

"I want my place:"

Housing, land and property (HLP) rights for persons affected by displacement in El Salvador



NORWEGIAN
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Table of Acronyms

ADESCOS	Asociaciones de Desarrollo Comunal or Community Development Associations
CNR	National Registry Center
DNAVMF	The Directorate of Attention to Victims and Forced Migration
FESPAD	Fundación de Estudios para la Aplicación del Derecho or Foundation for the Study of the Application of the Law
FMLN	Frente Farabundo Martí para la Liberación Nacional
FONAVIPO	National Fund for Popular Housing
FSV	Social Fund for Housing or Fondo Social para la Vivienda
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICLA	Information Counselling and Legal Assistance
IDP	Internally displaced persons
ILP	Institute for the Legalization of Property
ISDEM	Salvadoran Institute of Municipal Development
ISDEMU	Salvadoran Institute of Women Development
ISTA	Agrarian Transformation Institute of El Salvador
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex and queer
MIRPS	Comprehensive Regional Protection & Solutions Framework
MOVITIERRA	Movimiento Por La Defensa de La Tierra de El Salvador, lucha por la legalización de tierras y por la vivienda Digna
NRC	Norwegian Refugee Council
PESS	Plan El Salvador Seguro
PTT	Programa de Transferencia de Tierras or Land Transfer Program
RPRH	Registro de la Propiedad Raíz e Hipotecas
RSI	Social Property Registry
SINAPI	National System of Attention and Integral Protection to People in Condition of Internal Forced Displacement
UNHCR	United Nations High Commissioner for Refugees



EXECUTIVE SUMMARY

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After 12 years of conflict, El Salvador's civil war finally ended with the Peace Agreement known as "Chapultepec Agreement" in January 1992, leaving between 75,000 and 80,000 dead, more than 8,000 disappeared and almost 25 per cent of the population displaced, with estimates of 550,000 people being internally displaced. Today, gangs continue to kill, extort, displace and recruit at will, and sexually abuse and disappear men, boys, women, girls, and lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people with impunity. Official, updated numbers of displacement are not available, but the government reported 71,500 internally displaced individuals (IDPs) between 2006 -2016.

Violence, displacement and inequitable land distribution remain problems in the country. The historic and ongoing waves of displacements – whether induced by the war in the late 1990s or the gang and criminal violence since the early 2000s – are still negatively affecting communities interviewed for this report. In these contexts, housing, land and property (HLP) rights are essential to achieving durable solutions and providing a foundation on which families and communities can rebuild their lives. Based on in-depth legal analysis and quantitative and qualitative research, including a survey of 797 households, 13 focus group discussions and 25 interviews of displaced persons, government representatives and humanitarian actors, the report aims to highlight HLP needs and problems of the affected populations. The study provides a legal analysis of key HLP laws and institutions, gives an overview of the on-the-ground reality for communities affected by displacement and highlights how gaps in these areas could be addressed.



A. LAND ADMINISTRATION

The Agrarian Transformation Institute of El Salvador (ISTA) was created in 1975 to carry out the agrarian reforms, starting in 1980, and today remains responsible for identifying, allocating, surveying and titling land for beneficiaries. Decree 153 of 1980, the Basic Agrarian Reform Law, was passed to expropriate land from large land owners for redistribution as smaller holdings “for those who work it.” The 1983 Constitution codified several of the principles established in the 1980 agrarian reform law, including the social function of land ownership and rights to housing, and limited the amount of farmland a natural or legal person could own to 245 hectares.

In 1994, the National Registry Center (CNR) was created to consolidate El Salvador’s land registries and is responsible for all land registration in the country today; titles issued by ISTA must still be registered at CNR. Municipalities have no legal authority to grant title to land, and their cadaster serves to show who is registered to use services in the municipality, not to prove legal ownership. A patchwork of complicated laws governs urban land and regulates urban land markets.

The Minister of Housing leads the Housing System, which is constituted by the Ministry of Housing, the National Fund for Popular Housing (FONAVIPO), the Social Fund for Housing (FSV) and the Institute for the Legalization of Property (ILP). FONAVIPO is an autonomous public credit institution with its own legal personality and assets, and is domiciled in the City of San Salvador. The FONAVIPO – FSV program provides mortgage loans for lower income workers. The ILP was established to help regularize property titles for low-income families.

B. DISPLACEMENT IN EL SALVADOR

Displaced during the civil war. Many Salvadorans displaced by the war have struggled to resettle and rebuild their lives. The research highlights several communities where families had not been able to register their ownership with CNR and obtain title deeds. Land was acquired through different mechanisms, including when the land was granted by the municipalities; obtained from ISTA as part of the Agrarian Reforms and purchased from developers. These communities expressed the fear of being displaced again in the future.

Displacement, HLP issues and gang violence. Families displaced because of gang violence experience the lack of tenure security acutely. Those who are fleeing from gang violence have difficulty finding and affording places where they feel safe and secure enough to stay with their families. While there are no official updated numbers of people displaced by violence, a 2022 Human Rights Watch report notes that from 2011 to October 2020, 71,500 people were internally displaced, mostly due to violence perpetuated by gangs and security forces. UNHCR’s internal displacement projections for 2022 based on previous yearly trends is 114,400 IDPs.



C. THE INTERSECTION OF HOUSING, LAND AND PROPERTY ISSUES AND FORCED DISPLACEMENT: OBSERVATIONS ON THE GROUND

Lack of registration, inability to access titling services and risks of eviction. Land tenure regularization remains a challenge for many in El Salvador. People who had obtained land through the agrarian reform process expressed frustration about both the failure of ISTA to produce their title deeds and the perceived refusal of ISTA to support them. Similarly, people who had purchased their land from private developers through the lotificación system complained that the companies were years late in delivering their deeds after the full purchase price had been paid. Many respondents also said that the process to update property records was too expensive and complicated. People believe that most of the land is registered at CNR, but mentioned that the records are out of date because current owners cannot afford to update them when ownership is transferred or inherited. Even after living in the same place for 20 or 30 years, the lack of ownership documents remains a source of uncertainty for many. Those interviewed for this study said that no matter how long they had lived in their current location, they always worried that they could be forced to move if they lacked official documentation and the government decided to use the land for other purposes.

Loss of property. Loss of property was reported as a problem by those who fled the violence of the gangs in the communities where the field research took place. Some individuals interviewed for the research did not know whether they would ever be able to return, while others were adamant that they could never go back – both groups were concerned about the status of their property.

Inability to pay loan and mortgages for property.

Several families interviewed during the field work reported obtaining loans from the Social Housing Fund (FSV), a public lending institution. However, if people are forced to flee from violence before they have finished paying off the debt, they lose both the house and the money invested. Additionally, when security conditions in the neighborhoods where they bought their house become dangerous and violent, there is no mechanism for them to find another house through the FSV.

Inheritance and other HLP disputes. Informal allocations of inheritance without updated CNR records also cause problems. The practice of deciding during life to whom the family properties will be left is common in El Salvador, and tends to leave the most vulnerable members without their inheritance rights. Families explained that these agreements are usually respected but are not legally formalized, often because of the cost. Under such arrangements, people who are forced to suddenly flee can lose their claims to property because they cannot return to their neighborhoods and have no legal evidence of their rights.

Women and land ownership. The historical trajectory of land ownership – including through the agrarian reforms – has not treated women equitably. People who received land titles from ISTA as part of the agrarian reform mentioned that the deeds could be issued jointly to married couples, but it was up to the husband to decide whether to do so. Women interviewed during this research also said that it was more difficult for them to own property because they were responsible for their children and elders members of their family (reproductive and care work) and had less stable work. As a result, women reported having less economic independence and not being able to earn enough money to buy property.

D. LOOKING FORWARD

There are some hopeful signs of progress in addressing internal displacement since 2014, when the former government formed the Consejo Nacional de Seguridad Ciudadana y Convivencia (CNSCC or National Council for Citizen Security and Coexistence), which passed the Plan El Salvador Seguro (PESS) in 2015, which is no longer in place but was successful in implementing actions regarding violence prevention, criminal prosecution and victims' assistance in the country. El Salvador has also joined the Comprehensive Regional Protection & Solutions Framework and, in 2018, the Supreme Court ordered the government to officially recognize forced displacement and develop legislation and policies to protect and help displaced people. In 2020, the National Assembly adopted the IDPs Law, which requires the creation of a registry of displaced persons and a national system to coordinate humanitarian assistance, such as housing in temporary shelters, protection, and durable solutions, including the safe return or resettlement of victims of forced displacement.

However, while recognizing the efforts that are being made, this research shows that many HLP needs remain unmet, which impedes efforts to recover and rebuild after displacement. Securing HLP rights in El Salvador is essential to help its citizens build resilience and work towards a safer and more prosperous future. The report makes recommendations to the Government of El Salvador, humanitarian and development actors and donors to further this goal.



Photography by NRC



PART I. INTRODUCTION / BACKGROUND

After 12 years of conflict, El Salvador's civil war finally ended with the Peace Agreement known as "Chapultepec Agreement" in January 1992, leaving between 75,000 and 80,000 dead, more than 8,000 disappeared¹ and almost 25 per cent of the population displaced, with estimates of 550,000 people being internally displaced.² The highly concentrated distribution of land has historically been at the root of 12 years civil war. The Government initiated agrarian reforms in the 1980s and 1990s, but these achieved limited success in addressing inequality. In the aftermath of reconstruction from the war, the country saw high levels of violence and homicides, placing civilians in the middle of territorial conflicts and life-threatening danger.

Today, gangs continue to kill, extort, displace and recruit at will and sexually abuse and disappear women, girls, and lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people with impunity. Gang violence and lack of opportunities continue to force people to leave their homes in search of protection and access to services and opportunities. The onset of Covid-19 and a series of natural disasters further drove up poverty and displacement in the country, particularly in rural communities.³ The 2021 World Risk Index lists El Salvador as among the 20 countries in the world most at risk from a range of natural disasters including earthquakes, volcanoes, hurricanes, and droughts.⁴ Official updated numbers of communities and families displaced are not available,⁵ but according to the Government, there were 71,500 internally displaced individuals (IDPs) between 2006 -2016.⁶

El Salvador has the smallest population but most densely populated of the three countries of Northern Central America, but has been the source of the majority of the region's asylum requests since 2005.⁷ In 2018, more than 46,000 Salvadorans sought

asylum worldwide, with the country ranking as the sixth country of origin for new asylum-seekers globally. Over the past decades, Salvadorans have moved across the world, though today the majority live in the United States with precarious legal status. El Salvador is also a recipient of asylum seekers, with increasing applications from Nicaraguans, Cubans, Venezuelans and Hondurans in recent years.

In July 2019, the Government joined the Comprehensive Regional Protection & Solutions Framework (MIRPS, for its acronym in Spanish) to address forced displacement in Central America and Mexico. Other countries involved in the MIRPS framework include Mexico, Belize, Costa Rica, Guatemala, Honduras and Panama. As part of this initiative, a National Response Plan was adopted to assist internally displaced persons, refugees, and asylum seekers. The Plan involves seven line ministries and focuses on the area of protection, jobs and livelihood, education and health. In 2020 the Government promulgated the "Special Law for the Comprehensive Care and Protection of People in a situation of Forced Internal Displacement," a fundamental instrument that established a comprehensive national system in response to forced displacement due to violence from gangs and other organized criminal actors.

Despite these recent efforts, violence, displacement and inequitable land distribution remain problems in the country. The historic and ongoing waves of displacements – from the war in the late 1980s and early 1990s and the gang and criminal violence that dramatically increased in the early 2000s – have come together and this report aims to highlight the housing, land and property (HLP) needs and problems of the affected populations. Land rights are not considered fully secure by many people in El Salvador, with an estimated 57 per cent of the rural

¹ FESPAD (2020).

² IDMC (2018).

³ Congressional Research Service (2022).

⁴ Congressional Research Service (2022).

⁵ IDMC, Figures Analysis 2021 – El Salvador. Available at <https://www.internal-displacement.org/sites/default/files/figures-analysis-2021-slv.pdf>

⁶ UNHCR El Salvador Factsheet, August 2021, available at <https://reporting.unhcr.org/sites/default/files/El%20Salvador%20Factsheet%20August%202021.pdf>

⁷ IDMC & Cristosal (2018).

⁸ <https://www.unhcr.org/news/press/2019/7/5d3ab64a4/el-salvador-joins-regional-effort-address-forced-displacement-central-america.html>

⁹ <https://mirps-platform.org/en/what-is-the-mirps/> and UNHCR 2021, Tendencias Globales, Desplazamiento Forzado en 2020, available at https://www.acnur.org/60cbddfd4#_ga=2.203820183.666449845.1624026074-52275424.1624026074

¹⁰ <https://mirps-platform.org/en/mirps-by-country/el-salvador/>

¹¹ USAID, LandLinks, El Salvador Country Profile available at <https://www.land-links.org/country-profile/el-salvador/>

¹² World Bank, Population Density, El Salvador, available at <https://data.worldbank.org/indicator/EN.POP.DNST?locations=SV>



population that has no legal access to land. This is exacerbated by population density, which is among the highest in the world.¹² People affected by displacement in El Salvador expressed the need for tenure security and want to know that once they find a new place, they will not be forced to leave again. Those who have been displaced more recently are concerned about the properties they leave behind and wonder whether they will be able to access them again in the future. To better understand the dynamics of the current situation, this report provides an overview of the country's HLP legal framework and key land governance institutions, perspectives from people who live and are seeking refuge in areas around San Salvador and practical recommendations for action.

Methodology and Limitations: This research is based on both qualitative and quantitative data collection as well as a desk review of primary and secondary sources. Fieldwork was conducted from March to June 2022 by NRC in the following communities: Las Marias, Cantón Los Apoyos in the City of Santa Ana, Santa Ana Department; Cantones El Tablón, La Bomba, Calle Nueva, Santa Barbara, Zacamil and colonias El Jardin, Las Apariciones and El Rodeo 1 & 2 in the Municipality of Guazapa, San Salvador Department; Cantones Tres Campanas, La Pampa, Las Tunas, Los Mangos, Las Pampitas y Los Castaños in Aguilares; Asentamiento Cañaveral in City of San Vicente; and Cantón Cañizal in City of Sonsonate. The qualitative data comes from 14 focus group discussions with communities and organizations, and 25 interviews of displaced persons, government representatives and humanitarian actors. The quantitative data comes from a survey of 797 households, most of whom did not report themselves as displaced. Some of this may be because people who were displaced during the civil war are no longer considered to be displaced (by either themselves or the state), though many are still trying to legalize their ownership status of the homes

and lives they have rebuilt. Additionally, persons who are displaced by violence often do not wish to draw attention to themselves and may not report being displaced if asked.

Unfortunately, security conditions severely limited access to people for both the qualitative and quantitative research, so while it is believed that much of the findings are applicable to other communities, this study does not claim to be representative of the entire country. Where this research references information collected during the fieldwork, it is important to understand that this is how the speakers perceived the situation, and it is unsurprising that there were variations among the perceptions of people interviewed. However, there was consistency in the frustration, fear and anger of people who were trying to resolve their challenges regarding tenure security in a system they find to be nonresponsive to their needs. Finally, all names and places in this report have been changed to protect the privacy and security of persons who were interviewed for this study.

Demographic Profile of Quantitative Survey Respondents

The demographic profile of the respondents included in the household survey offers a first contextual dimension to the research findings. Approximately 71 per cent of the respondents were women. According to the women, the low number of male respondents is due to male members of the household being out working/looking for work when the surveys were carried out.

64 per cent of survey respondents report owning their home, 20 per cent were renting, and the remainder lived in houses where they did not pay rent or did not know the owner. 74 per cent of respondents said they lived on private land, 11 per cent said they were



on public land, and 4 per cent said they lived on land that was in the process of regularization. 64 per cent lived on rural land and 35 per cent lived on urban land.

9 per cent of survey respondents said that they had not lived in their present location for the past ten years. The most common reasons for leaving their previous location were family issues and economic difficulties. Among this group, 18 per cent said they believed they would return to their place of origin, 66 per cent said they would not return, and 15 per cent said they were not sure at this time.



Photography by NRC

A photograph of a dirt road winding through a lush green landscape. The road is flanked by tall grasses and a wooden fence. In the background, there are dense trees and a clear blue sky. A brown cow is visible on the left side of the road.

PART II. LEGAL ANALYSIS

A. KEY CONCEPTS

What are housing, land, and property rights?

Housing, land and property rights are about having a home free from the fear of forced eviction and a place that offers shelter, safety and the ability to secure a livelihood. HLP rights are referenced and defined in several international human rights instruments,¹³ as well as in national law in El Salvador, for instance, in the Constitution and agrarian and urban land laws.¹⁴ Organizations providing protection and assistance to persons affected by conflict should respect the human rights, including HLP rights, of affected persons at all times, and advocate for their promotion and protection to the fullest extent. The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally, both public and private housing, land and/or property assets.¹⁵

HLP rights include:

- The right to adequate housing
- The right of access to natural resources, such as land and water
- The right to security of tenure and protection against forced eviction
- The right to non-discrimination in accessing HLP rights which often entails special protection for the most vulnerable and marginalised persons

Land tenure is the relationship among people, as groups or individuals, with respect to land. The rules of tenure define how property rights are allocated within societies, and define how access to rights to

use, control, and transfer land, are granted. “In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.”¹⁶ As described in the legal analysis, there are many forms of tenure arrangements in El Salvador, ranging from full ownership and formal rental agreements to emergency housing and informal occupation of land. Land tenure is a relationship, which can (and often does) change over time.

This section provides a description of the key institutions and laws regarding the country’s land policies. The history of land tenure, administration, and reforms in El Salvador are reflective of significant inequities in land distribution and ownership and rapid urban growth.¹⁷ Over the past decades, land issues have been at the heart of much of the country’s conflicts, and efforts to reform access to and administration of land have been ongoing for decades. Agrarian policies have attempted redistributive programs, urban policies have tried to organize rapid urban growth and recent laws have struggled with how to legalize tenure for the population at large.

¹³ For example, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by El Salvador in 1979, recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”. The General Comments of the ICESCR are also binding upon El Salvador, including General Comment 4 on “The Right to Adequate Housing (Art. 11 (1) of the Covenant)” and General Comment 7 on “The right to adequate housing (Art.11.1): forced evictions”. A further example is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by El Salvador in 1981, which explicitly protects rural women from discrimination with respect to matters relating to HLP in Article 14 (2) (h) of CEDAW. The Guiding Principles on Internal Displacement also specifically address HLP issues, for example, the right to an adequate standard of living (Principle 18), protection from pillage and arbitrary deprivation of property (Principle 21), and responsibilities relating to the recovery of property (Principle 29).

¹⁴ See Part II for legal analysis.

¹⁵ More information on the scope of HLP can be sourced from the HLP Area of Responsibility of the Global Protection Cluster, <http://www.globalprotectioncluster.org/en/areas-of-responsibility/housing-land-and-property/hlp-area-of-responsibility.html> and from Norwegian Refugee Council (2011) Housing, Land and Property, Training Manual <https://www.nrc.no/what-we-do/speaking-up-for-rights/training-manual-on-housing-land-and-property/>

¹⁶ Land tenure is often categorised into four types: 1) private (rights are assigned to a private party); 2) communal or collective (rights held jointly by a group of people generally on the basis of ongoing use such as cultivation, clearance or access); 3) open access (specific rights are not assigned to any individuals or groups and no one can be excluded i.e. forest can be open access); 4) state or public (rights are assigned to a public sector state entity). Norwegian Refugee Council (2011) Housing, Land and Property, Training Manual <https://www.nrc.no/what-we-do/speaking-up-for-rights/training-manual-on-housing-land-and-property/>

¹⁷ Land Equity Intl Pty, Ltd (2006).



A. Relevant Institutions

1. Agrarian Transformation Institute of El Salvador (Instituto Salvadoreño de Transformación Agraria or “ISTA”)

According to the World Bank, attempts at agrarian reform in the 1960s and 1970s failed to reduce land inequalities; the landless population actually increased¹⁸ from 12 to 40 per cent during these decades. In the early 1970s, it was estimated that 60 per cent of agricultural land was held by 2 per cent of the rural landholders, and that 65 per cent of the rural population had little or no land.¹⁹

ISTA was created by Decree No. 302 in 1975,²⁰ and tasked with defining the process of agrarian transformation in El Salvador under the motto of “Land for those who work it.”²¹ ISTA had the primary responsibility of carrying out the agrarian reforms implemented in 1980 and 1996, and it remains responsible for identifying, allocating, surveying and titling land for beneficiaries today. More details on the procedures involved will be provided below, as part of the discussion on the country’s agrarian reforms.

2. National Registry Center (Centro Nacional de Registros or “CNR”)

Prior to 1994, El Salvador had two registries: the Real Property and Mortgages Registry (“Registro de la Propiedad Raíz e Hipotecas” or “RPRH”) and the Social Property Registry (“Registro Social de Inmuebles” or “RSI”). In 1994, the RPRH and RSI were consolidated and brought under the control of the *Centro Nacional de Registros*,²² which is currently responsible for all land registration in the country.²³ A World Bank Land Administration Project implemented between 1996 and 2005 “to regularize land

registration for El Salvador’s estimated 1.6 million parcels of rural and urban land and to create an efficient, streamlined, and financially self-sustaining nationwide cadastral mechanism for mapping and land registration.”²⁴ According to the World Bank and the general director of the CNR, about 60 per cent of the 1.8 million land parcels finally identified in the country had been registered in the new system by the end of 2005.²⁵

CNR’s jurisdiction to issue titles covers urban and peri-urban land; ISTA maintains responsibility to issue titles for agrarian land, which must then be registered at CNR. As explained by a representative of CNR, a person needs to bring documents supporting their claim of ownership to the registry office, who will review the documents and issues and register the title. Such evidence could include a contract of sale, a court judgment, or inheritance documents; even if the documents are less formal, CNR still advises that people bring what they have for CNR’s review and registration. However, CNR states that it does not get involved in disputes regarding ownership of property; such questions must be resolved before the property can be registered.²⁶

3. Institute for the Legalization of Property (Instituto de Legalización de la Propiedad or “ILP”)

In February 1991, the *Instituto de Legalización de la Propiedad*²⁷ was created by Executive Decrees 16 and 17 as an executive level agency to facilitate the registration of property for low-income families who lacked titles and had difficulty accessing credit.²⁸ The ILP describes its main purpose as providing “legal certainty regarding land ownership to families with limited economic resources; provide technical assistance to the Government of the Republic and

¹⁸ World Bank, 2012, El Salvador Country Land Assessment, p. 30 and p. 61. <https://documents1.worldbank.org/curated/ru/122551468027660574/pdf/823120WP0P12330ssment0Final0English.pdf>

¹⁹ Land Equity Intl Pty, Ltd (2006).

²⁰ ISTA was created by Legislative Decree No. 302, on June 26, 1975 and published in the Official Journal No. 120, Volume 247 on June 30, 1975.

²¹ <https://www.ista.gob.sv/marco-institucional/>

²² Trackman et. al. (1999); USAID (2006).

²³ For more on the registries overseen by CNR, please see their website: <https://www.cnr.gob.sv/marco-institucional/>

²⁴ World Bank (2010).

²⁵ USAID (2006); World Bank (2012).

²⁶ KII 3.

²⁷ The institute was previously named Libertad y Progreso; its name was changed in 2012.

²⁸ Trackman et. al. (1999).

other public and private institutions of a national and international nature (...) and develop programs for the legalization of real estate, in order to ensure land tenure for families with limited economic resources in the form agile, efficient, safe and low cost."²⁹ The ILP has the power to "promote, procure, facilitate and ensure resources for the legalization of real estate and speed up its registration, for the benefit of people with limited economic resources who live mainly in slums and marginal areas, developing communities, unauthorized subdivisions [and] housing parceling, through brief and simple procedures; and plan, direct and execute processes of regularization of property rights or possession of real estate for families with limited economic resources."³⁰

While the focus on regularization of titles for low-income families is clear, other reports have noted that the limited budget of the ILP raises questions as to how many titles they are actually able to help provide.³¹ One of the communities interviewed for this research said that they had reached out to the ILP for help to formalize their ownership of land given to them by the municipality when they fled during the civil war, but had not received any assistance.

4. Ministry of Housing

In 1993, the Vice-Ministry of Housing and Urban Development was created under the Ministry of Public Works to regulate and facilitate national level housing policies. It was responsible for urban planning and development, with the exception of metropolitan San Salvador, where planning was done by the Planning office of the Metropolitan Areas of San Salvador.³²

In 2019, President Bukele restructured the sector and created the Ministry of Housing to address the

lack of housing in the country and encourage investment in social interest projects in a coordinated manner. The Minister of Housing leads the Housing System, which is composed of the Ministry of Housing, the National Fund for Popular Housing (FONAVIPO), the Social Fund for Housing (FSV) and the Institute for the Legalization of Property (ILP). The Ministry's stated mission is "to improve the quality of life of families living in extreme poverty, by investing in adequate and affordable housing; promoting actions that allow urban planning and adaptation of cities to new health, environmental and structural needs."³³

Programa del Fondo Nacional de Vivienda Popular (FONAVIPO) y del Fondo Social para la Vivienda (FSV)

FONAVIPO was created in 2021 with the mission to "facilitate access to comprehensive housing solutions to Salvadoran families of lower income; through subsidy programs, credits and development of housing projects that allow improving their quality of life."³⁴ It is an autonomous public credit institution with its own legal personality and assets and is domiciled in the City of San Salvador. The FONAVIPO – FSV program provides mortgage loans for lower income workers, particularly those in the informal sector.³⁵ A 2017 report by UN Habitat describes FONAVIPO and FSV as "the most important entities in the country's housing loans, financing a range between 5,000 and 10,000 homes in the last decade."³⁶

²⁹ <https://www.ilp.gob.sv/marco-institucional/>

³⁰ <https://www.ilp.gob.sv/marco-institucional/>

³¹ USAID (2006).

³² UN Habitat (2017).

³³ <https://vivienda.gob.sv/marco-institucional/>

³⁴ <https://www.fonavipo.gob.sv/marco-institucional/>

³⁵ https://portal-fsv-gob-sv.translate.google.com/programa-fonavipo-fsv/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hi=en&_x_tr_pto=sc

³⁶ UN Habitat (2017).



5. Municipalities

The Constitution establishes municipalities as the administrative unit of local government, and states that departments are to be divided into municipalities that are governed by councils, headed by a mayor, and must be elected every three years.³⁷ Municipalities are able to create, collect and use their own taxes, and the Municipal Councils are responsible for approving plans of local development.³⁸ Municipal authorities and responsibilities are further elaborated in the Municipal Code, passed in 1986.

The research team interviewed two municipal cadastre offices and spoke with department level officials to understand the role of municipalities in land registration. While there are no property taxes in El Salvador, municipalities collect a tax for services provided, e.g., water, electricity, etc. However, it is unclear whether deeds are actually required to be registered with the municipality. One cadastral worker explained that the tax is calculated on the basis of land that the citizen has registered in their municipal registry, so “when people ask for services, the municipality asks for deeds,” but the worker also said that other forms of proof of residence were often accepted.³⁹ The municipal cadastre is intended to show who is registered to use services in the municipality, not necessarily to prove ownership – CNR is the only institution that maintains records of legal ownership.

Municipalities can sign an agreement with CNR for access to their cadastral information, but the arrangement is optional, and not all municipalities are willing or able to pay for the data.⁴⁰ One of the municipal cadastre offices said that they used to have a Memorandum of Understanding with CNR, but it has expired, and their maps are not yet up to date.⁴¹ The other said that they now have an agreement with

CNR and are about to start updating their cadastre with data from CNR’s records.⁴²

National Directorate of Municipal Works

This office was created by Decree No. 219 (2021) to manage over USD 300 million that had been previously transferred to the Salvadoran Institute of Municipal Development (ISDEM) when it was dissolved by the national government. In 2021, the Directorate submitted a proposed bill to the legislature, seeking to exercise the power of eminent domain for landowners that it alleged did not have legally registered titles, and arguing that it wanted to centralize public funds of the mayors’ offices for works in their communities that are of “undeniable urgency, public benefit and priority for the country.”⁴³

It is unclear what this office is empowered to do, or how jurisdiction and authority between this national office and municipal offices would be divided. Some persons interviewed for this research expressed the opinion that its creation is an example of a trend towards centralization of services.

6. Community Leaders and Community Development Associations (Asociaciones de Desarrollo Comunal or “ADESCOS”)

ADESCOs promote development at community level and work with the mayor and other levels of government on projects like health, education, water, infrastructure, and housing. These associations can participate in social, economic, cultural, religious, civic, educational and other fields beneficial to the community.⁴⁴ Under the 1986 Municipal Code, they can apply to the municipality for official legal personality and must have at least 25 members, 30 per cent of whom must be women.

³⁷ Constitution, art. 202.

³⁸ Constitution, art. 206.

³⁹ KII 14.

⁴⁰ World Bank (2010).

⁴¹ KII 14.

⁴² KII 18.

⁴³https://www.elsalvador.com.translate.google/noticias/nacional/gobierno-promueve-ley-expropiacion-inmuebles-terrenos-interes-publico/892038/2021/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=nui

⁴⁴ Municipal Code, Chapter II, art. 119-20.



ADESCOs and other community leaders (who had not yet formalized their legal status as an ADESCO) said that they generally focused on trying to bring critical infrastructure and services to their communities, and did not work on matters related to housing and land. Some expressed the desire to do so, but said they did not have the necessary technical skills.⁴⁵ However, there were others who were very dedicated to the cause of legalizing ownership for their lands with CNR and are seeking assistance from anyone who can provide it.

B. Relevant Law

1. Civil Code of 1859

As in most civil law countries, the Civil Code of El Salvador of 1859 includes fundamental concepts regarding property. The Second Book of the Code, entitled “Of Property, Its Ownership, Possession, Use and Enjoyment” explains the following:

- All things which can be appropriated are called property, and are divided into immovable (real) and moveable property. Real property includes land and any constructions attached to the ground. Moveable property is all tangible things and rights that are not real property.⁴⁶
- Rights are divided into real and personal. Real rights are held over a thing without reference to a specific person, and include ownership, inheritance, usufruct, use or habitation, easements, pledges and mortgages. Personal rights are those which can only be claimed from certain persons who, by an act of theirs, or by provision of law, are subject to correlative obligations.⁴⁷
- Dominion or ownership is the right to possess a thing exclusively and to enjoy and dispose of it, without any limitations, other than those established by law.⁴⁸

- A person claiming to be the owner of real property has no legal effect against a third party unless the ownership is recorded in the registry.⁴⁹

The Civil Code also established a national registry of real property which must record: 1) deeds or instruments recognizing, transferring, modifying or cancelling ownership or possession of immovable property; 2) deeds or instruments in which rights of usufruct, inheritance, use, habitation or servitude over immovable property are constituted, transferred, recognized, modified or cancelled; and 3) contracts for the lease of immovable property, when they are to be enforced against third parties.⁵⁰

Inheritance and Marital Property

Property can be transferred through inheritance either with a will (testamentary), without a will (intestate), or some combination of both.⁵¹ If there is no will, the inheritance will be divided in accordance with law, which states that males and females have equal inheritance rights, and all children have equal inheritance rights.⁵²

El Salvador also has different regimes for marital property:

- Deferred Community: If a marriage ends, both parties will have rights to assets acquired by either spouse during the marriage.⁵³
- Separation of Property: Each spouse retains individual ownership of property (s)he obtains before and during the marriage, with the exception of the family home.⁵⁴
- Profit Sharing: Each spouse acquires the right to profits obtained by his/her spouse during the time the parties agree to use this regime.⁵⁵

⁴⁵ FGDs 1, 2.

⁴⁶ Civil Code, arts. 560-62.

⁴⁷ Civil Code, art. 567.

⁴⁸ Civil Code, art. 568.

⁴⁹ Civil Code, arts. 674-83.

⁵⁰ Civil Code, art. 686.

⁵¹ Civil Code, art. 953.

⁵² Civil Code, arts. 981-88.

⁵³ Family code, Art. 62

⁵⁴ Family code, Art. 48

⁵⁵ Family Code, art. 51.

2. Decree No. 153 of 1980, Basic Agrarian Reform Law

In 1980, the military junta in power (Tercera Junta Revolucionaria de Gobierno) passed Decree 153 on land reform with the objective of reorganizing large haciendas⁵⁶ into agricultural cooperatives in three phases. Motivations behind the land reform were to diminish land inequality under the hacienda system, increase agricultural productivity by giving land to those working it, increase development and reduce poverty.⁵⁷

Phase I called for the expropriation of all agricultural land owned by an individual with over 500 hectares in total landholdings, and redistribution as smaller landholdings based on “the equitable distribution of land, the adequate organization of credit and comprehensive assistance for rural producers.”⁵⁸ Instead of providing individual title and possession to workers, ISTA organized former hacienda laborers into agricultural cooperatives under collective ownership where farmers would work the land in groups.

The agrarian reform was meant to be nation-wide and included all land with the exception of those located in urban areas and in forests.⁵⁹ The reform affected properties owned by private individuals and/or companies with specific type of soils exceeding 100 hectares and those exceeding 150 hectares with other type of soils. With regards to the process, the law established that ISTA was responsible to determine soil types (and so eligibility for redistribution/expropriation) and to notify the owner of the state’s interest to buy their property. The owner had eight days to confirm his willingness to sell; failure to appear allowed expropriation procedures to begin as an operation of law.⁶⁰

ISTA was also responsible for establishing the price for the land/property, to be paid as compensation with a combination of cash and agrarian reform bonds, depending on the size of the land and its productivity.⁶¹ ISTA assumed ownership and possession of the land as an interim administrator of the property until it was allocated to peasants under collective land ownership.⁶²

There are differing accounts as to how much land was actually redistributed. According to the World Bank, Phase I redistributed 232,674 hectares of pasture and unused land to cooperatives, which is equivalent to 15 per cent of estimated agricultural land in El Salvador.⁶³ Other reports estimate that about 20 per cent of all of El Salvador’s farmland was expropriated during Phase I, and it is estimated that about 31,000 working families, or one-fifth of agricultural laborers, in El Salvador, benefited from the reforms.⁶⁴

Phase II of the Reform aimed at expropriating farms between 100 and 500 hectares but was never implemented. The government officially called off Phase II in 1982 following a reorganization of the government leadership.

Phase III was managed by the National Financier of Agricultural Lands (FINATA, now closed) and allowed tenants who farmed up to seven hectares to claim legal title to some of the land they rented.⁶⁵ Ownership rights of the cooperatives to land distributed under Phases I and III were severely restricted; cooperatives were not allowed to sell, rent, or subdivide their lands to avoid fragmentation and maintain economy of scale. Eventually in the 1990s, many limitations were removed through a number of significant legal developments.

⁵⁶ Haciendas were large plantations.

⁵⁷ Montero (2018).

⁵⁸ See also articles 33 and 34, Decree No. 153, of 1980.

⁵⁹ Sections I, II and III D.L. No. 966; D.O. No. 85 Vol. 299 of May 9, 1988. The reform also included peri-urban areas where land was initially expropriated and then returned to the original owner. Section II D. LAW No. 451; D.O. No. 204, 29 October 1980. The land reform did not cover forestry land which is administered under the Forestry Law (Article 4, Decree No. 153, of 1980).

⁶⁰ Decree 153 (1980), arts. 10-11

⁶¹ Decree 153, arts. 12-14, 16

⁶² Decree 153, arts. 17-18, 21; Decree 302 (1975), arts. 48-49.

⁶³ World Bank, 2012, El Salvador Country Land Assessment, p. 30, available at <https://documents1.worldbank.org/curated/ru/122551468027660574/pdf/823120WPOP12330ssment0Final0English.pdf>.

⁶⁴ Montero (2018).

⁶⁵ Decree 207 (1980).



3. 1983 Constitution

The 1983 Constitution codified several of the principles established in the 1980 agrarian reform law, including the social function of land ownership, rights to housing, limits on the concentration of land by wealthy elites and redistribution of land to ensure productive use by those who work the land. Key principles include:

- All persons are equal before the law, regardless of nationality, race, sex or religion.⁶⁶
- The right to private property is recognized and guaranteed as a social function.⁶⁷
- The State's real property (bienes inmuebles) may be transferred to natural or juridical people within the limits and in the form established by law. The rural state property with agricultural or livestock (agropecuaria) vocation, which is not indispensable for the activities proper of the State, can be transferred by means of corresponding payment to the beneficiaries of the Agrarian Reform. It may also be transferred to corporations of public utility.⁶⁸
- The State recognizes and guarantees the right to private property over farmland (tierra rústica) for individual, cooperative, communal or in any other associative form. It establishes a ceiling of 245 hectares (ha) of tierra rústica that natural or legal persons can possess. Owners of tierra rústica that exceed the limit can decide what the portion of land they wish to retain by demarcating the new boundaries and updating the record with the Register of Real Estate and Mortgages. Land that exceeds the 245 ha limit that is owned in common ownership (proindivisión) can be partitioned among its co-owners. All land that exceeds the limit should be transferred within three years under any title to peasants, small farmers, and cooperative

corporations (sociedades) and associations, though not to certain categories of relatives.⁶⁹ If such land is not transferred within the period of three years, it can be expropriated.⁷⁰ The 245 ha limit does not apply to cooperative or communal peasant associations that are regulated under the agrarian reform.⁷¹

- The State should facilitate the development of small rural properties, through technical assistance, credits and other means.⁷²
- The construction of housing is of social interest. The State has the obligation to ensure that the greatest possible number of Salvadoran families become the owners of their home, including in rural areas.⁷³

In 1988 the legislature passed Decree No. 895, Special Law for the Allocation of Rural Lands that Exceed 245 Hectares. The law established that land that exceeded the 245 ha limit was deemed expropriated as an operation of law and taken over by ISTA, who had to pay for the land with agrarian reform bonds. ISTA was responsible for determining what land was eligible and for transferring the land to beneficiaries in line with the reform laws.

4. Land Registry Reform: Decree No. 292, Law for the Restructuring of the Registry of Real Estate and Mortgages (1986) and Decree 24, Regulation of the Law on Restructuring the Registry of Real Property and Mortgages (1986, as amended in 1988)

El Salvador has adopted a title system registration that focuses on the land parcel and centers around the registration of the property. In 1986, Decrees No. 292 and 24 officially established the Real Property and Mortgages Registry ("Registro de la Propiedad Raíz e Hipotecas" or "RPRH") to "regulate the

⁶⁶ Constitution, art. 3.

⁶⁷ Constitution, art. 103.

⁶⁸ Constitution, art. 104.

⁶⁹ Constitution, art. 105.

⁷⁰ Constitution, art. 267.

⁷¹ Constitution, art. 105.

⁷² Constitution, art. 116.

⁷³ Constitution, art. 119.



registration of legal transactions affecting such property,”⁷⁴ and was comprised of three registries: 1) the Real Estate Registry; 2) the Real Estate Registry for Flats and Apartments; and 3) the Registry of Court Decisions; all divided in several units.⁷⁵ Decree 292 established the General Director of Registries (under the Ministry of Justice) to oversee other registrars throughout the country.⁷⁶ Decree 24 set out more detailed regulations and several important principles for the registration process, such as the principle of priority (of two competing claims, the one that is validly registered first has priority over the other) and the principle of legality (documents that meet all requirements established by the law will be registered as a public record).⁷⁷

In terms of registration procedures, all required information is recorded in the “folio real” system, where each parcel of land is assigned a number in the registry and has its own record where all rights and interests pertaining to that parcel are recorded.⁷⁸ The “folio real” is the cornerstone of the registration system as all rights related to that parcel will be in that record, including multiple co-owners, inheritance, easements and sub-divisions of the land.⁷⁹ Registration of apartments follows a similar procedure and is also recorded in the “folio real.”⁸⁰ Once the process is complete, the Real Estate and Mortgages Registry will issue proof of registration that includes the key information of property and serves as evidence of ownership.⁸¹

5. The 1992 Peace Agreement and Legislative Decree No. 719, the Law on the Special Regime of Land Ownership of Cooperative, Communal and Community Peasant Associations and Beneficiaries of the Agrarian Reform⁸²

1992 Peace Accords: The 1980 reform law was passed amidst the background of the civil war, and as noted earlier, the implementation of the redistribution process was slow. The war ended with the signing of the Peace Accords on January 16th 1992 between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) in Mexico.⁸³ The agreement re-iterated that the government would transfer rural land that was held in violation of the 245 hectare limit enshrined in the Constitution, affirmed that such land would be given to landless peasants and small farmers, and committed the government to ensuring that the national financial system would provide credit to the small scale and cooperative farmers.⁸⁴

The agreement also included a Land Transfer Program (Programa de Transferencia de Tierras or “PTT”).⁸⁵ According to this agreement, beneficiaries could decide whether they wanted individual or collective ownership, but a form of joint land ownership known as proindiviso would be initially issued.⁸⁶ The goal was to distribute 237,000 manzanas of land⁸⁷ to 47,500 people – including those who had lived and worked on land they did not own and former combatants of the Armed Forces and the FMLN.⁸⁸

The process depended on the willingness of landowners to sell land, which was problematic because some landowners were not willing to do so and the cost of rural land increased. Beneficiaries obtained plots of land ranging from two to seven manzanas by taking out loans from ISTA and the National Agricultural Land Fund (Banco de Tierra and Financiera Nacional de Tierras Agrícolas or “FINATA”), which led to a significant agricultural debt, though ISTA reported that much was forgiven for a majority of the beneficiaries. After three years of

⁷⁴ Decree 292, art. 1; Trackman et. al. (1999)

⁷⁵ Decree 24, arts. 4-5

⁷⁶ Decree 292, arts. 2-4.

⁷⁷ Decree 24, arts. 41-45

⁷⁸ Decree 292, arts. 5-7.

⁷⁹ Decree 24, arts. 49-70.

⁸⁰ Decree 24, arts. 73-78.

⁸¹ Decree 24, arts. 83-84.

⁸² Legislative Decree No. 719, published in the Official Journal No. 100, Vol. 331 from May 31st, 1996.

⁸³ FESPAD (2020).

⁸⁴ 1992 Peace Agreement, Ch. V Economic and Social Questions.

⁸⁵ Decree No. 290 (1995).

⁸⁶ De Bremond (2007).

⁸⁷ A manzana of land is equivalent to 7000 square meters.

⁸⁸ FESPAD (2020).



implementation, 51 per cent of the PTT's goals had been achieved, and former President Calderón Sol declared the process complete in 1995 when 80 per cent of the transfers were complete.⁸⁹

Gender Perspectives – Women and the PTT

Women represented 38 per cent of landholders and 27 per cent of former FMLN combatants who were eligible to receive land under the PTT. In 2004, the ILP found that women represented only 27 per cent of the total beneficiaries, and as of December 2007, that percentage had increased to 34 per cent of the total beneficiaries.⁹⁰

Decree 719 of 1996 was promulgated to consolidate the agrarian reform process and guarantee the legal security of land ownership.⁹¹ It allowed cooperative members to choose between individual and collective land management regime, to sell portions of land to its members for housing, and sell or rent parcels or lots to non-members, after approval by the Extraordinary General Assembly.⁹² The sale of cooperative land to non-members of the cooperative follows a complex non-judicial public action and requires approval by two thirds of the cooperative members through an Extraordinary General Assembly meeting, which involves the participation of representatives of several public entities such as the Attorney General and the Ministry of Agriculture.⁹³

6. Urban Development Laws

The **Urban Development and Construction Law of 1951** and its amendments were intended to regulate parcel and lot divisions and subdivisions in urban land markets, but much informal development

continues to take place.⁹⁴ The Law established the Vice-ministry of Housing and Urban Development under the Ministry of Public Works as the lead agency to oversee compliance with the law (replaced in 2019 by the current Ministry of Housing), and listed the municipalities' competencies for urban planning, requirements for obtaining construction authorizations and appeal mechanisms. However, other research notes that the majority of municipalities have their own ordinances to regulate urban land markets which are not necessarily in harmony with national or regional plans.⁹⁵

Decree No. 70 of 1991, Regulations of the Law of Urbanism and Construction in Relation to the Housing Subdivisions and Urbanizations, regulates all activities related to the planning, execution and control of any housing subdivision project to be carried out in the country, with the exception of those municipalities or groups of municipalities that have a local plan that establishes their own regulations.⁹⁶ The law sets out important definitions and criteria (such as urban/rural land, zoning area, plot, etc.), which are foundational to urban planning and development carried out under the management and supervision of the municipalities.⁹⁷ It regulates the procedures to be followed for obtaining subdivision permits for housing purposes in urban and rural areas, providing in detail all the requirements (i.e. prerequisites, permits) as well as standards for the execution of the work and verification for habitability purposes.⁹⁸

Decree 644 of 2011, Territorial Planning and Development Law, provides further detail about the responsibilities of different institutions regarding urban development.⁹⁹ It created the National Council and Departmental Councils for Territorial Planning

⁸⁹ Rafael Paz Narvaez (1996) "El Programa de Transferencia de Tierras Agrícolas y la Redefinición del Problema Agrario en El Salvador."

⁹⁰ FESPAD (2020).

⁹¹ Decree 719 (1996), art. 1.

⁹² Decree 719, arts. 4-10.

⁹³ Decree 719, art. 9.

⁹⁴ World Bank (2012).

⁹⁵ World Bank (2012).

⁹⁶ Decree 70, art. 1.

⁹⁷ Decree 70, art. 3 and Title II Subdivision.

⁹⁸ Decree 70, Title II, Chapters 3-5.

⁹⁹ Decree 644, arts. 7-10.



and Development as the governing institution of the administration in matters related to land use planning and development.¹⁰⁰ Its objectives include:¹⁰¹

- Formulating the national policy of urban land management and development;
- Formulating urban land management and development plans in 262 municipalities;
- Formulating at least 14 departmental urban land management and development plans;
- Developing regional or micro-regional urban land management and development plans; and
- Formulating the National Urban Land Management and Development Plan.

The law also recognizes the role of municipalities in terms of approving land management plans.¹⁰²

Land classification

The Territorial Planning and Development Law, lists the following categories of lands:

- Urban areas include the areas that have the infrastructures and services of urban centers. Urban areas may be consolidated (i.e., have infrastructure and road services, lighting, water supply, rainwater evacuation and sanitation, up to the standards and characteristics to serve the area) and unconsolidated (i.e. do not have the required infrastructures and services).
- Urbanizable areas are those classified by development plans as susceptible for its urban transformations, in response to the needs of urban development of the population.
- Special areas for social housing are reserved to develop housing for low-income households, with special requirements for housing density, infrastructure of basic services and equipment.

- Rural areas include those areas for which their urban transformation is not contemplated in the short and medium term.
- Non-developable areas are those excluded of possible processes of urbanization or territorial transformation due to environmental, cultural value, etc.¹⁰³

Decree No. 23, Special Law for the Guarantee of Ownership or Regular Possession of Real Estate, (2009) was passed “to establish an efficient and expeditious procedure to guarantee the ownership or regular possession of real estate against invaders.”¹⁰⁴ The law creates an expedited judicial procedure to remove people accused of squatting on land that is not theirs, and authorizes a government official to appear within 24 hours of a complaint being filed to verify the information in the complaint.¹⁰⁵ Proceedings can be initiated by the Attorney General when the property in question is owned by the state, or the owner of the property when the land is privately owned.¹⁰⁶ After the inspection, there must be a court hearing within three days, and a decision must be issued within five days of the hearing.¹⁰⁷ The judge assigned to the case is allowed to order the eviction of the “possible invaders” as a “precautionary measure” to protect property owners.¹⁰⁸

Outcry against Decree No. 23 of 2009

Human rights organizations interviewed by the research team stated that they have been advocating for the repeal of Decree No. 23 for years, because it facilitates large-scale eviction of families who have nowhere else to go.¹⁰⁹ There have been several well-known examples where this has happened; for example, one human rights NGO told the research team about 75 families living in El Espino Community,

¹⁰⁰ Decree 644, arts. 14, 16.

¹⁰¹ UN Habitat (2017).

¹⁰² Decree 644, art. 34.

¹⁰³ Decree 644, art. 34.

¹⁰⁴ Decree 23, art. 1.

¹⁰⁵ Decree 23, art. 4.

¹⁰⁶ Decree 23, art. 3.

¹⁰⁷ Decree 23, arts. 4-6.

¹⁰⁸ Decree 23, art. 5.

¹⁰⁹ Kils 16, 19.



Antiguo Cuscatlán, who had irregularly settled on government land. There were efforts to build a shopping center on privately owned land in the area, and the owners of the land in question agreed to accept an exchange of state land of an equal amount as the property they were asked to give up. Seventy-five families from the El Espino community were living on that land. The now private owners of the property initiated legal proceedings to have them removed, and in 2014 a judge ordered the families to vacate the land. Legal proceedings stretched on for several years, but in 2018 they were forcibly removed by the state.¹¹⁰ Fundación de Estudios para la Aplicación del Derecho (FESPAD or Foundation for the Study of the Application of the Law) and the National Movement for the Defense of the Land (MOVITIERRA) have helped to support affected communities to protect and fight for their rights.

A common way to acquire land is through the parceling or partitioning of land, commonly called *lotificación*, which typically entails a developer buying land from the owner, subdividing the land into smaller lots and reselling those lots to individuals upon which they can legally build their homes. After the new buyers have finished paying the sale price, the developer must register the transfer of ownership and provide deeds to the new owners. Decree No. 993 of 2012, Special Law on Allotments and Plots for Residential Use was passed “to regulate the possession in good faith, commercialization and transfer of ownership under any title, of the plots or lots derived from the subdivisions at the national level as of the effective date of the present Law; as well as to establish a Transitory Regime for the regularization, legalization and authorization of subdivisions, constituted and commercialized until the effective date of the present decree.”¹¹¹ The law applies to all types of land with specific exceptions, such as

agrarian reform land, certain developments financed by the government, land in protected areas, land in high-risk areas, and subdivisions that do not have residential use, to name a few.¹¹² The law requires the Vice-Ministry of Social Housing and Development to create a national Registry of Land Developers, and stipulates that only developers in this registry can legally commercialize and sell lots in accordance with the law.¹¹³ The system was established as a transitional regime of six years, but was extended in 2018.

Subsequent provisions to regularize and register informal subdivisions were put forth in Decree No. 68 of 2021, to facilitate the regularization and registration of residential land that was subdivided before 2012 as well as those that were still in process of being registered under Decree 993.¹¹⁴ The law sets out the complex process, its requirements and timeframe for the regularization¹¹⁵ and registration¹¹⁶ of residential land use. Land developers whose subdivided land needs to be regularized should request a land registry-cadastral study from the CNR. After the study has been completed and the necessary fees are paid, CNR shall deliver the new deeds to the property. As will be discussed further in Part III, many purchasers have complained about the process and the failure of the developers to deliver the titles as required.

Decree No. 134 of 2021 was passed to facilitate the division of property that was jointly owned (*proindivisión*), but where it was not possible to identify all co-owners; certain beneficiaries of the agrarian reform can also apply for this process to obtain legal ownership of the land they obtained through the cooperative.¹¹⁷ Owners who have enjoyed open and uninterrupted possession of the property for at least ten years can submit an application with proof of ownership (e.g., registration documents) to the

¹¹⁰ Kil 19; <https://www.fespad.org.sv/informe-desalojo-forzado-de-77-familias-en-la-comunidad-el-espino-el-salvador/>

¹¹¹ Chapters III-V.

¹¹² Decree 993, art. 2.

¹¹³ Decree 993, art. 11.

¹¹⁴ Decree 993, art. 1.

¹¹⁵ Decree 68, Chapter II.

¹¹⁶ Decree 68, Chapter III.

¹¹⁷ Decree 134, art. 2.

notary, with two witnesses.¹¹⁸ The notary is responsible for filing the application and appointing experts to inspect the property and carry out the required survey.¹¹⁹ If ownership is disputed, the notary must stop the proceeding and refer the case to the judge; in this scenario the process will resume only after a final court decision is issued.¹²⁰ At the end of the process, the notary will issue a new title deed that will be recorded in the cadaster.¹²¹

C. Decree No. 539, Special Law for the Comprehensive Care and Protection of People in a Situation of Forced Internal Displacement (IDP Law)

On January 9, 2020, El Salvador adopted the IDP Law,¹²² whose provisions are aligned with the UN Guiding Principles on Internal Displacement and other international standards. The law provides for the establishment of a comprehensive national system that brings together a variety of public institutions to collaborate in the response to and prevention of forced displacement induced by conflict and violence or natural disaster.¹²³ The law sets out the rights of people affected by displacement which includes, inter alia, the right to property restitution/compensation,¹²⁴ the right to be issued lost, damaged or destroyed documents,¹²⁵ the right to return to the place of origin or resettlement to other parts of the country, the right to reparation for violation suffered¹²⁶ and the right to non-discrimination.¹²⁷ The law establishes the right to legal protection, including family unity, an adequate standard of living, including shelter, decent economic and social conditions and access to resources.¹²⁸ With regards to HLP, the law establishes the right to protection of properties against occupation, damage and destruction, and the right to restitution and

compensation for HLP violations,¹²⁹ but it is unclear whether IDPs have the ability to meaningfully access and claim these protections in practice as there are no mechanisms to guarantee these rights at this time.

The law creates the National System of Attention and Integral Protection to People in Condition of Internal Forced Displacement (SINAPI), which is responsible for issuing, implementing and evaluating the National Policy for Prevention and Protection of IDPs (the National Policy).¹³⁰ The Inter-institutional Technical Commission for the Attention and Protection of People in a Condition of Internal Forced Displacement (the Commission) will design, approve, evaluate and disseminate the National Policy and any future modifications. The Directorate of Attention to Victims and Forced Migration (DNAVFM) is responsible for setting up an early warning system to prevent forced displacement.¹³¹ DNAVFM is also in charge of developing contingency plans to respond to emergencies¹³² and delivering and coordinating the humanitarian response in collaboration with relevant authorities.¹³³ DNAVFM is responsible for setting up and managing an IDP Registry to track displacement in the country.¹³⁴ UNHCR is strengthening the work of DNAVFM and its Local Offices for Attention to Victims.¹³⁵

Additionally, the office of the Attorney General has established a Forced Displacement Unit that focuses on IDPs and is providing protection and humanitarian assistance, when possible, but notes that they are understaffed and under-resourced. They are unable to directly provide housing assistance but can refer people to the Vice-Ministry of Social Housing if needed.¹³⁶

¹¹⁸ Decree 134, arts. 4-5, 10.

¹¹⁹ Decree 134, arts. 4, 8-9.

¹²⁰ Decree 134, art. 10.

¹²¹ Decree 134, art. 12.

¹²² Approved in Legislative Decree no. 539 dated 9 January 2020 and published in the Official Journal no. 15 Volume 426 dated 23 January 2020.

¹²³ Decree 539, arts. 2-3.

¹²⁴ Decree 539, art.5, g.

¹²⁵ Decree 539, art. 5, k.

¹²⁶ Decree 539, art. 5, a and j.

¹²⁷ Decree 539, art.5, b.

¹²⁸ Decree 539, arts. 11-13.

¹²⁹ Decree 539, art.14.

¹³⁰ Decree 539, art. 15-20.

¹³¹ Decree 539, art. 7.

¹³² Decree 539, art. 8.

¹³³ Decree 539, art. 9.

¹³⁴ Decree 539, art. 29.

¹³⁵ UNHCR El Salvador Factsheet, January 2021 available at <https://reporting.unhcr.org/sites/default/files/UNHCR%20El%20Salvador%20Fact%20Sheet%20January%202021.pdf>

¹³⁶ KII 5.



Photography by NRC



**PART III. THE INTERSECTION OF HOUSING,
LAND AND PROPERTY ISSUES AND
DISPLACEMENT: OBSERVATIONS ON
THE GROUND**

El Salvador has seen multiple waves of displacement throughout the country's history. Section A provides an overview of HLP rights for those displaced by war and the challenges they face in obtaining full security of tenure. Section B focuses on HLP rights for those who have been displaced by current gang violence and criminality – attention is largely focused on this group, as evidenced by the specific nature of the IDP law, although many do not necessarily think of themselves as displaced. Section C offers an assessment of the different HLP problems and issues that have arisen for individuals and families affected by displacement.

A. Displaced During the Civil War

The 12-year civil war displaced 20-25 per cent of the population – over 1 million Salvadorans.¹⁸⁷ Many people were eventually able to find refuge and begin rebuilding their lives within the country, but despite the efforts made during the last thirty years, key HLP needs remain unmet. The research team spoke with several communities that were established by people who fled their home areas because of the violence of the war. These communities acquired their land through different mechanisms, but all have worked hard over the past thirty to forty years to re-build their lives. However, many have been unable to obtain title deeds and register their ownership with CNR, and they fear being displaced again in the future.

1. Permission to Use Land From the Municipality

"We had to flee like cattle ... [without papers] we can be thrown out anytime." - Man in community

Leaders in one community said that many people fled their homes in the mountains where fighting during the civil war was very intense. They were able to find refuge in their present location, reporting that the

woman who was mayor in 1980 gave plots of land to approximately 37 displaced families by verbal agreement. That land had previously been a rural road belonging to the state, but fell into disuse and was thus available for the families when they arrived. They have not had access to basic sanitation services, but have been able to improve their homes slowly over time.

Community leaders think that approximately 20 per cent of current residents arrived during the war. However, municipalities do not have legal authority to grant ownership of land in El Salvador, and forty years later, these families have raised children, built homes and started businesses, but are still waiting to formalize their ownership. They are afraid that without documents, the government will make them move for future development of the area. They are trying every avenue they can think of to legalize their ownership of the land where they have settled. They have letters from the mayor and the municipality, they have reached out to the "Instituto Libertad y Progreso" and to the legislature, but say that no one will help them: *"We have tried to communicate with everyone; no one wants to talk to us."*

2. Obtaining Land from ISTA During the Agrarian Reforms

Many of the original families of one visited community were working as colonos when the land was a hacienda, with some coming from other parts of the country, seeking safety from the war.¹⁰⁵ Those families formed a peasant cooperative and were able to receive and own the land as part of the agrarian reform. They started working with ISTA in 1987, but say that they did not actually start receiving deeds until 1990. A member of the original cooperative board explained that ISTA was responsible for the process, but that the cooperative's members decided themselves how to distribute the land. The idea had

¹⁸⁷ <https://www.migrationpolicy.org/article/el-salvador-civil-war-natural-disasters-and-gang-violence-drive-migration>



been to divide the land into four categories: plots for housing, fertile land and two types of low water land. Each partner in the cooperative got one piece of each category, receiving approximately seven manzanas¹⁰⁶ in total.

ISTA determined the value of each piece of land, and the recipient received a letter agreeing to pay that amount to ISTA. When the amount was paid in full, the new owner would receive a deed. Recipients could decide whether to title the land in a single person or jointly (if married). Regardless, the heirs to the property were listed on the deed, and if the title holder was married and passed away, the property would go to the surviving spouse by operation of law.¹³⁸

However, community members say that up to present time, only 50 per cent of the cooperative members have deeds, and that several members who have paid the full amount never received their documents.¹³⁹ They are continuing to seek help to obtain their deeds, and have no knowledge of why they have not received their documents. Some believe that the failure is due to political reasons, stating that the process stopped during later government administrations.¹⁴⁰

ADESCO leaders say that ISTA refuses to see or speak to them, and has not responded to any of their inquiries. They say that members of the national legislature came to visit the community in early 2022 and asked for the names of the families who were still waiting for their deeds, but have not provided any new information or response yet and they want to have clear ownership that can be passed down to future generations. “We are not the owners; ISTA may come one day and say we must go, or maybe they will ask for more money,” said one woman in the community.¹⁴¹

Arguments between the cooperative and families on the land

A community of about 15 families has been living on a small plot of land previously owned by a person from Spain. A cooperative had been formed in the past to take ownership of the land under the agrarian reforms, but many of these families living there today are unhappy with the cooperative board because they have not been able to obtain title deeds. At this time, the families are asking to have separate titles in the name of each family to avoid disputes between members of the cooperative.¹⁴² Community members are also asking the cooperative to transfer ownership of land where a health clinic has been established to the Ministry of Health to facilitate state investment; the cooperative has so far refused to do so.

3. Buying Land from Developers

Some people who fled because of the war decided to purchase lots from private developers. One woman said that she came from Chalatenango, escaping because of the war and looking to start a new life in her current location.¹⁴³ People in these communities had consistent accounts of how they acquired their land – they made an agreement with the developer to purchase a lot and signed a contract saying they would pay a set amount of money every month until the purchase price was paid off. When that was done, the company issued a letter saying that the debt had been canceled/paid off, and was supposed to provide the new owner with their deed, registered at CNR (as outlined in Decrees 993 and 68, discussed above).

Though a common way for people to acquire land in El Salvador, the consequences are severe for buyers when the system does not work and the developers

¹³⁸ FGD 9.
¹³⁹ FGD 9.
¹⁴⁰ FGDs 1, 8, 9.
¹⁴¹ FGD 8.
¹⁴² FGD 13.
¹⁴³ FGD 10.



do not provide the deeds. People from two communities described their anger and frustration at the companies from which they purchased their land.¹⁴⁴ They believed the companies were acting in bad faith in not providing their deeds, and gave examples of the kinds of excuses they had heard: “There is a delay because of the pandemic,” “everyone in the community must finish paying before anyone can get a deed,” “another community must get their deeds before this one,” etc. Some buyers tried contacting a lawyer to find out what was going on, and heard that there was a problem with government permissions regarding the land. Another person interviewed for this research, said that the development was built too close to archeological ruins, and the government would not issue deeds because the land was a protected area; he believed the developer was aware of this restriction and took people’s money anyway.

“The company lied”

Lola explained that the land she had purchased had been initially used to keep horses. In 2009, she discovered that the land was being divided and sold as lots. The price was 25 USD per month for 10 years; no down payment was required. She bought the land and started to build a house. When she finished paying off the sale price, she went to the developer to ask for the deed. They told her she had to pay an additional 300 USD, even though that was never in the terms of her agreement. She spoke to a neighbor who said that she had paid the developer a fee one year ago, but the company lied and never gave her the deed. One of Lola’s neighbors said that her community was close to archeological ruins, and so the land was a protected site and could not be titled; he thinks the company knew this from the beginning but took money from the people anyway.

When asked to explain the importance of the title documents, people said that they had paid a lot of money and needed to make sure the land was theirs: “In the eyes of the law, we are illegal occupants . . . we are afraid the developer will make us leave, even if we have paid.”¹⁴⁵ The municipality says that they can try and bring attention to the issue, but they cannot deliver titles. The national government gave the parcel companies the power to develop the lands, and CNR is the only institution that can help resolve the matter.¹⁴⁶ The problem is widespread across the country; in 2021 activists stepped up their efforts to appeal to President Bukele to force private developers to give titles to over 350,000 families whose money they have taken.¹⁴⁷

B. Displaced by Violence

Violence has become an increasingly recognized cause of forced displacement in the country over the past decade. The deteriorating security situation has largely been driven by organized criminal groups and gangs. It was reported that the level of violence is now greater than it was during the civil war, and gang violence remains at the center of the country internal displacement and migration trends. While updated official numbers of displaced individuals are not available, a 2022 Human Rights Watch report notes that from 2011 to October 2020, 71,500 people were internally displaced, mostly due to violence perpetuated by gangs and security forces.¹⁴⁸ UNHCR’s projections for 2022 based on previous yearly trends is 114,400 IDPs.¹⁴⁹ By 2019, El Salvadorans made up 37 per cent of all Central American migrants at the southern U.S. border.¹⁵⁰

In March 2022, there were 87 murders in three days, which led to President Bukele calling for a 30 day of exception regime that curtailed civil liberties and greatly expanded state powers.¹⁵¹ The legislature also

¹⁴⁴ FGD 10.

¹⁴⁵ FGD 10.

¹⁴⁶ KII 15.

¹⁴⁷ <https://wagingnonviolence.org/2021/06/el-salvador-land-rights-renacer-cofoa/>

¹⁴⁸ Human Rights Watch (2022).

¹⁴⁹ UNHCR El Salvador Factsheet, April 2022, available at <https://reporting.unhcr.org/document/2350>

¹⁵⁰ Migration Policy Institute, 2021, Central American Immigrants in the United States, disponible en <https://www.migrationpolicy.org/article/central-american-immigrants-united-states-y-acnur-2021-Tendencias-Globales-Desplazamiento-Forzado-en-2020-disponible-en>

https://www.acnur.org/60cbddf4#_ga=2.203820183.666449845.1624026074-52275424.1624026074

¹⁵¹ Congressional Research Service (2022).



approved the establishment of indefinite time periods for pretrial detention; the ability to try people accused of crimes in their absence; the power to sentence children between the 12-16 years of age for up to ten years in prison for gang-related crimes; and the criminal punishment of those who “directly or indirectly benefit from relationships of any nature” with gangs.¹⁵² The exception regime continues to be extended every month and remains in effect as of July 2022.

Gangs are not the only cause of violence, as increased criminal activity, drug trafficking and corruption certainly play a role, but this report focuses on gangs as they were the concern most often reported to the field team. The two major gangs in El Salvador are the Pandilla Barrio 18 and the Mara Salvatrucha (MS-13). Their organizational structure usually involves local sub-groups comprised of young people from the neighborhood,¹⁵³ and people interviewed for this research described environments where gangs held nearly unchecked power – able to demand money and recruit young men, women, boys and girls into their groups as they choose, sometimes targeting children as young as eight or nine years old.¹⁵⁴ Gangs also set restrictions about who can come in or out of territory under their control, and failure to follow their instructions results in threats, violence and deaths. For decades, the Salvadoran population has generally distrusted the feasibility of changing this reality in 2018.¹⁵⁵

While all members of society suffer, women and young girls often bear a disproportionate burden, as gang members view them as their property and under their complete control. Women and girls who have been sexually involved with a gang member are particularly vulnerable to risk and displacement if there is any change in their relationship, and must do

whatever they are told or risk being killed.¹⁵⁶ This research supports other reports that find that young women and girls are systematically targeted for sexual abuse and exploitation,¹⁵⁷ as illustrated in Anna’s story below.

Anna’s Story: “I was forced.”¹⁵⁸

Anna was born in San Salvador. She has two children; her son is 12 and her daughter is 9. Their father, Marco, belonged to a gang. He was from the neighborhood where she grew up; she lived with her mother and sister. “I didn’t want to be involved with him, but he kept following me; I was forced.” Marco forced her to marry him when she was 16 years old. They lived together until he was arrested and sent to prison, but he still made her visit him in jail, even though she did not want to go. Anna says her children were conceived during these visits because he kept track of her period and knew her fertility dates. When she turned 18 and applied for her identity card, she was forced to include her husband’s surname in her name, and his name is on the card.

When the government enacted stricter measures to address gang violence, prison visits for members were banned. In 2020, she started a new relationship and became pregnant, but then, “The gang called and said they knew I had met someone; they came and said they wanted to talk to me. They hit me 13 times with a bat and I lost the baby.” Anna called the Salvadoran Institute for Women Development, who referred her to NGOs for humanitarian assistance. With that help, she took a course on how to do manicures and pedicures so she could earn money to support herself and her children. She also went to the church for help finding a place to live, and she now lives in the pastor’s house, together with the pastor and his wife, two of their siblings, and their daughter,

¹⁵² <https://www.amnesty.org/en/latest/news/2022/04/el-salvador-state-of-emergency-human-rights-violations/>

¹⁵³ Harvard Law School, International Human Rights Clinic (2007).

¹⁵⁴ Harvard Law School, International Human Rights Clinic (2007); IDMC (2018).

¹⁵⁵ IDMC and Cristosal (2018).

¹⁵⁶ IDMC (2018).

¹⁵⁷ IDMC (2018).

¹⁵⁸ KII 11.



her spouse and child. In the beginning they asked her for \$40 USD a month, but she tries to contribute whenever and whatever she can, and she says they do not ask anymore.

She worries that she will still be accused of helping or being part of the gangs; her husband's name is on her ID card. She says, *"I want a place, but there has to be no gang presence. If I go to a rival gang, they will kill me."*

Un problema relacionado es el aumento significativo de las denuncias de desapariciones forzadas. El Protocolo de Acción Urgente y la Estrategia de Búsqueda de Personas Desaparecidas se adoptó en 2018, pero el número de denuncias de desapariciones siguió creciendo, con niveles más altos en 2021¹⁵⁹ que en 2020: en octubre de 2021 se registraron 1.192 personas desaparecidas. La creencia de que las pandillas pueden y harán "desaparecer" a las personas contribuye en gran medida a los temores que provocan, lo que hace más probable que las personas huyan si se ven amenazadas. Además de aumentar el desplazamiento, la desaparición no resuelta de una persona afecta a los derechos y a la vida de aquellos que pueden quedar atrás. Por ejemplo, una mujer dijo que ella y su marido pidieron un préstamo para vivienda hace 20 años. Él desapareció hace 13 años, pero el banco le ha dicho que debe presentar un certificado de defunción o la deuda se mantendrá.

Discrimination and violence against LGBTIQ+ people

There is no comprehensive legislation to protect the LGBTIQ+ community in El Salvador,¹⁶⁰ and under the law, a person can only change the sex listed on civil documents if a medical reassignment procedure is actually carried out. LGBTIQ+ are often targeted by

the gangs for living a life that goes against their norms. Several people reported being victims of such threats. For example, Antonia told the research team that the gangs threatened her cousin because she and her partner were transgender; her cousin fled the country but the gangs killed them.¹⁶¹ Maria was another transgender woman who reported fleeing her home after the gangs threatened her. Her mother wanted to register ownership of their house in Maria's name, but they did not because it would put Maria at risk, and Maria will not let her family visit her new apartment.¹⁶²

C. Displacement and HLP Challenge

While much of the population at large faced or faces HLP challenges, people who have been displaced, either by war or by gang and social violence, often experience the lack of tenure security more acutely. Those who fled their homes because of the civil war want to be sure that they can have full, legal ownership of the lands where they have rebuilt their lives, and want to be able to pass those lands to their children for a secure future. Those who are fleeing from gang violence have difficulty finding and affording places where they feel safe and secure enough to stay, and where they think their attackers will not find them. This section will discuss in greater detail how displacement affects the ability to cope with HLP challenges.

1. Lack of Registration and Inability to Access Titling Services

"Without papers, anyone can take [your land] very easily. It has happened here before." – woman in community¹⁶³

Due to the intense focus on land titling in past years, El Salvador has a relatively high rate of officially

¹⁵⁹ <https://agendaestadodederecho.com/la-desaparicion-de-personas-en-el-salvador-una-deuda-estatal-del-pasado-y-el-presente/>

¹⁶⁰ IDMC (2018).

¹⁶¹ KII 8.

¹⁶² KII 23.

¹⁶³ FGD 8.



registered property; a World Bank survey of 630 rural households in 1995 found that 83 per cent had land titles.¹⁶⁴ This research also indicated high levels of awareness among people that property deeds had to be registered at CNR. That said, land tenure regularization continues to remain a challenge for many in El Salvador. As discussed above, many beneficiaries from the agrarian reforms are still waiting for documents from ISTA, many buyers are still waiting for titles from the property developers who sold them the land, and many others are at a loss of how to navigate the legal system to advance their claims. 74 per cent of respondents in NRC's survey declared that their current home is located on private land -of which only 53 per cent said they owned the land on which their home is built-, 11 per cent said they lived on public land, 10 per cent stated the land of their current home is not under any regularization process and 5 per cent were on land that was in the regularization process.

Residents of one community established in the early 1900s say that now everything is privately owned; there is no "free land" anymore. People there stressed the importance of having documents to prove their property ownership. As one woman said, *"Without papers, anyone can take [your land] very easily. It has happened here before."*¹⁶⁵ She gave the example of a man that she knew who had to move out of the community because of threats from gang members. He had to leave very quickly but did not have any papers for his land. While he was gone, a lawyer came and measured the land, then claimed the property was his.

People who had obtained land through the agrarian reform process also expressed frustration about both the failure of ISTA to produce their title deeds and the perceived refusal of ISTA to speak with them.¹⁶⁶ ISTA did not respond to inquiries from this study team, but other reports note that ISTA does not have an

agreement with CNR to process registration cases, and CNR does not carry out cadastral tasks on ISTA lands. Effectively, ISTA must pay to update and register the lands it administers, which has significantly delayed registration for land reform beneficiaries. A 2006 USAID report noted that approximately 22,000 land parcels with legal titles could not be registered at that time because ISTA could not pay the CNR registration fees.¹⁶⁷ A 2012 World Bank report said ISTA had not yet legalized 170,000 titles that were part of the agrarian reform.¹⁶⁸

Similarly, people who had purchased their land from private developers through the lotificación system also complained that the companies were years late in delivering their deeds after the full purchase price had been paid. They worried that they would never receive their ownership documents but did not know what to do because they did not believe that any government institutions would be able or willing to help them.

Many respondents also said that the process to update property records was too expensive and complicated. People believe that most of the land is registered at CNR but say that the records are out of date because current owners cannot afford to update them when ownership is transferred or inherited. One man said he owns land that his father gave to him, but he cannot pay to update the official records, and he worries that if he cannot register the change before his father dies it will become more complicated because he will not have his father's signature. Another woman mentioned that her father owned property in their community and that it was registered with CNR, but he had died while he was in Guatemala, so she had no death certificate or other official records. She went to a lawyer to update the records, but he asked her for many documents she did not have and did not seem relevant – her grandfather's death records, documents about her

¹⁶⁴ World Bank (2010).

¹⁶⁵ FGD 2.

¹⁶⁶ FGDs 1, 8, 9.

¹⁶⁷ USAID (2006).

¹⁶⁸ World Bank (2012).



father's first wife, etc. Discouraged, she gave up.¹⁶⁹ Still another woman said that her mother had left her some land that she had received in 2000 as part of the agrarian reform; she went to CNR to update the deed but was unable to complete the process because CNR asked her "too many questions."¹⁷⁰

2. Loss of Property

Loss of property is an obvious problem for those forced to flee. For example, one woman told the research team that it had taken her thirty years to finish paying for her land and house; just three years later her house was full of gang members threatening to shoot her, saying that she had three hours to go and not come back. She was forced to leave because her sister, who lived in another neighborhood outside the gang's territory had come to visit, and the gangs did not allow anyone living in rival territory into the neighborhood.¹⁷¹ Another woman told the research team about a house that she had purchased from the Social Housing Fund.¹⁷² She had been living there and paying for the house for five years when gang members said they wanted her house and instructed her to leave. She lost everything, and because she stopped the payments, the Social Housing Fund resold the property.¹⁷³

In NRC's survey, 72 respondents said they had land somewhere other than where they were living. Of this group, 30 said the property was abandoned, two said it was occupied without their permission and four said they did not know the status of that property. Nine people said they could not access that land, while another two were unsure. 43 respondents also said they owned a house somewhere else in the country. Of this group, ten people said it was abandoned, one said it was occupied without their permission and three said they did not know about the status of the house. Six people said that they could not access their other house, and one was unsure. 62 of these

property owners said that they had documents for the house, fifty of whom confirmed having a public deed.

Figure 1: What is the status of the other land that you own? (72 respondents)

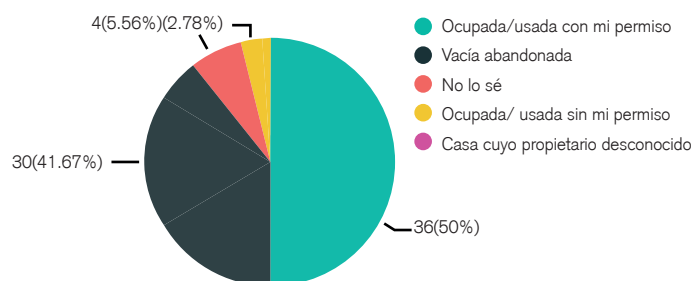
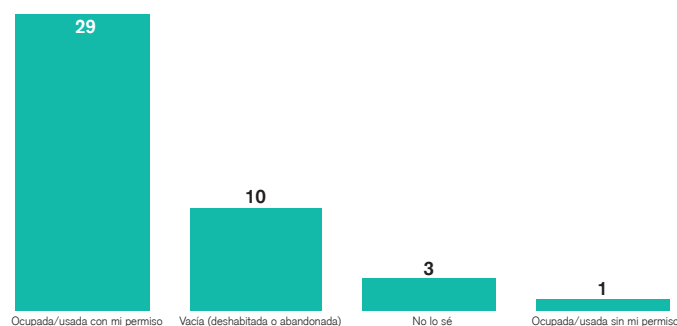


Figure 2: What is the status of the other house that you own? (43 respondents)



Susana, her missing son and the family home

Susana was married and had two children, a 15-year-old daughter and a son who disappeared at the age of 20. She has been regularly searching for him including at hospitals and medical centers, but has no idea what happened to him. Susana took out three loans to build an apartment and start a fast-food business. They lived on land that was registered in the name of Susana's adoptive mother.

In 2021, Susana's adoptive mother had stomach cancer. She wanted to give the land to Susana but they could not afford to update the title deed with

¹⁶⁹ FGD 3.

¹⁷⁰ FGD 3.

¹⁷¹ KII 10.

¹⁷² Fondo Social para la Vivienda (Social Fund for Housing) acquires housing from third parties and provides loans and credit to buyers.

¹⁷³ KII 7.

CNR. In January 2022, two armed men broke into the house, beat Susana and demanded she leave the property in 24 hours. Susana lost consciousness. The next day, other armed men visited her in-laws' house demanding that they also leave. Susana does not know why they were threatened, but believes it was related to the disappearance of her son. Susana and her family had no choice but to gather a few things quickly and run away, leaving the house and everything they owned behind. The family is very afraid and anxious, not only for their lives, but also for the whereabouts of Susana's son, the debt with the bank and their uncertain future.¹⁷⁴

A 2017 report on internal displacement by the NGO Cristosal offered data from the Social Housing Fund as further evidence that violence causes people to abandon and otherwise lose their property. The Fund identified 455 empty properties in areas with some level of criminal risk: 77 per cent of the houses were in high risk areas, 8 per cent in moderate risk areas, and 3 per cent in low risk areas.¹⁷⁵ The report notes "it is likely that these 455 households have abandoned their residence either as direct victims of crime or as a preventive measure."¹⁷⁶

3. Inheritance Disputes

"You want to give the land to your children, but how can you do this if you don't have a deed?" – woman in community¹⁷⁷

Informal allocations of inheritance without updated CNR records also cause problems. One community member said that his father had given him and his brother land by verbal agreement, but that his brother claimed the whole property. The man said he had to buy another property for himself because his brother refused to return his share. Another woman said that

her grandmother had owned land but did not have ownership documents. She divided the land and gave equal shares to all her children, but one of the daughters registered the entire property in her name and refuses to give the other sisters their rightful shares.¹⁷⁸ NRC's survey also suggests that many inheritance allocations are done informally within the family; 29 per cent of respondents who acquire land by inheritance said that the division was not legalized. Moreover, 5 per cent of the respondents stated that they had experienced HLP disputes within the past year, citing problems with family members as the most common reason.

The practice of deciding during life to whom the family properties will be left is common in El Salvador, and usually tends to leave the more vulnerable members without their inheritance rights. Families explain that these agreements are usually respected but are not legally formalized, often because of the cost.¹⁷⁹ Under such arrangements, people who are forced to suddenly flee can lose their claims to such property because they cannot return to their neighborhoods.

Civil Documentation

The lack of civil documentation was mentioned by a few people interviewed during this research, typically in the context of needing marriage and death certificates in order to update the records of inherited property with CNR.¹⁸⁰ Humanitarian workers in the education sector have observed that children who do not have birth certificates are therefore unable to attend school. Additionally, displaced persons who lose their civil documents may have difficulty accessing other services, including housing and health care if they are unable to prove their identity.

¹⁷⁴ KII 24.

¹⁷⁵ Cristosal (2017).

¹⁷⁶ Cristosal (2017).

¹⁷⁷ FGD 8.

¹⁷⁸ FGD 2.

¹⁷⁹ FGDs 12, 13; KII 25.

¹⁸⁰ FGDs 2, 3, 8.

4. Women and Land Ownership

The historical trajectory of land ownership – including through the agrarian reforms – has not treated women equitably. People who received land titles from ISTA as part of the agrarian reform mentioned that the deeds could be issued jointly to married couples, but it was up to the husband to decide whether to do so.¹⁸¹ Statistics from 2007 indicate that only 34 per cent of the more than 20,000 beneficiaries of the Land Transfer Program after the war were women.¹⁸² According to data from the 2007 Agricultural Census, only 12.6 per cent of landowners cultivating for their own consumption and 12.5 per cent of commercial farming land owners were women.¹⁸³

Additionally, during the field work, some women mentioned that men were not questioned when they listed their occupation on identity documents as a farmer, but when women tried to do the same they were sometimes required to present rural land deeds as evidence. Without specifying their occupation as “farmers,” women often could not access a farmer pack (paquete agrícola) provided by the State each year to support farmers, creating more barriers for women in agriculture.

Women interviewed during this research also said that it was more difficult for them to own property (than men) because they were responsible for their children and elders members of their family (reproductive and care work) and had less stable work, so had less economic independence and could not earn enough money to buy property. One woman said that her father gave land to her brothers as their inheritance, but refused to give her a share because he expected her to move out when she got married. Women reported they did not have time or money to go through the registration process to obtain the

necessary documents, and that women sometimes did not know about legal processes. For example, one woman said that her mother was married in a church but did not legally register the marriage, and when her father died, her mother could not prove the marriage to claim the inheritance.¹⁸⁴

However, progress has been made. In 2017, the Social Housing Fund¹⁸⁵ reported that 44 per cent of its loans for home ownership were made to women and that 19 per cent of female farmers own land.¹⁸⁶ Land rights activists said that when ISTA had a female president from 2014-2019, approximately 19 per cent of titles were issued jointly in the name of both husbands and wives.¹⁸⁷ The research team also found a relatively high level of acceptance of women’s rights to own property. In all communities visited, there were several women who reported owning and inheriting land.¹⁸⁸

Noting that 71 per cent of NRC’s survey respondents were women, the data also revealed some interesting comparisons regarding HLP rights for men and women. Of people who had property documents, 111 women (50 per cent of the women) said it was in their name alone, 73 (33 per cent) said it was in someone else’s name alone, and 34 (16 per cent) said they had joint titles. Of the men, 70 (71 per cent) said their document was in their name alone, 19 (19 per cent) said it was in someone else’s name, and 9 (9 per cent) said they had joint titles. In the survey, 47 per cent of men but only 38 per cent of women acquired their current home through sale. More women also reported renting (22 per cent of women versus 17 per cent of men) and inheritance (19 per cent of women and 13 per cent of men) as the way they got their home.

¹⁸¹ FGD 9.

¹⁸² FESPAD (2020).

¹⁸³ UN Habitat (2017).

¹⁸⁴ FGD 3.

¹⁸⁵ Fondo Social para la Vivienda (Social Fund for Housing) acquires housing from third parties and provides loans and credit to buyers

¹⁸⁶ FESPAD (2020).

¹⁸⁷ KII 12, 13.

¹⁸⁸ FGDs 1-10



Figure 3: Female Respondents: Whose name is on your property document?

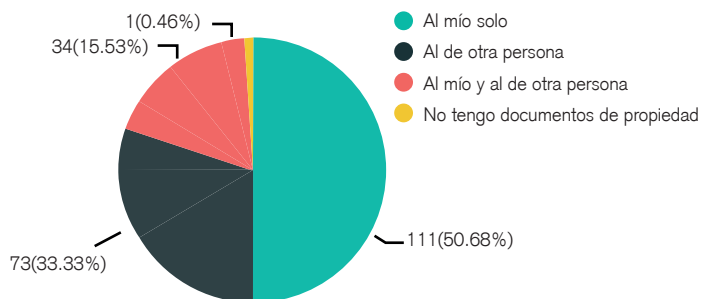
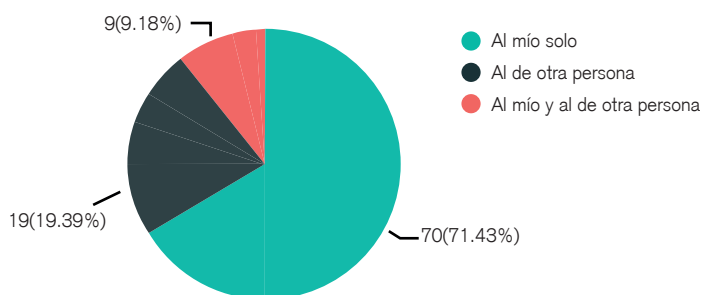


Figure 4: Male Respondents: Whose name is on your property document?



Gender based violence

Violence against women is high, several women have reported fleeing their homes due to intimate partner violence. In the interviews and focus groups, those who reported having been survivors of this type of incident mentioned that the property was in the name of their husbands and at the time of displacement they only took a few items of clothing. Many of them reported suffering psychosocial consequences and facing difficulties finding work. One woman said she had been kidnapped and held by her partner for 20 years, and she was forced to live with him and his other four wives.¹⁸⁹ Another reported that her partner had installed cameras throughout the house so he could keep watch and control over her; she said “To escape I had to cut the electricity for 10 minutes so that he would not notice.”¹⁹⁰

5. Uncertainty and Risks of Eviction

Even after living in the same place for 20 or 30 years, the lack of ownership documents remains a source of uncertainty for many. Parents emphasized the need to resolve this matter before they died, because they did not want to leave the problem for their children.¹⁹¹ One woman said that her mother was living on land that she had received from the municipality in 1982, but that she and her sister rented a house nearby because her mother did not have ownership documents: “We have children. What happens if we go live with [our mother] and then we’re told we have to leave?”¹⁹² Those interviewed for this study said that no matter how long they had lived in their current location, they always worried that they could be forced to move if they lacked official documentation and the government decided they wanted them to move and use the land for other purposes.

Advocacy for Tenure Security and Access to Land

The risks of eviction are also present in communities that have settled on private or State land they do not own. These sites often lack access to public services and are in unsafe locations. The most common cases are families located on the railway line, forests and other lands protected by the Ministry of Environment and Natural Resources. Some examples include: 35 families in Hacienda El Zope street, in Acajutla department of Sonsonate; 126 families in the Bendición de Dios community, in San Miguel; and 700 families in Hacienda Normandía, in Jiquilisco Usulután.¹⁹³

The risk of eviction for these communities is high, and they need access to adequate housing, water and other services in addition to land itself. Civil society

¹⁸⁹ FGD 11.

¹⁹⁰ KII 25.

¹⁹¹ FGD 6.

¹⁹² FGD 5.

¹⁹³ FESPAD y MOVITIERRA, 2021. <https://www.fespad.org/sv/fespad-y-movitierra-el-salvador-sin-reconocer-el-derecho-a-la-vivienda-adecuada/>

and other social organizations have focused on advocating the Legislative Assembly to public land to FONAVIPO, who can then divide the land into lots and issue titles. Thanks to their efforts, some communities have been able to obtain much needed land and homes.

6. Inability to Afford a New Home and Challenges with Renting

Stories from people who had been displaced by gang violence highlight how life can go from being normal to being completely torn apart in the space of a few hours, as in Alberto's story below. Families who are forced to flee without any belongings must start over again, often with past debts and little savings, making it difficult to find a new place they can afford, and forced to rent for years before they can save enough to buy a new home. Even people who have property ownership documents worry that they may have to move one day because of gangs and criminal activity, and fear that they will lose the houses and homes they worked so hard to build as they cannot go back to territory that is under the control of the gangs who threatened them.

Alberto's Story¹⁹⁴

Alberto and his family had lived in their home for 22 years. He and his mother explain that before they moved to that house, they were living in the mountains where there was no water or electricity. They bought the land for a better life and new possibilities and registered their purchase at the CNR to obtain a property deed. At that time, the neighborhood was very safe.

In 2021, Alberto's family started renting a room to a young carpenter, who soon started bringing over people who were very loud and would get drunk. In September of that year, the family told the carpenter

that he would have to leave. He was very angry and argued with Alberto's father, but he eventually left. Three days later, they were attacked. Men started throwing things through the window; Alberto's mother ran, and his father told him to go find her. Alberto was 24 years old. His father tried to hold off the attackers as long as he could, and he was very badly injured.

That night, the family was able to make their way to some relatives in another neighborhood, who showed them some land where they could stay. It was a lot that belonged to an old woman who had died. She left it to a distant relative of Alberto's father's brother-in-law, who said they could stay there until they found something else. Alberto and his parents had to sleep around a toilet made of rotting wood. They did not know the community, but they knew that it was controlled by a different gang than the one who had just forced them out of their home. They still do not know the identity of those who attacked them.

Alberto and his parents loved their old home, but knew that they could never go back, so they made the difficult decision to sell that property. They said that some of their neighbors had expressed interest in buying that land, as did some relatives of the carpenter who started their troubles. They needed money, so sold their home and land for 9,000 USD; the sale was registered with CNR. Alberto says, "I think it was cheap but we had no choice ... now I look for homes and they are USD 100,000." He is the only member of his family working and makes minimum wage, and he has a USD 8,000 loan from the bank he took out to pay for school.

"We want to leave the country. There are gangs in the current area too; we haven't had any direct problems with them but you hear shootings, and then you hear about killings. There are other families who have had to leave this area too. It's a small community; gang members are often still living with their families. We are looking for a new place but can't find anything that we can afford."

¹⁹⁴ KII 9.



NRC's survey suggests that people who have to relocate are more likely to rent for a substantial number of years in their new area. In the survey, 91 per cent of respondents said that they had lived in their community for the past 10 years. Of this group, 67 per cent said they owned their home, 17 per cent were renters, 12 per cent were living in a place without paying rent, 2 per cent said they did not know the owner of their current home, and the other 2 per cent replied they had another agreement to live in their current home. For people who had not been in the community for the past 10 years, only 35 per cent said they owned their home, 48 per cent were renters, 15 per cent were living in a place without paying rent, and the other 2 per cent replied they had another agreement to live in their current home. Most renters – 76 per cent – said that they had only verbal agreements with their landlords, with 46 per cent reporting difficulties paying their rent. Of the latter group, 76 per cent expressed fears of being evicted.

Figure 5: Respondents who have lived in their community for the past 10 years: How did you access your home?

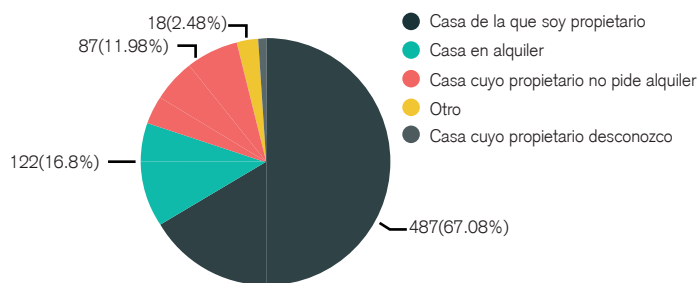
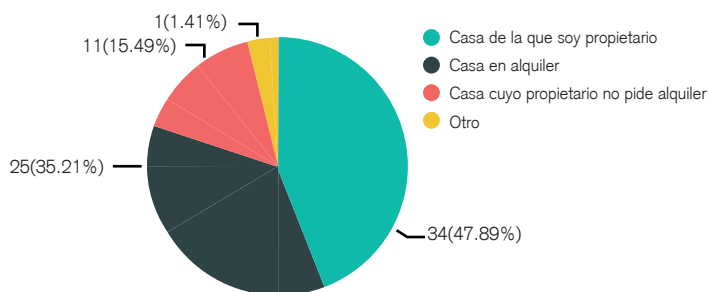


Figure 6: Respondents who have not lived in their community for the past 10 years: How did you access your home?



7. Inability to Pay Loans and Mortgages for New Housing

Several families reported taking out loans from the Social Housing Fund (FSV), a public lending institution discussed above in Part II, in accordance with their ability to pay. If security conditions in the neighborhoods where they bought their houses become dangerous and violent, there is no mechanism for them to find another house through the FSV. Additionally, if people are forced to flee from violence before they have finished paying off the debt, they lose both the house and the money invested, and the FSV will resell the house, which can result in placing new families in dangerous areas. As one person recalled, *"I approached the FSV to ask what alternatives existed for access to housing for displaced persons. The official showed me a list of available housing. To my surprise, they were all located in the most dangerous neighborhoods, including the area from which I first moved. The list showed the state of the houses; almost all of them were destroyed. They belonged to other people who were displaced as well."*¹⁹⁶

The risk of losing your investment to acquire your family home

Juliana was born and raised in the Larco neighborhood. She got married and after several years of renting, she and her husband applied to the Fondo Social para la Vivienda (FSV) for a loan to buy a house. Her mother-in-law told them about a property near her home that was within the loan amount. Juliana and Fernando, the husband, used the loan to buy the house. The house was appraised at 24,000 USD and the couple started paying 220 USD monthly for the loan. Juliana and Fernando moved into the house where they lived happily with their daughters and benefitted from the proximity to

¹⁹⁶ FDG11.



the mother in law who was a great help with the girls.

However, there is a bar selling drugs and alcohol next to the house where gang members often went. A few years ago, her husband had an argument with a drunk driver who had gotten into a car accident. To prevent further accidents, Fernando took the driver's car keys and papers for the vehicle. The next day the gang members came to her house and calmly asked her to return these items.

Since that day, the couple has not felt safe staying in the house: the gang and related criminal activities were increasing and the neighborhood is no longer a place to raise a family. The couple decided to make some improvements to the house and tried to sell it, but they were never able to secure a buyer. They asked the FSV if it was possible to return the house to the Fund and were informed that they had to default on payments for three months. However, they consider this option very risky as they do not want to risk their rights to the home and investments.

The IDP law provides that payments on loans held by public banks and funds, such as FSV, can be suspended for six months from the time of displacement. However, this protection does not extend to private loans. The person seeking to benefit from this protection must obtain a "certificate of forced displacement" from the National Directorate of Victims and Forced Migration, located in the Ministry of Justice and Public Security, and it is unclear whether there is formal process to obtain this document.



Photography by NRC



PART IV. LOOKING FORWARD

There are some hopeful signs of progress in addressing internal displacement since 2014, when the former government formed the Consejo Nacional de Seguridad Ciudadana y Convivencia (CNSCC or National Council for Citizen Security and Coexistence), which passed the Plan El Salvador Seguro (PESS) in 2015, which is no longer in place but was successful in implementing actions regarding violence prevention, criminal prosecution and victims' assistance in the country. El Salvador has also joined the Comprehensive Regional Protection & Solutions Framework, and in 2018, the Supreme Court ordered the government to officially recognize forced displacement and develop legislation and policies to protect and help displaced people. In 2020, the National Assembly adopted the IDPs Law, which requires the creation of a registry of displaced persons and a national system to coordinate humanitarian assistance, such as housing in temporary shelters, protection, and durable solutions, including the safe return or resettlement of victims of forced displacement. The Office of the Attorney General in San Salvador is also working hard to assist victims of violence who present themselves to the office.

However, while recognizing the efforts that are being made, this research shows that many HLP needs remain unmet, which impedes efforts to recover and rebuild after displacement. People displaced by violence need safe places to rebuild their homes and want the government to reduce the threats posed by criminal gangs. Communities who were displaced during the country's civil war need help to formalize their ownership rights in the places they have settled to ensure that they will not be displaced again. While the number of people waiting for deeds from ISTA is unknown, this report suggests that steps are needed to support easier access to the institution for this group.

Concrete steps can and should be taken to tackle the HLP challenges and increase tenure security of individuals affected by displacement. A set of recommendations for the attention of the Government of El Salvador, humanitarian and development actors and donors is provided below.



For the Government of El Salvador:

1) Take the necessary measures to ensure the security of tenure of all at community and household level pursuant to obligations under international and national law.

a) Consider steps to make the land titling process (including updating records) more accessible to citizens of all socio-economic levels (e.g. reducing costs, raising awareness on processes and requirements, promoting institutional proximity to communities in need), and in particular promote land titling for women.

b) Strengthen the process of regularization of land at the community level, including by:

i) Creating a clear pathway for communities who were displaced in the past to obtain legal title for their new lands;

ii) Ensuring strict compliance with the law by property developers to assure that customers have access to title deeds; and

iii) Issuing the backlog of titles which have been pending with ISTA as part of the agrarian reform.

iv) Clarifying and strengthening the links between the CNR and ISTA to facilitate the delivery of registered title deeds to eligible landowners.

c) Clarify the role, responsibilities and authorities of the municipalities and national actors in urban planning.

d) Protect properties against occupation, damage and destruction and ensure the right to restitution and compensation for HLP violations as set out in the IDP Law and share information regarding the current status of implementation of the IDP law.

2) Review the effect of forced displacement on paying ongoing public and private loans/bills and consider extending/freezing payments without additional penalty.

3) Continue to facilitate access to civil documentation for El Salvadorians, in particular when this is required for securing HLP rights, such as for the inheritance process.

4) Listen to communities and affected populations, encouraging their effective participation in processes related to their HLP rights.

5) Strengthen the judicial system to resolve disputes and processes related to HLP in an efficient and lawful manner.

6) Regulate the granting of urban construction permits that are expelling entire communities, putting at risk access to housing, land, property and to livelihoods of the most disadvantaged populations, as well as affecting environmental sustainability.

For humanitarian and development actors:

- 1) Offer legal services to increase security of tenure including:
 - a) Targeting low-income, displaced and other vulnerable citizens to address their HLP needs, including for HLP-related disputes.
 - b) Providing information on and assistance with the process to obtain and update title deeds with a specific focus on vulnerable families affected by displacement and women.
 - c) Providing assistance with the regularization of land for communities, particularly those who have been displaced in the past or are at-risk of future displacement.
 - d) Better understanding and supporting the needs of community leaders and institutions interested in implementing alternative dispute resolution mechanisms for HLP-related disputes in their communities.
 - e) Supporting social organizations in advocacy processes for access to land and advocating for access to land for vulnerable communities squatting on public or private land.
- 2) Provide information on and assistance with the process to obtain necessary new or replacement civil documentation (e.g., birth, marriage and death certificates, identity documents, etc.)
- 3) Continue to advocate for the implementation of the IDP Law and support government efforts to further this goal.

For donors:

- 1) Advocate for the streamlining and simplification of the process for registering land and property in El Salvador.
- 2) Increase funding to ensure that the humanitarian and development response is able to meet increasing HLP needs of displaced affected populations.
- 3) Promote livelihood, food security and infrastructure projects in communities with sufficient tenure security.

¹⁹⁶ <https://nacla.org/news/2020/02/04/confronting-internal-forced-displacement-el-salvador>



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