practices are manifested on the occasion of religious festivals. They are given preference in the use of archaeological sites for spiritual purposes and as holy places.

758. Article 12 of the Labour Code makes it clear that the State must ensure respect for the principles of equality of opportunities and treatment in employment, including access to vocational training.

759. As a result of the changes incorporated in the Labour Code in 1994, article 30.12 now prohibits employers from establishing any distinctions, exclusions or preferences based on race, colour, sex, religion, political opinions, or national or social origins, subject to the exceptions provided by law for the purpose of protecting workers.

760. Lastly, article 38.1 of the Constitution and article 123 of the Labour Code provide effective recognition of the principle of equal wages irrespective of a worker's sex, age, race, colour, nationality, political opinions or religious beliefs.

761. The following table shows the main indigenous population groups in El Salvador by municipality:

Department	*Indigenous peoples*
Ahuachapán	Tacuba, Concepción de Ataco, Apaneca, San Pedro Puxtla, San Francisco Menéndez
Sonsonate	Santo Domingo de Guzmán, San Antonio del Monte, Nahuizalco, Izalco, Caluco, Cuisnahuat, Santa Isabel Ishuatán, Santa Catarina Masahuat, Sonsonate, Salcoatitan, Juayua, Sonzacate
Santa Ana	Texistepeque, Chalchuapa
La Libertad	Jayaque, Jicalapa, Talnique, Chiltiupan, Huizucar, Teotepeque, Tepecoyo
Chalatenango	Tejutla, Concepción Quezaltepeque
San Salvador	Santiago Texacuangos, Panchimalco, San Antonio Abad, Ciudad Delgado, Rosario de Mora
La Paz	San Francisco Chinameca, San Miguel Tepezontes, San Juan Tepezontes, San Pedro Nonualco, San Juan Nonualco, Santiago Nonualco, San Antonio masahuat, San Pedro Masahuat
Cuscatlán	Cojutepeque, San Pedro perulapan, Santa Cruz Michapa, Monte San Juan, Santa Cruz Analquito
San Vicente	Apastepeque, San Sebastián
Usulután	Jiquilisco, Ozatlan, Tecapan, Santa Elena
San Miguel	Lolotique
Morazán	Cacaopera, Chilanga, Guatajiagua, Jocoro, San Simón, Sensembra
La Unión	Yucuaquin, Yayantique, Conchagua

LIST OF ANNEXES

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