



## CHAPTER V

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

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**El Salvador**

**ANNUAL REPORT OF THE INTER-AMERICAN  
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El Salvador

## CHAPTER V

# FOLLOW UP ON THE RECOMMENDATIONS OF THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

## FIRST 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 issued in the report "Situation of Human Rights in El Salvador," approved by the Inter-American Commission on Human Rights (the Commission, the Inter-American Commission, or the IACHR) on October 14, 2021, in compliance with paragraph 9 of Article 59 of its Rules of Procedure. According to that provision, the Commission will follow up on the measures taken to comply with the recommendations made in the country or thematic reports through Chapter V of its Annual Report.

2. Following the IACHR's request to the State to conduct an on-site visit, the State granted its consent on July 2, 2019. The IACHR conducted an on-site visit to the country on December 2–4, 2019. The Commission highlighted and appreciated that, within its first 6 months, the Government of El Salvador invited the IACHR to conduct an on-site visit after 32 years.

3. In 2021, the IACHR issued the Report on the Situation of Human Rights in El Salvador, with a series of recommendations to the State, based on the findings and information obtained before, during, and after the on-site visit. Likewise, it was based on the investigations carried out on its initiative, the information provided by the State, the inputs from the various mechanisms through which the IACHR has followed up on the situation in the country, as well as journalistic notes, decisions, and recommendations from specialized international organizations, among others, as established in Article 59, paragraph 5 of its Rules of Procedure.

4. In the Country Report, which includes facts up to December 31, 2020, the Commission addressed the human rights situation in El Salvador with an emphasis on the structural problems that affect the country and that have been pending since the armed conflict, such as the absence 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 the lack of guarantee of the rights to justice, truth, and memory of the victims of the armed conflict. Additionally, it analyzed the particular situation of groups and persons of special concern, such as persons deprived of liberty; women and LGBTI persons; indigenous peoples and persons of African descent; persons in the context of human mobility; and human rights defenders. The IACHR also analyzed other concerns related to ESCER and the situation of freedom of expression in the country.

5. The IACHR stated that, despite the decrease in the homicide rate, the levels of violence continued to be alarming. In this regard, it noted the continuity of a security policy with an emphasis on repression through the intervention of police and military forces, which is ineffective in responding to the structural causes that reproduce and trigger violence. In addition, it addressed allegations of serious human rights violations in this context and an increase in the number of disappearances of persons in the country. A lack of specific information and transparency about the Territorial Control Plan added to this. The IACHR also analyzed the effects of the measures taken in El Salvador to address the COVID-19 pandemic and, in particular,

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<sup>1</sup> Commissioner Carlos Bernal Pulido approved the report and issued a partial reasoned vote. This reasoned vote is available at the Executive Secretariat of the IACHR.

the motions to remand that led to hundreds of reports of arbitrary detentions, forced confinements, and other human rights violations registered in this context.

6. The Commission highlighted the progress made regarding memory, truth, and justice. Despite this, it noted with concern the existence of de jure and de facto obstacles to the State's compliance with its international obligations. It pointed out the application of legal figures that impede the prosecution and punishment of persons responsible for serious human rights violations, the need to provide more information and participation of victims and civil society organizations in such processes, the lack of complete and systematized access to the archives of the security forces that acted during the armed conflict; the absence of legal frameworks regarding the search for missing persons; among others.

7. The report also analyzed the worrying situation of the prison population in El Salvador, noting with great concern the high levels of overcrowding and the fact that prisons were characterized by failing infrastructure, unhealthy conditions, and the absence of programs, especially those that allow for reintegration. The IACHR addressed the impact of violence and discrimination on the rights of women and LGBTI persons in El Salvador, given the prevalence of misogynist, sexist, and discriminatory socio-cultural patterns that permeate Salvadoran society. It also highlighted the direct actions of maras and gangs as the driving force of displacement in El Salvador and the repeated violation of the human rights of the internally displaced population, including their economic, social, cultural, and environmental rights. Regarding the rights of indigenous peoples and communities and persons of African descent, the Commission stressed the need to improve on the collection of disaggregated statistical information on these populations as a fundamental aspect for taking actions that guarantee their full enjoyment and exercise of their rights. In addition, it noted with particular concern an increase in stigmatizing discourse that seeks to delegitimize the denunciation work carried out by organizations and human rights defenders, pointing out that it is essential to advance a framework and policy for the effective and comprehensive protection of human rights defenders.

8. The IACHR also addressed poverty and exclusion in El Salvador, noting that people living in poverty in the country have been particularly affected by acts of violence both during the internal armed conflict and after the restoration of peace. It also highlighted the unequal access to water as a cause for concern, and its particular impact on the populations with fewer economic resources and in a more vulnerable condition. The Commission noted complaints about the increasingly hostile environment for exercising of freedom of expression in El Salvador, which would especially affect independent journalists. It also raised concerns about diversity and pluralism in public debate and analyzed restrictions on access to public information and the State's obligations of transparency and accountability.

9. By communication dated November 2, 2021, the IACHR requested the State of El Salvador to submit information on compliance with the recommendations contained in the Country Report within the established six-month period. On July 28, 2022, the State submitted a report on the status of compliance with the recommendations.<sup>2</sup> On September 20, 2022, the IACHR requested the State to update the information and received a supplementary report on October 11, 2022,<sup>3</sup> The Commission appreciates and is grateful for the information received, which was included in the present report. Likewise, the IACHR is also thankful for the information provided by civil society organizations.

10. This follow-up report is divided into five sections that deal with the consideration of the measures taken by the State to comply with the Commission's recommendations and the pending challenges. The recommendations are evaluated in accordance with the General Guidelines for Follow-up on IACHR

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<sup>2</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an in-loco visit in 2019, [Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022](#).

<sup>3</sup> State of El Salvador, update on compliance with the recommendations contained in the Report "Situation of Human Rights in El Salvador," [Diplomatic Note MPOEA-OAS-178/2022, October 11, 2022](#).

Recommendations and Decisions,<sup>4</sup> following the structure used in the IACHR report being followed up in this report. Each section refers to the recommendations issued by the IACHR in the respective chapters, and the main aspects of progress and challenges identified by the IACHR are analyzed in light of the information submitted by the State and civil society organizations, as well as the information that the Commission has gathered in monitoring the general human rights situation in the country. To this end, the Commission has made use of information received from the State during public hearings, investigations; carried out on its initiative, input from the petition and case mechanism, precautionary measures, and requests for information under the authority established in Article 41 of the American Convention on Human Rights, as well as information available from other public sources and the decisions and recommendations of specialized international organizations, among others. Finally, the IACHR presents its conclusions and recommendations.

11. On January 27, 2023, the Commission sent to the State a copy of the preliminary draft of this report, in accordance with Article 59, paragraph 10, of its Rules of Procedure, and requested the State to submit its observations. On February 13, 2023, the Commission received the State's observations and comments, which were incorporated into this version, as relevant. The complete document is attached to this Report.<sup>5</sup> The final report was approved by the Commission on March 11, 2023.

12. The IACHR reiterates the importance that the State of El Salvador fully complies with the recommendations made in the report under follow-up.

## II. FOLLOW-UP ON THE RECOMMENDATIONS

### A. CITIZEN SECURITY

- **1. Publicize the Territorial Control Plan and incorporate instances of participation by the civil society and dissemination of citizen security policies, including the Territorial Control Plan.**
- **2. Urgently carry out diligent and impartial investigations in all cases where civilians are injured or killed by police or military forces, in order to establish the facts and determine the corresponding criminal responsibilities.**
- **3. Strengthen the capacities of the National Police Force so as to make headway on implementing the plan to gradually replace the armed forces performing public security tasks, in accordance with inter-American human rights standards.**

13. Regarding the recommendation to **publicize the Territorial Control Plan and incorporate instances of participation by the civil society and dissemination of citizen security policies**, the State reported that its publicity has been developed through different mechanisms, indicating actions carried out throughout 2021.<sup>6</sup> It pointed out that other stages of the Plan were made known, including projects to strengthen the social fabric in various communities, as well as equipment for security elements, and that a permanent dissemination of the actions developed as part of the Plan and the results of its effectiveness are being maintained. The State reported that the following phases of the Plan were being carried out: Phase 1, "Preparation," Phase 2, "Opportunities," Phase 3, "Modernization," and Phase 4, "Incursion," each of which had been publicized at the beginning of its execution. The Commission notes that the State didn't present information on specific and detailed measures that have been implemented to guarantee the publicity of this Plan or mechanisms to ensure citizen participation in its implementation.

<sup>4</sup> IACHR, [Directrices Generales de seguimiento de recomendaciones y decisiones de la Comisión Interamericana de Derechos Humanos](#), OEA/Ser. L/V/II.173 Doc. 177, September 30, 2019.

<sup>5</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', [Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023](#).

<sup>6</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador," approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 5.

14. In its comments on the draft of this report, the State stated that each of the phases of the Territorial Control Plan implemented have been publicized to the extent and time necessary for each citizen to be aware of its scope and benefits.<sup>7</sup> The State also indicated that the participation of civil society and citizens, in general, is concretized through each beneficiary of the programs implemented for the prevention of violence and reconstruction of the social fabric, mentioning the Urban Centers for Wellbeing and Opportunities (CUBO) initiative as an example of these programs.<sup>8</sup>

15. In turn, the Commission is aware that the Territorial Control Plan consists of seven phases. In addition to the phases indicated by the State above, the Commission notes that the Executive Branch announced on November 24, 2022, the implementation of phase five (extraction)<sup>9</sup>, while phases six and seven haven't yet been made public.<sup>10</sup> The Commission regrets that all information and documents related to the Territorial Control Plan remain confidential, according to the press and civil society organizations.<sup>11</sup> The IACHR also has been informed of challenges on the matter of transparency from different institutions working on issues related to citizen security. In this regard, the Commission takes note of the periodic dissemination of joint figures from the Armed Forces, the National Civilian Police (PNC) and the Ministry of Justice and Security regarding the number of persons arrested during the state of exception, as well as the number of daily homicides according to the PNC.<sup>12</sup> On the other hand, civil society organizations point out a lack of access to statistical data and official records on violence and crime from the Attorney General's Office and the Institute of Forensic Medicine, as well as other data from the PNC, making it difficult to verify, contrast, and analyze information on citizen security.<sup>13</sup>

16. The IACHR also notes that, on March 27, 2022, the Legislative Assembly issued Decree No. 333 "State of Exception," based on a proposal by the Executive Branch and based on circumstances related to citizen security.<sup>14</sup> This decree [suspends different rights and guarantees protected by the American Convention on Human Rights](#), and was extended successively in consecutive months<sup>15</sup>. In this context, the IACHR considers

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<sup>7</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 2-3.

<sup>8</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 2.

<sup>9</sup> Ministry of Security and Justice of El Salvador, [Presidente Nayib Bukele anuncia fase 5 del Plan Control Territorial: Extracción](#), November 24, 2022.

<sup>10</sup> Presidency of the Republic, [El Salvador alcanza niveles de seguridad inéditos con la implementación del Plan Control Territorial](#), June 24, 2022; El Salvador Info, [El Salvador Territorial Control Plan. President Nayib Bukele Plan Control Territorial](#), November 30, 2022.

<sup>11</sup> Human Rights Watch, Cristosal, ["Podemos detener a quien queramos" Violaciones generalizadas de derechos humanos durante el "régimen de excepción" en El Salvador](#), December 2022, p. 43; Gato Encerrado, [Es falso que la información sobre el Plan Control Territorial es pública](#), November 11, 2021.

<sup>12</sup> E.g., PNC El Salvador, [Twitter @PNCSV] (December 31, 2022). "[Finalizamos el viernes 30 de diciembre, con 0 homicidios en el país \(We ended Friday, December 30, with 0 homicides in the country.\)](#)"; PNC El Salvador, [Twitter @PNCSV] (December 31, 2022). "[Finalizamos el miércoles 28 de diciembre, con 0 homicidios en el país. \(We ended Wednesday, December 28, with 0 homicides in the country.\)](#)"; Ministry of Security, [Twitter @SeguridadSV] (December 19, 2022). "[Estamos haciendo justicia en nombre de miles de salvadoreños. \(We are doing justice on behalf of thousands of Salvadorans.\) #Seguimos 24/7 en esta #GuerraContraPandillas. \(#WeContinue 24/7 in this #WarAgainstGangs.\) 60,452 terroristas capturados #Guerracontrapandillas \(60,452 terrorists captured #Guerracontrapandillas\)](#)"; Ministry of Security, [Twitter @SeguridadSV] (December 13, 2022). "[La #GuerraContraPandillas continúa, no nos vamos a detener hasta que cada terrorista esté tras las rejas. \(The #WarAgainstGangs continues, we will not stop until every terrorist is behind bars.\) #Seguimos.60,019 terroristas capturados #Guerracontrapandillas \(60,019 terrorists captured #War against gangs\)](#)".

<sup>13</sup> La Prensa Gráfica, [4,060 personas con reporte de desaparición entre 2020 y 2022](#), November 16, 2022; WOLA, [Corrupción y Régimen de Excepción en El Salvador: una democracia sin oxígeno](#), September 27, 2022; La Prensa Gráfica, [Homicidios a la baja, pero sin contraste](#), August 3, 2022; La Prensa Gráfica, [Mesa tripartita desaparecería por falta de funcionamiento](#), July 29, 2022; Reuters, [In El Salvador, discrepancy over deaths and mass graves alarms critics](#), August 3, 2022; Gato Encerrado, [Policía reserva datos de feminicidios y declara confidencial detalles de los delitos](#), July 28, 2022; Gato Encerrado, [Policía reserva información sobre homicidios y personas desaparecidas](#), June 21, 2022.

<sup>14</sup> Legislative Assembly, Decree No. 333 - To Declare Throughout the National Territory "Regime of Exception", March 27, 2022.

<sup>15</sup> Legislative Assembly, Decree No. 358 - Prolong until May 25, 2022, the effects contained in Legislative Decree No. 333/22, which established the regime of exception, to give continuity to the re-establishment of order, citizen security, and territorial control, April 24, 2022; Legislative Assembly, Decree No. 396 - Prolong throughout the national territory for a term of 30 days as of May 26, 2022, under

that it is extremely important to comply with this recommendation and reinforces its call to the State of El Salvador to guarantee the publicity of data and state actions regarding citizen security, as well as citizen participation in the design, implementation, and evaluation of this public policy. Therefore, the IACHR considers that this recommendation is **pending compliance**.

17. In order to guide the follow-up process of this recommendation, the IACHR emphasizes that considering that the effectiveness of the Territorial Control Plan and other citizen security initiatives necessarily requires the reconstruction of the social fabric, this objective can only be achieved through the involvement of the civil society. These approaches will allow access to key information to ensure the effectiveness and sustainability of citizen security actions, through a human rights perspective. In this sense, the IACHR invites the State to adopt compliance measures consisting, for example, of dissemination campaigns informing the content and implementation roadmap of the stages of the Territorial Control Plan. Likewise, the level of compliance with this recommendation will progress to the extent that the State schedules and develops workspaces (e.g., meetings, roundtables, or spaces similar to the now defunct Citizen Security Council) with the interested civil society so that the latter can contribute to the structuring of the Plan and other citizen security policies.

18. Regarding to the recommendation to **urgently, diligently, and impartially investigate all cases in which civilians are injured or killed by police or military forces**, the State pointed out that it has permanent mechanisms in place to monitor police and military actions, aimed at ensuring that all police and military activities are carried out with strict respect for human rights. It also reported on prevention measures, such as the training of agents of the National Civilian Police (PNC), the socialization of its institutional Human Rights Policy, and the development, updating, and dissemination of joint action protocols between the PNC and the Armed Force (FAES), among others.<sup>16</sup>

19. The State informed the Commission that the Prosecutor General's Office (FGR) is responsible for investigating criminal acts, including those in which the active subject is police or military. In this regard, it provided data from the Department of Statistics of the Directorate of Analysis, Investigation Techniques, and Information of the Prosecutor General's Office relating to the 2015-2022 period up to March 16.<sup>17</sup> Regarding 2022, it indicated that 6 police officers and 1 military officer were being investigated for voluntary manslaughter; 1 police officer was investigated for involuntary manslaughter and 3 for firearm shooting, totaling 11 active investigations at the Prosecutor's Office. Moreover, it reported that one case of a military officer was prosecuted for voluntary manslaughter, 1 case of a military officer for firearm shooting, and 1 police officer for the same type of crime, totaling 3 cases prosecuted. Finally, it stated that 2 police officers were acquitted of the crime of felony murder, while 8 were convicted this year. According to the figures shared by the State, since 2015, a total of 99 investigations were opened for different modalities of homicide or firearm

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the same conditions, the effects of Legislative Decree No. 333, dated March 27 of the current year, May 25, 2022; Legislative Assembly, Decree No. 427 - Prolong throughout the national territory for a term of 30 days as of June 25, 2022, under the same conditions, the effects of Legislative Decree No. 333, dated March 27 of the current year, June 21, 2022; Legislative Assembly, Decree No. 454 - Prolong until August 19, 2022, the effects contained in d. l. No. 333/22, which established the regime of exception, July 19, 2022; Legislative Assembly, Decree No. 476 - Prolong until September 18, 2022, throughout the national territory, the effects contained in d. l. No. 333/22, which established the exception regime, August 16, 2022; Legislative Assembly, Decree No. 503, Extends throughout the national territory for a term of 30 days; the effects of Legislative Decree No. 333, dated March 27, 2022, September 14, 2022; Legislative Assembly, Decree No. 530, Extends throughout the national territory, for a term of 30 days, the effects of Legislative Decree No. 333/22, which established the regime of exception, October 14, 2022; Legislative Assembly, Decree No. 569, Prolong in the entire national territory, for the term of 30 days, the effects of Legislative Decree No. 333, dated March 27 of the current year, November 15, 2022; Legislative Assembly, Decree No. 611 - Prolong in the entire national territory, for the term of 30 days, the effects of Legislative Decree No. 333, dated March 27, 2022, December 14, 2022.

<sup>16</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador," approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 6.

<sup>17</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the Report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, July 2022. Annex 1 - Investigations of cases involving military or police officers.

shooting by police or Armed Force officers; 431 investigations were archived; and cases were prosecuted against 1,870 officers. Likewise, 124 officers were acquitted and 88 convicted during the last 8 years.

20. Now, in the [country report](#), the IACHR noted information from civil society organizations indicating that, based on public data, a total of 1,957 deaths of civilians and 68 of public officials had been registered in the context of 2,514 clashes between alleged gang members and security forces during the years from 2014 to 2019. Referring to the same period, the Human Rights Ombudsman's Office documented 48 cases where an extrajudicial execution may have taken place, involving more than 130 victims. Although the IACHR notes an increase in the opening of investigation' and prosecution of cases over the last few years, it observes that the cases sentenced in the justice administration system aren't proportional to the number of reported incidents.

21. In its observations on the draft of this report, the State reiterated the data provided and expressed that it doesn't share the IACHR's assessment of compliance with the recommendation.<sup>18</sup> Likewise, the IACHR considers that the information provided by the State about 2022 is insufficient to evaluate progress in this matter after the publication of the country report, given that it is limited to the first quarter of this year. The Commission considers as especially relevant the information on the investigations and administration of justice for possible instances of abuse framed during the period that the state of exception was in place when citizen security operations were stepped up. It also highlights the absence of updated official data on incidents of injured or dead persons related to police or Armed Force officers that could be construed as human rights violations. It is also concerning that, according to public information, the figures published this year regarding violent deaths do not include persons who died, when these are suspected of criminal activities.<sup>19</sup>

22. Civil society organizations have said that since the establishment of the state of exception until October 2022, a total of 101 armed confrontations took place, in which 80 alleged gang members and three police officers died.<sup>20</sup> They claim to have received different complaints of incidents, including beatings during the security operations or the arrest of persons considered suspects, noting that there were deaths in these situations; also affecting persons with disabilities and pregnant women.<sup>21</sup> In this context, the Commission [expressed its concern](#) regarding the different complaints of abuses in the use of force by agents of the National Civilian Police and the Armed Force within the framework of the state of exception that would have resulted in injured persons. Likewise, in November, various organizations submitted a report to the Committee against Torture of the United Nations, registering dozens of complaints of violations of the right to life or physical integrity by members of the FAES and PNC over the last few months.<sup>22</sup> Despite this, they say that the FGR hasn't disclosed information on investigations into cases of police or military officers allegedly responsible for abuses perpetrated in this context, having indicated in July that such information was confidential.<sup>23</sup>

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<sup>18</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 4.

<sup>19</sup> La Prensa Gráfica, [Los datos de la Policía y Fiscalía sobre los homicidios durante el régimen no coinciden](#), November 10, 2022; Reuters, [In El Salvador, discrepancy over deaths and mass graves alarms critics](#), August 3, 2022; WOLA, [Corrupción y Régimen de Excepción en El Salvador: una democracia sin oxígeno](#), September 27, 2022.

<sup>20</sup> La Prensa Gráfica, [Enfrentamientos de PNC en marco de régimen de excepción arrojarían saldo de 80 fallecidos](#), November 28, 2022.

<sup>21</sup> IACHR, Hearing 'Arbitrary Detentions and the Situation of Persons Deprived of Liberty in the State of Exception in El Salvador', 185th session, October 25, 2022; Cristosal, [Violaciones a los derechos humanos. Durante el régimen de excepción en El Salvador. Informe situacional período de junio a septiembre de 2022](#), October 19, 2022, p. 13; Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. Informe situacional período del 27 de abril al 25 de mayo de 2022](#), June 14, 2022, p. 12, 16, 17, 26; Cristosal, [Violaciones a los derechos humanos durante el régimen de excepción en El Salvador. Informe situacional período del 27 de marzo al 26 abril de 2022](#), May 2022, p. 7, 10; La Prensa Gráfica, [Régimen de excepción | Familia denuncia captura de adolescente embarazada que perdió a su bebé en prisión](#), October 7, 2022; La Prensa Gráfica, [Policías son los más denunciados durante régimen de excepción](#), September 1, 2022; La Prensa Gráfica, [PNC no sanciona violencia policial y aleja a familiares](#), April 27, 2022.

<sup>22</sup> Agrupación Ciudadana por la Despenalización del Aborto; Asociación Azul Originario; et al.; [Informe alternativo en seguimiento a evaluación del Comité Contra La Tortura de la ONU a El Salvador](#), November 8, 2022, p. 26-27.

<sup>23</sup> Human Rights Watch, Cristosal, ["Podemos detener a quien queramos" Violaciones generalizadas de derechos humanos durante el "régimen de excepción" en El Salvador](#), December 2022.



23. The Commission takes note of all the efforts indicated by the State about recent years. However, it understands that it does not have all the details to evaluate the efforts undertaken and their results in compliance with the recommendation, for the period following the publication of the country report and in light of the events that took place within the framework of the state of exception, for which it considers it to be **pending compliance**.

24. In order to guide the process of implementation of this recommendation, the IACHR wishes to state that progress in its compliance depends on knowing the number of complaints or known incidents about injuries or killings allegedly perpetrated by the police or military forces, and the actual number of investigations opened, and judicial proceedings carried out with respect to these incidents. In this regard, the IACHR urges the State to ensure that the implementation of this recommendation is based, first, on the complete systematization and adequate attention to these complaints or known incidents, so that the competent authorities proceed to launch investigations and urgent and appropriate proceedings to identify the alleged perpetrators. In this regard, the IACHR requests that the follow-up information provided describes how this data corresponds to the way the authorities are carrying out the corresponding investigation and prosecution procedures.

25. Concerning to the recommendation to **strengthen the capacities of the police to advance in the gradual relief of the armed forces in public security tasks**, the State pointed out that in accordance with the constitutional power of the President of the Republic, the use of the Armed Force for security tasks has been ordered, in the face of situations of criminality and citizen insecurity, under a framework of legality that has been determined through Executive Decrees. The State also indicated that it had established mechanisms to orient and train military personnel permanently, at all hierarchical levels, on human rights, with emphasis on the use of force and the utilization of firearms, through courses, seminars, conferences, and training, especially aimed at all members who are directly involved in supporting public security tasks.<sup>24</sup> According to the information provided by the State, the Armed Force, within the framework of its collaboration in public security tasks, maintains strict adherence to its constitutional role, in coordination with the PNC, and its function is clearly limited to supporting the PNC in certain tasks of the Territorial Control Plan. As per the State, this has allowed this support not to lead to an increase in lethality or institutional violence.<sup>25</sup>

26. The State reported that, in order to strengthen the National Civil Police (PNC), 3,962 officers were promoted in the various police ranks (basic, executive, and senior), from June 2019 to April 2022; the PNC has been provided with a budgetary reinforcement, which has been allocated to improve the working conditions and social benefits of the officers, as well as the provision of equipment; more police stations have been opened and the infrastructure of existing stations has been improved, with the support of the penitentiary system. In addition, it was noted that between June 2019 and April 2022, a total of 1,963 officers have graduated and received training in human rights.<sup>26</sup>

27. In its observations on the draft of this report, the State reiterated that State institutions, particularly the Armed Forces and the National Civil Police, are constantly strengthening their human rights capacities. It also pointed out that all measures adopted seek to comply to guarantee the population's right to

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<sup>24</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 8.

<sup>25</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after the in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 9 and 10.

<sup>26</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after the in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 8 and 9.

life and security.<sup>27</sup> He also warned that all legislative provisions, as well as the actions of the institutions in charge of public security, are subject to the permanent constitutional control of the Constitutional Chamber of the Supreme Court of Justice, which acts upon the activation of the mechanisms for the protection of the constitutional order, which are available to any citizen.<sup>28</sup>

28. Despite this, the Commission has observed that, contrary to progress in complying with this recommendation, the State's security strategy, including the Territorial Control Plan, has resulted in an increased military presence in citizen security tasks. In this regard, within the framework of the implementation of phase four of the Territorial Control Plan, an announcement was made to increase the military personnel participating in security tasks to 40,000.<sup>29</sup> Additionally, according to data from the Ministry of National Defense, an additional element is related to the number of military personnel assigned to security tasks, which, by January 2022, doubled the number of officers from 8,626 to 15,259 soldiers.<sup>30</sup> Moreover, the Commission has learned that, under the context of the state of exception, the National Civilian Police and the Armed Force have conducted various joint citizen security operations at the national level, which have included the implementation of military blockades in various cities.<sup>31</sup> In this regard, the Commission notes that, in the military blockade established in the municipality of Soyapango, most of the troops mobilized were members of the Armed Force of El Salvador—8,500 soldiers—while 1,500 officers were from the PNC.<sup>32</sup>

29. Therefore, the IACHR considers that this recommendation is **pending compliance**. Likewise, it **reminds** that maintaining public order and citizen security should be primarily reserved to civilian police forces, ensuring that the participation of the armed forces in these tasks is extraordinary, temporary, subordinate, and supplementary to the work of civilian corporations, as well as regulated and supervised by competent, independent, and technically capable civilian bodies.

30. To guide the follow-up process of this recommendation, the Commission notes that progress in its level of compliance requires that the State report information that demonstrates the implementation of measures to strengthen the capabilities of the police, to the point of allowing the gradual replacement of the Armed Forces in public security tasks. This information may consist, for example, in the description of institutional strengthening measures such as sustained and continuous training programs that allow them to optimize and maximize the performance of their public security tasks, the implementation of police protocols that employ good practices in the performance of these tasks, based on a human rights perspective, and even strategies that ensure an increase in the number of members of civilian police forces.

## B. MEMORY, TRUTH, AND JUSTICE WITH RESPECT TO THE INTERNAL ARMED CONFLICT

- 4. Implement a National Reconciliation Law in accordance with inter-American standards on transitional justice, in particular with respect to the accountability of the perpetrators of serious human rights violations and the participation of the victims.

<sup>27</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 3.

<sup>28</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 4.

<sup>29</sup> Agrupación Ciudadana por la Despenalización del Aborto; Asociación Azul Originario; et al.; [Informe alternativo en seguimiento a evaluación del Comité Contra La Tortura de la ONU a El Salvador](#), November 8, 2022, p. 4-5.

<sup>30</sup> Servicio Social Pasionista, [Cambios y continuidades en el rol de la Fuerza Armada en la seguridad ciudadana, 1992-2022](#), June 2022, p. 24.

<sup>31</sup> Diario El Mundo, [Bukele: "Soyapango está totalmente cercado" por 10.000 soldados y policías](#), December 3, 2022; Gato Encerrado, [Comasagua bajo cerco militar tras homicidio](#), October 2, 2022; La Prensa Gráfica, [Expertos: "Cercos militares son dirigidos a personas pobres"](#), November 30, 2022; La Prensa Gráfica, [Abuso policial y militar en El Salvador es más alto en zonas rurales que en las urbanas](#), November 30, 2022; La Prensa Gráfica, [Régimen de excepción está vulnerando a la niñez](#), March 30, 2022.

<sup>32</sup> Diario El Mundo, [Bukele: "Soyapango está totalmente cercado" por 10.000 soldados y policías](#), December 3, 2022.

- 5. Investigate, prosecute and, where appropriate, punish crimes consisting of serious human rights violations perpetrated during the internal armed conflict.
- 6. Ratify the Inter-American Convention on the 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.
- 7. Order, systematize, and make available to the victims, the authorities of the justice system, and those in charge of searches, as well as to society as a whole—in the latter case, with the treatment of the protection of sensitive aspects—all the documentation of the security forces that acted during the internal armed conflict, reconstructing the archives that were destroyed or the documents that were not produced when they should have been legally produced.
- 8. Put in place a regulatory framework that regulates the national policy for the search for victims of forced disappearance, the creation of a genetic bank, the exhumation processes, as well as a law that regulates the rights of family members related to the absence of disappeared victims.
- 9. Provide the CNB, CONABÚSQUEDA, and the IML with the human, economic, logistic, scientific, and other resources necessary to be able to investigate and determine the whereabouts of persons who disappeared in the context of the armed conflict.
- 10. Develop a regulatory and institutional framework that guarantees a policy of comprehensive reparations to the victims of the armed conflict, immediately restoring, pending the development of such a framework, the reparations program provided for in Executive Decree 204 of 2013.
- 11. Create spaces for listening to the victims of the internal armed conflict that allow them to express their needs with respect to the different state benefits in terms of truth, memory, justice, and reparation for serious human rights violations.

31. With regards to the recommendation of **implementing a National Reconciliation Law**, the State said that, since September 2021, the Justice and Human Rights Commission of the Legislative Assembly has been conducting studies for the creation of a Law on Restorative and Transitional Justice in order to redress the rights of the victims of the armed conflict. In this process, it has defined the following as a road map: i) study of the unconstitutionality ruling by the Supreme Court of Justice, ii) study of the presidential veto of the Transitional Justice Law approved by the previous legislature, iii) creation of an inter-institutional round table, iv) structuring of the law, drafting of articles of the law, v) discussion and issuance of an opinion, vi) knowledge of the opinion by the plenary for its approval. Moreover, it said that various actors have been heard, including the Supreme Court of Justice; institutions under the Attorney General's Office; the Ministry of Foreign Relations; the Institute of Forensic Medicine; DIGESTYC; organizations, associations, and committees of families and victims of the armed conflict.<sup>33</sup>

32. Although the State has not detailed the current state of development of the process, according to information from the press, the executive branch has a draft bill of the Special Law on Transitional Justice for Victims of Human Rights Violations in the context of the Salvadoran armed conflict to be presented to the legislative branch.<sup>34</sup> In this regard, organizations of victims and the civil society are demanding that their contributions be considered in the text of the bill and have criticized the delay in its approval.<sup>35</sup> The IACHR recognizes that the State has initiated efforts to consult with relevant actors for the drafting of the bill; however, in the absence of information on the content of the bill and the status of its progress, it considers that the recommendation is **pending compliance**.

<sup>33</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, July 2022, pp. 24-25.

<sup>34</sup> La Prensa Gráfica, [Gobierno blindará a la Fuerza Armada en su ley de justicia transicional](#), September 19, 2022.

<sup>35</sup> Voces Diario Digital, [Asamblea Legislativa continúa sin aprobar ley de justicia transicional](#), November 7, 2022; El Salvador.com, [Estudio de Ley de Justicia Transicional lleva un año estancado en la Asamblea](#), September 9, 2022; SWI Swissinfo, [Exigen al Congreso de El Salvador retomar ley para víctimas de guerra civil](#), September 7, 2022; Radio YSUCA, [Aprobación de Ley de Justicia Transicional es una deuda legislativa](#), September 3, 2022; DPLF, [Carta Pública a Asamblea Legislativa de El Salvador a 6 años desde sentencia inconstitucionalidad de Ley de Amnistía](#), July 20, 2022; La Prensa Gráfica, [En pausa Ley de Justicia transicional](#), April 18, 2022.

33. In order to guide the process for following up of this recommendation, the IACHR emphasizes the importance, on the one hand, of speeding up the process of drafting this legislative motion and its processing and, on the other hand, that its drafting considers the perspective and contributions of organizations of victims and the civil society. In this regard, the IACHR would like to recall that, in transitional justice contexts, it has identified victims' real and effective participation throughout the investigation, trial, and reparation processes as a challenge.<sup>36</sup> Considering that this transitional justice law must be based on the centrality of the victims, it will be essential that the establishment of spaces for their participation be the basis of this process. Likewise, the IACHR invites the State to ensure that the process of complying with this recommendation takes into account successful comparative experiences on transitional justice processes, especially with regard to the creation of spaces for continuous work with the victims in the drafting of this legislation, insofar as it is compatible and as long as it is relevant to the Salvadoran context. In addition, the IACHR invites the State to provide information on the existing draft bill and whether there is any roadmap planned for its processing.

34. With regards to the recommendation to **investigate, prosecute and, where appropriate, punish crimes consisting of serious human rights violations perpetrated during the internal armed conflict**, the State said that the Unit for the Investigation of Crimes Perpetrated During the Armed Conflict (UIDCA) of the Office of the Attorney General, in charge of exclusively investigating crimes against humanity and war crimes perpetrated in the context of the armed conflict in El Salvador, has its functions framed in a work plan the implementation of which is accompanied by the Human Rights Unit and the various prosecutors' offices. It also stressed that 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" incorporates into the methodological approach of the investigation the recognition of the victims and their families as subjects with full right to access to justice. Finally, it reported that the UIDCA was investigating 234 cases that occurred during the armed conflict at the national level, of which 22 have been prosecuted.<sup>37</sup>

35. Despite not having details of the implementation status of the UIDCA's work plan or of the cases investigated and prosecuted, the Commission notes that, since the period analyzed in the [Country Report](#), there has been an increase in the number of cases in both stages. In this context, the IACHR appreciates the amparo ruling issued by the Constitutional Chamber of the Supreme Court of Justice (CSJ) in the case of the massacre that occurred at the "José Simeón Cañas" Central American University.<sup>38</sup> Said ruling invalidated the resolution issued by the Criminal Chamber of the CSJ in 2020 that determined the absolute invalidity in the corresponding criminal proceedings and reaffirmed the definitive dismissal of the case. The IACHR also takes note of statements made by representatives of the University and the victims regarding the lack of participation of family members in the reopening of the case.<sup>39</sup>

36. The IACHR notes that, despite the increase in the number of cases investigated and prosecuted, no progress has been made in the implementation of judicial decisions establishing the facts, identifying the persons responsible, and, if applicable, imposing the respective sanctions for the serious human rights violations perpetrated during the internal armed conflict. Taking into account that some measures have been taken to investigate the facts referred to in the recommendation, but that additional investigative measures are needed, as well as the effective development of judicial proceedings, the Commission considers that the recommendation is in **partial compliance**.

37. In order to guide the implementation of this recommendation, the Commission invites the State to provide information on the effective execution of the work plan of the UIDCA and urges the

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<sup>36</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, par. 84.

<sup>37</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, July 2022, pp. 25-26.

<sup>38</sup> Constitutional Chamber of the Supreme Court of Justice, [Amparo 414-2021](#), January 5, 2022.

<sup>39</sup> ElSalvador.com, [La UCA pide "no instrumentalizar políticamente" la reapertura de la masacre de los jesuitas de 1989](#), January 7, 2022; Noticias UCA, [Ante el proceso judicial por la masacre en la UCA](#), March 14, 2022.

incorporation of a contextual approach in the investigation of serious human rights violations perpetrated in the context of the internal armed conflict. In this regard, it is essential for the Commission that this work plan considers the applicable inter-American standards, prevents the application of any legal figure that impedes these investigations, prosecutions and sanctions, and also ensures the necessary human and material resources to advance in its implementation. It also invites the State to report on the substantial progress of these investigations, as well as details on the implementation and roadmap 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.

38. With regards to **ratifying the Inter-American Convention on the Forced Disappearance of Persons** and the **International Convention for the Protection of All Persons from Enforced Disappearance**, the State informed that both treaties are pending ratification.<sup>40</sup> On the other hand, it has not provided information on the ratification of the **Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity**.

39. Given the lack of information on the steps taken to comply with the recommendation, the Commission considers it to be **pending compliance**. In this regard, the IACHR requests specific information on the existence of willingness to ratify these instruments and calls for the development of a road map to this end.

40. In relation to the recommendation to **order, systematize, and make available all the documentation of the security forces that acted during the internal armed conflict**, the State said that various military units are ordering, identifying, and classifying the collection of documents from the period from 1980 to 1992, as part of the actions to establish and identify useful and relevant information for the investigations required by the FGR, as well as to protect it and prevent its destruction. In this regard, it reported that, during the year 2021, approximately 3,000 special archive boxes were provided to the military units, with the purpose of safeguarding the documentation that is undergoing this process.<sup>41</sup>

41. The State did not provide updated information on the progress made in the implementation of this process of ordering and classifying the aforementioned information, nor on the efforts to make it accessible to the victims, judicial authorities, and society as a whole. In this regard, the IACHR has learned that victims' organizations and civil society organizations that make up the Roundtable against Impunity have demanded that the executive branch "cease blocking access to the historical military archives of the armed conflict held by the Armed Force in support of the judicial and administrative investigations of these crimes, as well as the work of recovering the memory and truth carried out by the victims of war crimes and crimes against humanity and their organizations".<sup>42</sup> In light of this, the Commission considers this recommendation to be **pending compliance**.

42. In order to advance in the process of implementing this recommendation, the IACHR urges the State to take and report on recent specific actions aimed at systematizing and disseminating the documentation of the security forces that acted during the internal armed conflict. These actions could include the creation of databases and the reconstruction of archives, as well as any action to disseminate this information to victims, judicial authorities, and society as a whole. Likewise, the IACHR reiterates that these actions are aimed at guaranteeing the public availability of documentation of any kind, including operational, administrative, financial, health, or public relations documentation on the actions of the security forces in the context of the internal armed conflict.

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<sup>40</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, July 2022, pp. 27-28.

<sup>41</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" approved after an on-site visit carried out in 2019, July 2022, pp. 28-29.

<sup>42</sup> VOCES Diario Digital, [Organizaciones señalan impunidad perpetua en casos de violaciones a derechos humanos durante la guerra](#), June 9, 2022.

43. On the recommendation to **put in place a regulatory framework that regulates the national policy for the search for victims of forced disappearance, the creation of a genetic bank, the exhumation processes, as well as a law that regulates the rights of family members related to the absence of disappeared victims**, the State indicated that, within the scope of Phase II of the project "Institutional strengthening in cases of disappearances related to organized crime to reduce impunity in El Salvador," it is planning on implementing, between 2020 and 2023, tools to manage cases of disappearances and tortures linked to organized crime.<sup>43</sup> This, with an emphasis on increasing the use of existing protocols and guides on the matter; strategically conforming and strengthening the investigation; improving the response of the criminal justice system and the response to victims; and implementing a software program for the Single Registry of Disappeared Persons. It also recalled actions taken prior to the publication of the [Country Report](#) on this matter, among which are the drafting of the "Law on the Disappearance of Persons" with the purpose of ensuring a comprehensive approach to cases of disappeared persons under development by the Attorney General's Office; and the approval of Decree No. 815—Law on the National DNA Data Bank—in January 2021. The State said that it was working on the formulation of the regulations of Decree No. 815 and the respective protocols.

44. The Commission appreciates the efforts reported by the State and, considering that the approval of the regulations of the Law on the National DNA Data Bank is pending, it understands that the recommendation is in substantial partial compliance with regard to the aspect of putting in place a regulatory framework for the creation of a genetic bank. On the other hand, while the IACHR has taken note of the tools and actions implemented to improve on the institutional functioning and inter-institutional coordination of the institutions responsible for the search and identification of disappeared persons, it has also identified the persistence of challenges and has called for the implementation of special legislation on this matter. The Commission notes that the relatives of disappeared persons and human rights organizations have petitioned the Legislative Assembly to approve national legislation in this regard.<sup>44</sup>

45. In addition, with respect to the National Commission for the Search for Disappeared Adults in the Context of the Armed Conflict and the National Commission for the Search for Children Disappeared during the Armed Conflict, the IACHR has called on the State to ensure greater legal security and sustainability over time of the actions carried out by both institutions through the implementation of a law. In this sense, the Commission considers that, as a whole, this recommendation is considered to be in **partial compliance**.

46. In this regard, in order to guide the implementation of this recommendation, the IACHR emphasizes that its content implies the adoption of regulations and legislation on different aspects related to the search for persons who are victims of forced disappearance. Consequently, the Commission calls on the State to adopt and report on the development and approval of the regulations specified in the recommendation, including progress made in the approval of the "Law on the Disappearance of Persons," the regulation of the Law on the National DNA Data Bank, the regulation of exhumation processes, and the law on the rights of family members regarding the absence of disappeared victims.

47. Regarding the recommendation to **provide the CNB, CONABÚSQUEDA, and the IML with the necessary resources to be able to investigate and determine the whereabouts of persons who disappeared in the context of the armed conflict**, the State said that these commissions have their own budget and the human, financial, and technological resources to carry out their work.<sup>45</sup> In particular, it reported that for scientific matters, it has in place a Technical-Scientific Cooperation Agreement with the Argentine

<sup>43</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" approved after an on-site visit carried out in 2019, July 2022, pp. 30-32.

<sup>44</sup> La Prensa Gráfica, [Familiares de desaparecidos acuden a la Asamblea Legislativa y presentan cinco peticiones a favor de las víctimas](#), December 6, 2022.

<sup>45</sup> State of El Salvador. The State of El Salvador report to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" was approved after an in-loco visit in 2019, July 2022, pp. 32-33.

Forensic Anthropology Team and another with the Forensic Anthropology Foundation of Guatemala, dated 2021; in the matter of archives, it has an agreement with the National Registry of Natural Persons to obtain authentications of free certificates; and in the area of historical memory, there is an agreement with the Ministry of Culture.

48. The State also provided information on the results of the work of the CNB and CONABÚSQUEDA, noting that, as of December 2021, both commissions had investigated more than 900 cases of disappeared children and adults, of which 116 had been solved. In addition, it noted that, in the last three years, seven events were carried out as symbolic mourning or restitution of mortal remains to family members. The State also said that 24 exhumations were carried out, from which the skeletal remains of 41 children and adults were recovered, most of them identified and returned, and that there were other cases in the process of being identified to return them to their relatives. It pointed out that these results have been achieved in coordination with institutions such as the Attorney General's Office, the Institute of Forensic Medicine, the Argentine Forensic Anthropology Team, or the Forensic Anthropology Foundation of Guatemala, in addition to support and synergy with local governments, associations, and relatives of the municipalities intervened. Among other efforts, the State reported on the carrying out of psychosocial workshops; the collection of more than 150 DNA samples for genetic profile analyses; progress made in the creation of a Single Registry of Disappeared Children and Adults, and in maps of burial sites; and the review of files of the Supreme Court of Justice and reports of disappeared persons.

49. The Commission appreciates the results reported by the State. However, it notes that no detailed information has been provided on the resources dedicated to these institutions, nor on how they have been strengthened to fulfill their mandate to investigate and determine the whereabouts of persons who disappeared in the context of the armed conflict. On the other hand, it has learned that for the year 2022, the budget allocated to both commissions was reduced by \$91,675, which means a cut of 15.5% when compared to the previous year.<sup>46</sup> In this regard, civil society organizations have pointed out that 80% of the budget is allocated to pay salaries; without having resources for operating costs, equipment, and technical-scientific tools. In its observations on the draft of this report, the State indicated that the Ministry of Foreign Affairs assumes the operating costs of these government bodies, which is additional and independent of the budget allocated to them.<sup>47</sup> It also indicated that it had considered the needs in the matter of health as a result of the COVID-19 pandemic and the prevention of violence, which has resulted in an adjustment of the budgets of various institutions, given the limited resources of the State and the need to prioritize these matters.<sup>48,49</sup> In light of this, the Commission considers this recommendation to be **pending compliance**.

50. In order to guide the implementation of this recommendation, the IACHR would like to invite the adoption of actions for the institutional strengthening of the 3 respective entities. This strengthening implies specific and additional efforts to these institutions' current and routine functioning and coordinating action. These efforts can be made, for example, through the allocation of additional budget, the increase and training of specialized staff, as well as the implementation of protocols that optimize and achieve an increase in the results of these institutions. Likewise, the IACHR wishes to clarify that the recommendation is aimed at

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<sup>46</sup> Citizen Group for the Decriminalization of Abortion; Original Blue Association; et al.; Alternative report in follow-up to evaluation of the UN Committee Against Torture to El Salvador, November 8, 2022, p. 37.

<sup>47</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 5.

<sup>48</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 5.

<sup>49</sup> The IACHR takes note of the information provided to the Inter-American Court of Human Rights regarding the measures adopted by both search commissions in connection with the supervisory hearing in the cases of the Serrano Cruz Sisters, Contreras et al. and Rochac Hernández, held in October 2022, as highlighted by the State in its observations to the present report. Likewise, since they are different bodies of the Inter-American System, on the next occasion, the Commission invites the State to also transfer to the IACHR the information relevant to the follow-up analysis of the recommendations of this report.

the implementation of measures to optimize the search for persons who disappeared in the context of the armed conflict, so the follow-up of the recommendation is based on the information that addresses this aspect.

51. Regarding the recommendation to **develop a regulatory and institutional framework that guarantees a policy of comprehensive reparations to the victims of the armed conflict, immediately restoring the reparations program provided for in Executive Decree 204 of 2013**, the State said that the Ministry of Local Development has conducted an analysis of the Decree in order to identify the need for reforms to guarantee a framework of reparations to the victims.<sup>50</sup> It also said that it has developed a process for training on transitional justice and psychosocial care for victims of the armed conflict aimed at delegates from various institutions linked by the decree. On the other hand, the State called to mind that the Justice and Human Rights Commission of the Legislative Assembly is developing a process for the creation of a Law on Restorative and Transitional Justice, which will, among other aspects, consider the measures of comprehensive reparation to the victims. Finally, it reported that the Salvadoran Women's Development Institute (ISDEMU) has been working on measures that seek to reconstruct the memory of women survivors and victims of serious human rights violations and crimes against humanity, in order to disseminate the memory of the women who were massacred, as well as to recognize and dignify their lives, and contribute to the right to truth and reparation. The IACHR values the initiatives taken within the framework of the ISDEMU and encourages the promotion of measures aimed at reparations for victims from various State agencies, in a coordinated manner and articulating gender and differential approaches.

52. In this regard, according to information dated April 2022 from the Ministry of Local Development on the Follow-up to the Annual Operational Plan, there had been no monetary transfers made to families and victims of serious human rights violations during the context of the internal armed conflict because the funds to do so had not been received from the Ministry of Finance.<sup>51</sup> In that context, the IACHR notes that, in May 2022, the Roundtable against Impunity demanded that the executive branch reactivate the reparation measures initiated with Decree No. 204 so that the victims would have access to the financial assistance contemplated and to the medical assistance and psychosocial care that was provided to them until a year ago.<sup>52</sup> In its observations on the draft of this report, the State informed that the Ministry of Local Development delivered monetary transfers to families and victims of severe human rights violations during the context of the internal armed conflict in May, in accordance with the Annual Operational Plan updated for June 2022.<sup>53</sup> The Commission appreciates the re-establishment of the measures framed in Executive Decree No. 204.

53. Likewise, concerning developing the recommended regulatory framework, the Commission notes that the State hasn't provided detailed information on the content of the draft bill for the Law on Restorative and Transitional Justice under development or the progress made on it and the steps taken for its approval. In this regard, it considers this recommendation is **partially in compliance**.

54. In order to guide the implementation of this recommendation, the IACHR notes that, beyond taking isolated reparation measures, it is necessary to implement a solid regulatory and institutional framework that guarantees a comprehensive reparation policy. In this regard, it reiterates that it is necessary to reactivate Executive Decree 204 of 2013, while the State implements, in a sustainable manner, a policy of comprehensive reparation to the victims of the armed conflict. Furthermore, considering that the passage of time aggravates and intensifies the damage caused by violations to the human rights of the victims, the IACHR urges that the comprehensive reparation measures be taken diligently and immediately.

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<sup>50</sup> State of El Salvador. The State of El Salvador Report to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations Contained in the Report "Situation of Human Rights in El Salvador" was approved after an in-loco visit in 2019, July 2022, pp. 34-35.

<sup>51</sup> Ministry of Local Development, [Informe de Seguimiento al Plan Operativo Anual -POA 2022](#). January-March period. April 2022.

<sup>52</sup> Radio Ysua, [40 años esperando justicia](#), May 11, 2022.

<sup>53</sup> State of El Salvador, Observations of the State of El Salvador to the draft Chapter V of the 2022 Annual Report, on the follow-up to the recommendations made by the IACHR in the report "Situation of Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-024/2023, February 13, 2023.



55. With regards to the recommendation to **create spaces for listening to the victims of the internal armed conflict**, the State said that in the process of formulating the Law on Restorative and Transitional Justice, a broad consultation process has been carried out with various sectors, including the victims of the armed conflict, family members, and organizations that represent them, who have submitted their contributions, assessments, and observations.<sup>54</sup> Moreover, it stated that, in the specific case of El Mozote, a process is being developed for dialogue and coordination with local leaders regarding the implementation of reparation measures. Likewise, it said that CONABÚSQUEDA has a permanent communication mechanism with communities and family members, and that it holds workshops with victims and family members; also, that the Unit for Assistance to War Veterans and Victims of the Armed Conflict of the Ministry of Health maintains permanent communication with members of the organizations that represent victims to follow up on the healthcare being provided to them.

56. The Commission values the information presented and considers that it is in **partial compliance**, taking into account the existence of spaces that would make possible the participation of the victims of the internal armed conflict, as well as their representatives. Likewise, in order to guide the implementation of this recommendation, it notes that progress in its level of compliance will depend on also providing information on participation mechanisms with regard to justice measures and the reparations program in force by virtue of Executive Decree No. 204/2013. Moreover, the IACHR calls on the State to increase the spaces for listening to the victims with a view to identifying which components should be covered in the reparations policy and that identify the specific needs of the victims, based on their particular situations or the presence of various factors of historical discrimination or vulnerability. Furthermore, the Commission will also value the provision of information regarding the results and main findings of these listening processes.

## C. SITUATIONS OF PARTICULAR GROUPS

### 1. Persons Deprived of Liberty

- 12. Establish a criminal policy aimed at using the deprivation of liberty as a measure of last resort, through the application of alternative measures, and to grant minimum guarantees to persons deprived of liberty.
- 13. Implement urgent and necessary measures to put an end to the use of police facilities as places to hold persons for long periods of time.
- 14. Provide sufficient human and financial resources in prisons in order to guarantee minimum conditions of detention for persons deprived of their liberty in accordance with inter-American standards.
- 15. Guarantee the holding of regular visits to prisons; for this, it is necessary to review Article 79-A of Decree 93—Reforms to the Penitentiary Law.
- 20. Take the necessary measures to guarantee differentiated care, with a gender-based approach, to women deprived of liberty.
- 16. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and to create the National Mechanism for the Prevention of Torture.
- 17. Approve the Organic Law of the Attorney General's Office, as well as grant it a budget that allows it to act in a manner consistent with its workload.

57. With regards to the recommendation related to **establishing a criminal policy aimed at using the deprivation of liberty as a measure of last resort**, the State said that the criminal prosecution carried out by the Office of the Attorney General (FGR) is limited to the regulations in force under the applicable constitutional principles and the human rights approach. In this sense, it reported that article 10 of the Criminal Prosecution Policy of the FGR recognizes that "the deprivation of liberty is the exception and not the general

<sup>54</sup> State of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the Status of Compliance with the Recommendations contained in the Report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, July 2022, p. 35.

rule," except in "cases of legal prohibition of the application of alternative or substitute measures to preventive custody, as provided in article 331 of the Code of Criminal Procedure." In addition, it said that in order to guarantee that the application of deprivation of liberty is carried out in strict compliance with the law, the Salvadoran Criminal Code typifies as a crime the "Deprivation of Liberty by Public Official or Employee, Agent of Authority, or Public Authority," which punishes the corresponding official with three to six years in prison and a special disqualification when the detention takes place outside the cases established in the legislation.<sup>55</sup>

58. In addition to the above, the State referred to the exceptional nature of both preventive custody for adults and adolescents, as well as the detention measures applicable to adolescents in conflict with the criminal law. In this regard, it provided data from which it is clear to see that, between 2014 and 2019, priority was given to the use of non-custodial measures for the benefit of adolescents. For instance, in 2014, there were 254 custodial measures and 776 non-custodial measures issued. Similarly, in 2019, custodial measures were applied to 231 adolescents, while non-custodial measures were used for 468.<sup>56</sup>

59. However, the Commission [has expressed](#) its concern for the mass arrests of people carried out since March of this year, in the context of the state of exception, many of which would have been based on anonymous calls or perceptions about belonging to criminal groups due to their physical or aesthetic appearance, or place of residence.<sup>57</sup> In this context, the use of the measure of deprivation of liberty has increased dramatically. In particular, according to official data, as of December 13, 2022, a total of 60,019 persons had been imprisoned under that state of exception,<sup>58</sup> in addition to the 37,866 people who were already imprisoned as of May 2021.<sup>59</sup> These figures indicate that there would be a total of at least 97,885 persons deprived of liberty in the country. In this scenario, as reported to the IACHR by the civil society, with a rate of 2,144 persons detained per every 100,000 inhabitants, El Salvador would be the country with the highest number of persons detained per capita in the world.<sup>60</sup>

60. On the other hand, with respect to the use of preventive custody, according to figures from the Ministry of National Defense, as of September 27, there were at least 47,893 persons imprisoned in the context of the state of exception who had been subjected to preventive custody.<sup>61</sup> Taking into account that 53,465 persons were detained between 27 March and 26 September,<sup>62</sup> these figures would indicate that the rate of application of this precautionary measure is at least 89.58%. In this regard, the United Nations Committee against Torture noted with concern the reports that point to excessive and, in some cases, indefinite use of preventive custody, without sufficient and individual determination of its necessity and proportionality, following the establishment of the state of exception and its negative effect on detention conditions.<sup>63</sup>

<sup>55</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 14-15.

<sup>56</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 16-17.

<sup>57</sup> IACHR, Public Hearing "[Detenciones arbitrarias y situación de las personas privadas de libertad en el Estado de Excepción en El Salvador](#)", 185 regular session, October 25, 2022.

<sup>58</sup> Ministry of Security, [Twitter @SeguridadSV] (December 13, 2022). "[La #GuerraContraPandillas continúa, no nos vamos a detener hasta que cada terrorista esté tras las rejas. \(The #WarAgainstGangs continues, we will not stop until every terrorist is behind bars.\) #Seguimos.60.019 terroristas capturados #Guerracontrapandillas \(60,019 terrorists captured #War against gangs\)](#)".

<sup>59</sup> State of El Salvador, Diplomatic Note No. MPOEA-OAS-149/2021, November 19, 2021, p. 1.

<sup>60</sup> IACHR, Public Hearing "[Detenciones arbitrarias y situación de las personas privadas de libertad en el Estado de Excepción en El Salvador](#)", 185 regular session, October 25, 2022; Expediente Público, [Hacinamiento, torturas y muertes en cárceles de El Salvador por estado de excepción](#), June 24, 2022; Gato Encerrado, [El Salvador es el país con mayor cantidad de detenidos por cada 100 habitantes, según Amnistía Internacional](#), June 4, 2022; La Prensa Gráfica, El Salvador, [segunda tasa más alta de reos a nivel mundial](#), May 10, 2022.

<sup>61</sup> IACHR, Press Release No. 254/22 - [Siete meses del régimen de excepción: CIDH recuerda a El Salvador cumplir sus obligaciones de derechos humanos](#). Washington DC, November 11, 2022.

<sup>62</sup> Ministry of Security, [Twitter @SeguridadSV] (September 26, 2022). "[La #GuerraContraPandillas sigue hasta poner al último terrorista tras las rejas. #Seguimos haciendo justicia por las miles de familias salvadoreñas que sufrieron a manos de estos criminales. 53,465 terroristas capturados #Guerracontrapandillas](#)".

<sup>63</sup> UN, Committee against Torture, Concluding observations on the third periodic report of El Salvador, CAT/C/SLV/CO/3, December 19, 2022, para. 18.

61. Finally, the IACHR notes a set of legislative measures that favor the growth of the prison population. In this regard, it notes that, starting with Legislative Decree No. 333 and its extensions, the constitutional guarantee that restricts administrative detention to a period of 72 hours was suspended, and it was changed to a maximum limit of 15 days.<sup>64</sup> In addition, reforms to the criminal and criminal procedure legislation were approved, extending the legal duration of pre-trial detention in certain circumstances.<sup>65</sup> In particular, it notes that the legal time limit for preventive custody or imprisonment for certain crimes was removed, which was previously subject to a maximum of 12 to 24 months renewable for 12 months, depending on the seriousness of the crime and the processing of appeals.<sup>66</sup> In addition, it notes that the reform of the Juvenile Criminal Law removed the 90-day time limit, which can be extended, for provisional measures for certain juvenile<sup>67</sup> justice offenses. It also notes that the law added a prison sentence of up to 10 years as one of the measures applicable to persons over 12 years of age; and up to 20 years of imprisonment for persons over 16 years of age.<sup>68</sup>

62. Based on the data presented, the IACHR notes that the high number of persons in prison shows that deprivation of liberty is not used as a measure of last resort; on the contrary, its application is prioritized over the use of alternative measures. Therefore, the Commission concludes that the recommendation is **pending compliance** and urges the State of El Salvador to take measures to effectively comply with this recommendation.

63. In order to guide the implementation of this recommendation, the IACHR invites the State to establish, as a priority and in a sustainable manner, a criminal policy that ensures the use of deprivation of liberty as a measure of last resort. These measures may include public policies, actions aimed at reducing the use of preventive custody, mechanisms to ensure speedy criminal proceedings, and implementation of alternative measures or restorative justice processes in criminal matters, if appropriate.

64. With regards to the recommendation to **put an end to the use of police facilities as places to hold persons for long periods of time**, the State pointed out that both convicted persons and those detained after their initial hearing are transferred from the overcrowded holding cells to a penitentiary center.<sup>69</sup> Likewise, the IACHR notes that, according to an official communiqué dated July 2021, measures had been taken to build new spaces in various prisons, as well as to close the holding cells of the National Civilian Police (PNC) that had been previously used for persons to stay more than 72 hours in police custody despite not having been designed for this purpose.<sup>70</sup>

65. However, the IACHR notes with concern that, according to public information, during 2022 and in the context of the state of exception, thousands of persons would have been held in police cells for several days before being transferred to prisons.<sup>71</sup> This, considering that the terms of administrative detention were increased from 72 hours to 15 days, resulting in overcrowding in these spaces.<sup>72</sup> In this context, civil society

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<sup>64</sup> Legislative Assembly, Decree No. 333 - Declárase En Todo El Territorio Nacional "Régimen De Excepción", March 27, 2022, art. 4.

<sup>65</sup> IACHR, Public Hearing "Situation of Human Rights and Rule of Law in El Salvador", 184th session, June 23, 2022.

<sup>66</sup> Legislative Assembly, Legislative Decree No. 339 - Reform the Code of Criminal Procedure, March 30, 2022.

<sup>67</sup> Legislative Assembly, Decree No. 333 - Declárase En Todo El Territorio Nacional "Régimen De Excepción", March 27, 2022, art. 4.

<sup>68</sup> Legislative Assembly, Legislative Decree No. 342 - Reform the Juvenile Criminal Law, March 30, 2022, art. 8 lit. g.

<sup>69</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on human rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador". approved after an in-loco visit in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 17.

<sup>70</sup> Presidency, State of El Salvador, [Centros Penales continúa enfocado en reducir el hacinamiento para fortalecer la reinserción social que promueve el Gobierno del Presidente Nayib Bukele](#), July 9, 2021.

<sup>71</sup> El Faro, Tras un mes preso, Uziel volvió a su isla, August 25, 2022; Bloomberg línea, [Así somete El Salvador a 40.000 detenidos en estado de excepción](#), según las ONG, June 24, 2022; La Prensa Gráfica, [Hacinamiento y trifulcas en bartolinas de Sonsonate](#), April 30, 2022; and La Prensa Gráfica, [Capturas masivas duplicaría hacinamiento](#), March 29, 2022.

<sup>72</sup> El Faro, Tras un mes preso, Uziel volvió a su isla, August 25, 2022; Bloomberg línea, [Así somete El Salvador a 40.000 detenidos en estado de excepción](#), según las ONG, June 24, 2022; La Prensa Gráfica, [Hacinamiento y trifulcas en bartolinas de Sonsonate](#), April 30, 2022; and La Prensa Gráfica, [Capturas masivas duplicaría hacinamiento](#), March 29, 2022.

organizations have pointed out that the National Civilian Police established a 7-year reserve on the information about the number of persons detained in police holding cells during the state of exception.<sup>73</sup>

66. In light of this, the Commission concludes that this recommendation is still **pending compliance**. In this regard, the IACHR calls on the Salvadoran State to implement urgent actions aimed at putting an absolute end to the use of police facilities as places to hold persons for long periods of time. In this regard, it stresses that States must take the necessary legislative measures and structural reforms to ensure that the action of being held in custody in police headquarters is used as little as possible. Besides, it is the obligation of States to transfer these persons to prisons where those who are being prosecuted must be kept separate from those convicted.<sup>74</sup>

67. With regards to the recommendation to **provide prisons with sufficient human and financial resources in order to guarantee minimum conditions of detention**, the State said that despite the diversion of resources to address the COVID-19 pandemic, the amount of the annual budget allocated to the prison system has been maintained in order to ensure the care of this population in terms of food, healthcare, and basic services (water and electricity). Likewise, the State said that the Directorate General of Prisons generates its own resources as a result of the commercialization of goods and services produced in workshops and farms within the prison system, which has contributed to the creation of the Special Activities Fund (FAE/CBPSPTGSP) that allows for the acquisition of raw materials to supply the workshops for social reinsertion activities.<sup>75</sup>

68. With regard to the conditions of detention, the State provided information on: i) the project to expand prison infrastructure to reduce overcrowding in prisons and transfer persons from different security centers; ii) the establishment of exclusive centers for convicted and indicted persons to ensure their separation; iii) the existence of two prisons and an area allocated for the recovery and medical treatment of persons deprived of liberty with specific health conditions, particularly mental and chronic degenerative diseases, and tuberculosis; iv) the updating of the Inter-institutional Cooperation Agreement with the Ministry of Justice and Public Security by the Ministry of Health, to provide medical care to detainees; and, v) special healthcare programs for this population.<sup>76</sup>

69. In its comments on the draft of this report, the State mentioned other actions taken regarding detention conditions: (i) technical training for prison health promoters and health personnel in detention; (ii) the creation of special prison health care centers - totaling 5 - in order to provide adequate medical care and treatment, as well as the creation of spaces to separate persons deprived of liberty with delicate illnesses, to be subsequently transferred to specialized health centers where persons deprived of liberty with chronic degenerative diseases are held; iii) the development of a hydration plan, disinfection of water to make it fit for human consumption, hygiene measures and drinking water supply, as well as improvements in the storage and distribution of water and implementation of nutritional plans; and iv) cleaning and disinfection campaigns in prisons, including the contracting of services for the collection of bio-infectious waste and the elimination of humidity in common areas.<sup>77</sup> In addition, it reported the strengthening of educational and technical programs for the care of the prison population to facilitate their productive reintegration into society; the continuity with

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<sup>73</sup> Cristosal, [Violaciones a los derechos humanos. Durante el régimen de excepción en El Salvador. Informe situacional período de junio a septiembre de 2022](#), October 19, 2022, p. 7.

<sup>74</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, para. 257 and 326 D. Recommendations regarding conditions of detention, para. 6.

<sup>75</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador," approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 18.

<sup>76</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador," approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 18-19.

<sup>77</sup> State of El Salvador, Observations of the State of El Salvador to the draft Chapter V of the 2022 Annual Report, on the follow-up to the recommendations made by the IACHR in the report "Situation of Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-024/2023, February 13, 2023, p. 7.

the execution of the "Cero Ocio" Plan; and the creation of prison cities aimed at establishing order, control, and discipline within the prisons.<sup>78</sup>

70. The IACHR notes that, according to official information, the Administration of the Penitentiary System was allocated a budget of 53 million dollars for 2022, with the purpose of "contributing to the social reintegration of persons deprived of liberty" and "strengthening inter-institutional cooperation links, in order to make viable the implementation of alternative measures to imprisonment."<sup>79</sup> Likewise, under the heading "Public Security" of the 2023 Budgetary Policy for said year, specific allocations will be included to: i) reduce overcrowding through the construction, reconstruction, or refurbishing of prisons nationwide; ii) strengthen social reinsertion programs; iii) create penitentiary cities; iv) install health units in the centers; and iv) build the "Terrorism Confinement Center" in the municipality of Tecoluca.<sup>80</sup> The Commission also takes note of the State's comments in its observations on the present report regarding the efforts undertaken during 2022 in the construction and hiring of personnel for this penitentiary center.<sup>81</sup>

71. Without prejudice to the foregoing, the IACHR is concerned about the deplorable detention conditions faced by persons deprived of liberty in El Salvador, which worsened under the state of exception. In particular, these are mainly characterized by: i) overcrowding, with a rate of at least 235%;<sup>82</sup> ii) negligent medical care; iii) insufficient food due to the reduction of food; iv) restriction of drinking water; v) lack of contact with the outside world caused by the suspension of visits and calls; vi) poor sanitation and hygiene conditions; vii) ill treatment such as beatings and use of pepper spray; and viii) excessive use of solitary confinement.<sup>83</sup> In this regard, the IACHR [urged](#) the State to ensure the minimum conditions of detention to guarantee the life, health, and integrity of all persons in its custody in accordance with the [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#).

72. In light of this, the Commission concludes that this recommendation is still **pending compliance**. In this sense, it urges El Salvador to take measures to provide prisons with sufficient human and financial resources to ensure minimum conditions of detention for the incarcerated population, especially considering that this population has almost tripled under the state of exception. It also stresses that States are obligated to guarantee detention conditions compatible with human dignity and respect for fundamental rights that ensure the dignified treatment of persons in custody in accordance with the standards on deprivation of liberty.<sup>84</sup> In order to provide these resources, the IACHR invites the State to previously determine the priorities to be resolved so as to guarantee the minimum conditions of detention that have been most affected, with the

<sup>78</sup> State of El Salvador, Observations of the State of El Salvador to the draft Chapter V of the 2022 Annual Report, on the follow-up to the recommendations made by the IACHR in the report "Situation of Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-024/2023, February 13, 2023, p. 7.

<sup>79</sup> Fiscal Transparency Portal, State of El Salvador, [Ley del Presupuesto 2022, 2400 Ramo de Justicia y Seguridad Pública](#), 2022.

<sup>80</sup> Fiscal Transparency Portal, State of El Salvador, [Política Presupuestaria 2023](#), August 30, 2022.

<sup>81</sup> State of El Salvador, Observations of the State of El Salvador to the draft Chapter V of the 2022 Annual Report, on the follow-up to the recommendations made by the IACHR in the report "Situation of Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-024/2023, February 13, 2023, p. 7.

<sup>82</sup> The IACHR reaches this percentage by considering that according to official sources, there would be at least 94,056 persons deprived of liberty (corresponding to 56,190 persons detained in the context of the emergency regime as of October 29 and 37,866 persons imprisoned as of May 2021), compared to an official capacity of 28,054 persons. In this regard, see Secretaría de Prensa de la Presidencia de El Salvador [Twitter @SecPrensaSV] (October 29, 2022). ["#PlanControlTerritorial | Gracias a las acciones de seguridad desarrolladas por el Gobierno del Presidente @nayibbukele, con el régimen de excepción, a la fecha se contabilizan 56,190 miembros de estructuras criminales capturados"](#); State of El Salvador, Diplomatic Note No. MPOEA-OAS-149/2021, November 19, 2021, p. 1 and 3.

<sup>83</sup> IACHR, Hearing "[Detenciones arbitrarias y situación de las personas privadas de libertad en el Estado de Excepción en El Salvador](#)", 185th regular session, October 25, 2022; Cristosal, [Violaciones a los derechos humanos. Durante el régimen de excepción en El Salvador. Informe situacional período de junio a septiembre de 2022](#), October 19, 2022, p. 12-27; Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. Informe situacional período del 27 de abril al 25 de mayo de 2022](#), June 14, 2022; Cristosal, [Violaciones a los derechos humanos durante el régimen de excepción en El Salvador. Informe situacional período del 27 de marzo al 26 de abril de 2022](#), May 2022; Agrupación Ciudadana por la Despenalización del Aborto; Asociación Azul Originario; et al.; [Informe alternativo en seguimiento a evaluación del Comité Contra La Tortura de la ONU a El Salvador](#), November 8, 2022; Human Rights Watch, Cristosal, ["Podemos detener a quien queramos" Violaciones generalizadas de derechos humanos durante el "régimen de excepción" en El Salvador](#), December 2022, p.75-91.

<sup>84</sup> IACHR, [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), para. 343.

aim of allocating a sufficient budget that allows for financing the adjustments to be made to the prisons. Likewise, the Commission invites the State to report this information.

73. Regarding the recommendation to **guarantee the holding of regular visits and to review Article 79-A of Decree 93—Reforms to the Penitentiary Law**, the State stressed that this regulation is part of a special regime applicable to maximum security centers intended to house persons considered highly dangerous, with the purpose of "safely exercising greater control and vigilance." In this regard, the State said that the stay of persons in such centers and the restriction of visits "is not permanent and is subject to review, since it is subject to the disappearance or reduction of the circumstances that determined the admission of an inmate to this type of center."<sup>85</sup>

74. Related to this recommendation, the Commission was informed of the suspension of family visits in the context of the state of exception.<sup>86</sup> In addition, according to data published by the press, in the context of the pandemic, persons deprived of liberty would not have received visits for almost two years, at least from April 2020 to December 2021.<sup>87</sup>

75. In its observations on the draft of the present report, the State emphasized that the Protocol for the Prevention and Control of COVID-19 continues to be implemented, which is why the restriction on regular visits continues to be extended in all penal establishments since this would put the health of the persons held<sup>88</sup> there at risk. It indicated that the same restriction applies to maximum security centers.<sup>89</sup>

76. In view of the information available indicating that Article 79-A has not been amended, as well as the challenges to have visits, the Commission concludes that this recommendation is **pending compliance**. In this sense, it stresses that direct contact and the maintenance of ties between detainees and their families are fundamental elements that favor social reintegration.<sup>90</sup> Based on this, it calls upon the Salvadoran State to take measures to guarantee regular visits to all prison facilities.

77. Among the measures that can be taken to guarantee regular visits in prisons are, for example, rules or regulations that order the officials involved to guarantee this right. Any measure for institutional strengthening may also be implemented within the prisons, such as the issuance of protocols, the provision of physical spaces for these visits, or the training of the staff of these centers in international standards on visits, as a guarantee that should be recognized for persons deprived of their liberty.

78. Regarding the recommendation aimed at **guaranteeing differentiated care to women deprived of liberty**, the State provided data on housing, healthcare, social reintegration programs, and various types of assistance. In particular, with respect to housing, it pointed out that the prison system has three prison compounds that, as of July 2022, housed 2,475 women, who are separated by legal status.<sup>91</sup> It also pointed out

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<sup>85</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador," approved after an in-loco visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 19-20.

<sup>86</sup> ACHR, Public Hearing "[Arbitrary Detentions and Situation of Persons Deprived of Liberty in the State of Emergency in El Salvador](#)", 185 regular session, October 25, 2022.

<sup>87</sup> La Prensa Gráfica, [22 months without allowing visits to prisoners](#), 28 December 2021.

<sup>88</sup> State of El Salvador, Observations of the State of El Salvador to the draft Chapter V of the 2022 Annual Report, on the follow-up to the recommendations made by the IACHR in the report "Situation of Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-024/2023, February 13, 2023, p. 8.

<sup>89</sup> State of El Salvador, Observations of the State of El Salvador to the draft Chapter V of the 2022 Annual Report, on the follow-up to the recommendations made by the IACHR in the report "Situation of Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-024/2023, February 13, 2023, p. 8.

<sup>90</sup> In this regard, CIDH, [Observations on Advisory Opinion to the Inter-American Court of Human Rights - Differentiated Approaches to Persons Deprived of Liberty](#), 14 November 2020, para. 138.

<sup>91</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an on-site visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, pp. 48-49.

that a sector for women living with their children within the penitentiary system has been set up, which also has a breastfeeding room. Regarding healthcare, the State said that incarcerated women have access to "general medical, psychiatric, dental, gynecological, and control consultations with different specialists in a hospital area," which depends on the National Health System. Regarding social reintegration, it referred to the existence of two specific programs aimed at emotional strengthening, and support and training of this population, respectively.<sup>92</sup>

79. In addition to the above, the State referred to various types of care provided to women deprived of liberty, including: i) technical assistance to women detained in the Izalco Prison Farm and in the Center for Prevention and Serving of Sentences for Women in Ilopango, provided by the Public Criminal Defense Unit; ii) the program of the Attorney General's Office for adolescents and young women in conflict with the law, in the framework of which, if they are identified as being in a situation of vulnerability, they are referred to comprehensive legal advice; iii) comprehensive care for women in vulnerable situations provided by the Penitentiary Surveillance and Sentence Enforcement Team; and iv) the "Project for legal assistance to women deprived of liberty who live with their children in prisons", aimed at family reunification through the substitution of deprivation of liberty by assisted liberty measures, which by the end of 2021, had benefited 50 women.<sup>93</sup>

80. In this regard, data from the civil society refer to a lack of measures respectful of a gender approach, which would cause women deprived of their liberty to face greater risks.<sup>94</sup> In particular, available information indicates that, in September 2022, women incarcerated in the Ilopango Preventive and Sentence Enforcement Center known as "Women's Prison" would have been transferred to penal centers for men because the facility is currently occupied by men.<sup>95</sup>

81. In this regard, in its observations on the draft of this report, the State indicated that the transfers of women deprived of liberty to the Apanteos Center for Prevention and Serving of Sentences were made in order to guarantee them better conditions, such as: (i) bathroom cubicles in each of the 12 sectors, increasing the number of latrines from 8 to an average of 30 per sector; (ii) sinks for personal hygiene and washing clothes in each of the 12 sectors; (iii) painting of walls and perimeter walls; iv) the plumbing of sewage drains and drinking water pipes to ensure that they function properly, thereby helping to ensure access to water and hygiene; and v) a security sector with two barred cells, which have ventilation and lighting, two bathrooms, a shower area, and a sink for proper hygiene.<sup>96</sup> The State pointed out that the separation between men and women in penitentiary centers has been maintained. In addition, El Salvador has an Izalco Prison Farm for Women, which houses mothers and their children.<sup>97</sup> Furthermore, the State reported that the Gender Unit of the General Directorate of Prisons continues to promote, disseminate, and encourage actions that guarantee

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<sup>92</sup> State of El Salvador, Annex: Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019, Diplomatic Note No. MPOAS-OAS-122/2022, July 28, 2022, pp. 48-49.

<sup>93</sup> State of El Salvador, Annex: Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019, Diplomatic Note No. MPOAS-OAS-122/2022 – July 28, 2022, pp. 49-50.

<sup>94</sup> IACHR, Hearing "[Detenciones arbitrarias y situación de las personas privadas de libertad en el Estado de Excepción en El Salvador \(Arbitrary detentions and the situation of persons deprived of liberty under the State of Emergency in El Salvador\)](#)" 185th regular session, October 25, 2022; La Prensa Gráfica, [Más de 400 reas fueron trasladadas de Cárcel de Mujeres \(More than 400 inmates transferred from Women's Prison\)](#), September 1, 2022.

<sup>95</sup> La Prensa Grafica, [Más de 400 reas fueron trasladadas de Cárcel de Mujeres](#), September 1, 2022.

<sup>96</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 8.

<sup>97</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 8.

women's right to a life free from violence through awareness campaigns and training processes for prison staff.<sup>98</sup>

82. Likewise, the civil society indicates that women face worse housing conditions since up to 100 women are placed in the same cell.<sup>99</sup> Similarly, they denounce that women would sleep on the floor, water would be rationed to one glass a day, toilets could only be used twice a day, they would be forced to defecate in buckets that would only be emptied once they were full, they would not be able to shower, and they would be subjected to beatings and permanent confinement. In addition, their sexual and reproductive health needs would not be attended to.<sup>100</sup>

83. The IACHR makes note of the measures taken by the State for the benefit of incarcerated women. However, based on what has been raised by the organizations regarding the violations of the rights of this population, it concludes that this recommendation is **pending compliance**. In this sense, the Commission urges the Salvadoran State to adopt measures respectful of the gender perspective that guarantee a differentiated attention to women deprived of liberty. This, in light of the disproportionate impacts they face during incarceration and the particular violations of their rights derived from their gender condition.<sup>101</sup> In the same sense, the Commission recalls that in its Advisory Opinion No. OC-29/22, the Inter-American Court stated that the principle of equality and non-discrimination calls upon States, through the criminal justice system and prison administrations, to employ a differentiated approach when dealing with women deprived of liberty, so that the treatment provided to the male population is not simply reproduced. In particular, it indicated that the differentiated approach entails the adoption of differentiated criminal and penitentiary policies that address both the profile and vulnerabilities of women detainees, as well as their social conditions and care responsibilities, with a view to their proper integration into society.<sup>102</sup> In this regard, the IACHR emphasizes that these measures may consist of institutional strengthening actions to ensure that health needs are met, including sexual and reproductive health needs, based on the provision of sufficient resources. Likewise, the IACHR requests specific information on how these women are being held in facilities specifically equipped to meet their needs and where they are guaranteed the minimum conditions of confinement.

84. Regarding the recommendation to **ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and to create a national mechanism in this regard**, the State said that, in compliance with the process contemplated in the Constitution of the Republic for the ratification of international instruments, the ratification of said instrument was submitted for consideration by the Legislative Body in 2013, and therefore urges it to move forward in this approval process. In its observations on the draft of this report, the State indicated that the Office of the Human Rights Ombudsman (Procuraduría para la Defensa de los Derechos Humanos) has a broad constitutional mandate for the protection of human rights in the country, which allows it to fully exercise its function as

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<sup>98</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 8.

<sup>99</sup> IACHR, Hearing "[Detenciones arbitrarias y situación de las personas privadas de libertad en el Estado de Excepción en El Salvador \(Arbitrary detentions and the situation of persons deprived of liberty under the State of Emergency in El Salvador\)](#)" 185th regular session, October 25, 2022; La Prensa Gráfica, [Más de 400 reas fueron trasladadas de Cárcel de Mujeres \(More than 400 inmates transferred from Women's Prison\)](#), September 1, 2022.

<sup>100</sup> IACHR, Hearing on Arbitrary Detentions and the Situation of Persons Deprived of Liberty in a State of Exception in El Salvador, 185th Period of Sessions, October 25, 2022. See also: La Prensa Gráfica, [More than 400 inmates transferred from Women's Prison](#) September 1, 2022.

<sup>101</sup> IACHR, [Report on Measures to Reduce the Use of Pretrial Detention in the Americas, Report on Measures to Reduce the Use of Pretrial Detention in the Americas](#), paras. 200-201.

<sup>102</sup> I/A Court HR, [Differentiated approaches to certain groups of persons deprived of their liberty](#), Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 127.



comptroller and overseer of all the activities of State institutions to ensure respect for the human rights of the population, thereby constituting a mechanism for the prevention of torture.<sup>103</sup>

85. On the other hand, it did not provide information on the creation of a national mechanism for the prevention of torture,<sup>104</sup> and therefore urges it to move forward in its creation in order to ensure a permanent and systematic monitoring of places of deprivation of liberty in the country. By virtue of the foregoing, the IACHR concludes that the recommendation is **pending compliance**.

86. Regarding the recommendation to **approve the Organic Law of the Office of the Attorney General (PGR), as well as allocate to it a budget that allows it to act in a manner consistent with its workload**, the State said that Legislative Decree No. 837 of 2021—with a new Organic Law of the Office of the Attorney General—was approved in May 2021. It reported that the content of the regulation was reconciled with the Constitution of the Republic, Salvadoran legislation, and international human rights treaties.<sup>105</sup> It also pointed out that this law introduces a series of changes. It emphasized that it provides for the organizational structure developed within the framework of a new institutional vision of the user assistance service, from an approach of respect for human rights and inclusion without discrimination, with special emphasis on victims or populations in vulnerable situations. Likewise, principles like equality, an approach on rights and inclusion, the best interests of children and adolescents, equity, legality, promotion of a culture of peace, among others, were included among the guiding principles of the PGR. Groups in vulnerable situations were also recognized through specialized units, among other modifications. Regarding budgetary matters, it reported that the Office of the Attorney General has its own budget to comply with its constitutional mandate; it also pointed out that the regulations of the Organic Law of the Office of the Attorney General establish the mechanism for preparing the budget for the operation of said institution.

87. The IACHR welcomes the approval of Legislative Decree No. 837 of 2021 and considers that this first component of the recommendation has been complied with. Regarding the budget currently allocated to the PGR or how it has been increased in a manner consistent with its institutional needs, initially, the State did not provide sufficient information. Likewise, according to information provided by the PGR to civil society organizations, as of May 2021, the Public Criminal Defense Unit of the PGR had 265 public defenders, 17 local coordinating offices, and 23 recipients nationwide.<sup>106</sup>

88. In its observations to the draft of this report, the State indicated that the PGR included in its budget the costs entailed by the technical defense of the individual liberty of adults and minors, accused of committing criminal offenses, as well as the costs of legal assistance related to prison surveillance and execution of the sentence, as well as the monitoring and controlling of the definitive measures imposed in accordance with the Juvenile Criminal Law.<sup>107</sup> The State stressed that the budget has been increasing every year, starting in 2019, when it was allocated US\$29, 944,377.00; and that by 2023 the PGR's budget had

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<sup>103</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 8-9.

<sup>104</sup> State of El Salvador, Annex: Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019, Diplomatic Note No. MPOAS-OAS-122/2022, July 28, 2022, pp. 20.

<sup>105</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, p. 20-22.

<sup>106</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 36-37.

<sup>107</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 9.

increased to US\$39, 827,840.00.<sup>108</sup> It also noted that the PGR has taken emergency measures to provide care, advice, and legal assistance and to cover proceedings and hearings of persons detained under the emergency regime. That has involved personalized interviews with the persons charged, as well as attention to the families of detainees, and coordinated institutional and interagency work.<sup>109</sup> To that end, it had proceeded to hire personnel in the Ancillary Public Prosecutor's Offices at the national level, in the following positions: 32 people as criminal law public defenders, 18 in the office for receiving detainees (*receptoría*), 4 in the psychology department, and 2 in the social work department.<sup>110</sup>

89. At the same time, the Commission has received repeated information on the challenges faced by the Attorney General's Office, particularly with respect to its public criminal defense work since the establishment of the state of exception in March 2022, given the high number of persons detained, investigated, or prosecuted for crimes in this context.<sup>111</sup> The IACHR has learned that between March 1 and April 30, 2022 alone, the PGR provided a total of 24,104 legal assistance services nationwide; and assigned public defenders to a total of 28,209 people.<sup>112</sup> In this regard, the Commission was informed that the overload in the demand for these services in relation to the institutional capacity has resulted in restrictions in the due attention to cases, in the exercise of the defense in judicial hearings, and in the maintenance of basic communications with the families of detainees.<sup>113</sup> Among other aspects, the Commission has been informed that the PGR would have directed the detained persons and their families to seek the first legal counsel 13 days after the detention.<sup>114</sup>

90. In light of the above, the IACHR appreciates the increase in budget and human resources allocated to the PGR. On the other hand, it notes that the measures adopted in the area of citizen security under the emergency regime have substantially increased the demand for the services constitutionally delegated to this institution, and significant challenges have been observed with regard to complying with those additional requirements. In light of the above, the Commission considers that this recommendation is in **substantial partial compliance**.

91. In order to guide the implementation of the second part of this recommendation, the IACHR considers it relevant that, first, the State carry out a diagnosis of the functions that should be performed by the PGR so that, based on it, it can determine the budget that is reasonably required for the optimal performance of these functions. Based on this diagnosis, the State is invited to report on the actions taken to ensure that the budget required for carrying out these functions is provided.

## 2. Women and LGTBI Persons

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<sup>108</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 9.

<sup>109</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 9.

<sup>110</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 8-9.

<sup>111</sup> IACHR, Hearing on Arbitrary Detentions and the Situation of Persons Deprived of Liberty in a State of Exception in El Salvador, 185th Period of Sessions, October 25, 2022; Christopher, [Human rights violations. During the emergency regime in El Salvador. Situational report period June to September 2022](#), October 19, 2022, p. 14-15; Cristosal, [Human rights violations during the emergency regime in El Salvador. Situation report period from April 27 to May 25, 2022](#), June 14, 2022, p. 35-37; The Graphic Press, [Increase in the number of people who go to the Attorney General's Office](#), 20 April 2022; The Graphic Press, [Relatives seek help in a Prosecutor's Office that cannot cope](#), 8 April 2022.

<sup>112</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#) June 14, 2022, pp. 36-37.

<sup>113</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#) June 14, 2022, pp. 36-37.

<sup>114</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#) June 14, 2022, pp. 36-37.

- 18. Take the necessary measures to strengthen the system for the protection of women and girls who are victims of violence, including the strengthening of the system for monitoring protection measures, including the creation of a Special Fund for the Reparation of Women Victims of Gender-based Violence, and the creation of a network of shelters with sufficient resources for their operation.
- 19. Provide periodic training to State officials, particularly justice operators, on the inclusion of a gender perspective and inter-American standards on gender-based violence and discrimination; access to justice for women, girls, and adolescents; investigation with a gender perspective; and due diligence by the State on the matter, with a view to eradicating impunity in cases of violence against women.
- 21. Strengthen the mechanisms of access to justice for women, girls, and adolescents, including the clarification of competencies; strengthening in terms of resources, capacity, and specialization of the Specialized Courts for a Life Free of Violence and Discrimination.
- 22. Review the cases of women sentenced to severe prison sentences for felony murder for incidents related to obstetric emergencies or complications; as well as give priority processing to requests for commutation of the sentence in progress.
- 23. Take the necessary measures to adapt the Salvadoran regulatory framework to the inter-American standards on the matter of the sexual and reproductive rights of women, girls, and adolescents.
- 24. Take specific measures in accordance with international standards that guarantee the rights to work and their fair and equitable conditions for women who work in domestic services and manufacturing plants, particularly within the textile industry, under the modality of home-based work. It is recommended that the State ratify ILO Conventions 177, 189, and 190 and apply its recommendations 184 and 201 on the subject.
- 25. Strengthen the institutional capabilities of the Salvadoran Women's Development Institute (ISDEMU) so that it has greater autonomy to prevent, punish, and eradicate violence against women.
- 26. Ratify the Convention Against All Forms of Discrimination and Intolerance.
- 27. Take the necessary measures to achieve the approval and implementation of the Gender Identity Law and that it is in accordance with the inter-American standards on the matter; as well as to strengthen the institutional framework for the defense and protection of the rights of LGBTI persons.
- 28. Implement a comprehensive plan for the protection and guarantee of the human rights of LGBTI persons, from a human safety perspective, including their access to justice, education, health, and employment, and promote the participation of civil society organizations in its design and formulation.
- 29. Train State officials, particularly justice operators, in the matter of the rights of LGBTI persons.
- 30. Implement statistical data that is public, periodically updated, and duly disaggregated, related to acts of violence and discrimination against LGBTI persons in the country.
- 31. Take the necessary measures to strengthen access to justice for LGBTI victims of violence through a coordinated effort between the various institutions of the executive branch and the Public Prosecutor's Office.

92. With regards to the recommendation to **strengthen the system for the protection of women, girls, and adolescents who are victims of violence, including the monitoring of protection measures**, the State reported that the Salvadoran Women's Development Institute (ISDEMU) has the Directorate of Specialized Assistance (DAE), with a nationwide presence and in the six centers of Ciudad Mujer, and it also has the System for the Protection of Women, through which temporary shelter is provided for women who are suffering from gender violence and are in danger.<sup>115</sup>

93. It pointed out that the DAE, in coordination with various authorities, accompanies women in the process of filing complaints and requesting protection measures; provides specialized psychological treatment; and facilitates entrepreneurial activities to promote the economic autonomy of the victims. In

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<sup>115</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site conducted in 2019, July 2022, p. 39

addition, it said that the Attorney General's Office has Specialized Units for Women (UAEM) in the 14 departments of the country, which constantly monitor the protection measures for women, girls, and adolescent victims of violence.<sup>116</sup>

94. Likewise, it pointed out that, in 2021, ISDEMU launched the 126 Te Orienta Platform to provide psychological support and legal advice services through video calls, which will be adjusted this year to provide adequate assistance and services to migrant women. It also reported that remote care services are provided through the Ciudad Mujer Program and that a network of women leaders was established to facilitate the referral and care of cases of women facing violence in the territory, allowing many of them to receive protection measures from the judicial system.<sup>117</sup>

95. In the part of the recommendation referring to the **creation of a network of shelters with sufficient resources for their operation**, the State reported on the creation and equipping of shelters for women facing violence, as well as their children, in the eastern and paracentral zones. It also said that ISDEMU has a shelter for women victims of gender violence and a refuge for returned migrant women, which was inaugurated in January 2022.<sup>118</sup> In addition, it reported that there are currently four shelters exclusively for girls and adolescents, one of which is a specialized regional shelter for victims of trafficking.<sup>119</sup> It pointed out that, through inter-institutional coordination with various authorities, it seeks to guarantee the right to health, education and a comprehensive approach to women, children, and adolescents in shelters.<sup>120</sup> On the other hand, the Commission has also taken note of public information that points to the lack of shelters as one of the main challenges for the protection of women who face violence, as well as the difficulties they face to be accepted in the available shelters.<sup>121</sup>

96. The Commission appreciates the continuity of the protection system for women victims of violence coordinated by ISDEMU, as well as the UAEMs that follow up on protection measures. It also takes note of the expansion of remote legal counseling services to provide accompaniment to women victims of violence in the country, as well as the opening of a refuge for returned migrant women. On the other hand, it noted the lack of information on the measures taken for the creation of a Special Fund for the Reparation of Women Victims of Gender-based Violence, or other measures aimed at guaranteeing comprehensive reparations to family members of victims of femicide. Moreover, there is a need to strengthen the network of shelters and safe houses with sufficient resources, so that they are accessible to all women, girls, and adolescent victims of violence who require shelter and protection in all territories of the country. In light of this, the Commission finds the present recommendation to be in **partial compliance**.

97. With regard to the recommendation to **provide periodic training to public officials, particularly justice operators, on the matter of a gender perspective and inter-American standards on gender-based violence and discrimination, with a view to eradicating impunity in cases of violence against women**, the State reported that it has implemented training processes for public administration officials and the justice administration system on various topics, such as the right of women to a life free of violence, substantive equality, sexual and reproductive health, pregnancy prevention, masculinities,

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<sup>116</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, pp. 39-40

<sup>117</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, pp. 38-40

<sup>118</sup> ISDEMU. [ISDEMU Inaugurates Shelter for Returned Migrant Women](#), 3 January 2022

<sup>119</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 41

<sup>120</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site conducted in 2019, July 2022, pp. 39-40

<sup>121</sup> REDFEM, [Report on the situation of violence against women, El Salvador](#), 2022, p. 59

specialized care for survivors of violence, among others. This has the purpose of strengthening the response capability of institutions to guarantee women's rights and progress towards substantive equality.<sup>122</sup>

98. In particular, the State reported on the education and training processes provided by the Judicial Training School to justice operators since 2017, the most recent being the gender and women's rights specialization program and the specialized training course on women's labor rights;<sup>123</sup> as well as by the Prosecutor Training School and the Training, Analysis, and Research Center of the Office of the Attorney General (FGR) since 2015, aimed at personnel who attend to and investigate crimes of violence against women, the most recent being the course to strengthen capabilities for handling vulnerable persons.<sup>124</sup> It also reported on training processes aimed at staff of the National Child Protection System, the Ministry of Culture, the Ministry of Health, the National Civilian Police, and the PGR.<sup>125</sup>

99. Likewise, the State said that ISDEMU develops training and awareness-raising processes through the Specialized Training Unit (UFE) aimed at public officials, women and the general population on gender, equality, non-discrimination and the right of women to a life free of violence.<sup>126</sup> It reported that, from 2012 to April 2022, more than 17,949 people have been trained, of whom 49.4% are women and 56.6% are men.<sup>127</sup> In addition, since 2021, the automated and self-directed virtual modality was implemented to maximize the training strategy.<sup>128</sup>

100. On the other hand, the Commission takes note of the work report of the FGR which says that, in the period from June 1, 2021 to May 31, 2022, more than 65% of the sentences issued in cases of gender-based, sexual, physical, psychological, and patrimonial violence consisted of convictions;<sup>129</sup> which exceeds the 60% achieved in the 2020-2021 period.<sup>130</sup> At the same time, there is a considerable disparity between the number of complaints and the number of sentences reached. For example, in the 2021-2022 period, 144 crimes of gender-based violence and 7,023 of sexual violence were registered; in the same period, 54 convictions were obtained for gender-based violence, and 1,094 for sexual violence.<sup>131</sup> Similarly, in the 2020-2021 period, 355 crimes of gender-based violence and 5,269 crimes of sexual violence were registered, with 164 and 720 convictions, respectively, in the same period.<sup>132</sup>

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<sup>122</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site conducted in 2019, July 2022, p. 42

<sup>123</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, pp. 42-44. Annex 2 Program of Activities from January 2017 to March 2022

<sup>124</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted 2019, July 2022, p. 44. Annex 4 Information training from 2015 to 2022

<sup>125</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, pp. 45-48

<sup>126</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an on-site visit carried out in 2019, July 2022, pp. 44-45

<sup>127</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an on-site visit carried out in 2019, July 2022, pp. 44-45

<sup>128</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, pp. 44-45

<sup>129</sup> Office of the Attorney General of the Republic. [Work Report 2021-2022](#), June 1, 2021 to May 31, 2022, pp. 185-186.

<sup>130</sup> Office of the Attorney General of the Republic. [Work Report 2020-2021](#), June 1, 2020 to May 31, 2021, pp. 128-130.

<sup>131</sup> Office of the Attorney General of the Republic. [Work Report 2021-2022](#), June 1, 2021 to May 31, 2022, pp. 185-186.

<sup>132</sup> Office of the Attorney General of the Republic. [Work Report 2020-2021](#), June 1, 2020 to May 31, 2021, pp. 128-130.

101. In the same vein, note is taken of information compiled by the civil society indicating that only 12% of the 20,728 complaints of sexual violence registered from 2018 to June 2021 received a conviction.<sup>133</sup> Likewise, a study conducted in 2022 on the structural and cultural factors that perpetuate sexual violence in El Salvador—a study that included the participation of six government institutions related to the administration of justice—found that gender prejudices and stereotypes persist among public officials, which has resulted in revictimization and stigmatization, as well as in the absence of complaints or in dismissals of criminal proceedings.<sup>134</sup>

102. The Commission takes note of the State's continued efforts to train in gender competencies those public officials linked to the justice administration system, especially justice operators, prosecutors and police personnel, as well as personnel of the Ministry of Culture, the Ministry of Health and the National System for the Protection of Children. At the same time, it notes that challenges persist in the administration of justice free of gender stereotypes, which limits progress towards the eradication of impunity in cases of violence against women.

103. In this regard, the Commission stresses the importance of mandatory and ongoing training for public servants, especially those related to the judicial system, on the causes and consequences of gender-based violence and the barriers that women face in accessing justice and comprehensive redress.<sup>135</sup> In this sense, the follow-up of this recommendation depends largely on the State providing information on the design, delivery and evaluation of these training programs, specifying how it has ensured their mandatory coverage to civil servants, especially those linked to the justice system, how the requested topics (gender perspective and inter-American standards on gender-based violence and discrimination, access to justice and due diligence) have been specifically covered, and what are their strategies for sustainability over time. It also highlights the need to implement evaluation mechanisms for the training and education processes that allow for measuring and monitoring their real impact on the administration of justice and the reduction of impunity in cases of violence, in order to improve the access of women, girls and adolescents to justice without gender biases. In light of this, the Commission considers the present recommendation to be in **partial compliance**.

104. Regarding the recommendation to **strengthen the mechanisms of access to justice for women, girls and adolescents, including the clarification of competencies**, the State said that the Office of the Attorney General has the UAEMs, which provide specialized assistance to women, girls and adolescent victims of violence through the multidisciplinary monitoring of legal, psychological and social matters during judicial and administrative proceedings.<sup>136</sup> It also indicated that the judicial branch has the Units of Assistance to Victims of Domestic Violence, Sexual Abuse and Child Abuse, and of Assistance in a Sexual Abuse Crisis, which use Gesell chambers in the taking of testimonies or interrogations to avoid revictimization.<sup>137</sup>

105. Along the same lines, the Commission takes note of the reforms approved in October 2022 to the Code of Criminal Procedure that allow victims or witnesses in cases of gender violence, violation of sexual freedom and trafficking in persons to give their statements in advance and in safe environments, in order to avoid revictimization and improve their access to justice.<sup>138</sup> Note is also taken of the reforms approved in 2021

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<sup>133</sup> Radioyskl. [ORMUSA: only 12% of complaints of violence against women between 2018 and 2021 had a conviction](#), 5 May 2022; Counterpoint. [They ask for more penalties for sexual crimes, but 12% of complaints end in convictions](#), 10 May 2022

<sup>134</sup> ORMUSA. [Rape culture: structural and cultural factors. Proposal of a new architecture for the construction of new social imaginaries](#), 2022, pp. 45-62

<sup>135</sup> IACHR. [Violence and discrimination against women, girls and adolescents. Annex 1. Standards and recommendations](#). OEA/Ser.L/V/II. Doc. 233 (2019), para. 65

<sup>136</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the “Human Rights in El Salvador” report approved after a visit on site Conducted in 2019, July 2022, p. 40

<sup>137</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the “Human Rights in El Salvador” report approved after a visit on site Conducted in 2019, July 2022, p. 37

<sup>138</sup> Legislative Assembly, [Full reform of the Criminal Procedure Code for victims and witnesses to issue advance statements](#), 14 October 2022.

to the Special Comprehensive Law for a Life Free of Violence (LEIV), which included political violence as a modality of violence against women.<sup>139</sup>

106. On the other hand, the State reported that the regulatory and institutional framework specialized in cases of violence against women allows the authorities of the National System for the Comprehensive Protection of Children and Adolescents to work in a coordinated manner to improve specialized care on the matter of the protection of girls and adolescent victims of violence.<sup>140</sup> It stated that the protection mechanisms of the National System have been strengthened through the hiring of multidisciplinary and specialized personnel nationwide. In addition, the 2021-2025 roadmap to end violence against children and adolescents was developed, which integrates the gender perspective in a cross-cutting manner in all its intervention environments.<sup>141</sup>

107. Likewise, the State reported that in October 2021 the FGR created the Deputy Prosecutor General's Office for Victims and Populations in a Situation of Vulnerability, which includes the National Directorate for Women, Children, Adolescents, LGBTI Persons and other Vulnerable Populations; the 19 Specialized Care Units for Women, Children and Adolescents (UAEMNA); the Specialized Unit for the Investigation of Femicide, and the Institutional Gender Unit.<sup>142</sup>

108. With regard to the **institutional strengthening of the courts specializing in a life free of violence and discrimination against women**, the State reported that there are currently three courts of first instance, three trial courts, and one specialized chamber.<sup>143</sup> Likewise, as previously mentioned, it is noted that the Judicial Training School provides training courses and processes for justice operators, including the specialized courts, the most recent of which are the gender and women's rights specialization program and the specialized training course on women's labor rights.<sup>144</sup> The State reported that there are plans to include in the training schedule an update on the jurisprudence of the Inter-American Human Rights System on gender-based violence, legal argumentation, and evaluation of evidence from a gender perspective, reparations to victims of gender-based violence, among others.<sup>145</sup>

109. On the other hand, the Commission makes note of public information that indicates that in 2021 the congestion rate of the specialized courts reached 266%, which is indicative of the capacity of the courts to resolve cases in relation to the rate of cases filed.<sup>146</sup> According to available information, the saturation is due, among other reasons, to the large number of cases of violence against women and requests for

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<sup>139</sup> ISDEMU. [Reforms to the Special Comprehensive Law for a Life Free of Violence for Women and Law for Equal Equity, and Eradication of Discrimination against Women](#). Table prepared in 2022.

<sup>140</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site conducted in 2019, July 2022, p. 38

<sup>141</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 41

<sup>142</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site conducted in 2019, July 2022, pp. 52-53

<sup>143</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p.51

<sup>144</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, pp. 42-44. Annex 2 Program of Activities from January 2017 to March 2022.2

<sup>145</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted 2019, July 2022, pp. 43-44.

<sup>146</sup> REDFEM. [Report on the situation of violence against women, El Salvador](#), 2022, pp. 25-28, with data collected by the Directorate of Institutional Planning, Information and Statistics Unit. [Statistical Bulletin, year 2021](#).

protection measures that are received,<sup>147</sup> as well as the large number of cases of domestic violence.<sup>148</sup> Regarding the latter, it is noted that the specialized courts and the magistrate's and family courts have concurrent jurisdiction over the crime of domestic violence, as stipulated by the LEIV and the Law against Domestic Violence, a situation that would lead to conflicts of jurisdiction among the courts and the saturation of the courts that specialize on violence against women.<sup>149</sup>

110. The Commission appreciates the continuity of the regulatory framework and institutions that specialize in the care, prevention, protection, punishment, and reparation from violence against women, which had been previously analyzed in the country report.<sup>150</sup> In addition, it notes positively the measures taken to avoid revictimization and improve access to justice through the mechanism of early declaration and the rendering of testimonies in safe environments. It also notes the coordination with the authorities of the National System for the Comprehensive Protection of Children and Adolescents to improve specialized care and protection for girls and adolescent victims of violence.

111. However, the Commission notes with concern the saturation of the specialized courts for a life free of violence and discrimination, as a result of the large number of cases received, as well as the lack of clarity of competencies in relation to the crime of domestic violence. This reflects the need for strengthening the capability of these courts with sufficient material resources and specialized personnel, in order to improve their capacity to resolve cases and, consequently, the access of women victims of violence to justice and protection measures in a timely manner. Along these lines, the Commission considers that, although some compliance measures have been adopted, it is still necessary to implement additional measures, for which reason the present recommendation is in a state of **partial compliance**.

112. In order to guide the implementation of this recommendation, the IACHR reiterates the importance that the State take and inform measures for institutional strengthening of the specialized courts for a life free of violence and discrimination. In this regard, it invites the State to report measures aimed at increasing the budget and resources allocated to these courts, their capacity through the allocation of sufficient personnel trained in access to justice for women, girls, and adolescents, and mechanisms that, in a mandatory, permanent, and sustainable manner over time, ensure their training and specialization in this area. It will also be essential for the State to take measures aimed at responding diligently to the congestion of these courts, ensuring a rapid and effective response. It is also essential to take and report on actions aimed at clarifying the competencies of the courts, which will contribute to decongesting the handling of these cases.

113. Regarding the recommendation to **review the cases of women sentenced to severe prison sentences for felony murder, related to obstetric emergencies or complications, as well as give priority processing to requests for commutation of the sentence in progress**, the State reported that from 2018 to date, at least 18 women have been released. It also stated that from July to September 2019, a certification course on "Specialization in the exercise of criminal defense in cases of obstetric emergencies" was provided to the staff of the public defender's office and the Specialized Care Units for Women.<sup>151</sup>

114. In its country report, the Commission found that as of January 2020, at least 14 women were still deprived of liberty for convictions related to obstetric emergencies.<sup>152</sup> Subsequently, it welcomed the release of three women by commutation of sentence in [December 2021](#),<sup>153</sup> and of two other women in the

<sup>147</sup> La Prensa Gráfica, [Emergency regime would make invisible women victims of violence](#), 25 May 2022

<sup>148</sup> El Mundo, [Cases of domestic violence overwhelm women's courts](#), 8 March 2021

<sup>149</sup> See, for example: El Salvador. [Judgment No. 65-COMP-2021 of Full Court by the Corinto Magistrate's Court, department of Morazán](#), 3 March 2022.

<sup>150</sup> CIDH, [Human Rights in El Salvador](#). OEA/Ser.L/V/II.278 (2021), para. 178, 189-191

<sup>151</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 53

<sup>152</sup> IACHR, [Human Rights in El Salvador](#). OEA/Ser.L/V/II.278 (2021), para. 199

<sup>153</sup> DW, [El Salvador releases three women convicted of abortion](#), 24 December 2021.



months of [January](#) and [February](#) 2022.<sup>154</sup> In this regard, the IACHR has learned of the difficulties faced by these individuals in their social reintegration due to discrimination and stigmatization associated with women's reproductive rights.<sup>155</sup> On the other hand, the Commission [expressed its rejection](#) of the sentences imposed in 2022 on two women, to 30 and 50 years respectively, for felony murder after suffering obstetric emergencies.<sup>156</sup>

115. In its observations on the draft of this report, the State claimed that, with respect to the aforementioned cases, the Office of the Attorney General of the Republic had based its accusations on sufficient evidence that has established the participation and guilt of the persons convicted, within the framework of proceedings that had respected the due process of law. Additionally, it indicated that the Prosecutor's Office ensured, in its role as guarantor of human rights, that all relevant procedures were carried out to gather information and documentation to establish whether during the pregnancy there had been any obstetric urgency or emergency that endangered the lives of the women and/or the fetus, requiring immediate medical and/or surgical attention.<sup>157</sup>

116. The Commission once again welcomes the release, from 2018 to date, of at least 18 women sentenced to severe prison terms for felony murder related to obstetric complications, although, it notes with concern that in 2022 other two women were deprived of their liberty for similar reasons. In addition, it notes that the State did not provide information on the number of women who continue to be deprived of liberty for incidents related to obstetric emergencies, nor on the measures taken to review their cases and give priority processing to requests for commutation of sentences. Therefore, although the Commission finds that the State has taken some measures of compliance with this recommendation, additional information is needed, as well as other measures of compliance, which is why it considers that this recommendation has a status of **partial compliance**.

117. In order to guide the implementation of this recommendation, the IACHR would like to express the need for a specific report from the State on the number of women who are currently serving prison sentences for felony murder for incidents related to obstetric emergencies or complications. In this regard, the Commission urges the State to keep this information current and to specify when these sentences were imposed, as well as the current situation of the convicted women. The IACHR also urges the State to report on the specific measures taken to proceed with the review of these cases, and to give priority processing to the requests for commutation of the sentence in progress.

118. With regard to the recommendation to **adapt the regulatory framework to the inter-American standards on the matter of the sexual and reproductive rights of women, girls, and adolescents**, the Commission clarifies that updated information on legislative or regulatory amendments implemented after the issuance of the country report will be taken into account. This is due to the fact that some of the laws and policies reported by the State were already analyzed in the 2021 country report.<sup>158 159</sup>

119. The State reported on the existing regulatory framework and public policies in this matter, such as the Law for the Comprehensive Protection of Children and Adolescents (LEPINA); the Law on Equality, Equity and Eradication of Discrimination against Women (LIE); the Nacer con Cariño [Born with Love] Law;

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<sup>154</sup> La Jornada, [After nine years in prison, a woman accused of aggravated homicide for an abortion is released in El Salvador](#), 18 January 2022; Voice of America, [El Salvador Releases Woman Accused of Miscarriage Homicide](#), 9 February 2022

<sup>155</sup> ZonaDocs, [Life After the Criminalization of Abortion in El Salvador](#), 1 May 2022.

<sup>156</sup> In its observations on the present report, the State of El Salvador rejected the publication of both statements on social networks because they were not preceded by a request for information from the State regarding the cases.

<sup>157</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 11.

<sup>158</sup> IACHR, [Human Rights in El Salvador](#). OEA/Ser.L/V/II.278 (2021), para. 11; 153; 195.

<sup>159</sup> In its observations on the draft of this report, the State reiterated its disagreements with respect to the analysis of the scope of its international obligations in this area and the adequacy of the State's measures in relation to these obligations.

the General Law on Youth; and the National Policies on Women, on the Comprehensive Protection of Children, on Support for Early Childhood Development, and the National Cross-cutting Strategy for the Prevention of Pregnancy in Girls and Adolescents (ENIPENA).<sup>160</sup> In its comments on the draft of this report, the State added that through the Ministry of Health, it provides adolescents and young people with differentiated, comprehensive, and integrated health care, including sexual and reproductive health care in all establishments and other institutional and community facilities, in accordance with the needs of this population and the legal and regulatory framework in force.<sup>161</sup>

120. Likewise, the State said that the Crecer Juntos [Growing Together] Law for the Comprehensive Protection of Early Childhood, Children and Adolescents was approved in June 2022, which will enter into force in 2023, repealing the LEPINA. It pointed out that this legislation is in addition to the Nacer con Cariño Law approved in August 2021, and the Crecer Juntos Early Childhood Policy, which provides due attention to the developmental trajectory of girls and boys from gestation to 8 years of age.<sup>162</sup> In line with these legislative measures, it is noted that in March 2022 the Ministry of Health presented the second version of the Policy for Gender Equality and Equity in Health (PIEGS), which updates the legal framework that supports it.<sup>163</sup> In addition, the State reported on the Amor Convertido en Alimento [Love Converted into Food] Law for the Promotion, Protection and Support of Breastfeeding, published on October 14, 2022, which aims to guarantee the right of children to be breastfed and seeks to ensure that public and private institutions provide spaces and decent conditions for women to breastfeed or collect their milk.<sup>164</sup>

121. On the other hand, the Commission notes the persistence of the total criminalization of the voluntary termination of pregnancy. The Commission has repeatedly pointed out that the denial of interruption of pregnancy in certain circumstances 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>165</sup> In the Merits Report on the Case of Beatriz v. El Salvador, the Commission concluded that the criminalization of abortion without exceptions, and without considering the risks to the life, health, or personal integrity of the woman in the event of continuing the pregnancy, is contrary to the American Convention on Human Rights.<sup>166</sup>

122. The Commission also notes that the regulatory framework and health policies mentioned above prioritize the protection of motherhood, establishing a distinction in the protection and guarantee of the right to reproductive health depending on whether a pregnancy continues or not. For example, the Nacer con Cariño Law excludes from the rights of women, in relation to pregnancy, the possibility of its interruption and, therefore, does not regulate its timely healthcare in cases of emergency.<sup>167</sup>

123. In accordance with the above, it should be noted that the PIEGS does not include among its strategies and lines of action the provision of health services in emergency situations related to the termination

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<sup>160</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 54, 41.

<sup>161</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 13.

<sup>162</sup> Republic of El Salvador. Update on compliance with recommendations contained in the Report: "Human Rights in El Salvador, p. 3-4.

<sup>163</sup> Ministry of Health, [Policy for gender equality and equity in health](#), published in Official Gazette No. 42, Volume No. 434, March 1, 2022

<sup>164</sup> Republic of El Salvador. Update on compliance with recommendations contained in the Report: "Human Rights in El Salvador, p. 4; Republic of El Salvador. [Official Journal Volume No. 437, p. 3](#), October 14, 2022.

<sup>165</sup> IACHR. Press Release 042/18. IACHR Urges El Salvador to End the Total Criminalization of Abortion, March 7, 2018; Press Release 208/21. [IACHR Expresses Concern over the Adoption of Regressive Measures on Sexual and Reproductive Rights in the Region](#), 11 August 2021

<sup>166</sup> IACHR. Report No. 9/20. Case 13.378. Bottom. Beatriz. El Salvador. March 3, 2020., para. 156

<sup>167</sup> IACHR. Annual Report 2021, [Chapter IV.A](#) Development of Human Rights in the Region, para. 534.

of pregnancy that endanger the life or health of women. Furthermore, it does not consider deaths caused by abortions carried out in unsafe conditions as preventable situations, as it validly does in the case of maternal deaths caused by hypertensive diseases related to pregnancy and post-partum hemorrhage.<sup>168</sup> The Commission warns that these deaths can be prevented through medical care that is timely and without discrimination.

124. Along the same lines, the Commission notes that in the legislative process of the Crecer Juntos Law, obstetric emergencies—that endanger the life or constitute an irreparable risk to the health of the pregnant girl or adolescent—were deliberately excluded as one of the mandatory cases of immediate and free care for all healthcare providers.<sup>169</sup>

125. In light of the above, the Commission highlights the State's efforts to advance in the protection of the rights of children in early childhood, as well as the rights of women during pregnancy, childbirth, and breastfeeding period. However, it notes that the regulatory framework and health policies maintain and reinforce the restrictions previously identified by the Commission that hinder the access of women, girls, and adolescents to sexual and reproductive health services without discrimination.

126. In this regard, the Inter-American Court of Human Rights, in the case of *Manuela and Others v. El Salvador*, stated that the right to sexual and reproductive health of women is related, on one hand, to autonomy and reproductive freedom to make autonomous decisions about their life plan, their body, and their sexual and reproductive health, free of any violence, coercion, and discrimination. On the other hand, it is related to access to information, education, and reproductive health services that allow them to exercise their autonomy and reproductive freedom in a free and responsible manner. In this sense, States have the obligation to provide medical care without discrimination, which implies that under no circumstances may medical care be conditioned for women who require it.<sup>170</sup> In light of all this, the Commission considers that this recommendation is **pending compliance**.

127. In order to guide the implementation of this recommendation, the IACHR would like to reiterate the need for the State to take measures and report information on these measures, aimed at adapting the regulatory framework to the inter-American standards on sexual and reproductive rights of women, girls, and adolescents previously reiterated. In this sense, it will be necessary to implement new regulations or amend the current legislation in order to advance in the level of compliance with this recommendation.

128. Regarding the recommendation to **take specific measures that guarantee the rights to work and their fair and equitable conditions for women who work in domestic services and manufacturing plants, particularly within the textile industry, under the modality of home-based work**, the State reported that through the Ministry of Labor and Social Security (MTPS), the Inter-institutional Committee for the Promotion and Improvement of Women's Labor Rights was created; awareness-raising campaigns have been carried out; reforms to the special regime for domestic workers have been promoted; and technical assistance was provided to support the formation of the first Union of Paid Domestic Workers (SIMUTHRES).

129. It also pointed out that the MTPS, through the implementation of inspections and the Salvadoran Social Security Institute, expanded its coverage for self-employed workers and their beneficiaries, as well as domestic workers, in order to enhance women's access to social security services. In this regard, the Commission notes that, according to data compiled by civil society, as of July 2022, the registry of the

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<sup>168</sup> Ministry of Health, [Policy for gender equality and equity in health](#), published in Official Gazette No. 42, Volume No. 434, March 1, 2022, p. 18

<sup>169</sup> La Prensa Gráfica, [Deputies admit "pressures" to stop scope of Crecer Juntos Law](#), 26 September 2022

<sup>170</sup> I/A Court. [I/A Court H.R., Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs](#). Series C No. 441. Judgment of November 2, 2021, para. 192-194

population employed in households with domestic services totals 147,877 persons—86.28% of whom are women—of whom only 1,833 are registered in the social security system.<sup>171</sup>

130. The State also reported that in 2021, the ISDEMU, the Ministry of Economy, and the Salvadoran Standardization Agency established coordination to promote in the private sector the Salvadoran Technical Standard (NTS 03.116.01:21), which contains the requirements that an organization must meet to establish a Gender Equality Management System that promotes the elimination of gender gaps and increases its competitiveness, as a result of the improvement of working conditions and quality of employment from a gender perspective.<sup>172</sup>

131. On the other hand, the Commission takes note of the demands of organizations and unions of domestic workers for the implementation of legislative measures to regulate the obligatory nature of contracts and living wages;<sup>173</sup> and of home-based embroiderers, to regulate inspections in their workplaces to verify the conditions in which they work,<sup>174</sup> as well as for the ratification of ILO Convention 177.<sup>175</sup> In addition, it notes with concern the complaints from workers in manufacturing plants who report restrictions by employers to attend medical appointments, and even dismissals related to absences due to illness.<sup>176</sup> It also takes note of data collected by the civil society indicating that, from January to June 2021, there were 217 complaints of labor violence against women, of which 62 correspond to harassment in the workplace.<sup>177</sup>

132. With regard to the **ratification of Conventions and the implementation of specific ILO recommendations**, the State reported that Convention 190 was ratified by the Legislative Assembly on May 16, 2022.<sup>178</sup> Regarding Conventions 177 and 189, it said that they were submitted to the Legislative Assembly for their consideration and ratification since 2019 and 2015, respectively, and are still under study and consultation with the corresponding sectors and national institutions.<sup>179</sup>

133. The Commission appreciates the State's efforts to advance in the protection of the labor rights of women, particularly domestic workers. At the same time, it notes the lack of information regarding the particular situation of women workers in the textile industry under the home-based work scheme, as well as the application of ILO Recommendation No. 184 on home-based work. It also notes the mobilizations of organizations and unions of domestic workers, maquila workers, and home-based embroidery workers seeking to improve their working conditions, especially in terms of social protection, health, and living wages. In light of these considerations, the Commission concludes that the State has taken some measures of compliance, but that additional measures are necessary to advance in implementation, and therefore considers that this recommendation is in a state of **partial compliance**.

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<sup>171</sup> Women's Economic and Labour Observatory. [Only 1,833 domestic workers registered in Social Security, as of July 2022](#), 11 November 2022

<sup>172</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 83; Salvadoran Organization for Standardization. [Salvadoran Technical Standard](#) NTS01.116.91:21, accessed November 2022.

<sup>173</sup> Radio YSUCA. [Organizations demand living wages for domestic workers](#), 8 March 2022.

<sup>174</sup> Diario El Mundo, [Embroidery machines will require inspections in new law](#), 28 July 2022

<sup>175</sup> Alharaca. [When I'm also embroidering](#), 23 March 2022

<sup>176</sup> ElSalvador.com. [Maquila unionists denounce that 25% of workers are denied permission to go to medical consultations](#), 8 March 2022, The Graphic Press. [Women denounce abuses in maquilas](#), 10 March 2022

<sup>177</sup> Central American Observatory on Workplace Violence. [El Salvador. Newsletter No. 1 January – March 2022](#). Retrieved November 15, 2022

<sup>178</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 82; Legislative Assembly. [Legislative Decree 385](#), 16 May 2022.

<sup>179</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 82.

134. In order to guide the implementation of this recommendation, the IACHR would like to reiterate the need for the State to report detailed information on the measures taken to guarantee the rights to work and fair and equitable conditions for women working in manufacturing plants, particularly in the textile industry under home-based work. Likewise, with respect to domestic service workers, the IACHR calls for the taking of measures to strengthen the guarantee of their rights, taking into consideration the claims necessary to ensure their fair and equitable conditions. Likewise, the IACHR urges the State to promote the ongoing process for the approval of ILO Conventions 177 and 189, and to specify what actions it has taken to implement recommendations 184 and 201 on this issue.

135. Regarding the recommendation to **strengthen the institutional capacities of the ISDEMU, so that it has greater autonomy to prevent, punish, and eradicate violence against women**, the State reported that in August 2022 the law creating the ISDEMU was reformed to strengthen its competencies and provide it with new structures and functions that make viable the fulfillment of its purposes.<sup>180</sup> It reported that the Institute's personnel, with the exception of the executive director, is hired under a system in line with the Salary Law, which provides labor stability to the personnel and allows for continuity in the work processes. It also reported on the increase in 2020 of the budget for current expenses, compared to the 2019 budget.<sup>181</sup>

136. Among the amendments to the Law, it is noted that the Ciudad Mujer Program was transferred to be under the management and administration of the ISDEMU.<sup>182</sup> Therefore, in September 2022, the Legislative Assembly approved the transfer of funds for this Institute to continue the work of coordinating and implementing its projects.<sup>183</sup> On the other hand, note has been taken of the progressive decrease in the budget of Ciudad Mujer over the last four years, as well as the complaints about the amendments to the Law that limit and condition the participation of women's and feminist organizations in ISDEMU.<sup>184</sup>

137. On one hand, the IACHR appreciates that a law aimed at strengthening the competencies and structures of ISDEMU has been issued. At the same time, it appreciates the legislative measures taken to concentrate in ISDEMU 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. The IACHR considers that these measures contribute to strengthening the autonomy of this institute in the exercise of its functions. On the other hand, the Commission notes the absence of updated information on budgetary matters and specialized training that would make it possible to assess the strengthening of ISDEMU's institutional capabilities to fulfill its mandate. Therefore, the Committee considers that, although some measures have been taken to achieve compliance, additional information is needed, and thus considers that this recommendation has a status of **substantial partial compliance**.

138. In order to guide the implementation of this recommendation, the IACHR urges the State to promote measures aimed at strengthening the financial resources and specialized training of ISDEMU personnel, and to report the details of these actions, based on updated information. This information will allow the IACHR to determine that progress has been made to comply with this recommendation.

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<sup>180</sup> Republic of El Salvador. Update on compliance with the recommendations contained in the report: "Human Rights in El Salvador", p. 1; Legislative Assembly of the Republic of El Salvador. [Decree No. 472](#), 17 August 2022.

<sup>181</sup> Republic of El Salvador. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the State of Implementation of the Recommendations contained in the "Human Rights in El Salvador" report approved after a visit on site Conducted in 2019, July 2022, p. 58.

<sup>182</sup> Legislative Assembly of the Republic of El Salvador, [Reform of ISDEMU Law Will Allow Women to Receive Specialized and Comprehensive Care](#), 17 August 2022.

<sup>183</sup> Legislative Assembly of the Republic of El Salvador, [ISDEMU will receive funds to continue with social projects of Ciudad Mujer](#), 28 September 2022.

<sup>184</sup> Compass magazine. [Reforms to ISDEMU Law Limit Participation of Organizations and Concentrates Ciudad Mujer Services in ISDEMU](#), 17 August 2022; ElSalvador.com. Suecy Callejas: ["We are not closing Ciudad Mujer, we are taking it to the place where it belonged"](#), 16 August 2022.

139. Regarding the recommendation to **ratify the Convention Against All Forms of Discrimination and Intolerance**, the State informed the IACHR that it is currently holding an internal consultation process on the ratification of said instrument, in accordance with the national legal system. The IACHR invites the State to promote the consultation process and to provide information on the substantial progress made in the process of ratification of this instrument. In the meantime, it notes that the recommendation is **pending compliance**.<sup>185</sup>

140. Regarding the recommendation aimed at **implementing a gender identity law**, the State submitted information according to which the Constitutional Chamber of the Supreme Court of Justice (CSJ) declared, in February 2022, the unconstitutionality of Article 23, paragraph 2 of the Law on the Name of the Natural Person, insofar as it does not allow name changes for reasons of gender identity. The CSJ ordered the Legislative Assembly to reform the law. In this regard, the IACHR has learned that, at the time of writing this report, this reform is pending.<sup>186</sup>

141. The State did not provide additional information on the progress of legal initiatives to comply with this recommendation. Nor did it provide information on the current status of the initiative presented in 2021 by the Permanent Roundtable for the Gender Identity Law, composed of civil society organizations.<sup>187</sup> The IACHR recalls that this new proposed bill came as a result of the tabling of a draft bill that had been under study since 2018, as was highlighted in the 2021 annual report of the Inter-American Commission.<sup>188</sup>

142. In light of this, the IACHR considers that the recommendation is **pending compliance**. In order to guide the implementation of this recommendation, the IACHR reiterates the need to adopt a gender identity law that recognizes, in a comprehensive manner, not only the change of name and image in identity documents, but also the rectification of the sex marker in identity documents, including the birth certificate and passport, to facilitate full recognition of gender identity and access to other rights. The Committee brings to mind that the report of information on these measures will make it possible to assess some progress in the fulfillment of this recommendation.

143. Regarding the recommendation to **implement a comprehensive plan for the protection and guarantee of the human rights of LGBTI persons**, the State did not provide information to the IACHR on the intention or processing of such a plan at the national level or plans in the current context of access to health or education, corresponding to the year 2022.

144. However, with respect to the employment sector, the State reported that, with the intermediation of UNHCR, the "Creando Oportunidades" [Creating Opportunities] program has been launched, which is under development and consists of promoting capabilities to facilitate the employability of populations in a historical condition of exclusion and vulnerability, through vocational courses with a stipend to guarantee adherence to the program, and then be incorporated into the employment exchange of the Ministry of Labor and Social Welfare. In this regard, the State reported that this program includes the LGBTI population as a target audience.<sup>189</sup> Likewise, the State reported that the Ministry of Labor and Social Welfare considers the LGBTI population as part of priority groups and that it carries out actions aimed at a job placement free of discrimination, and develops actions such as labor intermediation, business meetings, technical roundtables with LGTBI persons and productive reintegration programs for returned migrants. It pointed out that, from the General Directorate of Labor Inspection, programmed and special labor inspection plans are developed, in response to complaints received by various means. In addition, it reported that, from the General Directorate of Social Welfare, technical visits are carried out in which the safety conditions for

<sup>185</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.59

<sup>186</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.59; Alharaca, Supreme Court of Justice orders to include gender identity in the Name Law. 23 February 2022

<sup>187</sup> Today's newspaper "Permanent Table for a Gender Identity Law presents new proposal to deputies" August 20, 2021

<sup>188</sup> IACHR, Annual Report 2021, Chapter IV.A, para. 535

<sup>189</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.61

workers are verified and that the General Directorate of Employment has a labor intermediation system (General Population and Vulnerable Groups) whose objective is to establish the relationship between supply and demand in order to offer the most suitable resources to companies.

145. Additionally, the State informed the Commission that issues related to the rights of LGBTI persons have been established as competencies of the Ministry of Culture and the Ministry of Local Development. In addition, the Diversity and Gender Unit has been created, implementing measures to promote non-discrimination based on sexual orientation and gender identity and expression, which were included in the 2019-2024 Five-Year Operational Plan.<sup>190</sup>

146. However, the information provided by the State, according to complaints from the civil society, since the elimination of the directorate of sexual diversity within the executive branch, and despite the new powers of the Ministry of Culture in the matter, difficulties have arisen for the inter-institutional articulation of comprehensive public policies aimed at protecting the rights of LGBTI persons and their social inclusion.<sup>191</sup>

147. Considering that the State has reported some measures aimed at complying with this recommendation, especially with regard to differentiated care for LGTBI persons in the employment sector, the Commission considers that the implementation or reporting of specific information on the other components of this recommendation is still missing; therefore, it considers that it is in **partial compliance**. In order to guide the implementation of this recommendation, the IACHR urges the State to implement a comprehensive plan for the protection and guarantee of the human rights of LGBTI persons, which includes all the components listed in the recommendation (human security, access to justice, education, health, and employment), as well as to promote the appropriate mechanisms for an effective articulation of said plan in all relevant State institutions. Likewise, the IACHR reiterates that the implementation of this plan must contemplate the participation of interested civil society organizations, so that they can contribute and that their perspective is taken into account in the design and formulation of this measure.

148. Regarding the recommendation to **train State officials in the matter of the rights of LGBTI persons**, the State informed the Commission that the Office of the Attorney General developed, between 2019 and 2022, through its Center for Training, Analysis and Research, four courses related to the rights of LGBTI groups. In March 2022, the Workshop "Human Rights of the LGBTI population" was held, while in 2021, training was carried out on the subject "Strategies to raise awareness and strengthen interview techniques in order to address the care of LGBTI persons," aimed at personnel from the various User Care Units, which were given with the support of the Association for Communicating and Training Transgender Women with HIV in El Salvador (COMCAVIS-TRANS). Likewise, the Course "Mainstreaming the Inclusion Approach with an emphasis on the LGBTI population" was carried out, with the theme: Sexual Diversity, Approach to Addressing the Rights of the LGTBIQ Population, Principle of Secularism and Information Registration, which was taught by the Center for the Study of Sexual and Gender Diversity (Amate). The Workshop "Human Rights of Women from the Perspective of Intersectionality" was also held, in which the problems faced by the LGBTI population regarding access to justice were addressed.

149. The State also reported that, from January 2015 to April 2022, the Prosecutor Training School carried out a total of 1,035 training and awareness-raising courses related to the issue of the rights of women and the LGBTI population, having an effect on the same number of assistant prosecutors. Likewise, the State informed the IACHR that the National Civilian Police has a Human Rights Policy and permanently develops a process of socialization and training for institution personnel.<sup>192</sup>

<sup>190</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.59

<sup>191</sup> Today's daily "LGBTIQ+ Activist: We are more unprotected than ever." June 27, 2022

<sup>192</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, pp.11-12.

150. The IACHR values the information provided by the State regarding the training processes for public officials on the rights of LGTBI persons. Considering that some measures have been taken to comply with this recommendation, but the implementation of additional actions is still necessary, as well as detailed information on them, the Commission considers the recommendation to be in **partial compliance**.

151. To guide the implementation of this recommendation, the IACHR urges the State to continue taking training measures for state officials on the rights of LGTBI persons. The progress in its level of compliance will depend on information that specifies how these trainings have addressed all state officials, prioritizing justice operators, and how, specifically, they have developed the issue of the rights of LGTBI persons. The Commission invites the information provided to report aspects such as actions for the design, implementation, monitoring, and evaluation of training programs, budgets, and other allocated resources. Likewise, information on the measurement of the results and the sustainability strategy of these programs will be evaluated. For the IACHR, it will be essential to verify the continuous and mandatory nature of these training sessions.

152. Regarding the recommendation to **collect disaggregated statistical data on acts of violence and discrimination against LGBTI persons**, the State informed the IACHR that the National Civilian Police (PNC) keeps a registry of crimes against LGBTI persons. Likewise, that the Attorney General's Office has the capability to register complaints related to the crimes of homicide and threats motivated by "hatred of gender identity and expression or sexual orientation," through the reforms to the criminal code that allow the aggravation of the punishment for these reasons.<sup>193</sup>

153. The State also informed the Commission that the Office of the Attorney General has promoted the collection of information on vulnerable populations that require its services, including LGBTI persons.<sup>194</sup>

154. Additionally, the State reported that the PGR is working on a platform that allows the registration of users with information disaggregated by age, sex, and other key variables, and that this tool is intended to be a single registry base for consultation at a national level that facilitates the collection and reading of updated data, which will include data regarding violence and discrimination against LGBTI persons.<sup>195</sup>

155. Based on this, the IACHR considers that the State has taken steps towards the implementation of the recommendation under follow-up, but additional compliance measures are still necessary, for which it considers that it is in **partial compliance**. In this regard, the IACHR identifies that the State did not report on the data collected, the implementation or effectiveness of the PNC registry, or whether said information is publicly accessible. In this sense, the IACHR reiterates the content of its recommendation and urges the State to strengthen the mechanisms for collecting the requested data, taking into account the inter-American standards on the matter, including the need for disaggregated, public and regularly updated statistics. Likewise, it urges that the construction of these information registration tools have the articulation of all the institutions involved, in order to ensure that they consist of unified and comprehensive records that are useful for the future implementation of measures of care and prevention of this type of violence.

156. Regarding the recommendation to **take the necessary measures to strengthen access to justice for LGBTI persons**, the State reported that in October 2021, the Attorney General created the Deputy Prosecutor's Office for Women, Children, Adolescents and other Vulnerable Groups, whose main function is to carry out investigations and the corresponding criminal action, on crimes perpetrated against women, children, adolescents, the LGBTI population, and other vulnerable groups, in the context of gender-based violence.<sup>196</sup>

<sup>193</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.10

<sup>194</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.10.

<sup>195</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, p.10.

<sup>196</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, pp.11-12.



157. The State also informed the IACHR that in cases of crimes perpetrated against LGBTI persons, the ones in charge of the investigations are the units for crimes related to life and physical integrity or the Early Solution Units of each Prosecutor's Office, which provide specialized care for victims. Additionally, the State assured that the Public Criminal Defense Unit of the Attorney General's Office coordinates actions with other institutions regarding the LGBTI population to guarantee an effective criminal defense.<sup>197</sup>

158. Likewise, according to the information received from the State, the Ministry of Justice and Public Security has implemented a policy for the care of the LGBTI population in various divisions of the National Civilian Police, among which are the Division for the Protection of Victims and Witnesses, the Border Security Division, and the Law Enforcement Unit.<sup>198</sup>

159. The IACHR recognizes the measures taken by the various State institutions that are part of the Public Prosecutor's Office and that play an essential role in the access to justice for LGBTI persons. In light of this, the Commission considers that the State has taken various measures aimed at implementing the IACHR's recommendation, and therefore considers its recommendation to be in **partial compliance**. In order to guide the process of implementation and follow-up of this recommendation, the IACHR considers that the actions that have been reported should be reinforced in terms of their implementation and monitored in terms of their effectiveness, with a view to demonstrating that, in practice, these have represented a strengthening of the access to justice for LGBTI persons. Likewise, the IACHR encourages the State to continue advancing and taking the necessary measures to guarantee access to justice for LGBTI persons, with an emphasis on measures that are duly articulated between the institutions of the executive branch and the Public Prosecutor's Office.

### 3. Persons in the Context of Human Mobility

- 32. Approve a comprehensive regulatory framework on forced displacement that includes durable solutions, within the framework of the implementation of the MIRPS, guaranteeing support and advice in comprehensive coordination mechanisms for the protection of human rights.
- 33. Refute the application of measures, policies or agreements that in any way impose the recognition of the country as a safe third country.
- 34. Strengthen the transnational coordination in the search for disappeared and deceased migrants, including the strengthening of mechanisms for collecting, safeguarding, and analyzing forensic data and genetic data banks; likewise, strengthen consular services for Salvadorans abroad, especially those with a need for international protection.
- 35. Implement comprehensive programs and specific measures aimed at guaranteeing the rights of internally displaced populations, in long-lasting conditions of security and dignity, and place the guarantee of these rights at the center of strategies to prevent this phenomenon, particularly the rights to housing, work, education, and health.
- 36. Implement a public policy aimed at guaranteeing an effective reintegration focused on the human rights of returned migrants, especially migrants in vulnerable situations and/or with particular protection needs, such as children, victims of trafficking, persons with disabilities, LGBTI persons, older persons, and persons with medical needs.

160. Regarding the recommendation aimed at **approving a comprehensive regulatory framework on forced displacement that includes durable solutions, within the framework of the implementation of the MIRPS**, the State pointed out that it has in place an inter-institutional board to speed up the application of the Global Compact for Safe, Orderly and Regular Migration, with the main goal of drafting a National Plan on migration. It also informed the IACHR that the Deputy Ministry of Diaspora and Human Mobility of the Ministry of Foreign Affairs launched the Program for the Creation of Alliances for Migration, an

<sup>197</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, pp.11-12.

<sup>198</sup> State of El Salvador, Report presented by the State to the IACHR, July 2022, pp.11-12.

initiative that seeks to improve governance and coordination necessary to address human mobility, as well as for the implementation of the Global Compact for Safe, Orderly and Regular Migration.<sup>199</sup>

161. On its part, the Commission observes that the State had implemented the Labor Migration program, which would seek to benefit Salvadorans with job opportunities in areas such as agriculture, industry, and construction, and in countries such as the United States and Canada. In addition, it would have contributed to reducing the percentage of irregular migration.<sup>200</sup> Moreover, the Salvadoran Institute for the Development of Women participated in the launching of the project "Empowerment of women and girls affected by migration and forced displacement in El Salvador," which has as main objectives: i) promoting processes that strengthen the gender approach in decision-making on the needs of migrant, displaced, and refugee women, and ii) favoring the capacity to provide specialized services for women.<sup>201</sup>

162. The Commission welcomes the initiatives implemented by the State to provide lasting solutions to the phenomenon of forced displacement. However, it notes that this continues to develop. In this regard, the most recent UNHCR data point out that by the end of 2021 there was a total of 52,041 refugees of Salvadoran origin, while 153,249 asylum seekers were awaiting a resolution of their procedures.<sup>202</sup> These figures represent an increase of 14% and 2%, respectively, when compared to 2020.<sup>203</sup> On its part, the IOM has indicated that, in terms of the proportion of the total population, El Salvador is among the countries with the largest migrant population from the perspective of the country of origin.<sup>204</sup> Likewise, UNHCR highlighted that, in the United States, more than half of all new asylum applications in 2021 were submitted by nationals of only five countries, including El Salvador, with a total of 14,900 applications, which represents 8% of the total number of requests.<sup>205</sup>

163. The IACHR takes note of the measures reported by the State to advance in compliance with the recommendation made. However, it notes that the implementation of a legal framework in the terms indicated in this recommendation is still pending. Therefore, the Commission considers that this recommendation is **pending compliance**.

164. With a view to guiding the implementation of this recommendation, the IACHR reiterates that, beyond programs, plans, and even policies on the matter, the recommendation requests the approval of a comprehensive regulatory framework on forced displacement. In this sense, the actions that must be reported to assess the progress of compliance with the recommendation will consist of specific laws on the matter, which are also aimed at guaranteeing the accompaniment and advice of the comprehensive coordination mechanisms for the protection of human rights.

165. Likewise, the Commission recommended that the State **refute the application of measures, policies or agreements that in any way impose the recognition of the country as a safe third country**. In this regard, the Commission notes that the State did not include in its report any information regarding compliance with this recommendation. Additionally, the publicly available information does not allow for establishing the actions initiated by the State to advance in compliance with this recommendation. Pending information that reports specific actions taken by the State to refute the measures, policies, and agreements indicated in the recommendation, the IACHR considers that it is **pending compliance**.

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<sup>199</sup> State of El Salvador, Follow-up Report on Compliance with IACHR Recommendations, July 2022, p. 67 and 101. IACHR Archive.

<sup>200</sup> Press Secretariat of the Presidency, El Salvador, "[Government of President Nayib Bukele promotes the Labor Migration program to stop irregular migration in El Salvador](#)", 16 August 2022.

<sup>201</sup> Salvadoran Institute for the Development of Women, "[Project launched for the empowerment of women and girls affected by migration and forced displacement in El Salvador](#)", 28 June 2022.

<sup>202</sup> UNHCR [Global Trends 2021](#), June 2022, Tables 1 to 22 of the annex.

<sup>203</sup> UNHCR [Global Trends 2020](#), June 2021, Tables 1 to 22 of the annex.

<sup>204</sup> OIM, [World Migration Report 2022](#), April 22, 2022, p. 102. IOM [International Migration Law. Glossary on Migration](#), 2019, p. 63.

<sup>205</sup> UNHCR [Global Trends 2021](#), June 2022, p. 32.

166. With regard to **strengthening the transnational coordination in the search for disappeared and deceased migrants**, the IACHR notes that, on this occasion, the State initially did not send information on the progress implemented during 2022. In its comments on the draft of this report, the State indicated that it has more than 90 diplomatic and consular representations around the world and plans to increase them to 104 by the end of 2023. In addition, in 2022, it inaugurated 4 consulates in the United States to provide attention to more than 24,000 Salvadorans. This will bring the number of Salvadoran consulates throughout the United States to 28, making it the country with the most consular representation worldwide.<sup>206</sup>

167. On its part, the Commission observes that, according to figures from the United Nations, between 2010 and 2022, the Forensic Data Bank of Disappeared Migrants registered 392 cases of “disappeared” Salvadoran migrants.<sup>207</sup> Considering the lack of information on specific state measures to implement the content of this recommendation, the Commission concludes that it is **pending compliance**.

168. In order to guide the implementation of this recommendation, the IACHR considers it opportune to reiterate that this recommendation requests the implementation of several actions: specific measures that strengthen transnational coordination in the search for missing and deceased migrants, which must include mechanisms for the collection, safeguarding, and analysis of forensic data and genetic data banks, and, on the other hand, measures that strengthen consular services for Salvadorans abroad, especially with regard to persons in need of international protection.

169. Likewise, the Commission recommended that the Salvadoran State **implement comprehensive programs and specific measures aimed at guaranteeing the rights of internally displaced populations, in long-lasting conditions of security and dignity**. In this regard, the State, in its response to the IACHR, did not refer to the follow-up actions on the recommendation made.

170. On its part, the IACHR notes that the most recent figures from the Internal Displacement Monitoring Center (IDMC) indicate that, by the end of 2021, a total of 175,000 new displacements were reported, related to conflicts and violence, and 550 displacements related to natural disasters. In particular, the IDMC warned that displacement associated with criminal violence continues to pose a challenge, but evidence shows that it was a major trigger in several countries in the Americas, including El Salvador.<sup>208</sup> In addition, it highlighted that the results of a national survey in El Salvador suggest that around 111,000 persons changed their residence due to threats to their lives and safety in 2021. It adds that, since some people moved several times, the total number of internal displacements was estimated at around 175,000, of which gang violence triggered just over 80%. Finally, it points out that, although the survey is not without limitations, it gives an idea of what could be a much more complex phenomenon that affects the country.<sup>209</sup>

171. Considering that the State did not report any measures taken to implement this recommendation, the IACHR considers that this recommendation is **pending compliance**.

172. In addition, with a view to guiding the implementation and follow-up of this recommendation, the IACHR invites the State to put in place and report comprehensive programs that guarantee the rights of internally displaced persons, in conditions of lasting safety and dignity. Likewise, it will be essential for the State to report to the IACHR the measures that have been taken so that, in the strategies for the prevention of internal displacement, the guarantee of the rights of persons to housing, work, health, and education is a priority. These measures may consist of public policies, programs, plans, regulations, protocols or any other action aimed at this purpose, including details on their design, implementation and monitoring.

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<sup>206</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 14.

<sup>207</sup> UN [Disappearance in the context of migration in Mexico and Central America](#), September 2022, p. 4.

<sup>208</sup> IDMC, [Global Report on Internal Displacement 2022](#), April 2022, p. 162, 16.

<sup>209</sup> IDMC, [Global Report on Internal Displacement 2022](#), April 2022, p. 78.

173. Finally, regarding the recommendation to **implement a public policy aimed at guaranteeing an effective reintegration focused on the human rights of returned migrants, especially migrants in vulnerable situations and/or with particular protection needs**, the State reported on the implementation of the action "Comprehensive care for young persons in conditions of vulnerability returned from abroad to accompany their social and productive integration," within the framework of the project "Contribution to the reintegration of returned migrant women and children, as a priority population in the Social Plan of El Salvador-Phase I". This action aims to contribute to the generation of opportunities for social and labor integration and to lay down roots for young persons who have returned to the country, by strengthening their capabilities through orientation and training with employability and entrepreneurship initiatives.<sup>210</sup> Likewise, the Commission takes note of the implementation of the digital skills certification training program, as well as in the culinary field. This program is aimed at returned migrants and other persons in a situation of vulnerability and risk of migrating, including the sons and daughters of returnees.<sup>211</sup>

174. However, the Commission continued to observe an upward trend in relation to the forced returns of persons to El Salvador. Of these numbers, the most up-to-date data from the IOM indicate that, until late August 2022, a total of 10,399 persons would have been returned to El Salvador from Mexico and the United States, of whom 3,536 would be children and adolescents. This figure represents an increase of 221.1% in relation to the same period during 2021.<sup>212</sup>

175. The Commission takes note of the State's efforts to implement measures aimed at the integration of returnees. However, the IACHR identifies that the actions reported do not constitute the implementation of the public policy requested in the recommendation; therefore, it concludes that it is **pending compliance**.

176. In this regard, it stresses that not every measure taken by the state powers should be assumed as a public policy, since it must be made up of specific phases, namely: i) creation of the 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>213</sup> Considering the composition of a public policy and with a view to guiding the implementation of this recommendation, the IACHR invites the State to implement and report on the implementation of a public policy that is made up of the aforementioned phases and that covers the needs of the migrants referred to in the recommendations (children, victims of trafficking, persons with disabilities, LGBTI persons, older persons, and persons with medical needs).

#### 4. Human Rights Defenders

- 37. Implement 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 the necessary measures to stop the stigmatization and degrading accusations originated at the level of the State or its agents, with the purpose of preventing violence against journalists and human rights defenders and in compliance with inter-American standards that establish special responsibilities for public authorities in the exercise of their freedom of expression.
- 38. Carry out effective investigations with due diligence in order to identify, prosecute, and punish the perpetrators and masterminds of crimes against human rights defenders.

177. Regarding the recommendation to **implement a legal framework for the protection and defense of human rights defenders and implement a comprehensive protection policy**, the State said

<sup>210</sup> State of El Salvador, Follow-up Report on Compliance with IACHR Recommendations, July 2022, p. 75. IACHR Archive.

<sup>211</sup> Press Secretariat of the Presidency, El Salvador, "[Government promotes actions that allow returned migrants to expand their skills and knowledge to qualify for more job opportunities](#)", 15 February 2022.

<sup>212</sup> Human Mobility Information Management Initiative in the Northern Triangle - NTMI, [El Salvador](#). Accessed November 15, 2022.

<sup>213</sup> IACHR, [Public policies with a human rights approach](#), OEA/Ser.L/V/II., Doc. 191, September 15, 2018, para. 154, 174-183.

that, by constitutional and legal mandate, the Office of the Attorney General is the institution responsible for the investigation of incidents that constitute crimes, and it is assisted by the National Civilian Police. It said it has manuals and documented procedures that would be applied by police personnel, guaranteeing a professional and technical investigation process that would allow for positive results. Moreover, it added that it has in place the Special Law for the Protection of Victims and Witnesses, to ensure that victims, witnesses, and other persons involved in the investigation of the crime or in legal proceedings are protected, which in turn regulates the implementation of a comprehensive protection program for victims and witnesses. On the other hand, the State highlighted that the criminal legislation contemplates as an aggravating circumstance of criminal responsibility that the criminal act is perpetrated against the victim given their "humanitarian work."<sup>214</sup>

178. On the other hand, during 2022, the IACHR received information on persistent challenges that prevent the free exercise of the defense of human rights. In this regard, the Commission registered the murder of Elizabeth De León, defender of women's rights and companion of women in situations of violence, on March 22, 2022.<sup>215</sup> On their part, civil society organizations submitted information to the Commission according to which, between January and June 2022, a total of 81 attacks against 40 female human rights defenders were registered. Among the types of aggressions that would have been registered were digital attacks (29%), limitation or impediment to gather information on human rights violations (14%), arbitrary arrests (10%), physical and verbal violence (16%), harassment (7%), threats (5%), attacks against the prestige and credibility of the defenders (4%), and home invasions (4%).<sup>216</sup>

179. In its observations on the draft of this report, the State reiterated that it has recognized the legitimate right to defend human rights and condemns any crime against persons engaged in the defense of human rights. It indicated that it has constantly provided explanations on the existing institutional framework to guarantee the free exercise of the work of human rights defenders and that it rigorously prosecutes threats against them or attempts on their lives, regardless of the actors or perpetrators.<sup>217</sup>

180. In turn, civil society organizations have highlighted that, during the first half of 2022, an institutionalized dynamic of discrediting civil society organizations and human rights defenders has been maintained.<sup>218</sup> In this regard, the Commission was informed that within the framework of the state of exception, stigmatizing and discrediting discourse has increased against associations for the defense of human rights, which has come from the highest State authorities.<sup>219</sup> The Commission stresses that discrediting the work carried out by human rights defenders through pronouncements by State officials leads to stigmatization and,

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<sup>214</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019, Diplomatic Note MPOEA-OAS-178/2022, October 11, 2022, p. 12.

<sup>215</sup> IACHR, Press Release No. 114/22, [IACHR: High Violence against Human Rights Defenders in the First Quarter of 2022 Urges States to Protect Life and Work](#), 25 May 2022.

<sup>216</sup> Salvadoran Network of Women Human Rights Defenders, Information on the situation of women defenders in El Salvador, July 28, 2022, on file with the IACHR; IM Defensoras, [In El Salvador, digital violence is state violence](#), 26 October 2022.

<sup>217</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 14.

<sup>218</sup> Table for the right to defend rights, [Defending human rights in crisis contexts: Analysis of cases of attacks against defenders and journalists 2021-2022](#), September 6, 2022, p. 11.

<sup>219</sup> Table for the right to defend rights, [Defending human rights in crisis contexts: Analysis of cases of attacks against defenders and journalists 2021-2022](#), September 6, 2022, p. 14; CELS [El Salvador: State of Emergency and Attacks on Human Rights Defenders](#), 31 March 2022; FUSADES, Information on events affecting human rights defenders in El Salvador, received on October 22, 2022, on file with the IACHR; Twitter @nayibbukele (April 24, 2022) "If there is something that should teach us a great lesson, it is who comes out to defend this scum. Look at the organizations, the NGOs, the media, the "friendly governments". May it help us to understand, once and for all, who has always been behind the suffering of our people." <https://twitter.com/nayibbukele/status/1518438395189645314?s=20&t=lwowlfqlTko-lx0WStgHIQ>

at the same time, can generate a climate of hostility and intolerance on the part of various sectors of the population that would hinder the legitimate exercise of their freedom of association.<sup>220</sup>

181. The IACHR has also received information on the unjustified use of criminal law as a way to criminalize the work of human rights defenders. In this regard, civil society organizations reported on the launching of criminal investigations against human rights defenders, for carrying out their investigative work and expressing their opinions regarding public policies.<sup>221</sup> In this regard, the Salvadoran Network of Women Defenders, within the framework of the state of exception, pointed out that at least 7 female defenders have faced arbitrary detentions, accused of being members of illegal or terrorist groups.<sup>222</sup>

182. Additionally, through its Office of the Special Rapporteur for Freedom of Expression, the Commission has received reports indicating the persistence of a hostile climate for practicing journalism in El Salvador, characterized by the approval of restrictive legislation on freedom of expression and the freedom of the press; the use of spyware against journalists investigating matters of high public interest; restrictions on the right of access to public information; obstructions to access interviews and statements of public officials by the press; and the persistence of stigmatizing accusations and disqualifications against the independent press coming from governmental spheres. The records received by the Office of the Special Rapporteur show that at least 10 journalists decided to leave the country in 2022, arguing the lack of guarantees to practice the profession.<sup>223</sup>

183. In this regard, in its observations on the draft of this report, the State reiterated the position it took<sup>224</sup> at the thematic hearing on the situation of human rights in the context of cyber surveillance in El Salvador, held by the IACHR at its 183rd period of sessions, and the views it expressed<sup>225</sup> in response to the communiqué of the IACHR, the Special Rapporteurship on Freedom of Expression (RELE) and OHCHR on the use of Pegasus software to spy on journalists and civil society organizations in El Salvador.<sup>226</sup> In addition, it rejected any action that constitutes aggression or an attack on the free exercise of freedom of expression, so that in cases where there are formal complaints of attacks or threats, an investigation is carried out under the oversight and direction of the FGR.<sup>227</sup>

184. Likewise, in 2022, the SRFOE also observed the persistence of stigmatizing accusations against journalists and the media by government actors. Among the events recorded this year, the vice president disqualified the work of digital magazine *Gato Encerrado*, referring to the media outlet as "zanates" [grackles] and "activists disguised as journalists," and asserting that "they lie shamelessly."<sup>228</sup> This happened after the outlet published an investigative article in which it alleged "tight secrecy" and refusal to provide

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<sup>220</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 125.

<sup>221</sup> Red Salvadoreña de Defensoras de Derechos Humanos, Información sobre la situación de defensoras en El Salvador (Information on the situation of defenders in El Salvador) July 28, 2022, on file with the IACHR.

<sup>222</sup> Salvadoran Network of Women Human Rights Defenders, Information on the situation of women defenders in El Salvador, July 28, 2022, on file with the IACHR.

<sup>223</sup> IACHR, Press Release No. 22/22, [IACHR, RELE, and OHCHR Express Concern over Findings on Use of Pegasus Software to Spy on Journalists and Civil Society Organizations in El Salvador](#), 31 January 2022.

<sup>224</sup> During the public hearing, the State denied the existence of persecution, harassment, or stigmatization of persons critical of the government's handling of these matters and affirmed that the Attorney General's Office was conducting the corresponding investigations.

<sup>225</sup> In connection with the publication of the aforementioned press release, the State asserted via Diplomatic Note that "the origin of such interventions is unknown and therefore the corresponding investigations are being carried out in order to determine the responsibility and authorship of such acts, which had allegedly also violated devices and communications of state officials.

<sup>226</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 14.

<sup>227</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 14.

<sup>228</sup> Twitter account of Félix Ulloa (@fulloa51). [March 3, 2022](#); Twitter account of Félix Ulloa (@fulloa51). [February 10, 2022](#).

information of public interest within the framework of the process of creating a proposal for a new Constitution.<sup>229</sup> Likewise, a pro-government legislator would have referred to journalists from *El País* as “barfly journalists,”<sup>230</sup> in relation to an article in which they reported on the declaration of a state of exception in the country due to the rise in homicides.<sup>231</sup> The Minister of Justice and Public Security described *La Prensa Gráfica* and *El Diario de Hoy* as “hypocrites,” accusing them of “protecting the interests of criminal structures” and “being on the side of terrorists and their opposition allies to misrepresent information.”<sup>232</sup> Likewise, the Deputy Minister of Justice and Director General of Prisons referred to journalists from *El Faro* as “terrorists,” “gang spokespersons,” and “mercenaries.”<sup>233</sup>

185. The Rapporteurship also documented stigmatizing messages against journalists coming from the head of State. Thus, for example, according to the information available, the president questioned the veracity of the information published by *El Diario de Hoy*, describing its work as “a stupid thing.”<sup>234</sup> Through his social networks, the president also described anthropologist and journalist Juan Martínez d’Aubuisson, a collaborator of *InsightCrime* and *El Faro*, as “garbage,” referring to an interview in which the expert gave his opinion on the role of gangs in El Salvador.<sup>235</sup> Next, a deputy from the Nuevas Ideas party shared the president’s message and pointed out that “these guys (...) don’t deserve anyone’s respect, they are rubbish.”<sup>236</sup> The anthropologist is the author, among other academic publications, of “Ver, Oír y Callar,” [Seeing, Hearing, and Keeping Quiet] in which he documents the way in which gangs control territories and their population.<sup>237</sup> After these incidents, Martínez d’Aubuisson publicly denounced having received death threats, a “wave of attacks” on social networks, and “dozens of comments from pro-government lawmakers, officials, and opinion leaders.”<sup>238</sup> In addition, he denounced that one of his sources had also received death threats.<sup>239</sup>

186. In this context, the Office of the Rapporteur also observed with concern the messages from the president of the Legislative Assembly against the independent press that publishes about gangs and criminal groups in El Salvador, and that has questioned the government’s management of this matter.<sup>240</sup> During a plenary session held on April 19, he referred to the “embarrassing newspapers and journalists, those who call themselves intellectuals,” and stated that “if they want to leave, let them leave,” “give them asylum and leave (...) they don’t contribute to anything here (...) We don’t need you, go away.”<sup>241</sup> The lawmaker from the Nuevas Ideas party said that “there are lots of journalists who, in addition to being journalists, are scoundrels (...) boasting about being intellectuals (...) and, in fact, they are self-conscious people with little personality, who need to attract attention and try to tell this country that they are important, when in fact they are nothing.”<sup>242</sup> Likewise, he referred to *La Prensa Gráfica* and *El Diario de Hoy* as “minuscule newspapers and cartoon

<sup>229</sup> Gato Encerrado. December 15, 2021. [The secret process to create Bukele's new Constitution](#).

<sup>230</sup> Twitter account of Carlos Hermann Bruch (@noalospoliticos). [March 27, 2022](#).

<sup>231</sup> El País. March 27, 2022. [Bukele Assumes Extraordinary Powers, Declares State of Emergency to Confront Wave of Murders in El Salvador](#).

<sup>232</sup> Twitter account of Gustavo Villatoro (@Vi11atoro). [May 12, 2022](#).

<sup>233</sup> Twitter account of Osiris Luna Meza (@OsirisLunaMeza). [April 11, 2022](#).

<sup>234</sup> Twitter account of Nayib Bukele (@nayibbukele). [March 5, 2022](#).

<sup>235</sup> Twitter account of Juan Martínez d’Aubuisson (@juan\_martinezd). [April 11, 2022](#).

<sup>236</sup> Twitter account of Ernesto Castro (@ECastroES). [April 11, 2022](#).

<sup>237</sup> The Lighthouse. April 21, 2022. [After a week of harassment of the press, the president of the Assembly demands journalists: 'leave'](#); RT. 26 de March 2016. [The gangs up close: an anthropologist delves into his world to understand the phenomenon](#).

<sup>238</sup> The Washington Post. April 18, 2022. [Opinion. Bukele turned me into a gang member because of my work as a researcher](#); Twitter account of Juan Martínez d’Aubuisson (@juan\_martinezd). [April 11, 2022](#).

<sup>239</sup> The Washington Post. April 18, 2022. [Opinion. Bukele turned me into a gang member because of my work as a researcher](#); The Lighthouse. April 21, 2022. [After a week of harassment of the press, the president of the Assembly demands journalists: 'leave'](#);

<sup>240</sup> The Lighthouse. April 21, 2022. [After a week of harassment of the press, the president of the Assembly demands journalists: 'leave'](#); Twitter account of Juan Pappier (@JuanPappierHRW). [April 20, 2022](#).

<sup>241</sup> El Mundo. 20 de abril de 2022. [Castro a periodistas “incómodos”: “Váyanse”](#); El Diario de Hoy. 20 de abril de 2022. [“En democracia, la prensa independiente es incómoda”, le responde Human Rights Watch a presidente de Asamblea tras decir a periodistas “que se vayan” del país](#).

<sup>242</sup> El Mundo. 20 de abril de 2022. [Castro a periodistas “incómodos”: “Váyanse”](#); El Diario de Hoy. 20 de abril de 2022. [“En democracia, la prensa independiente es incómoda”, le responde Human Rights Watch a presidente de Asamblea tras decir a periodistas “que se vayan” del país](#).

magazines" that "are pathetic," and that "in the end they were only the arms of the opposition."<sup>243</sup> Subsequently, through his Twitter account, the official referred to the press as "clowns," and referred to newspaper *El Mundo* as a "pamphlet", [full of] "deaf" [people], "international gold diggers," and demanded that they "retract, apologize," and accept that the article was "another piece of lying and self-victimizing nonsense."<sup>244</sup>

187. The Office of the Special Rapporteur for Freedom of Expression has indicated that those who lead debates of general interest participate in a public space that they are also responsible for.<sup>245</sup> As the Inter-American Court of Human Rights has held, in a democratic society it is not only legitimate, but also sometimes a duty, for state authorities to rule on matters of public interest.<sup>246</sup> However, in doing so, they are subject to certain limitations, mainly aimed at verifying the facts on which they base their opinions and addressing them with even greater diligence than that used by individuals, due to their high status, wide scope and eventual effects that their expressions may have on certain sectors of the population.<sup>247</sup> Likewise, as the Court maintains, "they must take into account that as public officials they have a position as guarantors of the fundamental rights of individuals and, therefore, their statements cannot disregard these or constitute forms of direct or indirect interference or pressure injurious to the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts."<sup>248</sup> This duty of special care is particularly accentuated in certain contexts, such as a state of exception, or situations of social conflict, disturbances of public order, or social or political polarization, precisely because of the risks that may be involved.<sup>249</sup>

188. On the other hand, the IACHR, its Office of the Special Rapporteur for Freedom of Expression and the Regional Office of the United Nations High Commissioner for Human Rights for Central America and the Dominican Republic and the Caribbean (OHCHR) expressed their concern regarding new findings on the use of malicious software Pegasus, used for illegal surveillance purposes against journalists and civil society organizations in El Salvador. In January, the IACHR and its Rapporteurship received information about the alleged use of the malicious software Pegasus to spy on journalists in El Salvador.<sup>250</sup> An expert analysis carried out by Citizen Lab of the University of Toronto and the Access Now organization determined that at least 35 people from the Salvadoran media and civil society organizations had their phones tapped with Pegasus, the hacking software created by Israeli company NSO Group.<sup>251</sup> On its part, the State said that the origin of such tapping is unknown, and therefore the corresponding investigations are being carried out, in order to determine the responsibility and authorship of such acts, which also allegedly violated the devices and communications of state officials.<sup>252</sup>

<sup>243</sup> *El Mundo*. 20 de abril de 2022. [Castro a periodistas "incómodos": "Váyense"](#); *El Diario de Hoy*. 20 de abril de 2022. ["En democracia, la prensa independiente es incómoda". le responde Human Rights Watch a presidente de Asamblea tras decir a periodistas "que se vayan" del país.](#)

<sup>244</sup> Cuenta de Twitter de Ernesto Castro (@ECastroES). [20 de abril de 2022.](#)

<sup>245</sup> CIDH. Relatoría Especial para la Libertad de Expresión. 17 de mayo de 2021. [La Relatoría Especial para la Libertad de Expresión hace un llamado para que las personas que ocupan o aspiran a ocupar cargos de elección popular en Perú contribuyan con su discurso a la protección de los derechos humanos.](#) R 126/21.

<sup>246</sup> I/A Court. I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; Inter-American Court. I/A Court H.R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

<sup>247</sup> I/A Court. I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; Inter-American Court. I/A Court H.R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

<sup>248</sup> I/A Court. I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; Inter-American Court. I/A Court H.R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

<sup>249</sup> Corte IDH. I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139.

<sup>250</sup> Citizen Lab, Universidad de Toronto. January 2022. [Project Torogoz. Extensive Hacking of Media & Civil Society in El Salvador with Pegasus Spyware.](#) Citizen Lab Research Report No. 148.

<sup>251</sup> Citizen Lab, Universidad de Toronto. January 2022. [Project Torogoz. Extensive Hacking of Media & Civil Society in El Salvador with Pegasus Spyware.](#) Citizen Lab Research Report No. 148.

<sup>252</sup> Permanent Mission of El Salvador to the OAS. January 28, 2022. Note MPOAS-OAS-012/2022. Position of the State of El Salvador on the draft communiqué "The IACHR, RELE, and OHCHR express their deep concern over the findings on the use of Pegasus software to spy on journalists and civil society organizations in El Salvador."



189. These incidents were also presented to the IACHR during the 183<sup>rd</sup> Period of Sessions, in March 2022.<sup>253</sup> In the hearing "The situation of human rights in the context of cyber surveillance in El Salvador," civil society organizations expanded on the information and stated that the journalists who had been infected by Pegasus fear more and more for their safety and personal integrity, and that of their journalistic sources.<sup>254</sup> On this occasion, the State highlighted that the problem with the use of the Pegasus software is global in scope, at the same time that it stressed the need to create a legal framework to control this type of tools, which, when used properly, could be useful to confront terrorism and organized crime.<sup>255</sup> In addition, the representative of the State specified that the Pegasus infection did not exclusively affect journalists, but also affected public officials.<sup>256</sup> In this regard, he mentioned that up to that moment there had been 33 complaints from public employees and officials.<sup>257</sup>

190. Given the previous considerations, the SRFOE [reiterates](#) that communications surveillance practices not only violate the right to privacy, but also have the potential to affect the rights inherent to the exercise of journalism, including the confidentiality and integrity of the sources, as well as the rights of other people around them. Likewise, as the IACHR, its SRFOE and the OHCHR have pointed out, "any intrusive action by communication devices must be supported by a legal and transparent framework that is in accordance with international human rights rules and standards, guaranteeing the principles of necessity, proportionality, and an objective that is legitimate and in accordance with said rules."<sup>258</sup> The Rapporteurship considers it essential that the State undertake its maximum efforts to clarify the facts through a complete, effective, and impartial judicial investigation, and that independence in the investigations and the cooperation of both public and private entities be guaranteed.

191. In this context, in its country report, the Commission highlighted the importance of resuming the discussion on a law for the protection of defenders, as well as the implementation of a comprehensive policy for the protection of defenders, which guarantees adequate treatment of cases of human rights violations against activists.<sup>259</sup> In this regard, the Commission learns about the submission of a bill for the recognition and comprehensive protection of human rights defenders and for the guarantee of the right to defend human rights submitted by civil society organizations in 2018,<sup>260</sup> which had been tabled by the Legislative Assembly during 2021.<sup>261</sup> In this sense, the Commission observes that, since the publication of this report, there has been no progress in the creation of a solid legal framework that supports the work carried out by human rights defenders in El Salvador. This situation was also observed by the United Nations Committee against Torture, which urged the State to implement the regulatory framework for the protection of human rights defenders.<sup>262</sup>

192. In relation to the provision of a comprehensive protection program for victims and witnesses indicated by the State, the IACHR has pointed out that the mechanisms related to programs for the protection of victims, witnesses, and other individuals who participate in criminal cases do not constitute a national

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<sup>253</sup> IACHR. March 16, 2022. 183 Period of Sessions. [Hearing No. 11The Human Rights Situation in the Context of Cyber Surveillance in El Salvador.](#)

<sup>254</sup> IACHR. March 16, 2022. 183 Period of Sessions. [Hearing No. 11The Human Rights Situation in the Context of Cyber Surveillance in El Salvador.](#)

<sup>255</sup> IACHR. March 16, 2022. 183 Period of Sessions. [Hearing No. 11The Human Rights Situation in the Context of Cyber Surveillance in El Salvador.](#)

<sup>256</sup> IACHR. March 16, 2022. 183 Period of Sessions. [Hearing No. 11The Human Rights Situation in the Context of Cyber Surveillance in El Salvador.](#)

<sup>257</sup> IACHR. March 16, 2022. 183 Period of Sessions. [Hearing No. 11The Human Rights Situation in the Context of Cyber Surveillance in El Salvador.](#)

<sup>258</sup> IACHR. January 31, 2022. [The IACHR, RELE, and OHCHR express concern over findings on the use of Pegasus software to spy on journalists and civil society organizations in El Salvador. January 31, 2022.](#) Press Release No. 022/22.

<sup>259</sup> IACHR, [Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 288.

<sup>260</sup> IACHR, [Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 287; FESPAD, [Human rights defenders in El Salvador](#), Situational Report 2018-June 2019, December 2019, p. 37.

<sup>261</sup> FESPAD, [Communiqué: In view of the decision to shelve the proposed Law on the Protection of Human Rights Defenders](#), 19 May 2021.

<sup>262</sup> CAT, [Concluding observations on the third periodic report of El Salvador](#), 25 November 2022, para. 37.

mechanism for the protection of human rights defenders.<sup>263</sup> This is because protection under these programs presupposes the danger that a person faces due to their participation in a criminal case, while in the case of human rights defenders the threat may be the result of a number of factors, such as their work promoting human rights.<sup>264</sup> Although the IACHR acknowledges the existence of general institutional mechanisms that can be used as tools to offer protection to human rights defenders, mainly within judicial systems, it also emphasizes the need for States to implement comprehensive policies and programs that specialize in protection and risks faced by those who defend human rights.<sup>265</sup>

193. The Commission reminds the States that they are obligated to develop positive actions that create favorable environments for the defense of human rights and that translate, in turn, into the suppression of hostile or dangerous environments for the protection of human rights and other especially important activities for the strengthening of democracy, such as the journalistic profession.<sup>266</sup> The defense of human rights and journalism can only be exercised freely when defenders and journalists are not victims of threats or any type of physical, mental, or moral aggression or other acts of harassment.<sup>267</sup> Due to this, the Commission considers that this recommendation is **pending compliance**.

194. Likewise, the IACHR expresses that progress in the level of compliance with this recommendation will depend on the State implementing a legal framework for the protection and defense of human rights defenders and, furthermore, on the implementation of a comprehensive protection policy in their favor. Likewise, the IACHR reiterates the need for the State to urgently take all the necessary measures to end the stigmatization and degrading accusations against journalists and human rights defenders, considering the previously mentioned context.

195. Regarding the recommendation to **carry out effective investigations with due diligence in order to identify, prosecute, and punish the perpetrators and masterminds of crimes against human rights defenders**, the State reiterated that the Office of the Attorney General is the institution that guarantees the right of access to justice for the population, whose role is to collect the evidence and present it before the corresponding judicial authority. On its part, it said that the judicial authority has the power to assess the evidence in accordance with the law and decide on the responsibility or not of the persons involved in illicit activities previously established in the internal regulations and for the imposition of the corresponding penalties. It pointed out that the fiscal functions and services are deployed throughout the national territory, through the Offices, as well as through the Specialized Investigation Units.<sup>268</sup>

196. In this regard, the Commission has expressed its special concern regarding the lack of a record of the attacks perpetrated against defenders and the invisibility that the State would give to the attacks against them by attributing them to the general security situation in the country.<sup>269</sup> Along these lines, the Commission regrets that it does not have sufficient information on the measures taken to investigate the crimes perpetrated against human rights defenders since the publication of its country report in 2021. In this same sense, the United Nations Committee against Torture expressed its concern at the lack of investigations regarding the

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<sup>263</sup> IACHR, [Toward a Comprehensive Policy for the Protection of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, par. 242.

<sup>264</sup> IACHR, [Towards a comprehensive policy of protection for human rights defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, para. 242.

<sup>265</sup> IACHR, [Towards a comprehensive policy of protection for human rights defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, para. 242.

<sup>266</sup> IACHR, [Report on the situation of human rights defenders and social leaders in Colombia](#), OEA/Ser.L/V/II. Doc. 262, December 6, 2019, para. 175.

<sup>267</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, para. 46.

<sup>268</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019, Diplomatic Note MPOEA-OAS-178/2022, October 11, 2022, p. 12.

<sup>269</sup> IACHR, [Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 285.

threats, acts of intimidation and retributions of which human rights defenders would be victims in the context of their work.<sup>270</sup>

197. The Commission recalls that the lack of investigation and punishment of those responsible for crimes against human rights defenders, both perpetrators and masterminds, has resulted in high levels of impunity, which promotes the repetition of these acts.<sup>271</sup> Based on the information available, the IACHR does not have enough information to determine progress in compliance with this recommendation, and therefore concludes that it is **pending compliance**.

198. In order to guide the follow-up of this recommendation, the IACHR urges the State to implement the necessary measures to adopt the investigations to identify, prosecute, and punish the persons responsible for material and mastermind crimes against human rights defenders. These measures must include a transparent record of the complaints and facts related to these crimes, in order to verify how the investigation, prosecution and sanction actions have, in effect, contributed to the eradication of impunity for this type of crime. The IACHR also invites the State to report the information on these compliance measures.

## 5. Indigenous Peoples and Persons of African Descent

- 46. Generate statistical data on the indigenous population and persons of African descent at the national level, incorporating into the population census questions that contribute to the identification and registration of these groups.
- 47. Ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the Indigenous and Tribal Peoples Convention, 169 of the International Labor Organization.

199. Regarding the recommendation that asks to **generate statistical data on the indigenous population and persons of African descent at the national level, incorporating into the population census questions that contribute to the identification and registration of these groups**, the State reported that the Public Policy for the Indigenous Peoples of El Salvador is in the process of being updated, which will require a census of the indigenous population.<sup>272</sup> It also said that the Ministry of Health maintains statistical data on the ethnic self-identification of families and their health situation as part of the preparation of a participatory community diagnosis.<sup>273</sup> The State also reported that the Office of the Attorney General has incorporated a space in its statistical matrices so that users can indicate their ethnic self-identification in order to receive adequate care.<sup>274</sup> Lastly, it stated that the Gender and Inclusion Unit has been developing variables to make visible life situations, particularities, gaps and inequalities between different population groups in situations of vulnerability and promote a more inclusive statistical registry.<sup>275</sup>

200. The IACHR values the information provided by the State on the actions that will be taken within the framework of the public policy on indigenous peoples and those that some State institutions have

<sup>270</sup> CAT, [Concluding observations on the third periodic report of El Salvador](#), 25 November 2022, para. 36.

<sup>271</sup> IACHR, [Basic guidelines for the investigation of crimes against human rights defenders in the Northern Triangle](#), OEA/Ser.L/V/II. Doc. 110, 1 of June Nov 2021, para. 11.

<sup>272</sup> Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved following the visit on site conducted in 2019, July 2022, p. 79.

<sup>273</sup> Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved following the visit on site conducted in 2019, July 2022, p. 79.

<sup>274</sup> Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved following the visit on site conducted in 2019, July 2022, p. 79.

<sup>275</sup> Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved following the visit on site conducted in 2019, July 2022, p. 79.

developed to improve on the inclusion of disaggregated information regarding the indigenous population. However, it stresses that it is also necessary to have information on actions aimed at expanding on the collection of disaggregated information on indigenous peoples in the development of the national census, so that it includes the self-identification criterion and that facilitates the participation of indigenous peoples for such purpose.<sup>276</sup>

201. On the other hand, in relation to the Afro-descendant population, the State did not present significant progress on this recommendation, limiting itself to noting the incorporation, into the statistical matrices of the Attorney General's Office (PGR), of "a space for recording whether the user belongs to a specific ethnic group, with the purpose of providing adequate care in accordance with the requirements of international standards in this matter."<sup>277</sup>

202. The Commission reiterates its concern over the scant information available on the human rights situation of the Afro-descendant population and tribal communities in El Salvador and urges the State to address the need to generate disaggregated and updated statistical data to serve as a source for the design and development of public policies. Likewise, it stresses the need to incorporate the *Afro-descendant* self-identification variable in all statistical systems, and to use the category of *ethnic-racial origin* instead of race, ethnicity, or lineage.<sup>278</sup> At the same time, it points out that on different occasions various Afro-descendant organizations have promoted a constitutional reform to include the recognition of persons of African descent in the Magna Carta, a proposal that has not been taken into account by the State to date.<sup>279</sup> In this same sense, the Commission takes note of what was indicated by leaders of civil society organizations regarding the lack of public policies focused on the protection of the rights of persons of African descent, as well as the recognition of their legacy.<sup>280</sup>

203. Considering that the State must implement and report on actions that effectively generate statistical data on the indigenous and Afro-descendant population, at the national level, the IACHR considers that the recommendation is **pending compliance**. In order to guide the implementation of this recommendation, the IACHR invites the State to promote an effective population census to identify and register these groups, and to share details on the process of design, implementation, and analysis of this census. Likewise, the IACHR invites the State to carry out comprehensive statistical records to identify these persons that will be useful in planning and adopting measures to respond to their particular conditions.

204. Regarding the **ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the Indigenous and Tribal Peoples Convention, 169 of the International Labor Organization**, the State of El Salvador reported that in accordance with "the process contemplated in the Constitution of the Republic for the ratification of international instruments, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance has already been submitted to the legislative branch for consideration. Regarding ILO Convention 169, the Ministry of Labor has resumed the study of its feasibility."<sup>281</sup>

205. On its part, the Commission observes that the State did not specify the date on which the aforementioned ratification process of the Convention was submitted for consideration by the legislative

<sup>276</sup> IACHR, [Human Rights in El Salvador](#), OEA/Ser.L/V/II., Doc. 275 (2021), par. 278.

<sup>277</sup> Report of the State of El Salvador to the IACHR on the Status of Compliance with the Recommendations contained in the Report "Human Rights in El Salvador," Approved Following a Visit on site carried out in 2019, p. 79.

<sup>278</sup> IACHR, [Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 278.

<sup>279</sup> IACHR, [Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 282.

France 24, [Salvadoran Afro-descendants demand that the bicentennial State be taken into account](#), September 17, 2021.

<sup>281</sup> Report of the State of El Salvador to the IACHR on the Status of Compliance with the Recommendations contained in the Report "Human Rights in El Salvador," Approved Following a Visit on site carried out in 2019, Page 80.

branch.<sup>282</sup> In this sense, it recalls that the universal ratification of the inter-American instruments is an essential step for the respect and guarantee of all human rights, and the prevention and eradication of all forms of discrimination.

206. On the other hand, it reiterates that the constitutional recognition of indigenous peoples carried out in 2014 and the ratification of Convention 169 must be accompanied by a reinforced legal, political and institutional framework for the protection of the rights of indigenous peoples.<sup>283</sup> Likewise, it reiterates that, in line with international and inter-American standards, the State must take, in consultation with indigenous peoples, the necessary measures for the recognition and protection of their cultural identity, their lands, territories, and natural resources, participation, consultation and free, prior and informed consent, and their economic, social and cultural rights, among others.<sup>284</sup> Finally, the IACHR highlights the importance of States building new relationships with indigenous peoples based on respect for their self-determination in order to overcome historical legacies of discrimination, racism, and colonialism.<sup>285</sup>

207. Based on this, the IACHR considers that this recommendation is **pending compliance**, since the aforementioned Conventions have not been ratified. The IACHR invites the State to move forward with the ratification of both instruments and to report to the Commission on the substantial progress of this process.

#### D. OTHER CONCERNS RELATED TO ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS

- 39. Promote the implementation of measures to apply inter-American standards related to business and human rights.
- 40. Include, in the school curriculum, content on equality, non-discrimination, and civic coexistence in order to advance the construction of a culture based on tolerance and the peaceful resolution of conflicts, inclusion, and respect for human rights.
- 41. Recognize, in the national legal system, the human right to drinking water and sanitation, promote a comprehensive and coordinated administration of the resource as a public good from a rights-based approach, and ensure that water use permits and agreements with companies on said resource do not jeopardize the effective realization of the human right to water.
- 42. Promote the negotiation and implementation of a treaty in cooperation with bordering countries to guarantee the necessary measures of prevention, regulation, and supervision of a comprehensive and sustainable management of shared basins of transboundary waters taking as a central point the content of the human right to water.
- 43. Ratify the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).
- 44. Take measures and allocate resources for the effective creation of a national authority that supervises the guarantee of access to water from a human rights framework by national and local authorities and companies involved in its administration or distribution. Likewise, to ensure that water use permits and agreements with companies on said resource do not jeopardize the effective realization of the human right to water.

<sup>282</sup> According to article 131, paragraph 7, of the Constitution of the Republic of El Salvador, the Legislative Assembly is responsible for "ratifying treaties or pacts concluded by the Executive with other States or international organizations or refusing to ratify them."

<sup>283</sup> IACHR, [Human Rights in El Salvador](#). OEA/Ser.L/V/II., Doc. 275 (2021), paras. 277-278.

<sup>284</sup> IACHR, [Human Rights in El Salvador](#). OEA/Ser.L/V/II., Doc. 275 (2021), par. 278.

<sup>285</sup> IACHR, Press Release No. 177/22. [On the International Day of the World's Indigenous Peoples, the IACHR Calls on States to Build New Relationships with Indigenous Peoples Based on Respect for Their Self-Determination](#). August 9, 2022; CIDH, [Right to self-determination of Indigenous and Tribal Peoples](#). OEA/Ser.L/V/II., Doc. 413 (2021).

- 45. Implement specific policies to guarantee access to water in the context of the pandemic, especially by vulnerable communities, including persons living in poverty and extreme poverty, women, children, and adolescents, among others.

208. Regarding the recommendation aimed at **promoting the implementation of measures to apply inter-American standards related to business and human rights**, the Commission and SRESCER highlight that, according to the information provided by the State, the National Plan for Climate Change and the Nationally Determined Contribution include provisions to regulate business activity in terms of water management and climate change. Thus, climate adaptation and mitigation actions and measures 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>286</sup>

209. In this regard, the IACHR and the Office of the ESCER Special Rapporteur stress that, in accordance with the provisions of the Report on Businesses and Human Rights, the State duties derived from the general obligation to guarantee human rights in this matter are: i) prevent human rights violations in the framework of business activities; ii) supervise the effective enjoyment of human rights in the framework of business activities; iii) regulate and implement internal law provisions regarding business activities and human rights; and, iv) investigate, punish, and guarantee access to effective reparation mechanisms for human rights violations within the framework thereof.<sup>287</sup> From this, it can be deduced that the guarantee obligation is not exhausted with the existence of a normative framework aimed at enforcing it, but rather, it requires governmental conduct that ensures the existence, in reality, of an effective guarantee of the free and full exercise of human rights.<sup>288</sup> In this sense, although the State has undertaken some actions aimed at fulfilling the duty to regulate and implement internal law provisions on the matter; it is not yet observed that other measures have been adopted in a general way aimed at implementing the inter-American standards on business and human rights in relation to the specific duties to prevent; supervise and investigate, sanction and guarantee access to effective reparation mechanisms. Similarly, it is not observed that there are provisions on accountability in terms of human rights for national or foreign companies.

210. Consequently, it is considered that the recommendation to promote the implementation of measures to apply the inter-American standards on business and human rights **remains pending compliance**.

211. In order to comply with this recommendation, the implementation of the standards on the matter is also required in the context of other situations that are of special attention in the inter-American context. Specifically, in the case of El Salvador, it would be necessary, among other things, to guarantee human rights in the framework of business activities related to the provision of essential public services and in fiscal policies or tax practices.<sup>289</sup> It is worthy of note that in the implementation of standards on business and human rights, people and groups in situations of vulnerability must be especially considered.<sup>290</sup>

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<sup>286</sup> Permanent Mission of El Salvador to the Organization of American States, Contributions of the State of El Salvador to the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER) of the Inter-American Commission on Human Rights on the impact of the climate emergency on the human rights of the most vulnerable populations in the Americas, MPOAS-OAS-149/022, September 7, 2022.

<sup>287</sup> CIDH – REDESCA, [Report on Business and Human Rights: Inter-American Standards](#), OEA/Ser.L/V/II, November 1, 2019, para. 86.

<sup>288</sup> I/A Court, [I/A Court H.R., Case of Velásquez Rodríguez v. Honduras](#). Bottom. Judgment of July 29, 1998. Series C No. 4. para. 167.

<sup>289</sup> I/A Court, [I/A Court H.R., Case of Velásquez Rodríguez v. Honduras](#). Bottom. Judgment of July 29, 1998. Series C No. 4. para. 167.

<sup>290</sup> I/A Court, [I/A Court H.R., Case of Velásquez Rodríguez v. Honduras](#). Bottom. Judgment of July 29, 1998. Series C No. 4. para. 167, § 314.

212. Regarding the recommendation to **include, in the school curriculum, content on equality, non-discrimination, and civic coexistence in order to advance the construction of a culture based on tolerance and the peaceful resolution of conflicts, inclusion, and respect for human rights**, the IACHR and the Office of the ESCER Special Rapporteur take note of the implementation of a reform to the educational system within the framework of the “Mi Nueva Escuela” [My New School] program, starting in September.<sup>291</sup> According to official information, said reform has seven pillars: infrastructure, early childhood, teacher training, renewed curriculum, technology, health and nutrition; which, together, seek to transform the educational system to promote the development of human potential.<sup>292</sup>

213. Regarding the contents of the school curriculum, the State indicated that one of the main characteristics of the reform is the prioritization of learning based on strengthening the qualities of each student, instead of the development of contents.<sup>293</sup> In a similar sense, the Work Report of the Ministry of Education, corresponding to the period between June 2021 and May 2022, details that the objective of the curricular reform is to guide learning towards new competences linked to the social and scientific transformations of the 21<sup>st</sup> century. Likewise, it mentions that the process is based on human rights and equity of knowledge; and seeks to specify the postulates of an inclusive and equitable education.<sup>294</sup>

214. On its part, the Ministry of Education would have launched a process of dialogue with the teachers of educational institutions in the country to engage in technical discussions about potential changes in the contents of the school subjects and other aspects.<sup>295</sup> However, the teacher unions that participated in the meetings reportedly stated that, as of September, the Ministry had not delved into the details of the reform proposal.<sup>296</sup>

215. In its observations on the draft of this report, the State reported that the main objective of the comprehensive curriculum reform is the global transition to economies based on knowledge and technology, and that it seeks to promote the development of human potential, focusing on the individual, taking into account his or her diversity and needs throughout the life cycle, where each student becomes a proactive actor in his or her own learning process. It also indicated that the main features of this curriculum are: i) learning based on strengthening the qualities of each student, not on the development of content; ii) incorporation of practice as a central learning experience; iii) collaborative and resource-rich construction of knowledge, using questions, ideas, and hypotheses as starting points; iv) teaching that is explicit but flexible with regard to methodologies, types of learning, and degrees of intensity (*modality, dosage and methodological plasticity*); v) inclusion of the everyday context to provide students with a sense of closeness to reality and practicality; vi) the incorporation of technology (in a broad sense) in the learning experience; vii) the proposing and continuous contrasting of ideas, sources, and findings; viii) the priority of evidence-based formative assessment; and ix) being centered on the areas of development: personal and social development, communication and expression, and relationship to the environment. Additionally, the State reported that it has taken a new look at the design of educational facilities and has set new infrastructure and school furniture standards in its “My New School” design manual.<sup>297</sup>

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<sup>291</sup> Permanent Mission of El Salvador to the Organization of American States, Update on compliance with recommendations contained in the “Human Rights in El Salvador” report, MPOEA-OAS-178/2022, October 11, 2022.

<sup>292</sup> Permanent Mission of El Salvador to the Organization of American States, Update on compliance with recommendations contained in the “Human Rights in El Salvador” report, MPOEA-OAS-178/2022, October 11, 2022.

<sup>293</sup> Permanent Mission of El Salvador to the Organization of American States, Update on compliance with recommendations contained in the “Human Rights in El Salvador” report, MPOEA-OAS-178/2022, October 11, 2022.

<sup>294</sup> Ministry of Education, [Work Report June 2021 – May 2022](#), 2022..

<sup>295</sup> Ministry of Education, [“Dialogue with Teachers”, an informal colloquium with prominent educators who contribute to the Curriculum Reform](#), 4 June 2022.

<sup>296</sup> La Prensa Gráfica, [Dialogue opened for educational reform](#), 23 September 2022.

<sup>297</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report ‘Situation of Human Rights in El Salvador’, Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 15-17.

216. Notwithstanding these important advances, the Commission and REDESCA note that no explicit content on equality, non-discrimination, and citizen coexistence appears to have been included in the school curriculum and will continue to monitor the process in order to evaluate progress in this area; and, for the time being, they consider that compliance with this recommendation **is still pending**.

217. In order to comply with the recommendation, the Commission urges the State to report on the implementation of the reformed program and curricular content, on equality, non-discrimination, and citizen coexistence, as well as progress in this area.

218. In relation to **recognizing the human right to drinking water and sanitation**, the IACHR and the Office of the ESCER Special Rapporteur welcome the fact that, on December 22, 2021, the Legislative Assembly approved the General Water Resources Law-which entered into force on January 12, 2022, with its publication in the Official Gazette-through which the rights to water and sanitation were recognized as components of the right to an adequate standard of living. The first was defined as the right of all people to have quality, sufficient, safe, accessible, and affordable water; and the second as the right to access, without discrimination, sanitation that is healthy, hygienic, safe, social and that guarantees dignity.<sup>298</sup>

219. Said Law establishes that the State has the primary obligation and responsibility to guarantee the effective enjoyment of the rights to water and sanitation for present and future generations. Therefore, it requires the implementation of all public policies, rules, and measures that lead to their full realization.<sup>299</sup> Also, it determines that water is a national asset for public use; prohibits its privatization; and declares that all works and projects related to the conservation, protection, improvement, exploitation, and use of water resources are of public utility and social interest.<sup>300</sup>

220. Within this framework, what stand out are these advances and the incorporation of the principles of equality and non-discrimination, equity, rights-based approach, responsibility, co-responsibility, risk management, *In Dubio Pro Aqua*<sup>301</sup>, prioritization of the use of water for human consumption, water security, and water sustainability, as guiding criteria for the management, use, exploitation, protection, and conservation of water resources.<sup>302</sup>

221. In turn, the Commission and its SRESCER emphasize that the Law prioritizes the use and exploitation of water resources, in the following order: i) human consumption and domestic use; ii) sustainability of ecosystems; iii) agricultural use seeking food security; iv) use for the generation of electrical energy; v) industrial and commercial use; vi) recreational uses; and vii) other uses. In this regard, it is categorically stated that the use of water for human consumption and domestic use may not be subordinated or conditioned to any other use; it can only be restricted by the environmental flow regime defined for the water source.<sup>303</sup>

222. On the other hand, for the use and exploitation of water resources for purposes other than human consumption and domestic use, the Law requires the consent of the Salvadoran Water Authority; through public assignments, authorizations for assets established in the public hydraulic domain, and

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<sup>298</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, art. 1.

<sup>299</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, art. 1.

<sup>300</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, arts. 5 and 7.

<sup>301</sup> The principle *In Dubio Pro Aqua* It establishes that "in case of doubt about the scope of the legal provisions, the norm that most favors the preservation of water resources, which guarantees a dignified life, health, culture, protection and conservation of ecosystems, will be applied."

<sup>302</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, art. 8.

<sup>303</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, art. 63.



permits.<sup>304</sup> Mainly, these institutions are differentiated by the fact that public allocations can only be requested by public administration bodies to fulfill their powers, for periods of up to five years and, in the case of electricity generation, fifteen years; while authorizations can be issued, in general, for the consumptive or non-consumptive use of water, in a certain quantity and quality, and in a defined geographical point.<sup>305</sup> Finally, permits can be granted to natural or legal persons, exclusively for discharges or exploration.<sup>306</sup>

223. The Law establishes the administrative procedures and applicable requirements for each case, which share issues such as registration, periodic reporting or review and subjection to technical and scientific parameters on their compatibility with the use and exploitation of water. In addition, it establishes fees for the use and exploitation of water and discharges, with the aim of providing the necessary financial resources to carry out activities related to the comprehensive management of water.<sup>307</sup>

224. Without ignoring the important advances that the General Water Resources Law represents in terms of the recognition of the rights to water and sanitation, the Commission and the SRESCER take note of the questions raised by various organizations dedicated to the defense of human rights and the environment with respect to its content.<sup>308</sup>

225. In this sense, the Water Forum has pointed out that the Law did not include the figure of the supply permit for rural and urban populations, forcing local boards to pay the established fees, which could generate an increase in rates for the users.<sup>309</sup> Likewise, it has pointed out that the law only provides for community authorizations of up to five years, as opposed to the fifteen years provided for authorizations of private companies.<sup>310</sup> Similarly, the National Alliance Against Water Privatization has indicated that the law did not contemplate the proposals of environmental and social organizations, and does not contain some of the “non-negotiable” points, such as citizen participation in the management of the water resource.<sup>311</sup> It should be noted that this regulation replaced the draft Water Law that had been worked on among the various legislatures jointly with environmental groups, and that it would not have effectively and comprehensively contemplated the issues included in the project.<sup>312</sup>

226. For all of the above, the IACHR and the ESCER Special Rapporteurship consider that the recommendation has achieved **partial compliance**.

227. In order to comply with this recommendation, it is necessary for the State to take into account the observations of the civil society, to explore the possibility of including changes that make it possible to guarantee the effective enjoyment of the right to water in a comprehensive manner, considering the circumstances of all sectors of the population. Likewise, they urge that, within the framework of the implementation of the General Water Resources Law, there is a guarantee of the promotion of a comprehensive and coordinated administration of the resource as a public good from a human rights approach that prioritizes the effective realization of the right to water of the entire population.

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<sup>304</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, art. 69.

<sup>305</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, arts. 70 and 71.

<sup>306</sup> Legislative Assembly of the Republic of El Salvador, [Decree No. 253 – General Law on Water Resources](#), 22 December 2021, art. 92.

<sup>307</sup> *Ibid.*, art. 105.

<sup>308</sup> Swiss Info, [El Salvador's Congress approves law recognizing human right to water](#), 22 December 2021.

<sup>309</sup> The Spanish, [The withered water war El Salvador: the harassment of multinationals fuels the "projects of death"](#), 16 February 2022.

<sup>310</sup> The Spanish, [The withered water war El Salvador: the harassment of multinationals fuels the "projects of death"](#), 16 February 2022.

<sup>311</sup> TeleSUR TV, [Salvadoran Congress Approves Questioned Water Law](#), 22 December 2021.

<sup>312</sup> TeleSUR TV, [Salvadoran Congress Approves Questioned Water Law](#), 22 December 2021.

228. Regarding the recommendation aimed at **promoting the negotiation and implementation of a treaty in cooperation with bordering countries to guarantee the comprehensive and sustainable management of shared basins of transboundary waters, taking as a central point the content of the human right to water**, the Commission and SRESCER take note that the General Water Resources Law expressly enshrines the state obligation to negotiate and sign international treaties and agreements on international drainage basins or cross-border, bilateral or multilateral basins, between El Salvador and other neighboring States.<sup>313</sup> However, there are still no concrete policies or initiatives to make this obligation effective.

229. In this regard, the IACHR and SRESCER have obtained information on the repeated requests made by civil society organizations to start negotiations with the States of Guatemala and Honduras, regarding the situation of the Lempa river basin and the possible cross-border impacts of the Cerro Blanco mining project.<sup>314</sup> In addition, they have denounced the lack of response from the Salvadoran authorities to the requirements and the information they have presented on the risks of the project.<sup>315</sup> In turn, the Prosecutor's Office for the Defense of Human Rights (PDDH) has urged the Vice Presidency of the Republic and the Foreign Ministry to establish channels of dialogue with the Guatemalan State, given the risks that the Cerro Blanco mine represents for the sources of water in El Salvador.<sup>316</sup>

230. In this regard, the IACHR and SRESCER have received information that these institutions have taken some steps on the matter—such as promoting the formulation of a cross-border diagnostics analysis<sup>317</sup> and a strategic action plan for the Lempa river basin and holding status meetings<sup>318</sup>. In addition, in its comments on the draft of this report, the State reported on other initiatives based on the General Law on Water Resources, namely: i) a letter of intent for the governance of the Ocotepeque-Citalá Aquifer; ii) the development of a roadmap for the Ocotepeque-Citalá Transboundary Aquifer between Honduras and El Salvador; iii) the development of a communication strategy to facilitate knowledge and coordinate actions from the binational to the local level; iv) a plan to improve the monitoring system of transboundary water resources (Guatemala, Honduras, and El Salvador); and v) a treaty on the integrated management of transboundary watersheds between the Republic of El Salvador and the Republic of Guatemala.<sup>319</sup> In addition, the State reported on the creation of an interagency roundtable to address the situation of the Cerro Blanco mining project and the monitoring and preparation of a report on the water quality index and discharges from both ordinary and special water plants.<sup>320</sup>

231. The Commission and REDESCA appreciate these efforts and note progress in the negotiations and, in particular, in the adoption of the international agreement with Guatemala. In light of other reasons, the IACHR and REDESCA consider that compliance with the recommendation is **partial**.

<sup>313</sup> Legislative Assembly of the Republic of El Salvador, [General Law on Water Resources](#), art. 33.

<sup>314</sup> The Economist, [Environmentalists ask the Northern Triangle for a treaty to protect transboundary waters from mining activity](#), July 28, 2021; La Prensa Gráfica, [Outstanding Debts Five Years After El Salvador's Mining Ban Pointed Out](#), 29 March 2022; The Graphic Press, [Urge the Government to seek agreements for Guatemalan mine](#), July 2, 2022.

<sup>315</sup> La Prensa Gráfica, [Waste from Guatemalan Cerro Blanco mine could reach El Salvador's Lake Guija](#), 18 August 2022.

<sup>316</sup> Office of the Procurator for the Defense of Human Rights of El Salvador, [David Sandoval attends press conference of representatives of communities and environmental organizations of Guatemala and El Salvador, who express their concern, in relation to the Cerro Blanco mining project, in Guatemala](#), February 15, 2022.

<sup>317</sup> Vice-Presidency of the Republic of El Salvador, [The Vice-President held a meeting in the framework of his participation in the High-Level Political Forum, at the offices of UNEP to discuss the project "Promoting Water Security in the Trifinio Region, which manages water resources in the area"](#), 12 July 2022.

<sup>318</sup> Vice-Presidency of the Republic of El Salvador, [Vice President Ulloa receives status report on the Cerro Blanco mining project](#), 9 June 2022.

<sup>319</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023.

<sup>320</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023.

232. Notwithstanding the above, compliance with this recommendation would also require the adoption of the agreement with Honduras, which would make it possible to act jointly to address various challenges in this area. Likewise, the IACHR and REDESCA urge that efforts continue to advance in the other initiatives mentioned by the State, ensuring the protection of people and organizations that defend water and the environment, as well as the effective participation of civil society, in order to guarantee the integrated and sustainable management of shared transboundary watersheds.

233. In relation to the **ratification of the Escazú Agreement**, the IACHR and SRESCER deem it pertinent to refer to the information provided by the State regarding regulations, systems, mechanisms, policies or actions to ensure access to information and the participation in decision-making processes on climate policies; as well as to facilitate access to justice in matters of climate change.

234. In this regard, they observe that the State has the Law on Access to Public Information, whose objective is to contribute to the transparency of the actions of all state institutions; and, specifically, the Ministry of the Environment has a Public Information Access Unit (UAIP), in charge of managing and providing the information that is requested by any person.<sup>321</sup>

235. Regarding public participation in decision-making processes on environmental matters, the Environmental Law establishes that the National Climate Change Plan must be submitted to a public consultation process determined in the same regulatory body. In turn, the formulation of El Salvador's Nationally Determined Contribution would have included the participation of different actors—among them, civil society organizations, academia, and private companies—which would have been involved in presentation and discussion meetings on the proposed measures.<sup>322</sup>

236. Regarding access to justice, El Salvador has an environmental jurisdiction, made up of first instance environmental courts and second instance environmental chambers in the cities of San Salvador, Santa Ana, and San Miguel, which are competent to hear and resolve civil liability actions derived from actions that threaten the environment.<sup>323</sup>

237. In this regard, the IACHR and SRESCER highlight that the instruments and jurisprudence of the Inter-American Human Rights System, including the ACHR, the American Declaration and the Protocol of San Salvador, have a comprehensive body of law with respect to the state obligations regarding access to information, public participation and access to justice in environmental matters; whose standards must be implemented by the States by virtue of the principle of control of conventionality. In addition, they stress that Commission Resolution 3/2021 addresses the content and scope of the obligations related to procedural rights of access in matters related to climate change.<sup>324</sup>

238. Without detriment to this, the Commission and the Office of the ESCER Special Rapporteur consider that the Escazú Agreement is a key tool to consolidate the recognition and effective protection of environmental rights in the region; while they reinforce the inter-American principles and obligations in the

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<sup>321</sup> Permanent Mission of El Salvador to the Organization of American States, Contributions of the State of El Salvador to the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER) of the Inter-American Commission on Human Rights on the impact of the climate emergency on the human rights of the most vulnerable populations in the Americas, MPOAS-OAS-149/022, September 7, 2022.

<sup>322</sup> Permanent Mission of El Salvador to the Organization of American States, Contributions of the State of El Salvador to the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER) of the Inter-American Commission on Human Rights on the impact of the climate emergency on the human rights of the most vulnerable populations in the Americas, MPOAS-OAS-149/022, September 7, 2022.

<sup>323</sup> Permanent Mission of El Salvador to the Organization of American States, Contributions of the State of El Salvador to the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER) of the Inter-American Commission on Human Rights on the impact of the climate emergency on the human rights of the most vulnerable populations in the Americas, MPOAS-OAS-149/022, September 7, 2022.

<sup>324</sup> IACHR – REDESCA, [Resolution No. 3/2021, Climate Emergency: Inter-American Human Rights Scope and Obligations](#), December 31, 2021, Chapter VI.

matter, highlighting the need to guarantee the rights of access to ensure the effective observance of the right to a healthy environment.<sup>325</sup>

239. In this sense and given that El Salvador has not ratified the Escazú Agreement, the IACHR and SRESCER consider that this recommendation remains **pending compliance**.

240. Regarding compliance with the recommendation, it is necessary for the State to strengthen its commitments to the guarantee of environmental rights and the protection of the environment by ratifying the Escazú Agreement.

241. Regarding the recommendation to **take measures and allocate resources for the effective creation of a national authority that supervises the guarantee of the right of access to water from a human rights framework, and ensure that water use permits do not jeopardize the effective realization of the human right to water**, the Commission and SRESCER note with satisfaction that, through the General Water Resources Law, the Salvadoran Water Authority (ASA) was created as the governing body for the comprehensive management of water resources and assets that are part of the public hydraulic domain.<sup>326</sup>

242. Among the main powers of the ASA are: i) to prepare and ensure compliance with the National Policy for Integrated Management of Water Resources, the regional water plans and their monitoring plans; ii) develop guidelines on the efficient and sustainable use of water for the subsectors that use water resources; iii) formulate and provide technical studies and contingency plans to prevent and respond to emergencies related to critical situations due to excess or deficit of water; iv) issue public assignments, authorizations and permits for the use and development of water resources; v) audit compliance with the conditions set for the use and development of water and penalize non-compliance; and, vi) establish the fees for use and exploitation, and prepare proposals for collection rates for the sale of products and services in this area.<sup>327</sup> Also, it has competencies related to registration, dispute resolution, promotion, education and management of resources and technical cooperation at the national and international level.<sup>328</sup>

243. Regarding the composition of the ASA, the IACHR and the Office of the ESCER Special Rapporteur take note that it is made up of a president, appointed by the executive branch, bodies of a political as well as operational nature, of a mixed composition between public authorities, the private sector and the civil society; regional agencies; and, a sanctioning court with members appointed by the President of the Republic.<sup>329</sup>

244. However, despite highlighting the creation of the ASA, the mandate notes that, in the month of May, the Environmental Fund of El Salvador (FONAES) was dissolved by the Legislative Assembly, with a view to consolidating the General Law on Water Resources and the financing of ASA activities.<sup>330</sup> Although it was decided that the Fund's functions would be transferred to the water authority,<sup>331</sup> environmental organizations have expressed their concern that, due to its powers, said institution could not assume the tasks and commitments of FONAES.<sup>332</sup> The above while the latter was dedicated to the financing and management of projects in matters of protection, conservation, improvement, restoration and rational use of natural resources

<sup>325</sup> CIDH – REDESCA, Press Release No. 98/2021, En el Día de la Tierra, [CIDH y REDESCA saludan la entrada en vigor del Acuerdo de Escazú y llaman a los Estados de la región a fortalecer sus políticas públicas ambientales frente a la emergencia climática](#), April 22, 2021.

<sup>326</sup> Legislative Assembly of the Republic of El Salvador, [General Law on Water Resources](#), 21 December 2022, arts. 10 and 11.

<sup>327</sup> Legislative Assembly of the Republic of El Salvador, [General Law on Water Resources](#), 21 December 2022, art. 13.

<sup>328</sup> Legislative Assembly of the Republic of El Salvador, [General Law on Water Resources](#), 21 December 2022, art. 13.

<sup>329</sup> Legislative Assembly of the Republic of El Salvador, [General Law on Water Resources](#), 21 December 2022, art. 12.

<sup>330</sup> Legislative Assembly of the Republic of El Salvador, [Deputies endorse dissolution of El Salvador's Environmental Fund and its functions will be resumed by the Salvadoran Water Authority](#), 25 May 2022.

<sup>331</sup> Legislative Assembly of the Republic of El Salvador, [Deputies endorse dissolution of El Salvador's Environmental Fund and its functions will be resumed by the Salvadoran Water Authority](#), 25 May 2022.

<sup>332</sup> Legislative Assembly of the Republic of El Salvador, [Deputies endorse dissolution of El Salvador's Environmental Fund and its functions will be resumed by the Salvadoran Water Authority](#), 25 May 2022.

and the environment in general.<sup>333</sup> According to the Foundation of Studies for the Application of Law (FESPAD), this decision would weaken the institutional framework in environmental matters and could discontinue the projects initiated by the Fund.<sup>334</sup>

245. Based on these considerations, the IACHR and SRESCER consider that the **recommendation has been complied with**. However, they emphasize that the measures taken to solve the problem of water stress at the national level and ensure comprehensive water management should not imply setbacks in terms of environmental protection; rather, on the contrary, it is necessary to implement comprehensive policies and strategies to deal with the various impacts of the climate emergency. Likewise, they remind the State that the rights to water and sanitation are inseparable from the right to a healthy environment;<sup>335</sup> and, therefore, what governs is the obligation to allocate the maximum of available resources to also guarantee its effective enjoyment.<sup>336</sup>

246. Regarding the recommendation aimed at **implementing specific policies to guarantee access to water in the context of the pandemic, especially by vulnerable communities, including persons living in poverty and extreme poverty, women, children, and adolescents, among others**, the Commission and SRESCER take note of the National Water Plan promoted by the Salvadoran Government, which seeks to ensure full and permanent access to drinking water and sanitation services for the entire population, with emphasis on the Mesoamerican Dry Corridor.<sup>337</sup>

247. In this regard, it is worthy of note that this area is characterized by its high vulnerability to long periods of drought and short periods of intense rains; which results in high levels of poverty and extreme poverty in a rural population that is mainly dedicated to agriculture.<sup>338</sup> According to FAO estimates, almost 80% of small producers in the Dry Corridor live below the poverty line; of whom 30% are in extreme poverty.<sup>339</sup> Likewise, it is estimated that, on average, 20% of the population in this area does not have access to drinking water at home; while only between 25% and 31% of families have water available whenever they require it.<sup>340</sup> In addition, there are twenty-five Salvadoran municipalities that are located in the severely affected areas of the Dry Corridor, suffering the effects of severe and high-effect droughts.<sup>341</sup>

248. In this context, the IACHR and SRESCER highlight the implementation of local projects to improve access to drinking water in communities. For example, the installation of the first fixed desalination plant in the country on Madresal Island, in Puerto El Triunfo, Usulután, which converts salty sea water into drinkable water.<sup>342</sup> According to official information, the project would have benefited around 600 persons—in approximately 150 families—whose main activity is fishing.<sup>343</sup> In addition, the Madresal project is expected to be replicated on the beaches of El Majahual and San Diego, in the department of La Libertad, with the installation of mobile water purification and desalination systems.<sup>344</sup>

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<sup>333</sup> Foundation for Studies for the Application of Law (FESPAD), [Press Release | Repeal of El Salvador's Environmental Fund Law: weakening environmental institutions](#), 30 May 2022.

<sup>334</sup> Foundation for Studies for the Application of Law (FESPAD), [Press Release | Repeal of El Salvador's Environmental Fund Law: weakening environmental institutions](#), 30 May 2022.

<sup>335</sup> I/A Court, [Advisory Opinion OC-23/17 on Environment and Human Rights](#), 15 November 2017, Series C No. 23, para. 66.

<sup>336</sup> IACHR – REDESCA, Resolution No. 3/2021, [Climate Emergency: Scope of Inter-American Human Rights Obligations](#), 31 December 2021, para. 15.

<sup>337</sup> Presidency of the Republic of El Salvador, [Water strategy of the Government of Nayib Bukele advances to guarantee water supply](#), 10 August 2022.

<sup>338</sup> FAO, [Opportunity Strip | Dry Corridor in El Salvador, Guatemala and Honduras](#), 2021.

<sup>339</sup> FAO, [Opportunity Strip | Dry Corridor in El Salvador, Guatemala and Honduras](#), 2021.

<sup>340</sup> The Economist, [20% of the population does not have water in housing](#), 10 February 2022.

<sup>341</sup> The Economist, [20% of the population does not have water in housing](#), 10 February 2022.

<sup>342</sup> Presidency of the Republic of El Salvador, [Water strategy of the Government of President Nayib Bukele advances to guarantee water supply](#), 10 August 2022.

<sup>343</sup> Presidency of the Republic of El Salvador, [Government executes comprehensive drinking water projects, with ecological awareness and in favor of Early Childhood](#), 20 July 2022.

<sup>344</sup> Presidency of the Republic of El Salvador, [Government executes comprehensive drinking water projects, with ecological awareness and in favor of Early Childhood](#), 20 July 2022.

249. In the department of La Libertad, an estimated 22,000 persons in the municipality of Santa Tecla will benefit from the opening of a new drinking water well at the El Espino pumping plant, with a view to doubling its production.<sup>345</sup> Similarly, the improvement of the Las Cañas pumping plant facilities aims to benefit around 43,000 people, including 4,000 children in early childhood.<sup>346</sup>

250. In turn, the National Administration of Aqueducts and Sewers (ANDA) incorporated 550 families from the Los Magueyes canton, in the department of Ahuachapán, into the drinking water network, with which they will be able to access a continuous and high-quality water supply.<sup>347</sup>

251. Within this framework, the Commission and the Office of the Special Rapporteur deem it pertinent to refer to what was indicated by the Working Group of the Protocol of San Salvador, with respect to the fact that the average population with access to drinking water at the national level reached 88.3% in 2017, although it dropped to 76.5% in rural areas; this highlights the deep gaps between rural and urban areas.<sup>348</sup>

252. For its part, in its comments on the draft of this report, the State reported other environmental works underway, including: (i) the project to strengthen environmental capacities for water and infrastructure sustainability of the rural water and sanitation association in the municipality of Suchitoto, department of Cuscatlán; ii) the Mejora Project involving the drinking water system and reforestation of the source area in the communities of southern Bajo Lempa in the municipality of Tecoluca by providing wells, and the electrical transformers for the Santa Barbara and San Carlos pumping station, construction of a 150m<sup>3</sup> tank, and strengthening of local capacities in the municipality of Tecoluca, in the department of San Vicente; and iii) the improvement of the water supply and operation and maintenance of the system; with greater pumping flow by building a well, a 150 m<sup>3</sup> storage tank, changing transformers, and providing distribution network and reforestation of the water recharge area of the water source that supplies the cantons of San Nicolás Lempa, San Carlos Lempa, El Pacún, Las Anonas, and Las Mesas.<sup>349</sup>

253. In light of the above, the IACHR and REDESCA value the actions implemented by the State to guarantee access to water for people in vulnerable situations at the local level. However, more information is needed regarding the results obtained from those initiatives, with disaggregated and detailed information on the special care groups mentioned in the recommendation. In this context, monitoring of the recommendation will continue, even though it is considered to have been **partially complied with**.

254. In order to comply with this recommendation and in order to assess compliance with the recommendation in a comprehensive manner, it is necessary to have information on the situation at the national level and in a disaggregated manner.

## E. THE RIGHT TO FREEDOM OF EXPRESSION

- 48. Implement the necessary measures to guarantee a safe working environment for journalists and respect for the independence of the media. In particular, guarantee that official advertising and the allocation of frequencies are guided by democratic criteria and in accordance with international human

<sup>345</sup> Presidency of the Republic of El Salvador, [Government of President Nayib Bukele inaugurates drinking water well that will benefit more than 22,000 inhabitants of La Libertad](#), 11 November 2022.

<sup>346</sup> Presidency of the Republic of El Salvador, [Government executes comprehensive drinking water projects, with ecological awareness and in favor of Early Childhood](#), 20 July 2022.

<sup>347</sup> Presidency of the Republic of El Salvador, [Government of President Nayib Bukele formally incorporates 200 families from Ahuachapán into ANDA's drinking water network](#), July 1, 2022.

<sup>348</sup> Working Group for the Analysis of National Reports under the Protocol of San Salvador, [Concluding Observations and Recommendations to the Republic of El Salvador](#), 23 September 2020.

<sup>349</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 17.

rights standards. Likewise, incorporate measures to ensure that the state media operate under international standards on public media.

- 49. Guarantee the right of access to public information in accordance with the guidelines of the inter-American legal framework and implement the necessary measures to remove the barriers that prevent its effective compliance.
- 50. Give consent for a work visit by the IACHR's Office of the Special Rapporteur for Freedom of Expression, which will allow that Office to monitor and collect information directly about the situation of the right to freedom of expression in El Salvador.

255. Regarding the recommendation to **implement the necessary measures to guarantee a safe working environment for journalists and respect for the independence of the media; guarantee that official advertising and the allocation of frequencies are guided by democratic criteria and in accordance with international human rights standards; and incorporate measures to ensure that the state media operate under international standards on public media**, the State has recognized the important role that the media play in a democratic society, and highlighted in this regard the open and proactive role that the current management has had with the media through press conferences, national chains, speeches, statements, among other actions.<sup>350</sup>

256. The Salvadoran State has indicated that one of the priority objectives of the current government has been "to strengthen the coverage and participation of the public media in media spaces and public discussion, as a way of promoting plurality in the media and facilitating the population's access to them."<sup>351</sup> According to the authorities, "the strengthening of the state media and their journalistic practice contributes to providing the population with a variety of informative spaces, which constitutes a broader frame of reference for Salvadorans, favoring the balance of the country's media system for the democratization of information of public interest."<sup>352</sup>

257. In its comments on the draft of this report, the State indicated that there are 77 community, university, and commercial media outlets, including radio stations, television channels, newspapers, magazines, and digital portals; and that there are also two state-owned media outlets that broadcast educational and informative content. In addition, it reported that, as a public initiative, it has focused on improving and developing the technological and communications infrastructure throughout the country and has taken steps aimed at connectivity, coverage, and access to new technologies.<sup>353354</sup>

258. Along these lines, the State reported that the National System of Public Media was "reorganized and revitalized" in order to "allow the positioning of public media within the country's news

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<sup>350</sup> Permanent Mission of the Republic of El Salvador to the OAS. MPOAS-OAS-112/21. September 29, 2021. Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>351</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>352</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>353</sup> State of El Salvador, Observations of the State of El Salvador to the draft project of Chapter V of the Annual Report 2022, about the follow-up on the recommendations of the IACHR in the report 'Situation of Human Rights in El Salvador', Diplomatic Note MPOEA-OEA-024/2023, February 13, 2023, p. 18.

<sup>354</sup> In its observations on this report, the State indicated that it does not interfere with the exercise of journalistic and investigative functions. It also indicated that there is wide dissemination of government messages through the media, but it has also promoted other ways of providing information through state-owned media. The State affirmed that the Salvadoran media have freedom of access to information, as well as freedom to practice journalism as there are no restrictions on the exercise of freedom of expression in the country.

referents, promoting the diversity of opinions, approaches and visions of the national reality.”<sup>355</sup> According to the State, “this position has been the product of various strategies and actions, among which are: i) investment in human and technological resources to expand the coverage of the national station and public radio; ii) the launch of Noticiero El Salvador, which has three broadcasts and five previews a day, is broadcast simultaneously on Radio Nacional and on different digital platforms; iii) the optimization of broadcast channels, in order to maintain a constant flow of conversations with the various audiences.”<sup>356</sup> As the State has indicated, the Internet has been a means of government communication, which has guaranteed the wide and timely dissemination of messages and has made it possible to guarantee the right to freedom of expression.<sup>357</sup> In this sense, it stated that one of the fundamental pillars of the government’s communication policy has been the democratization of communications, for which use has been made of the digital platforms available on the Internet to inform and involve citizens in its decisions, and to reach the population that is no longer informed through a newscast or a radio program.<sup>358</sup>

259. Additionally, the State said that there has been an increase of digital media with different editorial lines and totally independent, which favors pluralism in the media and contributes to social control in a democratic state of law.<sup>359</sup>

260. Despite this, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have received reports from the civil society expressing concern about the potential government capture of public debate.<sup>360</sup> According to the information received, there would be institutional efforts to position the official story as the only legitimate and truthful one, through the constant dissemination of biased content, favorable to the president and the government, in state media and privately owned media managed by the State, and through the reduction of independent informative spaces.<sup>361</sup> Various actors have reported to the Rapporteurship on the use of various state media, such as *Canal 10*, *Radio Nacional*, and *Diario El Salvador*, for political purposes and the dissemination of government propaganda.<sup>362</sup>

261. According to the information received by the SRFOE, an alliance of journalists from various media outlets, coordinated by the training program Update Cycles for Journalists (CAP), monitored and

<sup>355</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the “Human Rights in El Salvador” report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>356</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the “Human Rights in El Salvador” report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>357</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the “Human Rights in El Salvador” report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>358</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the “Human Rights in El Salvador” report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>359</sup> Permanent Mission of El Salvador to the OAS. MPOAS-OAS-150/022. September 7, 2022. Contributions of the State of El Salvador to the public consultation of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights on the closure of civic space in the Americas. P. 2

<sup>360</sup> IACHR. [Human Rights in El Salvador](#). OEA/Ser.L/V/II. Doc. 278. 14 October 2021. Para. 322.

<sup>361</sup> El Diario de Hoy. July 30, 2020. [The Government defines and directs some content from confiscated media](#); Deutsche Welle (DW). October 4, 2020. [Bukele and his government are the main source of disinformation in the country](#); Radio YSKL. October 20, 2020. [Special Commission assures that harassment of journalists was detected by the Executive and prepare final report](#); Facebook account of Radio Legislativo. [October 20, 2020](#); Twitter account of the Legislative Assembly (@AsambleaSV). [November 4, 2020](#); The Lighthouse. November 16, 2022. [Assembly: “Bukele and his officials are the main actors of harassment against journalists”](#); Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#); Participatory Broadcasting Association of El Salvador (ARPAS). March 15, 2022. [Public media: an unrealizable dream in El Salvador?](#)

<sup>362</sup> IACHR. [Human Rights in El Salvador](#). OEA/Ser.L/V/II. Doc. 278. 14 October 2021. para. 322; Update Cycles for Journalists (CAP). [The 400 covers that Diario El Salvador gave to bukelism](#); Participatory Broadcasting Association of El Salvador (ARPAS). March 15, 2022. [Public media: an unrealizable dream in El Salvador?](#); El Diario de Hoy. October 2, 2020. [Government is turning Channel 10 into a means of official propaganda](#); The Graphic Press. October 4, 2020. [APES: State media are not to disseminate propaganda](#); Deutsche Welle (DW). October 12, 2020. [Noticiero El Salvador: pre-election journalism?](#)



analyzed 400 covers of *Diario El Salvador* published over 14 months, between October 19, 2020 and November 26, 2021, and concluded that said outlet works as "a loudspeaker for official discourse", where "propaganda predominates".<sup>363</sup> According to the study, published in March 2022, "on 69 of those covers, for example, the newspaper promoted the image of President Nayib Bukele, based on the results of public opinion polls favorable to his administration or speeches in which he announced opaque public policies, of which there is little or no public information, such as the Vaccination Plan against COVID-19, the implementation of bitcoin, or the Territorial Control Plan, which has never been announced by the government in public (...)." <sup>364</sup> Among some of the examples that the study uses to graph its conclusions, it mentions the cover of February 28, 2021, the day of the legislative and municipal elections, on which *Diario El Salvador* titled its central cover note with the campaign slogan of the Nuevas Ideas party, "History is being made today."<sup>365</sup> Likewise, according to the monitoring of the coverage of the COVID-19 pandemic, *Diario El Salvador* would have presented the government's management of the health emergency as exemplary. <sup>366</sup> In this regard, the study highlights that "in 214 covers, the newspaper disseminated propaganda on the measures for managing the pandemic." <sup>367</sup> To reach its conclusion, the report also argues that while *Diario El Salvador* has questioned opposition political figures and former government officials for alleged acts of corruption, it has not published information on gang-related matters and citizen security that would involve the government.<sup>368</sup>

262. This issue was also studied by the Special Commission for the investigation of harassment of journalists, created in August 2020, within the Legislative Assembly and to which the SRFOE referred in its most recent annual reports.<sup>369</sup> In the final report, the Special Commission concluded that there had been "possible interference by the executive branch in the editorial line of the media outlets that are under the administration of the National Asset Administration Council (CONAB), to attack, delegitimize, discredit and lie against those who do work that goes against the official version of the government". <sup>370</sup> Likewise, the aforementioned Commission adds that these practices on the part of the government "ignore the resolution of the Specialized Asset Forfeiture Court of San Salvador, which orders the aforementioned Council to guarantee strict and absolute respect for the editorial line and the contents of the media and administered by said instance, not being able to intervene in any way (...)"<sup>371</sup>

263. According to the reports received by the IACHR and the SRFOE, the alleged government strategy of favoring the official story and positioning it as the only legitimate one also had an impact on citizen

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<sup>363</sup> Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#) (also available at [Alharaca](#) and [Factum Magazine](#)).

<sup>364</sup> Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#) (also available at [Alharaca](#) and [Factum Magazine](#)).

<sup>365</sup> Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#) (also available at [Alharaca](#) and [Factum Magazine](#)).

<sup>366</sup> Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#) (also available at [Alharaca](#) and [Factum Magazine](#)).

<sup>367</sup> Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#) (also available at [Alharaca](#) and [Factum Magazine](#)).

<sup>368</sup> Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukelism](#) (also available at [Alharaca](#) and [Factum Magazine](#)).

<sup>369</sup> IACHR. Annual Report 2020. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 28. March 30, 2021. para. 615; IACHR. Annual Report 2021. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 64 rev. 1. May 26, 2022. Para. 390.

<sup>370</sup> Legislative Assembly, Republic of El Salvador. November 4, 2022. Special commission for the investigation of harassment that journalists from different media are suffering due to their work and editorial line and the use of public resources against opponents. Opinion adopted on 12 November 2022. P. 74 and 75.

<sup>371</sup> Legislative Assembly, Republic of El Salvador. November 4, 2022. Special commission for the investigation of harassment that journalists from different media are suffering due to their work and editorial line and the use of public resources against opponents. Opinion adopted on 12 November 2022. P. 75.

perception of the media.<sup>372</sup> A study carried out in May 2022 by the private Francisco Gavidia University of San Salvador indicated that currently the state media are the most reliable sources for Salvadoran citizens.<sup>373</sup>

264. The IACHR and its SRFOE continue to receive information about alleged harassment and intimidating acts against certain media outlets that investigate matters of public interest, such as corruption and government irregularities, including *El Faro*, *Revista Factum*, *El Diario de Hoy* and *La Prensa Gráfica*. Thus, for example, in April, three unknown individuals stole a laptop from *La Prensa Gráfica*, which was intended for the work of judicial journalism editor David Bernal. According to the information available, the computer was in a vehicle at an establishment in Santa Elena, Antiguo Cuscatlán.<sup>374</sup> The individuals removed only the computer and the charger. The media outlet denounced these acts and asked the authorities to "clarify the facts to avoid future threats to journalistic work."<sup>375 376</sup>

265. Likewise, the SRFOE has learned of reports of attacks on or restrictions on the press committed by security forces. Thus, for example, according to the information reported, in March, a photojournalist from *El Diario de Hoy* was attacked by military and police forces in the Santa Lucia neighborhood of Ilopango, when he was carrying out his work in a Naval Force operation.<sup>377</sup> The security forces violently prevented the reporter from continuing to take photos and forced him to delete the material from his device.<sup>378</sup> In addition, the Rapporteurship received information about the alleged arbitrary detention by members of the National Civilian Police, the Armed Forces, and prison guards of three journalists from *La Prensa Gráfica* who were covering the construction of a prison in the municipality of San Vicente, on December 13.<sup>379</sup> The security agents would have forced them to delete all the content they had recorded in photography and video, and would have checked their cell phones, as reported.<sup>380</sup> On this issue, in its annual monitoring report on the situation of freedom of expression in El Salvador, APES indicated that, in 2022, a total of 31 journalists would have suffered violations of their rights due to alleged abuse of power by agents of the PCN and FAES against the press.<sup>381</sup>

266. The IACHR and the Office of the Special Rapporteur recall that, as the 2021 Joint Declaration of Rapporteurs points out, "States have a positive obligation to create an environment conducive to freedom of expression and the right to information, among other things by promoting the independence and diversity of

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<sup>372</sup> Reuters. November 29, 2022. [Trolls, propaganda and fear stoke Bukele's media machine in El Salvador](#); El Diario de Hoy. December 1, 2022. [Bukele's government has set up a machine of disinformation, propaganda and attack on critics](#); Update Cycles for Journalists (CAP). March 4, 2022. [The 400 covers that Diario El Salvador gave to bukélism](#); Participatory Broadcasting Association of El Salvador (ARPAS). March 15, 2022. [Public media: an unrealizable dream in El Salvador?](#).

<sup>373</sup> Disruptive Magazine. May 25, 2022. [Evaluation of three years of President Nayib Bukele's government: No news, everything is fine...](#)

<sup>374</sup> APES Twitter account (@apeselsalvador). [April 5, 2022](#); The Graphic Press. April 5, 2022. [LPG journalist stolen, intimidated](#); El Diario de Hoy. April 5, 2022. [La Prensa Gráfica denounces theft of equipment and intimidation of journalist](#);

<sup>375</sup> La Prensa Gráfica. April 5, 2022. [LPG journalist stolen, intimidated](#).

<sup>376</sup> In its observations on the draft of this report, the State pointed out that, despite the country's important achievements in the area of security and the decreases in the levels of criminality and incidence of crime, it continues to be essential to exercise care and adopt preventive measures to avoid becoming a target of common crime.

<sup>377</sup> APES. March 29, 2022. [Military and PNC agents assault EDH photojournalist](#); El Diario de Hoy. March 29, 2022. [Military assault photojournalist of El Diario de Hoy and delete photographic material](#); The Graphic Press. March 29, 2022. [Military assault photojournalist of El Diario de Hoy](#).

<sup>378</sup> APES. March 29, 2022. [Military and PNC agents assault EDH photojournalist](#); El Diario de Hoy. March 29, 2022. [Military assault photojournalist of El Diario de Hoy and delete photographic material](#); La Prensa Gráfica. March 29, 2022. [Military assault photojournalist of El Diario de Hoy](#).

<sup>379</sup> APES Twitter account (@apeselsalvador). [December 13, 2022](#); Swissinfo. December 13, 2022. [They denounce the "arbitrary" detention of three journalists in El Salvador](#); Deutsche Welle (DW). December 14, 2022. [El Salvador: "Arbitrary" Detention of Journalists Denounced](#).

<sup>380</sup> APES Twitter account (@apeselsalvador). [December 13, 2022](#); Swissinfo. December 13, 2022. [They denounce the "arbitrary" detention of three journalists in El Salvador](#); Deutsche Welle (DW). December 14, 2022. [El Salvador: "Arbitrary" Detention of Journalists Denounced](#).

<sup>381</sup> APES Twitter account (@apeselsalvador). [December 21, 2022](#); The Graphic Press. December 22, 2022. [Espionage and aggression marked 2022 for journalists in El Salvador](#).

the media as a fundamental means to promote a solid and open debate on matters of public interest, and adopting regulations that guarantee public transparency and the responsibility of public agents”.<sup>382</sup>

267. As stated in Principle 9 of the Declaration of Principles of Freedom of Expression, “intimidation and threats (...) to social communicators violate the fundamental rights of individuals and severely restrict freedom of expression. It is the duty of the States to prevent and investigate these events, punish their perpetrators, and ensure the victims adequate reparation.” The IACHR and its Office of the Special Rapporteur have understood that this type of attack “seeks to be a tool of intimidation, through which a clear message is sent to all those people from civil society who carry out investigation tasks on irregularities in public administration. This practice seeks for the press, as a control mechanism, to remain silent or become an accomplice of those people or institutions that carry out abusive or illegal acts or acts.”<sup>383</sup> Ultimately, what is sought is to prevent society from being informed of these events at all costs.”<sup>384</sup>

268. Regarding the role of public media, the Commission and its Office of the Special Rapporteur for Freedom of Expression recall the recommendations made in the Joint Declaration of Special Rapporteurs for Freedom of Expression of 2017, particularly with regard to “ensuring the existence of strong, independent and well-resourced public media, operating with a clear mandate to further the general public interest and to establish and maintain the highest journalistic standards.”<sup>385</sup> Along these lines, the IACHR and SRFOE also recall that, in accordance with Principle 13 of the IACHR’s Declaration of Principles on Freedom of Expression, “the use of State power (...), with the aim of pressuring and punishing or rewarding and favoring social communicators and the media based on their lines of information, violates freedom of expression. Direct or indirect pressure aimed at silencing the informative work of social communicators is incompatible with freedom of expression.”<sup>386</sup>

269. Based on the information presented, the Commission assesses that the recommendation is still **pending compliance**. Considering the previous context, the IACHR also wishes to reiterate the content of its recommendation and, therefore, invites the State to adopt the necessary measures to guarantee a safe working environment for journalists, as well as respect for the independence of the media outlets, in accordance with the specifications included therein regarding the application of international standards on official advertising and frequency allocation, and on the state media.

270. In relation to the recommendation that requests measures to **guarantee the right of access to public information in accordance with the guidelines of the inter-American legal framework and implement the necessary measures to remove the barriers that prevent its effective compliance**, the State indicated that El Salvador has a Law on Access to Public Information through which the Institute for Access to Public Information has been created, which confers the mandate to create offices for access to public information in all State institutions, which deal with requests for access to information, in accordance with the parameters of said regulatory body. In addition, the State highlighted the work of the Institute for Access to Public Information (IAIP) with regard to promoting a culture of transparency and access to information in El Salvador. In this regard, it reported that the IAIP has designed tools such as the Transparency Portal, through which unofficial information is published; the “Legisla Portal”, from where citizens can participate in the process of formulating regulations of public institutions, designed as a tool for citizen participation.

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<sup>382</sup> UN, OSCE, OAS and ACHPR. 20 of October of 2021. [2021 Joint Declaration on Political Leaders, Public Officials, and Freedom of Expression](#).

<sup>383</sup> IACHR. Undated. [Antecedentes e Interpretación de la Declaración de Principios \(Background and Interpretation of the Declaration of Principles\)](#).

<sup>384</sup> IACHR. No date. [Antecedentes e Interpretación de la Declaración de Principios](#).

<sup>385</sup> United Nations (UN) Special Rapporteur for Freedom of Opinion and Expression, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), OAS Special Rapporteur for Freedom of Expression and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR). March 3, 2017. [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#).

<sup>386</sup> IACHR. 20 October 2000. [Declaration of Principles on Freedom of Expression](#).

271. The State also indicated that the IAIP has supported the development of capabilities in public institutions on the application of matters related to access to public information, transparency, protection of personal data, document management and archives; and it has also developed performance evaluation processes in compliance with the law on access to information by the obligated entities.<sup>387</sup>

272. The State also reported that both the Presidency of the Republic and the government institutions have websites available on the Internet to concentrate a cyberspace where they can find information of interest on actions, projects, services, and regulations that impact their daily life. In addition, they have the obligation to enable the social networks with the greatest circulation to communicate all the actions within their competence and all those that they carry out in coordination with other public agencies.<sup>388</sup>

273. On the other hand, according to information provided by the Supreme Court of Justice of El Salvador, since the beginning of the pandemic, the judicial branch would have tried to make more accessible and interactive its communications with the general public and with groups interested in the justice system such as journalists, students, lawyers' unions, national institutions, and international organizations.<sup>389</sup> In this sense, various lines of action stand out, such as the "Justicia de cerca" [Justice Up Close] project, through which legal information is published weekly, in terms of procedures, rights and obligations in different branches of law, aimed at internal, external, and inter-institutional users.<sup>390</sup> They also indicated that they are developing a training program on handling the media for officials of the judicial branch. On the other hand, they highlight that the official social networks of the Supreme Court of Justice and the judicial branch "have established themselves as an interactive and real-time communication channel with citizens and groups interested in legal and judicial information, becoming primary and official sources of information for journalists and the media at the national and international level."<sup>391</sup>

274. In addition, in terms of access to information, the authorities reported that the Institute for Access to Public Information is working on specific actions aimed at empowering women, with the aim of contributing—from an approach of transparency and access to information—to the elimination of gender-based inequalities.<sup>392</sup> Some actions carried out include the articulation of the "Network of Women for Transparency and Access to Information," in which participate various civil society organizations; and participation in the project "Incorporation of the gender approach in transparency and access to public information policies in Latin America," carried out by the Transparency and Access to Information Network.<sup>393</sup>

275. The Salvadoran State also indicated that, during the management of the pandemic, "the operation of the various media outlets was authorized, for their free exercise and without any restriction to

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<sup>387</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>388</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an on-site visit conducted in 2019. July 2022. pp. 90ff.

<sup>389</sup> Permanent Mission of the Republic of El Salvador to the OAS. MPOAS-OAS-144/21. November 12, 2021. Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>390</sup> Permanent Mission of the Republic of El Salvador to the OAS. MPOAS-OAS-144/21. November 12, 2021. Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>391</sup> Permanent Mission of the Republic of El Salvador to the OAS. MPOAS-OAS-144/21. November 12, 2021. Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>392</sup> Permanent Mission of El Salvador to the OAS. MPOAS-OAS-150/022. September 7, 2022. Contributions of the State of El Salvador to the public consultation of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights on the closure of civic space in the Americas. P. 8.

<sup>393</sup> Permanent Mission of El Salvador to the OAS. MPOAS-OAS-150/022. September 7, 2022. Contributions of the State of El Salvador to the public consultation of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights on the closure of civic space in the Americas. P. 8.

their activity, facilitating free movement for their personnel throughout the country."<sup>394</sup> In addition, it said that the IAIP has developed training actions with the journalistic sector, as a tool to support knowledge of the culture of transparency, access to public information and protection of personal data.<sup>395</sup>

276. On the other hand, journalists and the media have warned the IACHR and its Office of the Special Rapporteur about increasing limitations on the right of access to public information and non-compliance with the obligations of transparency by the State, especially after the decision of the Legislative Assembly of May 1, 2021, to dismiss the magistrates of the Constitutional Chamber of the Supreme Court of Justice.<sup>396</sup>

277. Among other incidents reported, the IACHR and the Rapporteurship learned about legal reforms and legislative proposals promoted by the executive branch to the detriment of the right of access to public information and transparency. On May 5, 2021, the Legislative Assembly approved the law for the Use of Products for Medical Treatments in Exceptional Public Health Situations Caused by the COVID-19 Pandemic, presented at the request of the president and which, according to civil society actors, would overshadow the management of the pandemic.<sup>397</sup> According to the information available, the law would guarantee the criminal and administrative immunity of government officials and individuals who have managed the COVID-19 pandemic, "in the face of any claim" of irregularities in the purchase of medical treatments to treat the coronavirus and, in addition, provides that its application will be retroactive.<sup>398</sup>

278. Likewise, in July, the executive branch announced a proposal to reform the law on access to public information that, according to the information reported, would drastically reduce the effectiveness of the current regulations and the IAIP.<sup>399</sup> Among the main changes that the proposal would seek to introduce is the possibility of classifying as reserved all the information that, according to the current law, is of an informal nature, alleging reasons of national defense, public security, risk to the health and security of the persons, or prejudice to the prevention and investigation of illegal acts. Likewise, it proposes extending the deadlines for the State's response to a request for information and also seeks that violations of the law be attributable to individuals. For the Regional Alliance for Free Expression and Information, these reforms constitute a serious attack against transparency, promote a culture of secrecy and opacity, and are contrary to inter-American standards on the matter.<sup>400</sup>

<sup>394</sup> Permanent Mission of El Salvador to the OAS. MPOAS-OAS-150/022. September 7, 2022. Contributions of the State of El Salvador to the public consultation of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights on the closure of civic space in the Americas. P. 8.

<sup>395</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the "Human Rights in El Salvador" report approved after an on-site visit in 2019. July 2022. P. 90 et seq.

<sup>396</sup> El Diario de Hoy. June 1, 2021. [Capres implemented a protocol that restricts journalistic mobility in Bukele's accountability](#); El Diario de Hoy. May 15, 2021. [New pro-government Assembly retreats in access to information and transparency](#); The Lighthouse. December 22, 2022. [El Salvador darkens more with the dissolution of Digestyc](#); Gato Encerrado. June 21, 2022. [Police reserve information on homicides and missing persons](#); Radio Cadena YSKL. December 6, 2022. [2022 closes with setbacks in access to public information, consider organizations](#); El Diario de Hoy. May 23, 2022. [Access to Information Institute 'dead', transparency experts say](#); Citizen Action. December 5, 2022. [There is a challenging context for transparency and the fight against corruption in El Salvador](#).

<sup>397</sup> EFE. May 5, 2021. [Salvadoran Congress approves a law that obscures the management of the pandemic](#); Swiss Info. May 5, 2021. [The Assembly of El Salvador decrees immunity from criminal justice to managers of the pandemic](#).

<sup>398</sup> Health with magnifying glass. May 5, 2021. [El Salvador: Law Granted Immunity for Irregular Purchases in Pandemic Approved](#); The Lighthouse. December 17, 2022. [Assembly grants immunity to Bukele officials for purchases during the pandemic](#); Gato Encerrado. May 7, 2021. [New Assembly grants amnesty to corruption and malpractice cases](#).

<sup>399</sup> Fusades. July 20, 2021. [Proposals for reforms to the LAIP must be rejected by the Legislative Assembly](#); Fespad. July 13, 2021. [Press Release: The Regression in Access to Public Information, Transparency and the Fight against Corruption Deepens](#); Swiss Info. July 14, 2021. [NGOs fear information law reform could lead to "opacity" in El Salvador](#); APES Twitter account (@apeselsalvador). [July 13, 2021](#).

<sup>400</sup> Regional Alliance for Free Expression and Information. July 16, 2021. [El Salvador: Concern over setbacks and threats to the right to IPA](#).

279. This proposal was examined and approved by the Legislation and Constitutional Points Commission on January 31, 2022.<sup>401</sup> According to public information, the favorable opinion was included in the agenda for February 1 to be submitted to a vote by the plenary session of the Legislative Assembly. However, pro-government legislators requested that this point be withdrawn from the agenda of the plenary session, so that it could return to the Commission on Legislation and Constitutional Points in order to "continue under study".<sup>402</sup> The IACHR and its SRFOE value this decision positively and emphasize that the laws on public information must guarantee the effective and broadest possible access to this right and, in case of contemplating exceptions, these must not become the general rule in practice.<sup>403</sup> Likewise, the exceptions regime must be interpreted restrictively, and any doubts must be resolved in favor of transparency and access.<sup>404405</sup>

280. In addition, various civil society organizations have expressed their concern to the Inter-American Commission and its Rapporteurship over the alleged lack of independence of the Institute for Access to Public Information (IAIP) of El Salvador, and over measures from the executive branch that their purpose would be to name and remove commissioners of the Institute according to political interests.<sup>406</sup> Likewise, the Office of the Special Rapporteur has received reports indicating that there is resistance from the different State bodies in providing public information.<sup>407</sup>

281. In this regard, a report by the organization Acción Ciudadana [Citizen Action] published in August 2022 that evaluated the performance of the IAIP in compliance with its legal obligations, concluded that there has been a decrease in resolutions on access to public information in favor of citizens, particularly evident as of November 2021, the date on which the current configuration of commissioners was consolidated.<sup>408</sup> In this sense, the report indicated that "as of this date, the general tendency of the resolutions is oriented towards a significant reduction of pronouncements in favor of the applicant and a correlative increase in the preliminary rejections of their claims."<sup>409</sup> As reported, the response levels favorable to access to information would have dropped from 60% to 19% between 2020 and 2021.<sup>410</sup> In addition, the IAIP would have reduced the number of cases it hears, and extended the term in which it resolves cases.<sup>411</sup>

282. In this context, in October 2022, the IAIP declared itself incompetent to hear an appeal filed by the organization Acción Ciudadana against the refusal of the Supreme Electoral Tribunal to provide information related to the financing of political parties, despite the fact that in 2016 the Institute had recognized that the principle of maximum publicity was applicable to the financial information of the political

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<sup>401</sup> Legislative Assembly, Republic of El Salvador. February 1, 2022. [Deputies issue favorable opinion to reform the Law on Access to Public Information](#).

<sup>402</sup> El Diario de Hoy. February 1, 2022. [Legislative Assembly Halts Reform That Sought to Hide Officials' Income](#); The Lighthouse. February 1, 2022. [Differences in Bukelism Halt Dismantling of Public Information Law](#).

<sup>403</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Right of Access to Information in the Inter-American Legal Framework](#). OEA/Ser.L/V/II IACHR/RELE/INF. 1/09. 30 December 2009. Para. 48.

<sup>404</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Right of Access to Information in the Inter-American Legal Framework](#). OEA/Ser.L/V/II IACHR/RELE/INF. 1/09. 30 December 2009. Para. 48.

<sup>405</sup> In its observations on the draft of this report, the State reiterated that it had informed the Commission in a timely manner about the Emergency Regime and its extensions, as well as the achievements obtained thanks to that Regime, and had responded to multiple requests for information from other organizations that monitor the country's human rights record.

<sup>406</sup> Radio Cadena YSKL. December 6, 2022. [2022 closes with setbacks in access to public information, consider organizations](#); El Diario de Hoy. May 23, 2022. [Access to Information Institute 'dead', transparency experts say](#); Citizen Action. December 5, 2022. [There is a challenging context for transparency and the fight against corruption in El Salvador](#); El Diario de Hoy. August 8, 2022. [IAIP co-opted by New Ideas, says APES expression rapporteur](#); El Diario de Hoy. May 4, 2021. [Liduvina Escobar: "Bukele is making abusive use to remove IAIP commissioners"](#); The Lighthouse. July 19, 2021. [Bukele Government seeks to bury access to public information](#).

<sup>407</sup> El Diario de Hoy. May 23, 2022. [Access to Information Institute 'dead', transparency experts say](#); Citizen Action. December 5, 2022. [There is a challenging context for transparency and the fight against corruption in El Salvador](#); Citizen Action. August 2022. [The IAIP in favor of citizens? Update 2022](#).

<sup>408</sup> Citizen Action. August 2022. [The IAIP in favor of citizens? Update 2022](#).

<sup>409</sup> Citizen Action. August 2022. [The IAIP in favor of citizens? Update 2022](#).

<sup>410</sup> La Prensa Gráfica. December 6, 2022. [2022 was a year of challenges for transparency and the fight against corruption](#); Citizen Action. August 2022. [The IAIP in favor of citizens? Update 2022](#).

<sup>411</sup> Citizen Action. August 2022. [The IAIP in favor of citizens? Update 2022](#).

parties that was in the possession of the entities obliged to comply with the LAIP.<sup>412</sup> Acción Ciudadana considered it "serious that the IAIP declares itself incompetent to hear this and future cases related to information from political parties, regardless of whether it is in the possession of entities bound by the LAIP, creating an area exempt from control."<sup>413</sup>

283. Additionally, the SRFOE learned that, in the context of the state of exception, in June, the National Civilian Police had declared the number of homicides and victims of the crime of disappearance as confidential information, based on a request made by the media outlet *Gato Encerrado*<sup>414</sup>. The institution would have based its refusal to deliver this information on the fact that it would put national defense and public security at risk, and could cause damage to the prevention, investigation, or prosecution of illegal acts.<sup>415</sup> The same media outlet reported that, in response to a request for information made to the Office of the Attorney General (FGR), the institution responded in May 2022 that it could not provide statistical data on complaints related to crimes of homicides, disappearances, rapes, sexual assaults and violence against women, corresponding to the period of March and April, since they are "non-existent".<sup>416</sup>

284. Regarding the right of access to public information and its link with the role of the press, the IACHR and its Rapporteurship have received reports on the alleged obstruction of press coverage at public events, the denial of interviews and access to political sources.<sup>417</sup> In 2022, Fernando Romero, a reporter for *Revista Factum*, publicly denounced that journalists from said media outlet and from *Noticiero 6* were not allowed to enter the Human Rights Summit of the Office of the Ombudsman for the Defense of Human Rights (PDDH), which took place in San Salvador between August 22 and 24.<sup>418</sup> Likewise, in October 2022, the San Francisco Gotera Investigating Court prevented the media from entering a hearing on the case of the El Mozote massacre, where five witnesses were testifying.<sup>419</sup> According to the outlet *Gato Encerrado*, official sources informed them that the decision would have been made "to avoid re-victimization" of the first five witnesses called.<sup>420</sup>

285. The Office of the Special Rapporteur has indicated that the right of access to information is a fundamental requirement to guarantee transparency in government administration and on the part of state authorities, and a fundamental tool for citizen control of the functioning of the State and the accountability.<sup>421</sup> As the IACHR has interpreted, Article 13 of the American Convention includes the positive obligation of the State to allow citizens access to the information in its possession.<sup>422</sup> In this regard, Principle 4 of the IACHR Declaration of Principles on Freedom of Expression states that "access to information [...] is a fundamental right of individuals. States are obligated to guarantee the exercise of this right."<sup>423</sup> On its part, the Inter-American Court has established that Article 13 of the American Convention, by expressly stipulating the rights to "seek"

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<sup>412</sup> La Prensa Gráfica. October 22, 2022. [IAIP rejected appeal on finances of political parties](#); Diario el Mundo. October 21, 2022. [IAIP rejects appeal against TSE for not reporting on political parties in El Salvador - Diario El Mundo](#); Citizen Action. October 22, 2022. [Citizen Action urges citizens to demand that public institutions respect their right of access to information](#);

<sup>413</sup> Citizen Action. October 22, 2022. [Citizen Action urges citizens to demand that public institutions respect their right of access to information](#).

<sup>414</sup> Gato Encerrado. June 21, 2022. [Police reserve information on homicides and missing persons](#).

<sup>415</sup> Gato Encerrado. June 21, 2022. [Police reserve information on homicides and missing persons](#).

<sup>416</sup> Gato Encerrado. June 14, 2022. [Prosecutor's Office denies data on crimes of violence](#).

<sup>417</sup> IACHR. March 16, 2022. 183 Period of Sessions. [Hearing No. 11 The Human Rights Situation in the Context of Cyber Surveillance in El Salvador](#).

<sup>418</sup> El Diario de Hoy. August 23, 2022. [Human Rights Ombudsman restricts work of some journalists covering events](#); Twitter account of Fernando Romero (@bayernfern). [August 23, 2022](#).

<sup>419</sup> El Mundo. October 31, 2022. [Judge does not allow the press to enter diligence in trial for the massacre of El Mozote](#); Gato Encerrado. October 31, 2022. [New judge in El Mozote case denies access to press](#).

<sup>420</sup> Gato Encerrado. October 31, 2022. [New judge in El Mozote case denies access to press](#).

<sup>421</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Right of Access to Information in the Inter-American Legal Framework](#). OEA/Ser.L/V/II IACHR/RELE/INF. 1/09. 30 December 2009. Paras. 4 and 5.

<sup>422</sup> I/A Court. Case of Claude Reyes et al. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 58 (a) and (b).

<sup>423</sup> IACHR. 20 October 2000. [Declaration of Principles on Freedom of Expression](#).

and “receive” “information,” protects the right of every person to access information under the control of the State, with the exceptions allowed under the strict regime of restrictions established in said instrument.<sup>424</sup>

286. Based on the previous considerations, the IACHR and its Rapporteurship consider that the recommendation is **pending compliance**; and calls on the Salvadoran State to take all necessary measures in order to effectively guarantee the right of access to public information. In this regard, although the State reported some measures that, in its opinion, are aimed at complying with this recommendation, the Commission and its Rapporteurship identified the broad context described with respect to events recorded or denounced that would indicate growing limitations on the right of access to information, as well as the non-observance of transparency in the handling of this information. In this sense, it is necessary and urgent to adopt measures that are aimed at eradicating this context and that, consequently, contribute to guaranteeing the right of access to public information in accordance with inter-American standards on the matter.

287. Regarding the recommendation **to give consent for a work visit by the IACHR's Office of the Special Rapporteur for Freedom of Expression, which will allow that Office to monitor and collect information directly about the situation of the right to freedom of expression in El Salvador**, the State of El Salvador has stated that “it is working on the definition of an agenda for the implementation of the Commission's recommendations, for which reason it is willing to respond to requests for information from the Commission regarding the situation of the right to freedom of expression in the country, as it has responded to the request for a general hearing on the 'Situation of freedom of expression in El Salvador', held on December 3, 2020 and has presented inputs for the 2021 Annual Report of the SRFOE in September and November 2021”.<sup>425</sup>

288. The Office of the Special Rapporteur for Freedom of Expression has undertaken efforts leading to the realization of this recommendation and assigns value to the availability of the Salvadoran State to inform this Office, on an ongoing basis, on matters related to freedom of expression. However, according to the monitoring of the situation, the Rapporteurship considers that there are important controversies regarding the situation of the right to freedom of expression in El Salvador, for which reason it insists on the importance of the State granting consent to carry out a working visit by the Rapporteurship, which allows the Office to gather information on the ground and listen to various actors, both state and civil society, on matters that concern its mandate.

289. In light of this, the IACHR and its Office of the Special Rapporteur consider that the recommendation is **pending compliance**.

### III. CONCLUSIONS

290. The Commission appreciates the efforts undertaken by the State of El Salvador to provide information on compliance with the recommendations issued in its 2021 Country Report. Based on the information provided, the Commission considered that, of the 50 recommendations, 1 was fully complied with; 2 had substantial partial compliance; 16 were partially complied with; and 31 are pending compliance. Therefore, it reiterates to the State to effectively comply with the recommendations that have not been fully complied with.

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<sup>424</sup> Corte IDH. Case of Claude Reyes et al. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151. Paras. 76 and 78; Inter-American Court. Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141. para. 77; Inter-American Court. I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107. Para. 108.

<sup>425</sup> Permanent Mission of El Salvador to the OAS. Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report “Situation of Human Rights in El Salvador” approved after an on-site visit conducted in 2019. July 2022. P. 95.



291. The Commission has observed progress, among which it values the training of state agents on issues related to the rights of women and LGBTI persons; the resolution of the Constitutional Chamber regarding the unconstitutionality of article 23 paragraph 2 of the Law of the Name of the Natural Person that limited the change of name for reasons of gender; the ratification of ILO Convention 190; the adoption of the National DNA Data Bank Law; the increase in cases investigated and prosecuted regarding serious human rights violations committed in the internal armed conflict; among others.

292. On the other hand, during the year 2022, and taking into account the validity and the events that occurred within the framework of the state of exception since March 27, 2022, the IACHR expresses special concern with the situation of persons deprived of freedom and the institutional capacity of the Office of the Attorney General of the Republic to comply with its mandate in this context; as well as with the lack of transparency, participation, accountability and external control of state actions in matters of citizen security.

293. The IACHR stresses the ongoing need to take action on issues developed in its 2021 Country Report. In this regard, it indicates that ensuring access to water continues to represent a major challenge, especially for communities in vulnerable conditions. It also highlights the lack of adaptation of the national regulatory framework to the inter-American standards on the sexual and reproductive rights of women, girls, and adolescents, as well as comprehensive protection against forced displacement. The IACHR calls for the State to pay attention to the debts owed to the victims of the internal armed conflict, who have been waiting for truth, justice, and reparation for decades. Also, to implement the corresponding efforts to produce the statistical data that allow the identification of the indigenous and Afro-descendant population at the national level.

294. Likewise, the Commission calls on the State to adopt measures so that there is full enjoyment of human rights and points out that it is essential that El Salvador ensure a safe environment for the exercise of the defense of human rights and independent journalism. In this regard, it reinforces the importance of adopting a legal framework in order to protect these tasks and to stop stigmatizing or degrading pronouncements by public agents. Additionally, it underlines access to public information in accordance with the guidelines of the inter-American legal framework as an essential pillar in a democratic regime, on which it is necessary to adopt actions aimed at guaranteeing it.

295. As the Commission pointed out in its Country Report, many of the human rights problems that affect the country are structural, and several of them have been pending since the armed conflict. However, it is imperative to preserve the efforts and historical achievements by the Salvadoran population after the internal armed conflict, such as the construction and strengthening of its democratic institutions, judicial independence, and the rule of law. The foregoing requires the adoption of effective measures in accordance with applicable international standards and the maintenance of an open, respectful, and constant dialogue with the Inter-American Commission, other international human rights organizations, and civil society.

296. The Commission reaffirms its commitment to collaborate with the State of El Salvador in the search for solutions to the problems and challenges identified, as well as to provide support in compliance with its international obligations in the area of human rights and in the processes of implementation of the recommendations that were followed up in this report.