



El Salvador

Joint Submission to the UN Universal Periodic Review  
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**Submission by CIVICUS: World Alliance for Citizen Participation  
NGO in General Consultative Status with ECOSOC**

**And**

**FESPAD - Fundación de Estudios para la Aplicación del Derecho**

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## 1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 190 countries throughout the world.
- 1.2 FESPAD is an institution committed to human rights, promoting gender equity, empowerment, social leadership, analysis and political and legal contributions, to contribute to a constitutional and democratic institutionalism that advances social justice. FESPAD was founded in 1998.
- 1.3 In this document, CIVICUS and FESPAD examine the Government of El Salvador's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse El Salvador's fulfilment of the rights to freedom of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in October 2014. To this end, we assess El Salvador's implementation of recommendations received during the 2<sup>nd</sup> UPR cycle relating to these issues and provide specific, action-orientated follow-up recommendations.
- 1.4 During the 2<sup>nd</sup> UPR cycle, the Government of El Salvador received four recommendations relating to the space for civil society - civic space - all of which were accepted. However, an evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrates that the Government of El Salvador has partially implemented only one recommendation regarding the operating environment for civil society, and has failed to implement three recommendations regarding the protection of HRDs.
- 1.5 CIVICUS and FESPAD are deeply concerned about the continuing violence and stigmatisation of LGBTQI rights defenders, women's rights defenders and sexual and reproductive rights defenders.
- 1.6 CIVICUS and FESPAD are also alarmed by the continued attacks, the lack of protection and killings of journalists, and inadequate safeguard mechanisms.
- 1.7 As a result of these issues, civic space in El Salvador is currently rated as 'obstructed' by the CIVICUS Monitor, indicating the existence of serious constraints on civil society's fundamental rights.<sup>1</sup>

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<sup>1</sup> CIVICUS Monitor: El Salvador, <https://monitor.civicus.org/country/el-salvador>.

- Section 2 of this submission examines the implementation by El Salvador of the UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines the implementation by El Salvador of the UPR recommendations and compliance with international human rights standards relating to the protection of HRDs and journalists.
- Section 4 examines El Salvador's implementation of the UPR recommendations and compliance with international human rights standards in the areas of the freedom of expression, media independence and access to information.
- Section 5 examines El Salvador's implementation of the UPR recommendations and compliance with international human rights standards concerning the freedom of peaceful assembly.
- Section 6 offers a series of recommendations to address the concerns raised.
- An annex on the implementation of the recommendations of the second cycle of the UPR related to the civic space.

## **2. Freedom of association**

**2.1** During the evaluation of El Salvador in the 2nd cycle of the UPR, the government received and accepted one recommendation on the right to the freedom of association and the creation of an enabling environment for CSOs. The government pledged to "Continue its efforts to involve relevant stakeholders, including civil society, as a partner of the Government in promoting and protecting human rights" (104.3). The recommendation has been partially fulfilled, as the government has, at times, enabled spaces for dialogue with civil society representatives. However, despite initiatives to consult civil society, obstacles to achieving the full and effective participation of civil society remain, in part due to unwarranted barriers to securing legal recognition of CSOs.

**2.2** Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which El Salvador is a state party, guarantees the freedom of association. Article 7 of the Constitution of El Salvador also establishes the freedom of association. Despite these commitments, the enjoyment of these rights has been hampered by subjectivity and discretion on the part of the government, which has prevented or delayed the registration of CSOs as non-profit associations or foundations, and unwarranted restrictions on environmental protection organisations and those that promote the rights of LGBTQI people.

**2.3** Several civil society groups in El Salvador consulted by FESPAD have articulated that attempts to support civil society participation in public affairs remain inadequate and ineffective. There are cases where CSOs have been invited by the government to attend formal spaces of participation, but their requests have not been heard, or when they have been heard, their comments were not reflected in the final agreements of the meetings.<sup>2</sup>

**2.4** CSOs also face obstacles due to the lengthy processes involved in achieving their registration and obtaining legal personality, as well as the costs involved, and extra-legal factors, including violence and discrimination, that make it difficult to exercise their freedom of association. The freedom of association is regulated in El Salvador by the Law of Non-Profit Associations and Foundations (Legislative Decree No. 894).<sup>3</sup> CSOs have stated that the length and costs of the registration process can particularly affect small and rural CSOs.<sup>4</sup> For example, FESPAD documented the case of Asociación de Artistas de Oriente, a local cultural CSO. In this case, the registration process took two years and required it to engage a lawyer to advise it through the process, which constitutes an additional burden.<sup>5</sup> FESPAD has also reported that organisations are required to obtain copies of many documents, which makes the process expensive, and that registration processes are not clear, and vary depending on the office where the registration is made.<sup>6</sup>

**2.5** Currently, the law does not establish that the registration office may deny a registration because of the objective of the organisation. However, in 2007, Asociación para la Libertad Sexual El Nombre de la Rosa saw its registration denied because its objective is to work with the LGBTQI community.<sup>7</sup> The law has not been amended and therefore continues to allow for the exercise of such discretion.

**2.6** In 2016, El Salvador initiated a consultation process for a new Law for Social Non-Profit Organisations. Civil society was invited to participate in this process in 2016 and 2018, and FESPAD has been able to provide comments, calling on the government to adhere to international standards on the freedom of association.

**2.7** The work of civil society remains undermined by the harassment and violence exerted against particular contingents of civil society, including those that work on LGBTQI

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<sup>2</sup> 'Follow-up report on the recommendations of the second Universal Periodic Review of El Salvador', Collective of Social Organizations for the Universal Periodic Examination, August 2018, para. 72.

<sup>3</sup> Law of Nonprofit Associations and Foundations (Legislative Decree No. 894), published in Official Gazette, No. 238, Vol. 333, 17 December 1996.

<sup>4</sup> Enabling Environment National Assessment (EENA) El Salvador, FESPAD and Civic Space Initiative, November 2018, pg. 52. To be published in 2019.

<sup>5</sup> Ibid., pg. 51

<sup>6</sup> Ibid.

<sup>7</sup> Ibid., pg. 53.

and women's rights. For example, the Inter-American Commission on Human Rights (IACHR) reported that on 20 February 2015, members of the police tried to enter the offices of the Solidarity Association to Promote Human Development (ASPIDH), a human rights organisation for transgender people in El Salvador, without a search warrant.<sup>8</sup> During this incident the police insulted ASPIDH members in relation to their identity and gender. In addition, LGBTQI organisations have reported being victims of police violence, constant arrests and searches of people entering their offices and, above all, lack of respect and recognition of their work as HRDs.<sup>9</sup>

**2.8** The Agrupación Ciudadana por la Despenalización del Aborto and Colectiva Feminista para el Desarrollo Local are two organisations that work for the sexual and reproductive rights of women in El Salvador. During 2014 and 2015, these organisations were stigmatised for their work of providing legal advice to women who have suffered obstetric emergencies and have been convicted of homicide. The organisations were subject to a smear campaign, which included several press articles, in which they were accused of betraying the country and promoting death, and statements by state agents who referred to the organisations in similar terms.<sup>10</sup>

### **3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists**

**3.1** Under El Salvador's previous UPR examination, the government received and accepted three recommendations on the protection of HRDs, journalists and civil society representatives. Among other recommendations, the government committed to "Properly investigate all attacks against human rights defenders and prosecute their perpetrators" (103.34). These recommendations have not been implemented and attacks against HRDs and journalists continue.

**3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure protection to HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression. However, despite these international protections, El Salvador does not have a national protection mechanism for HRDs, civil society activists or journalists, and attacks against them continue.

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<sup>8</sup> 'Violencia contra personas LGBTI', Inter-American Commission on Human Rights, 12 November 2015, <https://www.acnur.org/fileadmin/Documentos/Publicaciones/2015/10247.pdf>.

<sup>9</sup> 'Injusticia Uniformada: Violencia Estatal contra Personas LGBT en El Salvador', Proyecto de Investigación del Instituto de Derechos Humanos Centro de Derecho de la Universidad De Georgetown, 21 April 2017, <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/2017-HRI-Report-Uniformed-Injustice-Spanish.pdf>.

<sup>10</sup> '¡Defensoras bajo ataque! Promoviendo los derechos sexuales y reproductivos en las américas', Amnesty International, 2015, <https://www.amnesty.org/download/Documents/AMR0127752015SPANISH.PDF>.

- 3.3** The high rates of violence, particularly caused by gang wars, make the environment for the defence of human rights in El Salvador difficult. According to International Crisis Group data, there are approximately 60,000 active gang members and 500,000 supporters and passive or retired members in El Salvador, who control a large part of the territory in the urban peripheries. Violence caused by gangs made El Salvador the country with the highest homicide rate in the world in 2015.<sup>11</sup> The violence has also been reflected in a high number of enforced disappearances and hundreds of people who have left the country to seek asylum in countries such as Costa Rica, Mexico, Spain and USA.
- 3.4** In 2011 El Salvador reformed its Criminal Code, to include as an aggravating circumstance of a crime when it is committed because the victim is a human rights defender.<sup>12</sup> However, despite these encouraging measures, the existing legislative framework and institutions do not provide sufficient protections against attacks to HRDs. In El Salvador the right to defend human rights is not recognised and the conditions of protection to exercise this right are not currently guaranteed. In September 2018, CSO coalition Mesa Por el Derecho a Defender Derechos, of which FESPAD is a member, presented a bill proposal that seeks the recognition and protection of HRDs. FESPAD also presented the government with guidelines for a policy for HRDs.<sup>13</sup>
- 3.5** In particular, in El Salvador, defenders of environmental human rights and sexual and reproductive rights, trade unionists and LGBTQI activists are victims of stigmatisation, criminalisation and violence. In August 2018, environmental defender Dina Yeseni Puente was murdered. Dina was a leader of the Network of Community Environmentalists of El Salvador and had organised her community around the protection of their territory.<sup>14</sup> So far no one has been held to account for her assassination.
- 3.6** In many cases, violence and stigmatisation against environmental defenders occur with the participation of business groups that see their interests affected by the

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<sup>11</sup> At 102.9 homicides per 100,000 people, according to International Crisis Group. See 'Política y violencia perpetua en El Salvador', International Crisis Group, 19 December 2017, <https://www.crisisgroup.org/es/latin-america-caribbean/central-america/el-salvador/64-el-salvadors-politics-perpetual-violence>.

<sup>12</sup> Decree 1030, Legislative Assembly of El Salvador, 2011, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>.

<sup>13</sup> 'Lineamientos Para Una Política Nacional De Protección A Personas Defensoras De Derechos Humanos', FESPAD, to be published in 2019.

<sup>14</sup> 'Asesinan a Dina Yaseni Puente, defensora de la tierra, el territorio y los bienes comunes integrante de la RACDES', Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos (IM-Defensoras), 12 August 2018, <https://im-defensoras.org/2018/08/alertadefensoras-el-salvador-asesinan-a-dina-yaseni-puente-defensora-de-la-tierra-el-territorio-y-los-bienes-comunes-integrante-de-la-racdes>.

defence of the environment. An emblematic case is that of defender Margarita Posada, an advocate of the Alliance Against the Privatisation of Water, who was described as a terrorist in a press release issued by the National Association of Private Companies.<sup>15</sup> In July 2018, several activists of the Alliance Against the Privatisation of Water were threatened by people close to the National Association of Private Companies.<sup>16</sup>

- 3.7** The broad and imprecise nature of the Special Law against Acts of Terrorism, enacted in 2006, has also led to the criminalisation of environmental defenders. The Law has been widely criticised for being too imprecise, which allows it to be applied inappropriately against social movements. For example, in July 2007 the government filed terrorism charges against 14 people because they had participated in a protest against the privatisation of the national water supply system.<sup>17</sup>
- 3.8** In the last four years, two women HRDs have been murdered. In 2015, Francela Méndez, a defender of the rights of the transsexual community, was murdered.<sup>18</sup> In 2016, Angelica Quintanilla Hernández, better known as Karla, a well-known sex workers' rights activist, was murdered.<sup>19</sup> Both cases continue in impunity today.
- 3.9** Defenders of women's rights have reported being subject to constant campaigns of stigmatisation and criminalisation, including through messages on social networks that are clearly intended to discourage them from continuing their work. In February 2019, two defenders belonging to Espacio de Mujeres Lesbianas Salvadoreñas por la Diversidad (ESMULES), a women and LGBTQI rights organisation, reported attacks via social networks that created misinformation about them.<sup>20</sup> One of the two, Andrea Ayala, who is executive director of ESMULES, had previously been the victim of a serious campaign of intimidation and harassment. In August 2018, Andrea was physically assaulted by a security guard from the offices of the Foreign Ministry. After the incident, Andrea filed a complaint with the National Civil Police and publicly denounced the attack through social networks. Andrea was then the victim of

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<sup>15</sup> 'ANEP Denuncia Actos de Terrorismo en Contra de Nuestras Oficinas, Con el Fin de Distraer la Atención de la Corrupción y Mal Gobierno del FMLN', Asociación Nacional de la Empresa Privada (El Salvador), 31 August 2018, <https://twitter.com/ANEPElSalvador/status/1035559333042577408>.

<sup>16</sup> 'Denuncian a Miguel Fortín y Jorge Daboub por difundir campaña de odio', informaTVX, 25 July 2018, <https://informatvx.com/denuncian-a-miguel-fortin-y-jorge-daboub-por-difundir-campana-de-odio>.

<sup>17</sup> 'Un Verde Mortal Amenazas contra los Defensores y Defensoras de los Derechos', Article 19, 2016, [https://www.ciel.org/wp-content/uploads/2016/08/Deadly\\_shade\\_of\\_green\\_Spanish\\_Aug2016.pdf](https://www.ciel.org/wp-content/uploads/2016/08/Deadly_shade_of_green_Spanish_Aug2016.pdf).

<sup>18</sup> 'El Salvador: Killing of transgender human rights defender Francela Méndez', AWID, 3 June 2015, <https://www.awid.org/get-involved/el-salvador-killing-transgender-human-rights-defender-francela-mendez>.

<sup>19</sup> 'El asesinato desapercibido de una defensora de derechos humanos', Revista Factum, 19 February 2017, <http://revistafactum.com/el-asesinato-desapercibido-de-una-defensora-de-derechos-humanos>.

<sup>20</sup> 'Calumnias y campaña de desprestigio contra Andrea Ayala y Bárbara Romero, defensoras de los derechos de las mujeres y población LGBTI', IM-Defensoras, 7 February 2019, <https://im-defensoras.org/2019/02/alertadefensoras-el-salvador-calumnias-y-campana-de-desprestigio-contra-andrea-ayala-y-barbara-romero-defensoras-de-los-derechos-de-las-mujeres-y-poblacion-lgbti>.

harassment by various people and news media on social networks, making threats to try to make him withdraw his complaint and emphasising his sexual orientation, with the aim of discrediting and limiting his work as defender.<sup>21</sup>

**3.10** On 4 September 2018, unknown persons removed four nuts from one of the tyres of the vehicle of Bertha Deleón, a lawyer and HRD who has worked on several emblematic cases of victims of sexual harassment and assault.<sup>22</sup>

**3.11** Stigmatisation and reprisals against trade union movements in El Salvador have dissuaded workers from joining labour unions.<sup>23</sup> According to data from the Ministry of Labour, only five per cent of workers are associated with a union. Trade unionists have reported threats, attacks, harassment, dismissal from their jobs and police violence. Women unionists have reported being subjected to pressure and threats of dismissal or transfer for exercising their right to join a union.<sup>24</sup> The threats extend to organisations that work with women unionists. For example, in August 2018 the Asociación Mujeres Transformando, which works with women workers in the maquila industry, factories of the textile sector, reported being the victim of an attempt to search their facilities by an unknown armed person who was captured on security cameras.<sup>25</sup>

**3.12** According to the Association of Journalists of El Salvador (APES), between January 2015 and December 2017 10 journalists were murdered in El Salvador.<sup>26</sup> Among these cases, Nicolás Humberto García was murdered in 2016 for refusing to be part of a gang and not supporting the transmission of messages from the gang on the community radio station where he worked. Four gang members were sentenced to 20 years in prison for his murder in October 2016.

**3.13** The IACHR has also reported a disturbing number of threats, intimidation and attacks against journalists in El Salvador, particularly against journalists who have made allegations of corruption or extrajudicial executions by security forces, or who cover

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<sup>21</sup> 'Violencia física, intimidación, hostigamiento psicológico y amenazas contra Andrea Ayala, de ESMULES', IM-Defensoras, 7 September 2018, <https://im-defensoras.org/2018/09/alertadefensoras-el-salvador-agresiones-violencia-fisica-intimidacion-hostigamiento-psicologico-y-amenazas-contra-andrea-ayala-de-esmules>.

<sup>22</sup> 'Atentan contra el vehículo de Bertha Deleón, abogada y defensora de derechos humanos', IM-Defensoras, 6 September 2018, <https://im-defensoras.org/2018/09/alertadefensoras-el-salvador-atentan-contra-el-vehiculo-de-bertha-deleon-abogada-y-defensora-de-derechos-humanos>.

<sup>23</sup> 'Lineamientos Para Una Política Nacional De Protección A Personas Defensoras De Derechos Humanos', op. cit., pgs. 20-24

<sup>24</sup> Ibid., pgs. 20-24.

<sup>25</sup> 'Intento de allanamiento de las instalaciones de la Asociación Mujeres Transformando', IM-Defensoras, 15 August 2018, <https://im-defensoras.org/2018/08/alertadefensoras-el-salvador-intento-de-allanamiento-de-las-instalaciones-de-la-asociacion-mujeres-transformando>.

<sup>26</sup> 'Periodistas Asesinados en el Salvador 1992-2018', Asociación de Periodistas de El Salvador, 2018, <http://apes.org.sv/wordpress/wp-content/uploads/2018/11/N%C3%B3mina-de-periodistas-asesinados-en-El-Salvador-desde-1992-2018.pdf>.



issues related to the security crisis and gangs. For example, on 22 August 2017, journalist Jorge Omar Beltrán, who covers corruption, gangs and security issues, reported that when he had filed a complaint with the authorities about receiving threatening messages painted on his car, the National Police only accepted a complaint about damage to his property and not in relation to the threats.<sup>27</sup> Also on 22 August 2017, the *El Faro* and *Factum* magazines published a report stating that agents of the security forces had murdered gang members, simulating a confrontation. Two journalists from the magazines received threats via Facebook and Twitter. The Human Rights Ombudsman quickly issued protective precautionary measures to ensure the safety of the journalists.<sup>28</sup>

**3.14** In recent years, FESPAD has reported an increase in new forms of threats and harassment for journalists such as job instability. The *Mesa para la proteccion de Periodistas* keeps a record of cases of unjustified dismissals, as well as delayed payments and withholdings of social benefits. In 2018, the Mesa registered 161 unjustified dismissals; and so far in 2019, 15 are counted. At the end of February 2019, 10 workers of *El Diario de Hoy* were fired, including journalists, editors and photographers; due process was not followed in any of the cases. Also Diego Aleman, a sports journalist with another newspaper, was dismissed without being recognized for his labor liabilities.

**3.15** In October 2018, a proposal for a special law on the comprehensive protection of journalists was submitted to the Legislative Assembly of El Salvador by APES and the Protection Board for Journalists and Communication Workers, of which FESPAD is a member. The law seeks to protect journalists through public policies and mechanisms to guarantee, protect and safeguard their integrity.<sup>29</sup> To date, the law has not been approved by the Legislative Assembly.

#### **4 Freedom of expression, independence of the media and access to information**

**4.1** Under the 2<sup>nd</sup> UPR cycle, the government did not receive any recommendations relating to the freedom of expression, independence of the media and access to information. In the period under evaluation, however, several violations of the freedom of expression have been observed, as detailed below.

**4.2** Article 19 of the ICCPR guarantees the right to the freedoms of expression and opinion. Article 6 of the Constitution of El Salvador also guarantees the right to the

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<sup>27</sup> 'Annual report of the Office of the Special Rapporteur for Freedom of Expression', Inter-American Commission on Human Rights, 2017, OEA/Ser.L/V/II, para. 506, <http://www.oas.org/en/iachr/docs/annual/2017/docs/AnnexRELE.pdf>.

<sup>28</sup> Ibid., para. 507.

<sup>29</sup> 'Presentan Ley Especial para Protección Integral de Periodistas', *El Salvador Times*, 24 October 2018, <https://www.elsalvadortimes.com/articulo/politicos/diputados-presentan-ley-proteccion-periodistas/20181023100426050151.html>.

freedom of expression. However, access to the media is limited and the violence that afflicts the country affects journalists. In addition, in October 2018, the executive tabled a bill to regulate public entertainment and the media that could threaten the freedom of expression.

- 4.3** The criminal law in El Salvador penalises government officials who censor written media, radio or television.<sup>30</sup> Additionally, the penal code establishes that unfavourable criticisms or opinions expressed in the exercise of the right to the freedom of expression are not punishable unless they have a "slanderous, insulting purpose or attack on privacy or a person's own image."<sup>31</sup>
- 4.4** Article 6 of the Constitution, while protecting the freedom of expression, also establishes the possibility of legal censorship of public spectacles, understood as any public performance, whether live or not. In October 2018, a draft Law of Public Spectacles, Cinematography, Media and Publicity was presented to the Legislative Assembly.<sup>32</sup> The objective of the bill is to develop procedures that facilitate the regulation of the content of public shows, radio, television, movies and advertising to protect segments of the population, including children and older people, as well as the "moral integrity of society and family." The bill grants the Ministry of the Interior and Territorial Development, through the office of Direction of Shows, the ability to evaluate, classify and monitor content. It is of great concern that under this bill the executive would be endowed with broad discretion to censor media, particularly under the guise of protecting the moral integrity of the family.
- 4.5** Between 2016 and 2017 various journalists who made complaints against the authorities and the private sector were subject to judicial proceedings under the criminal defamation and slander categories. For example, a businessperson who had been interrogated by the courts and then arrested for the crimes of fraud and bribery accused the editor in chief of Factum magazine of defamation. However, in 2017, the Court of Appeals ruled in favour of the journalist and thereby protected freedom of expression.<sup>33</sup>
- 4.6** El Salvador has had an Access to Public Information Law since 2011, and has encouragingly created an access to information regulation and state institutions mandated to oversee its implementation, such as the Units of Access to Public

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<sup>30</sup> El Salvador Criminal Code, Article 293, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>

<sup>31</sup> Ibid., Article 191.

<sup>32</sup> Proyecto de Decreto Legislativo, Ley de Espectáculos Públicos, Cinematografía, medios de Comunicación y Publicidad, 1 October 2018, <https://www.asamblea.gob.sv/sites/default/files/documents/correspondencia/63F8C903-4CF1-49E6-BB24-E4AD46A8E840.pdf>.

<sup>33</sup> 'Annual report of the Office of the Special Rapporteur for Freedom of Expression', op. cit., para. 500.

Information, the Information and Response Offices that are responsible for processing requests for information in the entities of the executive, and the Institute for Access to Public Information, in charge of resolving conflicts of access to information. However, in practice, people still face obstacles in accessing public information, including the delivery of incomplete information, lack of capacity of the authorities responsible for responding to requests and a lack of training in the management of the law that leads to officials excessively questioning people about the reasons they are requesting information.<sup>34</sup>

- 4.7** In 2017, the Supreme Court of Justice adopted a troubling decision regarding access to information, in which it established that: 1) under the law, requests for access to information would only be valid when the objective is to know about the management of public resources; 2) if the request for information requires a large amount of human and material resources to be answered, it must not be answered; and 3) public authorities do not have the obligation to generate information about events that occurred in previous administrations.<sup>35</sup>

## **5. Freedom of Peaceful Assembly**

- 5.1** During El Salvador's examination under the 2<sup>nd</sup> UPR cycle, the government did not receive any recommendations on the right to the freedom of peaceful assembly. However, in the period under evaluation, several violations of the freedom of peaceful assembly have been observed, as detailed below.
- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 7 of El Salvador's Constitution also guarantees the right to the freedom of assembly, establishing that it must be peaceful, without weapons and for a lawful object. Beyond the constitutional provision, there is no law in El Salvador that regulates the freedom of peaceful assembly. The jurisprudence of the Constitutional Chamber has established that in the case of public freedom, the right to peaceful assembly is not subject to any type of "prior authorizations or authorizations" of the administrative authority.<sup>36</sup> However, civil society in El Salvador has expressed concern that the Anti-Terrorism Law, adopted in 2006,<sup>37</sup> has been used to criminalise social protest and HRDs who exercise their right to peaceful assembly.<sup>38</sup>
- 5.3** The use of excessive force against protesters remains a severe hinderance to the full exercise of the right. On 23 September 2017, during the accountability session for her first year in the position, the Procurator for the Defence of Human Rights violently

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<sup>34</sup> EENA, op. cit.

<sup>35</sup> 'Resolución de seguimiento de cumplimiento de Amparo, 713-2015', Sala de lo Constitucional de la Corte Suprema de Justicia, 1 September 2016.

<sup>36</sup> 4-94. Zamora y Barrientos vrs. Decreto número 5', Sala de lo Constitucional de la Corte Suprema de Justicia, 1995, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/1990-1999/1995/06/8926C.PDF>.

<sup>37</sup> Ley especial contra actos de terrorismo, Legislative Decree No. 108, 21 September 2006, published in Official Gazette, No. 193, Vol. 373, 17 October 2006.

<sup>38</sup> Un Verde Mortal Amenazas contra los Defensores y Defensoras de los Derechos', op. cit.

prevented LGBTQI groups from attending the meeting. Agents from the Procurator's security team evicted the activists from the room where the event was taking place.<sup>39</sup>

- 5.4 More recently, staff and students of the University of El Salvador were assaulted by security forces of the Legislative Assembly while attempting to enter the Assembly to deliver a document in which they demanded that it should not adopt a law that would reportedly privatise water provision. Security officers used pepper spray to disperse the protesters.<sup>40</sup>
- 5.5 In November 2018 a protest by street vendors in the Municipality of Santa Tecla was violently repressed by members of the Metropolitan Agents Corps. The repression left one person dead and 22 people injured, including three journalists covering the protest.<sup>41</sup>
- 5.6 Judicial officials have also show themselves to be apparently unaware of the right to peaceful assembly. In July 2018, a judge in the municipality of Jilisco, department of Usulután, issued a resolution in which he asked the National Civil Police to block the streets surrounding the courthouse. The resolution sought to limit the presence of women's social organisations during the trial of Imelda Cortéz, a woman who suffered an extra-hospital birth and was charged with attempted homicide.<sup>42</sup>

## 6. Recommendations to the Government of El Salvador

CIVICUS and FESPAD call on the Government of El Salvador to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. Considering this, the following specific recommendations are made:

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<sup>39</sup> EENA, op. cit.

<sup>40</sup> Ibid.

<sup>41</sup> Disturbios en Santa Tecla: Hospital dice atendió 22 lesionados, Comandos dice fueron 67', La Prensa Gráfica, 8 November 2018, <https://www.laprensagrafica.com/elsalvador/Disturbios-en-Santa-Tecla-Hospital-dice-atendio-22-lesionados-Comandos-dice-fueron-67-20181108-0039.html>; 'Gobierno condena violencia con que se reprimió protesta de vendedores en Santa Tecla', La Prensa Gráfica, 8 November 2018, <https://www.laprensagrafica.com/elsalvador/Gobierno-condena-violencia-con-que-se-reprimio-protesta-de-vendedores-en-Santa-Tecla-20181108-0066.html>.

<sup>42</sup> 'Juez obstruye derecho a defender derechos de organizaciones feministas', IM-Defensoras, 2 July 2018, <https://im-defensoras.org/2018/07/alertadefensoras-el-salvador-juez-obstruye-derecho-a-defender-derechos-de-organizaciones-feministas>.

## **6.1 Regarding the freedom of association**

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association. In particular, remove the possibility of central and local government discretion in the granting of legal personality to CSOs of different types that wish to exercise the right of association.
- Ensure a safe environment for organisations that defend women's rights and the rights of LGBTQI people, and safeguard against police violence and stigmatisation.
- Review Legislative Decree No. 894 in order to guarantee the removal of unjustified restrictions on the freedom of association, in accordance with articles 21 and 22 of the ICCPR. In addition, ensure that the proposed Law for Social Non-Profit Organisations respects international standards on the freedom of association.
- Strengthen opportunities for civil society participation and promote meaningful political dialogue that includes and embraces diverse perspectives, including those of HRDs, CSOs, journalists and political activists

## **6.2 Regarding the protection of human rights defenders**

- Provide civil society members, journalists and HRDs with a safe and secure environment in which to carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- Publicly condemn at the highest level instances of harassment and intimidation of CSOs and activists.
- Establish a policy for HRDs and a national protection mechanism to ensure that they can carry out their legitimate activities without fear, undue obstacle or legal or administrative harassment, in accordance with the resolution 27.31 of the Human Rights Council.
- Approve an HRDs' protection law.

### **6.3 Regarding the freedom of expression, independence of the media and access to information**

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may find sensitive.
- Organise inclusive consultations with journalists, media and CSOs in order to resolve the questions that exist regarding the Bill of Public Spectacles, Cinematography, Media and Publicity currently being processed by the Legislative Assembly.
- Provide training to officials responsible for responding to requests for access to information and effectively implement the law on access to information and its regulatory decree.
- Create effective control mechanisms to prevent cyberbullying, to counteract its use to intimidate the work of CSO representatives and people who defend rights and journalists. Effectively apply the Special Law against Computer and Related Offences.

### **6.4 Regarding the freedom of peaceful assembly**

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 annual report.
- Amend Decree 108 of 2006 - the Anti-Terrorism Law - in order to guarantee fully the right to the freedom of peaceful assembly and to avoid the criminalisation of those who exercise it
- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces while monitoring protests and demonstrations.
- Review and if necessary update existing human rights training for police and security forces, with the assistance of independent CSOs, in order to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.

- Publicly condemn at the highest level the use of excessive and brutal force by security forces in the dispersal of protests. Launch formal investigations into such instances, and bring the perpetrators to justice.

## **6.5 Regarding access to UN Special Procedures mandate holders**

In view of the visits completed during 2017 by the Special Rapporteur on internal displacement and the Special Rapporteur on extrajudicial, summary and arbitrary executions, the Government should in future prioritise official visits by 1) the Special Rapporteur on the situation of human rights defenders; 2) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) the Special Rapporteur on the right to freedom of peaceful assembly and of association; and 4) the Working Group on discrimination against women.

## **6.6 Regarding state engagement with civil society**

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

<b>Recommendation</b>	<b>Position</b>	<b>Assessment/comments on level of implementation</b>
<p>104.3 Continue its efforts to involve relevant stakeholders, including civil society, as a partner of the Government in promoting and protecting human rights (Indonesia);</p> <p>Source of position: A/HRC/28/5 (para. 104)</p>	Supported	<p>Status: Partially implemented</p> <p>Source: 2.1, 2.2, 2.3, 2.4, 2.5, 2.6</p>
<p>103.34 Properly investigate all attacks against human rights defenders and prosecute their perpetrators (Netherlands);</p> <p>Source of position: A/HRC/28/5 (para. 103)</p>	Supported	<p>Status: Not implemented.</p> <p>Source: 2.5, 2.6, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11</p>
<p>104.30 Fully implement the recommendations on human rights defenders it accepted during the previous UPR, including investigating fully and effectively violations committed against human rights defenders and journalists and bringing to justice those responsible (Norway);</p> <p>Source of position: A/HRC/28/5 (para. 104)</p>	Supported	<p>Status: Not implemented.</p> <p>Source: 2.5, 2.6, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11</p>



<p>105.46 Take increased measures to prevent and combat impunity for human rights violations through investigation of all threats, harassment, intimidation, violence and enforced disappearances, in particular those concerning children and human rights defenders, and ensure that all perpetrators are held accountable for their actions (Ireland);</p> <p>Source of position: A/HRC/28/5/Add.1 (para. 18)</p>	<p>Supported</p>	<p>Status: Not implemented.</p> <p>Source: 2.5, 2.6, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 5.2, 5.3</p>
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