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EL SALVADOR - PROFILE OF ASYLUM CLAIMS & COUNTRY CONDITIONS

## Table of Contents

	Page
I. Introduction	3
II. Overview	3
III. Claims and Relevant Country Conditions	5
A. Changed Country Situation	5
B. Claims Based on Political Opinion	6
1. Forced Recruitment	6
2. Politically Motivated Killings and Threats	6
3. Disappearances	7
4. Abuse and Torture	8
5. Arbitrary Detention	8
C. Claims Based on Race	9
D. Claims Based on Religion	9
E. Claims Based on Nationality	10
F. Claims Based on Social Group Membership	10
1. Labor Union/Peasant Organization Members	10
2. Homosexuals	11
IV. Other Considerations for Adjudicators	12

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El. Salvador/2

A. Motivation of Alleged Abusers	12
B. Amnesty and Military Service	12
C. Internal Relocation	13
D. Other Factors Influencing Migration	13
Appendix: Chronology	14
Map	17

## El Salvador/3

## I. INTRODUCTION

Country conditions profiles are produced by the Department of State's Office of Asylum Affairs for use by the Executive Office of Immigration Review and the Immigration and Naturalization Service in assessing asylum claims.<sup>1</sup> They are written by State Department officers with expertise in the relevant area and are circulated for comment within the Department, including to overseas missions, and to other agencies if appropriate. Adjudicators may also wish to review the applicable chapter of the annual Country Reports on Human Rights Practices, which can be accessed at [www.state.gov](http://www.state.gov) on the Internet, and other publicly available material on conditions in this country.

This profile is advisory only. It is only one of several sources of information relevant to the applicant's claim. Adjudicators may also rely on material provided by other credible non-governmental sources and international organizations. The determination regarding asylum is to be made by the Immigration and Naturalization Service and/or the Executive Office for Immigration Review.

## II. OVERVIEW OF RECENT DEVELOPMENTS

El Salvador is a constitutional, multiparty democracy with an executive branch headed by a president and a unicameral legislature. In 1999 voters elected President Francisco Flores of the Nationalist Republican Alliance (ARENA) to a 5-year term. In generally free and fair elections in March 2003, the former guerrilla organization Farabundo Marti National Liberation Front (FMLN) won a plurality of the seats in the Legislative Assembly. ARENA took second place, and three other parties won seats in the Assembly. The judiciary is constitutionally independent; however, it suffers from inefficiency and corruption. The Supreme Court and the Attorney General's office took initial steps during 2002 to address inefficiency and corruption in the judiciary.

The National Civilian Police (PNC) maintains internal security. The military is responsible for external security. The military

<sup>1</sup> By regulation, the Department of State may provide information on country conditions to help adjudicators assess the accuracy of asylum applicants' assertions about country conditions and their own experiences; likely treatment were the applicants to return; whether persons similarly situated are known to be persecuted; whether grounds for denial are known to exist; and other information relevant to determining the status of a refugee under the grounds specified in section 101(a)(42) of the Immigration and Nationality Act.

## El Salvador/4

provides support for some PNC patrols in rural areas, a measure begun in 1995 by presidential executive order in an effort to contain violence by well-armed, organized criminal bands, and also provides support to the law enforcement agencies for specific activities, including anti-narcotics efforts and reform school training for juvenile convicts. Civilian authorities generally maintain effective control of the military and security forces. Members of the police committed human rights abuses.

The free-market, mixed economy largely is based on services, agriculture, and manufacturing. The country's population is over 6.5 million. Although agriculture accounts for only 9 percent of the gross domestic product (GDP), it is the largest source of employment, engaging 20 percent of the work force, estimated at over 2.6 million persons. Coffee and sugar are the principal export crops and used to be the main sources of foreign exchange. The sustained decline in coffee prices has depressed activity in this sector, and the largest sources of foreign exchange are now family remittances and maquila exports. According to the Salvadoran Coffee Council, the decline in coffee prices reduced employment in the end of year harvest by approximately 40,000 jobs as of the end of December. The manufacturing sector, which contributes 23 percent of GDP, employs 16.5 percent of the work force. The textile sector, especially the maquila (in-bond assembly or processing) plants in free trade zones, represents about 50 percent of manufacturing sector employment and is the main source of new jobs. The economy is open, and private property is respected. The rate of real economic growth was estimated to reach 2 percent during the year. Inflation was expected to reach 2.5 percent. The official unemployment rate averaged 6.5 percent in the first 10 months of 2002; however, the rate of underemployment (less than full-time work or total income below the minimum wage) during the year was estimated at about 29 percent as of late November. In January and February of 2001, two earthquakes killed over 1,100 persons, made over 1.2 million homeless, and caused over \$1.9 billion in damage. According to the Ministry of Economy's statistics and census office, during the first 10 months of 2002 approximately 37 percent of the population lived below the poverty level, compared to 38.8 percent in 2001.

The Government generally respects the human rights of its citizens; however, there are serious problems in some areas. In

## El Salvador/5

2002, there were no politically motivated killings or disappearances; however, some police officers committed killings. Some police officers used excessive force and mistreated detainees. Prison conditions remained poor, and overcrowding was a continuing problem. At times, police arbitrarily arrested and detained persons. The FNC dismissed 372 employees and sanctioned 520 others. Lengthy pretrial detention remained a problem. The judiciary remained inefficient and hampered by widespread corruption. The Supreme Court and the Attorney General's office took initial steps during the year to address inefficiency and corruption in the judiciary. The Court dismissed 38 judges based upon formal notification by the Ministry of Education that they had not fulfilled the requirements for their degrees. The Attorney General asked the Court to lift the immunity of four judges whom he intended to prosecute. Impunity for the rich and powerful remained a problem. Violence and discrimination against women remained a serious problem. Discrimination against disabled persons also remained a problem. Abuse of children, child labor, and forced child prostitution were also problems. The Government did not protect adequately workers' rights to organize and bargain collectively. Trafficking in women and children was a problem.

## III. Claims and Relevant Country Conditions

## A. Changed Country Situation

Since the demobilization of the last guerrilla combat units in December 1992 brought to a successful conclusion the demilitarization phase of the U.N.-brokered peace accords, all claims from Salvadoran applicants should be reviewed in light of the sweeping changes which have taken place in that country. Violent crime (including crimes perpetrated by organized criminal gangs, sometimes called maras) is now the major security concern in El Salvador. Human rights NGOs, the Human Rights Ombudsman's Office, and the U.S. Embassy report that there have not been politically motivated crimes in El Salvador in years. Nonetheless, some asylum applicants continue to note fears deriving from the civil war.

Because many applicants have lived in the U.S. for some time, most asylum claims from El Salvador still derive from events that occurred prior to the peace accords, although some applicants have alleged more recent threats, harassment, and

El Salvador/6

even murder by ex-guerrillas or government police/military forces. Some of these more recent claims could involve the settling of continuing personal animosities by ex-combatants of both sides, but analysis of each specific claim will be required.

## El Salvador/7

## B. Claims Based on Political Opinion

Political opinion is the ground cited in most asylum applications from nationals of El Salvador, even in cases where there is little evidence that the political views of the applicant were related to the mistreatment alleged. The following are some of the most frequently alleged abuses or fears.

## 1. Forced Recruitment

There are many claims of actual or attempted forced recruitment during the civil war by the Salvadoran military and/or leftist guerrillas. The military practiced conscription and the FMLN used forced recruitment during the civil war, but neither has done so for more than 11 years. The FMLN has been participating in the political process since 1992, as noted above.

More recently, many Salvadoran applicants have alleged that they have been victims of actual or attempted forced recruitment by individuals or groups of usually unspecified motivation. Inasmuch as the peace process has eliminated political warfare between the government and the FMLN, most of these claims would seem to involve recruitment by criminal gangs motivated by criminal gain.

## 2. Politically-Motivated Killings and Threats

On an institutional level, neither the Salvadoran government, including the military, nor the FMLN, which is now a legitimate political party, is targeting for punitive action those who fought or sympathized with the opposing side during the civil war.

Some applicants claim to fear future harm from "death squads" of often unspecified or unclear identity and motivation. As noted above, there were no confirmed cases of political killings in 2002, although a number of cases from years ago remain unsolved. Unlawful killings were due to common crime, including crimes perpetrated by criminal gangs, rather than being politically motivated. However, there have been reports that police members, acting in an individual capacity, were

## El Salvador/8

involved in killings.

Some threats with political motivation were made against prominent citizens (among them the human rights ombudsman and other government officials) in 1996, including threats against 15 public figures made to media outlets ostensibly by a previously unknown entity calling itself the Roberto D'Ambuisson Nationalist Force (FURONA). However, according to the 1996 Country Reports and information received from the U.S. Embassy in El Salvador, it was not established that these groups existed as operational entities, and none of the threats were carried out.

Occasionally, claims are received from adherents of a political party alleging threats and/or violence by adherents of an opposing party. It should be kept in mind that since the signing of the peace accords in 1992, there have been two national elections in which parties with divergent political orientations participated, including the FMLN, ARENA, the PCN, the PDC and a number of other parties. Neither the government nor any national political party has a policy or practice of oppressing or harassing its political opponents, although it is possible that political rivalries or animosities at the local level could result in individual incidents of threats or violence. In such cases, internal relocation may be a viable option. However, even that may be unnecessary, since the violence usually consists of spontaneous confrontations between supporters of competing parties rather than planned acts of violence against specific individuals.

### 3. Disappearances

There were no alleged or verified cases of politically-motivated forced disappearances in 2002. Most disappearances were kidnappings for ransom. According to police statistics, 19 persons were kidnapped during 2002, a significant reduction from 49 in 2001.

The Association for the Search for Children who Disappeared as a Result of the Armed Conflict (Pro-Busqueda) acknowledged that neither the Government nor the Legislative Assembly would create a national commission to clarify what happened to children who disappeared during the war and whose whereabouts remain unknown. In December 2000, they accepted the Government's commitment to work with them to resolve these questions by forming a working group consisting of the office



## El Salvador/9

of the Attorney General, the Ministry of Foreign Affairs, the Salvadoran Institute for the Protection of Children, the National Secretariat of the Family, and the PDDH. In October 2001, the working group dissolved after Pro-Busqueda claimed that it was unable to receive cooperation from any of the organizations apart from the Attorney General's office, which was unable to procure any cooperation from the armed forces. Pro-Busqueda planned to push the legislative assembly again for the creation of a national commission.

## 4. Abuse and Torture

The Constitution prohibits such practices. During 2002, the Human Rights Ombudsman's office (PDDH) and the PNC Inspector General's office each received one complaint alleging torture by a police officer. There were 1,095 complaints filed with the PDDH against the PNC for all categories of human rights violations in 2002, compared to 1,142 in 2001. The vast majority of the complaints centered on violations of due process in criminal cases and improper detention. A number of complaints also involved the use of excessive force. The PNC was the subject of more human rights complaints than any other government institution. This reflects its authority as a police organ to use force and make arrests, and possibly the inexperience of many of its officers.

During 2002 the PDDH received 766 complaints of violation of the right of personal integrity by government authorities, compared to 736 in 2001. This category covers torture, inhuman or degrading treatment, mistreatment, disproportionate use of force, and improper treatment of detainees.

## 5. Arbitrary Detention

The Constitution prohibits arbitrary arrest and detention or compulsory exile. There were some complaints that PNC officers violated due process rights of detainees. During 2002 the PDDH received 205 complaints alleging violations of personal liberty, compared to 178 complaints in 2001. During 2001 the PDDH upheld the charges in 11 cases filed during 2001 and in prior years. The courts generally enforced a ruling that interrogation without the presence of counsel is coerced, and that any evidence obtained in such a manner is inadmissible. As a result, police authorities generally delayed questioning until a public defender arrived. By law, police may hold a person for 72 hours, after which the judge may order detention.

## El Salvador/10

for another 72 hours to determine if an investigation is warranted. Because of a lack of holding cells, such detainees often are sent to regular prisons, where they may be placed together with violent criminals. The law allows 6 months to investigate serious crimes before a judge is required to bring the accused to trial or dismiss the case. In exceptionally complicated cases, the judge or either party may ask the appeals court to extend the deadline for three months. However, many cases were not completed within the legally prescribed time frame. During 2002 5,568 inmates (more than half the prison population) were in pretrial detention. According to the Supreme Court, the judicial system received an average of 111 criminal cases per day during 2002, compared to an average of 134 per day in 2001.

A total of 19 inmates died in prison due to violence and illness during 2002.

## C. Claims Based on Race

El Salvador's population is largely homogeneous, and claims based on race are very rare. The few such claims received come from the very small indigenous population (perhaps a few hundred people). Indigenous people who continue to live in traditional communities generally do so without government interference. Access to land is a problem for indigenous communities, however, as few have legal land titles. The National Association of Indigenous Salvadoreans (ANIS) is involved in an ongoing land dispute and related lawsuit with a neighboring cooperative, which broke off from ANIS, and death threats possibly motivated by this dispute were received by ANIS leaders years ago. The indigenous population is believed to be among the poorest people in the country.

## D. Claims Based on Religion

A very few claims are received alleging harassment or mistreatment by the government or the FMLN based on religious affiliation or practice. These claims usually relate to incidents predating the 1992 peace accords. The Constitution of El Salvador provides for freedom of religion and the government respects this right in practice. According to information in past Country Reports, during the civil war years, political activity by some religious groups led to some

## El Salvador/11

Incidents of intimidation and/or violence, but these incidents were related to the groups' actual or suspected political activity rather than their religious beliefs. In recent years, neither the Human Rights Ombudsman's office, human rights NGOs, or the U.S. Embassy have received complaints of harassment, mistreatment, or discrimination based on religious grounds.

Although the population is predominantly Roman Catholic, members of other faiths (mainly various Evangelical and other Protestant groups) also practice their respective faiths without any hindrance. The government does not interfere in religious matters.

## E. Claims Based on Nationality

We have not seen any claims based on nationality.

## F. Claims Based on Social Group Membership

## 1. Labor Union/Peasant Organization Members

Some claims are received from leaders or members of unions or peasant associations alleging harassment or mistreatment by military/police forces, members of rival unions or cooperatives, and/or employers or landowners opposed to the applicant's union or agrarian organization activities. The majority of these claims date from the civil war period, but some are more recent.

There is a small organized labor sector with approximately 133 unions, 16 federations, and three confederations representing 142,500 workers in the private sector. In addition, there are 24 public employee associations and 26 peasant organizations that, together, have an estimated membership of 150,000 persons. Only private sector unions have the right to strike, but public sector associations have carried out strikes that were technically illegal but were in some cases treated by the government as legitimate. The right to bargain collectively is recognized by the Constitution only for employees in the private sector and autonomous government agencies, but in practice is used extensively by public sector employee associations as well. The Constitution prohibits discrimination against unions. However, some employers dismiss workers who seek to form unions. The Labor Code does not require the employers to reinstate workers dismissed for union

## El Salvador/12

activity, as recommended by the International Labor Organization; instead, it requires the employers to provide a severance payment.

During the civil war, although unions and peasant groups operated without legal restrictions and there were union leaders in the legislature, there also were credible reports of incidents of intimidation and/or violence by security forces against members of worker or peasant groups suspected of supporting the FMLN guerrillas. During the war years, some unions committed violent acts, including sabotaging factories.

The government, including the military and police as institutions, does not have a policy of harassing or repressing workers or peasants. In the mid-1990's, there were instances in which peasants occupied private land and either were evicted by police or left when police were called in.

On a local level, it is possible that animosities between worker or peasant organizations and particular employers or landowners, or between rival union or peasant groups, and their respective supporters could result in individual incidents of threats and/or violence. In some such cases, internal relocation may be a viable option.

## 2. Homosexuals

A few applicants claim to be members of a social group as homosexuals and to fear persecution in El Salvador. Generally speaking, El Salvador is a country in which traditional social values predominate. Homosexuality and related questions are rarely discussed publicly and generally are treated as non-issues. Some cultural bias against homosexuality undoubtedly exists in Salvadoran society, and individual incidents of violence or harassment may occur. We have no evidence, however, of a policy of official persecution or harassment of homosexuals in El Salvador or of interference in the private activities of consenting adults.

Our Embassy in San Salvador has advised that it has no reports of a pattern of direct targeting for abuse and/or harassment by the police or military of homosexuals, or reports indicating that they are targets of systematic violence from vigilante groups. There were threats made against the leaders of two AIDS awareness organizations by unidentified persons in 1994 and 1995.

## El Salvador/13

respectively, but the threats were not carried out. There were some instances of violence against homosexuals in 1999. An unknown assailant shot and wounded a man who was accompanying the director of the domestic homosexual rights organization Entre Amigos. On another occasion, Jose Armando Rivera, a transvestite prostitute known as "Doris," was murdered in San Salvador. Later in the year, Nestor Adonai Marenco (known as "Gloria"), another transvestite prostitute and a witness in the Rivera murder investigation, was killed in the same area. The NGO Entre Amigos reported that members of the municipal and National Civilian police regularly detained and harassed homosexuals and transvestites when they were out at night, although they were not engaged in criminal activity. The police countered that they monitored transvestites out at night because they had repeatedly been involved in crimes including prostitution, public nudity, and robbery. A homosexual employee of Entre Amigos reported that, in August four PNC officers detained him in a vacant lot, told him homosexuals should not exist, beat him, and threatened they would do him more severe harm if he reported the crime. He reported the crime. However, in November, the Attorney General's office told him the case did not fall in its jurisdiction for investigation because it was a petty offense. The law requires the Attorney General's office to prosecute petty offenses as well.]

El Salvador has no law prohibiting consensual homosexual activity. There also is no law specifically protecting homosexuals from discrimination based on sexual orientation. According to information provided to our Embassy in San Salvador by the Human Rights Ombudsman's Office (PDDH), there is one organization which can be considered a true gay advocacy group: Entre Amigos (Among Friends). While Fundasida and other AIDS awareness organizations do not deal directly with the issue of homosexuality, some may nevertheless provide support on some issues related to homosexuality.

## IV. Other Considerations for Adjudicators

## A. Motivation of Alleged Abusers

Given the current high level of random and criminal violence in El Salvador, it is often difficult to determine the motivation

## El Salvador/14

of the alleged abusers in Salvadoran asylum claims. Since the 1992 peace accords, both sides have worked non-violently within the democratic system, and recent mistreatment with political motivation would seem unlikely in most cases.

**B. Amnesty and Military Service**

In March 1993, the National Assembly passed a law granting amnesty to all Salvadorans who committed "political" as opposed to "common" crimes during the conflict. Although it was criticized as shielding human rights abusers, this action facilitated the re-integration of ex-combatants into society.

The fact that the amnesty law protects almost all asylum applicants who fought on either side in the war from prosecution by the government would seem to alleviate the legal concerns of former combatants. Concerns of applicants about conscription are likewise moot since the armed forces suspended involuntary military service with the signing of the peace accords. Military service is now voluntary, and those who evaded or deserted from military service during the war are not being prosecuted by the government.

**C. Internal Relocation**

The government permits freedom of movement throughout El Salvador, and there are no restrictions on citizens changing their places of residence or work.

Under the peace accords, land transfer and other programs were established to facilitate the reintegration of former combatants of both sides into the post-war society. Although many veterans took advantage of such programs, some found relocation difficult due to unfamiliar environments and lack of home community support systems.

**D. Other Factors Influencing Migration**

Since long before the civil war, El Salvador, which has the smallest land area of any country in Central America, has been

## El Salvador/15

a net exporter of labor. Its overpopulation (6.5 million people on 20,720 square kilometers of land that is only 27 percent arable) has resulted historically in many of its citizens seeking employment elsewhere. The endemic paucity of non-farm employment opportunities was further exacerbated by the war.

The two earthquakes in January and February 2001 that killed more than 1,100 people, slowed a stable but sluggish economy. With 1.2 million people left homeless and \$1.3 billion in damage, the country was set back, economically, many years. An analysis of El Salvador's balance of payments statistics shows that approximately 13% of GDP comes from almost \$2 billion in family remittances from the nearly two million Salvadorans living outside the country, mainly in the U.S.

INS statistics show that Salvadorans constitute the largest foreign population in the U.S. relative to the population of the sending country.

El Salvador/16

APPENDIX

CHRONOLOGY OF SIGNIFICANT EVENTS

October 1979	Reformist military officers overthrow military regime of General Carlos Humberto Romero. First of a series of military/civilian juntas is formed.
March 6, 1980	State of emergency declared following violent confrontations between leftist organizations and security forces. The state of emergency remains in effect for most of the next seven years.
March 24, 1980	Catholic Archbishop Oscar Romero is assassinated while saying mass in a San Salvador hospital. Ex-major Roberto D'Aubuisson is later implicated in the slaying.
April 18, 1980	Opposition forces form the Revolutionary Democratic Front (FDR), which becomes the political arm of the revolutionary opposition.
November 1980	Five armed guerrilla groups unite to form the Farabundo Marti National Liberation Front (FMLN).
March 28, 1982	Elections held for new Constituent Assembly. FDR invited, but refuses, to participate. Christian Democratic Party (PDC) wins plurality but in April right-wing parties unite to elect D'Aubuisson of the Nationalist Republican Alliance Party (ARENA) Assembly president.
March - May 1984	Presidential election held March 25. In May runoff election, Jose Napoleon Duarte of PDC is declared winner over D'Aubuisson.



## El Salvador/17

March 1989 Businessman Alfredo Cristiani of ARENA wins Presidential election in which for the first time a leftist party, Democratic Convergence (CD), participates. However, the armed conflict continues.

July 1991 UN Observer Mission in El Salvador (ONUSAL) is formed to verify implementation of a human rights accord signed by the government and the FMLN in July 1990.

January 16, 1992 Cristiani government and FMLN sign United Nations-brokered peace accords, ending nearly twelve years of civil war.

March 1994 Armando Calderon Sol (ARENA) elected President. FMLN participates for first time as a political party and emerges as the major opposition party in the legislature.

July 28, 1994 Joint Group for the Investigation of Illegal Armed Groups with Political Motivation in El Salvador issues its report.

March 1995 UN Human Rights Commission, citing the reduction in complaints of human rights violations, removes El Salvador from its list of countries subject to permanent monitoring.

April 1995 UN Secretary General declares peace process in El Salvador to be "irreversible." In response, the UN Security Council ends mandate of ONUSAL, which is replaced by a smaller UN mission (MINUSAL).

April 1996 UN presence further downsized to a small office of verification (UNUV).

El Salvador/18

December 1996	UNUV is dissolved and replaced with a small support group scheduled to function until June 1997.
March 1997	New legislative and municipal elections are held, resulting in significant gains for the FMLN.
June 1997	UN support group completes its scheduled operation. (The UN Development Program continues to be active in the country.)
October 1998	Hurricane Mitch kills many, damages infrastructure and agricultural production, and slows a growing economy.
June 1999	ARENA candidate President Flores takes office after defeating FMLN candidate Facundo Guardado in the Presidential elections.
March 2000	New legislative and municipal elections are held with FMLN winning 31 seats, ARENA winning 29 seats, and the rightist National Conciliation Party (PNC) winning 14 seats.
January-February 2001	Two earthquakes kill more than 1,000 people, cause over \$1.3 billion in damage, and leave more than 1.2 million people homeless.
[Does not fit in the same category with other things on this list. Even if you were to include it, this was not just INS/San Salvador. How about INS/US, GOES, etc?]	
December 2002	UN Secretary General declares an end to UN oversight of El Salvador's implementation of the peace accords.
March 2003	New legislative and municipal elections are held with FMLN winning 31 seats, ARENA winning 27 seats, and the

El Salvador/19

rightist National Conciliation Party  
(PNC) winning 15 seats.

El Salvador/20

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