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et du statut de réfugié du Canada

El Salvador: Domestic violence, including legislation, state protection and support services

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1. Situation and Statistics

Sources report that domestic violence in El Salvador is a "serious" (Freedom House 2013, 5; The Advocates July 2015, 1; US 25 June 2015, 16) and "widespread" problem (ibid.). According to the US Department of State's Country Reports on Human Rights Practices for 2014, "[a] large portion of the population considered domestic violence socially acceptable" (ibid., 16). In a report based on a follow-up mission to El Salvador, the UN Special Rapporteur on violence against women indicates that,

[a]ccording to the 2008 national survey on family health, 31 per cent of women interviewed declared having been subjected to physical violence before the age of 18. The same study revealed that 44 per cent of women who had been married or lived with a partner had suffered psychological violence, 24 per cent physical violence and 12 per cent sexual violence. (UN 14 Feb. 2011, para. 18)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Incidents of domestic violence in El Salvador that were reported include the following:

In September 2012, the Legislative Assembly removed immunity privileges from a deputy with the Grand Alliance for National Unity [Gran Alianza por la Unidad Nacional (El Salvador n.d.d)] because he was charged with domestic violence (US 19 Apr. 2013, 15).

In 2012, six women were killed by their partners, who were police officers (Al Jazeera 7 June 2013). News agency Inter Press Service (IPS) similarly states that six police officers were accused of violence against their partners in the first months of 2013 (10 Apr. 2013).

In May 2013, a former parliamentary adviser was imprisoned for six years for physically assaulting his ex-girlfriend (Elsalvador.com 19 Mar. 2014; Al Jazeera 7 June 2013).

In May 2013, a man was jailed for throwing hot cooking oil over his girlfriend in a domestic dispute (ibid.; La Prensa Gráfica 14 May 2013).

In June 2013, two men were arrested by the police for setting their girlfriends on fire following domestic disputes (US 21 Mar. 2014, 15). News agency Agencia EFE similarly reports that a man was arrested by the police for setting his wife on fire in June 2013 (Agencia EFE 23 June 2013). According to Country Reports for 2013, as of February 2014, both incidents were under investigation (US 21 Mar. 2014, 15).

Country Reports 2012 states that, according to the Office of the Attorney General (Fiscalía General de la República, FGR), there were 3,367 cases of domestic violence reported in 2012 (ibid. 19 Apr. 2013, 15). According to Country Reports 2013 and 2014, the National Civil Police (Policía Nacional Civil, PNC) received 1,904 domestic violence complaints between January and July 2013 (ibid. 21 Mar. 2014, 15) and 1,233 between January and September 2014 (ibid. 25 June 2015, 16). Sources report that, according to the Civil Chamber of the Supreme Court of El Salvador, there were 5,007 domestic violence cases reported in El Salvador in 2014 (The Advocates [July 2015], 1; CGRS 14 Aug. 2015, 10). According to the website of the Salvadoran Women's Organization for Peace (Organización de Mujeres Salvadoreñas por la Paz, ORMUSA), a feminist non-profit organization established in 1985 that promotes gender equity and social, political and economic empowerment for women (ORMUSA n.d.), the PNC registered 3,052 domestic violence complaints in 2013, 2,873 in 2014 and 614 between January and May 2015 (ibid. [2015]). Most of the domestic violence assaults in 2014 and 2015 took place in the departments of San Salvador, Usulután, and Santa Ana (ibid.).

In correspondence with the Research Directorate, the Director of the Center for Gender & Refugee Studies (CGRS) at the University of California's Hastings College of Law, who has conducted four fact-finding trips to El Salvador on gender-based violence, indicated that two "Salvadoran experts on violence against women" and an inspector of the PNC interviewed by CGRS in 2010 pointed out that there is a "strong link between [femicide] and domestic violence" and that "many of [CGRS's] contacts believe that [femicides] are often the end result of domestic battering" (CGRS 14 Aug. 2015, 9). For additional statistics on violence against women, see Response to Information Request SLV105266.

The UN Special Rapporteur notes in her report that, according to studies, "domestic violence and sexual abuse of women and girls in the private sphere remain largely invisible and are consequently underreported" (UN 14 Feb. 2011, para. 20). Other sources similarly state that domestic violence cases are underreported (US 25 June 2015, 16; CGRS 14 Aug. 2015, 9). Sources indicate that the economic dependency of women victims of domestic violence prevents them from reporting ongoing abuse (ibid., 7; AI Sept. 2014, 15; Director 11 Aug. 2015) or asking for protection (ibid.; CGRS 14 Aug. 2015, 7). Moreover, according to "a number of [CGRS's] sources," women's lack of confidence in the system is a barrier to reporting (ibid., 12-13). The UN Special Rapporteur quotes

the Women's Association for Dignity and Life (Asociación de Mujeres por la Dignidad y la Vida), also known as Las Dignas (Worthy Women), a Salvadoran feminist organization (Las Dignas n.d.), who notes that women do not report domestic violence for the following reasons, among others: "family and community pressure not to reveal domestic problems; ... fear of retaliatory violence by partners; poor awareness of rights among victims; lack of sufficient support services; and low confidence in the justice system" (UN 14 Feb. 2011, para. 21).

2. Legislation

The Law Against Domestic Violence (Ley contra la Violencia Intrafamiliar) was enacted in 1996 (CGRS 14 Aug. 2015, 2; El Salvador 1996) and modified in 2013 (ibid.). Article 3 of the Law defines domestic violence as [translation] "any act or omission, direct or indirect, that causes harm, physical, sexual, or psychological suffering, or death to members of the family" (ibid., Art. 3). Article 200 of the criminal code prohibits domestic violence and provides for sentences from one to three years of imprisonment (ibid. 1997, Art. 200). Country Reports 2014 states, without providing details, that "some forms of domestic violence carry higher penalties" (US 25 June 2015, 16).

Article 7 of the Law Against Domestic Violence includes provisions for different forms of protection available to victims of domestic violence, including court orders (El Salvador 1996, Art. 7). Article 10 of the Law includes provisions on measures that the police must take, including providing the victim with information and issuing temporary protection measures for up to 48 hours (ibid., Art. 10). Articles 7 and 10 of the Law are attached to this Response. The Director of CGRS explains that Articles 7 and 10

contai[n] provisions for both judicial protective orders issued by the courts and administrative protective orders issued by the National Civil Police. The law does not contain time restrictions for the duration of judicial orders, but does limit the duration of administrative orders. Prior to 2013, administrative protective orders issued by the National Civil Police, requiring aggressors to stay away from the victims of their abuse, were limited to a period of only 8 hours. In December 2013, the Legislative Assembly amended the provision to allow the National Civil Police to issue protective orders for up to 48 hours. Police officers throughout the country are responsible for enforcing both administrative and judicial protective orders. (CGRS 14 Aug. 2015, 2)

Similarly, Country Reports 2014 states that the criminal code "also permits restraining orders against offenders" (US 25 June 2015, 16). According to Article 338A of the criminal code, a person who fails to comply with a protective order issued by public authority under the Law Against Domestic Violence can be punished with imprisonment from one to three years (El Salvador 1997, Art. 338A).

Country Reports 2014 indicates that the criminal code's definition of rape "may apply" to spousal rape (US 25 June 2015, 15). The penalty for rape ranges between six and ten years of imprisonment (ibid.).

Sources report that laws against domestic violence are not effectively enforced (Director 11 Aug. 2015; US 25 June 2015, 16), as is the case with laws against rape (ibid., 15). The Director of CGRS similarly stated that laws against domestic violence are not effectively enforced "due to deep-seated discriminatory norms, inadequate implementation, and insufficient funding" (CGRS 14 Aug. 2015, 5).

3. State Protection

3.1 Police and Judiciary

Article 13 of the Law Against Domestic Violence states that domestic violence can be reported to the PNC, the courts or the FGR (El Salvador 1996, Art. 13).

Between January 2014 and February 2015, the Advocates for Human Rights, a US-based NGO dedicated to the promotion and protection of "international human rights standards and the rule of law" through monitoring, legal representation and publications, interviewed women who had been victims of domestic violence when they lived in El Salvador; these women

frequently reported that they did not go to police to report the violence because of the fear of retribution, as well as the lack of protection from the police. One woman reported that she feared that if she went to the police, her intimate partner would "have the gangs do something horrible to her." Many of the interviewees reported that the police were connected with the gangs and that information reported to the police was not kept confidential. (The Advocates [July 2015], 1, 4)

In a 2013 interview with CGRS, a UN Population Fund official in El Salvador, who is an "expert on laws on gender-based violence," noted that "the danger of reporting [is] a key problem, because in light of inadequate protection systems, making a report puts the victim even more at risk of further violence by her abuser" (CGRS 14 Aug. 2015, 13).

Al Jazeera states that "[a] prevailing machismo attitude among the police, prosecutors and judiciary in particular continues to be a huge obstacle to justice for women" (Al Jazeera 7 June 2013). The Director of CGRS indicated that in a 2013 interview, a legal consultant to "the Gender Unit of the Commission on Women and Gender Equality and the Commission on the Family, Children and the Elderly" of the Legislative Assembly expressed the view that "[s]trong discriminatory biases against women remain pervasive among judicial officials, police, prosecutors, doctors and other actors involved in enforcing operative laws, including the [Law Against Domestic Violence]" (CGRS 14 Aug. 2015, 6). Moreover, CGRS notes that police officers "consistently fail to adequately investigate criminal cases of violence against women under the Criminal Code" (ibid., 8). According to the legal consultant interviewed by CGRS, "police and prosecutors often re-victimize women by blaming the victim for her injuries and subjecting the women to repeated interrogation, including on inappropriate and unnecessary topics" (ibid.). The principal attorney at the organization Las Dignas, in a 2011 interview with CGRS, reported that "police and prosecutors, even decades after the relevant amendments to the Criminal Code, still view domestic violence as 'small crimes'" (ibid., 8). CGRS also notes that

[t]he judiciary does not effectively prosecute and resolve domestic violence cases. According to an official within the Gender Unit of the [FGR], a key problem in prosecution of domestic violence cases is the fact that judges lack sensitization to victims' rights and needs. (ibid., 13)

In a September 2013 interview with AI, a woman who suffered physical and psychological violence from her partner stated that when she filed a complaint about domestic violence, a judge told her to attend parenting classes together with her abusive ex-partner (AI Sept. 2014, 16). Another victim of domestic violence, interviewed in March 2014, indicated that in response to her complaint about

domestic violence, the judge told her and her abusive husband to attend Mass every Sunday in order to improve their relationship (ibid., 16-17, 56).

Country Reports 2014 indicates that the law "prohibits mediation in domestic violence disputes" (US 25 June 2015, 16). The principal attorney at Las Dignas similarly said that "formal conciliation procedures" had been repealed under the Law Against Domestic Violence (CGRS 14 Aug. 2015, 7). The Director of CGRS explained that initially, this law allowed women to enter into conciliation [1] with their abuser to resolve the claim, but

government officials mistakenly applied this provision as a requirement of women to engage in a process aimed towards "reconciliation" of their relationship with abusers, particularly if they had children - often resulting in officials pressuring victims to remain with abusers instead of seeking damages or protection from violence. (ibid., 2)

According to the Director of CGRS, due to "the widespread abuse" of this provision, the Legislative Assembly abrogated it in 2002 (ibid.). However, according to the principal attorney at Las Dignas, judges "continue to press for reconciliation, even in cases where danger of further abuse exists" (ibid., 7). Country Reports 2012 indicates that, according to the FGR, out of 3,367 domestic violence cases reported in 2012, 51 resulted in convictions and 811 were resolved through mediation (US 19 Apr. 2013, 15). Further information on statistics related to domestic violence cases could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The legal consultant to the Legislative Assembly interviewed by CGRS and a female police officer interviewed by BBC both stated that some police officers think of women as male abusers' property (CGRS 14 Aug. 2015, 8; BBC 8 Mar. 2013). The female police officer further stated that, according to "many of [her] male colleagues," men have the right to mistreat their wives (ibid.). She explained that when a woman reports a domestic violence dispute and a [translation] "macho" police officer takes the call, he tells her that there is no one available to help her (ibid.). The legal consultant to the Legislative Assembly stated that

[L]aw enforcement officials view abuse as justified particularly with respect to a woman who fails to to her male partner or to assume traditional gender roles. In rare cases where the woman succeeds in making a complaint with the police, prosecutors with these same biases will often elect not to prosecute. (CGRS 14 Aug. 2015, 8)

According to the principal attorney at Las Dignas, "[t]here are barriers to women obtaining protective orders from the police and from judges, who often believe the woman is responsible for the violence that befalls her" (ibid., 7). In a telephone interview with the Research Directorate, the Director of the Specialized Assistance Unit to Women Victims of Violence of the Office of the Ombudsman for Human Rights (Jefa de la Unidad de Atención Especializada a Mujeres Víctimas de la Violencia, Procuraduría para la Defensa de los Derechos Humanos, PDDH) expressed the opinion that even when the protection orders are in force, aggressors do not respect them (Director 11 Aug. 2015). The Director of CGRS stated that

[e]ven when a woman acquires an order of protection from her aggressor, law enforcement officials often do not enforce such orders. The biases ... and generally inadequate resources lead to a lack of follow up on measures of protection by the police - as well as resistance to issuing the 48-hour

administrative protective orders authorized under the [Law Against Domestic Violence]. (CGRS 14 Aug. 2015, 7)

Sources report that a man killed his ex-partner in front of their daughter (US 25 June 2015, 16; El Diario de Hoy 1 Oct. 2014) on 30 September 2014 (ibid.). The woman had previously been granted a restraining order (ibid.; US 25 June 2015, 16), but authorities reportedly "did not provide further protection to the victim" (ibid.).

Statistics on protection orders issued by the authorities could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Support Services

Sources indicate that there is one state shelter (CGRS 14 Aug. 2015, 15; AI 25 Feb. 2015, 142; Director 11 Aug. 2015), which is run by the Salvadoran Institute for the Development of Women (Instituto Salvadoreño para el Desarrollo de la Mujer, ISDEMU [2]) (ibid.; CGRS 14 Aug. 2015, 15). The shelter can accommodate 35 women and children victims of domestic violence (AI Sept. 2014, 55 (Note 30)). According to ISDEMU's website, the shelter provides psychological, medical, legal and social assistance, among other services (El Salvador n.d.b). In addition, ISDEMU provides a 24/7 free telephone help line (ibid. n.d.c).

The Director of CGRS pointed out that NGO-run shelters are "extremely limited" (CGRS 14 Aug. 2015, 16). According to a Salvadoran judicial official interviewed by CGRS, the Center for Women's Studies (CEMUJER) runs a shelter in San Salvador that accommodates two to three women and "only in circumstance of extreme crisis" (ibid.). The Director of the Specialized Assistance Unit to Women Victims of Violence of the PDDH similarly stated that NGO-run shelters for women victims of violence are "temporary" and "small" (Director 11 Aug. 2015).

Country Reports 2014 states that in 2014 ISDEMU, in coordination with the judicial and executive branches of the government, and civil society groups, conducted public awareness campaigns against domestic violence (US 25 June 2015, 16). In November 2014, ORMUSA, according to its website, launched a campaign focusing on violence against women and particularly on domestic violence (ORMUSA [2014]). According to ORMUSA, the messages were transmitted through media sources and ads in public transportation, as well as calendars and t-shirts, among others (ibid.).

For more information on violence against women and support services, see Response to Information Request SLV105266.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Director of CGRS explained the concept of conciliation in these terms: "Conciliation is not the same as 'reconciliation.' Conciliation involves the determination of whether there are any issues

between the two parties upon which they can agree, therefore removing them from further dispute. Reconciliation, in contrast, involves the restoration or reestablishment of the relationship between the couple" (CGRS 14 Aug. 2015, 2 (Note 4)).

[2] ISDEMU is the government agency responsible for implementing and monitoring national policies related to women, as well as for developing programs to combat violence against women (El Salvador n.d.a).

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Oral sources: CEMUJER; El Salvador - Embassy in Ottawa, Fiscalía General de la República, Instituto Salvadoreño para el Desarrollo de la Mujer, Policía Nacional Civil, Secretaría de Inclusión Social; Fundación de Estudios para la Aplicación del Derecho.

Internet sites, including: Alianza por la Solidaridad; Asociación de Mujeres Mélida Anaya Montes; Asociación de Mujeres por la Dignidad y la Vida; Asociación Salvadoreña de Mujeres; Diario La Página; ecoi.net; El Faro; El Salvador - Asamblea Legislativa, Centro de Documentación Judicial, Comisión de Derechos Humanos, Corte Suprema de Justicia, Embassy in Ottawa, Fiscalía General de la República, Imprenta Nacional, Ministerio de Justicia y Seguridad Pública, Ministerio de Relaciones Exteriores, Policía Nacional Civil, Presidencia de la República, Procuraduría para la Defensa de los Derechos Humanos, Secretaría de Inclusión Social; Factiva; Fundación de Estudios para la Aplicación del Derecho; Globalex; Human Rights Watch; Inter-American Development Bank; Interpeace - Oficina Regional para América Latina; Inter Press Service; Organization of American States; Periódico Digital; Red Feminista Centroamericana contra la Violencia hacia las Mujeres; Reproductiverights.org; SHARE El Salvador; Small Arms Survey; United Nations-International Labor Organization's Oficina Regional para América Latina y el Caribe, Office of the High Commissioner for Human Rights, Refworld, UN Committee on the Rights of the Child, UN Development Program, World Health Organization; United States - Bureau of Diplomatic Security, Embassy in San Salvador, Library of Congress; Universidad Centroamericana "José Simeón Cañas"; Universidad de El Salvador; Voces.

Attachment

El Salvador. 1996 (amended 2013). Ley contra la Violencia Intrafamiliar (Law Against Domestic Violence). Excerpts translated by the Translation Bureau, Public Works and Government Services Canada. [Accessed 13 Aug. 2015]

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