



EL SALVADOR Country Conditions

Using Science and Medicine to
Stop Human Rights Violations

Introduction

At the end of 2011, the number of unaccompanied children seeking a safe haven in the United States rose dramatically.¹ The largest number of new asylum applications came from three countries in Central America: El Salvador, Guatemala, and Honduras.² Ninety-two percent of pending cases of unaccompanied children in immigration courts currently come from these three Central American countries.³ As of March 2015, there were 41,540 cases of unaccompanied children from El Salvador still pending in the court system.⁴ The following country conditions report will focus on the causes of this massive migration of children from El Salvador, both unaccompanied and with their families, and also addresses other human rights violations in the country.

Background

Recent human rights violations in El Salvador are directly related to overwhelming violence and criminality in the country. Violence is mostly perpetrated by gang members that have been consistently present in the country, gang members who were deported from the United States, and other criminal actors like drug traffickers.⁵ The main gangs in El Salvador call themselves “maras.” The two largest and most infamous gangs are the Salvatrucha and the 18th Street. They are involved in criminal activities such as kidnapping, extortion, money laundering, and drug trafficking.⁶ While some of these gang members have been put in jail, they are still able to exert their influence by having visitors frequently smuggle weapons, drugs, and cellphones into the prisons. While some measures have been taken by the government to stymie these abuses and better protect human rights, including prison reform and public policies related to citizens’ security, the state institutions and political sector have not yet achieved this goal.⁷

Unaccompanied Minors

Between October 2013 and July 2014, 14, 591 children from El Salvador were detained by the United States for crossing the border illegally.⁸ Between January 2012 and August 2014, 5,401 Salvadoran children were deported from the United States and Mexico.⁹ There are currently 19,352 pending cases of unaccompanied minors from El Salvador in U.S. immigration courts.¹⁰

In a July 2014 report entitled “No Childhood Here,” 322 Salvadoran children who had been deported from the United States were interviewed. The report found that the three main reasons that children from El Salvador leave their home country are gang-related violence, poverty, and family reunification.¹¹

Gang Violence

The majority of unaccompanied children from El Salvador are males between the ages of 12 and 17 years.¹² Of the female children fleeing El Salvador, 6 of 10 are unaccompanied.¹³ Girls face even greater risks than those that males face.¹⁴ Boys fear gang recruitment and physical attacks or murder if they refuse to join.¹⁵ Girls face similar threats in addition to the constant fear of being kidnapped and raped by gang members.¹⁶ As children enter into adolescence, remaining in El Salvador becomes increasingly risky, as demonstrated by an extremely high rate of homicides among teenagers and those entering their twenties.¹⁷ Between 2005 and 2013, approximately 6,300 Salvadoran children and adolescents were murdered, with 984 killed in 2012 alone.¹⁸ The homicide rate remained the same in 2014; during the first two months of that year, there were 326 homicides and 322 reported disappearances.¹⁹ Of the children interviewed, 145 reported having the presence of one or more gangs in their neighborhoods.²⁰ Those who did not report the presence of gangs reported the presence of strangers involved in criminal activities in their community who often tried to recruit children.²¹

Children are also exposed to gangs while in school, with heavy gang presence either inside or immediately outside of the school. Of the children interviewed, 100 reported gang presence in their schools, 109 reported being asked to join a gang, and 22 suffered a physical attack after refusing to join.²² Children and their families have expressed that the fear of encountering gangs made them afraid to leave their homes, forcing them to limit their outside activities to school, work, and church. They also fear being killed in the crossfire of police encounters with gangs.²³

Both the number and intensity of gangs has increased throughout the country, and their territorial dominion has extended to both cities and rural communities. In fact, children report leaving in order to escape poor conditions in only three of El Salvador's poorest departments. In the rest of the departments, more than 50 percent of children report violence as the main reason for trying to immigrate to the United States.²⁴ More than 90 percent of children reported having a family member in the United States, but only 1 in 3 children mentioned this as their main reason for leaving the country.²⁵

There is great concern among parents in El Salvador who must choose between the danger of having their children live in a territory dominated by gangs or exposing them to the dangerous trip they would have to take in order to reach the United States. Many end up opting to send their children to the United States or making the trip with them rather than remaining in El Salvador.²⁶ Migrating to the United States is not always the first option for Salvadorans fleeing violence; El Salvador has seen an increased number of internally displaced people trying to relocate to other areas within the country. There has also been a dramatic increase in the total number of asylum petitions in countries like Belize, Costa Rica, Mexico, and Panama, many of whom come from El Salvador.²⁷

The National Council for Childhood and Adolescence and the Salvadoran Institute for Childhood and Adolescence are the two child protection agencies in El Salvador. However,

the investigations and prosecution of incidents of child abuse and violence carried out by both agencies have proven ineffective.²⁸ There is no designated program to support those children affected by gang violence or those children interested in leaving the gangs.²⁹ Children affected by gang violence generally have no confidence in the government and its institutions, leading many of them to not report incidents due to the lack of results in the investigations.³⁰ Only 16 of the children interviewed reported the violence they suffered to the police.³¹ In eight of those cases, the police did not write a report; in six cases, no investigation was undertaken after the initial report was made; and in two cases, the children received additional threats for reporting violence to the police.³²

Children and families who make it to the United States only to be deported back to El Salvador face even greater threats. One family who returned to El Salvador after voluntarily leaving the United States decided to start a new business in El Salvador, but were almost immediately met with extortion. They could not pay the amount of money the gang members demanded and were extremely scared to report the crime to the police. The only choice they felt they had was to try to flee again to the United States.³³ In another case, a group of four siblings, two boys and two girls, who had been detained at the U.S. border, were deported back to El Salvador without having the chance to appear before an asylum officer. As soon as they returned to El Salvador, the girls were approached by gang members to be their girlfriends. The girls refused and were later kidnapped and found murdered.³⁴

Gang violence remains the main reason that Salvadoran children leave the country. The different types of threats and violence perpetrated by gangs members – such as extortion, physical assaults, and forced recruitment – make migration the only alternative for children seeking a safe place to live.

The Story of Mr. O: Four Years of Gang Harassment and Intimidation

Mr. O was born in El Salvador in 1993. After his parents left for the United States, he continued to live with his grandparents in the same house. He reports that he encountered problems with gangs on a daily basis while growing up. He faced extortion from gang members who demanded money and threatened to kill him, his father, and his sister if he did not give them the money. The interactions with gang members, including his cousins who were involved in gangs, primarily consisted of forced recruitment efforts. Mr. O ended up in a juvenile detention center for a crime he did not commit. During his time in detention, he experienced severe beatings from gang members before being released for conflicting testimony. The last encounter Mr. O had with gang members was at a market where he was shot. After this incident he decided to escape to the United States.

Poverty

Another significant factor causing children to leave El Salvador is the poverty they face. According to the 2012 Multi-Purpose Housing Survey, 34 percent of households were living in poverty, of which 8.9 percent were living in extreme poverty and 25.6 percent were living in relative poverty.³⁵ In rural areas, poverty is the main reason children leave El Salvador. Children from Ahuachapán, Cabañas, and Chalatenango try to come to the United States to

make money to send back to their families in El Salvador to cover their basic needs.³⁶ Of the households living in poverty, 32.4 percent receive remittances from relatives residing in the United States, while 67.6 percent of the households living in poorer conditions receive larger sums in remittances.³⁷ Poverty – along with deprivation of social services like housing, healthcare, and education – are incentivizing Salvadoran children to migrate to the United States in search of fulfillment of the human rights they are being denied.

Family Reunification

Conflict-based migration is not a new phenomenon in El Salvador. From 1970 to 1979, people from El Salvador left the country due to the armed conflict with Honduras. Immediately following this period, civil war broke out and Salvadorans left the country as a result. Finally, following the earthquakes in January and February 2001, the United States government granted approximately 250,000 Salvadorans Temporary Protected Status.³⁸ As a result of this long history of steady migration, more than 50 percent of the children interviewed had at least one parent living in the United States. They expressed their desire to reunite with their parents, revive their relationships, and restore their memories and experiences together as a family.³⁹

Violence and Discrimination against Women

Sexual Violence

In 2014 in El Salvador, a rape was committed every two hours, a woman was murdered every 10 hours, and two of every three women who disappeared were found murdered.⁴⁰ Similar to the global trend, being a young or adolescent girl living in poverty in El Salvador often results in greater exposure to sexual violence. The main perpetrators of sexual violence against women are gang members belonging to the 18th Street gang and Mara Salvatrucha. Many cases of sexual violence go unreported due to the terror these gangs spread among entire communities,⁴¹ feelings of futility due to high levels of impunity in the judicial system, and because those who advocate for women's rights become targets.⁴² Women who do decide to bring their cases to the judicial system face gender discrimination by the judges who hear their cases. Moreover, women are disadvantaged by the importance that judges place on providing physical evidence in rape cases while simultaneously giving very little credibility to victim testimony.⁴³

The Salvadoran government has enacted laws seeking to protect women against domestic violence, rape, and other crimes. However, the government has not made the necessary budgetary appropriations to enforce those laws.⁴⁴ The patriarchal tradition in El Salvador has perpetuated discrimination against women. Under Salvadoran law, women are guaranteed the same rights as men, but this guarantee is not upheld in practice. Women continue to be discriminated against in the workplace. The practice of asking for a pregnancy test before hiring a woman is still used by many employers, and some employers fire women after finding out that they have become pregnant.⁴⁵ Women also suffer discrimination when it comes to equal pay for their work; on average, men receive 57 percent higher salaries than

women do for the same type of work. In addition, employers noticeably demonstrate a preference for men over women when hiring new employees.⁴⁶

The Story of Ms. M: Gang Threats and Sexual Violence

Ms. M is a nineteen-year-old woman from El Salvador. At the age of five years, Ms. M's father left for the United States. Several years later, her mother left as well, leaving Ms. M and her siblings with different caregivers who received money for her care. After living with different caregivers, Ms. M ended up living with Ms. Rosemarie who was the wife of her mother's brother. During the time that Ms. M lived with Ms. Rosemarie, she was physically, physiologically, and sexually abused. In the midst of this emotional, verbal, physical, and sexual abuse, Ms. M was threatened into silence. Ms. Rosemarie's brother, a member of MS-13 (a prominent, extremely violent gang in the region), told Ms. M that he would murder her family if she went to the police. Eventually, Ms. M was able to escape Ms. Rosemarie's home and come to the United States where she was taken to a detention center and then released to her parents.

The Abortion Ban

Salvadoran women face inhumane restrictions on their reproductive rights, including a complete ban on abortion. In 1998, the new penal code took effect, containing a complete ban on abortion with no exceptions under any circumstances.⁴⁷ If a woman is found guilty of committing the crime of abortion, she could face two to eight years in prison.⁴⁸ Under this law, 17 women have been convicted and imprisoned, many of whom are facing 30-year prison sentences despite the eight-year maximum sentence articulated in the law.⁴⁹ The first of these women was only released in February 2015, when the government granted her a pardon under immense local and international pressure.⁵⁰ The other 16 women still remain in prison. Women who have been raped are forced to choose between carrying their pregnancies to term and having a clandestine abortion, which would likely expose them to unsafe, possibly life threatening conditions. Between 2000 and 2011, 68 women were prosecuted for the crime of abortion, and approximately 35,000 clandestine abortions were performed each year during this time period.⁵¹

Adding to the difficulties associated with the ban on abortions is El Salvador's high rate of adolescent pregnancy. This is likely tied to insufficient sex education and limited access to contraception and information about reproductive health.⁵² A teenager interviewed for a report entitled "On the Brink of Death," expressed her opinion about sex education in the classroom:

Sex education in the schoolroom is just about biology, the development of the human body. Many teachers don't know how to broach the issue of sexuality from the emotional perspective, from the perspective of establishing a different type of relationship. Often, young people have mistaken ideas about sexuality, and it's because they obviously don't have access to scientific or genuine information on sex.⁵³

The high rate of adolescent pregnancy directly corresponds to the risks these women and girls subsequently face when they have an unplanned pregnancy. By banning abortion, the government of El Salvador forces pregnant women to make risky and unsafe choices. By upholding the current legislation on abortion, the government is failing to protect the rights of women to decide what to do with their own bodies, particularly after being victims of rape.⁵⁴

Discrimination against the LGBT Community

El Salvador does not criminalize homosexual relationships, but it does have a ban on same-sex marriage and adoption of children by same-sex couples. In 2010, the president of El Salvador issued decree no. 56, which prohibits any type of discrimination based on sexual orientation in public institutions.⁵⁵ However, the government has not passed any laws to prohibit such discrimination in the private sector.⁵⁶ In 2010, the Office of the First Lady created the Directorate of Sexual Diversity in order to promote the eradication of discrimination based on sexual orientation and sexual identity.⁵⁷ The government's efforts to implement policies aiming to reduce discrimination against the LGBT community have not prevented discrimination and violence against this population. From January to June 2013, there were 30 murders and 30 hate crimes committed against members of the LGBT community. For many of these crimes, no arrests were made and the causes or motivations remain unknown.⁵⁸

The LGBT community has suffered discrimination in academic environments, while seeking employment, and in the workplace. Despite possessing the required academic and professional qualifications, LGBT candidates are often rejected from employment opportunities on account of their sexual orientation. The transgender population has been particularly discriminated against when seeking employment. As a result, members of the LGBT community are relegated to employment in the informal job market and sex trade.⁵⁹ LGBT individuals have also suffered discrimination by public officials when trying to obtain their national identification documents because their names do not reflect their physical appearance.

Prison Conditions and Judicial Corruption

Overcrowded prisons are a pervasive problem in El Salvador, with prisons holding more than three times their capacity. According to data from the National Direction of National Penitentiary, as of early 2015, there were 28,697 inmates living in prisons in El Salvador, but the 22 prisons in the country only have the capacity to hold 8,490 people.⁶⁰ Overcrowding in prisons infringes on several of the inmates' fundamental human rights, including the right to health and the right to food. The government has not yet established any policies to resolve this crisis.⁶¹

Gang members represent a large percentage of the prison population, accounting for 10,576 prisoners in 2014.⁶² Many cases have been brought against prison guards for corruption. Three prison guards were removed from their jobs in 2013 for misconduct after they were found smuggling cell phones and drugs to jailed gang members.⁶³ The large percentage of

gang members in the prison population has increased corruption among guards, making it more difficult for the government to fight this problem.

The judicial system is undermined by corruption and ineffective mechanisms, contributing to sweeping impunity throughout the country. Conviction rates are below 3 percent.⁶⁴ At trials, judges deny certain witnesses the option to remain anonymous, exposing them to gang threats and retaliations.⁶⁵ A lack of guaranteed anonymity for witnesses makes it harder for prosecutors to bring criminals to justice and increases the levels of impunity in the country.⁶⁶ In addition, there are usually delays in trials and appeals due to understaffing, further limiting the judicial system's efficiency.

In 1993, El Salvador's government passed an amnesty law which prevented the prosecution of perpetrators of serious crimes committed against civilians during the civil war. Implementation of the amnesty law following the civil war also contributed to the high levels of impunity perpetuated by the judicial system and has been a significant obstacle in the investigation of human rights violations.⁶⁷ There is no effective public security strategy in place, and budgetary resources for the national police are insufficient to combat the high levels of crime affecting society.⁶⁸

Conclusion

Children from El Salvador have numerous circumstantial and personal motivations for leaving the country that have contributed to the large population of Salvadoran unaccompanied children in the United States. These motivations include gang violence, poverty, and the desire to reunite with family members, as well as insufficient governmental support and protection. Without significant structural changes, increased law enforcement, and the establishment of mechanisms to protect children's rights, the government's failure to effectively confront violence in El Salvador will continue to push children out of the country.

¹ UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014), available at <http://unhcrwashington.org/children>.

² *Id.*

³ TRAC, *Immigration Representation for Unaccompanied Children in Immigration Court* (2014), available at <http://trac.syr.edu/immigration/reports/371/>.

⁴ TRAC, *Juveniles Immigration Court Deportation Proceedings* (2015), available at <http://trac.syr.edu/phptools/immigration/juvenile/>.

⁵ UNHRC, *Universal Periodical Review Second Cycle, El Salvador* (2014), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/089/03/PDF/G1408903.pdf?OpenElement>.

⁶ Clare Ribando Seelke, *Gangs in Central America* (2014), available at <https://fas.org/sgp/crs/row/RL34112.pdf>.

⁷ IACHR, *Press Release 152nd special session* (2014), available at http://www.oas.org/en/iachr/media_center/PReleases/2014/086.asp.

⁸ *Id.*

⁹ *Id.*

¹⁰ TRAC, *Representation of Unaccompanied Minors in Immigration Court* (2014), available at <http://trac.syr.edu/immigration/reports/371/>.

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- ¹¹ Elizabeth Kennedy, *No Childhood Here: Why Central American Children are Fleeing Their Homes* (2014), available at http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.
- ¹² Center for Gender and Refugee Studies, *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges* (February 2014), available at http://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf.
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ Elizabeth Kennedy, *supra* note 11.
- ¹⁶ *Id.* at 5.
- ¹⁷ *Id.* at 3.
- ¹⁸ Center for Gender and Refugee Studies, *supra* note 12.
- ¹⁹ *Id.*
- ²⁰ Kennedy, *supra* note 11.
- ²¹ *Id.* at 5.
- ²² *Id.* at 5.
- ²³ *Id.* at 6.
- ²⁴ *Id.* at 7.
- ²⁵ *Id.* at 6.
- ²⁶ Center for Gender and Refugee Studies, *supra* note 12.
- ²⁷ Kennedy, *supra* note 11.
- ²⁸ *Id.* at 7.
- ²⁹ *Id.* at 7.
- ³⁰ *Id.* at 4.
- ³¹ *Id.* at 4.
- ³² *Id.* at 4.
- ³³ *Id.* at 8.
- ³⁴ UNHRC, *supra* note 5.
- ³⁵ Center for Gender and Refugee Studies, *supra* note 12.
- ³⁶ Kennedy, *supra* note 11.
- ³⁷ Center for Gender and Refugee Studies, *supra* note 12.
- ³⁸ *Id.*
- ³⁹ Kennedy, *supra* note 11.
- ⁴⁰ Center for Gender and Refugee Studies, *El Salvador: Documentation in Support of Asylum Applicants Based on Violence Against Women* (2014), available at http://cgrs.uchastings.edu/sites/default/files/HR_El_Salvador_VAW_CC_Memo_October_2014.pdf.
- ⁴¹ Associated Press, *El Salvador horrifying culture of gang rape*, New York Post (November 6, 2014), available at <http://nypost.com/2014/11/06/the-youth-are-theirs-el-salvadors-horrifying-culture-of-gang-rape/>.
- ⁴² UNHCR, *supra* note 1.
- ⁴³ Amnesty International, *On the Brink of Death, Violence Against Women and the Abortion Ban in El Salvador* (2014), available at <http://www.amnestyusa.org/research/reports/on-the-brink-of-death-violence-against-women-and-the-abortion-ban-in-el-salvador>.
- ⁴⁴ United States Department of State, *El Salvador Country Reports on Human Rights Practices* (2013), available at <http://www.state.gov/documents/organization/220654.pdf>.
- ⁴⁵ *Id.*
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ Amnesty International, *supra* note 43.
- ⁴⁹ Center for Reproductive Rights, *Marginalized, Persecuted and Imprisoned* (2014), available at <http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/El-Salvador-CriminalizationOfAbortion-Report.pdf>.

⁵⁰ Center for Reproductive Rights, *Miscarriage of Justice* (Feb. 27, 2015), available at <http://www.reproductiverights.org/feature/miscarriage-of-justice>.

⁵¹ IACHR, *supra* note 7.

⁵² Amnesty International, *supra* note 43.

⁵³ *Id.* at 19.

⁵⁴ *Id.* at 9.

⁵⁵ Immigration and Refugee Board of Canada, *Situation of Sexual Minorities in El Salvador* (2014), available at http://www.justice.gov/eoir/vll/country/canada_coi/el%20salvador/COUNTRY_FACT_SHEET.pdf.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ CEJIL, *Complain at the IACHR of El Salvador's prison crisis* (2015), available at <https://www.cejil.org/comunicados/denuncian-en-la-cidh-la-crisis-del-sistema-carcelario-en-el-salvador>.

⁶¹ *Id.*

⁶² OHCHR, *Universal Periodic Review Second Cycle, El Salvador* (2014), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/089/03/PDF/G1408903.pdf?OpenElement>.

⁶³ *Id.*

⁶⁴ United States State Department, *El Salvador Country Report on Human Rights Practices* (2013), available at, http://www.justice.gov/eoir/vll/country/DOS_HRR/2013/El%20Salvador.pdf.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ OHCHR, *supra* note 62.

⁶⁸ United States State Department, *supra* note 64.