

## CHAPTER V

# Follow-up of recomendations issued by the IACHR in its Country or Thematics reports

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**El Salvador**



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**CHAPTER V: EL SALVADOR**

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## CHAPTER V

# FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

## SECOND FOLLOW-UP REPORT ON COMPLIANCE WITH THE RECOMMENDATIONS OF THE IACHR ON THE REPORT ON THE SITUATION OF HUMAN RIGHTS IN EL SALVADOR<sup>1</sup>

### I. INTRODUCTION

1. The purpose of this chapter is to follow up on the recommendations made in the report titled *Situation of Human Rights in El Salvador*, approved on October 14, 2021, by the Inter-American Commission on Human Rights (the Commission, the Inter-American Commission or the IACHR), in compliance with Article 59, Paragraph 9, of its Rules of Procedure. Pursuant to this provision, through Chapter V of its Annual Report, the Commission follows up on the measures adopted by the member states of the Organization of American States (OAS) to comply with the recommendations issued in its country or thematic reports.

2. As part of the background to this follow-up report, the Inter-American Commission recalls that, following its request to conduct an *in loco* visit to El Salvador, the State granted its consent on July 2, 2019, and the visit took place between December 2 and 4, 2019. In this regard, the Commission highlighted and appreciated that, during the first six months of the current administration, El Salvador had invited the Commission to conduct an *in loco* visit after 32 years.

3. In 2021, the Commission issued the report titled *Situation of Human Rights in El Salvador* (country report), which includes a series of recommendations to the State based on the findings and information obtained before, during and after the *in loco* visit. Likewise, to prepare the aforementioned country report, the Commission relied on investigations carried out *ex officio*, the information provided by the State, the inputs from the different mechanisms through which the Commission has followed up on the situation in the country, as well as press articles, decisions and recommendations from specialized international organizations, among others, as established in Article 59, Paragraph 5, of its Rules of Procedure.

4. In its country report, which includes events up to December 31, 2020, the Commission addressed the human rights situation in El Salvador with an emphasis on the structural problems which affect the country and that have been pending since the armed conflict. These issues included citizen security, the high levels of violence and the impact of strong-arm policies on the human rights of the population, as well as access to justice, truth and memory for the victims of the armed conflict. Additionally, the Commission analyzed the particular situation of groups and persons of special concern in its country report, such as persons deprived of liberty, women and LGBTI persons, indigenous peoples and Afro-descendants, persons in the context of human mobility and human rights defenders. Furthermore, the Commission also analyzed other concerns related to economic, social, cultural and environmental rights (ESCERs) and the situation of freedom of expression in the country.

5. Following its country report, the Commission included a follow-up report on compliance with its recommendations in Chapter V of its 2022 Annual Report.<sup>2</sup> This report comprises five sections which detail

<sup>1</sup> Chapter not approved by Commissioners Carlos Bernal Pulido and Stuardo Ralón Orellana, with a partial reasoned vote by Commissioner Carlos Bernal, joined by Commissioner Stuardo Ralón. The partial reasoned vote is found at the end of this chapter.

<sup>2</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023.

the measures adopted by the State in compliance with the recommendations made by the Commission, as well as any outstanding challenges to the implementation of said measures, based on information provided by the State and civil society organizations, in addition to publicly accessible information obtained by the Commission.

6. Against this background, this document constitutes the second follow-up report on the recommendations that the Commission made to El Salvador in its country report. This report does not include information on the follow-up to recommendations 1, 2 and 3 regarding citizen security nor recommendations 12, 13, 14, 15 and 20 regarding the rights of persons deprived of liberty. This is due to the fact that the Commission is currently preparing a report on the state of emergency in El Salvador, as well as a report focused specifically on the follow-up of the recommendations concerning persons deprived of liberty. As a result, the Commission refers to those documents for its most up-to-date analysis on both issues.

7. For the preparation of this follow-up report, on August 7, 2023, the Commission requested the State of El Salvador to submit information on compliance with the recommendations contained in its country report within one month. The State subsequently requested an extension and provided the information on October 3, 2023.<sup>3</sup> The Commission appreciates and is grateful for the information received, which was included herein.

8. In addition, this follow-up report has taken into consideration, as applicable, the information provided by the State of El Salvador on August 10, 2023, with regard to the state of emergency and its impact on human rights.<sup>4</sup> This information was provided by the State in response to a previous request from the Commission dated May 10, 2023.

9. For its part, the Commission also sent a questionnaire to more than 80 civil society organizations so that they could provide information on the follow-up of the recommendations. The Commission is thankful for the information provided by some organizations, which was considered for the follow-up of the recommendations contained in the country report,<sup>5</sup> and appreciates their involvement in the monitoring of its recommendations.

10. On November 15, 2023, the Commission forwarded a copy of the preliminary draft of this report to the State, in accordance with Article 59, Paragraph 10, of its Rules of Procedure and requested the State to submit its observations. On December 18, 2023, the Commission received the observations and comments from the State, which, as applicable, were incorporated into this version. The final report was approved by the Commission on December 31, 2023.

11. This follow-up report is divided into five sections which analyze the measures adopted by the State in compliance with the recommendations made by the Commission, as well as any outstanding implementation challenges. The recommendations are evaluated in accordance with the General Guidelines on the Follow-up of Recommendations and Decisions of the Inter-American Commission on Human Rights,<sup>6</sup> following the thematic structure in the country report. The preparation of this report is a measure consistent with the Commission's recommendation follow-up practice.

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<sup>3</sup> State of El Salvador, [Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador](#) prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023.

<sup>4</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>5</sup> University Observatory of Human Rights (OUDH) and the Human Rights Institute of the Universidad Centroamericana José Simeón Cañas (UCA), Answers to the consultation questionnaire, September 11, 2023; Center for Justice and International Law (CEJIL), CRISTOSAL, Due Process of Law Foundation, Mesoamerican Initiative of Female Human Rights Defenders (IM-Defensoras), UCA Human Rights Institute (IDHUCA), Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023; Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023; COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>6</sup> IACHR, [General Guidelines on the Follow-up of Recommendations and Decisions of the Inter-American Commission on Human Rights](#), OEA/Ser.L/V/II.173 Doc. 177, September 30, 2019.

12. Each section of the report refers to the recommendations issued by the Commission and is structured in thematic axes. For each recommendation, the report presents a summary of the information obtained by the Commission and its analysis in the most recent follow-up report (2022). Following this summary, the report covers the information that the Commission obtained from different sources during 2023, including the reports submitted by the State and civil society organizations, as well as the information that the Commission gathered through monitoring the general human rights situation in the country.<sup>7</sup> The report subsequently provides an analysis on the level of compliance and addresses the main achievements and implementation challenges identified by the Commission based on the information collected during 2023. The analysis for each recommendation closes with a diagnosis from the Commission on specific information that the State has not yet submitted or on measures that should be adopted to conclude that there has been progress in the level of compliance with the recommendation. Finally, the Commission presents its conclusions regarding the advances and challenges in the implementation of the country report recommendations considered as a whole.

13. Comprehensive compliance with the recommendations made by the Commission is essential to ensure the full enjoyment of human rights in OAS member states and to contribute to the strengthening of the inter-American human rights system (IAHRS) as a whole. The current international situation demands that stakeholders participate actively by reporting information on the measures adopted to comply with the decisions made by international bodies, including the Inter-American Commission on Human Rights, but it is also essential that these efforts lead to suitable, timely and effective state measures.

14. The Commission reiterates the importance that the State of El Salvador fully complies with the recommendations made in the report under follow-up. Furthermore, the Commission hopes that this report will facilitate a dialogue process to foster compliance with the human rights recommendations that it has made to El Salvador.

## II. FOLLOW-UP OF RECOMMENDATIONS

### A. Memory, truth and justice with regard to the internal armed conflict

**Recommendation No. 4.** Adopt a National Reconciliation Law in accordance with inter-American standards on transitional justice, particularly with regard to holding perpetrators of serious human rights violations accountable for their actions and in relation to the participation of victims.

15. In the most recent follow-up report to the El Salvador country report, published in Chapter V of the *2022 Annual Report*, the Commission informed that it learned that the Committee on Justice and Human Rights of the Legislative Assembly had been conducting studies for the drafting of a bill on restorative and transitional justice. Nevertheless, the Commission considered that, to determine that there had been progress in compliance with this recommendation, the State needed to provide information on the content of the bill, its status and a road map for its processing, and to facilitate the participation of victims in its drafting.<sup>8</sup>

#### *Information on compliance*

16. In 2023, the State reiterated the information provided for the previous year's Annual Report and reminded that the Committee on Justice and Human Rights of the Legislative Assembly had begun to conduct studies for the creation of a bill on restorative and transitional justice in September 2021. In this regard, the State indicated that the road map for the drafting of the bill remained the same as last year, with no

<sup>7</sup> For this purpose, the Commission has used information gathered during public hearings, investigations carried out ex officio, inputs from the mechanisms for petitions and cases, and for precautionary measures, and responses to requests for information issued under Article 41 of the American Convention on Human Rights, as well as information available from other public sources, and decisions and recommendations made by specialized international organizations, among others.

<sup>8</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 32.

modifications having been indicated, and that the bill was still under consideration by the legislative body.<sup>9</sup> In addition, the State highlighted that different actors had been heard during this process, such as “the Supreme Court of Justice, institutions within the Office of the Public Prosecutor, the Ministry of Foreign Affairs, the Institute of Legal Medicine (IML), organizations, associations and committees of family members and victims of the armed conflict.”<sup>10</sup>

17. For its part, the Commission obtained information regarding repeated demands made by several civil society organizations to the Legislative Assembly for the passing of a bill on transitional justice which guarantees access to justice and for “the implementation of a far-reaching comprehensive reparations program for victims of war crimes and crimes against humanity.”<sup>11</sup> According to publicly accessible information, the Constitutional Chamber of the Supreme Court of Justice allegedly ordered the enactment of a law in Ruling No. 44-2013/145-2013 of July 2016.<sup>12</sup>

18. The Commission has also learned that the Legislative Assembly was considering a draft bill for a Special Law on Transitional Justice for Victims of Human Rights Violations in the context of the Armed Conflict in El Salvador, which had been reportedly submitted by a group of victims associations and civil society organizations on October 7, 2021, and included in File No. 290-10-2021-1 of the Committee on Justice and Human Rights of the Legislative Assembly.<sup>13</sup> In this regard, the civil society submitted information obtained from the records of the sessions held by the Committee on Justice and Human Rights and stated that, from February 2022 to the reporting date, the aforementioned draft bill and the proposal submitted by the Office of the Ombudsperson for the Defense of Human Rights (PDDH) known as Special Law on Transitional Justice had not been studied or discussed.<sup>14</sup> According to the civil society, the content of this proposal was not public and was reportedly facing criticism from several human rights organizations and victims of the armed conflict inasmuch as there had not been an adequate consultation process with the victims.<sup>15</sup>

#### *Analysis and level of compliance with the recommendation*

19. The Commission has been aware of the draft bill for the Special Law on Transitional Justice for Victims of Human Rights Violations in the context of the armed conflict in El Salvador since 2022 and takes note of the concern expressed by the civil society over the fact that the proposal had reportedly yet to be studied or discussed in the Legislative Assembly. Considering that the information provided by the State reiterates what was submitted in the previous year and does not identify substantial progress in the enactment of a National Reconciliation Law, the Commission considers that this recommendation remains **pending compliance**.

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<sup>9</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 2.

<sup>10</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 2.

<sup>11</sup> IACHR, 2022 Annual Report, [Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 31 and 32. See also: The Roundtable Against Impunity of El Salvador, the Advocacy Group for Comprehensive Reparations to Victims of the Armed Conflict and the Human Rights Working Commission for Historical Memory, “[Demandamos a la asamblea legislativa cumplir su obligación de aprobar una ley de justicia transicional.](#)” March 20, 2023; DW, “[El Salvador: exigen ley para las víctimas de la guerra civil.](#)” March 21, 2023.

<sup>12</sup> The Roundtable Against Impunity of El Salvador, the Advocacy Group for Comprehensive Reparations to Victims of the Armed Conflict and the Human Rights Working Commission for Historical Memory, “[Demandamos a la asamblea legislativa cumplir su obligación de aprobar una ley de justicia transicional.](#)” March 20, 2023; DW, “[El Salvador: exigen ley para las víctimas de la guerra civil.](#)” March 21, 2023.

<sup>13</sup> The Roundtable Against Impunity of El Salvador, the Advocacy Group for Comprehensive Reparations to Victims of the Armed Conflict and the Human Rights Working Commission for Historical Memory, “[Demandamos a la asamblea legislativa cumplir su obligación de aprobar una ley de justicia transicional.](#)” March 20, 2023; DW, “[El Salvador: exigen ley para las víctimas de la guerra civil.](#)” March 21, 2023.

<sup>14</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>15</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.



*Measures and information to advance compliance with the recommendation*

20. The Commission reiterates the importance of having a swift drafting process for the legislative proposal required to comply with this recommendation in place. In addition, it invites the State to ensure that the drafting process is participatory and takes into account the perspective and contribution of victims' organizations and the civil society, which is especially relevant in transitional justice contexts.<sup>16</sup> Furthermore, for the purposes of this recommendation, the Commission invites the State to learn from successful comparative experiences in transitional justice processes, especially with regard to the implementation of spaces for continuous work with victims, as it may be compatible with and relevant to the Salvadoran context. The Commission also invites the State to provide information on whether there are any road maps in place for expediting the processing of this bill and on any substantial progress achieved towards its approval.

**Recommendation No. 5.** Investigate, judge, and, where appropriate, sanction crimes that constitute serious human rights violations perpetrated during the internal armed conflict.

21. According to the follow-up report published in 2022, the Unit for the Investigation of Crimes Committed During the Armed Conflict (UIDCA) under the Office of the Attorney General (FGR) is the entity in charge of investigating crimes against humanity and war crimes committed during the internal armed conflict. In this regard, the State had reported that the UIDCA was investigating 234 cases that had taken place during the armed conflict, out of which 22 had been prosecuted. In that report, the Commission considered that, despite the increase in the number of cases investigated and prosecuted, no progress had been made in the issuing of sentences to punish those responsible for the human rights violations committed during the armed conflict. Consequently, the Commission requested additional information on the work plan of the UIDCA and the road map on the Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity that Occurred in the Context of the Armed Conflict in El Salvador.<sup>17</sup>

*Information on compliance*

22. For 2023, the State provided information on the status of the cases pursued by the UIDCA and indicated that 232 cases had been processed to the reporting date, out of which 201 were at the investigation stage, 28 had been prosecuted and 3 had been closed.<sup>18</sup> The State added that the UIDCA focused on essential activities linked to the investigation, such as gathering the evidence, identifying perpetrators and clarifying the facts and the manner in which the crime was committed. In addition, with regard to the road map for the UIDCA, the State reported that it focused on the guidelines and instructions laid down in the Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity that Occurred in the Context of the Armed Conflict in El Salvador, prioritizing the cases included in the report of the Truth Commission and without ignoring other human rights violations that took place during the armed conflict, including those committed by paramilitary groups known as "death squads."<sup>19</sup> The State indicated that the content of this policy had been disseminated to the staff of the Office of the Public Prosecutor by the Training School for Prosecutors to ensure its observance and effective implementation.<sup>20</sup>

<sup>16</sup> IACHR, Compendium of the Inter-American Commission on Human Rights on [Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, April 12, 2021, para. 84.

<sup>17</sup> IACHR, 2022 Annual Report, [Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 36 and 37.

<sup>18</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 2.

<sup>19</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 3.

<sup>20</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 4.

23. Moreover, with regard to the resources allocated to strengthen the UIDCA, the State reported that, since 2016, said unit had progressively been provided with the necessary human and logistic resources to carry out its activities. The State informed that the UIDCA had a dedicated space for the provision of services to victims and witnesses, which complies with confidentiality and dignity requirements. In this regard, the State indicated that the unit was composed of “one head of unit, one coordinator for prosecutors, seven deputy prosecutors, one administrative assistant, one advisor on military matters and one legal collaborator.”<sup>21</sup>

24. For its part, the Commission obtained information from civil society organizations according to which, although there had been progress in the consolidation of the Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity that Occurred in the Context of the Armed Conflict in El Salvador, its application had not been effective in litigations, inasmuch as UIDCA prosecutors’ conduct, strategies and requests were not different from those observed in the proceedings for ordinary crimes.<sup>22</sup> The organizations also indicated that they had no information regarding the creation of a plan or road map for the implementation of said policy.<sup>23</sup>

25. With regard to the budget for the UIDCA, the civil society informed the Commission that, although it had requested information, the FGR had reportedly denied access to information on the specific budget allocated to this unit, as well as on the number of prosecutors appointed for the investigation units in the FGR.<sup>24</sup>

26. In its observations to the draft of this report,<sup>25</sup> the State requested the Commission to declare that this recommendation was in substantial partial compliance. In support of this request, the State reiterated information provided on the operation of the UIDCA. In addition, the State updated the number of cases handled by the UIDCA and indicated that at the time it was investigating **255 cases that had taken place during the armed conflict**, out of which **28 had been prosecuted** and the rest remained under investigation. The State reported that the prosecuted cases included:

- The case of the Dutch journalists: the State informed that the members of the military involved had been arrested pursuant to a judicial order requested by the FGR.
- The case of the UCA massacre: former President Cristiani and the highest-ranking members of the military at the time had been prosecuted.
- The case of San Andrés: members of a paramilitary structure who had founded a “death squad” in the city of San Miguel had been prosecuted.

27. In its observations, the State also indicated that the investigation of these cases had been coordinated with organizations representing victims of the armed conflict. The State added that transitional justice actions focused on victims and their families, applied a gender perspective and strengthened the participation of civil society organizations.<sup>26</sup>

28. Furthermore, the State referred to the *Mujeres guardianas de la paz* (Female Peacekeepers) project in its observations.<sup>27</sup> The State informed that the project seeks to i) strengthen the capacities of women’s organizations, ii) carry out actions on the historical memory of women’s contribution to the peace process and iii) strengthen the institutions in charge of transitional justice, as well as their coordination with

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<sup>21</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 3.

<sup>22</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>23</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>24</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>25</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, 18, 2023.

<sup>26</sup> State of El Salvador, Observations of the State to the draft project of Chapter V, submitted through Note MPOEA-OEA-220/2023 of December 18, 2023.

<sup>27</sup> The State informed that this project is funded by the Peace building Fund and is implemented jointly by the United Nations system through the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and UN Women, with the Office of the United Nations High Commissioner for Human Rights (UNHCR) as consulting agency.



women's organizations. The State listed the activities undertaken in this project, including artistic performances; the exchange of experiences between women's organizations to promote transitional justice; the provision of technical assistance to the National Commissions for the Search of Persons and the civil society; a manual on mainstreaming the gender approach in transitional justice processes; historical memory activities to include the rights of women; intergenerational meetings; workshops to promote a culture of peace and violence prevention in the post-conflict period; workshops targeted at public servants and focused on the defense and promotion of human rights, a culture of peace and transitional justice; the identification of best practices in the State to document violence in the armed conflict; the classification and digitization of historical files to identify specific patterns of violations of women's rights.<sup>28</sup>

29. Furthermore, the State referred to two activities developed in the context of the *Mujeres guardianas de la paz* project in its observations. The first one was the international seminar titled *Sistemas de búsqueda e identificación de personas desaparecidas: una visión desde los mecanismos estatales de búsqueda en Latinoamérica* (Systems for the search and identification of disappeared persons: a view from state search mechanisms in Latin America), which was held between August 14 and 16, 2023, and attended by representatives from Mexico, Colombia, Peru, Chile and El Salvador, and experts from Argentina, Guatemala and El Salvador. The seminar was targeted at justice operators and entities linked to search processes. The second activity was a seminar-workshop titled *Análisis de la Jurisprudencia Constitucional e Interamericana en Materia de Desaparición Forzada y justicia Transicional en El Salvador* (Analysis of Constitutional and Inter-American Jurisprudence on Enforced Disappearance and Transitional Justice in El Salvador),<sup>29</sup> organized in coordination with the Supreme Court of Justice and the United Nations implementing partners.<sup>30</sup>

#### *Analysis and level of compliance with the recommendation*

30. The Commission is thankful for the information provided by the State and the civil society. In this regard, it welcomes the information showing an increase in the number of cases prosecuted by the UIDCA in the previous year, which reportedly went from 22 to 28. However, the Commission notes that this figure accounts for only to 11 percent of the total cases under investigation. Although the Commission appreciates the important actions undertaken by the State to coordinate its work with civil society organizations and integrate a gender perspective into these proceedings, it also observes that most of the cases remain at the investigation stage. In this regard, it reiterates that the main goal of the recommendation under follow-up is both the investigation and, where appropriate, the sanction of serious human rights violations perpetrated during the internal armed conflict. The Commission has no information regarding substantial progress in the adoption of judicial decisions that establish the truth of the facts, identify and, where appropriate, punish those responsible for the serious human rights violations perpetrated during the internal armed conflict.

31. However, the Commission welcomes the information provided on the prioritization of cases included in the report of the Truth Commission, without ignoring other human rights violations committed during the armed conflict, since this will help the State to integrate a contextual approach into the investigations. Based on the foregoing, the Commission will determine that this recommendation has reached a substantial partial level of compliance when a majority of the serious human rights violations perpetrated during the internal armed conflict have been prosecuted and when those responsible for them have been punished in the terms set forth in the recommendation. The Commission also identifies the need for concrete information on the road map on the Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity that Occurred in the Context of the Armed Conflict in El Salvador. Considering that the adoption of additional measures for the investigation and the effective development of judicial proceedings leading to

<sup>28</sup> State of El Salvador, Observations of the State to the draft project of Chapter V, submitted through Note MPOEA-OEA-220/2023 of December 18, 2023.

<sup>29</sup> The State quoted the following tweets: [https://twitter.com/PDDHElSalvador/status/1729966761821208787?t=slg-4bDg-BBGt0BmOIF\\_ZA&s=08](https://twitter.com/PDDHElSalvador/status/1729966761821208787?t=slg-4bDg-BBGt0BmOIF_ZA&s=08); [https://twitter.com/CONABUSQUEDA\\_SV/status/1730367238845202450?t=T6Sr4NhTL4CAC6x04cxggQ&s=08](https://twitter.com/CONABUSQUEDA_SV/status/1730367238845202450?t=T6Sr4NhTL4CAC6x04cxggQ&s=08); <https://twitter.com/PDDHElSalvador/status/1730375687708565743?s=08>; [https://twitter.com/CONABUSQUEDA\\_SV/status/1730370621727494144?t=aMcTg3Cuzy5ZsiVndI7sBQ&s=08](https://twitter.com/CONABUSQUEDA_SV/status/1730370621727494144?t=aMcTg3Cuzy5ZsiVndI7sBQ&s=08)

<sup>30</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

effective decisions remains pending, the Commission considers that compliance with this recommendation remains **partial**.

*Measures and information to advance compliance with the recommendation*

32. The Commission reiterates its guidance on compliance with this recommendation in the sense that it invites the State to continue providing information on the effective implementation of the work plan of the UIDCA and urges the integration of a contextual approach into the investigation of serious human rights violations perpetrated during the internal armed conflict. As the Commission has stated since its most recent Annual Report, this work plan must consider the applicable inter-American standards, prevent the application of any legal concepts that prevent these investigations from being carried out, and those responsible for these serious crimes from being prosecuted and punished, and also ensure the necessary human and material resources to advance its implementation. In addition, the Commission reiterates its invitation to the State to report on the substantial progress of these investigations, including any increase in the number of prosecutions and the effective punishment of those responsible for serious human rights violations, as well as to continue submitting detailed information on the implementation and road map on the reported Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity that Occurred in the Context of the Armed Conflict in the Country.

**Recommendation No. 6.** Ratify the Inter-American Convention on Forced Disappearance of Persons, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

33. During the follow-up of recommendations carried out in 2022, the State reported that the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance were pending ratification. The State did not provide information on the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In this regard, the Commission requested the State to provide specific information on the willingness to ratify these instruments and called for the creation of a road map to this end.<sup>31</sup>

*Information on compliance*

34. In 2023, the State reported that both the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance had been submitted for the consideration of the legislative body. In addition, with regard to the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the State informed that it was in the process of consulting national stakeholders before submitting it to the Legislative Assembly for its possible ratification in accordance with the procedure laid down in the Constitution of the Republic for the ratification of international instruments.<sup>32</sup>

35. For their part, civil society organizations informed the Commission that so far there had been no progress in the ratification of any of these conventions. They claimed that the Inter-American Convention on the Forced Disappearance of Persons had allegedly been under study prior to ratification by the Committee on Foreign Affairs, Central American Integration and Salvadorans Abroad of the Legislative Assembly since 2013, and that no further progress towards ratification had been achieved.<sup>33</sup> In this regard, they stated that civil society organizations had called on the State to ratify the Inter-American Convention on Forced

<sup>31</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 38 and 39.

<sup>32</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 4.

<sup>33</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance, and that they had made recommendations and analyzed the need for their ratification in various reports. Moreover, with regard to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the civil society informed that there were reportedly “no public records evidencing any initiative from the Salvadoran State to adhere to this international instrument.”<sup>34</sup>

*Analysis and level of compliance with the recommendation*

36. Since the implementation of this recommendation depends on significant actions aimed at achieving progress in the ratification of the instruments mentioned therein, the Commission considers that this recommendation remains **pending compliance**.

*Measures and information to advance compliance with the recommendation*

37. The Commission invites the State to promote consultation processes and provide information on substantial progress in the ratification of these instruments.

**Recommendation No. 7.** Organize all documentation on the security forces that acted during the internal armed conflict, systematize this, and make it publicly available to victims, authorities of the justice and search system, and society as a whole, ensuring that sensitive aspects are protected appropriately, in the latter case, and reconstructing any files that were destroyed or documents that were not produced when they should legally have been.

38. For the 2022 follow-up report, the State informed that various military units had been ordering, identifying, and classifying the document archive from the period ranging between 1980 and 1992 with the aim of identifying and protecting useful information for the investigations conducted by the Office of the Attorney General (FGR). Nevertheless, the Commission considered that the State had not provided any updates on the progress made in the systematization of said information or in the access of victims and the civil society to it, and therefore it called on the State to report on any recent developments. In this context, the Commission referred to the requests submitted by the Roundtable Against Impunity to the executive branch to cease blocking access to the historical military archives of the armed conflict held by the Armed Forces and to contribute to guaranteeing the right of victims to memory and truth.<sup>35</sup>

*Information on compliance*

39. In 2023, the State informed that the Ministry of National Defense was ordering, identifying, and classifying the documents produced by the institution during the internal armed conflict. In this regard, the State reported that some military units had completed the systematization process and prepared an inventory of the documents. Additionally, the State emphasized that this ministry was also cooperating in the investigations carried out by the relevant authorities, who were conducting inquiries on alleged events occurred during the armed conflict, by issuing responses to requests for information.<sup>36</sup>

40. For their part, civil society organizations informed the Commission that they had no access to any information on the archives of the military and the extinct security forces that operated during the armed conflict. They further reported that the information on the appointment of the members of the Commission for the Review of Military Archives related to the internal armed conflict in El Salvador had been classified as confidential since October 1, 2021, for a term of five years, according to the index of classified information of

<sup>34</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>35</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 41.

<sup>36</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 5.

the Presidency of the Republic.<sup>37</sup> In addition, the organizations stated that no legislation had been passed to regulate access to information on the participation of armed forces during the internal armed conflict, although this had been ordered by the Constitutional Chamber of the Supreme Court of Justice in its Judgment of Unconstitutionality No. 44-2013/145-2013 concerning the Law on General Amnesty.<sup>38</sup>

41. In its observations to the draft of this report, the State reiterated that the information on military files was handed over to the competent authorities in the framework of investigations and criminal proceedings. In particular, the State informed that the military units of the Ministry of National Defense provided the information regarding the 1980-1992 period that was useful to the FGR. The State also clarified that the Ministry of National Defense had suspended the expunging and purging procedures to prevent the destruction of the documents produced in the context of the armed conflict. Additionally, the State reported that Directives No. 001-MDN-2019 and No. 002-MDN-2020 governed the management of military information related to the period between January 1, 1980, and January 16, 1992, including the access to information by the victims and the associations that represented them. In this regard, the State indicated that the directive integrated into both decrees had been prepared by an institutional commission created in November 2018 and reported that the information about this period was also included in the reports submitted by the State to the Inter-American Court of Human Rights in the framework of the joint monitoring of compliance with the judgments issued in *Serrano Cruz Sisters v. El Salvador* and *Contreras et al. v. El Salvador*.<sup>39</sup>

42. In addition, the State reported that, through the *Mujeres guardianas de la paz* project and with the international cooperation of the search commissions, it had begun the process of classifying and digitizing historical files by gender and type of human rights violations. The State clarified that this information was not public; however, it was intended to serve as a reparation measure for women who had been victims of serious human rights violations in the context of the armed conflict.<sup>40</sup>

#### *Analysis and level of compliance with the recommendation*

43. The Commission is thankful for the information provided by the State and notes that it has begun to implement some actions aimed at systematizing the information to which this recommendation refers. In particular, the Commission observes the progress achieved by the Ministry of National Defense in the process of ordering, identifying and classifying the documents from the security forces that were involved in the armed conflict. Furthermore, the Commission appreciates that this ministry has stated that the military units provided information for the investigations conducted by the FGR, that there was willingness to cooperate in the investigations carried out by the relevant authorities for acts committed during the armed conflict and that some military units had completed the systematization process by preparing inventories of the documents.

44. Among the efforts undertaken by the State, the Commission acknowledges the initiative launched as part of the *Mujeres guardianas de la paz* project to classify and digitize historical files. The Commission notes that this effort is not yet public; however, it regards it as an essential stage in the work of systematizing and classifying information.

45. For its part, the Commission determines that, although the State has taken the first steps towards compliance with this recommendation, some issues that are essential to its implementation remain pending. For instance, although Directives No. 001-MDN-2019 and No. 002-MDN-2020 govern the management of military information related to the period ranging between January 1, 1980, and January 16, 1992, including

<sup>37</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>38</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>39</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>40</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

the access to information by the victims and the associations that represent them, the Commission has no knowledge of the content nor the manner in which public access to these documents is guaranteed in practice.

46. Finally, according to the State, it should be noted that the information to which this recommendation refers was also included in the reports it had submitted to the Inter-American Court of Human Rights in the framework of the joint monitoring of compliance with the judgments issued in *Serrano Cruz Sisters v. El Salvador* and *Contreras et al. v. El Salvador*.<sup>41</sup> The Commission reminds the State that it is essential that the relevant data to analyze compliance with this recommendation be directly provided to it as part of its follow-up process considering that the monitoring processes of both organs of the inter-American system are independent.

47. The Commission observes that the efforts undertaken by the State to implement this recommendation are aimed at systematizing and classifying the information referred to therein and to provide it to authorities within the framework of investigations. The Commission considers that, although these actions are relevant, they still fail to comply with the core part of the recommendation inasmuch that the registry of information must be made available to the victims and even to society in general while protecting any sensitive aspects, as necessary. Even though the Commission appreciates the information shared on the creation of a record by the Ministry of Defense, as well as the initiative to classify information as part of the *Mujeres guardianas de la paz* project, it notes that said information still needs to be made available to all the persons listed in the recommendation. While the internal actions reported may bring visibility to the recommendation, the protected right requires effective access to the information and no progress has been recorded in this regard. Awaiting specific information on how access to the information mentioned in the recommendation is guaranteed for the victims and the public in general, the Commission concludes that this recommendation remains **pending compliance**.

*Measures and information to advance compliance with the recommendation*

48. The Commission reiterates the need for the State to continue implementing actions to systematize the documentation from the security forces that were involved during the internal armed conflict. These measures include the development of databases and the reconstruction of archives. However, the Commission considers that the State should also adopt measures to disseminate these records and ensure effective access thereto for victims and society as a whole, and that it should report on how it has strengthened in practice access for the judicial authorities in charge of the investigation of the facts occurred during the armed conflict. The Commission reiterates that these actions must guarantee the public availability of documentation of any kind, including operational, administrative, financial, health or public relations information on the actions of the security forces in the context of the internal armed conflict.

**Recommendation No. 8.** Adopt a legal framework regulating a national policy for the search of victims of forced disappearance and a law regulating the creation of a genetic information bank; exhumation proceedings; and a law regulating the rights of the relatives of the victims of disappearances.

49. In the follow-up to this recommendation included in Chapter V of the 2022 Annual Report of the Inter-American Commission on Human Rights, the State provided information on institutional strengthening measures to address cases of disappearances related to organized crime and reduce impunity in El Salvador. In addition, the State reiterated the information it had provided previously on the drafting of the bill proposal for the Law on the Disappearance of Persons and the regulations for Decree No. 815 (Law on the National DNA Data Bank).<sup>42</sup> In this regard, the Commission appreciated the efforts reported by the State and highlighted the use of the tools and actions implemented to improve the institutional operation and interinstitutional coordination of the entities responsible for the search and identification of disappeared

<sup>41</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>42</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 43.



persons. However, the Commission called for progress in the adoption of legislation and regulations on the search for victims of enforced disappearance.<sup>43</sup>

#### *Information on compliance*

50. For 2023, the State indicated that, through the creation and operation of the National Commission for the Search of Disappeared Girls and Boys in the context of the internal armed conflict (CNB) and the National Commission for the Search of Disappeared Adult Persons in the Context of the Armed Conflict in El Salvador (CONABÚSQUEDA), it has consolidated a national policy on the search for victims of enforced disappearance. In this context, the State informed about a series of actions taken by both entities, among which the following stand out:

- i) The recording of 1,240 cases or files concerning the search for disappeared persons under investigation as of June 2023, out of which 159 cases have been resolved.
- ii) The systematization of cases recorded by the committees of relatives and civil society organizations.
- iii) The performance of 27 exhumations, which led to the recovery of approximately 43 skeletal remains belonging to girls, boys and adults, which were identified through DNA testing or anthropological examinations and returned to their families, or which are in the process of identification and restitution. Among these exhumations, four are related to the cases *Massacres of El Mozote and surrounding areas v. El Salvador* and *Rochac Hernández et al. v. El Salvador*, as well as two cases overseen by the United Nations Working Group on Enforced or Involuntary Disappearances.
- iv) The delivery of 120 family or community workshops to comprehensively address the impact of psychosocial trauma and its consequences from the moment of the disappearance and throughout the following years.
- v) The review of archives at the cemeteries of the departments of San Salvador (center of the country) and Santa Ana (west of the country), which led to the location of more than 1,500 persons who had been buried as “unidentified” and had died in violent circumstances in the context of the armed conflict between 1974 and 1992.<sup>44</sup>

51. As regards progress in the enactment of the Law on the Disappearance of Persons, the regulations of the Law on the National Data Bank, the regulations governing exhumation proceedings and the law on the rights of family members regarding the absence of disappeared victims, the State reported that the national search commissions had been working on the creation of a genetic data system or bank of persons who had disappeared during the armed conflict. The State indicated the commissions had collected more than 400 reference or family samples and had obtained 265 genetic profiles for the future data bank.<sup>45</sup> However, the State did not submit specific information on the consolidation of the aforementioned legal frameworks.

52. According to information provided to the Commission by civil society organizations, during 2023, the State reportedly failed to achieve progress in the adoption of a national policy on the search for victims of enforced disappearance. In this regard, these organizations pointed out that El Salvador had taken important regulatory and institutional steps to address the phenomenon of forced disappearance, such as the drafting of the Protocol for Urgent Action (PAU) and the Strategy for the Search of Disappeared Persons; the creation of a Specialized Unit for Disappeared Persons within the FGR, an Internal Directive for Searches and a National Unified System for Disappeared Persons and Remains Records; and the amendment of criminal

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<sup>43</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 46.

<sup>44</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 6.

<sup>45</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 6.



legislation to punish disappearances committed by various subjects, including members of organized criminal groups, who prevent victims from exercising their fundamental right to freedom by concealing their whereabouts or location. In spite of this efforts, civil society organizations emphasized that, to date, there had been no progress in the enactment of specialized legislation on the disappearance of persons, in the regulation of exhumation processes nor in the approval of a law on the rights of the relatives of disappeared persons.<sup>46</sup>

53. In addition, with regard to the Law on the DNA Data Bank, civil society organizations reported that they had no information on whether this act would apply to the investigation of crimes or serve as an instrument for the identification of bodies of disappeared persons and for the location of possible perpetrators.<sup>47</sup>

54. Furthermore, the civil society informed that there were no special regulations in El Salvador for exhumation processes related to the armed conflict and that these were conducted pursuant to the Code of Criminal Procedure as an urgent evidentiary act by the FGR with the prior authorization of the competent justice of the peace.<sup>48</sup> On this issue, the civil society reported that the Chalatenango office of the FGR had “conducted two exhumation processes in 2023 related to facts that occurred during the armed conflict in the municipalities of Arcatao and Nombre de Jesús, and that, following the complaint, both had been concluded promptly and in line with the proceedings already established in the Code of Criminal Procedure.”<sup>49</sup>

55. In view of the alleged absence of a normative framework on the disappearance of persons, the organizations informed the Commission that, in August 2023, the Working Group for Disappeared Persons, the Search Group and relatives reiterated their request to the Legislative Assembly to establish a dialogue with victims, human rights organizations and national and international experts to contribute to the enactment of a Law on the Search of Disappeared Persons that includes provisions on prevention, investigation, justice and comprehensive reparation, as well as guarantees of non-repetition. This request was made during the commemoration of the International Day of the Victims of Enforced Disappearances.<sup>50</sup>

56. In addition, the Commission obtained information from public sources regarding an alleged 28.2 percent increase in the number of disappeared persons during the first quarter of 2023 when compared to the same period in 2022.<sup>51</sup> In this regard, there have been reports of activities conducted by the civil society to call upon the State to expedite the search process for disappeared persons.<sup>52</sup> For its part, the Group for the Search of Disappeared Persons has reportedly requested on media outlets the allocation of “more resources so that institutions responsible for the investigations are fully capable of exercising their powers and addressing the demands of the victims.”<sup>53</sup>

57. In its observations to the draft of this report, the State informed that, although there were no special regulations for exhumation processes related to the armed conflict, it had conducted such exhumations with the support of the Argentine Team of Forensic Anthropology (EAAF), the Forensic Anthropology Foundation of Guatemala (FAFG) and the IML. The State added that the absence of regulations had no negative impact on the identification and restitution of the remains of victims of enforced disappearance in the context

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<sup>46</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>47</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>48</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>49</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>50</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023; Infobae, “[Familiares de desaparecidos en El Salvador exhortan a las autoridades a aclarar casos](#),” August 29, 2023.

<sup>51</sup> La Prensa Gráfica, “[La desaparición de personas en El Salvador aumentó en primer trimestre de 2023](#),” July 26, 2023.

<sup>52</sup> Infobae, “[Familiares de desaparecidos en El Salvador exhortan a las autoridades a aclarar casos](#),” August 29, 2023.

<sup>53</sup> Infobae, “[Familiares de desaparecidos en El Salvador exhortan a las autoridades a aclarar casos](#),” August 29, 2023.

of the armed conflict. The State also reported that it was preparing a protocol for the coordination of the institutions involved in the investigations of enforced disappearances.<sup>54</sup>

58. In addition, in its observations to the draft of this report, the State informed that the search commissions had no authority to issue decisions and instead were out-of-court search mechanisms. The State reported that the commissions were governed by a regulatory framework, had legal certainty and had their own budget and technical independence. It added that they had already been allocated a budget and had a working plan for 2024.<sup>55</sup>

*Analysis and level of compliance with the recommendation*

59. The Commission appreciates the multiple activities conducted by the State to expedite and promote the search of disappeared persons, as well as the efforts to draft a protocol which will coordinate the activities of the institutions involved in the investigation of enforced disappearances. Additionally, the Commission appreciates the steps taken towards the creation of a system or genetic data bank of persons disappeared during the armed conflict and is confident that this will contribute enormously to their effective identification. Likewise, based on the information provided by the civil society, the Commission learned that the approval of the regulations for the Law on the DNA Data Bank reportedly remained pending. Furthermore, the Commission has taken careful note of the requests that the victims had reportedly made to the Legislative Assembly to promote a dialogue with them aimed at enacting a Law on the Search of Disappeared Persons that includes provisions on prevention, investigation, justice and comprehensive reparation, as well as guarantees of non-repetition. In addition, the Commission indicates that, since 2022, it has already underscored the importance of providing legal certainty to the operation of the National Commission for the Search of Disappeared Adult Persons in the Context of the Armed Conflict and the National Commission for the Search of Disappeared Girls and Boys during the armed conflict by establishing a legal framework. Given the need for additional compliance measures, the Commission concludes that this recommendation continues to be met with **partial compliance**.

*Measures and information to advance compliance with the recommendation*

60. The Commission underscores that the content of this recommendation requires the adoption of a legal framework on different aspects related to the search of victims of enforced disappearance. In particular, the Commission renews its call on the State to adopt the legal instruments specified in the recommendation, including the Law on the Disappearance of Persons, the regulations for the Law on the National Data Bank, the regulations governing exhumation proceedings and the law on the rights of family members regarding the absence of disappeared victims. Likewise, the Commission invites the State to guarantee the participation of victims and concerned civil society organizations in the drafting of the aforementioned legal framework.

**Recommendation No. 9.** Provide the CNB, CONABÚSQUEDA, and the Institute of Legal Medicine with the human, economic, logistic, scientific and other resources needed for investigating into and determining the whereabouts of the disappeared persons.

61. In the 2022 follow-up report, the State informed the Inter-American Commission that the commissions referred to in this recommendation had their own budget and the human, financial and technological resources to carry out their work. It also stated that, as of December 2021, the CNB and CONABÚSQUEDA had investigated more than “900 cases of disappeared girls, boys and adults, out of which 116 had been solved.”<sup>56</sup> Although the Commission appreciated the results obtained in the most recent years

<sup>54</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>55</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>56</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 47.

thanks to the work of both entities, it also warned about the absence of specific information on the resources allocated to them and on the manner in which they had been strengthened to fulfill their mandate of investigating and determining the whereabouts of persons who had disappeared in the context of the armed conflict.<sup>57</sup>

#### *Information on compliance*

62. During 2023, the State reported that the budget of the CNB and CONABÚSQUEDA was under the scope of the General Fund of the Nation and that it amounted to 56,425.00 US dollars for that year. In addition, the State informed that both commissions were beneficiaries of the *Mujeres guardianas de la paz* project of the Peacebuilding Fund of the United Nations Secretary General. Within the framework of this project, the State informed that a seminar targeted at justice operators and entities linked to search processes had been held in August 2023.<sup>58</sup>

63. In addition, the State highlighted that different mechanisms had been created through interinstitutional coordination with other government entities which assist in the search processes, thus increasing the resources available to the commissions. These entities include the Institute of Legal Medicine (IML), the Ministry of Health (MINSAL), the Ministry of Local Development (MINDEL), the National Registry of Natural Persons (RNPN), the National Records Center (CNR), the PDDH, local governments and the Ministry of Foreign Affairs.<sup>59</sup>

64. With regard to the IML, the State shared information on the strengthening of its budget for 2023, with an additional allocation of 2,499,555.00 US dollars compared to the 2022 budget. The State also indicated that the accreditation process for the IML laboratories had been completed and that the Department of Anthropology and Biology had been strengthened with human resources, but it offered no details in this regard.<sup>60</sup>

65. Additionally, according to information provided by the civil society, both the CNB and CONABÚSQUEDA reportedly continued to depend on the budget of the Ministry of Foreign Affairs and, to the reporting date, there had been no progress in the drafting of a law to strengthen these institutions since, based on the information received by the Commission, their operation and legal framework were governed by decrees issued by the executive branch.<sup>61</sup> Moreover, the Commission was informed that the budget allocated to these entities showed no significant changes for 2023 and, therefore, their funds remained modest when compared to the budgets allocated to other programs, such as those targeted at war veterans and former combatants.<sup>62</sup>

66. In its observations to the draft of this report, the State indicated that the aforementioned budget for the commissions only accounted for their operational expenses and clarified that the Law on the General Budget of the Nation allocated 187,320 US dollars to the CNB and 299,845 US dollars to CONABÚSQUEDA. It emphasized that the resources made available to the commissions exceeded the allocated budget. The State reported that these institutions had access to administrative resources from the Ministry of Foreign Affairs, to interinstitutional support and to funds from projects such as *Mujeres guardianas de la paz*.

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<sup>57</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 49.

<sup>58</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 7.

<sup>59</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 9.

<sup>60</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 9.

<sup>61</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>62</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

The State also informed that the commissions received support from national institutions for exhumation proceedings to strengthen their capabilities. Furthermore, it added that the approval of unfunded budgets was forbidden by law.<sup>63</sup>

*Analysis and level of compliance with the recommendation*

67. The Inter-American Commission is thankful for the information provided by the State and the organizations. In this regard, it appreciates the information submitted by the State about the steps taken towards the institutional strengthening of the commissions and the IML. In particular, the Inter-American Commission welcomes the increase in the 2023 budget for the latter, as well as the clarification offered by the State in the sense that the resources made available to the commissions are greater than the budget allocated to them, considering that they have access to administrative resources from the Ministry of Foreign Affairs, to interinstitutional support and to funds from projects such as *Mujeres guardianas de la paz*.

68. Notwithstanding the foregoing, the Inter-American Commission continues to consider that it is important for the State to guarantee a significant increase in the budget to ensure that these entities are able to carry out their functions appropriately. In this regard, the Inter-American Commission invites the State to continue reporting additional information detailing how the commissions have increased their budgets or other operating and strengthening resources, and how the IML will drive forward its institutional strengthening. Considering the information provided by the State and that additional compliance measures are still required, the Inter-American Commission declares that compliance with this recommendation remains **partial**.

*Measures and information to advance compliance with the recommendation*

69. Regardless of the actions reported by the State on the strengthening of the resources made available to the institutions referred to in the recommendation, the Commission invites the State to continue submitting information on the comprehensive provision of human, economic, logistical, scientific, and other resources necessary to investigate and determine the whereabouts of persons who disappeared in the context of the armed conflict. In this regard, the Commission requests information evidencing how the budget allocated to these entities for their operation increases progressively and how their internal resources are being strengthened and increased over time, not only financially, but also in terms of human, logistical and scientific resources, considering the challenges posed by the investigation into the whereabouts of disappeared persons. The Commission reiterates that the measures adopted to comply with this recommendation must be aimed at optimizing the search of persons who disappeared in the context of the armed conflict.

**Recommendation No. 10.** Develop a regulatory and institutional framework to guarantee comprehensive reparation for the victims of the armed conflict; immediately restore the reparations program provided for in Executive Decree No. 204 of 2013 until such framework is fully established.

70. In the follow-up to the El Salvador country report included in Chapter V of the *2022 Annual Report* of the Inter-American Commission on Human Rights, the State reported various measures, including an analysis of Decree No. 204 of 2013 conducted by the MINDEL to identify the need for reforms to ensure the reparation of victims, the provision of training on transitional justice to public officials and psychosocial care for victims of the armed conflict, as well as activities to reconstruct the memory of women survivors and victims of serious human rights violations conducted by the Institute for the Development of Salvadoran Women.<sup>64</sup> However, the Commission considered that information had yet to be submitted on the adoption of a solid regulatory and institutional framework that would guarantee a comprehensive reparation policy in the terms

<sup>63</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>64</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 51.

of the recommendation, and reiterated that it was necessary to reactivate Executive Decree No. 204 of 2013 while the State implemented this policy in a sustainable manner.<sup>65</sup>

#### *Information on compliance*

71. In 2023, the State indicated that Executive Decree No. 204 of 2013 was in force and was being implemented by the MINDEL.<sup>66</sup> The State informed that, within the framework of this decree, it had carried out various actions, such as the compensation program, whose payments had been made up to 2022 and were in the process of being paid for 2023; the provision of medical and psychological care; the introduction of amendments to the legal framework by the Office of the Secretary of the President for Legal Affairs, such as the transfer of the Victims Registry managed by the MINDEL; the coordination of food assistance; and the delivery of gerontological services focusing on the socio-family, psychosocial, nutritional and medical follow-up dimensions, through care at the Day Center for Older Adults, home care, educational talks and work with the communities.<sup>67</sup>

72. In addition, civil society organizations informed the Commission that they had no information on whether the reparation measures contained in Executive Decree No. 204 of 2013 had been resumed by the MINDEL or another ministry, and that, according to the explanatory note of the Annual Operations Plan, this information had been classified as confidential.<sup>68</sup> Civil society organizations added that the bill proposal for the Special Law on Transitional Justice for the victims of serious human rights violations in the context of the armed conflict in El Salvador reportedly included provisions relative to the comprehensive reparation of victims. However, this bill proposal was allegedly still under consideration by the Legislative Assembly.<sup>69</sup>

#### *Analysis and level of compliance with the recommendation*

73. The Commission appreciates that the financial compensation granted pursuant to Executive Decree No. 204 of 2013 had been reestablished up to 2022 and invites the State to move forward with the processing of payments for 2023. The Commission also takes note of other reparation measures which were reportedly adopted under this decree, even though it observes that the information does not explain in detail how such measures have been guaranteed in practice. In this regard, the Commission urges the State to ensure the implementation of a solid legal framework for the comprehensive reparations policy, considering that the application of Executive Decree No. 204 is a transitional measure. The Commission calls for the prompt adoption of this policy inasmuch as the passage of time aggravates and intensifies the damage caused by human rights violations to victims, which requires a diligent and timely response from the State. To this effect, and awaiting further information on compliance with this recommendation, the Commission considers that compliance with this recommendation remains **partial**.

#### *Measures and information to advance compliance with the recommendation*

74. The Commission invites the State to adopt a solid regulatory and institutional framework that guarantees the application of a policy for the comprehensive reparation of victims of the internal armed conflict. With regard to the reparation measures provided for under Executive Decree No. 204, the Commission requests information on any continuous reparation actions, specifying their content, beneficiaries and

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<sup>65</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 54.

<sup>66</sup> State of El Salvador. Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 10.

<sup>67</sup> State of El Salvador. Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 10.

<sup>68</sup> OUDH and the UCA Human Rights Institute, Answers to the consultation questionnaire, September 11, 2023.

<sup>69</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Salvadoran Network of Female Human Rights Defenders, answers to the consultation questionnaire, September 11, 2023.



frequency. However, the Commission also reiterates that compliance with this recommendation lies in the creation of a regulatory framework for the comprehensive reparation policy, which is still pending.

**Recommendation No. 11.** Create spaces to hear the victims of the internal armed conflict, allowing them to express their needs with regard to different state services on the matters of truth, memory, justice, and reparation for serious human rights violations.

75. For the follow-up report included in Chapter V of the *2022 Annual Report* of the Inter-American Commission on Human Rights, the State indicated that a wide consultation procedure with the victims and the civil society at large had been held as part of the process for drafting the Law on Restorative and Transitional Justice to receive their inputs and listen to their perspectives. In addition, the State informed that dialogue sessions with local leaders had been conducted to discuss the massacres of El Mozote and that institutions such as CONABÚSQUEDA and the Unit for the Support of War Veterans and Victims of the Armed Conflict of the Ministry of Health had mechanisms for communicating with organizations, communities and victims. In this regard, the Commission appreciated the existence of these spaces and requested information on any spaces for listening to the victims and on participation mechanisms – in relation to justice measures and the reparations program in force by virtue of Executive Decree No. 204/2013 – that may have been implemented to achieve progress in compliance with the recommendation.<sup>70</sup>

#### *Information on compliance*

76. For 2023, the State reported that the MINDEL had been encouraging dialogue spaces aimed at older indigenous adults, surviving victims and/or their relatives to exchange knowledge and expertise on biodiversity. In addition, it highlighted the creation of the Support Committee, with representatives from the 18 communities served by the Day Care Center for Older Adults in Meanguera, Morazán, with a view to promoting participation and shared responsibility.<sup>71</sup>

77. Additionally, the State informed that, as part of the mandate of the National Commissions for the Search of Persons, more than 120 family or community workshops had been conducted to comprehensively address the impact of psychosocial trauma and its consequences, from the moment of the disappearance and throughout the following years, considering the negative impact and physiological issues caused. According to the State, this mechanism provides a space to actively listen to the various needs of the families.<sup>72</sup> Likewise, these commissions have a mechanism for referrals in place with the Ministry of Health to provide priority care to the families of disappeared girls, boys and adults.

78. The State further indicated that it provided various spaces for permanent communication with the victims to adjust and create strategies aimed at improving the implementation of the health reparation measures. Among these mechanisms, the State highlighted the home visits conducted by multidisciplinary healthcare teams, the coordination meetings held with different groups of victims, the community discussions and the local healthcare working groups, which were composed of authorities from local, departmental and regional healthcare facilities, as well as victims, their relatives, legal representatives and victims' committees or associations who support them.<sup>73</sup>

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<sup>70</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 55 and 56.

<sup>71</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 10.

<sup>72</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 11.

<sup>73</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 12.



79. With regard to the findings from these listening and participation processes, the State emphasized that the victims and their relatives were satisfied with the different healthcare actions implemented. It further underscored the need to maintain permanent support from healthcare staff to guarantee the provision of comprehensive healthcare services through coordination with local representatives from healthcare facilities and to streamline the processes for medical attention, referrals and hospital appointments with specialist physicians.<sup>74</sup>

80. For their part, according to information provided by civil society organizations, the participation mechanisms to follow up on the implementation of Executive Decree No. 204 of 2013 had reportedly not been reactivated, although the victims and human rights organizations had explicitly requested the resumption of the reparations program and their participation in it.<sup>75</sup> In addition, they stated that the spaces for the participation of victims in the legislative process for the subsequent enactment of a Law on Transitional Justice had reportedly not been restored either. In this regard, they reported that, although the president of the Committee on Justice of the Legislative Assembly had pledged in 2022 to convene a permanent dialogue roundtable to discuss the contents of the bill, giving the victims and human rights organizations representing them the opportunity to participate actively, the organizations promoting the transitional justice agenda had not been summoned to continue this process as of the reporting date.<sup>76</sup>

#### *Analysis and level of compliance with the recommendation*

81. The Inter-American Commission appreciates the information provided on the listening processes conducted by the mechanisms of the National Commissions for the Search of Persons, as well as on the spaces for permanent dialogue to discuss health reparation measures. Nevertheless, during 2023, the Commission learned about the call made by the organizations and victims to relaunch the spaces for listening focused on both the implementation of Executive Decree No. 204 of 2013 and the legislative process for the enactment of the Law on Transitional Justice. Considering that the adoption of measures to ensure that victims are heard on topics other than the health reparation measures, such as memory, truth and justice and comprehensive reparations is pending, the Commission concludes that this recommendation continues to be met with partial compliance.

#### *Measures and information to advance compliance with the recommendation*

82. The Commission reiterates that the adoption of participation mechanisms in relation to memory, truth, justice and comprehensive reparation is also necessary to achieve progress in the level of compliance with this recommendation. Therefore, it invites the State to incorporate these spaces for listening to the victims of the armed conflict into a continuous listening strategy and to avoid confusing them with other isolated actions or spaces involving contact with citizens. The Commission considers that it is also essential that the information provided on compliance with this measure include the results and main findings from these listening process with regard to all the aspects listed in the recommendation: memory, truth, justice and comprehensive reparation.

### **B. Prevention of torture and other cruel, inhuman or degrading treatment or punishment**

**Recommendation No. 16.** Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and establish a national mechanism for the prevention of torture.

<sup>74</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 10.

<sup>75</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>76</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

83. As per Chapter V of the Commission's *2022 Annual Report*, the State informed that the ratification of the optional protocol mentioned in the recommendation had been submitted for consideration by the legislative body in 2013. However, the State did not provide any information on the creation of a national mechanism for the prevention of torture; therefore, the Commission urged the State to establish it.<sup>77</sup>

*Information on compliance*

84. For the 2023 follow-up report, the State reiterated that the aforementioned protocol had been submitted for consideration by the legislative body. In addition, it stated that the Constitution of the Republic empowered the PDDH of El Salvador to perform the duties of a national mechanism for the prevention of torture.<sup>78</sup>

85. For its part, according to publicly accessible information, the Commission learned that Salvadoran civil society organizations had called for the ratification of this optional protocol.<sup>79</sup> In this regard, the organizations emphasized the importance of advancing the ratification of this instrument and argued that it would create a system of periodic visits to the country to monitor the situation of persons deprived of liberty. Even though the petition for ratification had reportedly been submitted to the Legislative Assembly in 2018, the proceedings before it had allegedly not started.<sup>80</sup>

*Analysis and level of compliance with the recommendation*

86. The Commission observes that no additional measures have been implemented in the past year to advance the ratification of the optional protocol mentioned in the recommendation or to establish a national mechanism for the prevention of torture. Therefore, the Commission concludes that this recommendation remains pending compliance.

*Measures and information to advance compliance with the recommendation*

87. The Commission underscores the need for the State to adopt measures to achieve the two results requested in the recommendation – namely, the ratification of the optional protocol and the creation of a national mechanism for the prevention of torture.

### C. Operation of the Office of the Public General Defender of the Republic

**Recommendation No. 17.** Pass the Organic Law on the Office of the Public General Defender (PGR) and grant it a budget that will allow it to act consistently with the workload assigned to it.

88. In Chapter V of the Commission's *2022 Annual Report*, the State reported that Legislative Decree No. 837 of 2021 had been approved in May 2021. A new Organic Law on the PGR was enacted by said decree, which introduces a new institutional vision for the provision of services to users based on a human rights, inclusion and nondiscrimination approach focused on victims or populations in vulnerable situations. Regarding budgetary matters, the state informed that the PGR had its own budget to comply with its constitutional mandate. The Commission welcomed the approval of this decree and considered that the first component of the recommendation had been complied with. Likewise, the Commission appreciated the increase in the budget and human resources allocated to the PGR. However, the Commission also noted that, as a result of the citizen security measures adopted during the state of emergency, the demand for the services

<sup>77</sup> IACHR, *2022 Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador*, March 11, 2023, paras. 84 and 85.

<sup>78</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 12.

<sup>79</sup> La Prensa Gráfica, "[Organizaciones apremian ratificación del protocolo de la ONU contra la tortura](#)," July 13, 2023.

<sup>80</sup> La Prensa Gráfica, "[Organizaciones apremian ratificación del protocolo de la ONU contra la tortura](#)," July 13, 2023.

that the Constitution delegates to this institution had risen significantly, posing significant challenges to its operation.<sup>81</sup>

#### *Information on compliance*

89. In 2023, the State reported that the budget allocated to the PGR for the 2023 fiscal year amounted to 39,827,840.00 US dollars, which constituted an increase of 4,438,404.00 US dollars compared to 2022. In this regard, the State forwarded an overview of the budget allocated to this institution since 2018, which shows a reduction in 2022, but a new increase in the past year.<sup>82</sup>

90. For its part, the Commission learned from publicly available official information that the PGR had submitted requests to the Special Committee on Finance and Budget of the Legislative Assembly for an increase in the budget allocated to the institution for 2023. According to a statement rendered by PGR before the Legislative Assembly, the PGR required 47 million US dollars to carry out its duties during 2023; however, the Ministry of Finance had reportedly allocated a budget of 39.8 million US dollars, therefore creating a deficit of 7,12,160 US dollars for the institution.<sup>83</sup> In addition, pursuant to the Law on the General Budget of the State for 2023, the budget allocated to the PGR should be used to “provide legal aid for the fulfillment of obligations arising from family relations, as well as to adults or minors accused of committing a crime, and, in general, to make these services available to low-income citizens so that they can enforce their rights.”<sup>84</sup>

#### *Analysis and level of compliance with the recommendation*

91. The Commission reiterates that it appreciates the enactment of the regulatory framework to strengthen the PGR as an institution. In addition, while it welcomes the information on the increase in the budget allocated to the PGR in 2023, it has taken careful note of the reports alleging that the PGR had requested a greater budget increase. With a view to obtaining further information about the budgetary needs for the proper operation of the PGR, the Commission considers that this recommendation continues to be met with substantial partial compliance.

#### *Measures and information to advance compliance with the recommendation*

92. The Commission reiterates that it is important that compliance with this recommendation be combined with a diagnostic study on the duties that must be carried out by the PGR so that, based on this research, the State may determine the budget that is reasonably required to optimally fulfill such duties. Based on this diagnostic study, the Commission reiterates its invitation to the State to inform on the actions implemented to ensure that the budget allocated is adequate for said purpose.<sup>85</sup>

## **D. Situation of specific groups**

### **1. Women and LGTBI Persons**

**Recommendation No. 18.** Take the necessary steps to strengthen the system for protecting women and girls who are victims of violence, such as improving the system of monitoring of protection measures, the

<sup>81</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 86–91.

<sup>82</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 14.

<sup>83</sup> Legislative Assembly, “[PGR requiere \\$47 millones para fortalecer atención de niños, adolescentes y defensa pública](#),” December 15, 2022.

<sup>84</sup> Ministry of Finance, [Guía del Presupuesto General del Estado para el Ciudadano 2023](#), 2023, p. 28.

<sup>85</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 86–91.

establishment of a Special Reparation Fund for Women Victims of Femicide Violence, and the creation of a network of shelters, and providing these with the resources they need to operate.

93. In the follow-up to this recommendation included in Chapter V of the *2022 Annual Report*, the Commission learned that the State reportedly had institutions such as the Directorate of Specialized Assistance (DAE) of the Salvadoran Institute for the Development of Women (ISDEMU), as well as the System for the Protection of Women, which provided temporary shelter for women facing gender-based violence, and the Specialized Units for Women (UAEM) of the PGR. The Commission also learned about the creation and equipping of shelters for women victims of violence, as well as of exclusive shelters for girls and adolescents. Notwithstanding that, the Commission noted that it had not received information on the creation of a Special Reparation Fund for Women Victims of Femicide Violence or other measures aimed at guaranteeing comprehensive reparation for family members of victims of femicide. Moreover, the Commission identified a need to strengthen the network of shelters and safe houses with sufficient resources, so that they are accessible to all women, girls and adolescents who have been victims of violence in the country.<sup>86</sup>

#### *Information on compliance*

94. In 2023, the State provided information on several programs aimed at guaranteeing the rights of women victims of gender-based violence, which were coordinated by the ISDEMU, such as the 126 helpline and platform, specialized care centers, mobile screening and referral units and the system for the protection of women.<sup>87</sup> Likewise, the State reported that the Ministry of Justice and Public Security had implemented the Data System on Violence Against Women as a mechanism to analyze data and design public policies related to gender-based violence.<sup>88</sup>

95. The State also referred to programs implemented by the PGR. It reported on the creation of self-help groups for women as well as on an initiative by the Specialized Care Unit for Women to provide counseling, assistance, legal representation and psychological and social care in cases of gender-based violence, intrafamily violence and discrimination against women.<sup>89</sup>

96. With regard to the creation of a special fund for the reparation of women victims of femicide violence, the State reported that the ISDEMU, in coordination with the Ministry of Finance, had created the Special Fund for Women Victims of Violence to finance the projects defined in the national policy with funds arising from economic sanctions specified for infringements of the law under Article 35 of the Special Comprehensive Law for a Life Free of Violence for Women.<sup>90</sup> According to the State, the funds will be deposited in the General Fund of the Nation and administered by the Ministry of Finance.

97. With regard to the creation and strengthening of shelters, the State indicated that the ISDEMU had a shelters program and that this institute had also created guidelines for their accreditation and operation, as well as a service protocol and a proposal for a system to monitor and evaluate such shelters. In this regard, the State also indicated that there was a shelter for returned migrant women in which a multidisciplinary team of female lawyers, social workers, psychologists, caregivers and physicians provided comprehensive and

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<sup>86</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 92-96.

<sup>87</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>88</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>89</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 17.

<sup>90</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 15.

specialized support for these women, and their children. The State added that the creation of the Unit for the Accreditation and Monitoring of Shelters was in progress.<sup>91</sup>

98. In addition, with regard to actions focused on girls and adolescents, the State highlighted the implementation of shelters for boys, girls and adolescents “whose rights [were] threatened or violated and who [were] deprived of their family environment due to the impossibility of implementing any of the modalities of foster care.”<sup>92</sup> The centers operate on a temporary basis and offer care and protection, food, healthcare, education, recreational activities and psychological and social care.<sup>93</sup> Moreover, the State reported on the strengthening of the legal framework to protect the rights of children and adolescents with the enactment and entry into force of the *Crecer Juntos* (Growing Together) Law, which provided for the creation of the Boards for the Protection of Children and Adolescents under the authority of the National Council for Early Childhood, Children and Adolescents to safeguard the rights of children and adolescents, and to provide specialized care.<sup>94</sup>

99. For its part, based on information provided by civil society organizations and on publicly available information, the Commission learned that, on March 2023, the parliamentary group of the *Nuestro Tiempo* political party had reportedly submitted to the Legislative Assembly a bill proposal for the Law on the Comprehensive Responsibility of the Salvadoran State towards Persons who have Been Victims of Femicide and Indirect Victims of Femicide. Allegedly, this bill proposal was supported by Marielos Quezada, the mother of Fernanda Nájera, who had been murdered by her ex-partner and whose case had been supported by human rights organizations and feminist groups. According to the information obtained by the Commission, this bill is aimed at guaranteeing mechanisms for comprehensive reparation through psychological, family, social and economic support for the relatives of femicide victims; however, it had not yet been referred to any legislative committee. Civil society organizations pointed out to the Commission that the failure to adopt measures to comply with this recommendation resulted in a lack of recognition for victims’ relatives.<sup>95</sup>

100. In addition, according to publicly available information learned by the Commission, the Special Comprehensive Law for a Life Free of Violence for Women reportedly introduced amendments such as the non-applicability of statutory limitations to crimes of femicide and aggravated femicide. The information obtained by the Commission states that the purpose of this measure is to prevent femicides and to effectively investigate, prosecute and punish those responsible.<sup>96</sup>

101. Subsequently, in its observations to the draft of this report, the State indicated that it had created a program to assist the relatives of women victims of femicide with the support of the United Nations Population Fund (UNFPA), the Office of the Presidential Commissioner for Operations and the Cabinet, the PGR, the FGR and the ISDEMU. The State added that the provision of support to femicide victims and indirect

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<sup>91</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 16.

<sup>92</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to a request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>93</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to a request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>94</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 17.

<sup>95</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023. See also: La Prensa Gráfica, “[Nuestro Tiempo presentó iniciativa para garantizar que el Estado repare de manera integral a víctimas indirectas de feminicidios](#),” March 4, 2023.

<sup>96</sup> Voz de América, “[El Salvador aprueba reforma para que feminicidios no prescriban](#),” February 21, 2023. Swissinfo, “[Diputados acuerdan reformas para que feminicidio no prescriba en El Salvador](#),” February 21, 2023. In terms of statistics, the Commission also learned that, between January and June 2023, the Observatory of Violence Against Women of Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) had allegedly reported 27 cases of femicide. ORMUSA, “[Feminicidios serán imprescriptibles, pero es necesario reforzar sistema de justicia para disminuir impunidad en violencia feminicida](#),” June 4, 2023.

femicide victims was part of the mechanisms for comprehensive reparation through psychological, social and economic support for the relatives of femicide victims.<sup>97</sup>

102. With regard to the strengthening of the shelters network, in its observations to the draft of this report, the State informed that there was a system in place for the protection of women, which comprised *Las Luciérnagas* shelter and the shelter for women survivors of gender-based violence, returned migrant women and women in transit.<sup>98</sup> Finally, the State informed that, on June 28, 2023, the Ministry of Foreign Affairs and the ISDEMU had signed an interinstitutional agreement to prevent irregular migration and to comprehensively address integration and human mobility, thus contributing to improving the quality of life of women.<sup>99</sup>

*Analysis and level of compliance with the recommendation*

103. The Inter-American Commission appreciates the information provided by the State. In this regard, it has taken note of the programs aimed at guaranteeing the rights of women victims of gender-based violence, which are coordinated by the ISDEMU and the PGR. On the creation of the Special Fund for Women Victims of Violence, the Commission notes that it was created pursuant to the Special Comprehensive Law for a Life Free of Violence for Women (Decree No. 520 of 2011), which had been issued prior to the publication of the Commission's country report. Therefore, the Commission requires additional information on the manner in which that fund is providing comprehensive reparation to femicide victims and their relatives.

104. In addition, the Commission appreciates the adoption of guidelines and protocols for the shelters network. It also welcomes the proposals for the creation of a monitoring and evaluation system, as well as the Unit for the Accreditation and Monitoring of Shelters, and invites the State to report on the execution of these initiatives and their implementation. Likewise, the Commission invites the State to submit information on measures related to the financial, logistical and human resources allocated to the strengthening of the shelters. Accordingly, the Commission finds that this recommendation continues to be met with partial compliance.

*Measures and information to advance compliance with the recommendation*

105. The Commission reminds the State that compliance with this recommendation should be combined with the creation and implementation of the Special Reparation Fund for Women Victims of Femicide Violence or the adoption of other measures aimed at ensuring comprehensive reparation for the relatives of victims of femicide violence, providing specific information about the actions available to these victims. Additionally, the Commission invites the State to report specific information on the increase in the resources provided for the operation of the shelters, specifying how these resources are adequate to guarantee access to them for all women, girls and adolescents victims of violence who need shelter and protection throughout the country.

**Recommendation No. 19.** Provide periodic training for state officials, particularly those in the judiciary, on how to include a gender perspective and comply with inter-American standards on gender-based violence and discrimination, access to justice for women and girls, investigations with a gender perspective, and due diligence of the State in this matter so as to eradicate impunity in cases of violence against women.

106. In Chapter V of its *2022 Annual Report*, the Commission reported that it had received information from the State on education and training programs, in particular those provided by the Training School for the Judiciary, the Training School for Prosecutors, the Center for Training, Analysis and Research of

<sup>97</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>98</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>99</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.



the PGR and the ISDEMU, as well as training programs aimed at staff from the National Child Protection System, the Ministry of Culture, the Ministry of Health, the National Civilian Police and the PGR. Although the Commission took note of these efforts to provide training, it observed that challenges persisted in the eradication of gender stereotypes in the administration of justice. Therefore, it requested the State to provide information on the design, delivery and evaluation of these training programs, specifying how it has ensured completion by civil servants, especially those linked to the justice system, as well as information on the topics addressed in the programs, sustainability strategies and evaluation mechanisms to maximize their impact.<sup>100</sup>

#### *Information on compliance*

107. In 2023, the State reiterated that the Training School for Prosecutors of the FGR had implemented training for its staff during 2019, 2020, 2021 and 2022 to strengthen the criminal prosecution of conducts involving violence against women and girls. In addition, it stated that every training activity was preceded by planning, including its “background, objectives, cross-cutting approaches, skills to be developed, methodology, contents, evaluation procedures, participant and trainer profiles, course duration and training modality.”<sup>101</sup> According to this information, 130 training sessions had been delivered to staff of the FGR between 2019 and 2022.<sup>102</sup> To evaluate the training processes, the Training School for Prosecutors conducted a diagnostic, formative and summative evaluation to measure the skills developed and the goals achieved.<sup>103</sup>

108. Furthermore, the State submitted information on training sessions delivered by the National Judiciary Council to public servants, which focused on the rights of women and access to justice. It also reported on the development of a gender training program in 2023 for the staff of the judiciary and the Office of the Public Prosecutor.<sup>104</sup>

109. Additionally, the State indicated that the ISDEMU, through its Specialized Training Unit, had delivered various training sessions focused on the rights of women and girls, the principle of equality and nondiscrimination, and essential care for women and girls victims of gender-based violence. Between 2012 and 2022, 24,509 people had benefited from said sessions.<sup>105</sup> To measure their impact, the State reported that the ISDEMU held interinstitutional feedback meetings and used virtual tools, such as online surveys.<sup>106</sup>

110. For its part, the Commission learned from publicly available information about the Spotlight initiative promoted by the United Nations and the European Union following an agreement signed with El Salvador to address femicides and femicide violence in the country.<sup>107</sup> This initiative took place between 2019 and 2023 with a notable focus on the strengthening of various institutions to improve the access of women, girls and adolescents to justice. In this regard, the training programs for persons involved in the justice system were modified and several officials received training focused on these processes. In total, “439 persons,

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<sup>100</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 97–103.

<sup>101</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 18.

<sup>102</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 26.

<sup>103</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 28.

<sup>104</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 26.

<sup>105</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 26.

<sup>106</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 28.

<sup>107</sup> Spotlight Initiative, [Informe descriptivo final de programa](#), March 31, 2023.

including prosecutors and members of the analysis and investigation units, staff from courts and interinstitutional teams from the Supreme Court of Justice, and public defenders, benefited from training<sup>108</sup> in topics such as discrimination and violence against women, psychosocial and legal support for women victims of gender-based violence, approach to victims and witnesses, specialization in the investigation and criminal prosecution of femicides, among others.<sup>109</sup>

111. Likewise, the Commission learned that, thanks to this initiative, in the executive branch, “the ISDEMU [had been] strengthened with the update of the *Lineamientos para la Acreditación, Monitoreo y Evaluación de las Unidades Institucionales de Atención Especializada para las Mujeres* (Guidelines for the Accreditation, Monitoring and Evaluation of the Institutional Care Units for Women) and the protocol to provide care for women facing gender-based violence to improve essential services and quality monitoring capabilities.”<sup>110</sup>

112. According to publicly available official information, the Commission also learned about a series of training sessions and public discussions held by the Directorate for the Comprehensive Support of Women and Access to Justice of the Supreme Court of Justice during 2023. These were aimed at several justice operators in different regions of the country on topics related to gender-based violence, discrimination against women and human rights.<sup>111</sup>

113. In its observations to the draft of this report, the State requested the Commission to declare full compliance with this recommendation. In support of this request, it informed that the Special Comprehensive Law for a Life Free of Violence (LEIV) indicates that the State is responsible for training its officials. The State reported that, in the case of the FGR, “attendance to and completion of training or education sessions, whether initial, continuing or specialized, [were] unquestionably mandatory and failure to comply [constituted] a serious offense that could even lead to suspension from office,” pursuant to the Organic Law of the FGR.<sup>112</sup> The State added that, in the case of the National Judiciary Center, the Law of the National Judiciary Council provides that judges and justices must participate in every training to which they are summoned.<sup>113</sup> With regard to the ISDEMU and the National Police, the State informed that these institutions had continuously provided training programs focused on human rights topics related to the rights of women and LGBTI persons to their staff for 12 and 31 years, respectively.<sup>114</sup>

#### *Analysis and level of compliance with the recommendation*

114. The Commission appreciates the information submitted by the State in 2023 about the training provided by the Training School for Prosecutors of the FGR, the National Judiciary Council, the Specialized Training Unit of the ISDEMU and the Directorate for the Comprehensive Support of Women and Access to Justice of the Supreme Court of Justice, including those sessions within the framework of the Spotlight Initiative. In addition, the Commission observes that these training sessions have been delivered over the years and that both the training school of the FGR and the ISDEMU employ evaluation methods to verify their results. In this regard, based on this information, the Commission concludes that there has been progress towards compliance with this recommendation. Furthermore, the Commission appreciates the information provided by the State according to which the training sessions are mandatory and have been delivered over time. Nevertheless, the Commission requests additional information on the content and topics of the training sessions reported as mandatory and delivered over time to verify that these actions are specifically aimed at

<sup>108</sup> Spotlight Initiative, [Informe descriptivo final de programa](#), March 31, 2023, p. 42.

<sup>109</sup> Spotlight Initiative, [Informe descriptivo final de programa](#), March 31, 2023, p. 42.

<sup>110</sup> Spotlight Initiative, [Informe descriptivo final de programa](#), March 31, 2023, p. 43.

<sup>111</sup> Supreme Court of Justice, [Publications by the Directorate of Communication and Public Relations related to gender](#), September 2023.

<sup>112</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>113</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>114</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

achieving full compliance with this recommendation. This is considering the relevance of the measures required for compliance with this recommendation, especially with regard to justice operators. In view of the foregoing, the Commission considers that this recommendation has progressed to substantial partial compliance.

*Measures and information to advance compliance with the recommendation*

115. In order to achieve progress towards compliance with this recommendation, the Commission invites the State to provide details on the content of the training program reported as mandatory and delivered over time, especially in the case of training sessions aimed at justice operators, submitting specific information on how this program covers the topics mentioned in the recommendation.

**Recommendation No. 21.** Strengthen mechanisms for women and girls to access justice, by clarifying legal competences, strengthening resources and capacities, and improving the work of the Specialized Courts for a Life Free from Violence and Discrimination.

116. In the preparation of Chapter V of its *2022 Annual Report*, the Commission received information from the State on the Specialized Care Units for Women (UAEM) of the PGR, which reportedly provided specialized support for women, girls and adolescents victims of violence, as well as on the Support Units for Victims of Intrafamily Violence, Sexual Abuse and Child Abuse and the Support Unit for Sexual Abuse Crisis of the judicial body. The Commission also received information on amendments to the Code of Criminal Procedure Code aimed at providing victims and witnesses in cases of gender-based violence with the possibility of making advance statements, and on the reform of the LEIV to include political violence as a modality of violence against women. In addition, in 2022, the Commission received information on the institutional framework of the National System for the Comprehensive Protection of Children and Adolescents and on the creation of the Office of the Deputy Prosecutor for Women, Children, Adolescents and Other Vulnerable Groups. The Commission also learned about the existence of three investigation courts, three trial courts and a specialized chamber. The Commission appreciated the measures reported; however, it also noted with concern the backlog in the specialized courts for a life free of violence and discrimination, as well as the lack of clarity as to which court has jurisdiction over cases involving intrafamily violence. In this regard, the Commission invited the State to strengthen these courts through adequate material and specialized human resources, as well as with programs to ensure the continuous and specialized training of the staff.<sup>115</sup>

*Information on compliance*

117. In 2023, the State provided information on the creation of two new investigation courts for a life free of violence and discrimination for women, one in Cojutepeque, Cuscatlán, and the other in San Salvador. It also reported the following actions taken by the specialized investigation courts for a life free of violence:

- Agreement No. 541 Bis of the Court plenary, adopted in November 2022, pursuant to which the Technical Unit to Provide Comprehensive Support for Victims and Gender became the Directorate for the Comprehensive Support of Women and Access to Justice, composed by the Gender Unit, the Coordination Unit for the Departments for Comprehensive Support to Victims and the Coordination Unit to Support the Multidisciplinary Teams of the Specialized Courts.
- The strengthening of specialized human resources in the departments for comprehensive support to victims in San Salvador, Ciudad Delgado and Chalatenango.
- The creation of multidisciplinary teams to support the work of specialized courts, composed by professionals in the fields of psychology, social work, education and sociology.
- The creation of a department for comprehensive support to victims in the eastern area of the country to support specialized and peace courts.

<sup>115</sup> IACHR, *2022 Annual Report*, [Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 104–112.

- The strengthening of the protection system through the coordination of the Department for Comprehensive Support to Victims of San Miguel and the Institutional Unit for Specialized Support to Women Facing Violence of the Office for Complaint Reception and Citizen Support (UNIMUJER - ODAC) of the National Civilian Police to bring these services closer to women facing acts of violence.
- The improvement of infrastructure for the multidisciplinary teams that provide support to the specialized courts in San Salvador and San Miguel.
- The preparation of the first research study on satisfaction with the services provided by the specialized courts and multidisciplinary teams.
- The provision of equipment to the areas for specialized care in the multidisciplinary teams, departments for victims support and specialized courts, with support from the United Nations.
- An Institutional Policy on Gender and Access to Justice for Women implemented by the judicial body, which encourages changes in culture and attitudes (Article 4 of the Law on Equality, Equity and Eradication of Discrimination against Women [LIE]). This policy calls for the implementation of education and training programs (in-person and/or virtual) aimed at changing attitudes towards equality, nondiscrimination and effectiveness in the services provided by the judicial body in the specialized courts and other divisions of the Supreme Court of Justice. The State reported that 10 workshops aimed at peace courts, LEIV specialized courts and family courts in the country had been conducted in 2021.
- In accordance with the Strategic Line of Action No. 2 of the Institutional Policy on Gender and Access to Justice for Women on education programs with a special focus on gender for staff working with women, children and adolescents, the following activities were conducted during 2022:
  1. A diploma course on gender, children and adolescents provided with support from Save the Children to strengthen case management capabilities with a gender perspective aimed at public servants who provide direct support to girls, boys, adolescents and women.
  2. A workshop on the culture of rape aimed at specialized peace courts, investigation courts and trial courts for a life free of violence and discrimination for women.
  3. A public forum titled *La cultura de la violación, factores culturales y estructurales. Principales hallazgos* (The culture of rape, cultural and structural factors. Main findings), open to all the employees at the legal and social departments of the Supreme Court of Justice.
  4. A specialized training program for the departments of Citizen Support and Specialized Support Services for Cases Involving Violence Against Women in the judiciary.
  5. A capacity-building workshop for the staff providing psychosocial support to women survivors of violence, which also addressed the physical and psychological welfare of the staff providing support to women and girls victims of gender-based violence, aimed at teams from the Specialized Jurisdiction for Women and the departments for comprehensive support to victims.
- During 2023, six national workshops with specialized courses on the review methodology for deaths arising from gender-based violence. Also, the community system for informed risk aimed at peace courts, family courts and LEIV specialized courts, as well as at family and LEIV multidisciplinary teams, departments for comprehensive support to victims and forensic psychology experts from the Institute of Legal Medicine.
- The Executive Technical Unit of the Justice Sector (UTE) launched the education program titled *Manejo de la sana crítica con enfoque de género* (A gender approach to the rules of sound judicial discretion) aimed at staff from the peace courts, family courts and specialized courts for a life free of violence and discrimination for women in the departments of Ahuachapán, Santa Ana and Sonsonate to encourage the mainstreaming of the gender perspective into the interpretation,

drafting, argumentation and enforcement of the law, thus achieving a significant impact on the justice system.<sup>116</sup>

118. For their part, civil society organizations reported to the Commission that they had no information on measures adopted by the State to overcome the judicial backlog and address the delays in specialized courts in cases of violence and discrimination against women, girls and adolescents. In this regard, the Commission received information from these organizations indicating that the alleged deficiencies in access to justice in these cases persisted. Specifically, the organizations referred to the trial on the femicide of Fernanda Nájera, whose body had been found on January 31, 2019, to show that, considering that the trial was ordered four years after the events, the case reportedly remained unpunished with no timely justice response from the State and significant procedural delays.<sup>117</sup>

*Analysis and level of compliance with the recommendation*

119. The Inter-American Commission is thankful for the information provided by the State and the organizations. In addition, the Commission recalls that, since 2022, it had underscored the importance of adopting institutional strengthening measures for the specialized courts for a life free of violence and discrimination for women. In this regard, the Commission welcomes the information provided by the State on the provision of training, the strengthening of its multidisciplinary and specialized approach, and the improvements in infrastructure.

120. For its part, the Commission recalls that, since 2022, it has also received information showing high backlog rates in specialized courts. In this regard, the Commission observes that the State reported the creation of two specialized courts as a measure to reduce backlog in the aforementioned special jurisdiction. The Commission appreciates this measure and, at the same time, reminds that, according to the information obtained, in 2021,<sup>118</sup> the backlog rate in these courts reportedly reached 266.7 percent, which evidenced a reduced capacity to address litigation. The Commission will await further information on the results of these backlog reduction measures to determine whether this rate has dropped significantly with the creation of the two courts or other actions.

121. Moreover, the Commission observes that the State did not report on the steps taken to solve the forum disputes between the specialized courts and the peace and family courts regarding the jurisdiction over cases involving intrafamily violence, an issue considered as a specific implementation challenge in the *2022 Annual Report*.

122. Based on the information provided, the Commission concludes that this recommendation has progressed to substantial partial compliance.

*Measures and information to advance compliance with the recommendation*

123. The Commission considers that, to determine that this recommendation has reached full compliance, the State still needs to evidence that the reported compliance measures have helped to significantly reduce the backlog in specialized courts for a life free of violence and discrimination. In this regard, the Commission requests the State to provide a reliable diagnosis on the level of backlog in the courts and to adopt a swift and effective response based on the results. The Commission considers that it is also essential that

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<sup>116</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 28 - 31.

<sup>117</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>118</sup> REDFEM, [Informe de la situación de violencia contra las mujeres. El Salvador](#), 2022, pp. 25–28, with statistics collected by the Unit for Information and Statistics of the Directorate for Institutional Planning of the Supreme Court of Justice, [Bulletin of statistics, 2021](#).



compliance with this recommendation be based on actions to clarify the extent of the jurisdiction of the courts involved in these cases.

**Recommendation No. 22.** Review the cases of women who are serving severe prison sentences for aggravated homicide in relation to obstetric emergencies or complications, and prioritize requests to commute sentences that they are currently serving.

124. In Chapter V of the *2022 Annual Report*, the Commission reported that it had received information from the State according to which, between 2018 and July 2022, at least 18 women serving severe prison sentences for aggravated murder in relation to obstetric complications had been released. Although the Commission welcomes the release of these women, it noted with concern that two other women had been deprived of their liberty in 2022 for similar reasons. It also noted that the State had not provided information on the number of women who continued to be deprived of liberty on these grounds nor on the measures taken to review their cases. For this reason, the Commission expressed the need for a specific report in this regard, including information on the time in which these sentences were imposed and the current situation of the convicted women. Furthermore, the Commission urged the State to report on the measures adopted to review these cases, and to give priority processing to the requests for commutation of sentences.<sup>119</sup>

#### *Information on compliance*

125. In 2023, the State indicated that obstetric emergencies or complications at any stage of pregnancy were not classified as crimes and that there was no policy for the criminal prosecution of these acts. In addition, it reported on four cases of women who were serving sentences for attempts against the lives of newborns or unborn children. According to the State, the convictions and prison sentences had been imposed for “crimes defined under criminal law, which guarantees the protection of the right to life and an enhanced protection of the rights of the child, in accordance with conventional obligations assumed by the State.”<sup>120</sup> In this regard, the State mentioned that the sentences for murder against newborns or unborn children had been commuted upon requests from the interested party, which were processed as promptly as possible within the legal parameters set forth in the Special Law on Petitions for Pardon, Amnesty or Commutation of Sentence.<sup>121</sup>

126. Along the same lines, the State indicated that, in November 2021, the Ministry of Justice and Public Security had called for the priority processing of requests for the commutation of sentences. The State reported that the ministry had set an internal deadline of 10 working days to issue a decision on the requests for commutation counted from the date of receipt of the required information from the National Criminology Council and the Supreme Court of Justice.<sup>122</sup> The State further informed that, prior to this, the National Criminology Council had 15 working days to issue the report requested by the Ministry of Justice and Public Security.<sup>123</sup>

127. For its part, the Commission learned from information provided by the civil society that, in the past year, four women who had suffered from obstetric emergencies and attended medical facilities could face

<sup>119</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 113–117.

<sup>120</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 32.

<sup>121</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 32.

<sup>122</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 32.

<sup>123</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 32.



prison sentences for these complications. According to this information, in these cases, the healthcare staff reportedly alerted the police and judicial authorities even before assisting women.<sup>124</sup>

128. Moreover, according to publicly available information obtained by the Commission, on October 9, 2023, the Judge of the Second Trial Court of Santa Ana vacated, on grounds of procedural guarantees and due process violations, the conviction of a woman who had been sentenced to 30 years in prison after a delivery in the *San Juan de Dios* National Hospital, in Santa Ana. The appeal for review had allegedly been submitted by *Agrupación Ciudadana por la Despenalización del Aborto*. Additionally, in 2018, the 30-year prison sentence had allegedly been commuted to 15 years, out of which the woman had already served seven years and six months.<sup>125</sup>

129. In its observations to the draft of this follow-up report, the State indicated that, pursuant to legal provisions, the commutation of sentences requires a request from the person concerned, his or her relatives or legal representatives. In addition, the State reported that, based on the Law of Administrative Procedures, the technical staff was instructed that the Legal Directorate shall procure it from the court, with no interruption of the legal proceedings in the event that the request for commutation did not include the certification of final judgment.<sup>126</sup> Finally, the State informed that it will provide information on convictions for aggravated murder in relation to obstetric emergencies or complications when the Commission identifies and inquiries about specific cases, considering that obstetric emergencies are not classified as crimes by criminal law.<sup>127</sup>

#### *Analysis and level of compliance with the recommendation*

130. The Commission appreciates the information provided by the State and the civil society in the context of the follow-up to this recommendation. In this regard, the Commission recalls that, in early 2023, it called on several countries in Latin America, including El Salvador, to guarantee the exercise of the sexual and reproductive rights of women free of all forms of violence and gender discrimination in accordance with their international obligations. In this occasion, the Commission highlighted the sentences imposed on women who had suffered obstetric emergencies in El Salvador, in a context of absolute criminalization of abortion.<sup>128</sup>

131. In this regard, the Commission reiterates that the recommendation under follow-up is aimed at reviewing the cases involving convicted women and at prioritizing the processing of commutation requests. Although the Commission appreciates that the number of women serving sentences has reportedly decreased, it considers that it is important to move forward with the review of the convictions of the four women who remain deprived of their liberty. This review will allow to verify whether these cases are related to obstetric emergencies, considering the information provided by the civil society according to which these women had allegedly been imprisoned for these types of complications, as well as the context identified by the Commission as background to this recommendation. In addition, the Commission considers that it requires specific information on the total number of convictions which have been reviewed since this recommendation was issued, including those of women who have been released. Moreover, the Commission finds that the court decision vacating a 30-year prison sentence, reportedly issued in October 2023, is a relevant measure of compliance with this recommendation.

132. For its part, although the Commission appreciates the information provided on the proceedings for the commutation of prison sentences, it still requires specific information on whether this

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<sup>124</sup> Center for Reproductive Rights, "[Un año después de la sentencia de Manuela, las mujeres en El Salvador siguen en riesgo de ser encarceladas por emergencias obstétricas](#)," June 29, 2023; Gato Encerrado, "[El Salvador incumple sentencia del caso Manuela: Mujeres aún enfrentan riesgo de prisión por emergencias obstétricas](#)," June 29, 2023.

<sup>125</sup> Agrupación Ciudadana por la Despenalización del Aborto, "[Jueza anuló sentencia condenatoria contra Lilian, la última de las 17 y más con condena en firme](#)," October 12, 2023.

<sup>126</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>127</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>128</sup> IACHR, "[IACHR calls for progress in the recognition and protection of reproductive rights in the region](#)," January 31, 2023.

priority processing system has been applied exclusively in cases of women who were convicted for aggravated murder due to obstetric emergencies or complications. While it waits for this additional information, the Commission concludes that this recommendation continues to be met with partial compliance.

*Measures and information to advance compliance with the recommendation*

133. The Commission considers it important to continue receiving reports from the State on the number of women who are still serving prison sentences for aggravated murder to verify, even based on the requests for sentence review, whether the facts are related to obstetric emergencies or complications. In addition, it urges the State to report on the measures adopted for the review of convictions, including those issued against women who have already been released (among other reasons, because their sentences were commuted). Finally, the Commission requests the State to specify whether the priority processing of the requests to commute sentences which was reported applies exclusively to the cases of women convicted of aggravated murder due to obstetric emergencies or complications.

**Recommendation No. 23.** Take the necessary steps to adapt El Salvador's regulatory framework to comply with inter-American standards on the sexual and reproductive rights of women and girls.

134. In Chapter V of the *2022 Annual Report*, the Commission reported that it had received information about the existing legal framework and the public policies included in the Law for the Comprehensive Protection of Children and Adolescents (LEPINA), the LIE, the *Nacer con Cariño* (Born with Love) Law, the General Law on Youth, the National Policies on Women, on the Comprehensive Protection of Children and on Support for Early Childhood Development, as well as the National Cross-Cutting Strategy for the Prevention of Pregnancy in Girls and Adolescents (ENIPENA). Moreover, the State referred to the *Crecer Juntos* Law for the Comprehensive Protection of Early Childhood, Children and Adolescents, the second version of the Policy for Gender Equality and Equity in Health (PIEGS) and the *Amor Convertido en Alimento* (Love Transformed into Food) Law for the Promotion, Protection and Support of Breastfeeding.<sup>129</sup>

135. In 2022, the Commission also observed that the absolute criminalization of the voluntary termination of pregnancy reportedly persisted and reiterated that its prohibition in certain circumstances disregarded international obligations to respect, protect and guarantee the rights to life, health and personal integrity of women. Additionally, the Commission warned that this would mean that the State was giving priority to the protection of motherhood, thus drawing a distinction in the protection and guarantee of the right to reproductive health based on whether the pregnancy continues or not. Consequently, although the Commission highlighted the efforts undertaken by the State to advance the protection of the rights of children in early childhood, as well as the rights of women during pregnancy, childbirth and the breastfeeding period, it noted that the regulatory framework and health policies hindered the access of women, girls and adolescents to sexual and reproductive health services without discrimination. Based on the foregoing, the Commission reiterated that the State had to adopt measures to adapt its regulatory framework to the inter-American standards on the sexual and reproductive rights of women, girls and adolescents.<sup>130</sup>

*Information on compliance*

136. For 2023, the State referred to a series of public policies and institutional strengthening measures that contributed to guarantee access to sexual and reproductive health services, as well as to information and education on this subject. The State reported on the implementation of the ENIPENA, a strategy which coordinates health, education and rights protection services to eradicate child and adolescent pregnancy through interventions in different areas such as prevention, special protection, access to justice, restitution of rights and creation of knowledge. In addition, the State informed about the implementation of the

<sup>129</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 118-127.

<sup>130</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 118-127.

project titled *Apoyo a la implementación de la estrategia nacional intersectorial de prevención de embarazos en niñas y adolescentes, en los departamentos de Sonsonate y La Libertad, en El Salvador*” (Support for the implementation of the national cross-cutting strategy for the prevention of Pregnancy in Girls and Adolescents in the departments of Sonsonate and La Libertad in El Salvador). This project was managed by the ISDEMU and included training for healthcare staff focused on providing care to adolescents, training for teachers on sexual violence against adolescent girls, education sessions aimed at pregnant adolescents and the development of spaces for intergenerational dialogue.<sup>131</sup> The State reported that these programs had reduced the number of pregnant girls and adolescents significantly, “going from 781 to 482 in girls aged between 10 and 14, and from 8,858 to 4,189 in adolescents aged between 14 and 17 in the period from 2017 to 2022.”<sup>132</sup>

137. In addition, the State informed that the ISDEMU and the Ministry of Health had worked jointly to strengthen the model of adolescent-friendly services and to expand the supply of long-acting contraceptives, as well as to enhance the training of teachers in comprehensive sex education. The State indicated that the Unit for Comprehensive Healthcare for Adolescents (UAISA) of the Ministry of Health coordinated these activities, as well as interventions in first, second and third-level healthcare facilities to “promote health, prevention, early diagnosis, timely treatment, rehabilitation, follow-up and control of the conditions impacting the health of adolescents, with a focus on protective factors and aiming to reduce complications and mortality.”<sup>133</sup>

138. Furthermore, the State reported that the Ministry of Health had prepared a series of guidelines on this matter, including the *Lineamientos técnicos de procedimientos y técnicas quirúrgicas en obstetricia* (Technical Guidelines for Surgical Procedures and Techniques in Obstetrics), the *Lineamientos técnicos para la implementación de teleinterconsulta y teleconsulta especializada* (Technical Guidelines for the Implementation of Remote Referral Consultation and Remote Specialized Consultation), the *Lineamientos técnicos para la provisión de servicios de anticoncepción* (Technical Guidelines for the Provision of Contraceptive Services) and the *Lineamientos técnicos para la atención integral en salud de adolescentes y jóvenes en las redes integrales e integradas de salud* (Technical Guidelines for the Comprehensive Healthcare of Adolescents and Young Persons in the Comprehensive and Integrated Health Networks). The State also reported on a series of training activities for healthcare professionals.<sup>134</sup>

139. In its observations to the draft of this report, the State noted that this recommendation was linked to the reparations ordered by the Inter-American Court of Human Rights (IAHR Court) in *Manuela et al. v. El Salvador* and that it would wait for the Court’s judgment in *Beatriz v. El Salvador*.<sup>135</sup> The State also reported on the update of the *Lineamientos técnicos para la atención integral de adolescentes* (Technical Guidelines for the Comprehensive Healthcare of Adolescents) in accordance with international standards to expand access to services and achieve better outcomes in terms of sexual and reproductive health. Moreover, the State indicated that Articles 22 to 38 of Chapter 2 of the *Crecer Juntos* Law provided for the creation of public policies, programs and projects, as well as for the delivery of goods and services necessary to ensure the comprehensive health of children and adolescents.<sup>136</sup>

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<sup>131</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 33 and 34.

<sup>132</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 34.

<sup>133</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 35.

<sup>134</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 36.

<sup>135</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>136</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

*Analysis and level of compliance with the recommendation*

140. The Commission welcomes and appreciates the information provided by the State and observes that these are important measures aimed at promoting access to certain sexual and reproductive health services which favor girls and adolescents (many of which seek to prevent pregnancies and address sexual violence). However, the Commission reiterates the considerations expressed in 2022, and therefore observes that the absolute criminalization of the voluntary termination of pregnancy persists in El Salvador, even though, as the Commission has noted, in some circumstances, the denial of the termination of pregnancy imposes a disproportionate burden on the exercise of the rights of women, creates a context that facilitates unsafe abortions and disregards international obligations to respect, protect and guarantee their rights to life, health and integrity.<sup>137</sup>

141. Additionally, since 2022, the Commission noted that measures such as the *Nacer con Cariño* Law, the PIEGS or the *Crecer Juntos* Law gave priority to the protection of motherhood, thus drawing a distinction in the protection and guarantee of the right to reproductive health based on whether a pregnancy continued or not. In this regard, the Commission considers that the restrictions on the regulatory framework and on health policies that hinder the access of women, girls and adolescents to sexual and reproductive health services without discrimination still persist. Therefore, the Commission reiterates that the States have the obligation to provide medical care without discrimination, which implies that the provision of medical care for women who require so may not be conditioned under any circumstances.<sup>138</sup>

142. Considering that this recommendation requires the State to adapt its existing regulatory framework and that no measures have been identified in this regard to redress the restrictions on the access, with no discrimination, of women, girls and adolescents to sexual and reproductive health services, the Commission concludes that this recommendation remains pending compliance.

*Measures and information to advance compliance with the recommendation*

143. In order to guide the implementation of this recommendation, the Commission reiterates the need for the State to adopt measures aimed at adapting its regulatory framework to the inter-American standards on the aforementioned sexual and reproductive rights of women, girls and adolescents. In this regard, the adoption of new regulations or the modification of existing laws will be necessary to guarantee that women, girls and adolescents have access to sexual and reproductive health services without discrimination.

**Recommendation No. 24.** Adopt specific measures in accordance with international standards that guarantee the rights to work and to fair and equitable working conditions for women employed in domestic service and in *maquilas*, particularly those working in the textile industry from their own homes. It is recommended that the State ratify ILO Conventions 177, 189 and 190, and implement ILO recommendations 184 and 201 on this matter.

144. In Chapter V of its 2022 *Annual Report*, the Commission reported that it had received information on the creation of the Interinstitutional Committee for the Promotion and Improvement of the Labor Rights of Women and on other measures adopted in favor of domestic workers. The State also informed that, in 2021, the ISDEMU, the Ministry of Finance and the Salvadoran Standardization Agency had worked jointly to promote the application of the Salvadoran Technical Standard (NTS 03.116.01:21) in the private sector, which lays down the requirements that an organization must meet to establish a Gender Equality Management System. In addition, the Commission learned that the Legislative Assembly had ratified

<sup>137</sup> IACHR, Press Release No. 042/18, "[IACHR Urges El Salvador to End the Total Criminalization of Abortion](#)," March 7, 2018; Press Release No. 208/21, "[IACHR Expresses Concern Over the Adoption of Regressive Measures Concerning Sexual and Reproductive Rights in the Americas](#)," August 11, 2021; IACHR, [Report No. 9/20. Case 13.378. Beatriz et al. v. El Salvador. Merits](#), March 3, 2020, para. 156.

<sup>138</sup> IACHR Court, [Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs](#), Judgment of November 2, 2021. Series C No. 441, paras. 192–194.

Convention 190 on May 16, 2022, and that Conventions 177 and 189 had been under consideration since 2019 and 2015. Although the Commission appreciated the efforts to protect the labor rights of domestic workers, it requested information on the situation of female workers in the textile industry under the home-based work scheme, as well as on the application of International Labor Organization (ILO) Recommendation No. 184, on home-based work. Moreover, the Commission invited the State to expedite the process for the approval of ILO Conventions 177 and 189, and to provide specific information on the actions it has taken to implement recommendations 184 and 201 on this issue.<sup>139</sup>

#### *Information on compliance*

145. For 2023, the State reiterated that the Ministry of Labor and Social Welfare (MTPS) had implemented actions focused on promoting the ratification of ILO Convention 189 on Domestic Workers, which had been referred to the Legislative Assembly.<sup>140</sup> Nevertheless, the State did not provide any information on the ratification of ILO Convention 177.

146. Additionally, the State informed that, according to the 2021 Multiple Purpose Household Survey, women represent 92.8 percent of the domestic work sector and that they have access to social security.<sup>141</sup> Furthermore, the State indicated that the MTPS had implemented multiple initiatives to protect women employed in domestic service and in *maquilas*, which consist of: 1) the provision of training and guidance to union leaders on the registration proceedings for the boards of directors of unions; 2) the dissemination of awareness campaigns to promote respect for the rights of female workers in all economic sectors; 3) the strengthening of the support provided to female workers' unions and organizations; and 4) inspections conducted by the General Directorate of Labor Inspection, which verifies the working conditions of people in the domestic and textile sector, as a result of complaints filed by these workers. In this regard, the State informed that, as of June 2023, 39 complaints had been processed in cases involving nine men and 22 women.<sup>142</sup>

147. A recent report published by the ILO on the enforcement mechanisms implemented by the offices of labor inspection in the area of paid domestic work revealed that El Salvador reportedly continued to be one of the Central American countries with the largest number of domestic workers.<sup>143</sup> However, according to the ILO, since El Salvador had not ratified Convention 189 nor amended its legislation to guarantee equal rights for workers in domestic service, the country faced numerous obstacles to achieving equality of rights between them and workers engaging in other professions or trades.<sup>144</sup> The ILO noted various issues of particular concern, such as the voluntary enrollment in social security, the absence of inspections in the area of paid domestic work and the existence of regulatory gaps which may contribute to the violation of the rights of domestic workers.<sup>145</sup> On the latter issue, the report highlighted Judgment No. 143-2015 issued in February

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<sup>139</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 128–134.

<sup>140</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 39.

<sup>141</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 37.

<sup>142</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 38.

<sup>143</sup> ILO, [Mecanismos de cumplimiento implementados por la Inspección del Trabajo en el ámbito del trabajo doméstico remunerado en Costa Rica, El Salvador, Guatemala, Honduras y México](#), 2023, p. 13.

<sup>144</sup> ILO, [Mecanismos de cumplimiento implementados por la Inspección del Trabajo en el ámbito del trabajo doméstico remunerado en Costa Rica, El Salvador, Guatemala, Honduras y México](#), 2023.

<sup>145</sup> ILO, [Mecanismos de cumplimiento implementados por la Inspección del Trabajo en el ámbito del trabajo doméstico remunerado en Costa Rica, El Salvador, Guatemala, Honduras y México](#), 2023.



2020 by the Constitutional Chamber of the Supreme Court of Justice which provided that domestic workers are entitled to a minimum wage.<sup>146</sup>

148. In its observations to the draft of this follow-up report, the State informed that the recent adoption of the National Policy for the Joint Responsibility in Caregiving would contribute to the fulfillment of this recommendation gradually by specifying “the four dimensions that make up caregiving work: self-care, direct care for other persons, the provision of preconditions for care and care management.”<sup>147</sup>

*Analysis and level of compliance with the recommendation*

149. The Inter-American Commission is thankful for the information provided by the State and appreciates the compliance actions reported, which are focused on the rights of female domestic workers. Furthermore, it appreciates the recently approved National Policy for the Joint Responsibility in Caregiving. In particular, the Commission observes that, with regards to women employed in the textile industry, the State only reported information on inspections conducted and did not provide specific details on additional measures aimed at guaranteeing fair and equitable working conditions. Likewise, the Commission observed that ILO Conventions 177 and 189 had reportedly not been ratified. In this regard, the adoption of compliance measures remains necessary and, consequently, this recommendation continues to be met with partial compliance.

*Measures and information to advance compliance with the recommendation*

150. The Commission reiterates the importance of the State reporting detailed information on the measures adopted to guarantee the rights to work and to fair and equitable conditions for women working in *maquilas*, particularly those working in the textile industry from their own homes. Likewise, the Commission invites the State to expedite the ongoing process for the approval of ILO Conventions 177 and 189, and to provide specific information on the actions taken to implement Recommendations 184 and 201 on this issue. Finally, considering the recent National Policy for the Joint Responsibility in Caregiving, the Commission invites the State to provide information on its design and effective implementation, specifying the manner in which it contributes in practice to guaranteeing the rights to work and fair and equitable conditions for women employed in domestic service and in *maquilas*, particularly those working in the textile industry from their own homes.

**Recommendation No. 25.** Strengthen the institutional capacities of the Salvadoran Institute for the Development of Women (ISDEMU) so that it has greater autonomy to prevent, punish and eradicate violence against women.

151. In Chapter V of its *2022 Annual Report*, the Commission reported that it had learned that the law which created the ISDEMU had been amended in August 2022. The Commission appreciated the enactment of a law aimed at strengthening the capacities and structures of the ISDEMU, as well as the legislative measures adopted to assign to this agency the administration of public policies related to right of women to live free from violence and discrimination with the purpose of improving coordination among authorities and making better use of available resources. However, the Commission noted the absence of updated information on budgetary matters and specialized training at the ISDEMU, and therefore invited the State to strengthen its financial resources and to provide specialized training to ISDEMU employees.<sup>148</sup>

<sup>146</sup> ILO, [Mecanismos de cumplimiento implementados por la Inspección del Trabajo en el ámbito del trabajo doméstico remunerado en Costa Rica, El Salvador, Guatemala, Honduras y México](#), 2023.

<sup>147</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>148</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 135–138.



*Information on compliance*

152. For 2023, the State reiterated that the aforementioned ISDEMU law had been amended and indicated that this reform contributed to strengthening the capacities, structures and functions of the institute to guarantee the rights of women. In addition, the State reported that, since the Covid-19 pandemic, the ISDEMU had developed the competencies of course tutors by providing training in the use of virtual platforms and tools to broaden access to such courses for stakeholders in the population.<sup>149</sup>

153. In its observations to the draft of this follow-up report, the State highlighted that the six Ciudad Mujer Specialized Support Centers (CAE *Ciudad Mujer*) of the ISDEMU provided continuous training focused on quality support and warmth to the officials working in cases involving violence. The State reported having addressed topics such as “institutional training in the protection system for women victims of violence and humanitarian aid; regional strategies for the prevention of human trafficking and migrant smuggling, and for the support to and repatriation of victims thereof; comprehensive support for trauma; dissemination of the protection services provided by the United Nations refugee agency; human rights and mainstreaming of equality and nondiscrimination principles; exchange of information and interinstitutional legal cooperation in cases involving human trafficking and migrant smuggling; dissemination of the Norwegian Council protection program on techniques to provide support; training program in psychological first aid (PFA), including tools to address displacement and violence against women from a legal perspective; specialized courses titled ‘*El delito de trata de personas*’ (The crime of human trafficking) and a diploma course on the *Crecer Juntos* Law.”<sup>150</sup>

154. For its part, according to publicly available information, the Commission learned that the budget allocated to the ISDEMU had been increased for 2023. While the budget allocated to this agency in 2022 amounted to 6,310,224 US dollars,<sup>151</sup> in 2023, this sum reached 12,293,082 US dollars.<sup>152</sup>

*Analysis and level of compliance with the recommendation*

155. The Commission appreciates the information provided by the State, including the report on the strengthening and automation of the training program offered by this agency, as well as on the activities conducted by the six Ciudad Mujer Specialized Support Centers (CAE *Ciudad Mujer*), which provide continuous training to the officials working in cases involving violence. The Commission also appreciates the information alleging that the budget allocated to the ISDEMU reportedly doubled for 2023. Considering the measures adopted for the institutional strengthening of this agency, the Commission concludes that this recommendation has reached full compliance. Notwithstanding the foregoing, the Commission invites the State to continue strengthening this institution so that it can provide an adequate response to the context of violence against women in the country.

**Recommendation No. 26.** Ratify the Inter-American Convention Against All Forms of Discrimination and Intolerance.

156. In Chapter V of its *2022 Annual Report*, the Commission reported that it had learned that the State was reportedly holding an internal consultation process on the ratification of the Convention Against All Forms of Discrimination and Intolerance, in accordance with the national legal system. The Commission invited

<sup>149</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 39.

<sup>150</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>151</sup> [Fiscal Transparency Portal](#), Presupuesto-ISDEMU-2022, 2022.

<sup>152</sup> [Fiscal Transparency Portal](#), Presupuesto-ISDEMU-2023, 2023.

the State to promote the consultation process and to provide information on any substantial progress made in the ratification of this instrument.<sup>153</sup>

*Information on compliance*

157. In 2023, the State reiterated that, through the Ministry of Foreign Affairs, it was conducting a consultation process with national stakeholders before determining whether it would submit the ratification of the Convention Against All Forms of Discrimination and Intolerance for the consideration of the Legislative Assembly.<sup>154</sup>

*Analysis and level of compliance with the recommendation*

158. Awaiting information on concrete measures adopted in compliance with this recommendation, the Commission concludes that it remains pending compliance.

*Measures and information to advance compliance with the recommendation*

159. The Commission urges the State to adopt measures to achieve substantial progress in the internal ratification process concerning the international instrument mentioned in this recommendation and to provide information on the development of such measures.

**Recommendation No. 27.** Adopt the measures needed to ensure that the Gender Identity Law is passed and adopted, and that it conforms to inter-American standards on this matter, as well as adopt the necessary measures to strengthen institutions for the defense and protection of the rights of LGBTI persons.

160. In Chapter V of its *2022 Annual Report*, the Commission reported that it had learned that the Constitutional Chamber of the Supreme Court of Justice (CSJ) had rendered Article 23, Paragraph 2, of the Law on the Name of Natural Persons unconstitutional on the grounds that it did not allow name changes for reasons of gender identity. In this regard, the CSJ ordered the Legislative Assembly to amend the law, which was reportedly pending at that time. The Commission reiterated the need to adopt a gender identity law that comprehensively recognizes the possibility of changing the name and photograph in identity documents, including birth certificates and passports, as well as of rectifying sex markers to ensure the full recognition of gender identity and access to other rights.<sup>155</sup>

*Information on compliance*

161. For 2023, the State reported that the Legislative Assembly had not passed a gender identity law. Notwithstanding that, El Salvador indicated that it was developing various spaces for training on the rights of LGBTI persons, including training aimed at justice operators and service providers. The State indicated that the CSJ was developing a program of training and specialized courses aimed at staff from the IML and focused on the investigation of hate crimes based on sexual orientation and gender identity and expression, with emphasis on criminal investigation, forensic evidence gathering and the presentation of evidence at trial.<sup>156</sup> Additionally, the State informed that the IML had modified its General, Expert and Administrative Policy to prevent any type of discrimination, and that the Gender Unit of the Supreme Court of Justice was reportedly

<sup>153</sup> IACHR, 2022 Annual Report, [Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 139.

<sup>154</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 40.

<sup>155</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 140–142.

<sup>156</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 40.

attempting to mainstream the gender and nondiscrimination perspective by creating manuals that govern the provision of services to users of justice.<sup>157</sup>

162. For its part, on March 10, 2023, during the 186<sup>th</sup> period of sessions, the Commission held a hearing on the right to gender identity of trans persons in El Salvador, which was not attended by state representatives but did include the participation of representatives from the civil society. At the event, the organizations that had requested the hearing stated that there was no law in El Salvador that recognized the right to gender identity and that this situation reportedly hindered access to other rights. They added that, in the exercise of jurisdictional function, the Supreme Court of Justice had issued a judgment that reportedly rendered Article 23, Paragraph 2, of the Law on the Name of Natural Persons unconstitutional on the grounds that it did not allow a person to change their names based on gender identity, which would reportedly constitute discriminatory treatment.<sup>158</sup>

163. In addition, during the event, the organizations that had requested the hearing referred to specific cases involving violations of the right to gender identity, in which trans women had not been allowed to change their names and gender in their identity documents. Likewise, they informed the Commission that the failure to recognize gender identity reportedly affected other rights, such as the rights to life, nondiscrimination and personal integrity. They emphasized that, according to the World Health Organization, the life expectancy of a trans woman in El Salvador ranges between 21 and 31 years, and that, in many cases, when they are victims of physical or psychological assaults or attempted femicides, such attacks are reportedly committed by law enforcement officers.<sup>159</sup>

164. Additionally, the Commission received written information from the civil society in response to the questionnaire that had been sent to them during the preparation of this follow-up report. In this regard, they informed that the State had reportedly failed to take any steps towards compliance with this recommendation, and added that the defense of LGBTI human rights reportedly relied on advocacy actions from organizations supported by international cooperation organizations. Likewise, they indicated that there were reportedly no institutional strengthening measures in place related to the rights of LGBTI persons and that this was allegedly resulting in the closure of civic spaces and working groups involving various ministries.<sup>160</sup>

165. Moreover, the organizations reiterated that El Salvador had reportedly not adopted a gender identity law yet. With regard to the legislative process, the Commission was informed that the Gender and Diversity Unit of the Ministry of Culture reportedly had no legal authority to submit bill proposals. In addition, the Commission learned about two draft bills (one version from 2018 and the other from 2021) submitted by civil society organizations attached to the Permanent Working Group for a Gender Identity Law; however, these draft bills had reportedly been archived and closed to debate, and a congresswoman had declared that they were “obsolete and out of touch with reality.”<sup>161</sup> Likewise, the civil society informed the Commission that, on December 9, 2021, a Family Court in San Salvador, for the first time, had reportedly allowed two transgender women to change their names after a revictimizing process that reportedly failed to comply with Advisory Opinion No. OC-24/2017.<sup>162</sup>

166. Likewise, the Commission learned that, on February 22, 2022, in Judgment of Unconstitutionality No. 33-2016/195-2016 of February 18, 2022, the Constitutional Chamber of the Supreme Court of Justice had reportedly ruled on a constitutional challenge submitted in February 2016 by activists

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<sup>157</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 41.

<sup>158</sup> IACHR, [186th period of sessions public hearing “Right to identity of trans persons in El Salvador.”](#) March 10, 2023.

<sup>159</sup> IACHR, [186th period of sessions public hearing “Right to identity of trans persons in El Salvador.”](#) March 10, 2023.

<sup>160</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>161</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>162</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023; CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

Karla Avelar and Bianca Rodríguez, and ordered the Legislative Assembly to pass legislation within one year from the date of notification of the judgment. However, according to the information provided to the Commission, this order was reportedly pending compliance.<sup>163</sup> In this regard, the organizations informed the Commission that, in August 2021, the civil society had submitted a new bill proposal for a gender identity law providing for a mechanism for the legal recognition of gender, which was reportedly under study by the Committee on Women and Gender Equality of the Legislative Assembly, although no relevant progress had been recorded.<sup>164</sup>

167. Along the same lines, the Commission received information about 15 requests by trans persons to change their names and genders, which had reportedly been litigated by an organization. Out of these, five had received a favorable judgment, nine had been rendered inadmissible and one had been denied on religious grounds, according to the civil society.<sup>165</sup>

*Analysis and level of compliance with the recommendation*

168. The Inter-American Commission is thankful for the information provided by the State and the organizations. It appreciates the actions reported by the State on the training program ordered by the Supreme Court of Justice for the Institute of Legal Medicine, as well as the reforms in the protocols of the latter to favor inclusion and the incorporation of the gender perspective into the manuals for the provision of services to users. However, besides this, the Commission notes that there is not enough information to determine whether these measures were adopted in 2023 or in previous years.

169. Likewise, the Commission observes that the compliance measure requested in the recommendation, which consists in the enactment of a gender identity law, has reportedly not been adopted yet. In addition, the Commission has taken note of the decision issued in February 2022 by the Constitutional Chamber of the Supreme Court of Justice ordering the Legislative Assembly to create a procedure for the legal recognition of gender, which would enable trans persons to change their names in their identity documents within one year. Considering that this deadline reportedly expired in February 2023, the Commission concludes that the law requested in this recommendation has yet to be enacted. Since this implementation measure has not been adopted, the Commission concludes that this recommendation remains **pending compliance**.

*Measures and information to advance compliance with the recommendation*

170. The Commission reiterates the need for the State to adopt a gender identity law which recognizes the possibility of changing the name and photograph in identity documents, including birth certificates and passports, as well as of rectifying sex markers. The submission of information on the implementation of this measure will make it possible to assess progress in compliance with this recommendation.

**Recommendation No. 28.** Adopt a comprehensive plan to protect and guarantee the human rights of LGBTI persons from a human security perspective, including their access to justice, education, healthcare and employment, and promote the participation of civil society organizations in the design and drafting of this plan.

<sup>163</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023; CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023. See also: Human Rights Watch, [“El Salvador Fails to Meet Deadline for Trans Rights Ruling,”](#) February 23, 2023; *Gato Encerrado*, [“Exigen que la Asamblea apruebe una Ley de Identidad de Género,”](#) February 23, 2023. *Swissinfo*, [“El Salvador no cumple plazo para legislar sobre identidad trans, dicen ONG,”](#) February 23, 2023; *Swissinfo*, [“Denuncian que El Salvador no atiende llamados para una ley de identidad trans,”](#) March 31, 2023. *Gato Encerrado*, [“Exigen que la Asamblea apruebe una Ley de Identidad de Género,”](#) February 23, 2023.

<sup>164</sup> CEJIL, CRISTOSAL, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>165</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

171. In Chapter V of the *2022 Annual Report*, the Commission reported that it had received no information evidencing any efforts by the State to create or process such a plan at the national level or other plans of access to health or education in the current context. With regard to the employment sector, the State informed that it had launched the *Creando oportunidades* (Creating opportunities) program to facilitate the employability of populations who have historically been subjected to exclusion, including LGBTI persons. Likewise, the State reported that the Ministry of Labor and Social Welfare had been carrying out actions, including technical roundtables with LGBTI persons, aimed at achieving a job placement process free of discrimination. Although the State reported measures adopted in the employment sector, the Commission considered that specific information on the remaining elements of the recommendation was still missing. Therefore, it urged the State to adopt a comprehensive plan for the protection and guarantee of LGBTI human rights, which addresses human security, access to justice, education, health and employment, and to promote the appropriate mechanisms for an effective coordination in the development of such plan across all relevant State institutions. In this regard, the Commission reiterated that such plan must provide for the participation of interested civil society organizations.<sup>166</sup>

#### *Information on compliance*

172. In 2023, the State provided information on actions taken in the health and education sectors for the protection of LGBTI persons. In this regard, the State reported that the Ministry of Labor and Social Welfare had an institutional strategic plan in place that promotes the protection of labor rights, nondiscrimination and support for vulnerable groups. In addition, the State indicated that the Ministry of Education, Science and Technology was advancing a model of equal opportunities in education, with the purpose of eradicating discriminatory attitudes and practices in access to and permanence in education. In this context, the State informed that the Ministry of Education had conducted a study on gender-based and sexual violence faced by students, with a section focused on identifying the violence that students may be experiencing because of their sexual orientation. Furthermore, the State indicated that the school curriculum promoted acceptance and respect for diversity and that the early warnings section of the Educational Management Information System (SIGES) already recorded bullying based on sexual orientation. The State also reported on actions to facilitate access to financial products for women, focusing on support to women with diverse sexual orientation or gender identity, indigenous women and Afro-descendants.<sup>167</sup>

173. Nevertheless, according to civil society organizations, the Salvadoran State had reportedly shown no willingness to adopt a comprehensive plan for the protection and guarantee of the human rights of LGBTI persons, which addresses aspects related to access to justice, education, health, employment and human security.<sup>168</sup>

174. In its observations to the draft of this follow-up report, the State added that, since 2019, the Gender Unit of the Ministry of Education had provided training to teachers from public schools, focused on the prevention of gender-based and sexual violence in the school community. The State highlighted a module focused on guaranteeing access to and permanence in education with no discrimination, aimed at including the LGBTI population in the education system. In this context, the State provided information on training and workshops for teachers and students on topics such as equality, nondiscrimination, prevention of sexual violence and sexual education, which were delivered to 2,360 teachers and 1,212 members of the technical staff. The State also reported that 595 education centers had a Plan for Equality and Prevention of Sexual Violence in place between 2019 and 2021.<sup>169</sup> Lastly, the State added that the Protocol of Action for Addressing Sexual Violence in Education Communities and the Protocol for the Permanence in School of Pregnant or

<sup>166</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 143–147.

<sup>167</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 42.

<sup>168</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>169</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.



Parenting Girls or Adolescents had been updated as part of the review of the regulatory framework of the Ministry of Education and the *Crecer Juntos* Law.<sup>170</sup>

*Analysis and level of compliance with the recommendation*

175. The Commission appreciates the information provided by the State and the civil society in the follow-up to this recommendation. The Commission notes that the State has reported relevant compliance measures in the education area oriented towards compliance with this recommendation. In this regard, it welcomes the training processes as well as the implementation of regulations aimed at ensuring compliance with this recommendation in these centers. The Commission also notes the measures adopted to facilitate access to financial products for women with diverse sexual orientation or gender identity. Nevertheless, the Commission determines that these measures do not constitute a specific and focused comprehensive plan for the protection and guarantee of the rights of LGBTI persons under the terms of the recommendation.

176. Notwithstanding the foregoing, the Commission reiterates that it is important that compliance measures be adopted as part of a comprehensive plan to protect and guarantee the rights of LGBTI people in all the areas mentioned in the recommendation, including access to justice, health and employment. Furthermore, the recommendation stresses the importance of developing a plan from a human security perspective and of ensuring participation by the civil society in its design. The Commission determines that it is necessary to coordinate measures to protect the rights of LGBTI people in all the areas mentioned in the recommendation, as well as to provide information evidencing how such comprehensive plan is designed in cooperation with civil society organizations. Since additional information on the coordination of these protection measures within the framework of a comprehensive plan covering all the areas mentioned in the recommendation is still required, the Commission considers that this recommendation continues to be met with partial compliance.

*Measures and information to advance compliance with the recommendation*

177. The Commission urges the State to adopt the comprehensive protection plan mentioned in this recommendation. In this regard, the Commission reiterates the importance of this strategy covering all the areas identified in the recommendation (health, employment, education and access to justice), and stresses that its design must ensure the adequate participation of the civil society. Likewise, the Commission invites the State to indicate the time of adoption of the measures included in this plan to identify whether they are updated and adopted in compliance with this recommendation.

**Recommendation No. 29.** Provide training for state officials, especially judicial staff members, on the rights of LGBTI persons.

178. In Chapter V of the *2022 Annual Report*, the Commission reported that it had learned about various measures taken by the State regarding training programs for public officials on the rights of LGBTI persons. However, the Commission encouraged the State to continue adopting training measures and to provide information on their development, detailing how justice operators are being prioritized and, specifically, how the rights of LGBTI persons have been addressed. The Commission requested information on the design, implementation, monitoring and evaluation of training programs, budgets and other allocated resources. Additionally, the Commission invited the State to report on the measurement of the results and the sustainability strategy of these programs.<sup>171</sup>

<sup>170</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>171</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations of the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 148-151.



*Information on compliance*

179. During 2023, the State reported on training on the rights of LGBTI persons that had been provided to officials by different agencies. First, the State indicated that the PDDH had delivered several courses within the framework of its human rights school on topics such as the protection and guarantee of the rights of LGBTI people, as well as on equality and nondiscrimination. These courses had been provided between 2019 and 2023, and were addressed to a total of 262 public officials from the following institutions: the PDDH, the PGR, the Armed Forces, the Legislative Assembly, the Ministry of Health, the Ministry of the Environment, the Ministry of Foreign Affairs, the Ministry of Finance, the National Records Center, the General Directorate for Migration and Immigration Affairs, the National School of Agriculture, the Supreme Court of Justice, the Ministry of Labor and Ciudad Mujer.<sup>172</sup>

180. The State added that the Center for Training, Analysis and Research of the PGR had conducted a workshop and a course on this subject, aimed at different PGR operational units in November 2022 and between May and June 2023.<sup>173</sup> In addition, the State reported that, through the Training School for Prosecutors of the FGR, it had provided 26 training sessions on the rights of LGBTI persons between January 1, 2019, and August 16, 2023.<sup>174</sup>

181. With regard to the road map for the design, implementation and evaluation of the training programs, the State informed that the PDDH had developed a permanent training program on this topic, titled *Curso básico sobre derechos de la población LGBTQI+* (Basic course on the rights of the LGBTQI+ population), delivered by the Human Rights School.<sup>175</sup> With regard to the sustainability of these training processes, the State informed that a budget and resources had been allocated for the permanent work on education and promotion conducted by the PDDH Human Rights School. The State also informed that the Office of the Deputy Ombudsperson for the Defense of Civil and Individual Rights (PADCI), with the support of the organizations that are part of the PDDH Permanent Working Group on the Rights of the LGBTQI+ Population, had been jointly developing training activities on the rights of the LGBTQI+ population aimed at public servants and had been working to standardize the training processes of the PADCI in the institution.<sup>176</sup>

182. In the case of the FGR, the State indicated that the road map for the design of training activities was based on identifying needs, creating the content and designing instructional materials. The implementation phase of the activities involves the selection of the trainer, the call, logistical issues and the place of delivery. Finally, the evaluation process involves the design of evaluation tools and rubrics. To guarantee the sustainability of these processes, the State informed that its strategy was to include the topics related to the rights of LGBTI persons in the Annual Training Plan, thus ensuring the participation of the institution personnel with the aim of developing competencies and skills in the subject.<sup>177</sup>

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<sup>172</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 42-44.

<sup>173</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 44.

<sup>174</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 44.

<sup>175</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 45-46.

<sup>176</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 45-46.

<sup>177</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 45-46.

183. The Commission learned from the information provided by civil society organizations that some organizations, including COMCAVIS TRANS, reportedly provided technical training for public officials on human rights, dignified treatment, and sex, sexual orientation and gender identity (SSOGI) terminology. In this regard, this organization indicated that, during 2022, it had provided training to 2,850 duty bearers from different state institutions, such as: the PDDH, the FGR, the PGR, the National Youth Institute (INJUVE), the Ministry of Health (MINSAL), the Salvadoran Social Security Institute (ISSS), the ISDEMU, the National Statistics and Census Directorate (DIGESTYC), the Ministry of Culture (MICULTURA), the MTPS, the National Registry of Natural Persons (RNPN), the General Directorate of Penitentiaries (DGCP), the National Civil Police (PNC), the National Council for Early Childhood, Children and Adolescents (CONAPINA), and the CSJ.<sup>178</sup>

184. In its observations to the draft of this report, the State added that continuous training on the rights of LGBTI persons was guaranteed through the Institutional Gender Units that must exist in every public administration office pursuant to the Law on Equality, Equity and Eradication of Discrimination against Women. In the case of justice operators and members of the judiciary, the State informed that the Gender Department was tasked with mainstreaming the gender approach, disseminating the Gender Equality Institutional Policy (PIIG) and developing awareness processes in the Supreme Court of Justice and other areas of the judiciary. The State informed that the aforementioned policy included an Action Plan 2020/2023, which provided for the training of members of the judiciary.<sup>179</sup>

185. In its observations, the State reiterated that attendance by the staff of the FGR to training sessions or workshops was mandatory. In addition, the State informed that the Gender Unit of the General Directorate of Penitentiaries mainstreamed the human rights, gender and equity approach into the area of dignified treatment in prison contexts. In addition, it reported that the Annual Operation Plan of the Unit included a training program for the technical, administrative and security and prison treatment personnel on the respectful and dignified treatment of LGBTIQ+ persons. In this regard, the State indicated that, in the last four years, 586 officers had received training on sexual orientation, gender identity and expression, equality and equity, stigma and discrimination, among others. According to the State, these initiatives represent an interinstitutional effort conducted in cooperation with civil society organizations.<sup>180</sup>

#### *Analysis and level of compliance with the recommendation*

186. The Commission is thankful for the information provided by the State and the civil society. In this regard, the Commission observes that the State has reported an important number of training activities involving the rights of LGBTI persons, which were addressed at various units within the Office of the Public Prosecutor, such as the PDDH in 2019, 2020, 2021 and 2022, the PGR in 2023 and the FGR from 2019 to 2023. With regard to the targeted personnel, the Commission observes that, in addition to agencies from the executive branch, some of these actions were aimed at the aforementioned entities that make up the Office of the Public Prosecutor and, in some cases, at the Supreme Court of Justice, as part of the judiciary. Furthermore, the Commission identifies training and education activities for justice operators and officers from the judiciary and penitentiary system. Finally, the Commission appreciates that several of these training programs are implemented with the support of some civil society organizations.

187. Although the Commission appreciates these education activities, it also determines that additional information on the content and scope of the training topics is essential, in particular with regard to the training provided to justice operators. In the meantime, the Commission considers that the information obtained in the follow-up to this recommendation leads to the conclusion that this recommendation has progressed to substantial partial compliance.

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<sup>178</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>179</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>180</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

*Measures and information to advance compliance with the recommendation*

188. With a view to declaring that this recommendation has reached full compliance, the Commission requests additional information specifying the content, topics and details on the time, manner and place in which continuous and mandatory training on the rights of LGBTI persons is delivered to justice operators, including the Supreme Court of Justice and other entities within the judiciary.

**Recommendation No. 30.** Create a public statistical record on acts of violence and discrimination against LGBTI persons in El Salvador and ensure the data it contains is appropriately disaggregated and regularly updated.

189. According to Chapter V of the Commission's *2022 Annual Report*, the State indicated that the National Civil Police (PNC) reportedly kept a record of crimes against LGBT persons; that FGR had the capability to collect reports of homicides and threats based on "hatred of gender identity and expression or sexual orientation;" and that the PGR was allegedly working on a platform to register users, in which information would be disaggregated by age, sex and other key variables. However, the Commission noted that the State had not reported on the data collected or on the implementation or effectiveness of the record kept by the PNC. For this reason, it urged the State to strengthen the mechanisms for data collection and encouraged it to ensure that these registration tools be unified, comprehensive and useful to address and prevent this type of violence.<sup>181</sup>

*Information on compliance*

190. In 2023, the State reported on the Information and Automated Management System of the Prosecution Process (SIGAP) of the FGR, which has set variables to record information related to acts of violence faced by LGBTI persons. It also stated that, by creating a record of a natural person, it was possible to indicate if they belonged to a population segment, which allowed the information to be extracted and processed in real time. Moreover, the State emphasized that data updates depended on the progress of the investigations and the input of information into the system by the prosecutor heading each case.<sup>182</sup>

191. For their part, civil society organizations informed the Commission that, to date, the State has reportedly spared no effort to generate disaggregated statistics to make the LGBTIQ+ population visible at the national level. In this regard, they pointed out that the General Directorate of Statistics and Censuses (DIGESTYC) was no longer in place, which they considered to be a setback. The Commission was also informed that the censuses were to be carried out by the new National Office of Statistics and Censuses (ONEC) under the Central Reserve Bank of El Salvador, which had not reported any progress in updating population data.<sup>183</sup>

192. In its observations to the draft of the instant follow-up report, the State pointed out that the data generated by the Statistics Department of the FGR were published and updated in its annual work reports.<sup>184</sup> It also indicated that the June 2022–May 2023 *Annual Work Report* had been made available.<sup>185</sup> In addition, the State clarified that the statistical records kept by the FGR on investigations of crimes against the LGBTI population were produced by the Statistics Department without the involvement of other entities.<sup>186</sup> It

<sup>181</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 152–155.

<sup>182</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 47.

<sup>183</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>184</sup> In this regard, the State provided the following link: [Office of the Attorney General \(FGR\)](#), on the work report for 2022–2023.

<sup>185</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>186</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

further indicated that SIGAP only registered data on crimes under the Criminal Code of El Salvador based on the progress of the investigations conducted by each prosecutor.<sup>187</sup>

*Analysis and level of compliance with the recommendation*

193. The Commission appreciates the information provided by the State and the civil society. In this regard, it considers that the State continues to adopt some measures relevant to this recommendation related to the SIGAP of the FGR. The Commission also appreciates having been granted access to the 2022–2023 *Annual Work Report*, which reportedly includes data on gender-based violence that, according to the State, is perpetrated against the LGBTI population. After reviewing said report, the Commission noted that it included statistical information on crimes related to gender-based violence against women. However, it was not able to identify how data specifically related to LGBTI persons was recorded. Therefore, information is still needed to conclude whether this data constituted disaggregated statistics that were public and that comprehensively addressed acts of violence against LGBTI persons, including acts of discrimination. Likewise, the Commission recalls that, in 2022, it highlighted the importance of this system being fed jointly with records kept by other entities, such as the data reported by the PNC and the PGR. The Commission emphasizes that the importance of the statistical data referred to in this recommendation lies in its usefulness in the prevention, investigation and eradication of these acts of violence and discrimination. Consequently, the Commission considers that the level of compliance with this recommendation continues to be partial.

*Measures and information to advance compliance with the recommendation*

194. In order to advance the implementation of this recommendation, the Commission encourages the State to provide information to clarify how the FGR registry specifically produces statistics regarding LGBTI persons. It also encourages the State to provide information on any other relevant statistical systems devised by other entities or on any interinstitutional registries, indicating how they hold disaggregated data that is publicly accessible and periodically updated. In this regard, it urges the State to clarify how the existing registries or those under construction ensure that relevant entities work jointly to create unified and reliable statistics on acts of discrimination and violence against LGBTI persons. Likewise, it is essential for the Commission that these records include a wider concept of acts of violence and discrimination against LGBTI persons, and therefore encourages the State to specify what type of acts are covered in the reported registries.

**Recommendation No. 31.** Adopt measures necessary to strengthen access to justice for LGBTI victims of violence through a coordinated effort between organizations under the executive branch and the Office of the Public Prosecutor.

195. According to Chapter V of the Commission's *2022 Annual Report*, the State reported on the creation of the Deputy Prosecutor's Office for Women, Children, Adolescents and other Vulnerable Groups, which handles crimes committed against women, children, adolescents and LGBTI persons. The State also indicated that the investigation of crimes perpetrated against LGBTI persons was reportedly headed by the units for crimes related to life and physical integrity or the Early Solution Units of each Prosecutor's Office. It further assured that the Public Criminal Defense Unit of the PGR was allegedly carrying out coordinated actions targeted at LGBTI persons with other institutions to guarantee an effective criminal defense. It also reported that the Ministry of Justice and Public Security had allegedly implemented a policy to assist the LGBTI population with the National Civil Police. The Commission recognized that the State had adopted some measures of compliance; nevertheless, it urged it to reinforce their implementation so that, in practice, these measures resulted in a better access to justice for LGBTI persons.<sup>188</sup>

<sup>187</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>188</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 156–159.

*Information on compliance*

196. In 2023, the State reported that the FGR had two protocols in place: one for legal and psychosocial care for different populations, including LGBTI persons, and another for the investigation of crimes against LGBTI persons. In this regard, it did not specify whether these had been devised or implemented in coordination with the executive branch, as requested in the instant recommendation.<sup>189</sup>

197. According to information submitted to the Commission by the civil society, despite the fact that the State had created the Victim Assistance Directorate under the Ministry of Justice and Public Security, there were allegedly no relevant actions on the part of this entity aimed at increasing access to justice for LGBTIQ+ persons.<sup>190</sup>

198. Likewise, it was pointed out to the Commission that, while the FGR had approved the Protocol of Action for the Investigation of Aggravated Crimes Based on Hatred of Gender Identity and Expression or Sexual Orientation in late 2020, it has reportedly not been applied by the incumbent administration since May 2021.<sup>191</sup>

199. The Commission was also informed that crimes against LGBTI persons persisted, inasmuch as 203 cases had been reportedly recorded from January to March 2022.<sup>192</sup> Additionally, during that period, 45 reports of violations of the human rights of LGBTI persons had been received, 13.3 percent of which concerned alleged violations of the rights of access to justice, due process of law and fair trial.<sup>193</sup>

200. Subsequently, in its observations to the draft of the instant follow-up report, the State requested the Commission to declare this recommendation fully complied with. In support of this request, it pointed out that the drafting of the Protocol of Action for the Investigation of Aggravated Crimes Based on Hatred of Gender Identity and Expression or Sexual Orientation had been endorsed by the Rights and Dignity Project financed by USAID and executed by Counterpart International and Partners El Salvador. The State indicated that said protocol was the result of a broadly participatory process engaging prosecutors, the civil society and institutions of the judiciary involved in the investigation of hate crimes.<sup>194</sup> It further stated that the Ministry of Justice and Public Security had participated in the protocol consultation workshops through the National Civil Police and the Institute of Legal Medicine, which is attached to the Supreme Court of Justice.<sup>195</sup> The State added that the protocol had been shared with and sent to these institutions and that the Prosecutor Training School had been in charge of organizing the workshops and sharing the document.<sup>196</sup>

201. In its observations, the State indicated that the Protocol for Legal and Psychosocial Assistance for Persons Facing Violence, with Emphasis on Children, Adolescents, Women and Other Vulnerable Populations had resulted from the work of multidisciplinary groups pertaining to the FGR, and that its drafting

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<sup>189</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 47.

<sup>190</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>191</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>192</sup> Cristosal, [Estudio sobre el acceso a la justicia de las personas LGBTIQ+, particularmente de la población Trans, en Guatemala, Honduras y El Salvador](#), May 2023, p. 70.

<sup>193</sup> Cristosal, [Estudio sobre el acceso a la justicia de las personas LGBTIQ+, particularmente de la población Trans, en Guatemala, Honduras y El Salvador](#), May 2023, p. 76.

<sup>194</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>195</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>196</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.



process had been led and systematized by a consultant financed by UNICEF. Finally, the State clarified that both protocols were for internal use by the FGR as a fundamental tool in its investigative work.<sup>197</sup>

202. As part of the follow-up actions, the Commission also learned about a civil society study that analyzed the impact on the right of access to justice of LGBTIQ+ persons, particularly trans persons, in Guatemala, Honduras and El Salvador. Among the main challenges detailed in this report with respect to El Salvador were the lack of awareness and specialization of public officials, the absence of a differentiated approach in the care of and assistance to LGBTI persons, impunity and negligence in the investigation and prosecution of crimes, and the failure to implement the Policy for the Care of Diverse Persons.<sup>198</sup> According to this report, the information gathered on El Salvador had been provided by six civil society organizations working on the defense of the rights of LGBTIQ+ persons in this country. They had based their contributions on complaints, testimonies, requests for information and monitoring activities taken from public information sources (both official and unofficial).<sup>199</sup>

#### *Analysis and level of compliance with the recommendation*

203. The Commission appreciates the information provided by the State and highlights the relevance of the instruments reported by the FGR to contribute to the investigation of crimes against LGBTI persons, as well as the clarifications offered regarding the development process of the aforementioned protocols of action for investigations and legal assistance. Additionally, the Commission welcomes the information submitted by the State indicating that these initiatives had been built on interinstitutional efforts and through consultation processes.

204. The Commission has taken note of information from civil society research according to which, even after the implementation of specific methodologies for data collection and analysis, significant challenges persisted in relation to access to justice for LGBTI persons in El Salvador.<sup>200</sup> In order for the implementation of this recommendation to become a useful mechanism to overcome these challenges, and considering the measures adopted, the Commission encourages the State to continue carrying out coordinated actions between the entities of the executive branch and the Office of the Public Prosecutor that can lead to concrete results to increase access to quality justice for these persons. In this regard, the Commission recalls that the core content of the recommendation is to improve access to justice for LGBTI persons, specifically through an action plan jointly led by executive branch entities and the Office of the Public Prosecutor. In this regard, although it values the reported actions, the Commission reiterates its call to strengthen this interinstitutional strategy aimed at guaranteeing that LGBTI persons have access to the administration of justice. Given that this information is still required, the Commission considers that this recommendation continues to be partially complied with.

#### *Measures and information to advance compliance with the recommendation*

205. In order to guide compliance with this recommendation, the Commission emphasizes the importance of the State strengthening an interinstitutional action plan led by the entities that make up the Office of the Public Prosecutor and the relevant executive branch entities to improve access to justice for LGBTI persons, taking into account the challenges noted in relation thereto. Likewise, with respect to the aforementioned protocols, the Commission urges the State to provide additional information on their application to assess whether they constitute specific measures of compliance with this recommendation.

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<sup>197</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>198</sup> Cristosal, [Estudio sobre el acceso a la justicia de las personas LGBTIQ+, particularmente de la población Trans, en Guatemala, Honduras y El Salvador](#), May 2023, p. 79.

<sup>199</sup> Cristosal, [Estudio sobre el acceso a la justicia de las personas LGBTIQ+, particularmente de la población Trans, en Guatemala, Honduras y El Salvador](#), May 2023, pp. 66–79.

<sup>200</sup> Cristosal, [Estudio sobre el acceso a la justicia de las personas LGBTIQ+, particularmente de la población Trans, en Guatemala, Honduras y El Salvador](#), May 2023.



## 2. Persons in the context of human mobility

**Recommendation No. 32.** Pass a comprehensive regulatory framework on forced displacement that includes lasting solutions as part of the framework for implementing the MIRPS and guarantees the provision of support and advisory services on comprehensive coordination mechanisms for protecting human rights.

206. In Chapter V of its 2022 *Annual Report*, the Commission learned that the State was going to set up an interinstitutional working group to accelerate the implementation of the Global Compact for Safe, Orderly and Regular Migration, and develop a national plan on migration. It was also informed about the *Programa de creación de alianzas para la migración* (Program for the creation of alliances for migration), whose purpose is to address human mobility; the *Programa de migración laboral* (Labor migration program), aimed at benefiting Salvadorans with job opportunities in countries such as the United States and Canada; and the project *Empoderamiento de mujeres y niñas afectadas por la migración y el desplazamiento forzado en El Salvador* (Empowerment of women and girls affected by migration and forced displacement in El Salvador), set to strengthen the gender approach in decision-making concerning migrant, displaced and refugee women. Despite these measures, the Commission noted that compliance with this recommendation required the State to adopt laws aimed at guaranteeing the support and advice of comprehensive coordination mechanisms for the protection of human rights in the context of forced displacement.<sup>201</sup>

### *Information on compliance*

207. In 2023, the State reported that the Special Law for Comprehensive Care and Protection of People in a Situation of Forced Internal Displacement, which had been passed in 2020, was in force. The purpose of this law is to recognize, guarantee and protect the fundamental rights of people in a situation of forced internal displacement and of those who are at risk of being displaced, by establishing preventive procedures and an efficient care system with a humanitarian approach that includes lasting solutions.<sup>202</sup>

208. In addition, in its response to the questionnaire on the state of emergency, the State informed the Commission that the Victim Assistance Directorate under the Ministry of Justice and Public Security provided assistance to victims of different acts of violence, with special focus on those at risk, including the risk of forced internal displacement.<sup>203</sup> In this regard, it also indicated that there were 11 local Victim Assistance Offices throughout the country, where cases could be reported and victims were interviewed and offered legal, psychological and psychosocial assistance.<sup>204</sup> According to the State, the Directorate aims to provide a comprehensive response to victims, in relation to the needs identified during their interview, through referral to other institutions or public or private entities, and, as a last resort, by activating the appropriate protocol of action.<sup>205</sup>

209. For their part, civil society organizations pointed out to the Commission that there was no evidence of any political will to adopt and implement the regulatory framework indicated in the recommendation. In this regard, they indicated that the only measure in force was the interview of victims by

<sup>201</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 160–164.

<sup>202</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 48.

<sup>203</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>204</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>205</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

the Victim Assistance Directorate under the Ministry of Justice and Public Security, when specific services were required.<sup>206</sup>

210. The Commission was also informed that the Special Law for Comprehensive Care and Protection of People in a Situation of Forced Internal Displacement had been passed in 2020. However, notwithstanding this law, the Interinstitutional Technical Commission for the Care and Protection of People in a Situation of Forced Internal Displacement had not yet been created; this commission would reportedly play a fundamental role in the coordination and implementation of the National System of Assistance and Protection in terms of the design and dissemination of the national policy on the matter. In addition, it was reported that the Unified Registry of People in a Situation of Forced Internal Displacement, which should be headed by the National Directorate for Victims and Forced Migration, had not been created either. Despite the fact that Article 34 of the aforementioned law set forth that its regulations were to be issued 90 days after its entry into force, as of September 1, 2023, there were no initiatives in that regard.<sup>207</sup>

211. In addition, based on information in the public domain, the Commission has learned about reports from organizations according to which 2,237 cases of forced internal displacement had been recorded between 2020 and 2022.<sup>208</sup> In this regard, by 2022, the PDDH had reportedly identified 141 cases of forced internal displacement affecting a total of 548 displaced persons.<sup>209</sup>

212. For its part, in its observations to the draft of the instant follow-up report, the State reported on several instruments for the care of persons in the context of human mobility, which had been signed in 2023 between the OAS Secretariat and various entities in El Salvador. These agreements relate to: 1) Addendum No. 1 to the agreement between the OAS General Secretariat and the FGR, related to the implementation of the project *Fortalecimiento de núcleos de atención a víctimas* (Strengthening of victim assistance centers); 2) the cooperation agreement between the National Registry of Natural Persons and the OAS General Secretariat to facilitate access to identity and identification documents for persons and family groups returning to Guatemala, Honduras and El Salvador (PUICA); 3) the agreement between the OAS General Secretariat and the National Council for Early Childhood, Children and Adolescents of the Republic of El Salvador, related to the implementation of the project *Vinculación de niñas, niños y adolescentes retornados con necesidades de protección y sus familias a medios de vida* (Linking returnee children and adolescents in need of protection and their families to a livelihood) in El Salvador.<sup>210</sup>

213. The State also referred to the interinstitutional agreement between the Ministry of Foreign Affairs and the Salvadoran Institute for the Development of Women, “which aims to carry out actions focused on the prevention of irregular migration, on integration and on human mobility in a comprehensive manner, contributing to the improvement of the quality of life of women.”<sup>211</sup> Finally, it reported on the recent adoption of the Protocol for the Comprehensive Care of Asylum Seekers and Refugees in El Salvador.<sup>212</sup>

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<sup>206</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>207</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023; CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023; PDDH, [Informe de monitoreo de protección a personas víctimas de desplazamiento forzado interno 2022](#), May 26, 2023, p. 6.

<sup>208</sup> La Prensa Gráfica, “[2,237 casos de desplazamiento forzado en El Salvador, pese a que existe Ley.](#)” February 16, 2023.

<sup>209</sup> PDDH, [Informe de monitoreo de protección a personas víctimas de desplazamiento forzado interno 2022](#), May 26, 2023, p. 10.

<sup>210</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>211</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>212</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

*Analysis and level of compliance with the recommendation*

214. The Commission notes that, after the publication of the Country Report, it learned about the passing of the Special Law for Comprehensive Care and Protection of People in a Situation of Forced Internal Displacement, which provides for prevention, humanitarian assistance and protection stages in the process to assist displaced persons. Such stages are designed to transform into lasting solutions to this problem. In this regard, the Commission considers that the regulatory framework referred to in this recommendation is additional to the one set forth in the aforementioned law, as far as lasting actions of support and advice from integral mechanisms of protection are foreseen and provided that it is executed within the framework of the Comprehensive Regional Protection and Solutions Framework (MIRPS).

215. The Commission has taken careful note of the measures reported by the State in its observations to the instant follow-up report and it acknowledges that the aforementioned agreements, the interinstitutional agreement on actions focused on women and the recent Protocol for Comprehensive Assistance to Asylum Seekers and Refugees contribute to establishing a comprehensive regulatory framework on forced displacement. With a view to evaluating the fulfillment of this recommendation, the Commission indicates it requires information on the content of these initiatives that is devised to that effect and urges the State to move forward with the adoption of the required measures. Said measures must be implemented within the framework of the MIRPS and take into consideration the importance of the support and advice offered by the comprehensive coordination mechanisms for protecting human rights. Likewise, the Commission notes that compliance with these measures may also consist, for example, in the adoption of the regulatory framework for the operation of the Interinstitutional Technical Commission for the Care and Protection of People in a Situation of Forced Internal Displacement, or the issuance of the regulations to implement the Special Law of 2020, specifying the measures indicated in the recommendation. In view of the foregoing, the Inter-American Commission considers that this recommendation has reached a level of **partial compliance**.

*Measures and information to advance compliance with the recommendation*

216. The implementation of this recommendation requires the adoption of a comprehensive regulatory framework on forced displacement as part of the MIRPS aimed at guaranteeing the provision of support and advisory services on the comprehensive coordination mechanisms for protecting human rights. This framework could, for example, be adopted by issuing the regulations for the Special Law passed in 2020 or by creating a regulatory framework for the operation of the Interinstitutional Technical Commission for the Care and Protection of People in a Situation of Forced Internal Displacement. Likewise, the Commission urges the State to submit additional information to account for the way in which the aforementioned agreements, as well as the interinstitutional agreement and protocol, contribute to building a regulatory framework that provides lasting solutions to the problems faced by persons subject to forced displacement.

**Recommendation No. 33.** Refuse to implement measures, policies or agreements that in any way impose the recognition of El Salvador as a safe third country.

217. In Chapter V of its *2022 Annual Report*, the Commission noted that the State had not reported measures of compliance with this recommendation, and thus called for its implementation.<sup>213</sup>

<sup>213</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 165.

*Information on compliance*

218. In 2023, the State reported to the Commission that the Cooperation Agreement on Migration signed with the United States had been terminated in February 2022, in accordance with Article 9.3 thereof.<sup>214</sup>

219. In addition, the Commission received information from civil society organizations according to which no progress had been made with respect to the agreement signed by the current government with the United States.<sup>215</sup>

220. In its observations to the instant follow-up report, the State requested the Commission to declare that the specific purpose of this recommendation was no longer valid and to discontinue its follow-up. In addition, the State emphasized that “any agreement with another State [was] the result of its sovereign decision, so its bilateral relations [did] not include agreements that [disregarded] State sovereignty or [undermined] national interests.”<sup>216</sup>

*Analysis and level of compliance with the recommendation*

221. The Commission has taken careful note of the fact that the Cooperation Agreement on Migration signed with the United States, which implied the recognition of El Salvador as a safe third country, was terminated in 2022. Considering that, at present, the Commission has no knowledge of any measures recognizing El Salvador as a safe third country, it will cease to follow up on this recommendation and declares it has reached full compliance. However, the Commission encourages the State to continue to refrain from implementing such measures, policies or agreements as requested in this recommendation. The eventual imposition of the measures referred to in this recommendation may result in the restoration of the follow-up process to guarantee the protection of the human rights of persons in situation of human mobility.

**Recommendation No. 34.** Strengthen transnational coordination around the search for disappeared and deceased migrants, including strengthening mechanisms for collecting, storing and analyzing forensic data and genetic information banks, and improving consular services for Salvadorans abroad, especially those in need of international protection.

222. In Chapter V of its *2022 Annual Report*, the Commission considered that the State had not reported measures of specific compliance with this recommendation.<sup>217</sup>

*Information on compliance*

223. In 2023, the State reported that CONABÚSQUEDA had documented 26 cases of disappeared Salvadorans in Honduras and Guatemala and had plans to establish processes for cooperation in searches with these two countries to address the demands of the relatives of said persons.<sup>218</sup>

224. Moreover, the State indicated that it had strengthened its diplomatic and consular network with trained personnel and resources. It also pointed out that the Vice-Ministry of Diaspora and Human Mobility under the Ministry of Foreign Affairs had promoted a series of activities to protect Salvadoran

<sup>214</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 48.

<sup>215</sup> COMCAVIS Trans, Answers to the consultation questionnaire, September 11, 2023.

<sup>216</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>217</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 166–168.

<sup>218</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 6.

nationals abroad. These activities included the opening of new diplomatic and consular offices starting in 2019, bringing consular services to cities where there was no state representation, issuing the single identity card in 23 consular and diplomatic offices (located in the United States, Canada and Mexico), and issuing passports abroad.<sup>219</sup>

225. Furthermore, the State highlighted the set-up of the Quality Management System to verify the quality of the assistance provided to Salvadorans abroad and identify areas for improvement in the provision of such services; the set-up of one-stop shops and kiosks to facilitate access to the services of financial, credit and protection institutions for Salvadorans abroad; the implementation of the Registry of Vital and Family Records in March 2023, which provides for the electronic registration of births abroad; and the creation of a Protocol for Humanitarian Assistance and Management for Salvadorans abroad.<sup>220</sup>

226. In turn, through official information in the public domain, the Commission learned about the reallocation of funds to execute education and assistance projects for migrants. In August 2023, the Legislative Assembly had reportedly authorized the allocation of resources to the Ministry of Foreign Affairs – a reported amount of 972,000 US dollars – to strengthen “the consular network of El Salvador at the border between the United States of America and the United Mexican States, in an effort to assist and protect migrant children and their families as part of the Comprehensive Project on Human Mobility.”<sup>221</sup>

227. The Commission also became aware of official public information announcing the dissolution of the National Council for the Protection and Development of Migrants and their Families (CONMIGRANTES), and the transfer of its functions to the Ministry of Foreign Affairs. In this regard, the Commission learned that, on September 20, 2023, the Committee on Foreign Affairs of the Legislative Assembly had ruled in favor of creating the Law for the Integration of Functions of the National Council for the Protection and Development of Migrants and their Families so as to merge the work of CONMIGRANTES with that of the Vice-Ministry of Diaspora and Human Mobility.<sup>222</sup>

228. However, the Commission also heard multiple allegations from the civil society and deputies from non-ruling parties, who spoke against such merger and argued that the dissolution of CONMIGRANTES would result in the closure of spaces for civil society participation, mainly for associations of Salvadorans abroad, non-governmental organizations registered in the country, universities and representatives from small and medium-sized enterprises.<sup>223</sup>

229. In its observations to the instant follow-up report, the State requested the Commission to declare this recommendation fully complied with. It argued that the Department of Humanitarian Management headed by the Vice-Ministry of Diaspora and Human Mobility under the Ministry of Foreign Affairs kept an institutional record of persons pending to be located abroad, which included Salvadoran migrants in transit and in their destination country. Among the search activities it carried out, the State highlighted the “activation of the localization process through diplomatic and consular offices; the coordination with the police, the Office of the Public Prosecutor, morgues, hospitals, shelters and the civil society abroad; and the coordination at the

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<sup>219</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 48–52.

<sup>220</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 48–52.

<sup>221</sup> Legislative Assembly, “[Reorientan fondos para ejecutar proyectos educativos y asistir a migrantes](#),” August 30, 2023.

<sup>222</sup> Legislative Assembly, “[Consejo que protege derechos de migrantes podría pasar a Viceministerio de Diáspora](#),” September 20, 2023.

<sup>223</sup> La Prensa Gráfica, “[Memoria de labores de la Cancillería salvadoreña contradice argumento para disolver CONMIGRANTES](#),” September 26, 2023. See also: El Salvador, “[Disolución de CONMIGRANTES implicaría cierre de espacios a la sociedad civil](#),” September 21, 2023.



national level with the National Civil Police, the FGR, the National Registry of Natural Persons and the Institute of Legal Medicine, among others.”<sup>224</sup>

230. Likewise, in its observations, the State explained that the Vice-Ministry of Diaspora and Human Mobility carries out humanitarian management functions by coordinating efforts with diplomatic and consular offices in other countries to protect Salvadoran nationals from disappearing in the context of human mobility.<sup>225</sup>

231. Furthermore, the State reported on the Protocol for Humanitarian Assistance and Management for Salvadorans abroad, which set out three lines of action: (i) improving the capacity and quality of care at diplomatic and consular offices; (ii) promoting and ensuring political, economic, social and cultural inclusion; and (iii) creating the conditions to meet current and future demand. The State added that the protocol provided for personalized assistance and the institutionalization of humanitarian management processes, including those involving unlocated or disappeared Salvadorans.<sup>226</sup> Finally, the State indicated that, in August 2010, the Ministry of Foreign Affairs had signed the Agreement for the Creation of the Forensic Data Bank of Unlocated Migrants of El Salvador, to which the civil society is also reportedly a party.<sup>227</sup>

#### *Analysis and level of compliance with the recommendation*

232. The Commission appreciates the information provided on the multiple steps that the State has taken to strengthen consular services for Salvadorans abroad, which is an element of this recommendation that is considered fully complied with. As regards the request to adopt measures to extend transnational coordination in the search for disappeared and deceased migrants, as well as the strengthening of mechanisms for the collection, storage and analysis of forensic data and genetic banks, the Commission acknowledges that CONABÚSQUEDA and the Vice-Ministry of Diaspora and Human Mobility of the Ministry of Foreign Affairs have made efforts to document information. However, in order to advance compliance with this recommendation, the Commission notes that concrete action is needed to strengthen the systematization of this data, as well as to bolster transnational coordination with authorities in other countries. Although the Commission notes that the Vice-Ministry of Diaspora and Human Mobility carries out humanitarian management functions by coordinating efforts with diplomatic and consular offices in other countries, there is no evidence of how these efforts have been enhanced and coordinated in practical terms. Based on the compliance measures reported by the State, the Commission considers that the State has made progress for this recommendation to reach a level of partial compliance.

#### *Measures and information to advance compliance with the recommendation*

233. The Commission encourages the State to report on how, in practice, the reported measures contribute to the results sought by the recommendation, as well as to adopt specific measures to strengthen transnational coordination in the search for disappeared and deceased migrants. In particular, the Commission prompts the State to submit information on the results of the search and coordination mechanisms implemented. It also urges the State to file information related to the actions to be undertaken with respect to Guatemala and Honduras, as well as with other countries. Additional information is also required on the State’s plan to bolster transnational mechanisms for collecting, storing and analyzing forensic data and genetic banks.

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<sup>224</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>225</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>226</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>227</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

**Recommendation No. 35.** Adopt comprehensive programs and specific measures to guarantee the rights of internally displaced populations in safety and with dignity, and to place guaranteeing these rights at the core of any strategies to prevent forced migration, particularly the rights to housing, work, education and health.

234. In Chapter V of its *2022 Annual Report*, the Commission noted that the State had not submitted information on any compliance measures. The Commission added that, according to the Internal Displacement Monitoring Center, by the end of 2021, there had been reports of 175,000 new displacements related to conflict and violence and 550 displacements related to natural disasters. The Commission exhorted the State to adopt comprehensive programs aimed at guaranteeing the rights of internally displaced persons and ensuring long-lasting safe and decent conditions. The Commission also encouraged the State to adopt and report on strategies to prevent internal displacement, prioritizing the rights to housing, work, health, and education.<sup>228</sup>

#### *Information on compliance*

235. In 2023, the State reported that the Victim Assistance Directorate, with support from other government institutions and the UNHCR, had undertaken the task of updating the characterization study on forced internal displacement, which facilitates evidence-based decision-making for the formulation of public policies. The State also noted that the PGR had set up a Forced Internal Displacement Unit, which provides assistance and support to victims in conjunction with public institutions and civil society organizations, within the framework of the Special Law for Comprehensive Care and Protection of People in a Situation of Forced Internal Displacement and in accordance with the United Nations' guiding principles on forced displacement.<sup>229</sup>

236. In addition, the State reported that the Victim Assistance Directorate under the Ministry of Justice and Public Security carried out preventive actions, such as providing care at *A tu lado*" (By your side) support spaces, which offer comprehensive assistance to displaced persons and seek to prevent and identify the risks of forced displacement.<sup>230</sup> Likewise, the State pointed out that the Victim Assistance Directorate had conducted a comparative analysis covering from 2018 to the first quarter of 2023, which showed a reduced number of cases of violence caused by internal forced displacement.

237. Moreover, the State indicated that, in order to guarantee the right to education of the internally displaced population, several flexible education programs were under development at the national level, among them, the Proficiency Test Strategy, Tutoring for Academic Leveling and blended and distance learning modalities. Regarding the right to health of internally displaced persons, the State pointed out that the Ministry of Health had expanded healthcare coverage and that the National Action Plan of the MIRPS included specific actions in the area of health, mainly with regard to raising awareness among healthcare personnel, providing specialized training for health system officials and coordinating and designing a psychological/psychosocial care model.<sup>231</sup>

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<sup>228</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 169–172.

<sup>229</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 52.

<sup>230</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 53.

<sup>231</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 54–55.

238. In addition, the State reported that the ISDEMU provided psychosocial support to displaced women, women at risk of displacement and survivors of gender-based violence through a program targeting entrepreneurs and microenterprises.<sup>232</sup>

239. As per information provided by civil society organizations, the Commission learned that the Forced Internal Displacement Unit under the PGR had stated that it provided an immediate response when resorted to, in accordance with each person's care needs, while seeking lasting solutions that guarantee the gradual restoration of their rights and the possibility of starting a new life project. However, the organizations pointed out that, in general terms, the State had failed to adopt compliance measures, taking into account that it had not created shelters or provided protection for people in a situation of forced internal displacement, and that it had not developed the aforementioned unified registry of persons in such situation.<sup>233</sup> Likewise, civil society organizations reported that, in addition to the lack of action plans or programs to prevent displacement, there was still a reportedly significant number of cases of people subjected to forced internal displacement: between 2020 and 2022, a group of organizations had allegedly handled 2,237 cases.<sup>234</sup>

240. Likewise, the Commission takes note of the fact that, according to information in the public domain shared by the UNHCR, the groups that are most vulnerable to displacement are adolescents and young people between the ages of 12 and 29, women and LGBTIQ+ persons.<sup>235</sup> In this regard, the PDDH, in its *Informe de monitoreo de protección a personas víctimas de desplazamiento forzado interno en 2022* (Monitoring Report on the Protection of Victims of Forced Internal Displacement in 2022), identified several barriers to accessing rights for these populations. These barriers include: 1) difficult access to justice due to lack of implementation of the Special Law for Comprehensive Care and Protection of People in a Situation of Forced Internal Displacement, and to inadequate assistance from justice operators; 2) threats to personal integrity; 3) discrimination; 4) violation of labor rights; 5) violation of the right to housing and access to basic services, among others.<sup>236</sup>

241. In its observations to the draft of this follow-up report, the State added that the Victim Assistance Directorate was taking steps to get children and adolescents back in school. It said that this Directorate was working together with the Ministry of Labor to enable access to training and education programs for people in a situation of forced internal displacement, and with the Ministry of Health to guarantee immediate assistance for them.<sup>237</sup>

242. Moreover, the State indicated that, in the area of education, it had undertaken six commitments as part of the MIRPS, aimed at strengthening the protection of the education community in a situation of forced internal displacement or at risk of being internally displaced. These commitments were related to the revision, dissemination and updating of the *Guía de Atención a Niñez, Adolescencia, Juventud y Docentes Desplazados o en Riesgo de Desplazamiento Forzado Interno*; y del *Manual Operativo de Atención a Niñez, Adolescencia, Juventud y Docentes Desplazados o en Riesgo de Desplazamiento Forzado Interno* (Guide for the Care of Children, Adolescents, Youth and Teachers Displaced or at Risk of Forced Internal Displacement,

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<sup>232</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 55.

<sup>233</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>234</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>235</sup> UNHCR, [Mid-Year Trends 2022 \(Americas\)](#), November 2022.

<sup>236</sup> PDDH, [Informe de monitoreo de protección a personas víctimas de desplazamiento forzado interno 2022](#), May 26, 2023, pp. 17-18.

<sup>237</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

and the Operational Manual for the Care of Children, Adolescents, Youth and Teachers Displaced or at Risk of Forced Internal Displacement).<sup>238</sup>

243. In its observations, the State added that the ISDEMU provided permanent, comprehensive and differentiated psychosocial assistance to returning migrant women through the Migrant Assistance Management Unit (GAMI). It indicated that this service was provided in coordination with said institution's Specialized Assistance Centers to identify women in need of protection, economic autonomy, legal advice, medical attention or psychological care.<sup>239</sup>

244. Finally, the State also requested the Commission to refer to the *2022 Annual Report of the Comprehensive Regional Protection and Solutions Framework (MIRPS)*, which specifically addresses the progress made in the areas of protection, education, employment, livelihood and health.<sup>240</sup>

*Analysis and level of compliance with the recommendation*

245. The Commission emphasizes that the implementation of this recommendation requires long-term continuous and coordinated programs and measures to address the complex conditions needed to guarantee the rights to housing, work, education and health of internally displaced populations.

246. In this regard, the Commission underscores the role of the Forced Internal Displacement Unit, which was also recognized by the civil society, in that it immediately assists the internally displaced population and seeks to provide them with protection and lasting solutions to their situation of displacement. It also highlights the initiatives mentioned by the State that seek to prevent and identify the risks of forced displacement, as well as to guarantee the rights to education and health of the displaced population, which include efforts to integrate children and adolescents into schools, access to training programs for employment, immediate health attention, and assistance to migrant women.

247. Additionally, the Commission observes that, although the State reported a drop in the percentage of the population affected by forced internal displacement, the civil society had recorded a significant number of such cases. This shows that there are still hurdles in guaranteeing and respecting the human rights of internally displaced persons that require stepping up on comprehensive programs and measures designed for that purpose. Taking into account that some compliance measures have been adopted, the Commission declares that this recommendation has reached a level of partial compliance.

*Measures and information to advance compliance with the recommendation*

248. In order to advance compliance with this recommendation, the Commission prompts the State to report on the results obtained through the implementation of the programs and measures adopted, which must show an impact on the guarantee of the rights of internally displaced persons, giving priority to their rights to housing, health and education under long-lasting safe and decent conditions. In addition, it is essential that the State reports on the concrete measures incorporated into its strategies for the prevention of internal displacement.

**Recommendation No. 36.** Adopt a public policy that aims at guaranteeing an effective, human rights-centered reintegration process for returnee migrants, especially those in vulnerable situations and/or with a particular need for protection, such as children, victims of human trafficking, people with disabilities, LGBTI persons and people with medical needs.

<sup>238</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>239</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>240</sup> MIRPS, *2022 Annual Report of the Comprehensive Regional Protection and Solutions Framework*, pp. 50–53.

249. As per Chapter V of the Commission's 2022 Annual Report, the State reported on the initiative *Atención integral a jóvenes en condiciones de vulnerabilidad retornados del exterior para acompañar su inserción social y productiva*" (Comprehensive care for young persons in conditions of vulnerability returned from abroad to support their social and productive integration), which is part of the project *Contribución a la reinserción de mujeres, niñas y niños migrantes retornados, como población priorizada en el Plan Social de El Salvador – Fase 1*" (Contribution to the reintegration of returned migrant women and children as a priority population in the Social Plan of El Salvador – Phase I). The Commission also took note of a training program for the certification of digital skills, as well as the culinary programs for migrant returnees and those at risk of migrating. Although the Commission noted the efforts on integrating returnees, it identified that these did not constitute a public policy. In this regard, it recalled that, to build these actions into policy, specific stages must be followed, namely: i) creation of an agenda and/or identification of the situation to be addressed, ii) design and/or formulation, iii) implementation and/or execution, iv) monitoring and evaluation.<sup>241</sup>

#### *Information on compliance*

250. In 2023, the State reported that the Vice-Ministry of Diaspora and Human Mobility had started working on the formulation of a Human Mobility Policy in 2022. To this end, data collection workshops were held and information was validated with the civil society, governmental institutions, member organizations of the United Nations Network and representatives from Salvadoran diaspora associations in different parts of the world. The State pointed out that the International Organization for Migration (IOM) had provided technical and financial support for the formulation of said policy, which was in its final stage of review and authorization for its subsequent enactment.<sup>242</sup> The State also indicated that progress was being made in the development of a strategy to prevent irregular migration in cooperation with different stakeholders, which would include mechanisms such as cooperation agreements, intersectoral working groups, projects, programs and communication campaigns, among others.<sup>243</sup>

251. In addition, the State reported that the Department of Migrant Assistance under the Directorate of Human Mobility and Migrant Assistance also provided psychosocial care, offered training and certification, facilitated employability and supported the entrepreneurship plans of returned migrants to improve their reintegration into society.<sup>244</sup>

252. For its part, the Commission notes that, according to data released by the IOM, between January and July 2023, 6,438 people returned to El Salvador from Mexico and the United States, out of which 1,306 were women and 904 were children and adolescents.<sup>245</sup> Compared to the same period in 2022, the total number of returnees has declined.<sup>246</sup>

253. The Commission also learned about the *IOM Strategy for El Salvador 2023–2026*, launched in cooperation with the Ministry of Foreign Affairs, whose purpose is to bolster the work of the Vice-Ministry of Diaspora and Human Mobility.<sup>247</sup> Moreover, the Commission accessed information on the various programs carried out by the Vice-Ministry to support returned migrants, such as the *Programa de reintegración productiva con atención psicosocial para migrantes retornados*" (Program for productive reintegration with

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<sup>241</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 173–176.

<sup>242</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 56.

<sup>243</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, pp. 56–57.

<sup>244</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 57.

<sup>245</sup> IOM, [Returns to El Salvador](#), July 2023.

<sup>246</sup> IOM, [Returns to Northern Central America](#), December 2022.

<sup>247</sup> IOM, [IOM Strategy for El Salvador 2023–2026](#), March 2023.



psychosocial assistance for returned migrants), “which has benefited 150 returnees from the creation and development of businesses in the municipalities of San Salvador, Zacatecoluca, Santa Ana and Metapán,”<sup>248</sup> in addition to the projects *Transformando vidas* (Transforming Lives) and *Capital semilla para emprendimientos de salvadoreños retornados* (Seed capital for enterprises of Salvadoran returnees), as well as technical training and certification programs for young migrant returnees.<sup>249</sup>

254. In its observations to the draft of the instant follow-up report, the State reported on the launching of the Human Mobility Policy, which established a framework of assistance and protection for the Salvadoran diaspora and Salvadorans in situation of mobility. According to the State, one of the main goals of this initiative is to promote the sustainable reintegration of returnees and to prevent irregular migration in El Salvador with a human-rights approach.<sup>250</sup> The State indicated that this document was consulted with different stakeholders, such as the United Nations Network on Migration. It was also supported by the Bureau of Population, Refugees and Migration of the US State Department and the Regional Program on Migration.<sup>251</sup> Finally, the State reaffirmed its commitment to the implementation of the Global Compact for Safe, Orderly and Regular Migration.<sup>252</sup>

#### *Analysis and level of compliance with the recommendation*

255. The Commission takes note of the aforementioned reintegration program and the support spaces offered by the Department of Migrant Assistance, as well as other programs for returned young migrants the State has put in place. It also welcomes the development and launch of the Human Mobility Policy, which was presented to the public by the Vice-Ministry of Diaspora and Human Mobility of the Ministry of Foreign Affairs of El Salvador and the IOM. The Commission appreciates that this policy has been the result of a process of planning and collaboration between different actors with a holistic approach.<sup>253</sup> Likewise, the Commission highlights that it is fundamental to have information on the content of the policy so as to comprehensively evaluate the actions proposed to address the conditions of vulnerability and the protection needs of children, victims of trafficking, persons with disabilities, LGBTI persons, older persons and people with medical needs, as it relates to the instant recommendation. Taking into account the information provided in relation to said public policy, the Commission considers that this recommendation has reached a level of partial compliance.

#### *Measures and information to advance compliance with the recommendation*

256. To reach full compliance with this recommendation, the Commission encourages the State to share information on specific measures that evidence a differentiated approach to address the needs of the migrant groups indicated in the recommendation (children, victims of trafficking, persons with disabilities, LGBTI persons, older persons and people with medical needs). Likewise, according to the stages that are to be followed to draft a public policy with a human rights approach, the Commission urges the State to submit information on the implementation and/or execution, and monitoring and evaluation of the policy.<sup>254</sup>

### 3. Human rights defenders

**Recommendation No. 37.** Adopt a legal framework for the protection and defense of human rights defenders and implement a comprehensive policy for the protection of human rights defenders, taking all

<sup>248</sup> Ministry of Foreign Affairs, “[Cancillería participa en la presentación de la Estrategia Nacional de la OIM 2023–2026](#),” March 14, 2023.

<sup>249</sup> Ministry of Foreign Affairs, [Projects](#), 2023.

<sup>250</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>251</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>252</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>253</sup> IOM, “[Gobierno de El Salvador y OIM presentan Política de Movilidad Humana](#),” December 1, 2023.

<sup>254</sup> IACHR, [Public Policy with a Human Rights Approach](#) OEA/Ser.L/V/II, Doc. 191, September 15, 2018, paras. 154 and 174–183.



necessary measures to put an end to the stigmatization and degrading accusations emanating from the State or its agents in order to prevent violence against journalists, human rights defenders and in accordance with inter-American standards that establish special responsibilities for public authorities in the exercise of their freedom of expression.

257. In Chapter V of its *2022 Annual Report*, the Commission expressed that it had received reports of a persistent hostile environment for the practice of journalism and the defense of human rights in El Salvador. The Commission observed that no progress had been made in the creation of a solid legal framework to support the work of human rights defenders in El Salvador. It further noted that compliance with this recommendation implied the adoption of a legal framework for the protection and defense of human rights defenders, and the implementation of a comprehensive protection policy in their favor and all necessary measures to put an end to the stigmatizing and degrading accusations made against journalists and human rights defenders.<sup>255</sup>

#### *Information on compliance*

258. In 2023, the State reaffirmed its commitment to guarantee a safe environment for the free expression of opinions, ideas and thoughts for journalists and human rights defenders, without government or third-party interference. In this regard, it highlighted the appointment of the Presidential Commissioner for Human Rights and Freedom of Expression by the Presidency of the Republic, with the purpose of reinforcing respect for human rights. The State indicated that the Commissioner's functions include the coordination of activities to be developed by the executive branch to guarantee human rights and, especially, the right to freedom of expression.<sup>256</sup>

259. In the follow-up to this recommendation, civil society organizations informed the Commission that the State had not adopted a legal framework for the protection and defense of human rights defenders. They indicated that, in addition, the State had reportedly promoted actions that were detrimental to the right to defend human rights.<sup>257</sup> One of the organizations stated that, according to information provided by the PDDH, El Salvador does not have specific and comprehensive regulations in place that recognize, guarantee and protect the work of human rights defenders, who are only safeguarded by the general regulatory framework, which is inadequate and inefficient at recognizing and protecting them. In this regard, it was reported that the only step taken was an amendment introduced in 2011, after the murder of Marcelo Rivera (environmental activist and political leader of San Isidro, department of Cabañas), when item 21 was added to Article 30 of the Criminal Code which introduces an aggravating circumstance to raise criminal penalties in cases of criminal acts against human rights defenders.<sup>258</sup>

260. In addition, the Commission received information according to which, on May 19, 2021, the Committee on Justice and Human Rights of the Legislative Assembly had reportedly decided to shelve the Draft Law for the Recognition and Integral Protection of Human Rights Defenders and for the Guarantee of the Right to Defend Human Rights. This initiative had been reportedly submitted on September 6, 2018, with the support of the Roundtable for the Right to Defend Human Rights and had been broadly backed by civil society organizations, political parties, the diplomatic corps and the Office of the Ombudsperson for the PDDH.<sup>259</sup> The

<sup>255</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 177-194.

<sup>256</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 59.

<sup>257</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>258</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>259</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

Commission was also informed about another bill presented by *Fundación Democracia, Transparencia y Justicia* titled Law for the Protection of Journalists and Human Rights Defenders.<sup>260</sup>

261. Furthermore, the Commission learned that several organizations had allegedly observed an increase in patterns of attacks, threats and stigmatization of human rights defenders. In this regard, according to the information received, an increase in attacks against individual and collectives that advocate for human rights had been recorded. The Commission became aware of information contained in the report released in 2022 by the Roundtable for the Right to Defend Human Rights titled *Informe de agresiones contra personas defensoras y periodistas: análisis de casos 2022* (Report on Attacks against Human Rights Defenders and Journalists: Analysis of Cases, 2022).<sup>261</sup> The roundtable had allegedly documented 182 attacks against defenders and journalists, and identified 82 reports through its media monitoring, involving 328 types of aggression.<sup>262</sup>

262. In this regard, the roundtable reported that most of the documented attacks had allegedly targeted women and that most of the attacks identified through its media monitoring had allegedly targeted organizations and media outlets. In addition, 79.6 percent of the documented cases involved attacks against people defending freedom of expression and freedom of the press, followed by 14.28 percent of cases related to the defense of women's rights. To a lesser extent, there had been cases related to the defense of the environment, water and territory; the rights of LGBTIQ+ persons and the youth; and the defense of labor and workers' rights. The most frequently recorded attacks were against integrity and included harassment and stalking, physical assault and threats.<sup>263</sup>

263. In addition, according to information provided to the Commission, digital violence is on the rise. It was noted that, by 2020, more than 100 feminist and human rights organizations had claimed that the executive branch had used digital media to delegitimize and stigmatize people who questioned its actions and policies, which was reportedly replicated by followers and digital allies. According to this information, digital violence had also been allegedly perpetrated by using spying software in 2021 – which was reportedly alerted by the US company Apple – against journalists, academia members and activists. It was also indicated that, in 2022, Access Now and Citizen Lab had confirmed the use of NSO Group's Pegasus spyware against journalists and members of civil society organizations.<sup>264</sup>

264. According to the information provided to the Commission, public officials were the perpetrators in more than 50 percent of the cases, the majority being members of the National Civil Police (40 percent) – who had been allegedly accountable for arbitrary detentions, attacks, harassment and threats –, a trend that was reportedly reinforced by the extension of the state of emergency. Likewise, according to information provided to the Commission, there was concern over the fact that the appointed Presidential Commissioner for Human Rights and Freedom of Expression had publicly stated that he was not aware of any complaints from human rights defenders or journalists about human rights violations in the country, thus

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<sup>260</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>261</sup> Roundtable for the Right to Defend Human Rights, [Informe de agresiones contra personas defensoras y periodistas: análisis de casos 2022](#), May 2023.

<sup>262</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023. At a public hearing held during the 187<sup>th</sup> regular period of sessions of the Commission, different civil society organizations in El Salvador referred to the situation of human rights defenders. They reported that, from January to July 2022, 182 cases of attacks against human rights defenders had been recorded, resulting in 244 aggressions. Additionally, they indicated that 55 percent of the attacks had been allegedly committed by state agents such as members of the National Civil Police and members of the Legislative Assembly linked to the ruling party. IACHR, public hearing "[Human rights violations and states of exception in El Salvador](#)," July 14, 2023.

<sup>263</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>264</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

disregarding the case of community journalist Víctor Barahona, who had been detained in his home on June 7, 2022, and released on May 20, 2023.<sup>265</sup>

265. Similarly, the Commission received information pointing to the fact that civil society organizations had identified 246 attacks between 2021 and 2022, 64 of which involved more than one victim. According to information provided to the Commission, the most affected right was reportedly freedom of expression and of the press, as 3 out of 4 attacks affected such right. Acts of stigmatization or discrediting, intimidation, harassment and threats against people expressing dissident opinions prevailed, including digital attacks such as hacks, unauthorized access to certain information, spying and cyberbullying.<sup>266</sup>

266. Moreover, the Commission received information about the persistence of stigmatizing statements to discredit the work carried out by human rights defenders in El Salvador.<sup>267</sup> According to said information, the defense of rights had been consistently equated with defending “gang members.”<sup>268</sup> This had allegedly led to aggressions, including threats, especially on social media.<sup>269</sup>

267. The organizations also informed the Commission about how cases with a high level of visibility were reportedly being addressed. In this regard, they referred to serious attacks against persons who defended sexual and reproductive rights in connection with the cases before the inter-American human rights system, such as the cases of Manuela and Beatriz. They pointed out that these defenders allegedly faced a risk that stem from tearing down patriarchal and sexist logics and from affecting certain interests with the work they carried out, including those of corporate powers, state authorities and even organized crime. In this regard, they stated that, in the case of Manuela, there had allegedly been attempts at sabotage against human rights organizations, as well as a smear and slander campaign to discredit their work. In the case of Beatriz, the organizations also reported serious actions that reportedly sought to stigmatize the women defenders supporting the process and to prevent them from exercising their work in defense of human rights. They also denounced attacks against organizations such as *Agrupación Ciudadana por la Despenalización del Aborto en El Salvador*, Ipas LAC and *Red Salvadoreña de Defensoras de Derechos Humanos*.<sup>270</sup>

268. Likewise, civil society organizations informed the Commission about the approval of a series of regulations and practices at the administrative level that reportedly hindered the work of defense of human rights. According to the organizations, this added to the administrative measures implemented by the FGR and the Ministry of Finance, as well as to the controls imposed by the Office of Financial Innovation (OIF) under the Financial System Superintendency. In addition, the organizations indicated that defense work was also reportedly hampered by the guidelines for the prevention, detection and control of money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction that came into force in mid-2023.<sup>271</sup>

269. The organizations also pointed out that there were still high chances that the Foreign Agents Law would be passed, which was aimed at controlling and restricting the operation and financing of civil society organizations. In this regard, they recalled that this proposal had reportedly been condemned by the international community and that they were still concerned about new versions thereof that provide for

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<sup>265</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>266</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>267</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, p. 15.

<sup>268</sup> Cristosal, [Un año bajo el régimen de excepción: una medida permanente de represión y de violaciones a los derechos humanos. Informe situacional del 27 de marzo de 2022 al 27 de marzo de 2023](#), May 12, 2023, p. 19.

<sup>269</sup> Cristosal, [Un año bajo el régimen de excepción: una medida permanente de represión y de violaciones a los derechos humanos. Informe situacional del 27 de marzo de 2022 al 27 de marzo de 2023](#), May 12, 2023, p. 19.

<sup>270</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>271</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

endowing the Ministry of the Interior with extended powers, under which it might exercise arbitrary and disproportionate control and oversight of the organizations. Furthermore, the organizations pointed out that the bill would reportedly impose disproportionate administrative requirements, under penalty of heavy fines or even the cancellation of the legal status, and would impose a tax of up to 40 percent on transactions, which would cut down on sources of international cooperation. In addition, they reported that the draft law would reportedly encourage the stigmatization of organizations by singling them out as being financed by “foreign agents,” and could even prompt their criminalization, given that one article referred to criminal liability for the contravention of vague concepts such as “public order” and “national sovereignty.”<sup>272</sup>

270. The organizations also informed the Commission about a series of regressive legislative reforms that reportedly sought to criminalize the work of human rights defenders, such as the reforms to the Criminal Code made on April 6, 2022, and the Law Banning *Maras* and Gangs. According to the organizations, these reforms severely restricted freedom of the press by striving to prohibit the dissemination of images alluding to gangs, introducing serious limitations to the exercise of journalism and attempting to censor the media.<sup>273</sup>

271. The organizations also referred to five community leaders linked to *Asociación de Desarrollo Económico Social Santa Marta* (ADES), who had been detained since January 11, 2023, on charges related to the disappearance of a woman in the context of the civil war and who, despite having been transferred to their homes in precarious health conditions, were reportedly still facing criminal proceedings. According to the leaders’ defense counsel, the prosecution had presented contradictory evidence and the leaders claimed that they had not been in Santa Marta the year in which the crime allegedly occurred. The organizations argued that there was an intention to criminalize them, as they were also reportedly accused of the crime of conspiracy, which was introduced during the state of emergency that has been in place since March 2022. In this regard, the organizations pointed out that Santa Marta was a community known for demanding justice for the brutal violence and massacres that El Salvador had experienced in the 1980s during the armed conflict. In addition, it was reported that ADES was renowned for its contribution to environmental protection, the fight against metal mining and the promotion of community social development. The organizations argued that the detention and criminalization of these five leaders sought to discredit their environmental advocacy work and that it constituted political persecution against community organizations, possibly as an attempt to resume mining exploitation projects.<sup>274</sup> The Commission also learned that the OHCHR had already expressed its concern to the State and requested information on the alleged misuse of criminal law against the aforementioned human rights defenders.<sup>275</sup>

272. In its observations on the instant report and with regard to the information provided by the civil society, the State asserted that no cases had been submitted to it for its follow-up and monitoring through its internal institutional framework.<sup>276</sup> It also pointed out that the performance of police staff was subject to the scrutiny of the comptroller units of the Secretariat of Professional Accountability. The State reported that, whenever the Secretariat found *indicia* of possible violations of fundamental rights, it carried out the corresponding investigation, informing the FGR and the General Inspectorate of Public Security, as appropriate.<sup>277</sup> It further stated that, on January 31, 2023, the National Civil Police had created the Office of Citizen Assistance and Internal Control (ODACI) in the five regions of the country, located in the departmental

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<sup>272</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>273</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>274</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023; Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>275</sup> OHCHR, [Communication AL SLV 1/2023](#), March 8, 2023.

<sup>276</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>277</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

capitals of Santa Ana, Santa Tecla, San Vicente and San Miguel, so as to bring these services closer to citizens and facilitate the reception of complaints about police actions.<sup>278</sup>

273. In its observations, the State also clarified that the Presidential Commissioner for Human Rights and Freedom of Expression had publicly stated that no complaints had been brought to his attention, and that he had encouraged the reporting of cases of alleged threats to journalists and promoted the use of internal institutions. Regarding the case of community journalist Víctor Barahona, it was requested that the information filed by the civil society be contrasted with the report presented by the State at the public hearing of July 14, 2023.<sup>279</sup>

274. Likewise, the State indicated that the dissemination of information, opinions or press articles on any subject, not necessarily within the political sphere, results in the disseminator receiving comments contrary to their ideas, but that this does not restrict the possibility of using legal mechanisms to guarantee their safety and safeguard their integrity.<sup>280</sup> Moreover, it pointed out that social media are a private space, but for public use. Consequently, according to the State, these media “establish regulations to ensure a safe environment for interaction and therefore have their own policies to prevent abusive behavior or behavior that poses a risk to the safety of other users.” It also considered that “these spaces prohibit users from sending threats and give the option to report messages of this nature, a mechanism that is also available to any person who is a victim of threatening messages or harassment.”<sup>281</sup>

275. In addition, in its observations to the instant report, the State rejected “any allegations that it was attempting to curtail the work of human rights organizations, particularly in relation to the aforementioned cases (see paragraph 267 *supra*), which [had] been filed before the Inter-American Court of Human Rights, which [had] not transmitted any requests to the State in relation to any situation of this kind.” In this regard, the State indicated that attacks against honor, dignity and self-image, as well as threats and other types of damage to personal integrity, constituted crimes, “and thus protection by the State [required] the involvement of internal institutions, considering also that freedom of expression [was] a constitutionally recognized right in El Salvador, so it [could not] be subject to prior restrictions, but rather to subsequent sanctions.”<sup>282</sup>

276. Additionally, in its observations, the State also rejected any claims of curtailment of the right of association and assembly (see paragraph 268 *supra*). It further indicated that multiple recreational and cultural activities were carried out periodically across the country. According to the State, these have allowed for different forms of social expression, for example, press articles covering the marches held in commemoration of International Women’s Day and International LGBT Pride Day.<sup>283</sup>

277. In addition, the State pointed out that the Foreign Agents Bill did not seek to control and restrict the operation and financing of civil society organizations, nor to criminalize them. It indicated that the project was designed to promote the transparency of foreign financing in El Salvador to ensure “the normal unfolding of international cooperation activities and to guarantee that the resources allocated to the country lead to the best results, to contribute to addressing the real needs of the Salvadoran population.” In addition, the State underscored that the discussion of this bill by the Legislative Assembly had yet to be scheduled, given that prior consensus must be achieved with relevant actors at the national level. The State added that the

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<sup>278</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>279</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>280</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>281</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>282</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>283</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.



legislative process requires the observance of the principle of maximum parliamentary disclosure, as well as a control of convenience and constitutionality.<sup>284</sup>

278. In its observations, the State reported that, in November 2023, the Legislative Assembly had repealed Article 345-C, Paragraph 2, of the Criminal Code and Article 1, final paragraph, of the Law on the Prohibition of *Maras*, Gangs, Groups, Associations and Organizations of a Criminal Nature.<sup>285</sup>

279. According to the State, within the framework of the request for precautionary measures MC-535-23, it was reported that the deprivation of liberty of the community leaders linked to ADES was based on a criminal proceeding for crimes allegedly committed in the context of the Salvadoran armed conflict. In this regard, the State pointed out that these detentions and prosecutions were not related to the leaders' work as human rights defenders. It further indicated that the defendants had been granted alternative measures to detention and that, on December 5, 2023, the Commission had notified the State of the closure of the request for failure to comply with the requirements set out in Article 25 of its Rules of Procedure.<sup>286</sup>

280. Finally, in its observations to the instant follow-up report, the State requested the Commission to consider that there were no obstacles to human rights defense work in El Salvador. It concluded that: "i) legal provisions that were said to be infringing have been repealed; ii) the alleged criminalization of defenders had not been substantiated before the Commission; iii) there [was] no such curtailment of the rights of association and assembly in the context of the state of emergency as it [was] made to believe; iv) within the framework of the precautionary measure MC-1051-20, the Commission has ruled out examining allegations on auditing processes that had been reportedly carried out by the Ministry of Finance, and no other mechanisms have been activated by the alleged affected parties."<sup>287</sup>

#### *Analysis and level of compliance with the recommendation*

281. The Commission appreciates the information provided by the State and civil society organizations. In this regard, the Commission emphasizes that the follow-up on this recommendation is aimed at determining whether the State has adopted a legal framework for the protection and defense of human rights defenders, and whether it has implemented a comprehensive policy for the protection of human rights defenders. The follow-up is linked to the concrete implementation of measures, on which no information detailing specific compliance actions under the terms of the recommendation has been reported. Regarding the implementation of a regulatory framework, the Commission recalls that, although proposals have already been presented, the initiative for the Law for the Recognition and Integral Protection of Human Rights Defenders and for the Guarantee of the Right to Defend Human Rights, for example, has been archived by the Committee on Justice and Human Rights of the Legislative Assembly since May 2021.<sup>288</sup>

282. Moreover, the Commission notes with concern the allegations made by the civil society regarding the increase in cases of threats, harassment, persecution and violations of the freedom and personal integrity of human rights defenders, especially journalists and women, who defend the right to freedom of expression and gender-related rights.<sup>289</sup> Likewise, the Commission is concerned about the reports from civil

<sup>284</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>285</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023. In this regard, the State cited the following: Legislative Assembly, "[Diputados despenalizan difusión de mensajes generados por pandillas](#)," November 2, 2023.

<sup>286</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023. In this regard, the State cited the following: Legislative Assembly, "[Diputados despenalizan difusión de mensajes generados por pandillas](#)," November 2, 2023.

<sup>287</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023. In this regard, the State cited the following: Legislative Assembly, "[Diputados despenalizan difusión de mensajes generados por pandillas](#)," November 2, 2023.

<sup>288</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>289</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.



society organizations regarding the approval of a series of regulations and practices at the administrative level by the FGR, the National Civil Police, the Ministry of the Interior and the Ministry of Finance, among other authorities, which allegedly hinder human rights defense work. In addition, the implementation of the state of emergency has reportedly curtailed the exercise of the rights to freedom of association and assembly, which have not yet been reestablished.

283. For its part, the Commission has also taken careful note of the observations submitted by the State in response to the draft of the instant follow-up report. The Commission recognizes the existence of general institutional mechanisms for the protection of human rights defenders, mainly within the judicial systems. However, it also emphasizes the need for the State to implement comprehensive policies and specialized programs for the same purpose, which must translate into a reduction in the number of attacks against human rights defenders and the suppression of hostile or dangerous environments for the defense and protection of human rights, as well as for journalism.<sup>290</sup> Therefore, the Commission considers that this recommendation is still **pending compliance**.

*Measures and information to advance compliance with the recommendation*

284. To guide compliance with this recommendation, as in 2022, the Commission reiterates the need for the State to adopt a legal framework for the protection and defense of human rights defenders and, in addition, to implement a comprehensive policy for the same purpose. These must include protection measures that support the work of defenders, activists and journalists, and, at the same time, ensure that human rights violations committed against them are addressed adequately. Likewise, the Commission insists on the need for the State to urgently adopt all necessary measures to put an end to the stigmatizing and degrading accusations against journalists and human rights defenders, taking into consideration the context described above.

**Recommendation No. 38.** Carry out effective and due diligence investigations in order to identify, prosecute and punish those materially and intellectually responsible for crimes against human rights defenders.

285. In Chapter V of its *2022 Annual Report*, the Commission reiterated its particular concern over the absence of a record of attacks committed against human rights defenders and the lack of visibility of these attacks due to them being ascribed to the general security situation of the country. The Commission noted that it did not have sufficient information to determine progress in complying with this recommendation. It further urged the State to implement the necessary measures to conduct investigations aimed at identifying, prosecuting and punishing those materially and intellectually responsible for crimes against human rights defenders.<sup>291</sup>

*Information on compliance*

286. In 2023, the State informed the Commission that the FGR was the entity in charge of prosecuting threats against and attempts on the lives of human rights defenders. In this regard, it added that, from July 2022 to August 8, 2023, no complaints or investigations related to attacks, threats or acts of intimidation against journalists or media professionals had been recorded.<sup>292</sup> It also indicated that there were no records of complaints or criminal investigations related to attacks, threats or acts of intimidations against the media during that period.<sup>293</sup>

<sup>290</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 192.

<sup>291</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 195–198.

<sup>292</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 60.

<sup>293</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 60.

287. Furthermore, the Commission has learned that civil society organizations had reportedly pointed out obstacles to the investigation of the facts referred to in the recommendation. Specifically, they have reported that “among the main limitations on conducting diligent investigations are the absence of specialized institutions for dealing with crimes against human rights defenders, the lack of protocols or other regulatory instruments for their investigation, and the nonexistence of records where crimes that affect human rights defenders are disaggregated. Civil society organizations added that the crimes submitted to the FGR reportedly did not move to the pretrial stage due to weak arguments and inefficient collection of evidence by prosecutors, which was attributed to a lack of technical capacity, in addition to high workloads and insufficient material resources.”<sup>294</sup>

288. Subsequently, in its observations to the instant follow-up report, the State indicated that, to open an investigation into a case, a complaint had to be filed with the competent authority, and therefore organizations were requested to present specific cases that had been reported and in which the State was not observing its duty of due diligence.<sup>295</sup>

*Analysis and level of compliance with the recommendation*

289. The Commission recalls that, on the basis of the report *Situación de las personas defensoras del medioambiente en el Norte de Centroamérica* (Situation of Environmental Defenders in Northern Central America), released by the Commission in April 2023, it was observed that in “El Salvador, public and duly disaggregated information on crimes against human rights defenders [was] quite limited, so it [was] not possible to provide an approximate estimate of the number of attacks and other acts of violence committed against them.”<sup>296</sup> In addition, the report concluded that the lack of investigation and punishment of those responsible for crimes against human rights defenders, both perpetrators and masterminds, had led to high levels of impunity, which fueled the repetition of these acts.<sup>297</sup>

290. In this context, the Commission notes that it does not have sufficient information on the measures adopted by the State to investigate, prosecute and punish crimes committed against human rights defenders. The Commission has repeatedly flagged this lack of information across its different reports.<sup>298</sup> In addition, there is allegedly no disaggregated data on threats, aggression and any other type of crime against human rights defenders that would allow authorities to clarify facts and identify perpetrators and victims. The Commission reiterates that the failure to take steps to promote the investigation of crimes against human rights defenders with due diligence contributes to impunity and leads to further human rights violations being committed. Therefore, the Commission concludes that, in the absence of sufficient information to measure progress, the recommendation remains **pending compliance**.

*Measures and information to advance compliance with the recommendation*

291. The Commission reiterates the guidelines for the implementation of this recommendation from the previous year and urges the State to adopt the necessary measures to carry out investigations to identify, prosecute and punish those materially and intellectually responsible for the crimes committed against human rights defenders. These measures should include the creation of a transparent registry of complaints

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<sup>294</sup> IACHR, [Situación de las personas defensoras del medioambiente en el Norte de Centroamérica](#), April 25, 2023, para. 154. See also: WOLA, [Gaps in Human Rights Protections in El Salvador: Evaluating State Capacity to Protect and Promote Human Rights](#), September 2019, p. 25.

<sup>295</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023. In this regard, the State cited the following: Legislative Assembly, “[Diputados despenalizan difusión de mensajes generados por pandillas](#),” November 2, 2023.

<sup>296</sup> IACHR, [Situación de las personas defensoras del medioambiente en el Norte de Centroamérica](#), April 25, 2023, para. 100.

<sup>297</sup> IACHR, [Situation of Environmental Defenders in Northern Central America Countries](#), April 25, 2023, para. 50. See also: IACHR, [Basic Guidelines for Investigating Crimes against Human Rights Defenders in the Northern Triangle](#), June 1, 2021, para. 11.

<sup>298</sup> IACHR, [Situación de las personas defensoras del medioambiente en el Norte de Centroamérica](#), April 25, 2023, para. 154. See also: IACHR, 2022, [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 199–203; IACHR, [Situation of human rights in El Salvador](#), October 14, 2021, para. 285.

and events related to these crimes, with the purpose of assessing how investigation, prosecution and punishment of those responsible contribute to combating impunity in cases of this nature.<sup>299</sup>

#### 4. Indigenous peoples and persons of African descent

**Recommendation No. 46.** Generate statistical data on the indigenous population and persons of African descent at a national level, by including questions in the population census that contribute to identifying and registering these groups.

292. In Chapter V of the Commission's *2022 Annual Report*, the State reported that the Public Policy for Indigenous Peoples of El Salvador was being updated. It also indicated that the Ministry of Health was reportedly keeping statistical data on the ethnic self-identification of families and their health status, and that the PGR had incorporated into its data matrices a space for users to enter the ethnic category they self-identify with in order to receive adequate assistance. Although the Commission valued this information, it emphasized that it was necessary to expand the collection of disaggregated information on indigenous peoples when developing the national census, so that it may include the option to self-identify and facilitate the participation of this group. With regard to Afro-descendants, the Commission also noted that the State had not achieved significant progress on this recommendation and reiterated its concern over the scarce information available on the human rights situation of this population. In this context, the Commission encouraged the State to carry out an effective census to record the situation of these groups.<sup>300</sup>

##### *Information on compliance*

293. For the drafting of the instant follow-up report, the State reported that it was preparing its next population and housing census to learn about the socio-demographic conditions of the population.<sup>301</sup> The State added that international recommendations had been taken into account for the registration of indigenous and Afro-descendant people in the country but did not provide details on the progress achieved in said registration.

294. According to information in the public domain, the latest general census conducted in El Salvador was carried out in 2007 and allegedly included a question on ethnic self-identification. However, the Commission learned that no steps had been allegedly taken towards the launch of a new census. Furthermore, the recommendations made by international agencies regarding the disaggregation of data and the adequate inclusion of the country's indigenous and Afro-descendant peoples in its statistics had not been reportedly taken into account in subsequent multipurpose household surveys.<sup>302</sup>

##### *Analysis and level of compliance with the recommendation*

295. The Commission appreciates the information provided by the State and the fact that a census was being prepared in which international recommendations on indigenous and Afro-descendant persons were to be followed. Still, the Commission reiterates the analysis it had made the previous year regarding its concern over the absence of data and statistics on the human rights situation of the Afro-descendant population and tribal communities in El Salvador. For this reason, the Commission calls on the State to address the need to gather detailed and updated statistical information on which it can rely to draft public policies. It also stresses the importance of including the option to self-identify as Afro-descendant in all data collection systems

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<sup>299</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 198.

<sup>300</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 199–203.

<sup>301</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 66.

<sup>302</sup> International Fund for Agricultural Development (IFAD), [República de El Salvador: Nota técnica de país sobre cuestiones de los pueblos indígenas](#), 2022.

and of using the category of ethno-racial origin instead of the terms “race,” “ethnicity” or “lineage.” Consequently, the Commission considers that this recommendation is still **pending compliance**.

*Measures and information to advance compliance with the recommendation*

296. In line with what it has held since 2022, the Commission emphasizes that, to comply with this recommendation, the State must carry out an effective population census to identify and register the indigenous and Afro-descendant population at the national level. In addition, based on the information obtained, the State is required to share the details on the design, implementation and analysis of the census. The Commission also urges the State to keep comprehensive statistical records for the identification of these persons so as to support the design of measures to meet their particular needs.

**Recommendation No. 47.** Ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, and the International Labor Organization Convention 169 on Indigenous and Tribal Peoples.

297. In Chapter V of the Commission’s *2022 Annual Report*, the State reported that the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance had been submitted to the legislative branch for consideration and that the Ministry of Labor had resumed its study into the feasibility of ratifying ILO Convention 169. In this context, the Commission recalled that the universal ratification of inter-American instruments is indispensable for the respect and guarantee of all human rights, as well as for the prevention and eradication of all forms of discrimination. Thus, it encouraged the State to move forward with the ratification of both instruments and to inform the Commission about any substantial progress made in this regard.<sup>303</sup>

*Information on compliance*

298. In 2023, the State reported that it was assessing both the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the International Labor Organization Convention 169 on Indigenous and Tribal Peoples. Based on this analysis, the State will decide whether or not it should refer these instruments to the Legislative Assembly for it to consider their ratification.<sup>304</sup>

*Analysis and level of compliance with the recommendation*

299. In view of the lack of updated information on the ratification of the instruments referred to in the recommendation, the Commission reiterates what it stated in its 2022 follow-up report, indicating that ratification is an essential step towards the respect and guarantee of all human rights, as well as towards the prevention and eradication of all forms of discrimination.<sup>305</sup> Given that the aforementioned conventions have not been ratified, the Commission considers that the instant recommendation is **pending compliance**.

*Measures and information to advance compliance with the recommendation*

300. Once again, the Commission encourages the State to promote the ratification of both instruments and to inform the Commission on any substantial progress made in this regard.

<sup>303</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 204–207.

<sup>304</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 67.

<sup>305</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 205.

## E. Economic, social, cultural and environmental rights

**Recommendation No. 39.** Promote the adoption of measures to implement inter-American standards on business and human rights.

301. According to information provided by the State in the latest follow-up report to the country report on El Salvador, the National Plan for Climate Change and the Nationally Determined Contribution include mitigation and adaptation provisions to regulate business activity in terms of water management and climate change. In particular, the State pointed out that these included “actions and measures [that] are specifically established, applicable to companies in the agriculture, livestock, forestry, tourism and energy sectors; and regulations on good use of water, wastewater treatment and discharge, sanitation and integrated waste management, for all companies.”<sup>306</sup> In this regard, the Commission welcomed the steps taken by the State by calling for the implementation of the inter-American standards on business and human rights in relation to the specific duties to prevent, monitor, investigate, punish and guarantee access to effective reparation mechanisms, as well as for the adoption of provisions on accountability with regard to human rights for national and foreign companies.<sup>307</sup>

### *Information on compliance*

302. For the preparation of the instant follow-up report, the State reported on a number of initiatives in the field of labor. First, it pointed out that the General Directorate of Labor Inspections carried out comprehensive follow-up to protect labor rights, as it its role was to oversee the equal application of regulations and to verify the progress achieved in their implementation in particular periods of the work cycle, covering workers in four production sectors: agriculture, industry, commerce and services.<sup>308</sup> The State also indicated that the Ministry of Labor and Social Welfare had implemented public policies to promote employment, social dialogue and the protection of human rights. Among these, it referred to the *Gira por el empleo* (Employment tour) program, which served as a communication channel with employers, and through which the different public services available at the ministry had been announced.<sup>309</sup> The State also developed the *Programa de intermediación laboral* (Job placement program) for vulnerable sectors, which opens up employment opportunities for persons with disabilities, and launched the *Premio Nacional al Trabajo Decente* (National Decent Work Award), which promotes best practices for the creation of decent work.<sup>310</sup>

303. Moreover, the State reported that the 2019–2024 fiscal policy proposed by the Ministry of Finance seeks to ensure a modern and efficient tax system, by strengthening mechanisms to combat and reduce tax evasion, and to increase social investment to contribute to the guarantee of human rights.<sup>311</sup>

304. Civil society organizations did not provide specific information regarding the measures adopted by the State for the implementation of inter-American standards related to business and human rights. Nevertheless, the Commission and the Office of its Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) issued the report titled *Pobreza, cambio climático y DESCAs en Centro América*

<sup>306</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 208.

<sup>307</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 209.

<sup>308</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 60.

<sup>309</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 60.

<sup>310</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 61.

<sup>311</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 61.



y México, en el contexto de movilidad humana (Poverty, Climate Change and ESCR in Central America and Mexico in the context of Human Mobility) in July 2023. This report highlighted that “many of the megaprojects promoted in El Salvador in the name of economic development [relied] on the depletion of the country’s natural resources, which [was] reflected in the exorbitant number of environmental permits granted.”<sup>312</sup>

305. In addition, the report notes with concern the fact that El Salvador “has the largest population and the lowest water availability in Central American, so the impacts of metal mining have to be urgently addressed.”<sup>313</sup>

306. The Commission and REDESCA also received information according to which the Special Rapporteur on the human rights to safe drinking water and sanitation and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment had called the State’s attention to the unequal treatment that was reportedly given in the Metal Mining Prohibition Law to the community water boards that supplied drinking water to the population compared to the private company that exploits water for profit. Such a situation is especially worrisome considering that community water systems have contributed to providing drinking water for the population in cases where the State has reportedly not been able to do so and/or is absent.<sup>314</sup>

307. In its comments to the draft of the instant follow-up report, the State indicated that “the Ministry of Environment and Natural Resources (MARN) [had] carried out specific actions in the field of extractive activities, in terms of conservation of forest cover, sustainable management of ecosystems and building resilience to the impacts of climate change through landscaping, integrated water resource management, transition to sustainable agriculture, increased electricity generation through renewable energy sources and promotion of a circular economy, among others.”<sup>315</sup>

#### *Analysis and level of compliance with the recommendation*

308. The Commission observes that, while the State reported on measures to guarantee the right to work in decent conditions, it did not refer to concrete progress in the implementation of the standards on this matter in general terms or in the context of other situations that are of particular focus in the inter-American landscape, which in the case of El Salvador include business activities related to extractive industries, the provision of essential public services and fiscal policies or tax practices. Regarding the actions indicated by the Ministry of Environment and Natural Resources in the area of extractive activities,<sup>316</sup> the Commission observes the need for additional and specific information on how, when and where these actions have been implemented, including information on their results and impacts.

309. With regard to actions to implement inter-American standards, the Commission emphasizes that specific measures are required to comply with the specific duties of the State to prevent, monitor, investigate and punish violations, as well as to guarantee access to effective reparation mechanisms,<sup>317</sup> including accountability mechanisms for domestic and foreign companies. Given the lack of updated information on compliance with these obligations and on the incorporation of provisions into the domestic legal order, the Commission considers that the recommendation remains **pending compliance**.

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<sup>312</sup> IACHR and REDESCA, [Pobreza, cambio climático y DESCA en Centro América y México, en el contexto de movilidad humana](#), July 28, 2023, para. 217.

<sup>313</sup> IACHR and REDESCA, [Pobreza, cambio climático y DESCA en Centro América y México, en el contexto de movilidad humana](#), July 28, 2023, para. 219.

<sup>314</sup> IACHR and REDESCA, [Pobreza, cambio climático y DESCA en Centro América y México, en el contexto de movilidad humana](#), July 28, 2023, para. 219.

<sup>315</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>316</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>317</sup> IACHR and REDESCA, [Business and Human Rights: Inter-American Standards](#) OEA/Ser.L/V/II, November 1, 2019, para. 86.



*Measures and information to advance compliance with the recommendation*

310. In line with the compliance guidelines issued in 2022, the Commission highlights that it is important that measures aimed at implementing inter-American standards related to business and human rights include specific actions in relation to extractive activities, the provision of essential public services and fiscal policies or tax practices, and that such actions give special consideration to persons and groups in vulnerable situations.<sup>318</sup>

**Recommendation No. 40.** Include content on equality, nondiscrimination and social harmony in school curricula to advance on building a culture based on tolerance and peaceful conflict resolution, inclusion and respect for human rights.

311. For the follow-up report included in Chapter V of the Commission's *2022 Annual Report*, the State submitted information on the reform of its education system under the *Mi nueva escuela*" (My new school) program, which focuses on pillars such as infrastructure, early childhood, teacher training, renewed curricula, technology, health and nutrition. In spite of the advances derived from the reform, the Commission and the Office of its Special Rapporteur on Economic, Social, Cultural and Environmental Rights considered that no explicit content on equality, non-discrimination and citizen coexistence had been introduced into school curricula, and therefore encouraged the State to incorporate such content to make progress in complying with recommendation.<sup>319</sup>

*Information on compliance*

312. For 2023, the State reported that the Ministry of Education, Science and Technology (MINEDUCYT) had contributed to the inclusion of these topics in school curricula for all education levels, through the introduction of teacher training and the subject Moral, Civility and Civics (MUCI). In addition, as part of the *Mi nueva escuela*" program, the Ministry was reportedly reshaping the Social Studies syllabus for the third stage of basic education to incorporate a human rights approach, so as to spark dialogue on diversity, equality and nondiscrimination, and to give more visibility to the rights of indigenous and Afro-descendant people.<sup>320</sup>

313. Likewise, through official information in the public domain, the Commission learned of the *Inclusividad educativa*" (Inclusive education) program, implemented since mid-2022. The Directorate of Inclusive Education under the Ministry of Education was reportedly responsible for said program, whose goal was to develop the *Plan de atención educativo integral para estudiantes*" (Comprehensive plan of education assistance for students). Said plan "promotes and produces curriculum content in different formats to support students with a visual impairment in their learning process, and it structures the purchase and delivery of a visually impaired-friendly school pack to students in kindergarten, elementary and secondary education. In addition, it provides technical assistance to teachers in regular schools to promote the educational inclusion of students with learning difficulties and offers educational assistance to students with intellectual disability from kindergarten through pre-employment training."<sup>321</sup>

314. In its observations to the instant follow-up report, the State submitted to the Commission a list of the subjects included in the current Social Studies syllabus, in the Social Studies syllabus for the third stage of basic education, and in the Moral, Civility and Civics Education syllabus. These include content related to coexistence, tolerance, respect for diversity, conflict resolution and human rights. According to information

<sup>318</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 211.

<sup>319</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023.

<sup>320</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report [Situation of human rights in El Salvador](#) prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 62.

<sup>321</sup> Ministry of Education, [Programs - Inclusive Education](#), June 29, 2022.

provided by the State, these subjects are taught in primary and secondary school, throughout the school year, at different grade levels.<sup>322</sup>

*Analysis and level of compliance with the recommendation*

315. The Commission appreciates the information provided by the State. It welcomes its efforts to reshape the social studies syllabus for the third stage of basic education to incorporate a human rights, diversity and nondiscrimination approach, and urges the State to move forward in its consolidation. In addition, the Commission commends the implementation of measures to guarantee access to education for people with disabilities, following inclusion standards and adopting a differentiated approach according to their needs. However, it highlights that the subject Moral, Civility and Civics referred to by the State was introduced by the General Education Law (Decree No. 917 of 2011), and therefore predates the release of the country report. As a result, additional information detailing how said law has specifically incorporated the instant recommendation is required.

316. Moreover, the Commission has taken careful note of the contents of the current Social Studies and Moral, Civility and Civics Education syllabuses. In this regard, it notes that these include topics related to equality, nondiscrimination and coexistence; however, it also notes that the information submitted describes the syllabus contents, but does not specify who their target group is, nor does it provide additional details on how the programs are implemented. Taking into account that additional information is required on the explicit inclusion of content on equality, nondiscrimination and citizen coexistence both in the aforementioned subject and in the school curricula, the Commission considers that this recommendation has reached a level of **partial compliance**.

*Measures and information to advance compliance with the recommendation*

317. The Commission reiterates its guidance on compliance with this recommendation, as provided in 2022, and urges the State to report on the implementation of the reformed program and curriculum content on equality, nondiscrimination and citizen coexistence, as well as on progress in this area, including details on how, when and where it shall be implemented.<sup>323</sup>

**Recommendation No. 41.** Recognize the human right to drinking water and sanitation within the country's legal system, promote the comprehensive and coordinated administration of water as a public good using a rights-based approach, and ensure that water-use permits and agreements with companies on this resource do not jeopardize the effective realization of the human right to water.

318. In its latest follow-up report to the country report on El Salvador, the Commission highlighted the passing of the General Law on Water Resources by the Legislative Assembly, which contains important provisions regarding the recognition and guarantee of the right to drinking water and sanitation, the definition of principles linked to this right, and administrative procedures and requirements for the use of water. However, the Commission emphasized the importance of engaging all sectors in the debate over the administration of this public resource as well as the significance of guaranteeing effective access thereto for all communities, both rural and urban.<sup>324</sup>

<sup>322</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, Annex 1, December 18, 2023.

<sup>323</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 217.

<sup>324</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 225.

*Information on compliance*

319. In 2023, the State reported on the adoption of the Special Regulation for the Imposition of Fees for the Use and Development of Water Resources, and of the *Lineamientos de transparencia en el canon por uso y aprovechamiento del recurso hídrico* (Guidelines for Transparency in the Fees for the Use and Development of Water Resources), both within the framework of application of the General Law on Water Resources (LGRH), with the purpose of promoting an integrated and coordinated administration of water as a public good. In addition, the State indicated that the Salvadoran Water Authority (ASA) fostered citizen participation in comprehensive water management processes by sharing the content of the LGRH and other regulatory instruments with communities, water boards and civil society organizations. To facilitate understanding of the law, the State has reportedly prepared a didactic version titled *Conozcamos la Ley General de Recursos Hídricos* (Getting Acquainted with the General Law on Water Resources).<sup>325</sup> It also underscored the technical and legal support provided by the ASA Deputy Directorate of Territorial Management to the water boards that had been constituted and to those that were in the process of formation for the development and strengthening of capacities in the administration and management of water resources. Furthermore, the State emphasized that it took into consideration the proposals that arose at the meetings held with the water boards and communities as input to prepare the regulatory instruments that shall govern the administration of this resource.<sup>326</sup>

320. For its part, the civil society informed the Commission that important steps had been taken towards the implementation of the General Law on Water Resources and the installation of the ASA, such as “the operationalization of decisions through the partial formation of the Board of Directors of the Water Authority, Technical Directorate and Water Commission (*Comisaría del Agua*), the set-up of the Sanction Court and the creation of the Water Board Registry.”<sup>327</sup>

321. Moreover, the Commission learned through official public information sources that the Office of the Consumer Ombudsperson and the ASA had signed an agreement to guarantee access to drinking water services under strict standards of health, hygiene and dignity for the population, and to prevent “abusive pricing practices.”<sup>328</sup> In this regard, the ASA undertook to bring to the attention of the Office of the Consumer Ombudsperson any abusive practices in the provision of drinking water services, so that this office could conduct the appropriate investigations to guarantee and protect the human rights to water and sanitation.<sup>329</sup>

322. However, the civil society referred to several challenges that allegedly affected compliance with this recommendation. Firstly, they indicated that the development of general regulations for the aforementioned law and the drafting and/or updating of the *Plan nacional de gestión integrada de los recursos hídricos* (National plan on integrated water resources management) prepared by the Ministry of Environment and Natural Resources in 2017 had not been set as priority, nor had a minimum technical criteria been established by the ASA for the issuance of exploration permits.<sup>330</sup> In addition, the civil society argued that there was a need to regulate the signing of water agreements concluded in favor of companies, since the General Law on Water Resources did not reportedly encompass this issue, which could lead to a shortage of water resources in territories, thus preventing people from enjoying their human right to water.<sup>331</sup> Regarding citizen participation in water resource management and measures to guarantee the effective enjoyment of the right to water, civil society organizations reported that the ASA had allegedly established a confidentiality policy

<sup>325</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 63.

<sup>326</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 62.

<sup>327</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>328</sup> Office of the Consumer Ombudsperson of El Salvador, “[Defensoría del Consumidor y Autoridad Salvadoreña del Agua \(ASA\) firman convenio para tutelar derecho humano al agua](#),” February 21, 2023.

<sup>329</sup> Office of the Consumer Ombudsperson of El Salvador, “[Defensoría del Consumidor y Autoridad Salvadoreña del Agua \(ASA\) firman convenio para tutelar derecho humano al agua](#),” February 21, 2023.

<sup>330</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>331</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

applicable to interinstitutional cooperation agreements with the National Administration of Aqueducts and Sewers (ANDA) over the financing of works, activities and projects; to proceedings relating to precautionary measures issued by the Environmental Court against the ASA; and to information on the appointment of a civil society representative in the ASA and the internal rules for the election process.<sup>332</sup>

323. In its observations to the draft of the instant follow-up report, the State highlighted the regulations issued by the ASA, such as the Regulatory Improvement Law, and the regulations and guidelines issued by the Regulatory Improvement Agency that required that the development of all regulations be preceded by the systematization and search of related information, the analysis and evaluation of regulatory impacts and other possible impacts, and the submission of different versions of the regulations to be issued.<sup>333</sup> The State also indicated that the ASA was preparing a draft of the General Regulations for the General Law on Water Resources.<sup>334</sup>

324. Likewise, in its observations to the instant follow-up report, the State referred to the existence of an interinstitutional cooperation agreement between the National Administration of Aqueducts and Sewers and the ASA, which was available to all citizens on the institution's transparency portal. With respect to the confidentiality of information on the representative of the civil society to the ASA Board of Directors and the election procedure, the State indicated that there was still no information available on this issue, that is, that it did not exist, since the internal regulations governing the method and procedure for selecting the three candidates set forth in Article 20, final paragraph, of the General Law on Water Resources were still under development.<sup>335</sup>

#### *Analysis and level of compliance with the recommendation*

325. The Commission highlights the progress made in the last year in relation to the implementation of the LGRH, the adoption of the Special Regulation for the Imposition of Fees for the Use and Development of Water Resources, and the *Lineamientos de transparencia en el canon por uso y aprovechamiento del recurso hídrico* (Guidelines for Transparency in the Fees for the Use and Development of Water Resources). In this regard, the Commission notes that said regulation exempts water boards from the fee on use and exploitation, provided that the extracted water is intended for human consumption or household use. The Commission also welcomes the agreement between the Office of the Consumer Ombudsperson and the ASA to bring transparency to the provision of this essential public service and to advance investigation and accountability processes when irregularities occur. Based on this progress, the Commission considers that steps have been taken towards the fulfillment of two of the elements of the recommendation, namely, the recognition in the domestic legal system of the human rights to drinking water and sanitation, and the implementation of a rights-based, comprehensive and coordinated administration of the resource as a public good, owing to the operation of the ASA.

326. While acknowledging these important advances, the Commission observed that some challenges allegedly remained in ensuring that water use permits and agreements with companies to that effect do not jeopardize the effective realization of the human right to water, as requested in the recommendation. In this regard, the Commission has taken careful note of the information provided by the State indicating that the ASA was drafting the General Regulations for the General Law on Water Resources. Therefore, the Commission encourages the State to ensure that this regulation governs the signing of water agreements held in favor of companies and emphasizes the importance of civil society participation in the administration of water resources. The Commission also recalls that the establishment of confidentiality policies applicable to documents involving the granting of permits, signing of agreements, financing of projects and other

<sup>332</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>333</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>334</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>335</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

information related to this public good violates the effective realization of the human right to water and significantly curtails the effective engagement of communities. In view of the foregoing, the Commission declares that compliance with this recommendation has reached a **substantial partial level**.

*Measures and information to advance compliance with the recommendation*

327. To guide compliance with this recommendation, the Commission urges the State to provide the civil society with spaces for effective participation in the process of implementation and regulation of the General Law on Water Resources, which requires ensuring access to information on the administration of this public good. Additionally, the Commission requests specific information on measures adopted to guarantee that water use permits and agreements with companies do not jeopardize the effective realization of the human right to water, considering the perspective of the civil society.

**Recommendation No. 42.** Promote the negotiation and adoption of a treaty in cooperation with neighboring countries to guarantee the necessary measures for preventing, regulating and overseeing the comprehensive, sustainable management of shared, transboundary water basins, placing the human right to water at the core of this action.

328. According to the information provided by the State in the Commission's latest follow-up report to the country report on El Salvador, measures have been implemented to promote the negotiation of treaties with neighboring countries, such as a strategic action plan regarding the basin of the Lempa river, a treaty on the comprehensive management of transboundary water basins between the Republic of El Salvador and the Republic of Guatemala, and the development of a road map for the administration of the Ocotepeque-Citalá Transboundary Aquifer System between Honduras and El Salvador.<sup>336</sup> Consequently, the Commission highlighted the adoption of the international agreement with Guatemala and urged the adoption of an agreement with Honduras for the same purposes.<sup>337</sup>

*Information on compliance*

329. For the 2023 follow-up report, the State indicated that the ASA, together with other institutions, was analyzing measures to ensure the sustainable use of transboundary waters and to implement national and regional measures jointly with riparian countries to protect these waters.<sup>338</sup>

330. For its part, the civil society reported to the Commission on progress in some cooperation initiatives with neighboring countries for the management of shared water basins. Firstly, they indicated that the State had started developing the three strategic lines of the road map towards the coordinated management, with a basin-based approach, of the Ocotepeque-Citalá transboundary aquifer (ATOC) by both Honduras and El Salvador, to be carried out within the next five years.<sup>339</sup>

331. Secondly, civil society organizations referred to three projects that were reportedly under development within the framework of the Trifinio Plan, whose goal was to allocate funds to finance projects aimed at guaranteeing the comprehensive management of transnational water sources in Guatemala, Honduras and El Salvador. In this regard, they reported on the launch of the project *Fomentando la seguridad hídrica en la región del Trifinio* (Fostering water security in the Trifinio region), which reportedly focused on "trinational cooperation for comprehensive water management in the trinational basin of the Lempa river in Honduras, El Salvador and Guatemala, as well as on strengthening national and regional institutions, increasing their

<sup>336</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 230.

<sup>337</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 232.

<sup>338</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 63.

<sup>339</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.



capacity to manage water security and ecosystem challenges.”<sup>340</sup> The project is reportedly financed by the Global Environment Facility and implemented by the United Nations Environment Programme and the Organization of American States.<sup>341</sup> In addition, the civil society reported on the launch of the project for the Development of Climate-Resilient Regional Value Chains that Strengthen Water Ecosystem Services and Generate Rural Income in the Trinational Basin of the Lempa River in Trifinio, with the aim of making effective use of resources and improving conditions in the agricultural sector.

332. However, the civil society pointed out that these measures were reportedly insufficient because they constituted a project rather than a true public policy of transboundary water management that would address the extractive activities performed by the State.<sup>342</sup>

333. In its observations to the draft of the instant follow-up report, the State pointed out that, according to Articles 33 and 34 of the General Law on Water Resources, the ASA has the obligation to negotiate and sign international treaties and conventions on international drainage basins or transboundary basins, and to create a Committee for the Management of International Watercourses.<sup>343</sup> It also reported that the Ministry of Environment and Natural Resources was working jointly with the Republic of Honduras on specific studies on the behavior of the Ocotepeque aquifer, in pursuance of the agreed road map. Moreover, the State indicated that it had given priority to the regional water agenda by means of “broader regional spaces such as the Central American Integration System (SICA) and the Central American Commission on Environment and Development (CCAD), among others,” noting that these entities had previously managed major regional water projects.<sup>344</sup>

334. In its observations, the State also reported that it was working on updating the Regional Strategy on Climate Change (ERCC) and its Action Plan, whose main focus is to achieve climate security on three core categories: water security, food and nutritional security and energy security. It also indicated that it was working on a round of institutional consultations to move forward with the accession to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes.<sup>345</sup>

#### *Analysis and level of compliance with the recommendation*

335. The Commission notes that it does not yet have specific information from the State on the progress made in the negotiation and adoption of a treaty in cooperation with neighboring countries to guarantee the protection and comprehensive administration of shared transboundary water basins. Nevertheless, it values the implementation of the road map for the management of the Ocotepeque-Citalá transboundary aquifer, in coordination with the State of Honduras, as well as the development of projects linked to the Trifinio Plan for the comprehensive management of the trinational basin of the Lempa river in Honduras, El Salvador and Guatemala. In addition, the Commission appreciates the information submitted by the State on the prioritization of the regional water agenda through the Central American Integration System and the Central American Commission on Environment and Development.<sup>346</sup>

336. While the Commission recognizes the importance of these initiatives to consolidate best practices in the transboundary administration of water resources, it emphasizes that the recommendation being followed-up on calls for the negotiation and adoption of a treaty in cooperation with neighboring countries on the comprehensive and sustainable management of shared transboundary water basins. Although the Commission learned in 2022 about a treaty signed by the Republic of El Salvador and the Republic of

<sup>340</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>341</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>342</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>343</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>344</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>345</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>346</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.



Guatemala on the comprehensive management of transboundary water basins,<sup>347</sup> it is still awaiting information on the negotiation of a treaty with Honduras under the terms of this recommendation. Consequently, the Commission considers that the level of compliance with this recommendation continues to be **partial**.

*Measures and information to advance compliance with the recommendation*

337. To guide compliance with this recommendation, the Commission reiterates that the State is required to implement actions to promote the adoption of a cooperation treaty with Honduras that will allow both countries to act jointly to address various challenges in this area. Likewise, the Commission urges the State to continue taking steps to develop the other aforementioned initiatives, ensuring the protection of people and organizations that defend water and the environment, as well as the effective participation of civil society, to guarantee the comprehensive and sustainable management of shared transboundary water basins.

**Recommendation No. 43.** Ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

338. For its 2022 follow-up report, the Commission analyzed the regulations, systems, mechanisms, policies or actions in place in El Salvador aimed at ensuring access to information and participation in decision-making processes on climate policies, as well as at facilitating access to justice in relation to climate change issues.<sup>348</sup> With regard to this, though the Commission and the Office of its Special Rapporteur on Economic, Social, Cultural and Environmental Rights acknowledged that the State had taken significant steps in that direction. They both underscored that “the Escazú Agreement is a key tool to consolidate the recognition and effective protection of environmental rights in the region, inasmuch as they reinforce the inter-American principles and obligations in the matter, highlighting the need to guarantee the rights of access to ensure the effective observance of the right to a healthy environment.”<sup>349</sup>

*Information on compliance*

339. In 2023, the State indicated that the ratification of the Escazú Agreement was still at the analysis stage.<sup>350</sup>

340. For its part, the civil society informed the Commission that the State of El Salvador had not taken steps to ratify the Escazú Agreement. It further expressed its concern over the fact that the State, through the Ministry of Environment and Natural Resources, had granted – the previous year – two environmental permits for the sitting and construction of projects where, according to the *Directrices para la zonificación ambiental y los usos del suelo de la franja costero marina* (Guidelines on Environmental Zoning and Land Use of the Marine Coastline), urban development and/or construction projects were prohibited, and/or in protected areas, which would then entail a violation of the right to a healthy environment.<sup>351</sup>

341. One of these permits reportedly established the technical feasibility of the Ocean Breeze, Eco Hotel, Villas & Resort, to be built in the estate of Las Brisas, Mizata canton, La Libertad. This area is reportedly “home to at least 22 mammal species, 16 reptile species, 85 bird species, 10 marine invertebrate species and 151 species of flora.”<sup>352</sup> The second environmental permit allegedly allowed for the construction of the Pacific

<sup>347</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 230.

<sup>348</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 233.

<sup>349</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 238.

<sup>350</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 65.

<sup>351</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>352</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 65. See also: La Prensa Gráfica, “[MARN autoriza construir un resort turístico en una finca protegida](#),” June 27, 2022.

Airport, a project to be carried out within the framework of the Cuscatlán Plan, which would reportedly entail human intervention in a portion of the protected natural area of the Tamarindo Mangrove.<sup>353</sup> According to civil society organizations, such endeavor would alter the natural course of four rivers and at least seven streams in La Unión.<sup>354</sup>

342. In this regard, they pointed out that the communities affected by these projects had allegedly reported the negative impacts derived from them. However, the reports allegedly led to reprisals against the social leaders who had made them, as they were allegedly detained within the framework of the state of emergency for opposing these projects.<sup>355</sup>

343. In its observations to the draft of the instant follow-up report, the State added that, although the Escazú Agreement was at the consultation stage with the relevant institutions, it had mechanisms in place to address the issues covered in this instrument. For example, it pointed out that the General Directorate of Environmental Evaluation and Compliance under the Ministry of Environment and Natural Resources had created mechanisms that engaged citizens in the preparation process of environmental impact assessments. In this regard, the State listed the different stages in which access to information is guaranteed to citizens, indicating that such information was made available through different means.<sup>356</sup>

344. Likewise, in its observations, the State referred to the control and follow-up process carried out by the Office of Environmental Compliance Management, which is accredited as a Type B Inspection Body under ISO 17020, thus ensuring its impartiality and objectivity. It also pointed out that these actions had to be posted on the internal portal of the MARN. With respect to environmental zoning instruments, the State informed that these had been prepared at the national level and allowed for the submission of documentation by holders themselves in case there were inconsistencies, and any modifications were required.<sup>357</sup>

#### *Analysis and level of compliance with the recommendation*

345. The Commission appreciates the information provided by the State on the existing measures that seek to achieve the goals set in the Escazú Agreement. It has also taken note of the various complaints from the civil society regarding obstacles to access to information and participation in environmental matters. In this regard, the Commission reiterates that the Escazú Agreement is a key instrument that is complementary to the instruments and obligations of the inter-American system in the area of environmental rights. According to the *2022 Annual Report* of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights, the Escazú Agreement “reinforces the principles and obligations established in the inter-American regulations and jurisprudence on the right to a healthy environment, highlighting the need to guarantee the so-called ‘access rights’ to ensure their enforcement, such as the effective protection of the right of people to defend the environment.”<sup>358</sup> Based on the foregoing, and in view of the fact that the adoption of said agreement under the terms of the recommendation is still under consultation, the Commission considers that compliance with the instant recommendation remains **pending**.

<sup>353</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>354</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>355</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>356</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>357</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>358</sup> IACHR 2022 [Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights \(REDESCA\) of the Inter-American Commission on Human Rights \(IACHR\)](#), March 6, 2022, para. 356.

*Measures and information to advance compliance with the recommendation*

346. To guide compliance with this recommendation, the Commission emphasizes that it is necessary for the State to strengthen its commitments to guaranteeing environmental rights and to the protection of the environment by ratifying the Escazú Agreement.

**Recommendation No. 45.** Adopt specific policies to ensure access to water in the context of the pandemic, especially by vulnerable communities, including people living in poverty and extreme poverty, women, children and adolescents, among others.

347. In the latest follow-up report to the country report on El Salvador, the State provided information on the implementation of the National Water Plan and various local projects to improve access to drinking water in multiple communities in the country. In this regard, the Commission requested information on the results obtained from these initiatives, with disaggregated and detailed data on the groups requiring special attention mentioned in the recommendation to promote compliance therewith.<sup>359</sup>

*Information on compliance*

348. For the preparation of the instant follow-up report, the State indicated that the ASA had led actions to bridge the gap in access to water between rural and urban areas of the country. Among them, it highlighted the use of ultrafiltration systems such as WhiteBox and BlueBox, which made it possible to obtain water suitable for human consumption and would reportedly benefit rural communities in El Salvador. The State also reported on the implementation of the BioinovaSV System, which included “biotoilets, biokitchens and biodigesters that [offered] a decent sanitation solution to communities.”<sup>360</sup> According to the State, these projects have benefited over 600,000 families, most of them located in rural areas, thus reducing poverty and providing access to drinking water.<sup>361</sup>

349. Civil society organizations reported that one of the main challenges in complying with this recommendation was the lack of access to information on issues related to the budget and execution of programs and projects carried out by the ASA and the ANDA to ensure access to safe and clean water.<sup>362</sup> The civil society pointed out that, in 2023, the ASA had been allocated an institutional budget of 17.4 million dollars, out of which 11.2 million dollars were reportedly allocated for investment programs and projects, specifically for the *Programa de preservación del recurso hídrico, generación de energía y protección del medio ambiente a nivel nacional* (Program for the preservation of water resources, energy generation and environmental protection at the national level).<sup>363</sup> However, the organizations further indicated that, according to the official information available, the allegedly allocated resources were inconsistent with the programs under execution.<sup>364</sup>

350. In addition, civil society organizations stated that they had noticed a similar problem with the ANDA. Specifically, they provided information to the Commission on the signing of the agreement on the enforcement of the *Proyecto de asistencia para la potabilización del lago de Ilopango* (Ilopango lake potabilization assistance project) between the People’s Republic of China and El Salvador in October 2022, “which [would] benefit 250,000 inhabitants of municipalities in the departments of San Salvador and La Paz (Soyapango, San Martín, Ilopango, Santo Tomás, Santiago Texacuangos, Olocuilta and San Francisco

<sup>359</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 253.

<sup>360</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 65.

<sup>361</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 66.

<sup>362</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>363</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>364</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

Chinameca).<sup>365</sup> They voiced their concern over this project, as a water quality assessment report on lake Ilopango, conducted in 2015 by the ANDA, had concluded that “the lake water was not suitable as raw water to be processed into drinking water through conventional methods because it contained high levels of volcanic contamination with heavy metals such as arsenic (As) and boron (B), which are naturally found in the lake due to its location in volcanic fields.”<sup>366</sup> As a result, the civil society reportedly made a request for information to the ANDA regarding the conditions of the lake, but the ANDA replied that such information was confidential.<sup>367</sup>

351. Moreover, the civil society argued that, pursuant to the General Law on Water Resources, the Ministry of Health had been empowered to regulate activities aimed at guaranteeing access to drinking water. However, according to a response from the ministry following a request for information made by the civil society regarding the programs implemented to provide access to drinking water, the ministry declared that it had no authority to develop this type of programs and therefore allegedly failed to fully comply with the provisions and modifications set forth by the Law.<sup>368</sup>

352. In its observations to the draft of the instant follow-up report, the State provided some clarification on the regulatory powers of the Ministry of Health over the activities aimed at guaranteeing access to drinking water, in response to allegations from civil society organizations (para. 351 *supra*). The State argued that Article 35 of the General Law on Water Resources established that “there [were] institutions that [would] act as regulators in certain matters and [would] as representative of the different subsectors.” It further pointed out that the Ministry of Health would serve as regulator for the drinking water subsector, and that Article 38 of the Law indicated that the Ministry of Environment and Natural Resources had to ensure adequate sanitation.<sup>369</sup>

#### *Analysis and level of compliance with the recommendation*

353. The Commission appreciates the information provided on the initiatives undertaken to improve water safety conditions in rural communities. However, it notes that the content of this recommendation calls for the adoption of specific policies to ensure access to water in the specific context of the pandemic. Considering that the World Health Organization has declared the end of the Covid-19 public health emergency of international concern, the Commission acknowledges that the specific purpose of this recommendation is no longer valid and thus ceases to follow up on it, noting it has reached a level of partial compliance.

## **F. The right to freedom of expression**

**Recommendation No. 48.** Take the necessary measures to ensure a safe working environment for journalists and respect for the independence of the media. In particular, ensure that official advertising and frequency allocation are guided by democratic criteria and in accordance with international human rights standards. Also incorporate measures to ensure that state media operate under international standards on public media.

354. For the follow-up report included in Chapter V of the Commission’s 2022 Annual Report, the State indicated that one of the main goals of the incumbent administration was “to expand the coverage and participation of public media in the media and public discussions as a way to promote media plurality.”<sup>370</sup> To this end, it reported on the implementation of various strategies such as the investment in human and technology resources to expand the coverage of the national TV channel and public radio station, the launch of

<sup>365</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>366</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>367</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>368</sup> Foro del Agua El Salvador, Answers to the consultation questionnaire, September 11, 2023.

<sup>369</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>370</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 256.

the official news program *El Salvador* and the optimization of broadcasting channels by means of new platforms. In this regard, the Commission and the Office of its Special Rapporteur for Freedom of Expression (RELE) expressed their concern over the multiple reports from the civil society alleging harassment and intimidation against certain media outlets that investigate matters of public interest, such as corruption and government irregularities; attacks or restrictions on the press led by security forces; and government monopolization of the public debate. Consequently, the Commission and the RELE reiterated to the State the need to adopt institutional, political and legislative measures to ensure a safe environment for journalists and free access to information by the general public.<sup>371</sup>

#### *Information on compliance*

355. In 2023, in its response to the Commission's request for information on the state of emergency and its effects on human rights, the State emphasized the need to have multiple media involved in delivering information. In this regard, it reported on the modernization of public media (*Canal 10* and *Radio El Salvador*) by expanding the supply of information through additional news and opinion programs, and by using digital platforms and improving coverage on broadcast channels nationwide.<sup>372</sup> Moreover, regarding frequency allocation, the State informed that it conducted a concession process following certain requirements such as the specification of the required frequencies. Therefore, it pointed out that the Electricity and Telecommunications General Superintendency provided forms to support applicants in the submission of their request for the allocation of a frequency, a process that is open to anyone.<sup>373</sup>

356. Regarding the reforms made to the Criminal Code and the Law on the Prohibition of *Maras*, Gangs, Groups, Associations and Organizations of a Criminal Nature, the State indicated that these set forth that "conveying, either explicitly or implicitly, messages or statements related to gangs or criminal associations by any means" constituted a crime. In this regard, it pointed out that the right to freedom of expression was a constitutionally recognized right in El Salvador, though it was not absolute; rather, it had limits based on public order, given that the dissemination of messages related to gangs can cause panic in the population and contribute to their strengthening.<sup>374</sup> However, the State affirmed that, so far, "no complaints [had] been recorded in relation to this crime, nor with respect to the alleged illegal interception of communications through surveillance technology during the state of emergency."<sup>375</sup> Finally, the State added that the FGR was the entity in charge of investigating threats or attempts against the lives of journalists.<sup>376</sup>

357. For its part, the Commission took note of the information reported by various civil society organizations at a hearing on human rights and states of emergency in El Salvador held during the Commission's 187<sup>th</sup> regular period of sessions.<sup>377</sup> According to this information, 209 reports of attacks against journalists during the state of emergency had been recorded, 66 percent of which had been allegedly

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<sup>371</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, paras. 255–269.

<sup>372</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>373</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 68.

<sup>374</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>375</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>376</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report Situation of human rights in El Salvador prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 67.

<sup>377</sup> IACHR, [187th period of sessions, public hearing "Human rights violations and states of exception in El Salvador"](#), July 14, 2023.



perpetrated by state agents.<sup>378</sup> In addition, 17 journalists had been reportedly forced to leave the country due to “harassment, persecution and surveillance.”<sup>379</sup>

358. Likewise, civil society organizations informed the Commission about a series of reforms to criminal legislation carried out in 2022 that reportedly affected the exercise of freedom of the press, including the following: “1) enabling digital undercover operations, which could also potentially be used as evidence in criminal proceedings; 2) reforms to the Criminal Code and the Law on the Prohibition of *Maras*, Gangs, Groups, Associations and Organizations of a Criminal Nature, which could potentially lead to the criminalization of reporting on organized crime; and 3) lifting the controls exerted on the Office of the Public Prosecutor for wiretapping.”<sup>380</sup>

359. Furthermore, the Commission learned that the newspaper *El Faro* had moved its administrative and legal structures to Costa Rica, due to the alleged lack of guarantees from the State to continue operating in El Salvador, which, according to the newspaper, had been evidenced by “physical surveillance and threats; spying with Pegasus; harassment of advertisers and defamation on the part of officials and deputies of the incumbent party.”<sup>381</sup> Through various media outlets, the Commission also learned about statements made by the Director of the National Police in June 2023 regarding the alleged prosecution of journalists who, in 2012, had denounced and investigated the negotiations held between the government of then-President Mauricio Funes and the gangs. According to these statements, journalists had “glorified crime and induced facts or aggravating circumstances that affected the Salvadoran people.”<sup>382</sup>

360. In its observations to the draft of the instant follow-up report, the State affirmed that “there [was] no curtailment of the practice of journalism, nor of the dissemination of information; on the contrary, there [were] multiple media outlets, some of which were openly critical of the government, which [were] constantly producing coverage reports that [were] widely disseminated, without this implying any limitations or control on the part of the State.”<sup>383</sup> In support of this assertion, the State listed 210 news articles and reports issued by *El Faro* between 2020 and 2023.<sup>384</sup>

361. In its observations, the State also reported to the Commission that “Article 345-C, Paragraph 2, of the Criminal Code and Article 1, final paragraph, of the Law on the Prohibition of *Maras*, Gangs, Groups, Associations and Organizations of a Criminal Nature [had] been repealed by the Legislative Assembly last November.”<sup>385</sup>

#### *Analysis and level of compliance with the recommendation*

362. The Commission has taken careful note of the information provided by the State. Regarding the first element of the recommendation, which is related to measures to ensure a safe working environment

<sup>378</sup> IACHR, [187th period of sessions, public hearing “Human rights violations and states of exception in El Salvador”](#), July 14, 2023.

<sup>379</sup> IACHR, [187th period of sessions, public hearing “Human rights violations and states of exception in El Salvador”](#), July 14, 2023.

<sup>380</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>381</sup> *El Faro*, “[El Faro se cambia de casa](#),” April 13, 2023. See also: IACHR, RELE, OHCHR, [Press Release No. 022/22](#) “IACHR, Its Special Rapporteurship for Freedom of Expression and OHCHR Are Concerned About Evidence of the Use of Pegasus Malware to Spy on Journalists and Civil Society Organizations in El Salvador,” January 31, 2022.

<sup>382</sup> *El País*, “[El director de la policía de El Salvador amenaza con encarcelar a los periodistas que cubrieron la tregua entre el Gobierno y las pandillas](#),” June 6, 2023; *Voz de América*, “[El Salvador: director de la policía sugiere que podría comenzar proceso penal contra periodistas por caso tregua de pandillas](#),” June 8, 2023; *Swissinfo*, “[Al advierte ‘persecución’ contra prensa salvadoreña tras declaraciones de jefe policial](#),” June 6, 2023.

<sup>383</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>384</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, Annex 2, December 18, 2023.

<sup>385</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023. In this regard, the State cited the following: Legislative Assembly, “[Diputados despenalizan difusión de mensajes generados por pandillas](#),” November 2, 2023.

for journalists as well as the independence of the media, the Commission welcomes the decision made by the Legislative Assembly in November 2023 to decriminalize the dissemination of messages alluding to gangs by repealing Article 345-C, Paragraph 2, of the Criminal Code, as well as Article 1, Paragraph 3, of the Law on the Prohibition of *Maras* and Gangs. However, the Commission notes that this decision should be supplemented by other measures that contribute to strengthening civic space and promoting the necessary conditions for human rights defenders and journalists to work in a safe and adequate environment.

363. In addition, the Commission observes that the civil society continues to denounce the prevalence of attacks against journalists, allegedly including harassment, persecution and surveillance, as well as the adoption of legal decisions that reportedly have restrictive effects on the exercise of freedom of expression.

364. As noted in the Commission's *2022 Annual Report*, both the Commission and the Office of its Special Rapporteur for Freedom of Expression recall that the 2021 Joint Declaration of Rapporteurs points out that "States have a positive obligation to create an enabling environment for freedom of expression and the right to information, including by fostering media independence and diversity as a key means of promoting robust, open debate about matters of public interest, and by adopting rules that ensure public transparency and accountability of public actors." In this regard, intimidations and threats against social communicators severely restrict freedom of expression, as stated in Principle 9 of the Declaration of Principles on Freedom of Expression.

365. Likewise, the Commission and the Office of its Special Rapporteur for Freedom of Expression have concluded that "such acts are used as an instrument of intimidation that sends an unmistakable message to all members of civil society engaged in investigating attacks, abuses, irregularities, or illicit acts of any kind. This practice seeks to silence the press in its watchdog role or make it an accomplice to individuals or institutions engaged in abusive or illegal actions. Ultimately, the goal is to prevent society from being informed about such occurrences, at any cost."<sup>386</sup>

366. In addition, the Commission notes that additional information is needed to evaluate the remaining two elements of this recommendation; namely, the application of democratic criteria for government advertising and frequency allocation, as well as the application of international standards on public media with respect to state-owned media. While the Commission has taken note of the decriminalization of the dissemination of gang-related messages, it also identifies the need for additional measures that comprehensively address all the elements of this recommendation. Therefore, the Commission considers that this recommendation is still **pending compliance**.

*Measures and information to advance compliance with the recommendation*

367. To guide the adequate implementation of this recommendation, the Commission urges the State to adopt the necessary measures to ensure a safe working environment for journalists, as well as respect for the independence of media outlets, in accordance with the specifications included therein regarding the application of international standards on government advertising, frequency allocation and state-owned media.

**Recommendation No. 49.** Guarantee the right of access to public information in accordance with the guidelines of the inter-American legal framework and adopt the necessary measures to remove the barriers that impede its effective compliance.

368. In the latest follow-up report to the country report on El Salvador, the State reported that by adopting the LAIP, which led to the creation of the Institute of Access to Public Information, progress had been made in guaranteeing this right, through actions including the delivery of training to entities and officials, the design of digital tools, the creation of information portals and the strengthening of channels for communication

<sup>386</sup> IACHR, [Background and Interpretation of the Declaration of Principles](#). Undated.

and engagement, so as to provide guidance and quality information to citizens. However, the Commission learned about legal reforms and legislative proposals brought forward by the executive branch to the detriment of the right of access to public information and transparency, as well as about the implementation of policies that reportedly empowered the National Civil Police and the FGR to prevent access to information within the framework of the state of emergency. In this regard, the Commission urged the State to adopt measures aimed at guaranteeing the right of access to public information in pursuance of inter-American standards on the matter.<sup>387</sup>

#### *Information on compliance*

369. In 2023, the State reported that, in El Salvador, “there [were] no obstacles to press coverage of public events, nor refusals to hold interviews or barriers to access to political sources.”<sup>388</sup> In this regard, it informed that the Institute of Access to Public Information had created the Support Unit to guide the application of the LAIP and the way in which public officials must make available to citizens all information classified as “public information to be provided proactively” in the transparency portals of each institution.<sup>389</sup>

370. Similarly, the State reported on various mechanisms that guarantee the right of access to information, such as the possibility of filing an appeal with the Institute of Access to Public Information when requests for information are denied, the online request system, the Active Transparency Portal, and a series of training activities addressed at entities and the civil society on the right of access to information and the tools available to guarantee such right.<sup>390</sup>

371. The State also indicated that, within the framework of the state of emergency, the FGR and the judiciary had continuously and expeditiously provided statistical information to citizens and institutions on the number of arrests and persons facing criminal proceedings.<sup>391</sup> In addition, it reported that the Customer Service Centers located in different areas of the country had automated notices and records in place to provide information on detained persons to those who request so.<sup>392</sup> Moreover, the State informed that the PGR also had in place a “virtual customer service system, which [offered] guidance and information on institutional services, as well as information on persons detained in the context of the state of emergency.”<sup>393</sup>

372. For its part, the civil society stated that access to public information had taken a step backwards in general, especially with respect to public safety issues. This is allegedly due to the increase of information classified as confidential or nonexistent. In this regard, the Commission learned about an analysis of the 2022 and early 2023 confidentiality indexes, conducted by the OUDH, which concluded that an excessive amount of information had been classified as confidential by the public administration, which limited citizens’ access to information by refusing to disclose information in general terms with no justification or proper

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<sup>387</sup> IACHR, 2022 Annual Report, [Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 286.

<sup>388</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report [Situation of human rights in El Salvador](#) prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 68.

<sup>389</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report [Situation of human rights in El Salvador](#) prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 68.

<sup>390</sup> State of El Salvador, Follow-up report of the State of El Salvador on the recommendations issued in the report [Situation of human rights in El Salvador](#) prepared by the Inter-American Commission on Human Rights following its in loco visit in 2019, October 3, 2023, p. 70.

<sup>391</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>392</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

<sup>393</sup> State of El Salvador, Note MPOEA-OEA-117/2023, Response to the request for information on the state of emergency and its impact on human rights, July 14, 2023.

application of the grounds for confidentiality, and by allowing that information to remain confidential for as long as possible.<sup>394</sup>

373. In this context, civil society organizations expressed that institutions such as the General Directorate of Correctional Centers, the FGR, the Institute of Legal Medicine and the National Civil Police were largely impeding access to information on citizen security and that, since 2022, the Ministry of National Defense had also begun to do so.<sup>395</sup> According to the civil society, this is especially worrisome within the framework of the state of emergency, since it was reportedly not possible to gather statistics on “the number of persons deprived of liberty, the rate of overcrowding in detention facilities, the figure of deaths of persons deprived of liberty, the disaggregated number of crimes, whether or not the excessive use of force by public security agents is recorded and sanctioned, or the number of military and police agents conducting public security tasks, among other variables.”<sup>396</sup>

374. However, the civil society stated that the classification as confidential was not limited to this issue, and that institutions such as the PDDH, the Supreme Court of Justice and other ministries such as the Ministry of Environment and Natural Resources, the Ministry of Tourism and the Ministry of Agriculture and Livestock were also obstructing access to different kinds of public information.<sup>397</sup>

375. In its observations to the draft of the instant follow-up report, the State indicated that, although the right of access to information is fundamental, its exercise “may be subject to certain restrictions or limitations,” due to the principle of reasonableness.<sup>398</sup> In this regard, it stated that it was up to the Institute of Access to Public Information to decide whether this right may be curtailed when it conflicts with other fundamental rights or legitimate interests. Likewise, the State highlighted that the LAIP “regulates the limitations on access to information, which, in general terms, is classified as: reserved information (Art. 19), confidential information, in all its forms (Art. 24), and nonexistent information (Art. 73).”<sup>399</sup> Finally, it indicated that Article 96 of the LAIP provided for the possibility of appealing rejected requests for information, as well as the procedure to be followed in such a scenario.<sup>400</sup>

#### *Analysis and level of compliance with the recommendation*

376. The Commission has taken note of the measures reported by the State, including the regulatory framework established by the LAIP and the functions performed by the Institute of Access to Public Information. However, it voices its concern over civil society organizations allegations regarding a curtailment of the right of access to information through the classification as confidential used by various agencies in the three branches of government, which has reportedly had a differentiated impact on information related to public safety.

377. To achieve progress in the implementation of the recommendation, the Commission considers that it is essential for the State to address the allegations regarding the excessive and disproportionate use of confidentiality as a mechanism to limit access to public information. In this regard, the Commission encourages

<sup>394</sup> OUDH, [Informe sobre la Libertad de Prensa y el Acceso a la Información Pública en El Salvador, 2022](#), July 2023.

<sup>395</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>396</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>397</sup> CEJIL, Cristosal, Due Process of Law Foundation, IM-Defensoras, IDHUCA, Passionist Social Service, Red Salvadoreña de Defensoras de DD. HH., Answers to the consultation questionnaire, September 11, 2023.

<sup>398</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>399</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

<sup>400</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.

the State to identify the alleged barriers, including the classification as confidential, and to adopt the necessary measures so that these do not hinder access to information.

378. While the Commission awaits information on compliance measures, it considers this recommendation is **pending compliance**.

*Measures and information to advance compliance with the recommendation*

379. The Commission considers that it is essential for the State to identify the obstacles and limitations to access to public information, and, based on this prior diagnosis – which includes the use of the classification as confidential –, it must adopt all necessary compliance measures. These may consist of the adoption of regulations or institutional strengthening tools to tackle said obstacles.

**Recommendation No. 50.** To give its consent for a working visit by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, which would allow that Office to monitor and gather information directly on the situation of the right to freedom of expression in El Salvador.

380. In the latest follow-up report to the country report on El Salvador, the State indicated that it was working on “setting an agenda for the implementation of the Commission’s recommendations, and [was] therefore willing to respond to the Commission’s requests for information on the situation of the right to freedom of expression in the country.”<sup>401</sup> In this regard, the Commission and the Office of its Special Rapporteur for Freedom of Expression (RELE) considered that there was major controversy surrounding the situation of the right to freedom of expression in El Salvador, and therefore insisted on the importance of the State giving its consent for a working visit by the Office of the Special Rapporteur.<sup>402</sup>

*Information on compliance*

381. In 2023, the State reaffirmed its interest in collaborating with the Commission and the Office of its Special Rapporteur for Freedom of Expression, as well as its willingness to address requirements on topics of interest through written mechanisms and permanent dialogue. According to the State, this will allow the RELE to monitor and gather information on the situation of the right to freedom of expression in El Salvador.

382. Furthermore, at the hearing on human rights and states of emergency in El Salvador held during the Commission’s 187<sup>th</sup> regular period of sessions, the Special Rapporteur for Freedom of Expression reiterated the intention of the RELE to conduct a visit to El Salvador aimed at monitoring and gathering first-hand information on the situation of the right to freedom of expression in the country, and requested the State to report on any obstacles to such visit being carried out.<sup>403</sup>

383. In its observations to the draft of the instant follow-up report, the State indicated that it has held several meetings with the RELE through its Ministry of Foreign Affairs and the Presidential Commissioner for Human Rights and Freedom of Expression. It further reiterated its willingness to continue providing the information requested on matters of interest. It also claimed that conversations with different stakeholders should not be limited to a physical space, given the availability of multiple tools for interaction, and therefore stated that “the visit [could not] be an end in itself, but should only be one more means for gathering information.”<sup>404</sup>

<sup>401</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 287.

<sup>402</sup> IACHR, 2022 [Annual Report, Chapter V. Follow-up of recommendations issued by the IACHR in its Country or Thematic reports - El Salvador](#), March 11, 2023, para. 288.

<sup>403</sup> IACHR, [187th period of sessions, public hearing “Human rights violations and states of exception in El Salvador”](#), July 14, 2023.

<sup>404</sup> State of El Salvador, Comments of the State to the draft of Chapter V, submitted in its Note MPOEA-OEA-220/2023, December 18, 2023.



*Analysis and measures to advance compliance with the recommendation*

384. The Commission urges the State to continue engaging in dialogue and to establish joint working mechanisms to collect information on the situation of the right to freedom of expression in El Salvador. In addition, it reiterates the importance of enabling spaces to gather information directly on site and to hold conversations with a wide range of stakeholders – including state representatives and members of the civil society – on issues related to its mandate. Consequently, the Commission considers that this recommendation is still pending compliance.

**III. SUMMARY TABLE OF THE LEVEL OF STATE COMPLIANCE WITH THE RECOMMENDATIONS**

385. The following table shows the level of compliance of the State of El Salvador with each of the recommendations made by the Commission in its October 2021 report on the situation of human rights in the country:

Topic of recommendation	Recommendation number	2022	2023
		Level of compliance	Level of compliance
<b>Memory, truth and justice</b>	4	Pending	Pending
	5	Partial	Partial
	6	Pending	Pending
	7	Pending	Pending
	8	Partial	Partial
	9	Pending	Partial
	10	Partial	Partial
	11	Partial	Partial
<b>Situation of specific groups – Women and LGBTI persons</b>	16	Pending	Pending
<b>Operation of the Office of the Public General Defender</b>	17	Substantial partial	Substantial partial
<b>Women and LGBTI persons</b>	18	Partial	Partial
	19	Partial	Substantial partial
	21	Partial	Substantial partial
	22	Partial	Partial
	23	Pending	Pending
	24	Partial	Partial
	25	Substantial partial	Total
	26	Pending	Pending
	27	Pending	Pending

	28	Partial	Partial
	29	Partial	Substantial partial
	30	Partial	Partial
	31	Partial	Partial
<b>Situation of specific groups – Persons in the context of human mobility</b>	32	Pending	Partial
	33	Pending	Total
	34	Pending	Partial
	35	Pending	Partial
	36	Pending	Partial
<b>Situations of specific groups – Human rights defenders</b>	37	Pending	Pending
	38	Pending	Pending
<b>ESCR</b>	39	Pending	Pending
	40	Pending	Partial
	41	Partial	Substantial partial
	42	Partial	Partial
	43	Pending	Pending
	44	Total	Total
	45	Partial	Partial (cessation of follow-up)
<b>Situations of specific groups – Indigenous peoples and persons of African descent</b>	46	Pending	Pending
	47	Pending	Pending
<b>Right to freedom of expression</b>	48	Pending	Pending
	49	Pending	Pending
	50	Pending	Pending

#### **IV. CONCLUSIONS**

386. Through its country reports, the Commission makes recommendations to OAS member states to promote due respect for human rights. Given these powers and with a view to guaranteeing the full enjoyment of human rights within the framework of the inter-American system, the Commission has a mandate to follow up on its recommendations and to submit its assessment of compliance with these recommendations to the OAS General Assembly through its Annual Report.

387. Following up on the recommendations issued by the Commission helps to shed light on the actions taken by the States to contribute to the guarantee and respect for human rights, as well as to identify concrete compliance measures and to overcome the challenges that arise in specific areas. Likewise, the

Commission promotes a positive agenda of joint work with member states, in an effort to attain results in terms of compliance and implementation.

388. For the preparation of the instant country report, the Commission relied on information provided by both the State and multiple Salvadoran civil society organizations. In this regard, the Commission commends the efforts put into the submission of such information, which was evaluated and included herein as appropriate. Moreover, the Commission encourages parties to continue relaying information on the progress made and the challenges faced in complying with the recommendations, and strongly calls on the State to continue adopting measures to implement them. Therefore, the Commission reiterates its willingness and readiness to provide technical assistance to the State to promote adequate and effective compliance with its recommendations in accordance with inter-American standards.

389. The Commission considers that, out of the 41 recommendations addressed in this follow-up report,<sup>405</sup> two have reached a level of full compliance (5 percent), five have reached a level of substantial partial compliance (12 percent), 18 have reached a level of partial compliance (44 percent), and 16 are pending compliance (39 percent). Therefore, it reiterates to the State the importance of effectively complying with the recommendations that have not been fully complied with.

390. Moreover, the Commission appreciates the information provided, as it has allowed it to determine in which of these recommendations the State had made progress in terms of the level of compliance compared to 2022. Consequently, the Commission concluded that, by 2023, out of the 41 recommendations analyzed in the instant follow-up report, 12 had seen progress in their level of compliance: six had moved to partial compliance, four had moved to substantial partial compliance and two had moved to full compliance.

391. When drafting the 2023 follow-up report, the Commission noticed that progress had been made in complying with one recommendation regarding memory, truth and justice; four recommendations regarding women and LGBTI persons; five recommendations regarding persons in the context of human mobility; and two recommendations on economic, social, cultural and environmental rights (ESCR).

392. The following are some of the most important compliance measures required to advance compliance with these recommendations:

- carrying out training actions, promoting the multidisciplinary approach for the specialized jurisdiction for a life free of violence and discrimination against women;
- strengthening and automating the training programs offered by the ISDEMU, as well as increasing its operating budget;
- conducting a series of training activities related to the rights of LGBTI persons aimed at various levels of public administration officials, which are offered by the PDDH, the PGR and the FGR;
- strengthening consular services for El Salvador nationals abroad;
- launching the Human Mobility Policy, which should establish a framework for the protection of and assistance to the Salvadoran diaspora and Salvadorans in a context of mobility;
- implementing programs at institutions such as the Victim Assistance Directorate of the Forced Internal Displacement Unit under the PGR; the Victim Assistance Directorate under the Ministry of Justice and Public Security, and the ISDEMU, and devising programs on education and health for internally displaced persons;
- enforcing the Legislative Assembly's decision of November 2023 to decriminalize the dissemination of messages alluding to gangs.

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<sup>405</sup> The Commission recalls that, although the country report contains 50 recommendations, recommendation no. 44 was declared fully complied with in last year's follow-up report; in addition, follow-up of recommendations nos. 1, 2, 3, 12, 13, 14, 15 and 20 will be evaluated in the reports that are being prepared on the state of emergency and the situation of human rights of persons deprived of liberty in El Salvador.

393. Furthermore, the Commission considers that there are still significant obstacles to fully complying with the recommendations issued in the 2021 country report. Firstly, the Commission notes with concern that the recommendations related to access to the rights of memory, truth, justice and reparation in the context of the armed conflict face various challenges. In this regard, it is still necessary to adopt a National Reconciliation Law in accordance with inter-American standards on transitional justice, to develop actions to promote investigations, prosecutions, and the punishment of those responsible, and to foster comprehensive reparation for the victims. In addition, progress must be made in the consolidation of a regulatory framework and a national policy for the search for disappeared persons.

394. Secondly, the Commission indicates that measures must be implemented to strengthen the regulatory framework for the protection of the groups in vulnerable situations mentioned throughout the report, by bringing it into line with inter-American standards on prevention, protection, access to justice, equality, and nondiscrimination. Likewise, it urges the State to adjust its regulatory framework in accordance with inter-American standards on the sexual and reproductive rights of women, girls, and adolescents, and to adopt a gender identity law. Additionally, the Commission prompts the State to comply with the recommendations that call for the collection and systematization of data and statistics that allow for the implementation of policies to protect LGBTI persons, Afro-descendants, indigenous persons, migrants, returnees, and internally displaced persons. It further holds it is necessary for the State to comply with the recommendations related to Afro-descendants and members of indigenous peoples.

395. The Commission also reiterates the importance of El Salvador guaranteeing a safe environment for the practice of the defense of human rights and independent journalism. In this regard, it stresses the need to adopt a legal framework to protect this type of work and to put an end to stigmatizing or degrading speech from public agents, all the more so considering the allegations made by the civil society. It also urges the State to guarantee the right of access to public information, to lift all kinds of restrictions to this right and to regulate the use of the classification as confidential applied to official information.

396. The Commission also calls for the adoption of compliance measures related to economic, social, cultural and environmental rights. Although relevant measures have been reported, such as the enforcement of the General Law on Water Resources (LGRH), the Commission has also called for its effective regulation and for the adoption of other measures to ensure that water use permits and agreements with companies on this resource do not jeopardize the effective realization of this human right. In addition, the Commission reiterated its recommendation encouraging the State to accede to the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

397. The Commission further encourages the State to take into consideration the observations and proposals made by the civil society, to provide its members with spaces for effective participation in the process of implementation and regulation of the General Law on Water Resources, and to facilitate access to information regarding the administration of this public good. Additionally, the Commission requests specific information on measures adopted to ensure that water use permits and agreements with companies do not jeopardize the effective realization of the human right to water, considering the perspective of the civil society.

398. Finally, the Commission reaffirms its commitment to working together with the Government of El Salvador for it to overcome the challenges it is currently facing, as well as to offering support to the State so it may fulfill its international obligations related to human rights and implement the recommendations evaluated in the instant report.

## REASONED VOTE OF COMMISSIONER CARLOS BERNAL PULIDO ON CHAPTER V- EL SALVADOR OF THE 2023 ANNUAL REPORT

With all due respect for my colleagues and in accordance with Article 19.1 of the Rules of Procedure of the Inter-American Commission on Human Rights ("the Commission" or "the IACHR"), I hereby submit a partial reasoned vote on certain points raised by the majority of the plenary of the Commission in Chapter V- El Salvador ("the Chapter") of the 2023 Annual Report (the "Report" or the "Annual Report"). In particular, I will reiterate my disagreements with regard to considerations related to sexual and reproductive rights and abortion.

Without prejudice to this, I welcome the Commission's follow-up on the structural situation in El Salvador, which reflects important complexities and challenges, and I emphasize the importance of this chapter for the promotion of human rights and the formulation of the changes needed to guarantee their observance.

However, in relation to my discrepancies, Chapter V - El Salvador contains considerations that disregard the principle of complementarity, pose a risk to pregnant women, and omit comprehensive protection needs of women. Next, I will address the following issues: (i) the non-existence of the right to abortion and the leeway for state decision (*margen de configuración*) regarding the criminalization of abortion; (ii) the lack of protection for the unborn derived from the considerations of the report; (iii) the violation of the principle of subsidiarity and the lack of protection for the unborn in relation to considerations regarding obstetric emergencies, and (iv) the inappropriate curtailment of sexual and reproductive rights derived from the approved chapter.

Let this be an opportunity to reiterate once again that in pronouncements such as the Annual Report, with a cross-cutting impact on the guarantees afforded for the observance of rights throughout the region, the Commission must ensure that none of its positions tacitly contravenes or omits the provisions of the American Convention, regardless of the country to which its particular considerations refer.

### 1. The non-existence of the right to abortion and state leeway with respect to the criminalization of abortion

Paragraphs 134 and 140 of Chapter V on El Salvador state that the criminalization of abortion in certain circumstances "imposes a disproportionate burden on the exercise of women's rights, creates a context that facilitates unsafe abortions, and disregards international obligations to respect, protect and guarantee their rights to life, health and integrity".

In view of this, I reiterate that there are no binding sources in international law -and especially in the American Convention or other treaties that make up the inter-American system- that contemplate (i) the so-called right to abortion or (ii) alleged duties related to the decriminalization of abortion. That said, states have ample leeway - by virtue of the principles of subsidiarity or complementarity and representative democracy - to take measures to protect the life of the unborn child - which is indeed protected by the American Convention<sup>406</sup>- including, although it is not the only means, the use of criminal law.

Regarding the non-existence of the right to abortion, former I/A Court H.R. Judge Eduardo Vio Grossi (R.I.P.), established, in his partially dissenting opinion in the judgment in the case of *Manuela et al. v. El Salvador*, that:

"In this regard, it is indisputable that (...) **there is no inter-American or international legal norm**, whether conventional, international custom, or general principle of law, **that recognizes abortion as a right** There are only resolutions of international bodies, most of which are made up of international officials and not representatives of States, decisions which, in addition to not being binding, are not

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<sup>406</sup> ACHR. Article 4.



interpretative of current international law but rather reflect aspirations for it to change in the direction they suggest."<sup>407</sup> (Bold added)

Now, I emphasize that this range of option derived from the non-existence of a right to abortion and the convergence of competing rights (*en tensión*) is broader thanks to the fact that it is incumbent upon States to define punishable acts/conduct and their consequences, and to the automatic referral that, according to the I/A Court H.R., Article 7.2 of the American Convention makes to domestic law with respect to deprivation of liberty -the legal exception principle-.<sup>408</sup>

In addition, I also emphasize that the sections in which such assessments are formulated do not sufficiently support derivation of the indisputable existence, in the Inter-American System, of a clear and binding parameter that could serve as a basis for assessing abortion criminalization models as negative. The conventional parameter that does exist and that is mandatory is Article 4 of the ACHR which, as I have said on other occasions, contemplates protection of the right to life from conception and demands the existence of regulatory frameworks that do not leave a fetus totally unprotected.

This is relevant if one bears in mind that, from a systematic reading of Articles 31, 76, and 77 of the American Convention, it is only through consensus -which the States express by signing and ratifying amendments or treaties- that international obligations can arise for all States, different from those already contemplated in the ACHR.

In this sense, I conclude that, in the absence of a right to abortion in the IHRS and the absence of clear rules regarding criminalization models, States have considerable leeway in this regard.

## 2. Lack of protection for the unborn derived from the report's considerations

I emphasize that the references to abortion in the Report on El Salvador ignore the other person whose right to life is also conventionally protected: the unborn person, and ignore the necessary balancing that must exist between these competing rights (*derechos en tensión*) In this regard, it should be noted that pregnant women are also subjects of law and holders of the right to life. A pronouncement on abortion always implies a position on a practice that necessarily implies the termination of the life of a dignified human being and that Article 4 of the ACHR protects, so it is necessary to expressly recognize the rights of the unborn person as part of the weighing up of considerations required in any case of abortion.

In this regard, I emphasize that Article 1.2 of the ACHR clearly establishes that, for the purposes of the Convention, a "person" is every human being.<sup>409</sup> Thus, in light of the Convention, human rights are not only recognized for persons who have already been born, but must be protected for all individuals from conception, who are to be considered human beings. Moreover, the I/A Court H.R. itself, in its advisory opinion 22, indicated that, without being a matter open to interpretation, the term "person" is equivalent to the term "human being."<sup>410</sup>

In view of this, it is clear that the unborn person (*persona en gestación*) is a human being.<sup>411</sup> Furthermore, the Universal Declaration on the Human Genome and Human Rights states that "the human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity."<sup>412</sup>

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<sup>407</sup> Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Manuela et al. v. El Salvador: Judgment of November 2, 2021, (Preliminary Objection, Merits, Reparations, and Costs), paragraph 13.

<sup>408</sup> I/A Court H.R. Case of Romero Feris v. Argentina. Merits, Reparations, and Costs. Judgment of October 15, 2019. Series C No. 391. Par. 77.

<sup>409</sup> ACHR. Article 1.2 "For the purposes of this Convention, person means every human being."

<sup>410</sup> I/A Court H.R. OC-22/16. Ownership of rights of legal persons in the inter-American human rights system. Advisory Opinion of February 26, 2016. Series A. No. 22, Par. 48.

<sup>411</sup> Kaluger, G., and Kaluger, M., Human Development: The Span of Life, The C.V. Mosby Co., St. Louis, 1974, pp. 28-29.

<sup>412</sup> Universal Declaration on the Human Genome and Human Rights. Article 1.

The consequence of recognizing the unborn as a person as a human being is that he/she becomes a holder of rights. Thus, the ACHR establishes in the articles that develop rights the formula "Everyone (...)"<sup>413</sup>. Likewise, the instruments for the protection of human rights generally recognize the ownership of rights by members of the human species, especially the right to life.<sup>414</sup>

Furthermore, in the Artavia Murillo judgment, the I/A Court H.R. determined that "the protection of the right to life is not absolute, but gradual and incremental as the development of the fetus progresses", which implies that without prejudice to the concepts of gradualness and incrementality (with which I take issue), the Court has already established that persons in gestation must be protected by the State in their "right to life."

In the same vein, in the Cuscul Pivaral case,<sup>415</sup> the I/ A Court H.R. applied the ACHR to a fetus (*persona en gestación*) and also applied Article 19 of the ACHR, thus recognizing the legal status of the fetus as a child. Likewise, I emphasize that the preamble of the Convention on the Rights of the Child states that the child needs protection and care both before and after birth. This implies that in light of the Convention on the Rights of the Child (CRC), the unborn child is a child in need of special care. This was reiterated in the preparatory work for the International Covenant on Civil and Political Rights.<sup>416</sup>

In conclusion, this Report completely ignores the rights of the unborn, especially their right to life, recognized not only in the IHRS but also in other instruments of international law.

### **3. Obstetric emergencies: violation of the principle of subsidiarity and lack of protection of the unborn child**

Recommendation No. 22 suggests that the State "review the cases of women sentenced to severe prison sentences for homicide aggravated by facts related to obstetric emergencies or complications, as well as give priority to the processing of requests for commutation of the sentence in progress."

In this regard, I reiterate that I fully agree that the State should not condemn women for obstetric emergencies or complications. What I do not agree with is that a body such as the Commission should interfere intensively in national criminal proceedings and decisions, without sufficient factual and legal motivation.

First, I am concerned about this recommendation because (i) it disregards the principle of subsidiarity, and (ii) it creates a cloak of illegitimacy with respect to all convictions imposed by the State in these cases -even when they may be duly motivated-.

Logically, the majority's rejection of the convictions imposed leads to the need to revoke those sentences. In other words, it implies a pronouncement by which the majority position seeks to replace the national authority and considers that the persons convicted in the cases did not commit the crimes provided for by domestic law, and therefore the State should not individualize or enforce any penalty against them. Therefore, the majority

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<sup>413</sup> American Convention on Human Rights, Articles 4, 5, 7, 8, 10, 11, 12, 13, 14, 16, 18, 20, 21, 22, 24, and 25.

<sup>414</sup> International Covenant on Civil and Political Rights. Preamble, par. 3; American Convention on Human Rights, par. 3. Preamble; African Charter on Human and Peoples' Rights. Preamble, par. 6; on the Geneva Declaration Rapporteur on the Rights of Children. Preamble, par. 1; American Declaration of the Rights and Duties of Man. Article 1; Universal Declaration of Human Rights. Preamble, par. 1; Declaration of the Rights of the Child. Preamble, par. 2; European Convention on Human Rights. Preamble, par. 2.

<sup>415</sup> I/A Court H.R. Case of Cuscul Pivaral v. Guatemala. Judgment of August 23, 2018. "That said, the Court has indicated that extreme poverty and the lack of adequate medical care for women during pregnancy and postpartum are causes of high maternal mortality and morbidity. Therefore, States must implement appropriate health policies that allow them to provide assistance with suitably qualified personnel during births; policies to prevent maternal mortality by providing adequate prenatal and postpartum controls, and legal and administrative instruments relating to health policies that adequately record cases of maternal mortality. Thus, the Court has recognized that, by virtue of article 19, the State must assume its special position of guarantor with greater care and responsibility and take special measures focused on the principle of the best interest of the child."

<sup>416</sup> "The main reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death penalty should not be applied to pregnant women was to save the innocent life of the unborn child." United Nations. General Assembly Report of the Third Committee on the Draft International Covenants on Human Rights. A/3764. P. 40.

position far exceeded the competence limits of the Inter-American Commission by acting as a *fourth criminal instance*, without any type of motivation and in a scenario in which it is not appropriate to make such an assessment.

In this regard, the jurisprudence of the I/A Court H.R. recognizes that not even this Court, as the highest authority of the regional human rights system, can replace the national authority in assigning individual punishments corresponding to the crimes provided for in domestic law<sup>417</sup>.

This error in the position from which I am departing not only resulted in a manifest violation of the principle of subsidiarity or complementarity, but also placed the legal right to life of newborns at extreme risk. If the convicted persons really committed crimes, then the rejection of the majority position against those convictions would constitute a harmful precedent of disprotection of human life.

#### **4. Inappropriate limitation of sexual and reproductive rights**

Recommendation No. 23 calls for "taking the necessary measures to adapt the Salvadoran regulatory framework to the Inter-American standards on sexual and reproductive rights of women, girls, and adolescents". However, this recommendation focuses on the criminalization of abortion.

I again draw attention to the importance of not limiting so-called sexual and reproductive rights to access to abortion. This is not only because there is no law that establishes abortion as a guarantee of those rights, but also because this vision simplifies and detracts attention from the problems faced by women in the region and, in so doing, discourages debates that promote the formulation of comprehensive and integral proposals to address the structural problems faced by women in the region.

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<sup>417</sup> I/A Court H.R. Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2009. Series C No. 207. Par. 87. I/A Court H.R. Case of García Ibarra et al v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 17, 2015. Series C No. 306. Par. 167.