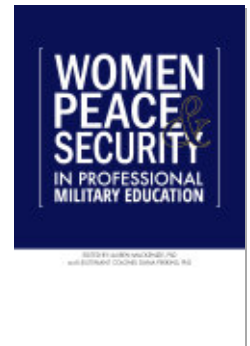




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Breaking a Vicious Cycle: Systemic Endorsement of
Violence Against Women in El Salvador



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PART **3**

Gender and Violence

Breaking a Vicious Cycle

Systemic Endorsement of Violence

Against Women in El Salvador

by Captain Elizabeth Jane Garza-Guidara, USAF*

Introduction

From 2007 to 2012, El Salvador had the highest reported femicide rate in the world and currently has the highest femicide rate in Latin America.¹ Despite these alarming statistics, gender-based violence against women is not regarded as a serious problem by many people in El Salvador. Post–civil war (1992 to present) conditions sowed seeds for the normalization of violence in El Salvador, especially violence against women. The postwar environment also exacerbated the dehumanization and subjugation of women in El Salvador, which has limited their access to justice and undermined the credibility of their legal testimony against their abusers.

By investigating how women’s legal and structural inequalities are compounded by the normalization of violence as a key component of gender relations, this paper seeks to answer the following question: What has contributed to Salvadoran law enforcement and judicial systems’ legitimization and endorsement of violence against women in El Salvador? Answering this question will help forge a comprehensive understanding of how the embrace of gender-based violence as socially acceptable reinforces the impunity of judicial and law enforcement institutions. Furthermore, the objective of this paper is twofold: 1) to investigate how barriers to justice for women have normalized gender-based violence as a part of everyday life and 2) to examine how the normalization of gender-based violence compels government officials to discredit and disregard women’s testimony in court. Exploring this phenomenon also sheds light on how systemic discriminatory treatment of female victims not only constitutes a violation of women’s rights, but is also noncompliant with El Salvador’s WPS national action plan (NAP).²

Postwar El Salvador and the Normalization of Gender-Based Violence

Postwar El Salvador created fertile ground for the normalization of gender-based violence. Radical levels of violence during the war impacted Salvadorans in two ways:

* The views expressed in this chapter are solely those of the author. They do not necessarily reflect the opinion of Marine Corps University, the U.S. Marine Corps, the U.S. Navy, the U.S. Army, U.S. Army War College, the U.S. Air Force, or the U.S. government.

¹ United Nations, “Deputy Secretary-General Applauds El Salvador for Implementing Spotlight Initiative, Tackling Highest Rate of Femicide in Latin America,” press release, 8 December 2020.

² *National Action Plan for Resolution 1325: “Women, Peace and Security,” 2017–2022* (San Salvador, El Salvador: Ministry of Foreign Affairs, 2017), unofficial translation, funded by ARC DP160100212 (CI Shepherd), hereafter El Salvador NAP.

1) it increased their tolerance for violence and 2) they embraced it as a normal means of problem solving.³ The deep integration of violence into Salvadoran society impairs individuals' abilities to recognize certain acts as violent.⁴ This has also contributed to the emergence of socially constructed levels of "acceptable" violence, which includes beating spouses, partners, or children with belts or pieces of wood.⁵

In El Salvador, violence is viewed as a natural form of male behavior toward women and as a critical element of gender relations.⁶ Furthermore, this gender norm not only naturalizes the abuse of women but also strengthens biases that prevent women from obtaining justice. In this context, *machismo* (which is based upon an exclusionary and highly masculinist logic) is a vehicle for informing and reproducing gendered violence.⁷ Multisided violence (a combination of structural, symbolic, political, and gender violence) prevents formal institutions from advocating for women's equality and reduces institutional responsiveness to women's rights.⁸ This can be attributed to the fact that multisided violence further legitimizes violence against women as an integral part of men's interaction with women. Hence, gender norms and multisided violence have prompted members of the Salvadoran judiciary and police force to routinely react to violence against women with impunity. Ultimately, the minority of women who report violence are faced with either the unwillingness or inability of Salvadoran judicial authorities to provide justice.⁹

In addition to the ramifications of gender norms and multisided violence, women face yet another obstacle to obtaining justice against their abusers. The privacy of family life in El Salvador is used to legitimize limited intervention of the state in domestic violence cases, which continues to subjugate women as second-class citizens.¹⁰ Because of this, police often encourage women to forgive and reunite with their male abusers instead of holding them legally accountable. According to a female Salvadoran domestic violence victim, she was "standing in front of the police, bleeding, and the police said, 'Well, he's your husband'."¹¹ Another Salvadoran woman stat-

³ Karen Musalo, "El Salvador—A Peace Worse than War: Violence, Gender and a Failed Legal Response," *Yale Journal of Law and Feminism* 30, no. 1 (2018): 18.

⁴ Mo Hume, " 'It's as if You Don't Know, Because You Don't Do Anything About It': Gender and Violence in El Salvador," *Environment & Urbanization* 16, no. 2 (October 2004): 64, <https://doi.org/10.1177/095624780401600223>.

⁵ Hume, " 'It's as if You Don't Know, Because You Don't Do Anything About It,'" 64.

⁶ Cecilia Menjivar and Shannon D. Walsh, "Impunity and Multisided Violence in the Lives of Latin American Women: El Salvador in Comparative Perspective," *Current Sociology* 64, no. 4 (July 2016): 586–602, <https://doi.org/10.1177/0011392116640474>.

⁷ Hume, " 'It's as if You Don't Know, Because You Don't Do Anything About It,'" 64.

⁸ Menjivar and Walsh, "Impunity and Multisided Violence in the Lives of Latin American Women," 594.

⁹ Rachel Dotson and Lisa Frydman, *Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala* (Washington, DC: Kids in Need of Defense, 2018), 3.

¹⁰ Mo Hume, "The Myths of Violence: Gender, Conflict, and Community in El Salvador," *Latin American Perspectives* 35, no. 5 (September 2008): 66, <https://doi.org/10.1177/0094582X08321957>.

¹¹ *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras and Mexico* (New York: United Nations High Commissioner for Refugees, 2015).

ed that when the police came to her home after she called them to report domestic violence, they said that she and her husband could resolve it between themselves.¹²

When victims of gender-based violence reside in gang-controlled areas, crimes have an even higher probability of resulting in impunity.¹³ Women living in gang-controlled areas throughout El Salvador are vulnerable to being forced into sexual relationships with gang members. If a woman refuses to comply with this demand, the gang member threatens to sexually assault her or to injure or kill her family members. Police, prosecutors, and judges in El Salvador often assume that females targeted by gangs (or from gang-controlled areas) have ties with gangs. This bias is then utilized to rationalize discrimination against these women, reject their reports, or “publicly question the credibility of their accounts.”¹⁴

The widespread acceptance of this bias is clearly illustrated when state officials and the media commonly criminalize female homicide victims from poor areas by declaring that they were involved with gangs. This leads to “a gender-motivated murder being classified as gang conflict rather than femicide.”¹⁵ Furthermore, it can be hypothesized that the subjugation of women and the normalization of gender-based violence in El Salvador fuels systemic discriminatory treatment of women by the judiciary and police.

El Salvador’s Abortion Law: An Expression of Gender-Based Violence

Domestic violence is not the only kind of violence that women are routinely subjected to in El Salvador. The criminalization of abortion in El Salvador exacerbates gender-based violence in two ways: 1) the discriminatory and violent treatment of “suspects” and 2) the violation of women’s legal, human, and reproductive rights. Prior to the civil war peace accords, El Salvador permitted legal abortions in three circumstances: when the life of the mother was at risk; when the pregnancy was the result of rape; or when the fetus “had deformities incompatible with extrauterine life.” In 1998, a new law criminalized abortion under all circumstances and extended the criminal sentence.¹⁶

As a result, Salvadoran women cannot legally terminate their pregnancies if their lives are at risk and/or if they are facing pregnancy-related complications.¹⁷ This not only violates women’s rights to health, but also means that a majority of women who

¹² *Women on the Run*, 26.

¹³ Dotson and Frydman, *Neither Security nor Justice*, 3.

¹⁴ Dotson and Frydman, *Neither Security nor Justice*, 9.

¹⁵ Dotson and Frydman, *Neither Security nor Justice*, 10.

¹⁶ Jocelyn Viterna and Jose Santos Guardado Bautista, “Pregnancy and the 40-Year Prison Sentence: How ‘Abortion Is Murder’ Became Institutionalized in the Salvadoran Judicial System,” *Health and Human Rights* 19, no. 1 (June 2017): 84, <https://www.jstor.org/stable/10.2307/90007917>.

¹⁷ “From Hospital to Jail: The Impact on Women of El Salvador’s Total Criminalization of Abortion,” *Reproductive Health Matters* 22, no. 4 (November 2014): 52, [https://doi.org/10.1016/S0968-8080\(14\)44797-9](https://doi.org/10.1016/S0968-8080(14)44797-9).

are raped are forced to carry their pregnancies to term.¹⁸ Over the past 20 years, approximately 181 women who experienced obstetric emergencies were prosecuted for abortion or aggravated homicide.¹⁹ This reflects a deeply rooted *machista* attitude that embraces the following rationale: because a woman's role is only of a mother, the fetus is given priority over the health and life of the pregnant woman. In El Salvador, women "are considered to be morally incapable" of making a decision to save the baby or save herself, which "denies them their status as human beings and violates their right to life as granted in the Constitution of El Salvador, Article 2."²⁰

During the initial wave of antiabortion activism, "abortion" and "homicide" were often used interchangeably in El Salvador. Hence, this distortion between the distinct differences between homicide and abortion have become institutionalized in the Salvadoran judicial system.²¹ An embodiment of this development entailed systematic gender discrimination where the "state aggressively pursues the woman's prosecution instead of the truth at every stage of the judicial process."²²

In cases where women were found guilty of having an abortion, there have been indications of dire violations of the right to due process (specifically the right to the presumption of innocence).²³ If a woman went to a public hospital because she was bleeding, she lost her right to be assumed innocent and was investigated. This escalated into an assumption that every woman who is bleeding has had an abortion and then must be investigated and prosecuted.²⁴ The criminalization of abortions under all circumstances also makes women even more vulnerable to a higher level of violence. Handcuffing women suspected of having abortions to their hospital beds is common and is a form of violence against women.²⁵

Hospitals are not the only settings where women are dehumanized in El Salvador. Courtrooms also fulfill this purpose. Judicial officials who prosecuted women for abortions justified their decisions by declaring that the defendants "violated social expectations of motherhood." For example, they argued that mothers should always know when they are pregnant and should seek to protect their unborn babies even when suffering a dire medical crisis and losing consciousness. Judges also often only admitted evidence that supported the guilt of the defendant and "systematically excluded evidence that supported the women's testimony."²⁶ Police who investigated alleged abortions were often notorious for gathering evidence that would incriminate women. In some cases, evidence was obtained illegally.

¹⁸ *Marginalized, Persecuted, and Imprisoned: The Effects of El Salvador's Total Criminalization of Abortion* (New York: Center for Reproductive Rights, 2014).

¹⁹ Joe Parkin Daniels, "El Salvador Abortion Laws on Trial in Case of Woman Jailed after Miscarriage," *Guardian*, 12 March 2021.

²⁰ "From Hospital to Jail."

²¹ Viterna and Bautista, "Pregnancy and the 40-Year Prison Sentence," 90.

²² Viterna and Bautista, "Pregnancy and the 40-Year Prison Sentence," 88.

²³ *Marginalized, Persecuted, and Imprisoned*, 51.

²⁴ "From Hospital to Jail," 57.

²⁵ *Marginalized, Persecuted, and Imprisoned*, 56.

²⁶ Viterna and Bautista, "Pregnancy and the 40-Year Prison Sentence," 89.

In 20 abortion cases examined by Harvard Sociology Professor Jocelyn Viterna in 2017, the Salvadoran authorities routinely ignored evidence in order to pursue guilty verdicts.²⁷ A presumption of guilt was evident in all 20 cases. Police and government lawyers failed to recognize the possibility of an unanticipated birth and instead argued that defendants threw their newborns into the latrine. Despite the fact that forensic specialists' autopsies revealed fetal abnormalities that were likely to have caused natural stillbirths, they utilized flawed logic and unreliable tests to conclude that the babies were killed. Salvadoran judges not only accepted inconsistencies in forensic reports but also excluded information that would have supported the women's testimony.²⁸

Moreover, women who have miscarriages are extremely vulnerable to being prosecuted for illegal abortions (and can be later charged guilty of aggravated homicide) and can be sentenced to serve 30 to 50 years in prison.²⁹ This unfortunate situation occurred during the *Manuela v El Salvador* case. On 10 March 2021, the Inter-American Court of Human Rights heard arguments in *Manuela v El Salvador*, which is a "landmark case that could shape policy and debate on abortion across Latin America." This was the first time that an international court challenged El Salvador's draconian approach to abortion.³⁰

Starting in 2006, Manuela regularly sought medical care for an unknown chronic medical condition. On 26 February 2008, Manuela felt an intense abdominal pain, went to the outdoor latrine (where she felt like something exited her), and fainted. Her parents took her to the hospital. That same day, the hospital sent a report to the Public Prosecutor's Office accusing Manuela of abortion. The next day, police officers interrogated Manuela and conducted a search of her family's home. Police officers asked Manuela's illiterate father (Juan) to sign a document but did not explain to Juan that he had signed a criminal complaint against his own daughter. Juan's complaint and the complaint filed by Manuela's physician from the hospital were then used as evidence in the trial against Manuela.³¹

At the time of Manuela's arrest, authorities failed to fulfill minimal procedural guarantees. Manuela was not given sufficient time to prepare her defense and could not freely and privately communicate with her attorneys. Despite heinous violation of Manuela's legal rights, she was convicted and sentenced to 30 years in prison for aggravated homicide.³² Manuela eventually died of cancer in prison without having proper treatment for her condition.

²⁷ Jocelyn Viterna, "The Real Reason El Salvador Jails Women for Stillbirths?: It's Called 'Moral Panic,'" *Los Angeles Times*, 30 July 2017.

²⁸ Viterna, "The Real Reason El Salvador Jails Women for Stillbirths?"

²⁹ "From Hospital to Jail," 52.

³⁰ Daniels, "El Salvador Abortion Laws on Trial in Case of Woman Jailed after Miscarriage."

³¹ *Marginalized, Persecuted, and Imprisoned*, 37.

³² *Marginalized, Persecuted, and Imprisoned*, 38.

The Dire Impact of El Salvador's Abortion Law on Women and Girls

The *Manuela v El Salvador* case reveals that the women accused of abortion are among the poorest women in the nation.³³ To make matters worse, the criminalization and repression of poor women and girls has become commonplace, to include cases of nine-year olds becoming mothers after rape by a family member. While perpetrators of sexual and physical violence are not convicted for their crimes, women are punished for miscarrying.³⁴ In addition to a clear violation of women's civil rights, the abortion ban threatens women's well-being in El Salvador. Girls as young as nine have been denied therapeutic abortions and three out of every eight maternal deaths in El Salvador are pregnant adolescents who commit suicide.³⁵

Gender-Based Violence and Women, Peace, and Security

In order to formulate solutions geared toward protecting women and girls from El Salvador's draconian abortion law and gender-based violence, it is necessary to examine these phenomena through the lens of the WPS program. UNSCR 1325 established WPS in 2000 to champion the criticality of the integration of a gender perspective for peace building and effective military and police operations.³⁶ In 2017, El Salvador adopted its WPS NAP.³⁷ To evaluate the extent to which El Salvador is fulfilling its WPS NAP, it is imperative to investigate two phenomena: 1) the degree to which gender equality principles have been integrated into El Salvador's laws and regulations and 2) the extent to which there is political will and commitment to integrate WPS principles into the judiciary and police force.

According to El Salvador's WPS NAP, the Salvadoran state declares its commitment to promoting and supporting initiatives to protect women and girls' human rights. El Salvador's Five-Year Development Plan (2014–19) is nested within the WPS NAP. The Five-Year Development Plan seeks to incorporate a gender approach in the following domains: education, citizen security, access to health, human rights, the maintenance of the historical memory and construction of peace, and progress toward a state aligned with civil society and serving as a promoter of human rights.³⁸

On 25 November 2010, the Comprehensive Special Law for a Life Free of Violence for Women was approved. The objective of this law is twofold: 1) to regulate

³³ Michelle Oberman, "The Consequences of El Salvador's Abortion Ban: A Cautionary Tale of How Criminalization Impacts Women Across Class Lines," *Guernica*, 11 January 2018.

³⁴ Belén Fernández, "The Country Where Having a Miscarriage Can Land You in Prison," *Jacobin*, 31 January 2020.

³⁵ Lisa Kowalchuk, "The Unspeakable Cruelty of El Salvador's Abortion Laws," *The Conversation*, 11 April 2018.

³⁶ Chantal de Jonge Oudraat et al., *Enhancing Security: Women's Participation in the Security Forces in Latin America and the Caribbean* (Washington, DC: Women in International Security, 2020).

³⁷ El Salvador NAP.

³⁸ *National Action Plan for Resolution 1325*, 15.

the detection, prevention, and punishment of violence against women and 2) to ensure the care, protection, and reparation for the rights of victims. The law defines the following as crimes: femicide, obstruction to justice, and other “expressions of violence against women.” This law also created the National System of Statistical Data and Information on Violence Against Women.³⁹ However, this law fails to achieve two things: 1) to recognize a lack of judicial and law enforcement impartiality as obstruction to justice and 2) to recognize the treatment of abortion suspects (such as being handcuffed to hospital beds) as expressions of violence against women.

Another law seeking to protect women is the Equality, Equity, and Eradication of Discrimination Against Women, which was established in March 2011. This law seeks to guarantee women the full exercise of citizenship and human rights, which include the following: health, social, and cultural rights; education; employment opportunities; and political participation. This law also requires the creation of an entity responsible for upholding women’s rights under the Office of the Attorney General of the Republic.⁴⁰

However, El Salvador’s legal and political rhetoric on WPS does not align with its implementation of WPS. El Salvador’s judiciary and police force minimally employ gender perspectives. Consequently, despite the creation of a WPS NAP, a Five-Year Development Plan, and laws geared toward upholding women’s rights, the tenets of these strategic policies and laws are often disregarded by judges and police officers. Instead of exercising rights as free and equal citizens that are clearly stated in the aforementioned laws and the WPS NAP, women are caught in a vicious cycle of subjugation.

Policy Recommendations

In order to tackle the root causes of the systemic legitimization and endorsement of violence against women in El Salvador, it is critical to employ a holistic approach that addresses the weaponization of traditional gender roles to maintain women’s subordinate status in society. With this in mind, implementing eight policy recommendations at the national and at the municipal and neighborhood levels throughout El Salvador will contribute to this effort. The actions outlined below need to be taken at the national level.

1. Ensure that all participating institutions outlined in the WPS NAP integrate the NAP into their strategic plans, including the Ministry of Justice and Public Security (which the judiciary and police force are a part of). Disseminate information related to the WPS NAP and make it available to civil society.
2. In addition to integrating the WPS NAP into strategic plans, all government agencies (including the judiciary and police force) should develop and execute their own unique WPS implementation plans. These WPS implementa-

³⁹ *National Action Plan for Resolution 1325*, 16.

⁴⁰ *National Action Plan for Resolution 1325*, 16.

tion plans should outline clear goals and milestones for measuring progress. In order to execute these plans, the National Civil Police, the Legislative Assembly, the Ministry of Justice and Public Security, and the Supreme Court should appoint Gender Advisors (GENADs) in order to achieve the following: aid with the development and implementation of organizational gender mainstreaming strategies; ensure that police operations have integrated a gender analysis; and advise on WPS education and training of police officers and judges.⁴¹ Gender Focal Points (GFPs) should be appointed at lower echelons of these government agencies to ensure the implementation of WPS from top to bottom.

3. The Supreme Court of Justice needs to create and disseminate standards and protocol for guaranteeing the right to due process, avoiding prejudices, and respecting procedural guarantees.⁴² For this to be effective, it is critical to create a comprehensive feedback loop that holds judicial officials accountable for failing to adhere to these standards and protocol. In order to achieve this, protocol must require the presence of a GFP during a court proceeding or a police operation involving a gender-based violence victim or a female abortion defendant. GFPs should be well educated on these standards and protocol (as well as national laws protecting women's rights) in order to notice and report violations to the Supreme Court of Justice GENAD. The Supreme Court of Justice GENAD will be responsible for coordinating necessary actions for violations and monitoring their status from start to finish (to include notifying judges of punishments for their actions). To further deter judges from violating protocol and standards, the Supreme Court of Justice should compile and disseminate reports of judges found guilty of protocol violations on a quarterly basis (to include listing punishments) to all members of the judiciary.
4. Institutionalize WPS training and oversight programs in the judicial and law enforcement sectors. The Salvadoran government needs to institutionalize WPS training and oversight for police, prosecutors, and judges to ensure sensitivity and application of due process during gender-based violence cases. Police personnel should also be routinely trained on the following: incorporating gender perspectives during operations; the guarantee of human rights (especially sexual and reproductive rights); addressing gender norms and stereotypes within judicial and law enforcement organizations in order to refrain from treating individuals based on these viewpoints; community policing strategies; and tactics that use violence as a last resort.⁴³
5. Allocate required resources (personnel and financial) to ensure effective im-

⁴¹ Oudraat, Haring, Islas, and Velasco, *Enhancing Security*, vi.

⁴² *Marginalized, Persecuted, and Imprisoned*, 67.

⁴³ Dotson and Frydman, *Neither Security nor Justice*, 13–14.

plementation of El Salvador's WPS NAP. The Legislative Assembly must become a pivotal driver in implementing the country's WPS NAP by presenting routine NAP updates and passing budgets with dedicated funding for the NAP.⁴⁴

6. Equip El Salvador's National System of Statistical Data and Information on Violence Against Women with a mechanism for neighborhood and municipal entities to directly input gender-based violence data into it. This mechanism should be used uniformly across government agencies. This will not only provide more accurate and current information about the degree and types of violence, but will also guide policy decisions, and monitor progress.⁴⁵
7. Establish systematic monitoring and evaluation mechanisms for El Salvador's WPS NAP. Because GENADS are a critical component of WPS implementation oversight, GENADS should utilize the Latin America and Caribbean WPS assessment tool in order to measure progress in a concrete, data-driven manner. This tool measures progress on three levels via qualitative and quantitative indicators: political will; institutional policy and practice; and monitoring and evaluation.⁴⁶ After gathering and compiling data, GENADS should propose and execute corrective action plans that align with their organizations' respective WPS implementation plans. All of this information should be published in a report that is then disseminated to Ministry of Justice and Public Security, National Civil Police, Supreme Court, and Legislative Assembly leadership. Reports should be created and released on at least an annual basis.

At the municipal and neighborhood levels, WPS programs need to be implemented holistically and tailored to the specific needs of various communities. Furthermore, carrying out the policy recommendation below is critical to achieving this.

8. Implement thorough WPS public education programs that explore the root causes of gender violence and the value of peaceful conflict resolution techniques as alternatives to violence. Exploring systemic gender inequalities will contribute to the denormalization of gender-based violence.⁴⁷ These efforts should be implemented in primary and secondary schools, public and community-based campaigns, and at workplaces. All of these efforts will aid in the deconstruction of highly socialized gender identities while simultaneously championing a positive form of masculinity that avoids aggression or violence toward others.

⁴⁴ Oudraat et al., *Enhancing Security*, 18.

⁴⁵ Dotson and Frydman, *Neither Security nor Justice*, 15.

⁴⁶ Oudraat et al., *Enhancing Security*, 4, 18.

⁴⁷ Dotson and Frydman, *Neither Security nor Justice*, 14.

Conclusion

This chapter illustrates the endemic nature of gender-based violence. Gender-based violence sprouted from the same seeds that normalized violence, exacerbated structural inequalities, and increased impunity within the judicial system and the police force in postwar El Salvador. Postwar conditions also exacerbated the subjugation of women by undervaluing their rights, lives, and voices. While *machismo* informs and reproduces gender-based violence, the judiciary and police force legitimize, reinforce, and endorse it. In order to break the vicious cycle of subjugation that women endure, the judiciary and police force must be committed to increasing transparency, impartiality, and accountability. They must also be committed to incorporating gender perspectives into their strategic plans, policies, procedures, and operations. For these changes to be effective and long-lasting, civil society needs to systematically denormalize the use of violence as a form of conflict resolution in tandem with government efforts.

Examining gender-based violence through the lens of WPS illustrates that it is not simply a “women’s issue.” Tackling root causes of gender-based violence in El Salvador involves addressing a wide spectrum of broader issues that plague Salvadoran society: police and judiciary abuse of human and legal rights; judicial impunity; and how social norms can lead to discriminatory treatment of various groups in Salvadoran society. Ultimately, implementing the aforementioned policy recommendations will not only increase the protection and empowerment of half of El Salvador’s population, but will also help Salvadoran society to purge itself of impunity and the normalization of violence.