



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Second periodic report due in 2001

Addendum* **

EL SALVADOR

[23 July 2007]

* For the initial report submitted by the Government of El Salvador, see CAT/C/37/Add.4; for its consideration, see CAT/C/SR.422, 425 and 429 and *Official Records of the General Assembly, fifty-fifth session, Supplement No. 44 (A/55/44)*, paras. 152-174.

** The annexes to the present report submitted by the Government of El Salvador may be consulted in the secretariat files.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Background	1 - 3	4
Introduction	4 - 13	4
LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING THE IMPLEMENTATION OF THE CONVENTION	14 - 41	6
MAIN STATE BODIES CONCERNED BY THE IMPLEMENTATION OF THE CONVENTION	42 - 71	10
IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	72 - 234	14
Article 1. Definition of torture	72 - 76	14
Article 2. Legislative, administrative, judicial and other measures to prevent acts of torture	77 - 112	15
Article 3. Prohibition of the expulsion, return or extradition of individuals to a State where they would be in danger of being subjected to torture	113 - 128	21
Article 4. Torture as an offence under Salvadoran criminal law punishable by appropriate penalties	129 - 140	24
Article 5. Offences of torture committed within the jurisdiction of the Salvadoran State	141 - 145	26
Article 6. Detention procedures in the Salvadoran State with a view to the extradition of persons who have committed acts of torture	146 - 160	27
Article 7. Trial of torture suspects	161 - 164	31
Article 8. The offence of torture and extradition treaties	165 - 171	32
Article 9. Judicial cooperation during the extradition procedure	172 - 177	34
Article 10. Education and information on the prohibition of torture in the training of personnel responsible for applying the law	178 - 193	35
Article 11. Interrogation rules, instructions, methods and practices to prevent any cases of torture against persons subjected to any form of arrest, detention or imprisonment	194 - 200	37

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
Article 12. Prompt and impartial investigation by the bodies responsible for administrating justice	201 - 204	38
Article 13. Steps taken to ensure that the complaints of victims of torture are promptly and impartially examined, and that the victims and witnesses are protected following those complaints	205 - 208	39
Article 14. Redress and the victim's right to compensation in cases of torture	209 - 212	41
Article 15. Invalidity of statements made as a result of torture	213 - 227	41
Article 16. Prohibition of other acts that constitute cruel, inhuman or degrading treatment or punishment	228 - 234	43
Bibliography		45
List of annexes		47

Background

1. In 1999, El Salvador submitted its initial report to the Committee against Torture on its compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report was examined by the Committee in May 2000 and is contained in document CAT/C/37/Add.4.
2. On 12 May 2000, following its consideration of the report, the Committee adopted and published its conclusions and recommendations (A/55/44, paras. 152-174), which deal with various important points that have been highlighted in the present report.
3. In submitting its second periodic report, the Government of El Salvador considers it important to inform the Committee about the efforts and progress made and difficulties encountered in complying with its obligations under the Convention, which are reflected in the report, and about the promotion of human rights in El Salvador.

Introduction

4. This document contains the second periodic report of El Salvador in fulfilment of its obligations under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the Convention” or “the Convention against Torture”) and covers the period from October 2000 to 2006.
5. The report was drafted by an inter-agency team coordinated by the Ministry of Foreign Affairs and composed of representatives of the following institutions: the judiciary, represented by the Supreme Court of Justice; the National Council of the Judiciary, which is in charge of the Judicial Service Training College; the Public Prosecutor’s Office, which is composed of the Office of the Attorney General of the Republic, the Office of the Procurator-General of the Republic and the Office of the Procurator for the Protection of Human Rights. The Office of the Procurator for the Protection of Human Rights was invited to join the team, but regrettably did not reply to the invitation or provide any information. The following government institutions also participated: the Ministry of the Interior, represented by the Department of Migration and Foreign Nationals and the Prisons Department; the National Civil Police, which is in charge of the Office of the Inspector-General of the National Civil Police and the Public Security Academy; the Ministry of Defence; the Ministry of Education; and the Salvadoran Institute for the Comprehensive Development of Children and Adolescents.
6. El Salvador became a party to the Convention against Torture by virtue of Executive Agreement No. 688 of 19 October 1993. With the subsequent ratification of the Convention by virtue of Legislative Decree No. 833 of 23 March 1994, published in Official Gazette No. 92 of 19 May 1994, the domestic and international obligations provided for in this important human rights instrument entered fully into force for El Salvador.

7. At the international level, El Salvador is caught up in the profound changes affecting the world at large, with challenges posed by a globalized and interdependent world and new threats to international peace and security such as terrorism, drug trafficking and arms smuggling.
8. At the national level, substantial progress has been made as a result of the peace process launched in 1992, and gains have been made in the development and consolidation of democratic institutions, and respect for those institutions, and in the introduction of other reforms required to improve the standard of living and general security of the population. It is noteworthy that people are increasingly demanding respect for their fundamental freedoms and turning more often to the competent bodies to assert their rights by submitting complaints and calling for the application of the law.
9. Over the last few years the Government has sought to modernize and strengthen State institutions and has had to deal with high levels of violence and crime, which undermine public safety, social stability and a country's economic development, as is the situation in El Salvador. There is public awareness of these problems and how to address them, namely by strengthening the competent bodies in the areas of security and justice. These institutions are striving to coordinate their efforts and action so as to be able to rise to the current challenges. To this end appropriate structural adjustments are being made within, principally, the judiciary, the Office of the Attorney General and the National Civil Police, in order to combat the violence affecting society in general, for which appropriate measures are required.
10. A constant challenge for the Salvadoran authorities has been to control and fight the current levels of crime and violence in the country and ensure the safety of citizens. The problem is deeply rooted in the past and has structural and historical causes, rendering it imperative to adopt measures tailored to the circumstances, at all times consulting with civil society and ensuring its involvement.
11. The problem of gangs, which ties in with the breakdown of the family and the legacy of the armed conflict that gripped El Salvador from 1980 to 1992, has prompted inter-agency efforts to counter gang violence through programmes based on prevention and citizen participation, deterrence and prosecution, and rehabilitation and social reintegration of gang members.
12. Natural phenomena had a major impact on El Salvador in 2001, including the El Niño phenomenon that affected Central America and the earthquakes of January and February 2001. They highlighted the vulnerability of this country and its people and obliged the Government to direct resources away from social spending, to cope with national disaster and emergency.
13. In this connection, it should be noted that, during the states of emergency declared following these natural disasters, the rule of law and the functioning of democratic institutions were upheld and there were no reports of conduct violating people's fundamental rights.

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING THE IMPLEMENTATION OF THE CONVENTION

Three branches of the State, form of government and political system

14. Article 83 of the Constitution of the Republic of El Salvador states: “El Salvador is a sovereign State. Sovereignty is vested in the people, who exercise it in the form and within the limits laid down in the Constitution.”
15. The Government is republican, democratic and representative.
16. The political system is pluralist and is reflected in political parties, which are the sole instrument for the representation of the people in the Government. Their rules, organization and operation are governed by the principles of representative democracy.
17. The existence of a single official party is incompatible with a democratic system and with the form of government established in the Constitution (Constitution, art. 85).
18. “Public authority emanates from the people. The various branches of government exercise their powers independently, within their respective spheres of competence, as established by the Constitution and the law. The powers of the various branches of government may not be delegated, but the branches shall cooperate with one another in performing their official functions.
19. “The main branches of government are the legislature, the executive and the judiciary” (Constitution, art. 86).

Legislature

20. The legislature is a collegiate body composed of 84 members and 84 alternates. They are elected every three years, and members may be re-elected. The members represent the people as a whole and are not bound by any mandatory terms of reference. They are immune from legal action and shall not be held liable at any time for their opinions or votes.
21. The main duties of the Legislative Assembly are:
 - (a) To enact, authentically interpret, amend and repeal subsidiary laws;
 - (b) To ratify treaties or agreements signed by the Executive with other States and international organizations or refuse ratification;
 - (c) To enact the income and expenditure budget for the civil service and amendments thereto;
 - (d) To elect by public roll-call vote the following officials: the President and judges of the Supreme Court, the President and judges of the Supreme Electoral Tribunal, the President and judges of the Court of Audit, the Attorney General, the Procurator-General, the Procurator for the Protection of Human Rights and members of the National Council of the Judiciary;

(e) To summon ministers or departmental chiefs and heads of autonomous government agencies;¹

(f) To recommend to the Office of the President of the Republic the removal of government ministers, and to the relevant bodies the removal of officials of autonomous government agencies, as it sees fit in light of inquiries by special commissions or questioning, as appropriate. The Assembly's decision shall be binding in respect of chiefs of public security or State intelligence in matters of serious human rights violations (Constitution, art. 131).

22. According to article 29 of the Constitution: "The safeguards contained in articles 12, paragraph 2, and 13, paragraph 2, of the Constitution, may also be suspended when the legislature so decides by a majority vote of three quarters of the elected deputies; provided that administrative detention shall not exceed 15 days."

23. The Legislative Assembly organizes its work through commissions composed of deputies from the different political parties. The Commission on Foreign Affairs, Central American Integration and Salvadorans Abroad is responsible for studying treaties submitted to the Legislature for consideration.

24. The Justice and Human Rights Commission deals with this theme in particular, receives reports, prepares draft legislation and correspondence on human rights for study and opinions. The Commission coordinates directly with State institutions responsible for implementing human rights and hears and summons officials and representatives of civil society dealing with human rights.

Executive

25. The executive consists of the President and Vice-President of the Republic, the ministers and deputy ministers of State and their subordinate officials.

26. "For the conduct of public affairs there shall be as many State secretariats as may be necessary, with the various areas of government shared among them. Each secretariat shall be headed by a minister, supported by one or more deputy ministers. Deputy ministers shall replace ministers as prescribed by law. National defence and public security shall be assigned to separate ministries. Public security shall be the responsibility of the National Civil Police, which shall be a professional body independent of the Armed Forces and removed from all partisan activity.

¹ Article 132 of the Constitution: "All public officials and employees, including staff of autonomous government agencies and members of the Armed Forces, are obliged to cooperate with the special commissions of the Legislative Assembly; they and any other person shall be obliged to attend and be heard by the special commissions of the Legislative Assembly when these so require, under the same terms of caution as are observed during judicial proceedings.

"The conclusions of the Legislative Assembly's special commissions of inquiry shall not be binding on the courts or affect judicial proceedings or decisions, without prejudice to notification of the outcome to the Office of the Attorney General for appropriate action."

27. “The National Civil Police shall be responsible for urban and rural policing to maintain order and guarantee public security and peace, and shall cooperate in criminal investigations, at all times on the basis of strict respect for the law and for human rights” (Constitution, art. 159).

28. At the start of President Elías Antonio Saca’s administration in 2004, various State secretariats were established, such as the Office of the Deputy Minister for Foreign Affairs for Salvadorans Abroad, whose duties include ensuring the protection of the human rights of Salvadoran migrants and members of their families.

29. The Ministry of Foreign Affairs established a Human Rights Department within the Directorate-General of Legal Affairs, and set up the Inter-Agency Commission on the search for children who disappeared during the armed conflict in El Salvador.²

Judiciary

30. “The judiciary comprises the Supreme Court, the appellate courts and such other courts as may be established by subsidiary laws. It has sole power to adjudicate and to enforce judicial decisions in constitutional, civil, criminal, commercial, labour and land matters as well as in administrative disputes and in such other areas as may be determined by law.

31. “The structure and functioning of the judiciary shall be determined by law.

32. “In matters pertaining to the discharge of their judicial duties, judges are independent and subject exclusively to the Constitution and the law.

33. “The judiciary shall be entitled to an annual allocation of not less than 6 per cent of the current revenue of the State budget” (Constitution, art. 172).

34. The Supreme Court is composed of 15 judges, one of whom shall be the President of the Judiciary.

35. There are different categories and levels of courts. The Constitution establishes the Judicial Service as a guarantee of the stability and interdependence of judges in the judiciary.

36. The main duties of the Supreme Court include the following:

(a) To hear *amparo* proceedings;

(b) To authorize, in accordance with the law and when necessary, the enforcement of sentences handed down by foreign courts;

(c) To ensure the swift and full administration of justice, for which any measures deemed necessary shall be adopted;

(d) To hold public officials accountable where specified by law;

² Executive Decree No. 45, Official Gazette No. 185, vol. 365, 6 October 2004.

(e) To try cases relating to the suspension or loss of citizens' rights under article 74, paragraphs 2 and 4, and article 75, paragraphs 1, 3, 4 and 5, of the Constitution and to restore such rights;

(f) To issue reports and opinions concerning applications for the remission or commutation of sentences;

(g) To appoint judges to the appellate courts and courts of first instance, and justices of the peace from lists proposed by the National Council of the Judiciary; to appoint forensic medical experts and the employees under their supervision; to dismiss them, accept their resignation and grant them leave (Constitution, art. 182).

37. The judiciary is governed by the Judicial Service Act, article 1 of which states: "The purpose of this Act is to organize the Judicial Service and establish the working relationship between judicial officials and employees and the Judiciary; and to regulate the procedure and requirements for admission to the Service, promotion and advancement based on merit and aptitude, transfers, the rights and duties of its members and the applicable benefits and disciplinary sanctions.

38. "The Judicial Service seeks to ensure the professional standing and advancement of judicial officials and employees and their security of tenure and independence, thereby contributing to the efficiency of the administration of justice."

39. Judges are independent in the discharge of their duties with respect to the administration of justice. The courts directly involved in implementing the Convention are the Supreme Court, through the Constitutional Division and the Criminal Division, the criminal courts, the investigating courts, the trial courts, the juvenile courts and justices of the peace.

40. There are 549 courts in El Salvador as a whole, of which 464 are competent to try offences that might be considered as torture. These courts are listed in the table below.

Distribution of courts

Constitutional Division	1
Criminal Division	1
Criminal Appeal Courts	5
Juvenile Appeal Courts	3
Mixed Appeal Courts	7
Trial courts	21
Investigating courts	46
Courts for prison supervision and sentence enforcement	10
Juvenile courts	20
Courts for the enforcement of measures	5
Mixed courts	23
Justices of the peace	322
Total	464

Source: Supreme Court.

41. Since the signing of the Peace Agreements the three main branches of government have exercised power effectively and independently without mutual interference and in keeping with the functions assigned them by the Constitution.

MAIN STATE BODIES CONCERNED BY THE IMPLEMENTATION OF THE CONVENTION

Public Prosecutor's Office

42. The Public Prosecutor's Office is composed of the Office of the Attorney General, the Office of the Procurator-General and the Office of the Procurator for the Protection of Human Rights.

43. "The Attorney General, the Procurator-General and the Procurator for the Protection of Human Rights shall be elected by a clear two-thirds majority of the elected deputies.

44. "Their term of office shall be three years and they may be re-elected. They shall be dismissed only on legal grounds, by a vote of two thirds of the elected deputies.

45. "The same qualifications are required of the Attorney General and the Procurator-General as of a judge of the appellate courts.

46. "The qualifications required of the Procurator for the Protection of Human Rights shall be prescribed by law" (Constitution, art. 192).

47. The powers of each of these institutions are described in the Constitution.

Office of the Attorney General

48. The main function of the Office of the Attorney General is to defend the interests of the State and society. It is responsible for the scientific investigation of criminal cases and for prosecution, which is conducted by prosecutors.

49. Its main functions include the following.

50. It is the responsibility of the Attorney General:

- (a) To defend the interests of the State and society;
- (b) To bring legal action, either ex officio or on application by a party, to uphold the rule of law;
- (c) To conduct criminal investigations in cooperation with the National Civil Police in the manner prescribed by law;
- (d) To bring criminal action either ex officio or on application by a party;

(e) To defend fiscal interests and represent the State in trials of any kind and in contracts relating to the acquisition of property in general and movable property under auction and as otherwise prescribed by law;

(f) To bring to trial and punish individuals suspected of crimes against the authorities and contempt of court;

(g) To appoint and remove prosecutors with the Supreme Court, the appellate courts, military tribunals and courts of first instance, and treasury prosecutors, and grant them leave and accept their resignation. The same functions apply with respect to other officials and employees of that Office.

Office of the Procurator-General

51. The Office of the Procurator-General is responsible for defending the legal interests of private individuals by assigning procurators to ensure their legal representation.

52. The Office of the Procurator-General is responsible for:

(a) Protecting the family and individuals and the interests of minors and others lacking legal capacity;

(b) Providing legal aid to persons of limited financial means, and legal representation in the defence of their freedom and their labour rights;

(c) Appointing and removing assistant procurators with all national courts, labour procurators and other officials and employees of that Office, and granting them leave and accepting their resignation.

Office of the Procurator for the Protection of Human Rights

53. The Office of the Procurator for the Protection of Human Rights is responsible for protecting individual human rights of persons from action by the State; the Procurator's main functions are as follows:

(a) To ensure respect for and the enjoyment of human rights;

(b) To investigate human rights violations, either ex officio or on the basis of complaints received;

(c) To assist alleged victims of human rights violations;

(d) To initiate judicial or administrative proceedings for the protection of human rights;

(e) To monitor the situation of persons deprived of their liberty; the Procurator shall be notified of all arrests and ensure that the legal limits for administrative detention are observed;

(f) To carry out any inspections deemed necessary to ensure respect for human rights;

- (g) To supervise the conduct of the civil service towards individuals;
- (h) To promote reforms in State bodies with a view to the advancement of human rights;
- (i) To issue opinions on draft laws affecting the exercise of human rights;
- (j) To promote and propose any measures deemed necessary to prevent human rights violations;
- (k) To formulate conclusions and recommendations, publicly or privately and draft and issue reports.

National Council of the Judiciary

54. The Council is an independent institution responsible for proposing candidates for posts as judges of the Supreme Court, the courts of appeal or the courts of first instance, or as justices of the peace.

55. The National Council of the Judiciary is responsible for organizing and running the Judicial Service Training College and evaluating judges. Its recommendations are submitted to the Supreme Court, which decides on measures to be adopted.

Judicial Service Training College

56. The Doctor Arturo Zeledón Castrillo Judicial Service Training College is under the supervision of the National Council of the Judiciary. Its main function is to train judicial officials.

57. The main subject areas in which training is provided are: constitutional law and human rights; criminal law; juvenile criminal justice; family law; justice and gender issues; intellectual property; alternative dispute resolution; general and civil procedural law; labour and commercial law; administrative, civil, environmental and financial law.

Department of Prisons

58. The Department of Prisons is responsible for prisons policy and for ensuring the safety and custody of prisoners and devising programmes for their rehabilitation and reintegration into society.

59. The work of the prisons service is underpinned by the Constitution, the Prisons Act and its regulations, and the decisions of the courts.

Department of Migration and Foreign Nationals

60. The Department's main functions include: to control migration in El Salvador and issue ordinary and special passports in accordance with the law; to deal with foreigners' applications for naturalization and with renunciation and restoration of Salvadoran nationality; and to process applications under article 90, paragraph 3, of the Constitution.

National Civil Police

61. The National Civil Police is a professional body independent of the Armed Forces and is in charge of public security. It is directed by the President of the Republic through the intermediary of the ministry, responsible for public security.

62. In accordance with its Organization Act, the purpose of the National Civil Police is to protect and guarantee the free exercise of individual rights, prevent and combat all kinds of crime and cooperate in criminal investigation procedures; to maintain domestic peace, calm, order and security in urban and rural areas, with strict respect for human rights.

National Public Security Academy

63. The National Public Security Academy trains future police officers. Anyone wishing to join the police force must be admitted to the Academy and pass the courses offered. It draws up study plans and recruitment plans, and conducts entrance tests and the routine evaluation of the police force.

64. The Academy's mission is to educate and train public security professionals and provide them with a specialized academic and theoretical qualification, in order to uphold democracy and the rule of law for the benefit of the population.

65. The Academy has included the study of human rights and the laws applicable to the police force in its various programmes of study.

Office of the Inspector-General of the National Civil Police

66. The main functions of this Office are to ensure strict observance of discipline in the National Civil Police and the efficient and effective performance of its operational services, which must uphold human rights.

67. The Office is represented throughout the country in each of the 14 departments, and thus plays an important role in monitoring police conduct and discipline.

Salvadoran Institute for the Comprehensive Development of Children and Adolescents

68. One of the objectives of the Institute is to provide comprehensive protection to children and adolescents in El Salvador, based chiefly on the children's rights laid down in the Constitution, the Convention on the Rights of the Child and subsidiary laws on the protection of minors.

69. The Institute is required to deal with any threat to or violation of the rights of children or adolescents, whether by their parents, relatives, guardians, or any authority or official. It is empowered to conduct its own investigations into any unlawful act and to notify the Office of the Attorney General to enable it to investigate and initiate legal proceedings concerning any act constituting an offence committed by parents, guardians or any authority or official.

70. The Institute is responsible for placing minors at risk and juvenile offenders in institutional care.

71. Under its mandate, the Institute applies the Juvenile Crime Act³ to minors in conflict with the law. The Act entered into force in March 1995 and has been brought into line with the Convention on the Rights of the Child as regards the comprehensive protection of the human rights of adolescents.

**IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

Article 1. Definition of torture

72. The Constitution⁴ prohibits and punishes torture, although it does not provide a specific definition of torture and other cruel, inhuman or degrading treatment or punishment. Various articles of the Constitution, which will be mentioned below, deal with other points relating to torture and cruel, inhuman or degrading treatment or punishment.

73. Article 1 of the Constitution (The individual and the aim of the State) provides: “El Salvador recognizes the individual as the source and object of the activity of the State, which is organized for the attainment of justice, legal security and the common good.”

74. Article 2 of the Constitution (Individual rights), establishes the right to life, physical and moral integrity, freedom, security and work, among others.

75. The 1998 Code of Criminal Procedure was considered progressive and when promulgated constituted a modern, dynamic and efficient tool for punishing criminal acts.

³ Decree No. 20, published in Official Gazette No. 126, vol. 372, of 7 July 2006, amending the Juvenile Crime Act, Article 119, which provides: “There shall be detention centres for persons who have reached 18 years of age and require specialized treatment or whose continued stay in the centre would be harmful for the minors. These centres shall be under the supervision of the executive branch through the Ministry of the Interior.”

Executive Decree No. 125, published in Official Gazette No. 227, Volume No. 373, of 5 December 2006, amending the Regulations of the Executive, which entered into force in January 2007, article 5 of which states that the Prisons Department shall be part of the Ministry of Public Security and Justice.

⁴ Provisions relating to protection against torture and other cruel, inhuman or degrading treatment or punishment are contained in articles 2, 12 and 27 of the Constitution.

When it was prepared by the National Commission for the Drafting of Legislation, the drafters tried to bring it into line with international human rights instruments ratified by El Salvador.⁵

76. Over the years the Criminal Code and the Code of Criminal Procedure have been subject to various amendments in keeping with government plans relating to security and crime control and in order to deal with the complex problem of juvenile violence and organized crime, which have been on the increase in El Salvador. As in any democratic State governed by the rule of law, it has been necessary to take steps to adapt to the circumstances.

Article 2. Legislative, administrative, judicial and other measures to prevent acts of torture

77. Since the signing of the Peace Agreements in 1992, the situation in El Salvador has continued to evolve favourably and although not all problems have been overcome, there is no doubt that Salvadoran society has undergone a transformation; its institutions are committed to creating conditions conducive to greater efficiency, thereby promoting political stability and legal security and ensuring respect for human rights.

78. Some of the main measures introduced by State institutions relate to the conduct expected of officials and the assessments they undergo; preparation and in-service training; efforts by the competent authorities to make them understand that torture must not be used and that anyone guilty of torture must be punished; rectifying administrative irregularities to prevent arbitrary detention and/or ill-treatment. During the reporting period, no amendment or legislation directly related to torture, cruel, inhuman or degrading treatment or punishment has been adopted.

79. In the administrative sphere, the National Civil Police has its own disciplinary regime, which defines disciplinary and administrative offences, applicable penalties, the competent bodies and the procedure for investigation and punishment. The regulations are applicable to all police staff irrespective of their job, position or administrative status.

⁵ The set of guarantees relating to personal integrity are enshrined in various international human rights instruments, which constitute domestic laws and are legally binding on entry into force. They include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the American Convention on Human Rights; the Universal Declaration of Human Rights; the American Declaration on the Rights and Duties of Man; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention to Prevent and Punish Torture; the Convention on the Elimination of All Forms of Discrimination against Women; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

80. Since 1999, the National Civil Police has taken steps to monitor police officers' performance by introducing a disciplinary regime. In 2000, a Commission on the Purging of the National Civil Police was established to assess the members of the police force.

81. Between 2000 and 2002, as a result of the Commission's work, disciplinary proceedings for human rights violations were initiated against 42 police officers, 14 of whom were dismissed and 28 suspended without pay, on the grounds of abuse of authority and inhuman, degrading and discriminatory treatment.

82. As regards statistics on police officers brought to trial, the National Civil Police reported that from 2000 until the end of 2006, 40 police officers and 1 administrative official as having been tried for abuse of authority.

83. Article 19 of the National Civil Police Organization Act refers to the Disciplinary Regulations: "Members of the National Civil Police who fail to comply with the Code of Conduct, their professional obligations, or the law, shall be liable to the following disciplinary sanctions depending on the seriousness of the offence:

"(a) Oral warning;

"(b) Written warning;

"(c) Up to five days' detention without pay;

"(d) Suspension without pay;

"(e) Demotion;

"(f) Separation from service with or without compensation; or

"(g) Dismissal."

84. Article 27 of the Disciplinary Regulations establishes the competence of National Civil Police officials to deal with minor offences and, when necessary, to apply appropriate penalties.

85. For minor offences one or more of the following penalties shall be applied:

"(a) Oral warning: verbal reprimand of a subordinate by the competent supervisor with power of sanction, noted in the police files;

"(b) Written warning: written reprimand of a subordinate by the competent supervisor with power of sanction;

"(c) Detention: confinement to headquarters or the police station or other place stipulated for serving the punishment. This penalty shall be applied for whole and consecutive days, a minimum of one and a maximum of five. The officer under arrest shall not be on duty or receive pay for those days. This penalty shall not affect the benefits, obligations or contributions of the police officer concerned;

“(d) Suspension without pay: withholding of pay for the duration of the punishment and exclusion from all duties of the post, from the work unit and the use of insignia, as well as from any promotion opportunities. The suspension shall be applied to the person concerned with immediate effect by the Department of Human Resources, proportionate to overall remuneration, for a minimum of one and a maximum of five days.

86. “Such suspension shall not affect the social security benefits, obligations and contributions of the police officer in question” (Disciplinary Regulations, art. 33).

87. For serious offences the following penalties apply:

(a) Investigation into a serious offence comes under the jurisdiction of the Office of the Inspector-General of the National Civil Police, through the Discipline Unit, the Internal Affairs Unit (when criminal offences are involved) and service chiefs through their respective disciplinary units, as laid down in article 40 of the Disciplinary Regulations;

(b) Under the Disciplinary Regulations there are 32 forms of conduct constituting a serious offence, as set forth in article 37;

(c) Offences of this kind are dealt with by the disciplinary tribunals.

88. The penalties applicable to serious offences are set forth in article 34 of the Disciplinary Regulations:

“(a) Suspension without pay: withholding of pay for the duration of the punishment and exclusion from all duties of the post, from the work unit and the use of insignia, as well as from any promotion opportunities. The suspension shall be applied with immediate effect by the Personnel Division, for a minimum of 16 and a maximum of 180 days, and shall not affect the social security obligations and contributions of the police officer in question;

“(b) Demotion: downgrading to the rank immediately below the one held previously, with loss of citations. It is not applicable to administrative personnel;

“(c) Dismissal: termination of all police functions and powers, with loss of all rights inherent in membership of the force and a bar on re-entry to the National Civil Police, as well as termination of the contract without compensation or benefits.”

89. Article 19 of the National Civil Police Organization Act added separation from service with or without compensation to these penalties.

90. The National Civil Police has a Human Rights Unit with three departments: (a) the Promotion Department, to promote and disseminate human rights legislation applicable to the police and to coordinate with other bodies involved in promotion and protection of human rights, in order to improve police effectiveness; (b) the Protection Department, responsible for monitoring compliance with current human rights legislation in the context of police work, inside and outside the police force; (c) the Administration Department, which coordinates and implements administrative and logistical activities.

91. The Office of the Inspector-General of the National Civil Police reported that when inspecting police units it did not observe any systematic use of torture during questioning, noting that the National Civil Police Organization Act, chapter IV (Code of Conduct), article 13, paragraph 4, states: “No police officer may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment; and may not invoke the order of a superior or special circumstances such as a state of war or the threat of war, a threat to national security, domestic political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment.” Any officer who violates this provision is subject to disciplinary investigation and proceedings, depending on the gravity of the offence, generally leading to disciplinary sanctions.

92. In the course of its work, the Office of the Procurator for the Protection of Human Rights has reported on the alleged torture of detainees, finding that the right to personal integrity had been violated during arrest and questioning procedures. In response to these reports, the National Civil Police has indicated that no methods violating human rights have been used during investigation procedures.

93. The Public Security Academy, which is responsible for basic police training, has incorporated theoretical and practical human rights training in its various course syllabuses, including on the Convention against Torture, as one of the international treaties or agreements relating to police work.

94. The lead agency in the area of prisons policy is the Ministry of Public Security and Justice, through the Prisons Department. Its work is underpinned by the Constitution, the 1998 Prisons Act and regulations, which entered into force in 2000, and court decisions. Following the amendments to the Prisons Act in 2006, the Prisons Department has greater control over prison activities, including judicial supervision.

95. The prison problem in El Salvador has resulted in violence and revolt in various prisons and it has been recognized that some of the main causes are over-population and overcrowding, lack of funding, the boredom of prison life, and the presence of prisoners with different backgrounds, such as ordinary prisoners and gang members, and some of the deaths that have occurred have been due to personal quarrels among gang members and other incidents connected with drugs and organized crime.

96. A police presence has been maintained to try to keep the prison population under control and guarantee the life and safety of inmates, reinforce security and prevent drugs and weapons being smuggled in. Important provisions governing the national prison system have been introduced and the authorities have proposed mobilizing the necessary funds to invest in modernization and other projects required for the rehabilitation of prisoners.

97. In July 2006, following consultations with the sectors involved in the implementation of the Act, amendments to the Prisons Act were approved, as a result of which security in the various prisons throughout the country was stepped up in an attempt to stop the circulation of information and objects enabling prisoners to organize criminal acts. The amendments made it compulsory to wear clothing - uniforms - that is not degrading or humiliating, to join the prison rehabilitation programmes and to use prison equipment and furniture properly. In addition, the

amendments ban money and valuable jewellery, pornographic and violent books and materials, telecommunications equipment and electronic, electrical or battery-operated devices such as mobile phones, cookers, walkie-talkies and fans for personal use.

98. Furthermore, people visiting prisoners must provide basic information and carry an identity card.

99. Article 5 of the Prisons Act stipulates: “The use of torture, ill-treatment or humiliating practices in the enforcement of sentences is strictly prohibited.

100. “No prisoner shall be discriminated against on grounds of nationality, sex, race, religion, political opinion or tendency, financial or social status or any other circumstance.”

101. It is therefore expressly prohibited to use torture, ill-treatment and humiliating practices in the enforcement of sentences. In this connection, article 128, paragraph 2, of the Prisons Act states:

“Disciplinary measures shall be imposed in such a way that they do not affect prisoners’ health or dignity.

“Corporal punishment, such as confinement in a dark cell, or any other cruel, inhuman or degrading treatment or punishment, is prohibited.

“No prisoner shall be used to impose or enforce disciplinary measures.

“The Disciplinary Board may waive a disciplinary measure, suspend enforcement or commute it, if it considers it unnecessary for the maintenance of order in the prison or prejudicial to the purposes of this Act.”

102. The Office of the Procurator-General is structured in such a way that it is able to detect breaches of the law, in terms of human rights violations, and its role is to provide technical assistance in detention centres and to contact the prosecutor’s office or the police. In this way it may be determined whether there has been physical or psychological harm or whether these have been improperly revealed to the press, and in cases where there are grounds for suspicion, the public defender is required to request a forensic psychologist’s report, which must be evaluated in the same way as criminal evidence, or, as a last resort, to request criminal proceedings to find those responsible.

103. As regards administrative measures taken by the Armed Forces pursuant to the Code of Military Justice and Disciplinary Regulations, the offences of ill-treatment or abuse of authority are punishable under article 113 of the Code of Military Justice, which provides: “Military personnel who arbitrarily abuse or exceed their authority in the discharge of their duties by harming or ill-treating a subordinate shall be liable to a prison sentence of one to three years, without prejudice to their liability for any ordinary offence arising.

104. “If the offence occurs when the subordinate is in training or on any type of active service or in the presence of fellow soldiers, the prison sentence may be increased by one third.”

105. Notwithstanding the foregoing, where the conduct arising from the abuse of power is not covered by the definition of the offence given above, the superior officer shall be subject to administrative penalties, including separation from service (discharge) following the investigation by the Court of Honour established under article 17 of the Professional Military Service Act.

106. The statistics on military preliminary investigations record no incident that may be considered as torture; however, incidents have been recorded involving abuse of power or authority - not necessarily physical abuse, but possibly verbal. In this connection, from 2000 to 2006, the Ministry of Defence reported a total of 12 preliminary investigations under way, 8 into officers of various ranks and 4 into lower ranks.

107. In May 1993, the Human Rights Office that used to be part of the Joint Armed Forces Headquarters was transferred to the Ministry of Defence, and became the Human Rights Department. Its purpose is to promote human rights awareness, education and assessment in the Armed Forces in cooperation with national and international human rights organizations, and to oversee the fair application of the law to all members of the Armed Forces.

108. Article 4 (k) of the Act establishing the Salvadoran Institute for the Development of Children and Adolescents (ISNA),⁶ states: "To submit to the executive, through the lead agency for national policy children, the broad outlines of the policy for discussion, approval and incorporation into the Government Plan." As the lead agency, the Institute is responsible for devising a comprehensive national policy on children, and to that end promotes action to ensure the fulfilment of their rights and the protection and promotion of comprehensive development, equity and non-discrimination; the Institute's policy is to place minors in care as an exceptional measure.

109. Since the entry into force of the reform of the Juvenile Crime Act, the Institute has been responsible for rehabilitation centres for minors, where juvenile offenders aged between 12 and 18 are placed under measures of various kinds. There are five such centres: Sendero de la Libertad Rehabilitation Centre (female wing); Sendero de la Libertad (male wing); Espino Rehabilitation Centre; Tonacatepeque Rehabilitation Centre; and the Alternative Centre for Juvenile Offenders. Young offenders have rights and their physical and moral integrity must be guaranteed.

110. The purposes of these centres include: (a) to provide and to guarantee, in accordance with the Constitution and the Convention on the Rights of the Child, physical and mental protection for adolescents who are serving any kind of sentence; (b) to manage, organize and maintain order in the centres for minors, to ensure better supervision of sentence enforcement. Services to the centres are coordinated by several State institutions: the Ministry of Education, for formal education programmes; the Ministry of Health and Social Welfare, for medical and dental care;

⁶ Decree No. 21, published in Official Gazette No. 126, Vol. 372 of 7 July 2006, amending the Act on the Salvadoran Institute for the Comprehensive Development of Children and Adolescents.

the Ministry of Labour and Social Security, for job placement; the municipal authorities, to improve the social environment; in addition, NGOs and private enterprises help with vocational technical training.

111. Children and adolescents who suffer abuse and neglect are placed in institutional care.

**Principal reasons for the admission and readmission
of female children and adolescents nationwide, 2006**

Principal reasons	Admission	Readmission	Total
Child abuse	190	12	202
Negligence and neglect	211	31	242

Source: Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA), Planning and Development Unit, September 2006.

**Principal reasons for the admission and readmission
of male children and adolescents nationwide, 2006**

Principal reasons	Admission	Readmission	Total
Child abuse	147	5	152
Negligence and neglect	189	17	206

Source: Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA), Planning and Development Unit, September 2006.

112. Among those who are principally responsible for the maltreatment of children and adolescents are mothers, fathers, stepmothers, stepfathers and other family members; the table below reflects this abuse.

**Persons responsible for violating the rights of children and adolescents
admitted or readmitted into ISNA, January-September 2006**

Person responsible	Admission	Readmission
Mother	1 837	199
Father	1 193	139
Stepmother/stepfather	145	20
Other family member	338	48
Other	278	42

Source: Salvadoran Institute for the Comprehensive Development of Children and Adolescents (ISNA), Planning and Development Unit, September 2006.

**Article 3. Prohibition of the expulsion, return or extradition of individuals to a
State where they would be in danger of being subjected to torture**

113. With regard to the application of this article, the Office of the Attorney General, the Supreme Court and the Department of Migration and Foreign Nationals have not reported any

cases of expulsion, return or extradition of individuals to a State where they would be in danger of being subjected to torture, as there were no individuals in such circumstances in Salvadoran territory.

114. El Salvador is a State party to the Convention relating to the Status of Refugees (Geneva, 28 July 1951) and its additional Protocol (New York, 13 January 1967). To comply with these international obligations, the Refugee Status Determination Act was adopted in July 2002, creating the Commission on Refugee Status Determination (CODER), comprising representatives of the Ministry of Foreign Affairs and the Ministry of the Interior.⁷

115. The aim of the Refugee Status Determination Act is to regulate the determination of refugee status and to guarantee the right of all individuals of foreign origin to seek and receive asylum in El Salvador, for the sake of their life, physical integrity, freedom, safety and dignity.

116. With the aim of publicizing the contents of the Act and related texts, three training days were held in January 2003, November 2004 and July 2005. These training days were organized by the Ministry of Foreign Affairs, the Ministry of the Interior and the Office of the United Nations High Commissioner for Refugees (UNHCR).

117. The CODER Subcommittee for the Evaluation of Asylum Applications is in charge of receiving and evaluating asylum applications and issuing the relevant technical reports.

118. Article 97, paragraph 1, of the Constitution governs foreigners' entry into and residence in the national territory: "The circumstances and manner in which entry into and residence in the national territory may be denied shall be established by law. Foreigners who participate directly or indirectly in internal politics lose the right of residence in the country."

119. Article 99 of the Constitution establishes that: "Foreigners may not resort to diplomatic channels, except in cases of denial of justice and once the legal remedies available to them have been exhausted. The fact that an enforceable decision is not in the claimant's favour is not a denial of justice. Anyone who contravenes this provision loses the right of residence in El Salvador."

120. One of the laws that regulate the legal status of foreigners is the Aliens Act, which establishes in article 3 that: "Foreigners within the national territory shall enjoy individual guarantees on an equal footing with nationals, subject to the limitations set forth in the

⁷ Article 5 of the Refugee Status Determination Act states: "The Commission on Refugee Status Determination is hereby created. It will henceforth be referred to by its acronym 'CODER' or simply as 'The Commission'."

Article 6: "The Commission shall comprise:

- (a) The Minister for Foreign Affairs or his or her representative; and
- (b) The Minister of the Interior or his or her representative."

Constitution and the subsidiary laws of the country.” Article 4 of the Act states that: “From the moment foreigners enter the national territory, they are obliged to respect the Constitution, subsidiary laws and authorities of the Republic, and have the right to be protected by them.”

121. In the case of foreign refugees, international and national law regulate the grounds on which a refugee may be expelled. Any expulsion will be carried out only for reasons of national security or public order and will not affect the refugee status of family members in the national territory.

122. The expulsion of refugees who have committed a serious offence can be ordered provided that a final judgement has been handed down and in El Salvador the expulsion must be carried out in accordance with the procedure set forth in articles 41 ff. of the Refugee Status Determination Act.⁸

123. With regard to extradition, El Salvador must comply with the provisions of the Constitution and the law, which states that extradition can be defined as an act through which a State asks for individuals to be handed over in order to try them in a court (active extradition), and the requested State decides whether to hand them over (passive extradition).

124. Article 28 of the Constitution establishes that: “El Salvador shall grant asylum to foreigners wishing to reside in its territory except where provided by domestic and international law. Exceptions shall not be made for persons persecuted only on political grounds.

125. “Extradition shall be regulated in accordance with the international treaties and, in the case of Salvadorans, shall apply only where the relevant treaty so provides and has been approved by the legislative body of the signatory countries. In any case, its provisions should recognize the principle of reciprocity and grant Salvadorans all the criminal and procedural guarantees granted by the Constitution.

⁸ Art. 41: “The Commission may order the expulsion of a refugee only on grounds of national security or public order and, as that expulsion is of a personal nature, it shall not affect the refugee status of other family members within the national territory.

“Refugees who have been convicted by a final judgement for a serious offence shall be referred by the court to the Commission secretariat for expulsion.”

Art. 42: “Expulsion proceedings shall be initiated by the Commission secretariat on its own motion or on the basis of a private complaint. Refugees will be granted a hearing to present their defence within three working days.

“Whether or not the refugee attends the hearing, evidence may be submitted in the proceedings during eight working days. At the end of this period the Commission secretariat will refer the case to the Commission, which, based on the evidence received, will pronounce its decision within three days.

“The Commission will place the person to be expelled in the custody of the Department of Migration so that it may take the appropriate steps.”

126. “Extradition shall apply when the offence has been committed within the jurisdiction of the requesting country’s territory, except in the case of international offences, and cannot be required under any circumstances for political offences, even where these give rise to ordinary offences.”

127. Matters related to extradition are dealt with under article 182, paragraph 3, of the Constitution, which authorizes the Supreme Court to determine whether extradition is to be granted or not; it may give an opinion on the legitimacy of the extradition request, but not on the guilt of the accused. In this case, the Court’s opinion is binding.

128. The international treaties on extradition ratified by El Salvador contain provisions establishing the principles of reciprocity, legality, criminal and procedural guarantees and the prohibition of the death penalty.

Article 43: “An expulsion ruling by the Commission is subject to review by CODER, the application to be lodged with the Commission secretariat within three working days of notification of the decision.

“The refugee and the Office of the United Nations High Commissioner for Refugees shall be notified of the ruling.”

Article 44: “If the expulsion ruling is appealed, or the administrative appeal or appeal in *amparo* is unsuccessful, the Commission shall grant the refugee 30 days’ stay in the national territory in order to arrange for legal entry into another State.

“Mass expulsion of refugees is prohibited.”

Article 45: “Expelled refugees’ property and ownership rights acquired during their stay in the national territory shall be guaranteed, provided that they were lawfully acquired.”

Article 4. Torture as an offence under Salvadoran criminal law, punishable by appropriate penalties

129. Title XIV of the Criminal Code (Offences against the fundamental rights and guarantees of the individual) provides as follows:

Torture (Criminal Code, art. 297): “Public officials or employees, law enforcement officers or public authorities who, in the course of their duties, subject an individual to physical or mental torture or who have the power to prevent it but fail to do so shall be liable to three to six years’ imprisonment and barred from their functions or post during that time.”

130. This article of the Criminal Code reflects the terms of article 1 of the Convention, on public officials who commit acts of torture, and of article 4, which provides that all acts of torture shall constitute offences and that the State shall punish them by appropriate penalties.

131. Article 144, paragraph 2, of the Constitution states that “The law may not change or derogate from what has been agreed in a treaty in force for El Salvador. In the event of a conflict between the treaty and the law, the treaty shall prevail.”

132. This clearly shows that the definition of torture given in the Convention is already incorporated into the definition used in article 297 of the Criminal Code, cited above. Thus, in establishing this offence in a specific case, the court must have regard to the situations described in that definition.

133. Those who directly apply the law - judges, prosecutors or procurators - can base their decisions or applications on article 1 of the Convention against Torture and article 297 of the Criminal Code. Courts trying criminal cases involving the offence of torture base their decisions on article 297 of the Criminal Code.

134. The Criminal Code also establishes that legal proceedings for torture offences shall not be time-barred: the final paragraph of article 99 states that: "Offences shall not be time-barred in the following cases: torture, acts of terrorism, kidnapping, genocide, violation of the rules or customs of war, enforced disappearance of persons, or political, ideological, racial, sexual or religious persecution, provided that the acts in question were committed after the entry into force of this Code." In this respect, the final paragraph of article 34 of the Code of Criminal Procedure is identical: "Legal proceedings are not time-barred in the following cases: torture, acts of war, enforced disappearance of persons, or political, ideological, racial, sexual or religious persecution, provided that the acts in question were committed after the entry into force of this Code."

135. Under title XIV of the Criminal Code (Offences against the fundamental rights and guarantees of the individual), article 290 (Offence of deprivation of liberty by public officials or employees, law enforcement officers or public authorities), "Public officials or employees, law enforcement officers or public authorities who, except where provided by law, impose, agree, order or permit any deprivation of a person's liberty, shall be sentenced to three to six years' imprisonment and barred from their functions or post during that time.

136. "If the deprivation of liberty exceeds 48 hours, or where an individual detained in flagrante delicto is not immediately brought before the competent authority, the prison sentence and disqualification shall be increased by up to a third of the maximum."

137. Under the definition of torture provided in the Convention, the offender is a public official or other person performing official duties. The offence of torture is a special offence because only certain categories of persons can be charged with torture and punished for it. These categories are indicated in article 39 of the Criminal Code, which defines officials, public and municipal employees, public authorities and law enforcement officers:

"Officials, public and municipal employees, public authorities and law enforcement officers

"Article 39. In criminal matters, the following shall apply:

"1. Public officials are all persons providing services, whether paid or unpaid, ongoing or temporary, civilian or military, in the State or municipal government or any autonomous government agency, and who are legally invested with powers of deliberation and decision-making in any matters relating to the organization and provision of public services;

“2. Public authorities are State officials who, in their own right or by virtue of their position or function as members of a court, exercise their own jurisdiction;

“3. State and municipal employees are all servants of the State or its decentralized bodies who have no decision-making power and act on the orders or authorization of an official or supervisor; and

“4. Law enforcement officers are officers of the National Civil Police.”

138. The essence of this offence is the abuse of power by officials performing a public service by virtue of their function or position; and the violation of criminal and procedural guarantees by the officials responsible for safeguarding them.

139. As mentioned above, the offence of torture is not time-barred in respect of either punishment or legal action, as established in the final paragraph of article 99 of the Criminal Code and article 34 of the Code of Criminal Procedure.

140. The entry into force and application of the provisions of criminal law and criminal procedure cited above demonstrate the importance the State of El Salvador attaches to the prosecution and punishment of the offence of torture. In practice, however, ill-treatment is considered to be a less serious offence and so only internal disciplinary cases and/or proceedings are opened in the institutions where it occurs, and where such ill-treatment is found to constitute an offence a complaint must be submitted to the Office of the Attorney General.

Article 5. Offences of torture committed within the jurisdiction of the Salvadoran State

141. The persons who could commit the offence of torture in Salvadoran territory are those indicated in article 39 of the Criminal Code: public officials, public and municipal employees, public authorities and law enforcement officers (National Civil Police officers). The Convention thus applies to these public servants in accordance with article 39, cited above.

142. Under article 39 of the Criminal Code, officials who commit acts of torture will be punished in any part of the territory over which the Salvadoran State exercises sovereignty. Article 84 of the Constitution determines the territory over which El Salvador has jurisdiction and sovereignty and article 8 of the Criminal Code states that “Salvadoran criminal law shall apply to punishable acts committed wholly or partly in the territory of the Republic, or in places under its jurisdiction.”

143. Criminal law can also apply to serious offences against universally recognized human rights and in this regard article 10 of the Criminal Code states that “Salvadoran criminal law shall also apply to offences committed in a place not subject to Salvadoran jurisdiction, where such offences violate rights protected by specific international agreements or provisions of international law or constitute serious violations of universally recognized human rights.”

144. Criminal jurisdiction is also exercised when crimes are committed on board national or foreign aircraft or boats in the national territory, or in Salvadoran embassies or consulates.⁹

145. As can be seen from the foregoing, the Salvadoran State has jurisdiction to prosecute the offence of torture in all the cases provided for in article 5 of the Convention against Torture.

Article 6. Detention procedures in the Salvadoran State with a view to the extradition of persons who have committed acts of torture

146. The procedure for detaining an individual was described in paragraphs 159 to 163 of the initial report.¹⁰

147. Detention may occur in a variety of circumstances: arrest in flagrante delicto by the National Civil Police or any individual; or detention by the Office of the Attorney General or by court order. The detention can be for the purposes of investigation or pretrial detention.

⁹ The fundamental principles contained in the Criminal Code shall be applicable in accordance with the following rules:

Article 6: “The general provisions contained in this Code shall be applicable to offences punishable under specific legislation, except where this contains different provisions.”

Article 8: “Salvadoran criminal law shall apply to punishable acts committed wholly or partly in the territory of the Republic, or in places under its jurisdiction.”

Article 9: “Salvadoran criminal law shall also apply:

(1) In respect of offences committed abroad by persons in the service of the State if they have not been tried in the place where the offence was committed by reason of the privileges of their post;

(2) In respect of offences committed by Salvadorans abroad or in a place not subject to the specific jurisdiction of a State; and

(3) In respect of offences committed abroad by Salvadorans and extradition is denied on grounds of nationality, or by foreigners in violation of the rights of Salvadorans.

Article 10: “Salvadoran criminal law shall also apply to offences committed in a place not subject to Salvadoran jurisdiction, where such offences violate rights protected by specific international agreements or provisions of international law or constitute serious violations of universally recognized human rights.”

¹⁰ Initial report of El Salvador to the Committee against Torture (CAT/C/37/Add.4, 12 October 1999, pp. 29-30).

148. From the moment a person is detained, the Constitution of the Republic provides a series of guarantees so that the accused's rights and dignity are not impaired and guaranteeing them due process under the laws of the Republic.

149. Article 2 of the Constitution establishes the principle of human dignity, in the sense that the State will protect the rights of individuals laid down in law, while article 12 of the Constitution states that individuals accused of a crime or offence have the right, from the moment of detention, to be informed immediately and in a form they understand of their rights and the reasons for their detention, and cannot be compelled to make a statement.

150. Detainees are guaranteed the assistance of a defence lawyer during the inquiries carried out by auxiliary agencies of the judiciary and during judicial proceedings, under the terms established by law.

151. In this regard, the rules of due process cannot be violated, nor can measures be imposed that violate a person's basic rights and fundamental freedoms or involve inhuman or degrading treatment. These rules are enshrined in the human rights treaties, the Constitution and subsidiary legislation. Pretrial detention is also warranted in other cases established in law.

152. Accused persons enjoy the rights enshrined in article 87 of the Code of Criminal Procedure,¹¹ which mentions the right not to be subjected to measures that impair their dignity or to techniques or methods which alter their free will.

¹¹ Article 87: "Accused individuals shall have the right:

"(1) To be informed immediately and in a form they understand of the reasons for their detention and by what authority they have been detained;

"(2) To designate the person or body to be informed of their arrest, which should be done immediately;

"(3) To be assisted and defended by a lawyer of their choosing or by a public defender, in accordance with this Code;

"(4) To be brought, promptly and within the legal time limit, before a judge or other official authorized by law to exercise judicial functions;

"(5) Not to make a statement;

"(6) Not to be subjected to methods that impair their dignity;

"(7) Not to be subjected to techniques or methods which alter their free will;

"(8) Not to be subjected to measures that impede their necessary physical movement within the premises or during a procedure, without prejudice to any precautionary measures the judge or prosecutor may order at their discretion in special cases; and

"(9) To be assisted by an interpreter if they do not understand Spanish.

153. According to information provided by the Office of the Attorney General on cases related to the application of the Convention, legal proceedings were initiated for the offence of arbitrary action in 517 cases, for deprivation of liberty by public officials or employees, law enforcement officers or public authorities¹² in 40 cases, and for unlawful restriction of individual freedom¹³ in 6 cases.

154. The following table shows the number of cases per year, the type of offence committed and the total for three years.

Offences reported by the Office of the Attorney General

Type of offence	2003	2004	2005	Total for 3 years
Deprivation of liberty by public official employee, law enforcement officer, public authority (Criminal Code, art. 290)	10	14	16	40
Unlawful restriction of individual freedom (Criminal Code, art. 291)	1	4	1	6
Arbitrary action (Criminal Code, art 320)	166	150	201	517
Total	176	168	218	562

Source: Office of the Attorney General.

“Accused individuals shall be informed of these rights immediately and in a form they understand, by the prosecutors, judges or police officers, and this advice shall be placed on record under the sole responsibility of the prosecutor in charge of the preliminary steps of the investigation or, as appropriate, of the judge.”

¹² Article 290 of the Criminal Code: “Public officials or employees, law enforcement officers or public authorities who, except where provided by law, impose, agree, order or permit any deprivation of a person’s liberty, shall be sentenced to three to six years’ imprisonment and barred from their functions or post during that time.

“If the deprivation of liberty exceeds 48 hours, or where an individual detained in flagrante delicto is not immediately brought before the competent authority, the prison sentence and disqualification shall be increased by up to a third of the maximum.”

¹³ Article 291 of the Criminal Code: “Public officials or employees responsible for an establishment intended for the serving of sentences, security measures or pretrial detention who receive a detainee without a written order from a competent authority, or who fail to comply with a release order from that authority, or who prolong the execution of the sentence or security measure, shall be sentenced to one to three years’ imprisonment and barred from their functions or post during that time.

“If the detainee is under 16 years old or has a mental disability, the prison sentence shall be three to five years and the disqualification shall run for the same length of time.”

155. To file a complaint against State agents who have committed the crime of torture, the individual concerned can apply to the following institutions:

- (a) The Office of the Attorney General, which is responsible for operational control of criminal investigations;
- (b) The National Civil Police, which is the auxiliary body responsible for investigating all punishable offences, under the operational control of the Office of the Attorney General;
- (c) A court, which is responsible for the administration of justice and the enforcement of sentences;
- (d) The Office of the Procurator-General;
- (e) The Office of the Procurator for the Defence of Human Rights.

156. With regard to the rights of the accused, article 87, paragraph 9, of the Code of Criminal Procedure states that accused persons have the right “to be assisted by an interpreter if they do not understand Spanish. Accused individuals shall be informed of these rights immediately and in a form they understand, by the prosecutors, judges or police officers, and this advice shall be placed on record under the sole responsibility of the prosecutor in charge of the preliminary steps of the investigation or, as appropriate, of the judge”.

157. Article 12 of the Constitution establishes the following rights: (1) to be presumed innocent until proved otherwise in court and in accordance with the law; (2) for the accused to be provided with the means necessary for their defence, notably the assistance of a defence lawyer; (3) for detainees to remain silent if they do not wish to make a statement about the acts they are accused of.

158. It further establishes that statements obtained by force or deception have no legal value and cannot therefore be used as evidence at trial or in any other legal procedure. Anyone who obtains statements in this way, and any judge or official who gives them legal value will be committing an offence.¹⁴

¹⁴ Article 12 of the Constitution: “Persons accused of an offence shall be presumed innocent until proven guilty in accordance with the law and in a public hearing in which they are provided with all the guarantees necessary for their defence.

“Detainees shall be informed immediately and in a form they understand of their rights and the reasons for their detention, and cannot be compelled to make a statement. Detainees are guaranteed the assistance of a defence lawyer during the inquiries carried out by auxiliary agencies of the judiciary and during judicial proceedings, under the terms established by law.

“Statements obtained against a person’s will lack validity; anyone obtaining or using such statements shall be held criminally liable.”

159. If the accused does not name a private defence lawyer, they have the right to be defended by a procurator under article 194, part II, paragraph 2, of the Constitution, which states:

“The duties of the Procurator-General include providing legal aid to persons of limited financial means, and with legal representation in the defence of their freedom and their labour rights.”

160. Currently, the regulations remain the same as those indicated in the initial report.¹⁵

Article 7. Trial of torture suspects

161. Foreigners who have committed an offence of torture in their country of origin but who are within the jurisdiction of the Salvadoran State can be tried in accordance with the following provisions.

162. Article 10 of the Criminal Code establishes the principle of universality:

“Salvadoran criminal law shall also apply to offences committed in a place not subject to Salvadoran jurisdiction, where such offences violate rights protected by specific international agreements or provisions of international law or constitute serious violations of universally recognized human rights.”

Under article 10, a foreigner can be tried in accordance with the Salvadoran Constitution and the law. In view of the fact that the crime of torture is an offence that violates rights protected by international law, which the Salvadoran State observes, any foreigner in the territory will be tried with due regard to all the guarantees they are entitled to.¹⁶

163. El Salvador is a State party to the Inter-American Convention to Prevent and Punish Torture and it complies with article 11, which provides that “The States Parties shall take the necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter.” The second part of article 12 adds that “Every State Party shall also take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area

¹⁵ CAT/C/37/Add.4.

¹⁶ Criminal Code, art. 11: “In the cases referred to in the two previous articles, the law in force in the place where the punishable act was committed shall apply, if its provisions are more favourable towards the accused than those of Salvadoran criminal law; however, preference will be given to the State in whose territory the offence was committed, if it asks to try the case before the legal proceedings begin.”

under its jurisdiction and it is not appropriate to extradite him in accordance with article 11. This Convention does not exclude criminal jurisdiction exercised in accordance with domestic law.”

164. The Supreme Court reports that there is no known case of a foreigner being tried for committing an act of torture, that no Salvadoran court has pronounced judgement after trying someone for torture, and that no letters of request have been received.¹⁷

Article 8. The offence of torture and extradition treaties

165. With regard to extradition for the crime of torture, the Constitution clearly establishes that an extradition treaty must exist. Furthermore, the law distinguishes between two types of extradition.

166. Active extradition is when one State requests another to hand over a person wanted by the law. Passive extradition is when a State is requested to hand someone over.

167. The active extradition procedure in El Salvador is as follows:

(a) Under article 139 of the Code of Criminal Procedure in force and the provisions of the various extradition conventions and treaties signed by El Salvador, courts can request other countries to extradite an individual who is on trial for some offence in the local courts;

(b) The court submits the request to the competent authority in the requested State through the Supreme Court of El Salvador, which has a constitutional mandate under article 182, paragraph 3,¹⁸ to deal with such requests and grant requests from abroad;

(c) The extradition request arrives at the Supreme Court of Justice, which assesses its legality under Salvadoran law and the international instrument on which the application is based. After this assessment, the court sitting in plenary decides to admit the request and refers it to the Ministry of Foreign Affairs, through the Ministry of Public Security and Justice, in accordance with article 35, paragraph 5, of the Regulations of the Executive;¹⁹

¹⁷ El Salvador is a State party to the Inter-American Convention on the Taking of Evidence Abroad and the Additional Protocol to the Inter-American Convention on Letters Rogatory.

¹⁸ Art. 182, para. 3: “To try the cases of detainees and cases not assigned to another authority; to order letters of request or letters rogatory to be issued for the taking of evidence abroad and ensure compliance with those from other countries, without prejudice to treaty provisions; and to grant extradition.”

¹⁹ Amendment to the Regulations of the Executive, Decree No. 125, published in Official Gazette No. 227, vol. 373, 5 December 2006.

(d) From the Ministry of Foreign Affairs, the extradition request is sent to the diplomatic mission of El Salvador in the requested country, which submits it to the competent authorities of that State;

(e) In other cases as required by domestic law, for example for the United States of America, extradition requests are submitted to its official diplomatic mission or consulate in the requesting State to allow the diplomatic or consular official to certify each of the grounds of the extradition request.

168. The procedure for passive extradition in El Salvador is as follows:

(a) All extradition requests from abroad are received by the Ministry of Foreign Affairs because they are sent either by the diplomatic mission or consulate of El Salvador or by the diplomatic mission of the requesting State in El Salvador;

(b) On receipt of the extradition request, the Ministry of Foreign Affairs, in accordance with articles 32 and 35, paragraph 5, of the Regulations of the Executive and article 182, paragraph 3, of the Constitution, refers it to the Supreme Court, through the Ministry of Public Security and Justice;

(c) At the Court, the extradition request is considered within the framework of the international instrument on which it is based, and domestic legislation;

(d) The Court sitting in plenary, in direct application of the constitutional provision mentioned above, orders the detention of the individual sought and holds a hearing to provide them with a legal opportunity to dispute the extradition request and establish grounds for its denial;

(e) If there are no grounds for rejection, the plenary Court will grant extradition and so inform the requesting State.

169. The State of El Salvador has signed bilateral treaties and conventions on extradition, the texts of which are compatible with the Constitution.

170. For countries with which there do not exist extradition treaties or conventions, requests have been submitted on the basis of the principle of reciprocity and other principles of international law.

171. In other cases, in accordance with domestic law, the extradition request must be submitted to El Salvador's diplomatic mission or consulate in the requesting country, to allow the diplomatic or consular official to certify each page of the extradition.

Article 9. Judicial cooperation during the extradition procedure

172. To establish mechanisms for judicial cooperation or mutual legal assistance the Salvadoran State has signed specific treaties on these subjects.²⁰

173. Another way of obtaining judicial cooperation is through the letters rogatory procedure, established in articles 139 and 140 of the Code of Criminal Procedure.

174. According to the records of the Supreme Court since 2000, no application for mutual legal assistance has been made for the offence of torture in any of the letters of request received from abroad or in any of those drafted by domestic courts and sent to other countries.

175. As torture is an offence under the Salvadoran Criminal Code, any request for mutual legal assistance shall be processed in accordance with the corresponding treaty signed by El Salvador.

176. The conventions and treaties on sentenced persons and on the enforcement of criminal sentences are intended to allow individuals sentenced in another country to complete part of their sentence in their country of origin. Those treaties must include the principle of dual criminality, i.e. the offence must be defined in the legislation of both countries.

²⁰ Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Panama, 1993.

Treaty between the Republic of El Salvador and the United Mexican States on the Enforcement of Criminal Sentences, 1993.

Agreement on Judicial Cooperation in Criminal Matters between the Republic of El Salvador and the Kingdom of Spain, 1997.

Treaty on the Transfer of Sentenced Persons between the Republic of El Salvador and the Kingdom of Spain, 1996.

Agreement on Judicial Assistance in Criminal Matters between the Republic of El Salvador and the Republic of Peru, 1996.

Treaty on Cooperation between the Government of the Republic of El Salvador and the Government of the United Mexican States concerning Mutual Legal Assistance in Criminal Matters, 1997.

Memorandum of Understanding on Judicial Cooperation with Colombia, 11 May 1992.

Agreement on Judicial Assistance in Criminal Matters with Ecuador, 22 April 2002.

Agreement on Judicial Assistance in Criminal Matters with Argentina, 14 August 2003.

Inter-American Convention on Mutual Assistance in Criminal Matters, 22 March 2004.

177. It is appropriate to mention that the State of El Salvador is party to certain treaties on terrorism and on psychotropic substances, among others, that include provisions on judicial cooperation.

Article 10. Education and information on the prohibition of torture in the training of personnel responsible for applying the law

178. The application of Article 10 of the Convention is the responsibility of those State institutions whose officials are tasked with enforcement of the law and the administration of justice, and of other institutions providing vocational and other training in human rights.

National Civil Police

179. Courses are organized periodically for the police. One example is the human rights training programme for officials of the National Civil Police, given by the Human Rights Institute of the Dr. José Simeón Cañas Central American University, which received a human rights award from the French Republic in 2004.

180. A total of 4,390 police officials and officers participated in seminars and training between 2003 and 2006.

Public Security Academy

181. As the institution responsible for general and specialist training for public security professionals responsible for law enforcement, the Academy offers a subject entitled “Fundamental rights and guarantees of the individual” as part of its study programmes, with a view to ensuring that police actions respect human rights.

182. Another important subject in the basic training of police officers is one entitled “Human rights”, which covers the protection, defence and universalization of human rights, including the theory and practice of their application to police work, and their application during detention, as well as the use of force and the legal constraints on the police.

183. Training programmes at executive level cover minimum guarantees in criminal matters and the principle of human dignity as a defence against the State, and international human rights standards as they relate to police duties, including the Code of Conduct for Law Enforcement Officials, the prohibition of torture, the use of force and unlawful and arbitrary detention.

Judicial Service Training College

184. The Judicial Service Training College offers courses on “International instruments for the protection of human rights” in the three geographical areas of the country, led by members of the Constitutional Division of the Supreme Court, the Office of the Procurator for the Protection of Human Rights and the Human Rights Institute of the Dr. José Simeón Cañas Central American University.

185. The College has established cooperation or collaboration agreements on general and specialist training for its teachers and instructors, and on training seminars on the subject of human rights, with authorities such as the Judicial Service Training College, the Supreme Court (justice sector executive implementation unit), the Office of the Procurator for the Protection of Human Rights, the Foundation for the Study and Application of Law and the Norma Virginia Guirola Herrera Women's Studies Institute.

Prisons Department

186. As part of its prison staff training component, the Prisons Department runs an induction, promotion and refresher course, which includes the subject of human rights. Between 2000 and 2006, 42 training courses were given at different levels, reaching 1,798 prison system officials. As part of the training, they are taught about proper treatment and compliance with the Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners.

Ministry of National Defence

187. The Armed Forces Education System (SEFA) is established in the Professional Military Service Act and the Regulations of the Armed Forces Education System. Article 21, paragraph 1, of the Regulations states that "The aim of the Armed Forces Education System is the basic, advanced and specialist training of military personnel." Among the courses operated by SEFA are courses on peace operations, courses for sergeants, courses for corporals, and the permanent programme on operational and technical units. The courses have a human rights component, which includes a subject entitled "Protection against unlawful and arbitrary detention and against torture and other cruel, inhuman or degrading treatment or punishment."

188. The courses at the various levels of SEFA offer approximately 573 teaching hours on human rights, including on the Convention against Torture. The Armed Forces Human Rights Handbook, which is compulsory reading on all SEFA courses, was approved in 2005.

United Nations human rights technical cooperation project

189. The human rights technical cooperation project carried out in El Salvador by the Office of the United Nations High Commissioner for Human Rights from 2003 to 2004 boosted El Salvador's own efforts to consolidate and preserve the achievements made since the signing of the Peace Agreements in 1992. Courses and training sessions were given on El Salvador's compliance, and its international obligations, in respect of the protection and promotion of human rights. At the same time the project helped strengthen the capacities of the main State agencies in the national system for the protection of human rights and facilitated improved inter-agency cooperation and the establishment of forums for coordinating the work of the responsible officials, advisers and experts.

Ministry of Education

190. The mission of the Ministry of Education derives from its constitutional mandate to preserve, promote and disseminate culture and education in order to achieve the comprehensive

development of the individual; build a more prosperous, fair and humane democratic society; instil respect for and observance of human rights; combat any spirit of intolerance or hatred; recognize the national reality and identify with the values of Salvadoran nationality; and work for the unity of the Central American people.

191. In its educational programmes, the Ministry of Education promotes education in values, human rights and moral and civic studies, which help improve attitudes among teachers, students and parents, and interpersonal relationships in schools, thereby fostering discipline among students and a greater sense of responsibility among teachers, and improving the atmosphere in these institutions.

192. The practice of “civic Mondays” in schools has spread, as an opportunity to present examples of values in practice in society and to promote respect for national symbols.

193. The “Solidarity and Social Harmony” component of the programme deals with clashes between rival student groups, as described in a preliminary analysis of violence between students from institutions in the metropolitan area of San Salvador, carried out by the Latin American Faculty of Social Sciences (FLACSO), and showing that this phenomenon has grown over the last few years, especially in the capital. Tolerance, inclusion, respect and solidarity must therefore counter youth violence. By putting these principles into practice, the students can enhance their education and move away from violent behaviour.

Article 11. Interrogation rules, instructions, methods and practices to prevent any cases of torture against persons subjected to any form of arrest, detention or imprisonment

194. Under article 193, paragraphs 3 and 4, of the Constitution, the Attorney General is responsible for conducting criminal investigations in cooperation with the National Civil Police, and instituting legal proceedings ex officio or on the application of a party.

195. With regard to article 11 of the Convention, when an arrest or detention is carried out by court order, the police bring in the person they have arrested. The other case is when an individual or police officer realizes that a crime is being committed. In that situation, the police can detain the person, which is known in legal terms as detention in flagrante delicto. In this case the police take the person to the Office of the Attorney General to initiate the investigations.

196. The rules of interrogation are set forth in the Code of Criminal Procedure, articles 259 (preliminary warnings), 260 (questions to establish identity), 261 (statement of facts), 262 (prohibited means of obtaining a statement), 263 (questioning) and 264 (remittal). Confessions are governed by article 221 of the Code of Criminal Procedure, which states that “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.

197. “Confessions are indivisible and both their favourable and their unfavourable elements must be accepted.” The articles referred to are supported by sufficient guarantees to ensure that no form of torture will be used to obtain confessions.

198. With regard to an extrajudicial confession, the court may reject or accept it. In its evaluation, the court determines whether it has been made against the accused’s will or under pressure, obliging them to make a statement against themselves. The court applies common sense, and on the basis of experience, professional training in criminal law and criminal procedure, and human rights treaties, can determine whether to accept an extrajudicial confession.

199. According to article 245 of the Code of Criminal Procedure, “Any police officials, officers or auxiliary staff who violate legal provisions or regulations, who fail to carry out, or delay in carrying out action forming part of their duties, or carry it out negligently or fail to obey the instructions of the public prosecutors shall be penalized by the courts in accordance with the applicable provisions of the police regulations. Police officials and officers who fail to comply with any of these principles shall incur disciplinary liability as appropriate, without prejudice to criminal liability.”

200. The competent authority for receiving prisoners’ complaints is the prisons supervision and sentence enforcement judge and the procedure is established in article 45 of the Prisons Act.

Article 12. Prompt and impartial investigation by the bodies responsible for administrating justice

201. According to article 193 of the Constitution and articles 83 to 85 of the Code of Criminal Procedure, the Office of the Attorney General shall be responsible for supervising criminal investigations and bringing criminal proceedings before the judges and courts.

202. The prosecutors will present their applications and conclusions in a reasoned and specific manner: orally at the initial hearing, the preliminary hearing, the public hearing and any other hearings the judges may convene; otherwise in writing.

203. The prosecutors will supervise the opening of the investigation and the actions of the police, ensuring strict compliance with the law. During the preparation of the case, they will carry out any inquiries requested by the judge or court, although they may broaden the investigation with a view to obtaining all the evidence on which to base the charge or request a dismissal. In all cases they shall be subject to judicial supervision.

204. In exercising their functions, prosecutors will have the authority to request information, require the cooperation of public officials and employees, call witnesses and, before applying for proceedings, order administrative detention, in strict compliance with the formalities and time limits prescribed in the Constitution and other laws. To that end, they can request the intervention of the police and use any measures that are deemed necessary.

Article 13. Steps taken to ensure that the complaints of victims of torture are promptly and impartially examined, and that the victims and witnesses are protected following those complaints

205. Article 3 of the Constitution establishes the principle of equality before the law and non-discrimination. The latter establishes respect for civil rights, in particular, i.e. the rights pertaining to the freedom of the individual. To have and exercise those rights there can be no discrimination of any kind on grounds of nationality, race, sex, or any other factor.

206. Victims' rights are governed by articles 13, 239 and 241 of the Code of Criminal Procedure. Furthermore, the recent Special Act on the Protection of Victims and Witnesses²¹ states in article 1 that, "The aim of the present Act is to regulate the measures of protection and support provided to the victims, witnesses and anyone else who finds themselves at risk or in danger as a result of their involvement in a criminal investigation or judicial proceedings."

207. According to article 13 of the Code of Criminal Procedure, victims shall have the right:

"(a) To be involved in and kept informed of all proceedings before the National Civil Police, the Office of the Attorney General and the courts, and to know the outcome of those proceedings;

"(b) To be informed of their rights and assisted by a lawyer of the Office of the Attorney General or by a special representative, as appropriate;

"(c) To be assigned a translator or interpreter if necessary;

²¹ The Act was published in Official Gazette No. 95, vol. 371, 25 May 2006.

Article 3 establishes that:

"In applying this Act, particular attention shall be paid to the following principles:

"(a) Principle of protection: Every judicial and administrative authority shall give prime consideration to the protection of the life, physical and moral integrity, freedom, property and safety of the individuals to whom this Act refers.

"(b) Principle of proportionality and necessity: The measures of protection and support ordered under this Act shall be commensurate with the level of risk or danger in which the persons requiring those measures find themselves, and may be implemented only when necessary to guarantee their safety.

"(c) Principle of confidentiality: All administrative or judicial information or activities in respect of the protection of persons covered by this Act shall be restricted to the respective investigation or proceedings, except as provided in this Act."

“(d) To give their opinion regarding any request that would benefit the accused, except if, having been called, they fail to appear in court;

“(e) To challenge decisions in favour of the accused, even when they have not been involved in the proceedings;

“(f) To be heard during the enforcement stage of the sentence before prisoners are granted leave of absence, conditional release or conditional suspension of the sentence;

“(g) To be notified if the complaint or accusation is abandoned or waived;

“(h) To provide evidence in person during the stages of the proceedings designated for that purpose in this Code, without prejudice to the powers of the prosecutor or the complainant;

“(i) To be compensated for harm arising out of the offence, to have damage caused by the offence repaired or the claimed object returned;

“(j) Not to have their own or their relatives’ identity disclosed if:

(i) They are minors;

(ii) Such disclosure would put them in obvious danger;

(iii) They so request;

“(k) To receive protection in special shelters for victims and their families, in cases where the police, prosecutor or judge believes it is necessary because the situation is complex or their lives are presumed to be at risk as provided in the Special Act;

“(l) To receive psychological or psychiatric support, if necessary;

“(m) For victims younger than 18:

(i) To be offered the possibility of testifying in an environment that is not formal or hostile and recording their testimony so that it can be replayed at the public hearing when necessary; and

(ii) For the Attorney General to be informed immediately;

“(n) To enjoyment of other rights established in this Code, in treaties in force and in other laws.”

208. Furthermore, article 17 of the Code of Criminal Procedure states that “All legal provisions that restrict the freedom of the individual, limit the exercise of a right or power conferred on the subjects of the proceedings, or which establish disciplinary measures shall be interpreted narrowly.”

Article 14. Redress and the victim's right to compensation in cases of torture

209. Title VI, book I of the Criminal Code (Civil consequences of punishable acts) states the following in article 114 with regard to civil liability: "Committing an act defined in law as a crime or offence shall incur civil liability under the terms provided for in this Code." Article 115, paragraph 3, of the Criminal Code states that "The civil consequences of the offence, which shall be stated in the sentence, include ... (3) Compensation to the victim or the victim's family for harm resulting from material or moral damage." Article 116, paragraph 1, states: "Any person who is criminally liable for a crime or offence shall also be civilly liable if the act gives rise to loss or injury of a moral or a material nature."

210. The civil proceedings resulting from a criminal offence are governed by article 42 of the Code of Criminal Procedure, which states that "The civil proceedings shall, as a general rule, be brought as part of the criminal proceedings, against the parties to the offence and, where appropriate, against whoever is civilly liable."

211. The forms of civil action are governed by article 43 of the Code of Criminal Procedure, which establishes that "In publicly actionable offences, [civil action] shall be taken in conjunction with criminal action, without prejudice to such action in the civil or commercial courts, but it may not be tried simultaneously in both jurisdictions."

212. "Where the Office of the Attorney General, ... institutes criminal proceedings through a complaint, it shall be understood that it is also bringing civil proceedings, unless it expressly declines to do so. Where civil proceedings are expressly waived by the complainant, it may only bring criminal action."

Article 15. Invalidity of statements made as a result of torture

213. With regard to the invalidity of statements made as a result of torture, the final paragraph of article 12 of the Constitution states that "Statements obtained against a person's will lack validity; anyone obtaining or using such statements shall be held criminally liable."

214. Criminal law permits the use of statements as a legal or lawful form of evidence, which means that the individual's fundamental guarantees must have been respected during the investigation of the offence and the gathering of oral and written evidence; otherwise a claim of unlawful evidence could be brought and the statement found invalid.

215. Article 15, paragraphs 3 and 4, of the Code of Criminal Procedure state that "Any kind of torture, ill-treatment, coercion, threat or deception, or any other method affecting or diminishing a person's will or violating their fundamental rights shall be prohibited."

216. "All the foregoing is without prejudice to any criminal responsibility that may arise."

217. "All legal provisions that restrict the freedom of the individual, limit the exercise of a right or power conferred on the subjects of the proceedings, or which establish disciplinary measures shall be interpreted narrowly" (Code of Criminal Procedure, art. 17).

218. “Accused persons shall have the right not to be subjected to techniques or methods which alter their free will” (Code of Criminal Procedure, art. 87).

219. “Under no circumstances shall the accused be required to swear an oath or make a promise, or be subjected to any form of coercion or threat; no methods shall be used to compel, persuade or cause them to make a statement against their will, and no charges or counterclaims shall be made in order to obtain a confession.

220. “Any measures that impair the accused’s freedom to make a decision, their memory or their ability to understand or to control their actions shall be prohibited, such as ill-treatment, threats, exhaustion, physical violence, torture or other inhuman or degrading treatment, deception, the administering of psychotropic drugs, truth serums, polygraph tests, or hypnosis” (Code of Criminal Procedure, art. 262).

221. The Code of Criminal Procedure contains a sole chapter on declarations of nullity and the causes and effects of nullity. Article 223 of the Code of Criminal Procedure states that: “No proceedings or procedural act shall be declared null unless the annulment is specifically allowed by law. Even then, there may be no annulment if it appears that the irregularity in question has not caused and could not cause harm to the rights or the defence of the party alleging such irregularity or the party benefiting from it.

222. “When a procedural act is declared null and void, it will invalidate only the subsequent acts that depend upon it, provided that such invalidity is essential to repair the harm to the applicant. When declaring the annulment, the judge or court shall also determine which prior or contemporaneous procedural acts become null and void by association with the annulled act and shall order, where necessary and possible, reconsideration of the annulled acts.

223. “A declaration of nullity shall not affect pretrial detention, except where annulment affects the grounds for this precautionary measure.”

224. Article 224 of the Code of Criminal Procedure (Causes of absolute nullity) states: “The proceedings are null absolutely, in whole or in part, only in the following cases:

“(a) When the court lacks jurisdiction *ratione materiae* or *ratione loci* under the terms of this Code, except where otherwise provided in this Code;

“(b) Failure on the part of the responsible official to bring charges, or failure to bring preliminary proceedings for judicial misconduct in criminal proceedings where this is a prerequisite;

“(c) Absence of a complainant or of a right of complaint in privately actionable offences, or absence of an application from a private party, except where otherwise provided in this Code;

“(d) Failure to provide the detained accused with a defence lawyer under the terms of this Code;

“(e) Passing of judgement without a trial by jury as stipulated in this Code, or passing of judgement with trial by jury in cases in which the court is not competent;

“(f) Proceedings fail to observe the fundamental rights and guarantees provided for in the Constitution, international law and this Code.

225. “Absolute nullity under paragraphs (a), (b) and (c) of this article shall void the entire proceedings, except that, in the case of preliminary proceedings for judicial misconduct, nullity shall be declared only in respect of those who have that constitutional privilege where there are other accused who do not; and in cases under paragraphs (d), (e) and (f), shall void the act or procedure in which the irregularity occurred, as well as any related acts, which should be reconsidered as established in the previous article.”

226. These articles of the Constitution, the Criminal Code and the Code of Criminal Procedure show: (a) that the Salvadoran State has legislation guaranteeing everyone’s right to be presumed innocent until proved otherwise in court and in accordance with the law; (b) that anyone accused of an offence has the right to be provided with the means necessary for their defence, notably the assistance of a defence lawyer; (c) that anyone detained should be told the reasons for their detention; (d) that anyone under arrest may remain silent if they do not wish to make a statement about the acts they are accused of.

227. It is also established in Salvadoran legislation that statements obtained by force, deception or other illicit means shall have no legal value, and cannot therefore be used as evidence at trial or in any other legal procedure. Anyone who obtains statements in this way, and any judge or official who gives them legal value, will be committing an offence.

Article 16. Prohibition of other acts that constitute cruel, inhuman or degrading treatment or punishment

228. The prohibition of other acts that constitute cruel, inhuman or degrading treatment or punishment is established in articles 4, 12 and 27 of the Constitution. Article 27 of the Constitution prohibits life imprisonment, degrading penalties, banning and all forms of torture. The same acts are also prohibited under the Criminal Code, the Code of Criminal Procedure, the Prisons Act,²² the Disciplinary Regulations of the National Civil Police and the Disciplinary Regulations of the Armed Forces, mentioned above.

229. Article 16 of the Convention refers to other behaviours that do not specifically constitute torture, indicating other actions against people such as ill-treatment and cruel, inhuman or degrading punishment, for which provision is made in criminal law.

²² Title VIII, chap. I, of the Prisons Act covers disciplinary measures in detention centres. These rules govern prison life and impose sanctions for breaking the rules. Corporal punishment such as confinement in a dark cell and other cruel, inhuman or degrading treatment are expressly prohibited.

230. El Salvador's legal system punishes acts, such as cruel treatment, which are defined in criminal law as arbitrary acts, as mentioned in article 320 of the Criminal Code,²³ and in articles 6, 35, 37 and 45 of the Prisons Act, on disciplinary measures in the prison system. When such measures are imposed, they must not affect detainees' physical or mental health.

231. Following calls from the public at large, the Legislative Assembly has at various times discussed the introduction of the death penalty and longer sentences, for certain offences that outrage public opinion, such as kidnapping and murder, or the rape and murder of minors. Both these sentences have been extensively debated in several sessions and as a result the Criminal Code and Code of Criminal Procedure have been amended in recent years.

232. With regard to the death penalty, political and public opinion are diametrically opposed, while some political positions are opposed to its introduction and others support it as an exemplary measure. The debate on the death penalty ends with the argument that El Salvador has abolished the death penalty (it is applied only for certain military offences, provided for under military law during a state of international war). Another strong argument against the death penalty is that it would be necessary to amend the Constitution.

233. In El Salvador there is no such thing as life imprisonment, which would mean spending one's whole life in prison. Nor are there any degrading punishments, i.e., punishments that humiliate a person and diminish their dignity.

234. Thus the State of El Salvador concludes its presentation of its second periodic report on its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

²³ Art. 320: "Public officials or employees or persons responsible for a public service who, in the performance of their functions, commit an unlawful or arbitrary act, harass or humiliate a person or damage property or exert unlawful or unnecessary pressure in the performance of their duties or functions, or permit a third person to do so, shall be liable to two to four years' imprisonment and barred from their post for the same period of time."

Bibliography

Constitution of the Republic

Regulations of the Executive

Judiciary Organization Act

Judicial Service Act

Judiciary Post Classification Manual

National Council of the Judiciary Act

Criminal Code

Code of Criminal Procedure

Prisons Act

Juvenile Offenders Act

Act on Monitoring of Juvenile Offenders and Supervision of Enforcement of Sentences

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Decree No. 21 amending the Act establishing the Salvadoran Institute for the Comprehensive Development of Children and Adolescents, Official Gazette No. 126, vol. 372, 7 July 2006

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International Covenant on Civil and Political Rights

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Convention on the Rights of the Child

International Convention on the Elimination of All Forms of Racial Discrimination

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Inter-American Convention to Prevent and Punish Torture

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

List of annexes

1. Regulations of the Executive
2. Judiciary Organization Act
3. Judicial Service Act
4. National Council of the Judiciary Act
5. Act on the Organization of the Office of the Attorney General of the Republic
6. Act on the Organization of the Office of the Procurator-General of the Republic
7. Police Order of Merit Act
8. Disciplinary Regulations of the National Civil Police
9. Public Security Academy Organization Act
10. Armed Forces Organization Act
11. Code of Military Justice
12. Professional Military Service Act
13. Regulations of the Armed Forces Education System
14. Rules of Procedure of the Armed Forces Court of Honour
15. Act establishing the Salvadoran Institute for the Comprehensive Development of Children and Adolescents
16. Refugee Status Determination Act
17. Organized Crime and Complex Offences Act
18. Decree No. 21 amending the Act establishing the Salvadoran Institute for the Comprehensive Development of Children and Adolescents, Official Gazette No. 126, vol. 372, 7 July 2006
19. Decree No. 1029, Special Act on the Protection of Victims and Witnesses, Official Gazette No. 95, vol. 371, 25 May 2006
20. Decree No. 45 establishing the Inter-Agency Commission on the search for children who disappeared during the armed conflict in El Salvador, Official Gazette No. 185, vol. 365, 6 October 2004

21. Decree No. 20 amending the Juvenile Crime Act, Official Gazette No. 126, vol. 372, 7 July 2006
22. Decree No. 54 amending the Prisons Act, Official Gazette No. 151, vol. 372, 17 August 2006
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