



# **Follow-Up of Recommendations in Country or Thematic Reports**

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**El Salvador**



## **CHAPTER V: EL SALVADOR**

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## CHAPTER V

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

#### **THIRD FOLLOW-UP REPORT ON COMPLIANCE WITH THE RECOMMENDATIONS MADE BY THE IACHR IN THE REPORT ON THE SITUATION OF HUMAN RIGHTS IN EL SALVADOR IN 2021<sup>1</sup>**

##### **I. INTRODUCTION**

1. The purpose of this chapter is to continue following up on the recommendations issued in the Report on the Situation of Human Rights in El Salvador, which was approved on October 14, 2021, by the Inter-American Commission on Human Rights (hereinafter "Commission", "Inter-American Commission" or "IACHR"), pursuant to Article 59(9) of its Rules of Procedure. Pursuant to this provision through Chapter V of its Annual Report, the Commission will follow up on the measures adopted by the Member States of the Organization of American States (hereinafter "OAS") to comply with the recommendations made in the country or thematic reports of the IACHR.

2. Regarding the background of this follow-up report, following a request from the Inter-American Commission, on July 2, 2019, the State granted its consent to conduct an *in loco* visit to the country, which took place between December 2 and 4, 2019. In this regard, the Commission highlighted and appreciated that, in the first 6 months of the current government, El Salvador has invited the IACHR to conduct an *in loco* visit after 32 years.

3. In 2021, the IACHR issued the report titled *Situation of Human Rights in El Salvador* (hereinafter "Country Report") which included a series of recommendations addressed to the State, based on the findings and information obtained before, during and after the *in loco* visit<sup>2</sup>. Likewise, to prepare for this report, the Commission based itself on the investigations carried out *ex officio*, the information provided by the State, inputs from the different mechanisms through which the IACHR has followed up on the situation in the country, as well as press articles, decisions and recommendations of specialized international organizations, among others, as established in Article 59, paragraph 5 of its Rules of Procedure.

4. In the Country Report, which includes events up to December 31, 2020, the Commission addressed the human rights situation in El Salvador with emphasis on the structural problems affecting the country that have been pending since the armed conflict. These issues include citizen security, high levels of violence and the impact of heavy-handed policies on the human rights of the population, as well as access to justice, truth and memory of the victims of the armed conflict. Additionally, in the Country Report, the Commission analyzed the situation of groups and persons of special concern, including persons deprived of liberty; women and LGBTI persons; indigenous and Afro-descendant peoples; persons in the context of human mobility; and human rights defenders. The IACHR also analyzed other issues related to ESCR and the situation of freedom of expression in the country.

5. After the publication of the Country Report, the IACHR prepared two follow-up reports on compliance with its recommendations, which it has included in Chapter V of its Annual Reports for the years

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

<sup>2</sup> IACHR, Country Report "Situation of Human Rights in El Salvador", OEA/Ser.L/V/II Doc.278/21, October 14, 2021.

2022<sup>3</sup> and 2023<sup>4</sup>. Both reports have sought to identify State measures of compliance with the Commission's recommendations, as well as pending challenges in terms of implementation, based on information provided by the State and civil society organizations, as well as other publicly available information known to the IACHR.

6. Based on this background, this is the third follow-up report on the recommendations that the IACHR made to El Salvador in its country report. Like the second report, this one does not evaluate the implementation of recommendations 1, 2, 3, regarding citizen security, nor recommendations 12, 13, 14, 15 and 20, regarding the rights of persons deprived of liberty. This is because, during the year 2024, the IACHR published two reports that have an impact on this follow-up. The first one deals with the state of emergency and human rights in El Salvador<sup>5</sup> and addressed 23 recommendations to the State and the second monitored the level of compliance with five recommendations on persons deprived of liberty in the country<sup>6</sup>. The Commission requests to refer to these two documents for a more updated analysis on both topics and to complement what has been developed in this Report.

7. For the preparation of this follow-up report, on September 4, 2024, the IACHR requested the State of El Salvador to present, within 30 days, information on compliance with the recommendations contained in the Country Report. After requesting an extension, the State of El Salvador submitted the requested information on October 23, 2024<sup>7</sup>. The Commission appreciates and is grateful for the information received, which was included in this report.

8. For its part, the IACHR also sent a questionnaire to civil society organizations so that they could provide information related to the follow-up of the recommendations. The IACHR appreciates the information provided by some organizations, which was considered for the follow-up of the recommendations of the Country Report<sup>8</sup> and appreciates their involvement in the follow-up processes of the Commission's recommendations.

9. On January 3, 2025, the Commission transmitted a copy of the preliminary draft of this report to the State, following Article 59(10) of its Rules of Procedure, and requested it to submit its observations. On February 13, 2025, the Commission received the observations and comments from the State<sup>9</sup>, which were incorporated, as pertinent, into this version and whose document is annexed to this Report. The final version of this Report was approved by the Commission on March 3, 2025.

10. This follow-up report is divided into five sections dedicated to the analysis of the measures adopted by the State to comply with the Commission's recommendations and the pending challenges in terms of implementation. The recommendations are evaluated following the General Guidelines on the Follow-up of Recommendations and Decisions of the IACHR<sup>10</sup>, following the thematic structure incorporated into the Country Report. The preparation of this document is consistent with the Commission's recommendation follow-up practice.

<sup>3</sup> IACHR, Annual Report 2022, Chapter V: El Salvador, March 11, 2023.

<sup>4</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023.

<sup>5</sup> IACHR, State of Emergency and Human Rights in El Salvador, OEA/Ser.L/V/II Doc. 97/24, June 28, 2024. (Available only in Spanish).

<sup>6</sup> IACHR, Follow-up Report: Recommendations on Persons Deprived of Liberty, Guatemala, Honduras and El Salvador, OEA/Ser.L/V/II Doc. 126/24, June 7, 2024. (Available only in Spanish).

<sup>7</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>8</sup> Servicio Social Pasionista (SSPAS), Response to follow-up questionnaire, October 4 and 22, 2024. Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024. Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024. Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024. Fundación Nacional para el Desarrollo (FUNDE), Response to follow-up questionnaire, October 4, 2024. Red Feminista frente a la Violencia contra las Mujeres (RED-FEM), Response to follow-up questionnaire, October 4, 2024; the network is composed of Asociación de Mujeres por la Dignidad y la Vida (Las Dignas), Asociación Movimiento de Mujeres Mérida, Anaya Montes (Las Méridas) and Asociación Organización de Mujeres Salvadoreñas por la Paz (ORMUSA).

<sup>9</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

<sup>10</sup> IACHR, General Guidelines on the Follow-up of Recommendations and Decisions of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc.385/23 (second edition), Nov. 20, 2023. (Available only in Spanish).

11. This report is divided into five sessions according to the thematic axes of the recommendations being followed up. For each decision, the report presents a synthesis of the analysis of the last follow-up report corresponding to 2023<sup>11</sup>. Then, it covers the information that the IACHR obtained in 2024 through different sources, including that reported by the State and civil society organizations, as well as the information gathered to monitor the general human rights situation in the country<sup>12</sup>. Subsequently, it performs an analysis of the level of compliance and refers to the main advances and implementation challenges identified by the Commission, according to the information known during the year 2024. The analysis for each recommendation culminates with a diagnosis by the IACHR on the specific information that the State has not yet submitted or on the measures that have yet to be adopted to determine progress in the level of compliance with the recommendation. Finally, the IACHR issues its conclusions on the progress and challenges of compliance with the recommendations of the Country Report analyzed as a whole.

12. Full compliance with the recommendations of the IACHR is essential to ensuring the full enjoyment of human rights in the OAS Member States and strengthening the Inter-American Human Rights System (hereinafter "IAHRS"). The current international scenario demands that the actors involved not only actively participate by reporting information on measures to comply with the decisions adopted by international bodies, including the IACHR, but that these efforts translate into suitable, timely, and effective State measures that achieve the objectives of each decision.

13. The IACHR reiterates the importance that the State of El Salvador fully comply with the recommendations made in the report under follow-up. It also hopes that this tool will make it possible to establish a process of dialogue aimed at complying with the recommendations that the Commission has addressed to the State of El Salvador in human rights.

## II. FOLLOW-UP OF RECOMMENDATIONS

### A. Memory, truth and justice concerning the internal armed conflict

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

14. For the 2023 follow-up report, the Commission noted that it has been aware of the draft of the "Special Law on Transitional Justice for Victims of Human Rights Violations in the Context of the Armed Conflict in El Salvador," law since 2022, when the State reported it. However, it noted civil society's concern about the lack of discussion of this initiative in the Legislative Assembly. Given the lack of progress in adopting this law, the Commission considered that this recommendation remained **pending**.<sup>13</sup>

#### *Information on compliance*

15. For the year 2024, the Commission learned of information provided by civil society according to which the State has not made progress in adopting a law on transitional justice in the country. It was also indicated that the president of the Justice and Human Rights Commission of the Legislative Assembly had intended to draft a Transitional Justice Law for victims of the armed conflict by the year 2021. However, no

<sup>11</sup> IACHR, Annual Report 2023, Chapter V. Follow-up recommendations issued by the IACHR in its country or thematic reports - El Salvador, December 31, 2023.

<sup>12</sup> To this end, the IACHR has made use of information gathered during public hearings, investigations conducted ex officio, input from the mechanisms for petitions and cases and precautionary measures, and responses to requests for information submitted under the authority established in Article 41 of the American Convention on Human Rights, as well as information gathered from other public sources, and the decisions and recommendations of specialized international organizations, among others.

<sup>13</sup> IACHR, Annual Report 2023, Chapter V. Follow-up recommendations issued by the IACHR in its country or thematic reports - El Salvador, paras. 15-20.

progress has been made on this objective, even though some government institutions and civil society organizations were cited, including the Committee of Mothers and Relatives of the Detained, Disappeared and Politically Assassinated of El Salvador, Monsignor Óscar Arnulfo Romero (COMADRES).<sup>14</sup>

16. The Commission was also informed that a May 2024 reform to the Legislative Assembly's rules of procedure eliminated the Justice and Human Rights Commission, which oversaw transitional justice issues, and created the National Security and Justice Commission. In addition, it was confirmed that on May 29, 2024, due to the loss of its validity, the project of "Special Law of Transitional Justice for Victims of Human Rights Violations in the Context of the Armed Conflict in El Salvador", presented on October 7, 2021, by the victims of the armed conflict and through Congresswoman Claudia Ortiz<sup>15</sup> was archived. In this regard, the Commission learned of the concern and rejection expressed by the Roundtable Against Impunity in El Salvador and the Management Group of the Comprehensive Reparation Law regarding this file, as well as the affirmation that the State had not adopted measures to carry out a participatory process and followed a dialogue with the victims for the drafting of the law indicated in this recommendation.<sup>16</sup>

17. For its part, the State reported that in May, the National Security and Justice Commission of the Legislative Assembly filed the draft bill of the "Special Law on Transitional Justice for Victims of Human Rights Violations in the Context of the Armed Conflict in El Salvador", because it was filed in 2021 and no longer in force.<sup>17</sup>

18. In addition, the State clarified that Unconstitutionality Ruling No. 44-2013AC on the Amnesty Law, issued by the Constitutional Chamber of the Supreme Court of Justice, orders the Legislative Assembly to respond to demands regarding investigations, prosecution, clarification, and punishment of crimes committed during the armed conflict, as well as comprehensive reparation and non-repetition. It indicated that, as of this sentence, the National Reconciliation Law (Legislative Decree No. 147 of 1992) became effective again and that the latter establishes that "the persons who, according to the report of the Truth Commission, had participated in serious acts of violence that occurred since January 1, 1980, whose imprint on society demands with greater urgency the public knowledge of the truth, regardless of the sector to which they belonged in their case" will not be granted amnesty. At the same time, it clarified that the favor referred to in the General Amnesty Law for the Consolidation of Peace (Legislative Decree No. 486 of 1993) cannot be applied to facts indicated in the Report of the Truth Commission.<sup>18</sup>

19. Although the State's approval of the Transitional Justice Law referred to in the recommendation under follow-up is still pending, regulatory mechanisms and institutional infrastructure exist to investigate the acts committed during the armed conflict, applying international standards of transitional justice and in accordance with its commitment to truth, justice, and reparation.<sup>19</sup>

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

20. Since 2022, the IACHR had been aware of the preliminary draft of the "Special Law on Transitional Justice for Victims of Human Rights Violations in the Context of the Armed Conflict in El Salvador". For this year, the Commission regrets that this bill had not been discussed or studied in time, a concern that had already been pointed out by civil society. The IACHR expresses its concern over the archiving of this

<sup>14</sup> Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024.

<sup>15</sup> Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024.

<sup>16</sup> Fundación Cristosal, Response to the follow-up questionnaire, October 4, 2024; Mesa Contra la Impunidad en El Salvador and the Grupo Gestor de la Ley de Reparación Integral, [Press release: El debate y aprobación de una Ley de Justicia Transicional en El Salvador no ha perdido vigencia y es fundamental para asegurar la justicia y la paz](#), May 2024. (Available only in Spanish).

<sup>17</sup> State of El Salvador, [Note MPOEA-OAS-168/2024, Response to IACHR questionnaire](#), October 23, 2024.

<sup>18</sup> State of El Salvador, [Note MPOEA-OAS-168/2024, Response to IACHR questionnaire](#), October 23, 2024.

<sup>19</sup> By way of example, the State referred to the creation of national commissions to search for disappeared persons and of a special investigative unit in the Office of the Attorney General of the Republic; to regulatory modifications to apply international standards in the investigation and prosecution of these acts; to the Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity; to the strengthening of capacities in genetics and forensic anthropology; to the indictment and prosecution of cases; and to arrest warrants for high-ranking military officials. State of El Salvador, [Note MPOEA-OAS-168/2024, Response to IACHR questionnaire](#), October 23, 2024.



legislative initiative, despite its relevance to develop international standards on transitional justice in the country. In this regard, it identifies that the recommendation is still **pending compliance**.

*Measures and information to advance compliance with the recommendation*

21. The Commission urges the State to move forward with the issuance of the law indicated in this recommendation and to guarantee the full participation of victims and civil society in its drafting; it also reiterates the importance that the process of drafting this initiative be swift, participatory, and consider the perspective and contributions of victims' organizations and civil society, which is especially relevant in transitional justice contexts<sup>20</sup>. Likewise, the IACHR invites the State to consider successful comparative experiences in transitional justice processes in complying with this recommendation, especially regarding the implementation of continuous working sessions with the victims, insofar as it is compatible and whenever it is relevant to the Salvadoran context.

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

22. For the 2023 follow-up report, the IACHR appreciated the increase from 22 to 28 cases prosecuted by the Unit for the Investigation of Crimes Committed in the Armed Conflict (hereinafter "UIDCA") of the Attorney General's Office (hereinafter "FGR"), although it noted that this figure corresponds to only 11% of the total. In addition, it stated that it was unaware of any progress in the adoption of judicial decisions that identify those responsible for the facts and impose indicated sanctions, although it valued the information on the prioritization of the cases in the Truth Commission Report, as well as the intention to adopt a contextual approach in the investigations. It also requested information on the road map of the "Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity Occurring in the Context of the Armed Conflict". Based on the above, the IACHR concluded that the recommendation remained partially fulfilled and noted that its level of compliance would advance when most of the violations reported are being prosecuted.

*Information on compliance*

23. For the year 2024, the State indicated that the FGR's UIDCA has been gradually endowed with the human and logistical resources necessary for its investigative work. It recalled that when it was created, it was a "working group" made up of three prosecutors, which was later transformed into an institutional unit, and currently has a team of thirteen people, including a coordinator and seven assistant prosecutors. The State also noted that the unit has enhanced the participation of victims and their representatives in the investigations.<sup>21</sup>

24. The State also referred to the cases in which it indicated that it had obtained essential results in the investigation, namely: the "San Andrés" case, in which, for the first time, a death squad was prosecuted; the "El Calabozo Massacre" and the "Dutch Journalists" case, in which arrest warrants were issued and, for the latter, included high-ranking military officials; and the "UCA Massacre" case, which is awaiting a preliminary hearing in December 2024. In addition, the State highlighted progress in the investigation of cases of sexual violence in the context of the civil war and serious human rights violations by the Farabundo Martí National Liberation Front (hereinafter "FMLN").<sup>22</sup>

25. Likewise, the State indicated that, in the case of the El Mozote Massacres and surrounding areas, a transitional justice team was formed to incorporate the applicable Inter-American standards and

<sup>20</sup> IACHR, Compendium: Truth, Memory, Justice and Reparation in Transitional Contexts, Inter-American Standards, OEA/Ser.L/V/II. Doc. 121 12 April 2021, para. 84.

<sup>21</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>22</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.



affirmed that it had removed obstacles to investigate, try and punish both the direct perpetrators and those who gave orders that violated fundamental rights and the commanders who did not respond to their legal duty to prevent abuses by subordinates. The State also pointed out that privileges and immunities were eliminated for officials who favored impunity for serious human rights violations and that, on December 22, 2023, the Court of Instruction of San Francisco Gotera declared the crime of personal concealment as a crime against humanity and, therefore, not subject to the statute of limitations.<sup>23</sup>

26. For its part, the Commission received information from civil society indicating that there is limited public information available regarding the UIDCA's progress in processing cases of serious human rights violations committed during the internal armed conflict<sup>24</sup>. Additionally, it was noted that the FGR's Work Report for the period of June 1, 2023, to May 31, 2024, mentions only one action taken by the UIDCA: the presentation of the indictment on June 6, 2023, in the case of the massacre of the Jesuit priests and their two collaborators.<sup>25</sup>

27. The Commission was also informed that there are still challenges related to the failure to comply with inter-American standards of due diligence in general and enhanced due diligence in cases of gender-based violence against women, as well as to guarantee the rights of victims to information and participation in investigations. This includes the lack of a gender perspective regarding violations of women's human rights. In addition, it was noted that only the assignment of an additional prosecutor, as reinforcement to the UIDCA, was known.<sup>26</sup>

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

28. The IACHR has noted the information reported by the State regarding the institutional strengthening of the UIDCA within the Attorney General's Office; the progress mentioned concerning the "San Andrés," "El Calabozo Massacre," "Dutch Journalists," and "UCA Massacre" cases; the investigations into sexual violence cases; the establishment of a transitional justice team aimed at incorporating Inter-American standards concerning the El Mozote Massacres and surrounding areas; the removal of privileges and immunities for officials that encouraged impunity; and the late 2023 decision by the San Francisco Gotera Court of Instruction to declare the imprescriptibility of the crime of personal concealment.

29. However, the Commission does not provide specific information indicating a significant increase in the number of cases prosecuted for serious human rights violations committed during the armed conflict. Without undermining the institutional strengthening decisions reported and some decisions adopted in relation to the mentioned cases, the IACHR reiterates that the essence of the recommendation under follow-up emphasizes the investigation, prosecution, and, if warranted, punishment of the reported facts. This requires concrete judicial decisions that identify the responsible parties and impose appropriate sanctions for the serious human rights violations committed during the internal armed conflict. In the absence of information demonstrating significant progress in these judicial decisions, the Commission believes that the recommendation remains **partially fulfilled**.

#### *Measures and information to advance in the fulfillment of the recommendation*

30. The Commission reiterates the importance of achieving substantial progress in investigations and prosecutions and effective sanctions for serious human rights violations perpetrated in the context of the armed conflict. In this regard, it reiterates that it will evaluate a substantial partial implementation of this recommendation when the majority of these acts are during the investigation and sanctioning stages. It also urges the State to continue reporting details on the implementation of the Criminal Prosecution Policy roadmap concerning war crimes and crimes against humanity within the context of the country's armed conflict. Above

<sup>23</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>24</sup> Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024. DW, ONG: Estado de El Salvador "sigue amparando la impunidad", March 21, 2024. (Available only in Spanish).

<sup>25</sup> FGR, Informe de Labores 2023 - 2024, p. 60: Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>26</sup> FGR, Informe de Labores 2023 - 2024, p. 60: Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

all, it should specify the number of cases processed, detailing how many are still in the investigation, prosecution, and conviction stages. This information is crucial for closely monitoring the implementation of this recommendation.

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

31. In the 2023 follow-up report, the State indicated that the Legislative Body was reviewing the first two conventions referenced in the recommendation and that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity was undergoing consultation before being presented to the Legislative Assembly. The IACHR stated that this recommendation was pending compliance and urged the State to advance the ratification of the instruments specified in the recommendation.<sup>27</sup>

*Information on compliance*

32. For the year 2024, the State indicated that on May 1, 2024, the new composition of the Legislative Assembly took office for the period 2024-2027 and was in charge of analyzing the eventual ratification of international human rights instruments, in accordance with human rights recommendations and national priorities. It also indicated that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity is currently in the consultation stage with national entities, before determining its possible subscription.<sup>28</sup>

33. The Commission, for its part, received information from civil society regarding the lack of progress in ratifying the instruments mentioned in the recommendation. Additionally, it was noted that in December 2021, thirteen civil society organizations issued a document highlighting several reasons why it is essential for El Salvador to adhere to these international instruments<sup>29</sup>. The Commission recognized that, among other reasons, the document emphasizes the importance of complying with these instruments to enhance and supplement internal protection of human rights, foster constructive dialogue with international protection organizations, advocate for victims' demands, follow the recommendations of various international organizations, and reject forced disappearance.<sup>30</sup>

*Analysis and level of compliance with the recommendation*

34. Considering that the implementation of this recommendation depends on substantial actions regarding the progress in the ratification of the instruments mentioned in the recommendation, the Commission considers that this recommendation is still **pending compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

35. The IACHR urges the State to effectively advance in the ratification process of these international instruments, which is essential for reporting any progress in implementing this recommendation.

**Recommendation No. 7.** Organize all documentation on the security forces that acted during the internal armed conflict, systematize this, and make it publicly available to victims, authorities of the justice and

<sup>27</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 34-37.

<sup>28</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>29</sup> DPLF, Alerta Raquel, ANADES, ASDEHUM FESPAD, PROBÚSQUEDA, AZO, Comcavis Trans, Cristiosal, SSPAS, Idhuca, ORMUSA, COPPES, *El Salvador debe adherirse a la Convención Interamericana sobre Desaparición Forzada de Personas y a la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas*, December 2021. (Available only in Spanish).

<sup>30</sup> FGR, Informe de Labores 2023 - 2024, p. 60: Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

search system, and society as a whole, ensuring that sensitive aspects are protected appropriately, in the latter case, and reconstructing any files that were destroyed or documents that were not produced when they should legally have been.

36. For the 2023 follow-up report, the IACHR identified some actions to systematize the information indicated in this recommendation and appreciated that the Ministry of National Defense expressed its willingness to support the investigations of the Attorney General's Office, as well as the initiative of the "Guardians of Peace" project, on classification and digitization of historical archives. However, the IACHR identified that, although the reported actions represent partial systematization efforts, they do not comply with the core of the recommendation, namely, that this record be made available to the victims and society in general, attending to the necessary protection of sensitive aspects. Pending complementary information on these aspects, the Commission considered that this recommendation was still **pending compliance**.<sup>31</sup>

#### *Information on compliance*

37. By 2024, the State indicated that the Ministry of National Defense had made progress in ordering, identifying, and classifying the documentation generated by the institution between 1980 and 1992. It indicated that several military units have a general inventory and that the last phase of information digitization is beginning. In addition, it indicated that, within the framework of the law, this entity provides the information requested by justice entities, victims or family members, if it is in existing or restored documents in the archives of the military units from the period of the armed conflict.<sup>32</sup>

38. The State indicated that in April 2024, the national commissions for the search for children and adults who disappeared in the context of the armed conflict signed a cooperation agreement with the Supreme Court of Justice. This measure seeks to facilitate access to files on the adoption and protection of children during the armed conflict and to judicial files of unidentified persons who had been recognized by the courts at the time, as well as support in exhumations and the processing of genetic profiles, and training for personnel of the Supreme Court of Justice on the search for persons.<sup>33</sup>

39. Additionally, the State noted that the national search commissions mentioned above began processes to review records from that time and have accessed documents and archives, including military and police records, in collaboration with entities such as the judiciary and family registries in various municipalities. Furthermore, it reported that between July 2022 and May 2023, these commissions examined cemetery archives in the departments of San Salvador and Santa Ana and identified over 1,500 "unidentified" individuals buried due to violent causes related to the internal armed conflict from 1974 to 1992, of which at least 50 were under 18 years old. The State indicated this action would be replicated in other cemeteries and complemented by mapping burial sites or mass graves. It also mentioned that, with the support of the United Nations Development Program (hereinafter "UNDP"), in 2024, these commissions will implement a system to digitize files and historical archives in order to achieve efficient management of the search processes and consolidate the Single Registry of Missing Children and Adults (hereinafter "RENIPAD").<sup>34</sup>

40. For its part, the Commission received information from civil society indicating that over the past year, there has been no progress in facilitating access to documentation from the armed forces and security forces involved during the armed conflict. It was noted that, on the contrary, state authorities even refused to make efforts to identify or request such documents. For example, in the context of criminal case No. 69/1992 related to crimes occurring during the Massacre of El Calabozo and surrounding areas, the organization Cristosal, on behalf of the victims, requested several documents from the court overseeing the case, including one titled "The Threat to the Sovereignty and Destruction of the State," prepared by the Ministry of National Defense, as well as the National Military Plans for the years 1980 to 1983. In January 2024, the Court of First

<sup>31</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 48-39.

<sup>32</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>33</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>34</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

Instance of San Sebastian (now the Second Civil and Mercantile Court of San Vicente) reportedly notified that it would not request these documents, arguing that "there is no record" of the actions of the military forces in 1982.<sup>35</sup>

41. In the observations to the present report, the State affirmed that it has worked on recovering and systematizing documents related to the actions of the security forces during the armed conflict. The State emphasized that efforts have been made to access information safeguarded by international organizations; however, it stated that access to these archives has been denied on the grounds of confidentiality<sup>36</sup>.

*Analysis and level of compliance with the recommendation*

42. The Commission notes that the information provided by the State indicates partial progress on the recommendation under review. Specifically, the compliance measures identified by the Commission to assess this partial progress included the reported advancements in the ordering, identification, and classification of documentation by the Ministry of National Defense, as well as the cooperation agreement signed between the national search commissions and the Supreme Court of Justice, which facilitated access to military and police documents for these agencies. Regarding these measures, the IACHR encourages strengthening their implementation, reporting on this progress with concrete data, and providing information on their results and impact.

43. For its part, the IACHR appreciates the efforts reported by the State to access information held by international organizations. To assess its relevance in compliance with this recommendation, the State is invited to specify details of the type of information that has been requested, as well as the organizations that, under confidentiality, have denied access to it.

44. The Commission also identifies as essential that the victims and their families be guaranteed access to the documentation that has been compiled and systematized regarding the security forces that acted during the internal armed conflict. While awaiting specific information on compliance measures in the pending matters indicated and considering the actions reported, the Commission identifies that this recommendation has advanced to a **partial level of compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

45. The IACHR will declare progress in the level of compliance with this recommendation when (i) the State provides details on progress in the ordering, identification and classification by the Ministry of National Defense of the documentation indicated and the results in access to information by the national search commissions; (ii) provide details on how access to the information indicated in the recommendation is guaranteed in practice for judicial authorities, victims and family members and society in general, specifying under what conditions this access is denied and ensuring that this decision is reasonable; (iii) indicate the concrete measures adopted for the reconstruction of the destroyed archives or documents not generated that legally should have been produced.

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

46. For the 2023 follow-up report, the IACHR valued State activities for promoting the search for missing persons, the progress in developing a protocol to coordinate the institutions involved in investigating forcibly disappeared persons, and the efforts to create a genetic data system. For its part, the Commission

<sup>35</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>36</sup> State of El Salvador, *Note MPOEA-OAS-011/2025. Observations to the draft of Chapter V*, February 13, 2025.

learned that the DNA Data Bank Law regulation is pending and that the victims have requested the Legislative Assembly to approve a Law on the Search for Disappeared Persons. In addition, the Commission reiterated the importance that the national commissions for the search of adults and children who disappeared in the context of the armed conflict be provided with legal certainty. Given the need for additional measures, the Commission noted that the recommendation remained **partially fulfilled**.<sup>37</sup>

#### *Information on compliance*

47. In 2024, the State indicated that there is no regulatory framework that independently governs the response to the disappearance of persons and the rights of their family members. However, it noted that it approved the National DNA Bank Law and has undertaken various actions to address this phenomenon, including the following<sup>38</sup>:

- The National Commission to Search for Children Disappeared during the Internal Armed Conflict (hereinafter "CNB"), created in 2010, and the National Commission to Search for Disappeared Adults in the Context of the Armed Conflict in El Salvador (hereinafter "CONABÚSQUEDA"), created in 2017, which constitute an administrative search mechanism.
- The Project aims to strengthen institutional capacity for managing disappearances linked to organized crime and fighting impunity from 2017 to 2019.
- The creation of the UIDCA of the FGR.
- The Policy for the Criminal Prosecution of War Crimes and Crimes against Humanity that occurred in the context of the armed conflict in 2018.
- The adaptation of the criminal offense of forced disappearance to meet international standards and the inclusion of this offense as a crime against humanity.
- The Urgent Action Protocol and Strategy for the Search of Missing Persons and the Instructions for the Urgent Search and Investigation of Cases of Missing Persons.
- Capacity building in genetics and forensic anthropology to investigate these events.

48. The project, which will run from July 2024 to July 2027, aims to implement a genetic profile bank administered by CONABÚSQUEDA. This bank will be used exclusively to compare DNA samples from victims with those from family members. Additionally, the State indicated that this project seeks to incorporate a multidisciplinary and inter-institutional approach involving various governmental and non-governmental organizations related to searching and identifying individuals who disappeared during the internal armed conflict. It also stated that the exhumation processes comply with current legislation and are coordinated by the FGR along with the search commissions for cases registered by the latter or those that have been adjudicated by the Inter-American Court of Human Rights (hereinafter referred to as the "IACHR Court").<sup>39</sup>

49. On the other hand, the Commission was informed by civil society that there has been no progress in the development of the "National DNA Data Bank Law," nor in the development of regulations concerning the "Law on Disappearance of Persons," the exhumation processes, or the rights of relatives of disappeared persons. It was noted that the proposals being considered by the Legislative Assembly were shelved because they were deemed invalid<sup>40</sup>. Additionally, it was emphasized that information or official data on missing persons has been classified since 2022, and the State has created no official, public, or integrated registry.<sup>41</sup>

50. Likewise, civil society pointed out that the National Data Bank Law, approved in 2021, would still not be implemented and that the creation of a blood and DNA bank to recognize bodies found in clandestine

<sup>37</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 50-60.

<sup>38</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>39</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>40</sup> Passionist Social Service (SSPAS), Response to the follow-up questionnaire, October 4, 2024; Cristosal Foundation, Response to the follow-up questionnaire, October 4, 2024.

<sup>41</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024; Passionist Social Service (SSPAS), Response to follow-up questionnaire, October 4, 2024.



cemeteries was still pending, even though it had been a measure foreseen in the Cuscatlán Plan<sup>42</sup>. In addition, it was reported that in August 2024, civil society organizations put into operation the Citizen Registry of Missing Persons in El Salvador for families and human rights organizations to enter data on missing persons and generate early warnings and statistical data disaggregated by geographic area, gender of victims and other variables useful for public policies to prevent and combat enforced disappearance.<sup>43</sup>

51. The Commission was also informed that civil society is concerned that in August 2024, the Specialized Unit for Cases of Disappeared Persons of the Attorney General's Office would have ceased to exist, to become part of the sub-directorate of organized crime, and because of the possible impact of this decision on the effective follow-up of active search cases.<sup>44</sup>

52. In its observations on the present report, the State indicated that the concern expressed by civil society regarding the Specialized Unit for Cases of Disappeared Persons of the FGR has no relation to the recommendation under follow-up, considering that the investigation of events that occurred in the context of the Salvadoran armed conflict corresponds to the Unit for the Investigation of Crimes of the Armed Conflict of the FGR, clarifying that the restructuring of the Prosecution Units has not had any impact on these cases<sup>45</sup>.

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

53. The IACHR identifies that several of the measures reported by the State were adopted before this recommendation was issued and recalls the importance of subsequent actions aimed at their specific compliance. Although it values institutional strengthening actions to respond to this phenomenon, the Commission recalls that this recommendation requests the adoption of a regulatory framework that has not yet been fully adopted and that the creation of the CNB and CONABÚSQUEDA, as well as the National DNA Bank Law, were measures known to the Commission before the publication of the 2021 Country Report.

54. The Commission, for its part, welcomes the information provided by the State indicating that the CNB and CONABÚSQUEDA are managing the cooperation project "Improving Identification and Closure for Missing Persons," which aims to establish a genetic profile bank by 2027. In this context, the Commission is awaiting updates on progress in this initiative and recognizes that its development can positively contribute to fulfilling this recommendation. Furthermore, it emphasizes the importance of having a regulatory framework for the establishment of this bank.

55. For its part, the Commission identifies that some aspects of this recommendation still require State implementation efforts, including the issuance of the law on the disappearance of persons and the national data bank, as well as specific regulations on exhumation processes and the rights of family members. It also identifies the need for information on the status of the regulation and application of the National DNA Data Bank Law, approved in 2021. In addition, it notes that the legislative initiatives before the Legislative Assembly have been shelved and therefore urges the development and discussion of the requested regulatory framework. In this sense, the Commission identifies that this recommendation continues to be **partially fulfilled**.

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

56. The IACHR emphasizes that progress in complying with this recommendation relies on the State adopting a regulatory framework addressing the four specified aspects: (i) the search for victims of forced disappearance, (ii) the establishment of a genetic bank, (iii) exhumation processes, and (iv) the rights of family members regarding the absence of the disappeared victims. Additionally, the IACHR reiterates the significance

<sup>42</sup> Passionist Social Service (SSPAS), Response to follow-up questionnaire, October 4, 2024; cited Fespad, Informe de Desapariciones forzadas o involuntarias en El Salvador, May 2, 2024. (Available only in Spanish).

<sup>43</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>44</sup> Passionist Social Service (SSPAS), Response to follow-up questionnaire, October 4, 2024.

<sup>45</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

of developing this normative framework to ensure the participation of victims and relevant civil society organizations.

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

57. For the 2023 follow-up report, the IACHR noted that the budget for the Institute of Legal Medicine (hereinafter “LMI”) has increased by an additional allocation of \$2,499,555.00 over the amount scheduled for 2022. It also clarified that the resources available to the commissions mentioned in the recommendation exceed their allocated budget and that they benefit from the administrative resources of the Foreign Ministry, inter-institutional support, and funds from projects like “Guardians of Peace.” Despite these efforts, the IACHR deemed it necessary for the State to ensure a significant budget increase to allow them to perform their functions adequately. Moreover, it concluded that the recommendation has progressed to a **partial level of compliance**.<sup>46</sup>

#### *Information on compliance*

58. For 2024, the State reiterated that the CNB and CONABÚSQUEDA are attached to the Ministry of Foreign Affairs and function as deconcentrated units, having administrative dependence and an independent budgetary allocation in the General Budget of the Nation. It highlighted that for over 14 years, the CNB and, for more than 7 years, CONABÚSQUEDA have performed their duties without interruption and have developed their strategic lines of action, namely: i) search and identification, ii) psychosocial support for family members, and iii) historical memory and awareness.<sup>47</sup>

59. In addition, the State indicated that the commissions as mentioned above have been strengthened by cooperation projects such as “Women Guardians of Peace” and noted that the latter allowed the adoption of the database system for the search, RENIPAD, and the digitalization of search files; the acquisition of computer tools to systematize and review historical archives; the organization of community workshops with a focus on gender and new masculinities (with the support of UN Women); the development of 3 seminars together with UNODC, PDDH and the Supreme Court of Justice for justice operators who assist in the search for missing persons in the armed conflict and one of international scope for October 2024 on search and identification systems for missing persons in Ibero-America. Likewise, the State reiterated that these commissions have benefited from the project “Improved Identification and Closure for Missing Persons,” implemented by FAFG and financed by USAID for two million dollars, and that this support is in addition to the regular budget of the commissions financed by the State's General Fund.<sup>48</sup>

60. Civil society informed the Commission that no measures were adopted in the last year to strengthen the CNB, CONABÚSQUEDA, and the IML and make progress in the search for persons who disappeared during the armed conflict. In this regard, it was also stated that no state efforts were made to guarantee the budgetary and functional autonomy of the CNB and CONABÚSQUEDA so that they could exercise their functions independently and more efficiently.<sup>49</sup>

61. In its observations on the present report, the State emphasized that there are various means by which the commissions mentioned in the recommendation provide information about their operations, projects, and institutional strengthening efforts. Additionally, United Nations agencies, such as UN Women, UNDP, and UNODC, continually collaborate with these commissions through the implementation of various

<sup>46</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 62-69.

<sup>47</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>48</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>49</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.



projects. Furthermore, the State requested that, in the context of following up on this recommendation, its authority to determine the allocation of resources while defining national needs and priorities should not be interfered with, given that the State must address multiple needs with limited resources. The State indicated that a more significant allocation of resources does not necessarily lead to improved investigation results.<sup>50</sup>

*Analysis and level of compliance with the recommendation*

62. The Commission appreciates the State's affirmation that the CNB and CONABÚSQUEDA have performed their functions without interruption in developing their strategic lines of action. Additionally, it values the strengthening measures reported from acquiring computer tools, workshops, and providing training, the support of international cooperation these institutions receive, and the regular budget of the commissions financed by the State's General Fund. While the State did not provide specific information this year on measures to enhance resources for the LMI, it recalls that in 2023, it identified significant compliance measures for this institution.

63. Although the Commission appreciates the information about the three institutions mentioned in the recommendation, it emphasizes the importance of the State's having a specific diagnosis to determine whether each one's functional burden can be adequately developed with the available budget and resources. In the meantime, the Commission considers that this recommendation continues to be **partially complied with**.

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

64. The IACHR will fully comply with this recommendation when the State presents a technical diagnosis that concludes the adequacy of human, economic, logistical, scientific, and other resources necessary for the three institutions to effectively investigate and determine the whereabouts of individuals who disappeared during the armed conflict. Additionally, the IACHR points out that the State's measures to progressively strengthen these entities' resources need to be more specific to assess progress on this recommendation. In this regard, the Commission reiterates that the recommendation being followed up on includes not only economic provisions but also human, logistical, scientific, and other types of resources, as long as they enhance efforts to investigate and determine the whereabouts of individuals who went missing during armed conflict, while ensuring that the State evaluates their necessity based on technical information.

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

65. For the 2023 follow-up report, the IACHR acknowledged that the monetary compensations granted under Executive Decree No. 204 of 2013 have been reinstated until 2022 and urged the State to make progress on the payment processes for compensation by 2023. It also noted other reparative actions that would be recognized in executing this Decree, although it highlighted the absence of information regarding its practical guarantees. Similarly, the Commission stressed the need for the State to ensure the timely implementation of a robust normative framework for the comprehensive reparation policy; it reiterated that the application of Executive Decree No. 204 serves as a transitional measure and concluded that the recommendation remains **partially fulfilled**.<sup>51</sup>

<sup>50</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

<sup>51</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 71-74.

*Information on compliance*

66. For 2024, the State indicated that Executive Decree No. 204 of 2013 is in force and is under the execution of the Ministry of Local Development, which is responsible for the Reparations Program for victims of serious human rights violations in the context of the internal armed conflict. It indicated that this entity executes monetary transfers to an annual average of 1,466 families of victims or victims' relatives. In addition, the State noted that, in the framework of the judgments of the IACHR Court, the State has executed different measures of reparation, namely<sup>52</sup>:

- The Garden Museum on Missing Children was inaugurated in April 2024 as part of the Rochac Hernandez et al. case.
- In the case of the El Mozote massacres and surrounding areas, various measures have been implemented. These include a development program targeted at the affected areas, which features a health center along with medical, psychological, psychiatric, and psychosocial care for the victims; an educational center in El Mozote; a home for the elderly; and a housing program. Additionally, the state indicated that there is currently a Day Care Center for the Elderly in the canton of La Joya, located in the municipality of Meanguera, department of Morazán. This center provides care to individuals from localities recognized by the judgment in this case. As a protective measure, food packages are periodically delivered to elderly individuals in El Mozote and nearby areas. Furthermore, home visits are conducted for vulnerable elderly individuals in neighboring localities to assess and attend to their health needs.

67. The State also indicated that the national search commissions hold a traveling exhibition every year to raise awareness of enforced disappearance among the general population.<sup>53</sup>

68. For its part, the Commission accessed information provided by civil society, according to which the measures provided in Executive Decree No. 204 of 2013 are not being complied with. Specifically, it was pointed out to the Commission that there have been no massive new additions to the Registry of Victims, nor have mechanisms been opened for the individual application for admission. The Scholarship Subprogram for higher education and graduate studies has not been created; the food security program and productive linkages have not been implemented, and the promotion of the ordered productive associations has not been fulfilled. Additionally, the compensatory monetary transfers are functioning irregularly, as victims received payments in September 2024 for July to December 2023 but did not receive them from January to September of this year. Furthermore, no measures have been enacted to dignify the victims.<sup>54</sup>

*Analysis and level of compliance with the recommendation*

69. The Commission identifies that Executive Decree No. 204 of 2013 remains in force and that the Ministry of Local Development reports continuing to execute monetary transfers to an annual average of 1,466 families of victims or victims' relatives. In addition, it values the reparation measures provided in the two cases indicated, specifically those with the scope of satisfaction in the Rochac Hernández case and others, and health and psychosocial rehabilitation in the case of the El Mozote Massacres and surrounding areas.

70. Although the Commission values the measures reported in these cases, as well as the monetary transfers reported under the decree, it identifies that there are relevant components of this recommendation that remain pending implementation. First, it identifies that, despite the relevance of Executive Decree No. 204 of 2013, this measure does not supplant the importance of the State adopting a reparation policy that, as noted in the Country Report, "contemplates the different impacts suffered by the

<sup>52</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>53</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>54</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

victims, in line with Inter-American human rights standards. Second, it emphasizes that the State must guarantee comprehensive reparations beyond monetary compensation and specific cases, ensuring inclusivity for all victims. This comprehensive approach should have a normative character robust enough to sustain over time and provide legal certainty while also considering the perspectives and needs articulated by civil society regarding the effective reparative scope of the measures provided. In this regard, the Commission notes that this recommendation is still only **partially met**.

*Measures and information to advance in the fulfillment of the recommendation*

71. The IACHR will declare progress in complying with this recommendation when the State accredits not only the full implementation of Executive Decree No. 204 of 2013 but also, considering its transitory nature, adopts a comprehensive national reparations policy that considers the needs expressed by all victims. Likewise, the Commission invites the State to provide more specific information on the ongoing reparations measures, specifying their content, recipients, and periodicity.

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

72. In the 2023 follow-up report, the IACHR acknowledged the information provided about the dialogue processes initiated by the National Search Commission and the opportunities for discussions on health reparation measures. Furthermore, that year, the IACHR became aware that organizations and victims called for the reactivation of dialogue spaces for both the implementation of Executive Decree No. 204 of 2013 and the legislative process of the Transitional Justice Law. The Commission recognized that it would still be necessary to adopt measures to ensure that victims are heard on issues beyond health reparations, such as memory, truth, justice, and comprehensive reparations, concluding that this recommendation remained **partially fulfilled**.<sup>55</sup>

*Information on compliance*

73. In 2024, the State noted that relatives of disappeared persons, civil society, national and international organizations, and state entities participated in the actions of historical memory and awareness organized by the CNB and CONABÚSQUEDA. As part of these activities, it emphasized that, in collaboration with the Ministry of Culture, each year, the "International Day of the Victims of Enforced Disappearance" is commemorated with a concert by the Symphonic Orchestra of El Salvador. Additionally, various photographic exhibitions have taken place over the years, with the most recent one in 2024 titled "Women Searching for Their Disappeared." Every March 29, the Day of the Disappeared Children in the context of the armed conflict is also commemorated, and the Re-cordis Magazine is published, promoting historical memory and outlining the commissions' progress.<sup>56</sup>

74. Additionally, the State indicated that the Ministry of Health (hereinafter "MINSAL") maintains various spaces for communication and coordination with victims, as well as associations, committees, and institutions representing the victims. Among these, comprehensive health care workshops are conducted, along with the implementation and evaluation of health care services, in accordance with the Technical Standard on Health Promotion, which outlines the mechanisms for social and community participation, as well as multisectoral efforts. Furthermore, the State affirmed that different levels of health care provide mechanisms for directly listening to victims. These mechanisms include coordination meetings with the victims, their representatives, and associations, in which MINSAL authorities participate; community assemblies and local health and education roundtables where individuals express their opinions on health services and

<sup>55</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 76-82.

<sup>56</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

opportunities for improvement; and home visits and/or follow-ups by a multidisciplinary team to facilitate victims' access to health services.<sup>57</sup>

75. Likewise, for the year 2024, the State reported that, in compliance with the judgment of the IACHR Court in the *Rochac Hernández et al.* case, it held workshops with relatives of the victims of this case and other cases of forced disappearance as part of the development of the Garden Museum of Disappeared Children project. It noted that it conducted these consultations in December 2022 in Güarjila, Chalatenango, and February 2023 in Suchitoto, Cuscatlán; San Vicente, and Jocoaitique, Morazán.<sup>58</sup>

76. In addition, according to the State, the Ministry of Local Development carried out 21 activities to coordinate mechanisms to actively listen and promote comprehensive care and guarantee the participation of the victims of the Internal Armed Conflict. The activities reported include spaces for commemoration and awareness-raising on victims' rights, coordination on health and psychosocial care, dialogue on access to justice, and delivery of food and cleaning supplies. According to the State, these spaces made it possible to raise awareness among the population about respect for the human rights of victims, allowed the latter to be heard, and facilitated the provision of services.<sup>59</sup>

77. The State also stated that, as part of the "Guardians of Peace" project, co-creation workshops had been held in the municipalities of Jiquilisco, Aguilares, El Paisnal, and San Esteban Catarina, with the communities of Sisiquayo, El Calabozo, La Quesera, Aguilares, and El Paisnal. According to the State, these workshops aim to build traveling exhibitions in the territories. The first one was held in August of this year to commemorate the massacre of El Calabozo.<sup>60</sup>

78. The Commission received information from civil society indicating that there are no known State efforts to establish mechanisms for victim and civil society participation or the listening spaces mentioned in this recommendation. Additionally, it was noted that a dialogue space was opened with the Presidential Commissioner for Human Rights and Freedom of Expression to advance the reparation measures ordered by the Inter-American Court in the *Massacres of El Mozote and surrounding areas* case at the request of the Association for the Promotion of Human Rights of El Mozote (hereinafter "APDHEM"); however, it was emphasized that this initiative was not a State initiative. According to what was reported to the Commission, the same situation occurred with other meetings involving the Attorney General of the Republic and the Human Rights Ombudsman. Furthermore, it was reported that there are no known efforts to listen to victims regarding the implementation of Executive Decree No. 204 of 2013, and that the dialogue and coordination roundtables have not been reactivated since they ceased to function in 2019.<sup>61</sup>

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

79. The Commission appreciates that the CNB and CONBÚSQUEDA continue to provide reparation measures that allow family members, civil society, national and international organizations, and state entities to participate fully. Furthermore, it acknowledges the significance of the communication and coordination channels established by MINSAL and the Ministry of Local Development with victims and associations, committees, and institutions that represent victims. This includes actions that enabled the involvement of victims' families in specific cases monitored by the IACHR Court and within the context of the "Guardians of Peace" project.

80. However, the Commission also notes calls from civil society to create spaces for participation, highlighting the necessity for the State to enhance its efforts in providing venues for victims to be heard, ensuring genuine and effective inclusion. In this regard, the Commission requests that these spaces be established at the national level and specifically tailored for victims to articulate their needs for reparations,

<sup>57</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>58</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>59</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>60</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>61</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

considering their specific circumstances, including vulnerability factors and historical discrimination. The Commission observes that this recommendation remains only **partially fulfilled** in this context.

*Measures and information to advance in the fulfillment of the recommendation*

81. The IACHR reiterates the importance of ensuring that the adoption of the participation mechanisms mentioned in this recommendation forms part of a comprehensive, national, and ongoing strategy for listening to the victims of the armed conflict. This strategy should not be confused with isolated actions or spaces that involve contact with the citizenry or where reparation initiatives focused on satisfaction are conducted. Additionally, the IACHR emphasizes that it is essential for the information provided regarding these compliance measures to include the results and main findings of the dialogue processes concerning all aspects indicated in the recommendation: memory, truth, justice, and comprehensive reparation.

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

**Recommendation No. 16.** Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and establish a National Mechanism for the Prevention of Torture.

82. In the 2023 follow-up report, the Commission learned that the legislature would be considering the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that the Constitution permits the Office of the Human Rights Ombudsman (hereinafter "PDDH") to serve as a national preventive mechanism. However, civil society organizations emphasized the necessity of ratifying the Protocol to facilitate periodic visits to individuals deprived of liberty, highlighting that, despite a petition in 2018, the legislative process had not progressed. The IACHR found that this recommendation remained **pending**.<sup>62</sup>

*Information on compliance*

83. For 2024, the State reported that, according to the recommendations on human rights and national priorities, the analysis on the ratification of international human rights instruments corresponds to the composition of the Legislative Assembly that took office in May 2024. In addition, it reiterated that, although the instrument indicated in the recommendation has not been ratified, the PDDH can function as a national mechanism for the prevention of torture.<sup>63</sup>

84. For its part, the Commission received information provided by civil society according to which it is not aware of any initiative aimed at ratifying the protocol mentioned in this recommendation, nor to create a National Mechanism for the Prevention of Torture<sup>64</sup>. Likewise, it was indicated that, in the framework of the Universal Periodic Review, the State had not accepted the recommendation to ratify the protocol, but only a mechanism that, however, would not have made any progress.<sup>65</sup>

*Analysis and level of compliance with the recommendation*

85. The IACHR notes that in the last year, no additional measures have been implemented for the ratification of the Optional Protocol mentioned in the recommendation. Regarding the establishment of the

<sup>62</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 84-87.

<sup>63</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>64</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024. Passionist Social Service (SSPAS), Response to follow-up questionnaire, October 4, 2024.

<sup>65</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

National Mechanism for the Prevention of Torture, although the State indicated the possibility of the PDDH performing these functions, it did not specify details on concrete progress in this regard. In this sense, it concludes that this recommendation is still **pending compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

86. The IACHR emphasizes the need for the State to adopt measures to ensure the two results requested in the recommendation, namely the ratification of the Optional Protocol and, in addition, the establishment of the National Mechanism for the Prevention of Torture.

### C. Operation of the office of the Attorney General of the Republic

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

87. For the follow-up report for the year 2023, the Commission positively assessed the issuance of the regulatory framework designed to strengthen the institutional structure of the Office of the Attorney General of the Republic (hereinafter "PGR"). Furthermore, it acknowledged the information regarding the increase in this entity's budget for 2023 and noted that a budget increase is necessary to ensure its effective functioning. At that time, the IACHR determined that the recommendation had a significant level of partial compliance and requested a more comprehensive analysis of the budgetary needs of this entity.<sup>66</sup>

*Information on compliance*

88. For the year 2024, the State highlighted that every year, the PGR identifies its needs for human, material, technological, and input resources to prepare the draft institutional budget. It pointed out that, in the year 2023, it reinforced the human capacity of the Specialized Attention Units of this entity to improve their performance, especially those for the Defense of the Family, Individual Liberty, Real and Personal Rights, Workers' Rights, Psycho-Social Preventive Services and Mediation, Third Party Funds and Conciliation, Children and Adolescents, Substantive Equality and Life Free of Violence for Women and, in addition, auxiliary prosecutors. It also stated that the PGR has made a diagnosis of the investment projects needed for the five years of 2024-2028, emphasizing the strengthening of the Training, Analysis, and Research Center at the national level; the enhancement of the central offices, technological improvements, and infrastructure upgrades in specific sectors.<sup>67</sup>

89. For its part, the IACHR received information from civil society, according to which a 13.6% reduction in the PGR budget is foreseen between 2023 and 2025. In addition, it was indicated that, to date, there would be a setback due to the saturation of cases by the public defender's office, considering the increase of detentions in the framework of the exception regime, in addition to a dismissal of 400 workers that, according to what was indicated, would have occurred by the year 2024. It was also stated that according to the Movement of Dismissed Workers (hereinafter "MTD"), more than 60% of the lawyers of the PGR had been dismissed, leading to a saturation of the workload<sup>68</sup>. In this regard, the IACHR verified the information

<sup>66</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 89-92.

<sup>67</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>68</sup> Passionist Social Service (SSPAS), Response to the follow-up questionnaire, October 4, 2024. Based on the fiscal transparency portal of the Ministry of Finance, this organization indicated to the IACHR that the budget in US dollars allocated to the PGR by management area has been as follows:

- Year 2023: 39,827,840 (38,149,755 for consumption or operational management; 273,900 for financial and other expenses; 1,404,185 for investments in fixed assets).
- Year 2024: 38,229,098 (37,350,453 for consumption or operating expenses; 307,800 for financial and other expenses; 570,845 for investments in fixed assets).
- Year 2025: 34,411,037 (33,532,192 for consumption or operating expenses; 308,000 for financial and other expenses; 570,845 for investments in fixed assets).



published in the Fiscal Transparency Portal of the Ministry of Finance of El Salvador for 2024 and the proposed budget for 2025. In this regard, it identified that, for the year 2024, a total of US\$38.2 million was allocated to the PGR<sup>69</sup> and that, according to the draft budget law for the year 2025, a budget of just over US\$34.4 million is foreseen for the same entity.<sup>70</sup>

90. In its observations of the present report, the State clarified that the Legislative Assembly approved a General Budget and Special Budgets for the Fiscal Year of 2025, as well as the Salaries Bill, which amounted to \$9,663 million and is the first fully funded state budget in decades. According to the State, three months before the approval of the institutional budgets, the deputies of the Treasury and Special Budget Committee carried out a consultation and analysis process with the heads of the different State portfolios so that they could justify the use of the funds, with which the budget gap has been reduced and highlighting that, in 2019, the gap amounted to \$1.2 billion. Likewise, the State affirmed that, due to the economic policies implemented, this figure has been significantly reduced year after year as follows: it indicated that, in 2020, the fiscal gap was reduced to \$645 million; by 2022, it achieved a further reduction to \$496 million; in 2023, it decreased to \$472 million; and in 2024, it was \$338 million, representing a reduction of 28.32% regarding 2019 and clarifying that by 2025, this fiscal gap will be zero dollars. According to the State, this trend reflects a commitment to fiscal stability and the country's economic development, which necessitated adjusting institutional budgets to align with the availability of resources, as increasing the taxpayer's tax burden is considered a measure of last resort.<sup>71</sup>

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

91. The Commission notes the State's information in the sense that the PGR assesses its resource needs annually and has diagnosed investment projects for the five years 2024-2028. The Commission has also considered the State's clarification regarding the State budget approved by the Legislative Assembly, the reduction of the fiscal gap, and the need to adjust institutional budgets to the availability of resources.

92. Despite the reported State measures regarding the approval of the State budget, the IACHR reiterates that the recommendation under follow-up focuses on two aspects: the first pertains to the organic law of the Attorney General's Office, which was considered fulfilled since 2022; the second requests a budget for the entity that "allows it to operate in a manner consistent with its assigned workload."

93. Regarding the component of the recommendation that remains under follow-up, the IACHR identifies that the State did not provide specific details regarding the scope of the budget allocated to this institution for the current year to determine whether its strengthening has been maintained and considering the information provided by civil society, which would indicate, in fact, a significant budgetary setback, the Commission emphasizes the importance of having additional detailed information on the current state of its resources and budgets, in comparison to the assessment of its priorities and workload. In the meantime, the Commission concludes that, based on the information it has accessed, this recommendation would have regressed in terms of compliance, reaching a **partial level of fulfillment**.

#### *Measures and information to advance in the fulfillment of the recommendation*

94. The IACHR reiterates the importance that compliance with this recommendation be accompanied by an assessment of the functions that should be performed by the PGR and its workload so that, based on this assessment, the State can determine what budget is reasonably required for the optimal exercise of these functions. Based on this diagnosis, we reiterate the invitation to the State to report on the actions taken to ensure an adequate budget for the exercise of these functions. In addition, clarifying information is requested regarding the budget that has been allocated to the PGR for the years 2023, 2024 and 2025, to contrast the information that, according to civil society, is the one available in the Fiscal Transparency Portal.

<sup>69</sup> Ministry of Finance, Guía del Presupuesto General del Estado para el Ciudadano, 2024, p. 28.

<sup>70</sup> Ministry of Finance, Draft Budget 2025 for the PGR, 2024.

<sup>71</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.



**D. Discrimination**

**Recommendation No. 26.** Ratify the Convention against all Forms of Discrimination and Intolerance.

95. For the follow-up report for the year 2023, the State reported that it is conducting consultations at the national level through the Ministry of Foreign Affairs before forwarding the instrument indicated in the recommendation to the Legislative Assembly for ratification. After urging the State to move forward with this ratification, the Commission concluded that this recommendation was still **pending compliance**.<sup>72</sup>

*Information on compliance*

96. For the year 2024, in addition to the fact that the State reiterated that the new composition of the Legislative Assembly, which took office on May 1, 2024, until 2027, was in charge of analyzing the possible ratification of international human rights instruments, according to human rights recommendations and national priorities, it indicated that the instrument referred to in this recommendation is in the consultation stage with the relevant national entities before determining its possible subscription.<sup>73</sup>

97. For its part, the Commission accessed information provided by civil society, according to which no progress has been made in the process of this instrument, despite the multiple discriminations faced by various populations in El Salvador.<sup>74</sup>

*Analysis and level of compliance with the recommendation*

98. Pending information on specific measures to comply with this recommendation, the IACHR concludes that this recommendation remains **pending compliance**.

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

99. The IACHR urges the State to adopt measures to achieve substantial progress in the process of domestic ratification of the international instrument mentioned in this recommendation and to report on its development.

**E. Situation of specific groups****1. Women**

**Recommendation No. 18.** Take the necessary steps to strengthen the system for protecting women and girls who are victims of violence, such as improving the system of monitoring of protection measures, the establishment of a Special Reparation Fund for Women Victims of Femicide Violence, and the creation of a network of shelters, and providing these with the resources they need to operate.

100. For the 2023 follow-up report, the IACHR took note of the programs to guarantee the rights of women victims of gender-based violence of the Salvadoran Institute for the Development of Women (hereinafter "ISDEMU") and the PGR. In addition, it noted that the Special Fund for Women Victims of Violence

<sup>72</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 157-159.

<sup>73</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>74</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

was created from the Special Comprehensive Law for a Life Free of Violence for Women (hereinafter "LEIV"), issued in 2011, through Decree No. 520. In this regard, it requested information on how this Fund provides comprehensive reparations to victims of femicide. On the other hand, the Commission valued the adoption of guidelines and protocols for the operation of the network of shelters, welcomed the proposals to create an evaluation system and the Accreditation and Monitoring Unit of Shelters, and invited to report on the economic, logistical and human resources to strengthen these houses. The IACHR concluded that the recommendation remained **partially fulfilled**.<sup>75</sup>

#### *Information on compliance*

101. For the year 2024, the State reiterated information provided in 2023, according to which Article 35 of the LEIV establishes where the resources of the Special Fund for the Reparation of Women Victims of Femicidal Violence come from and indicates that these will be used for the projects encompassed in this law. It noted that ISDEMU works to provide comprehensive and specialized care to women who face gender-based violence and has consolidated a strategy to monitor, promote, and ensure compliance with regulations and public policies on prevention, care, and justice.<sup>76</sup>

102. In addition, the State emphasized that ISDEMU works in coordination with other institutions and sectors, and, specifically, that the protection centers work, for example, with (i) the International Organization for Migration, Plan International, the Norwegian Refugee Council, the International Rescue Committee, and the Red Cross, concerning case management, humanitarian aid, shelter, relocation, and life plans; and (ii) with national entities, such as the Ministry of Education, Science and Technology (hereinafter "MINEDUCYT"), regarding the education of the sheltered population; with the National Council for Early Childhood, Children and Adolescents (hereinafter "CONAPINA"), to report on sheltered children and adolescents; with the PGR, to attend to women who are forcibly displaced; with health units and hospitals; and with the FGR and family courts, peace courts and specialized courts of the LEIV, to guarantee the rights of users.<sup>77</sup>

103. The State also stated that ISDEMU provides services to women who face femicide, sexual, economic, physical, symbolic, patrimonial, psychological, and emotional violence and that it has a temporary shelter and a shelter house where the primary needs of women and their children who face violence are met and where they are provided with tools for personal and economic development, as well as social, legal, medical and psychological care. It also indicated that these spaces guarantee educational and recreational care to protect the physical, psychological, and sexual integrity of the users and their children.<sup>78</sup>

104. In this regard, the State indicated that ISDEMU's protection centers have a specialized staff made up of a coordinator, a person in charge of the shelter or shelter house, an administrative liaison, an educator, an orderly, a service collaborator, a psychosocial technician, a social technician, a caregiver, and a service collaborator, and specified the functions of each one. It also indicated that the protection centers have a budget of USD 584,124.84, which includes salaries, payment of goods and services, and food for the users.<sup>79</sup>

105. For its part, the Commission learned information from civil society according to which there are no known advances for the Special Fund for Reparations to Women Victims of Femicide Violence or to guarantee comprehensive reparations for women and girls victims of violence<sup>80</sup> beyond training courses on comprehensive reparations in the year 2024 for judges, prosecutors, specialized prosecutors for women, which, however, it was indicated, would be early on to determine the effectiveness of this measure<sup>81</sup>. In

<sup>75</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 94-105.

<sup>76</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>77</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>78</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>79</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>80</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024. RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024; Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>81</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

addition, it was pointed out that the Legislative Assembly did not approve a proposed law presented in March 2023 on the Integral Responsibility of the Salvadoran State with the Victims of Femicide and Indirect Victims of Femicide, which contemplated a monthly subsidy, study grants, housing bonds, and free legal advice.<sup>82</sup>

106. It was also pointed out that budget allocations for the care of girls, adolescents and women who have suffered violence have decreased in recent years<sup>83</sup> and that the 2024 National General Budget Guide establishes that ISDEMU would have an allocation of 11.6 million dollars, although by 2023, this amount was 12.2 million dollars. It was also stated that the August 2022 decision to transfer the Ciudad Mujer Program to ISDEMU would have led to a deterioration in the latter; and that, within ISDEMU's organizational chart, between 2022 and 2024, some sub-directorates would have been eliminated, centralizing support services in a single one and with a decrease in the staff that provides care to women.<sup>84</sup>

107. Additionally, the Commission was informed that no progress has been made regarding the reception or temporary shelter services provided by ISDEMU<sup>85</sup> and that the available spaces are designated for the care of returned migrant women<sup>86</sup>. It was even reported that, despite having sought information from ISDEMU about the operation of the shelters, the State denied access to this information to avoid potentially hindering the institution's work, with this reservation in effect since June 2020. However, civil society claimed to have learned about the operation of two facilities: Las Luciérnagas and the shelter for returned migrant women, although the specific percentage of the budget allocated for their operation remains unknown, and these resources were identified as insufficient considering the need for service improvements throughout the national territory<sup>87</sup>. Furthermore, it was noted that, in 2018, REDFEM had proposed a reform for the financing and establishment of shelters, but for the 2021-2024 legislative period, at least 30 files have reportedly been archived in the Commission on Women and Gender Equality. In this context, it was reiterated that the lack of shelters continues to be a significant obstacle in protecting women victims of violence, including those with disabilities.<sup>88</sup>

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

108. The Commission identifies that, for 2024, no specific measures have been reported that would allow the conclusion of the progress in fulfilling this recommendation. The information reported by the State regarding the LEIV and the Special Reparation Fund had been previously reported. Still, no concrete actions for its creation and practical operation have been reported.

109. In addition, with respect to the claims regarding the services reportedly provided by ISDEMU to women victims of violence, as well as its allocated budget, a specific technical diagnosis is needed to determine whether or not there is still a need to strengthen the system for monitoring protection measures and to guarantee sufficient resources for the operation of the network of shelters. This data is necessary, considering the concerns expressed by civil society regarding the insufficiency of current resources and the number of shelters in operation for the entire territory. Considering the above, the Commission identifies that this recommendation continues to be **partially complied with**.

#### *Measures and information to advance in the fulfillment of the recommendation*

110. The IACHR reiterates that progress in complying with this recommendation requires the creation and implementation of the Special Fund for Reparations to Women Victims of Femicidal Violence; concrete measures to strengthen the system for monitoring protection measures; and specific actions to

<sup>82</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>83</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024. Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>84</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>85</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024. RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>86</sup> Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>87</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024.

<sup>88</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024.

provide sufficient resources to the network of shelters. With regard to the last two points, the Commission invites the State to prepare a specific prior diagnosis that will allow it to visualize the sufficiency or additional needs measures to strengthen the system for monitoring protection measures and the resources of the network of shelters and safe houses to attend to cases at the national level.

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

111. For the 2023 follow-up report, the IACHR valued information on training provided by the Prosecutorial Training School of the FGR, the National Council of the Judiciary, the Specialized Training Unit of ISDEMU, and the Directorate for Comprehensive Attention to Women and Access to Justice of the Supreme Court of Justice, including training related to the Spotlight initiative. Additionally, it noted that these activities have been implemented over time, and the FGR and ISDEMU evaluate their results. However, it requested further information on the content and topics of the training reported as mandatory and sustained over time, particularly concerning justice operators, and considered that the recommendation had a **substantial partial level of compliance**.<sup>89</sup>

#### *Information on compliance*

112. For 2024, the State indicated that training sessions—whether initial, ongoing, or specialized—for the prosecutorial staff of the FGR are "indisputably mandatory," and that unjustified non-compliance is a serious offense punishable by suspension, in accordance with the Organic Law of this entity (hereinafter "LOFGR"). In this regard, it noted that the Prosecutorial Training School (hereinafter "ECF") verifies the attendance of prosecutorial personnel each day. The State referenced the 2023-2024 work report of the FGR that details the trained personnel and provided figures such as 534 courses conducted from June 2023 to May 2024 and 35 technical assistances, with 2,179 individuals trained. Additionally, it highlighted the list of cooperating partners for the training of prosecutorial staff, both national and international, and reported an initiative to enhance investigation and prosecution capacities with a human rights approach and gender perspective, benefiting more than 1,000 legal staff and psychology professionals for a comprehensive approach to victims and their families, funded by the Canadian government.<sup>90</sup>

113. Additionally, the State referred to the training sessions on these subjects conducted in 2023 by the National Judicial Center, which included topics on women's labor rights; women and the criminal justice system; women's rights in the jurisprudence of the Inter-American Court of Human Rights; gender perspectives in judicial decisions; Inter-American standards for the protection of women's rights and the criminal justice system; equality and access to justice for women; femicide and suicide by inducement; labor damages with a gender perspective; and ratified ILO conventions.<sup>91</sup>

114. The State also stated that the Specialized Training Unit (hereinafter "UFE") of the Subdirectorates of Public Policy, along with the subdirectorates of the Specialized Care Centers Ciudad Mujer and Territorial Management of ISDEMU, offers specialized training in women's rights for public servants and the general population. It noted that the objectives of the UFE are to contribute to reducing gender inequality and discrimination, and to enhance the State's response to its obligations to respect, protect, and guarantee women's rights, as well as to expand opportunities for women. The State mentioned that the specialized training covers topics such as equality, living free from violence for women, masculinities, and communication for equality, among others, and that these courses have been offered both virtually and in-person. In this regard,

<sup>89</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 107-115.

<sup>90</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>91</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

it stated that between 2019 and 2023, the UFE trained 22,038 individuals (12,417 women and 9,621 men), while the subdirectorates of Specialized Care Centers Ciudad Mujer and Territorial Management trained 2,344 individuals (1,487 women and 857 men).<sup>92</sup>

115. For its part, the Commission received information from civil society indicating that, based on public information or data that has been provided to it, training for civil servants is ongoing, particularly in the judiciary, prosecutor's offices, and attorney general's or public defender's offices. For instance, details were shared about training processes conducted in 2023 and 2024 by the National Council of the Judiciary, the FGR, the Supreme Court of Justice, and the PGR on topics encompassing gender perspective, comprehensive reparations, intersectionality, or addressing violence.<sup>93</sup>

116. In addition to the above, civil society organizations reported to the Commission information on the following facts:<sup>94</sup>

- On February 22, 2024, the President of the Republic affirmed in an interview conducted by the director of the organization Moms for Liberty that gender ideology is prohibited in El Salvador due to its promotion of “unnatural, anti-God and anti-family” ideas in education. Furthermore, according to the organizations, the President stated that such ideologies would not be allowed in schools and colleges and that, in addition, the curriculum mustn't include gender ideology<sup>95</sup>. In this regard, the Commission learned of a video in which the President makes these statements<sup>96</sup>.
- The Ministry of Education issued a memorandum on February 28, 2024, in which it would have requested the exclusion of materials and content related to “gender ideology” from public schools under penalty of sanctions and termination of functions<sup>97</sup>. Regarding this allegation, the IACHR also learned of a tweet published on February 27, 2024, by the Minister of Education of El Salvador, which explicitly states the elimination of “any use or trace of gender ideology from public schools”<sup>98</sup>.
- The Ministry of Health has withdrawn material on sexual diversity from health units and HIV clinics<sup>99</sup>.

117. In its observations on the current report, the State requested that the IACHR declare full compliance with this recommendation. In this regard, it noted that the statements made by civil society regarding the President, concerning the educational curriculum, and those of the Ministers of Education and Health exceed the scope of the follow-up to the recommendation. It asserted that the decisions of these authorities reaffirm the State's commitment to guaranteeing the rights of children and adolescents, including access to information and education tailored to their specific needs, alongside the teachings and guidance of parents, which serve as the foundation for their upbringing. Accordingly, the State requested that the Commission restrict its monitoring of the recommendation to elements pertinent to it, excluding aspects that

<sup>92</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>93</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024. FUNDE, Response to follow-up questionnaire, October 4, 2024.

<sup>94</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>95</sup> Diariocolatino, Bukele cambia su discurso respecto a la ideología de género, February 29, 2024. Also see: Radioamericahn, Bukele dice que escuelas de El Salvador no existe espacio para la ideología de género. (Available only in Spanish).

<sup>96</sup> Radioamericahn, Bukele dice que escuelas de El Salvador no existe espacio para la ideología de género. (Available only in Spanish).

<sup>97</sup> La Prensa Gráfica, Ministerio de Educación amenaza con despidos si se difunde “ideología de género” en escuelas públicas de El Salvador, February 29, 2024. (Available only in Spanish).

<sup>98</sup> Pineda R, José Mauricio, [@JMauricioPineda], (2024, February 27), “Confirmado: todo uso o rastro de la ideología de género lo hemos sacado de las escuelas públicas”. [Tweet], <https://x.com/JMauricioPineda/status/1762545694190023000?mx=2> (Available only in Spanish).

<sup>99</sup> La Prensa Gráfica, MINSAL retira material sobre diversidad sexual de unidades de salud y clínicas VIH, February 28, 2024. (Available only in Spanish).

do not fall within the training of officials and justice operators, on which, it stated, the State has reported actions taken that have been confirmed by civil society<sup>100</sup>.

118. Furthermore, in these observations, the State affirmed that human rights training is institutionalized and part of public officials' continuous and permanent training. In addition, it indicated that it had implemented a comprehensive training program for justice operators from a gender perspective in coordination with the Attorney General's Office and the Salvadoran Institute for the Development of Women (ISDEMU). In this regard, it complemented the information by noting that, in the last year, more than 1,500 judicial operators received training under the National Training Plan on Human Rights and Gender<sup>101</sup>.

*Analysis and level of compliance with the recommendation*

119. The Commission notes that the State continued to report information on the periodic training of State officials, particularly justice operators. Likewise, based on the topics listed by the State, the Commission recognizes that they seem to address issues from a gender perspective and Inter-American standards regarding gender-based violence and discrimination, access to justice for women, girls, and adolescents, investigations with a gender perspective, and due diligence. Specifically, the Commission identifies compliance efforts by the FGR, the National Judicial Center, and ISDEMU, which were verified by information provided by civil society.

120. For its part, the IACHR has taken note of (i) the facts alleged by civil society consisting of the statement of the President of the Republic and the alleged decisions of the Ministry of Education and the Ministry of Health, as well as their effects on compliance with this recommendation and (ii) the State's request to consider that the statements and decisions mentioned by civil society "exceed the scope of the recommendation", since they are statements by the President, regarding the educational curriculum, as well as by the Ministry of Education and the Ministry of Health.

121. The Commission reiterates that the primary objective of this recommendation is for the State to provide training, particularly for justice operators, on a gender perspective, understood as "a concept that highlights the position of inequality and structural subordination of women and girls to men, based on their gender, and as an essential tool to combat discrimination and violence against women, as well as against individuals with sexual and gender diversity, in accordance with Inter-American standards on the matter."<sup>102</sup>

122. Considering the training measures known to the IACHR since 2022, which have involved justice operators as addressees and, in addition, have developed the topics requested by the recommendation, it declares the cessation of compliance and considers that this recommendation has reached a level of **full compliance**. Notwithstanding the foregoing, the Commission calls upon the State to ensure the continuity and obligatory nature of the training measures requested, ensuring that the notion of a gender perspective is duly disseminated and socialized with the civil servants, including justice operators.

123. For its part, the IACHR has taken note of the President's statements and decisions of the Ministry of Education and the Ministry of Health. As they refer to the prohibition of a "gender ideology" in schools and school curricula, the Commission will request specific information on the scope of these decisions in the framework of recommendation 40 of the Country Report under follow-up<sup>103</sup>.

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

<sup>100</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

<sup>101</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

<sup>102</sup> IACHR, Thematic Report "Violence and Discrimination against Women, Girls, and Adolescents," OEA/Ser.L/V/II, Doc. 233, November 14, 2019, par. 8.

<sup>103</sup> Recommendation No. 40 requests: "Include content on equality, non-discrimination, and social harmony in school curricula to advance on building a culture based on tolerance and peaceful conflict resolution, inclusion and respect for human rights."



124. For the 2023 follow-up report, the IACHR noted that, since 2022, it recognized the importance of strengthening specialized courts to ensure a life free from violence and discrimination against women. In this regard, it appreciated the training provided, the multidisciplinary and specialized approach, and the improvements in infrastructure, although it recalled that, since 2022, it had been aware of significant congestion and low capacity to handle litigation. Additionally, it noted that the State did not address actions to resolve jurisdictional conflicts between specialized courts and peace and family courts concerning domestic violence, which has been recognized as a challenge for compliance with this recommendation. Based on the information available, the Commission concluded that the recommendation had advanced to a substantial **partial level of compliance**.<sup>104</sup>

*Information on compliance*

125. For the year 2024, the State reported that Legislative Decree No. 286 of 2016 establishes measures to enhance access to justice for women, girls, and adolescents, along with strengthening the specialized jurisdiction for a life free from violence and discrimination against them. It noted that, in the San Salvador department, this jurisdiction has included an investigative court and a sentencing court since July 2017, and, starting in January 2018, a chamber was added; for the departments of Santa Ana and San Miguel, the jurisdiction comprised an investigative court and a sentencing court since January 2018.<sup>105</sup>

126. In addition, the State pointed out that, having identified the greatest congestion of proceedings in the investigative courts in San Salvador and Santa Ana, the judicial body sought to reduce this congestion this way:<sup>106</sup>

- San Salvador increased its staff (four judicial collaborators and one notifier), implemented a support judicial office from July 2020 to April 2021, requested the creation of two new judicial offices, a second court in San Salvador and one for Cojutepeque, and approved that, for four months, the first examining court would stop receiving processes to purge pending cases with a temporarily strengthened staff.
- For Santa Ana, it conducted statistical studies, agreed to implement a back-up judicial office from March to September 2022, changed the jurisdictional authority, extended the back-up judicial office, and strengthened the support staff by the end of 2022.
- In addition, since 2023, it has created two multidisciplinary teams in Cojutepeque and San Francisco Gotera, in addition to the three existing ones in San Salvador, Santa Ana, and San Miguel, to support the courts with technical studies based on gender and to follow up on protection measures imposed in cases of domestic violence and crimes under the LEIV.

127. According to the State, the measures mentioned above significantly reduced the congestion index values in those judicial offices in 2023 because they made it possible to expedite case processing and reduce the inventory of pending proceedings. However, the state indicated that the load of the sentencing courts in Santa Ana and San Salvador increased due to the increase in the flow of cases in the examining courts. In this regard, the State indicated that it is developing additional technical studies to propose actions to increase productivity and speed.<sup>107</sup>

<sup>104</sup>IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 117-123.

<sup>105</sup>State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>106</sup>State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>107</sup>State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.



128. For its part, civil society informed the Commission that the judiciary, the FGR, the PGR, the PDDH, the National Civil Police, the IML, MINSALUD, and others have a legal obligation to have specialized care units for women facing violence<sup>108</sup>. In addition, the impact that the creation of the specialized jurisdiction for a life free of violence has had on the treatment of women's inequalities when they access the justice system was recognized, although it was indicated that the challenge of a sufficient budgetary standard remains.<sup>109</sup>

129. Civil society also highlighted that over the past year, state efforts have been made to reduce congestion in specialized jurisdictions aimed at ensuring a life free of violence and discrimination against women. This includes the creation of multidisciplinary teams in Cojutepeque, Cuscatlán, and San Francisco Gotera, Morazán, as well as the establishment of the Directorate of Comprehensive Care for Women and Access to Justice, which is responsible for conducting technical visits to assess conditions for specialized technical support, capacity building, and the reinforcement of support staff, among other functions.<sup>110</sup>

130. Similarly, the RED-FEM noted that in 2021, it conducted a study to evaluate the resolution, pendency, and congestion rates in the two types of specialized courts mentioned in this recommendation: the investigating courts (responsible for the investigation phase) and the sentencing courts (responsible for the final phase of criminal proceedings). The study aimed to assess the capacity of these judicial bodies to handle the cases under their jurisdiction and to identify potential delays or congestion. According to the information provided to the Commission, the study's conclusions were as follows:<sup>111</sup>

- **Examining Courts:**
  - 2021: resolution rate 97%, pendency rate 168%, congestion rate 267%.
  - 2023: resolution rate 107%, pendency rate 94%, congestion rate 192%.
  - 2024: resolution rate 145%, pendency rate 90%, congestion rate 183%.
- **Sentencing courts:**
  - 2021: resolution rate 79%, pendency rate 129%, congestion rate 175%.
  - 2023: resolution rate 60%, pendency rate 157%, congestion rate 253%.
  - 2024: resolution rate 135%, pendency rate 115%, congestion rate 214%.

131. Regarding the analysis of these figures, the Commission was informed that, although in the specialized pre-trial jurisdiction, the data show a significant improvement in the years 2023 and 2024, considering the increase in the resolution capacity and the decrease in accumulation and congestion, this could be explained by the entry into force of two new offices in 2021. Concerning the sentencing instances, although there was an improvement in the resolution capacity, there was also an increase in the accumulation and congestion rates from 2023 to 2024, although it decreased compared to 2021. In any case, civil society identifies that congestion continues to be critical, especially for examining courts, exceeding 100%.<sup>112</sup>

132. In addition, the Commission was provided with figures on the critical situation of violence against women, and it was indicated that these require budgetary and institutional efforts to guarantee access to justice. However, specialized personnel, equipment, training, and clear guidelines for addressing this problem are lacking.<sup>113</sup>

133. Regarding the clarity of material competence, civil society informed the IACHR that, given the number of domestic violence and criminal incidents, the Supreme Court of Justice issued Circular No. 420 in November 2023 for judgeships focused on peace, family, and specialized matters ensuring a life free of violence for women. It stated that this instrument would clarify that violence against women is primarily a criminal

<sup>108</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>109</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>110</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>111</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024. Cited: RED-FEM, El Salvador: [Informe de la situación de violencia contra las mujeres](#), 2022.

<sup>112</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>113</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

issue. For RED-FEM, this pronouncement acknowledges the seriousness of this violence, but in practice, it fails to ensure simple or effective access to justice and represents a disadvantageous legal treatment for the victims. According to what was reported to the Commission, leaving all acts of domestic violence under the competence of the criminal jurisdiction denies the right to specialization in the matter since not all these acts fit into criminal types.<sup>114</sup>

134. In its observations to the present report, the State reported that on January 14, 2025, it launched the “CIHUATL Mujeres” project, an initiative funded by the European Union, implemented by UN Women and led by the Government of El Salvador through the Salvadoran Institute for the Development of Women (ISDEMU), which will work in coordination with other key institutions responsible for implementing the legal framework, including the Attorney General's Office and the National Civil Police. According to the Government, the project, with an investment of US\$4.12 million, has as its primary objective to reduce the gaps in the implementation of laws from government offices, reduce impunity, and strengthen the legal protection of women, for which this, existing regulations will be reviewed and updated, and the capabilities of the institutions responsible for their enforcement will be enhanced. The State indicated that approximately 4,000 public employees will participate in this process of updating and competency strengthening, as well as in facilitating processes to prevent the revictimization of women<sup>115</sup>.

*Analysis and level of compliance with the recommendation*

135. The IACHR recognizes that the State has continued to make significant efforts to strengthen specialized courts for a life free from violence and discrimination while seeking to reduce congestion levels. However, the IACHR notes that the State claimed the reported measures significantly lowered the congestion index values in these courts in 2023, without providing diagnostic information on these levels. Additionally, the State indicated it would be developing technical studies to propose actions for enhancing productivity and efficiency. Considering this information, along with the figures presented by civil society regarding the resolution rates, pendency, and congestion of both specialized investigative and sentencing courts, the IACHR underscores the importance of monitoring the effectiveness of the measures aimed at bolstering these judicial instances.

136. For its part, the IACHR did not identify State compliance measures for the clarification of competencies between the justices of the peace, family, and specialized courts. In this regard, it recalls that, for the 2021 Country Report, the Commission found that the specialized courts mentioned here would have “an almost universal competence to deal with acts of violence against women, but without the power to hear sexual crimes”. In addition, the information reported by civil society this year indicates that there would have been a decision by the CSJ, and considering the concern expressed by RED-FEM regarding this regulation, it considers it appropriate to request additional information to understand whether this decision contravenes or hinders access to justice for women victims of violence. In the meantime, the Commission concludes that this recommendation continues with a **substantial partial level of compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

137. The IACHR considers that to fully comply with this recommendation, the State must demonstrate that the reported compliance measures have significantly reduced congestion levels in specialized courts addressing issues related to a life free of violence and discrimination. In this regard, the Commission requests the State to provide a reliable assessment of the congestion levels in these courts and to adopt a prompt and effective response based on its findings. Furthermore, the IACHR emphasizes that compliance with this recommendation should involve actions to clarify the competencies of the courts authorized to hear these cases. Additionally, the Commission encourages the State to report on the progress of the technical studies mentioned, which propose actions to enhance the productivity and efficiency of these judicial processes, and

<sup>114</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024. Referred to [Circular No. 420](#) of November 9, 2023 of the Supreme Court of Justice of El Salvador. (Available only in Spanish).

<sup>115</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

to consider the information provided by civil society as valuable input for implementing institutional strengthening measures.

138. Finally, the Commission welcomes the information provided by the State on the launch of the “CIHUATL Mujeres” project. As this measure was implemented in 2025, it invites additional information that will allow it to assess its relevance to fulfilling the present recommendation.

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

139. For the 2023 follow-up report, the State asserted that obstetric emergencies are not classified as a crime. The IACHR recalled that, at the beginning of 2023, it identified as a setback in the guarantee of reproductive rights the convictions in El Salvador of women who experienced obstetric emergencies in the context of the absolute criminalization of abortion.<sup>116</sup> Additionally, it requested information on the convictions reviewed since the recommendation was issued, including regarding women who have been released. It also considered relevant the fact that a judge from the Second Sentencing Court of Santa Ana overturned, in October 2023, a 30-year prison sentence following a review requested by the Citizen Group for the Decriminalization of Abortion. Furthermore, it asked the State to clarify whether the prioritization of the commutation of prison sentences applies exclusively to convictions of women for aggravated homicide in the context of the criminalization of abortion. For that year, the Commission concluded that its recommendation remained **partially fulfilled**.<sup>117</sup>

#### *Information on compliance*

140. For the year 2024, the State emphasized that obstetric emergencies or complications at any stage of pregnancy are not criminalized under criminal law and that no policies exist for criminal prosecution regarding these situations. It noted that convictions and prison sentences imposed are for crimes categorized as offenses that protect the right to life and enhance the protection of children, in accordance with its obligations under the Convention. It further indicated that the Criminal Chamber of the Supreme Court of Justice recorded 12 commutations of sentences, of which 11 related to the crime of aggravated homicide, and that the status of these cases is “expired.” It stated that a single case of imperfect homicide also had a favorable outcome and is, therefore, also recorded as “expired.”<sup>118</sup>

141. Similarly, the State reiterated that requests for sentence commutation are prioritized. In this regard, the Ministry of Justice and Public Security has ten working days to decide, starting when it receives the necessary documentation from the National Criminological Council and the Supreme Court of Justice. Additionally, the Special Law on Appeals for Mercy specifies that commutations apply to women’s convictions for aggravated homicide or any crime.<sup>119</sup>

142. Additionally, the State stated that the Penitentiary System fulfills its guarantee responsibilities, emphasizing respect for rights. It noted that the General Directorate of Penal Centers (hereinafter “DGCP”) transferred women deprived of liberty from the Preventive and Punishment Center for Women in Ilopango to the appropriate center in Apanteos to enhance their conditions regarding space, care, and habitability. Furthermore, it has provided health, education, and comprehensive early childhood development for women deprived of liberty who are pregnant or accompanied by their children.<sup>120</sup>

<sup>116</sup> IACHR, Press Release No. 011/23, “[IACHR Calls to Advance the Recognition and Protection of Reproductive Rights in the Region](#),” January 31, 2023.

<sup>117</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), paras. 125-133.

<sup>118</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>119</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>120</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

143. For its part, the Commission was informed of a communiqué from the Agrupación Ciudadana por la Despenalización del Aborto (Citizens' Group for the Decriminalization of Abortion), according to which, in December 2023, Lilian's release was obtained and that with this decision, a total of 73 women convicted after facing an obstetric emergency would have been released with sentences of up to 50 years in prison for aggravated homicide. Despite the above, it was also noted that "the denunciations and persecution of women facing obstetric emergencies" did not end and that, at that time, there were eleven active cases because the FGR had decided not to archive them and six that were being "processed for obstetric emergencies and that intersect with sexual and reproductive rights, related to maternal death due to ectopic pregnancy."<sup>121</sup>

144. The Commission was also informed of a communiqué issued by the same organization in October 2024 regarding the serious impact that the absolute criminalization of abortion continues to have in the country. It was pointed out that, despite the progress made, in 2024, "a new case arose: a 19-year-old girl was imprisoned after experiencing an obstetric emergency at the hospital where she sought medical attention." In this context, it was indicated that she was "denounced, handcuffed to the stretcher, and transferred directly from the hospital to jail." Furthermore, the Commission learned that, according to this statement, "El Salvador has one of the most restrictive laws in the world on abortion, criminalizing any type of pregnancy termination, even in cases where the mother's life is at risk." It was also noted that this regulatory framework has led to the unjust imprisonment of dozens of women, most of whom are in precarious socioeconomic conditions.<sup>122</sup>

145. In its observations on the present report, the State requested that the IACHR declare full compliance with this recommendation. It indicated that, given that the country report under follow-up was communicated to the State on November 2, 2021, this recommendation is confined to reviewing the cases of women sentenced to imprisonment for actions related to obstetric emergencies, as well as giving priority to the processing of requests for commutation of the sentence in progress, without considering or referring to facts or alleged future cases, but solely to the cases reportedly registered at that time.<sup>123</sup>

146. Furthermore, in its observations, the State affirmed that, based on publicly available information, the IACHR identified that, as of December 2023, 73 women convicted of aggravated homicide would have been released after serving up to 50 years in prison. However, it indicated that the reference to an alleged case registered for October 2024 exceeds the timeframe of this recommendation. The State stated that this recommendation should not be interpreted as an impossibility for the State to prosecute crimes in cases where there are well-founded elements to support a charge for violations of criminal law, particularly in cases involving crimes against children, for whom the State has a reinforced obligation of protection. It also pointed out that the Commission's designation of these cases as emergencies or obstetric complications does not change the legal classification of the crime made by the competent judicial authority, which is aware of the facts presented to it.<sup>124</sup>

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

147. The Commission reiterates that the recommendation under follow-up is to review the cases of women convicted of crimes related to emergencies or obstetric complications and the priority processing of requests for commutation. The information provided by the State, including its observations on the report, does not allow the IACHR to conclude whether, at this time, there are women with prison sentences for aggravated homicide based on facts related to obstetric emergencies or complications and whether sufficient measures have been adopted to review all these cases.

148. In addition, based on publicly available information, the IACHR identifies that, although in December 2023, the *Agrupación Ciudadana por la Despenalización del Aborto* would have celebrated the release

<sup>121</sup> Agrupación Ciudadana por la Despenalización del Aborto, Celebramos la libertad de Las 17 y más, seguimos luchando para que ninguna mujer sufra las graves consecuencias de la penalización absoluta del aborto, January 23, 2024. (Available only in Spanish).

<sup>122</sup> Agrupación Ciudadana por la Despenalización del Aborto, Organizaciones alertan por un nuevo caso de mujer encarcelada por una emergencia obstétrica en El Salvador, January 23, 2024. (Available only in Spanish).

<sup>123</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

<sup>124</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

of a total of 73 women who had faced obstetric emergencies and had been convicted of aggravated homicide with up to 50 years in prison, by October 2024, a new case would have been reported. For the Commission, this last figure leads to the conclusion that there is still pending compliance with this recommendation; in addition, it identifies that the follow-up of this decision requires official information provided directly by the State that is more specific about the measures being adopted to review these cases.

149. The IACHR also recalls that this recommendation was issued in response to a repeated concern of the Commission, based on a series of data, testimonies, and cases known in the framework of its on-site visit, about a context of criminalization of women for the crime of homicide, with the common denominator that the facts they were accused of were related to obstetric complications<sup>125</sup>. For the IACHR, it is crucial to have access to specific official information submitted by the State to understand whether this context persists and whether the requested review measures have been adopted to remedy it. In the meantime, the Commission concludes that this recommendation continues to be **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

150. The IACHR will declare progress in complying with this recommendation when it has sufficient and clear information to conclude that the State has reviewed all cases of convictions of women sentenced to severe prison sentences for aggravated homicide for facts related to obstetric emergencies or complications. In this regard, the IACHR reiterates the request for official information provided directly by the State that allows for a precise understanding of the evolution of the measures of compliance with this recommendation, namely:

- a. The number of women who, from the time the recommendation was issued to the present, have had ongoing prison sentences for aggravated homicide of newborns or unborn children each year. In this regard, please specify for each case whether the State has taken any action to review it and, if so, what that action entailed.
- b. If applicable, explain precisely what measures have been taken to review convictions for aggravated homicide of women to identify cases of obstetric emergencies, including women who are no longer deprived of liberty (among other reasons, because their sentences have been commuted).

151. In addition, the IACHR identifies that information is still pending on the recommendation's component requesting priority processing of ongoing requests for sentence commutation, specifically for these cases.

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

152. For the 2023 follow-up report, the IACHR identified state measures to promote sexual and reproductive health services for girls and adolescents aimed at preventing pregnancy and addressing sexual violence. However, it reiterated that in the country, the absolute criminalization of voluntary termination of pregnancy persists, even when it imposes a disproportionate burden on the exercise of women's rights, facilitates a context of unsafe abortions, and may disregard the respect, protection, and guarantee of life, health, and integrity. Additionally, the Commission noted that there are state measures establishing a distinction in the right to reproductive health based on whether a pregnancy continues and concluded that obstacles remain in women's, girls', and adolescents' access to sexual and reproductive health services, without any

<sup>125</sup> IACHR, Country Report "Situation of Human Rights in El Salvador", OEA/Ser.L/V/II Doc.278/21, October 14, 2021, paras. 198 - 205.



discrimination whatsoever. In this context, it determined that compliance with the recommendation is **still pending**.<sup>126</sup>

#### *Information on compliance*

153. In 2024, the State reiterated that some laws and regulations guarantee access to sexual and reproductive health, along with information and education on the topic. Furthermore, the Ministry of Health implements initiatives like the "Adolescent Friendly Services Strategy," which promotes empathetic and dynamic care in environments tailored to their needs.<sup>127</sup>

154. In addition, the State indicated that, in compliance with the orders of the judgment of the Inter-American Court of Human Rights of November 30, 2021, in the case of *Manuela et al. v. El Salvador*, it created the Technical Guidelines for Compliance with Professional Confidentiality in the National Integrated Health System (hereinafter "SNIS") with technical and ethical provisions of mandatory compliance for the personnel of that system and for professionals in the public and private spheres. According to the latter, the SNIS institutions must guarantee the confidentiality of clinical files, and disclosing such information entails legal, and technical sanctions. Also, the State approved the Protocol for the approach to care in the preconception, prenatal, childbirth, puerperium, and obstetric emergencies from a human rights perspective, with technical and ethical provisions so that sexual and reproductive health care is provided with a human rights approach. For the State, the orders of this sentence "constitute the specific measures that would comply with this recommendation (...)".<sup>128</sup>

155. The State also reported on the (i) Policy for Gender Equality and Equity in Health of 2022, which, according to the State, would have a socialization plan for the east of the country to be developed between 2024 and 2025, and (ii) the *Crece Juntos* Law, which establishes measures for the comprehensive protection of early childhood, children and adolescents, as well as for comprehensive care for pregnancy in girls and adolescents and comprehensive education on sexuality and sexual and reproductive health. In addition, it listed a series of technical guidelines, manuals, and assistance protocols of the Ministry of Health on comprehensive health without specifying which are aimed at complying with this recommendation. Among these, some specifically refer to the sexual and reproductive rights of women, girls, and adolescents, such as the following:<sup>129</sup>

- Technical guidelines on comprehensive care for women with mental and behavioral disorders prevalent in the perinatal period; preconception care and high reproductive risk; psychosocial care in perinatal and early childhood bereavement; neonatal metabolic screening; performance of the technical committee evaluating health care cases of pregnant women, children, and adolescents in imminent danger to life or severe health conditions; and Obstetric Surgical Procedures and Techniques.
- Manuals for the application of the evaluation instrument of the *Nacer con Cariño* maternity model, which is the technical instrument for monitoring the implementation of the *Nacer con*

<sup>126</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 136-143.

<sup>127</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>128</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>129</sup> In addition to the instruments specifically referring to sexual and reproductive rights of women, girls and adolescents, the State reported on others related to comprehensive health, including that of children and newborns, such as: Grow and learn healthy strategy; safe health care; palliative care; comprehensive habilitation and rehabilitation care; follow-up of events allegedly attributable to vaccination or immunization and programmatic errors; extramural dental care; comprehensive care for children under ten years of age with severe malnutrition; implementation and operationalization of the colostrum therapy strategy, nutritional care and outpatient management of people with malnutrition in the life cycle; compliance with professional confidentiality in the integrated national health system; implementation of Teleinterconsultation and Specialized Teleconsultation; surveillance, prevention and control of infections associated with health care in newborns; open door units in the care of newborns and pediatric population; neonatal metabolic screening; early detection of hearing loss in newborns and infants; cardiac screening of clinically healthy newborns, and Comprehensive Health Care for Adolescents and young people in the RIIS. State of El Salvador, Note MPOEA-OEA-168/2024, Response to IACHR questionnaire, October 23, 2024.

Cariño Law; organization and functions of the Maternal-Perinatal and Childhood Integral Directorate.

- Assistance protocols for the preconceptional, prenatal, delivery, puerperium, newborn and breastfeeding periods in low risk situations at the First Level of Care; and on the approach to care in, prenatal period, delivery, puerperium, and obstetric emergencies from a human rights perspective.

156. Civil society noted that the regulations and policies regarding women's sexual and reproductive health are confined to their maternal and reproductive roles. This is evident in the Crecer Juntos Law for the Integral Protection of Early Childhood, Childhood, and Adolescence of 2021, the Nacer con Cariño Law for a Respectful Birth and Caring, Sensitive Care for Newborns of 2021, and the Amor Convertido en Alimento Law for the Promotion, Protection, and Support of Breastfeeding in 2022.<sup>130</sup>

157. The Commission was also informed that comprehensive and accessible sexual and reproductive health services for adolescents and young people to prevent early pregnancies and early unions have been inconsistent and irregular due to biases surrounding sexuality and restrictions on the right to access and use contraceptive methods<sup>131</sup>. Furthermore, civil society highlighted to the IACHR that, in their view, there is a dominance of “a State vision that promotes the conservative regulation of sexuality, which weakens and delays the implementation of the National Intersectoral Strategy for the Prevention of Pregnancy in Girls and Adolescents 2017-2027 (Enipena), since there is an explicit prohibition and censorship on addressing comprehensive sex education in the public system.”<sup>132</sup> In this context, it was noted that in 2020, the Ministry of Education, Science and Technology (Mineducyt) reportedly withdrew the existing Comprehensive Sexuality Education (EIS) materials from schools. Additionally, the Commission was informed that this action would prevent the student population from accessing information based on scientific evidence and international human rights standards<sup>133</sup>.

158. In its observations to the current report, the State recalled that the Inter-American Court recently issued a judgment in the case of Beatriz et al. v. El Salvador. In this case, it did not impose an obligation on the State to revise its domestic legislation but rather granted a period of one year to adopt “all the regulatory measures necessary to provide guidelines for medical and judicial personnel to act in situations of pregnancies that put the life and health of women at risk.” Therefore, the State points out that, concerning El Salvador, the Inter-American standards have not required a modification to its criminal legislation. On the contrary, the State can comply with this measure through the adaptation of existing protocols, the establishment of a new protocol, or any other regulatory measure that ensures legal certainty in addressing situations like the one in the case. The State requested that the IACHR condition compliance with this measure on the effective execution of the reparations ordered by the Inter-American Court. Once declared compliant by the Court, the Commission should also conclude its follow-up on this recommendation.<sup>134</sup>

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

159. The IACHR identifies that several measures reported by the State had been previously known. However, the IACHR reiterates the considerations expressed in 2022 and 2023 in the sense of observing that the absolute criminalization of voluntary termination of pregnancy persists even when, as it has stated, its denial in certain circumstances imposes a disproportionate burden on the exercise of women's rights, creates

<sup>130</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>131</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024. In this regard, according to the civil society response, this has been one of the findings of research conducted by both UNFPA, in 2023, and Las Dignas, in 2022.

<sup>132</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>133</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>134</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.



a context that facilitates unsafe abortions, and disregards international obligations to respect, protect and guarantee their rights to life, health and integrity.<sup>135</sup>

160. Additionally, since 2022, the IACHR has identified that measures including the Nacer con Cariño Law, the PIEGS, and the Crecer Juntos Law prioritize maternity protection, creating a distinction in the security and guarantee of the right to reproductive health based on whether a pregnancy continues. In this context, the IACHR believes that there are still restrictions in the regulatory framework and health policies that impede access for women, girls, and adolescents to sexual and reproductive health services without discrimination. Furthermore, the IACHR emphasizes that States have an obligation to provide medical care without discrimination, meaning that under no circumstances can medical care be contingent upon the needs of women who require it.<sup>136</sup>

161. Additionally, in following up on the current recommendation, it is important to reference the recent judgment rendered by the Inter-American Court of Human Rights in the case of Beatriz et al. v. El Salvador. In this case, the Court deemed it necessary for the State to implement, within one year, “all the regulatory measures needed to provide guidelines and action plans for medical and judicial personnel in situations involving pregnancies that jeopardize the life and health of women.” In this context, it was observed that the State could meet this requirement by modifying existing protocols, developing a new protocol, or any other regulatory measure that ensures legal certainty in addressing situations similar to the one presented. Furthermore, the State must incorporate “a gender perspective and consider the standards established by the Court’s jurisprudence.”<sup>137</sup>

162. Regarding the State’s request to limit this recommendation to the adaptation of protocols requested by the Inter-American Court as a guarantee of non-repetition in the case of Beatriz et al. v. El Salvador, the IACHR clarifies that the measures requested by the Court respond to the declaration of international responsibility in a specific case. In contrast, the recommendation of the 2021 Country Report under follow-up pertains to the adaptation of the Salvadoran normative framework in accordance with all relevant Inter-American standards, while considering the findings and concerns that were highlighted previously, specifically:

- (i) “At least 36 women reportedly died from preventable chronic diseases and another 13 from ectopic pregnancies”, which could have been prevented if the women could legally terminate their unsafe pregnancies.
- (ii) The prevalence of discriminatory gender patterns limits education on the subject and access to and distribution of contraceptives, particularly to women, girls, and adolescents, and although emergency oral contraception is legal for women victims of sexual violence, it is being distributed at the discretion of health operators.
- (iii) The IACHR has reiterated its concern about the regulations that criminalize abortion in all circumstances in El Salvador.

163. Considering that this recommendation requires adapting the existing regulatory framework to all the applicable inter-American standards and that no regulatory adaptation measures have been identified to remedy the restrictions on women’s, girls’, and adolescents’ access to sexual and reproductive health services without discrimination, the IACHR concludes that this recommendation remains **pending compliance**.

<sup>135</sup> IACHR, Press Release No. 042/18, *IACHR Urges El Salvador to End the Total Criminalization of Abortion*, March 7, 2018; Press Release No. 208/21, *IACHR Expresses Concern Over the Adoption of Regressive Measures Concerning Sexual and Reproductive Rights in the Americas*, August 11, 2021; *Report No. 9/20*, Case 13.378, Merits Report, Beatriz, El Salvador, March 3, 2020, para.156.

<sup>136</sup> I/A Court H.R., *Case of Manuela et al. v. El Salvador. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*, Judgment of July 27, 2022. Series C No. 461, paras. 192-194.

<sup>137</sup> I/A Court, *Case Beatriz Vs. El Salvador, Merits, Reparations y Costs*, Serie C No. 549, *Sentence of November 22, 2024*, par. 212.

*Measures and information to advance in the fulfillment of the recommendation*

164. The IACHR recalls that, according to the 2021 Country Report, it was indicated that the State's obligation to adopt legislation in this area seeks to ensure that women are guaranteed the effective exercise of their sexual and reproductive rights "on the understanding that the denial of voluntary termination of pregnancy in certain circumstances may constitute a violation of the fundamental rights of women, girls and adolescents."<sup>138</sup>

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

165. For the 2023 follow-up report, the IACHR valued the compliance actions focused on guaranteeing the rights of women domestic workers and the recent National Policy on the Co-responsibility of Care. However, regarding women working in the textile sector, the Commission noted that only inspections were reported without specifying additional measures to ensure fair and equitable working conditions. Likewise, it identified that ILO Conventions 177 and 189 had not been ratified and concluded that the recommendation continued to be **partially complied with**.<sup>139</sup>

*Information on compliance*

166. For 2024, the State affirmed that it had sought social protection for women in vulnerable situations to increase their equal participation in productive areas and that, on March 13, 2023, it reformed the Labor Code to guarantee the rights of working women during pregnancy. In addition, it reiterated that the new composition of the Legislative Assembly, which took office on May 1, 2024, until 2027, oversees the analysis for the eventual ratification of international human rights instruments, including the ratification of ILO Conventions 177 and 189, according to human rights recommendations and national priorities.<sup>140</sup>

167. The State also pointed out that the National Policy on Co-responsibility for Care is aimed at children, adults with disabilities or in a situation of dependency, elderly people in a situation of dependency, and people who provide care services, whether paid or unpaid. It indicated that the implementation of this measure is the responsibility of public institutions and that its components and strategic lines include the provision of services for comprehensive care, support for caregivers, knowledge management, improvement of service coverage and quality, infrastructure, professionalization, and decent work, as well as social benefits.<sup>141</sup>

168. The Commission received information from civil society indicating that inequality gaps remain in access to income through the labor market in El Salvador. It was reported that "76.8% of men of working age have had access to paid work, while only 45.5% of women have had such access." Additionally, it was observed that women continue to bear a disproportionate burden of household work and unpaid services, with 34.7% of women in this situation compared to 1.4% of men.<sup>142</sup>

<sup>138</sup> IACHR, *Report on the Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II, Doc. 278, October 14, 2021, para. 205.

<sup>139</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 145-150.

<sup>140</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>141</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>142</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024. Cited ORMUSA, *Mujer y Mercado Laboral 2023*, 2024. (Available only in Spanish).

169. Similarly, civil society noted that there are no known government measures to enhance the protection, working conditions, and rights of thousands of women employed in the textile industry, whether in maquilas or through home-based work<sup>143</sup>. In this context, it was highlighted that, according to findings from 2023, "45% of female textile workers work between 8 and 12 hours, while 48% of female embroiderers work between 12 and 16 hours. Additionally, 94% of them reported that their wages do not match the time and effort they invest," indicating significant risks for these individuals, making it essential for the state to ensure fair compensation.<sup>144</sup> Furthermore, it was remarked that by 2023, "seven companies in the textile and apparel sector will cease operations in the country, leaving approximately 2,533 workers and their families without daily sustenance."<sup>145</sup>

170. In addition, it was reported that, in terms of salaries, the textile maquila sector in El Salvador shows a worrisome reality in comparison with other formal jobs in the private sector, as well as a salary gap between men and women in the textile maquila of 23.6%, with a much more pronounced disparity than in other sectors of the economy. Also cited was the finding that women in this sector have less access to opportunities for advancement and face challenges such as low wages, precarious working conditions, and lack of adequate social protection<sup>146</sup>. Also, civil society pointed out that, by the first quarter of 2024, the PGR would have registered 93 claims for violation of labor rights in the maquila sector, 70% of which would have been filed by women, and that, by the end of 2023, a proposed law would have been presented by the Union of Home Embroidery Workers in El Salvador (SITRABORDO), with no news on its progress.<sup>147</sup>

171. On the other hand, it was indicated that there was no known ratification process for ILO Conventions 177 and 189<sup>148</sup>. According to what was suggested to the Commission, this lack of ratification has allowed home-based workers and domestic workers to continue to be violated in their rights and to remain at a disadvantage concerning other workers in the country.<sup>149</sup>

*Analysis and level of compliance with the recommendation*

172. The Commission notes that ratification of ILO Conventions 177 and 189 is still pending and that the measures reported by the State are not specific in terms of indicating precisely how the right to work under fair and equitable conditions has been guaranteed for women working in domestic services and maquilas, mainly work in the textile industry under the home-based work scheme. In this regard, the IACHR has taken note of the information provided and has noted that it has referred broadly to the policy of co-responsibility for care without specifying its actual impact or how the State guarantees the labor needs of the women indicated in the recommendation.

173. In addition, the IACHR is concerned about the information provided by civil society that there is an urgent need for protective measures for women working in the textile industry, especially in maquilas and in home-based employment, as well as for domestic service workers. These measures include those aimed at improving these people's working conditions, wages, and adequate social protection. In this context, the Commission identifies that this recommendation continues to be **partially complied with**.

<sup>143</sup> Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>144</sup> Asociación Mujeres Transformando (Women Transforming Association), Response to the follow-up questionnaire, October 4, 2024. Cited its report, *Mujeres en la Maquila Textil: Cuerpos, Vidas y Resistencias*, October, 31, 2023.

<sup>145</sup> Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>146</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024. Cited ORMUSA, *Women and the Labor Market 2023*, 2024.

<sup>147</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>148</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>149</sup> Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

*Measures and information to advance in the fulfillment of the recommendation*

174. The IACHR reiterates that progress in complying with this recommendation requires detailed information on the measures adopted to guarantee the rights to work and fair and equitable conditions for women working in domestic service and maquilas, particularly in the textile industry under home-based work. Likewise, the IACHR invites 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.

## 2. LGBTI people

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

175. For the 2023 follow-up report, the IACHR acknowledged the training program mandated by the Supreme Court of Justice for the Institute of Forensic Medicine and the adjustments to the latter's protocols aimed at integrating a gender perspective into service delivery. However, it noted a lack of sufficient information to specify the year of adoption. The IACHR also pointed out that the requested compliance measure—approving the gender identity law—had not yet been adopted. Additionally, it recognized the February 2022 decision of the Constitutional Chamber of the Supreme Court of Justice, which provided the Legislative Assembly a year to establish a legal gender recognition procedure that would enable transgender individuals to change their names on their identity documents. Considering the absence of the requested measure, the Commission concluded that this recommendation remained **pending**.<sup>150</sup>

*Information on compliance*

176. By 2024, the State confirmed that a Gender Identity Law had not yet been issued. It noted that since 2020, some transgender individuals have judicially requested name changes under the Name and Natural Person Law, and several individuals, including the executive director of COMCAVIS TRANS, have received favorable resolutions. According to the State, the process of the law mentioned above does not distinguish between cisgender and transgender individuals while aiming to provide a minimum level of legal certainty in this process. It also indicated that the Constitutional Chamber of the Supreme Court of Justice is responsible for monitoring its decision regarding the unconstitutionality of the partial omission of Article 23, paragraph 2 of the Law of the Name of the Natural Person. Additionally, the state stated that in line with its commitment to human rights, it has developed various training programs for justice operators and service providers on the rights of LGBTI individuals.<sup>151</sup>

177. Additionally, the State indicated that it has updated the General, Expert, and Administrative Policy of the Institute of Legal Medicine (hereinafter "IML") and modified its protocols to prevent prejudice based on sexual orientation or gender identity. According to the State, these reforms have fostered an inclusive environment, enhanced training for officials on LGBTI rights, improved access to justice, and increased visibility of the problems faced by LGBTI individuals. The State also noted that there is a program of specialized courses for the medical staff and forensic experts of the IML concerning the reception of complaints, examinations, expert opinions, and medical assessments related to i) the investigation of hate crimes based on sexual orientation and gender identity and expression; and ii) the search for forensic evidence and the presentation of evidence at trial. It further stated that the Supreme Court of Justice has reinforced training on equality and non-discrimination within the manuals for service provision to users of the administration of justice through four directives.<sup>152</sup>

<sup>150</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 160-170.p

<sup>151</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>152</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

178. The Commission received information from civil society indicating that, since March 2018, the civil society organizations involved in the Permanent Roundtable for a Gender Identity Law in El Salvador had prepared a preliminary draft. Although this draft was submitted to the Legislative Assembly for review, it was ultimately shelved. Additionally, the Commission was informed that various challenges related to fulfilling this recommendation continue to exist, including the following:<sup>153</sup>

- Failure to update and implement the Policy for the Attention of LGBTI Persons, approved by the Ministry of Justice and Public Security in 2017, includes the institutions in charge of security, including the National Civil Police and the Armed Forces.
- Need for training processes on gender, sexual diversity, and human rights of the LGBTI population for the National Civil Police, emphasizing operational personnel.
- Lack of incorporation of human rights, gender, intersectionality, and inclusion approaches in all manuals, general, and operational plans of the National Civil Police.
- Need for more technical, operational, and material resources for the defense, surveillance, and monitoring of the situation of LGBTIQ+ persons by the PDDH.
- Lack of revision and strengthening of the PGR's Case Registration System to include variables on sexual orientation and gender identity and generate accurate information, make these people visible in providing services and guide decision-making.

*Analysis and level of compliance with the recommendation*

179. The IACHR observes that the compliance measure requested by the recommendation, which consists of the approval of the gender identity law, has yet to be adopted. Furthermore, concerning the update of the General, Expert, and Administrative Policy of the Institute of Legal Medicine (hereinafter "IML"), the Commission notes that more detailed information is required to understand the scope of this measure aimed at strengthening the institutional framework for protecting the rights of LGBTI individuals. In this regard, while it appreciates the assertion regarding the existence of a non-discrimination policy, specific data is necessary regarding implementation and results achieved in this strengthening effort. In this context, the Commission points out that this recommendation is still **pending compliance**.

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

180. The IACHR reiterates the importance of the State adopting a gender identity law that recognizes not only the change of name and image in identity documents but also the correction of the sex marker in such documents, including birth certificates and passports. The report on implementing this measure will allow for the assessment of progress in complying with this recommendation.

**Recommendation No. 28.** Adopt a comprehensive plan for the protection and guarantee of the human rights of LGBTI persons, from a human security perspective, including their access to justice, education, health and employment, and promote the participation of civil society organizations in its design and formulation.

181. In the 2023 follow-up report, the Commission noted that the State had reported relevant compliance measures in the education sector and welcomed the training processes and implementation of regulations in these centers, along with access measures to financial products for women with diverse sexual orientations or gender identities. However, it pointed out that these do not constitute a specific and focused comprehensive plan according to the recommendation and emphasized the need to implement measures that

<sup>153</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024; cited Cristosal, Study on access to justice for LGBTIQ+ persons, particularly the Trans population, in Guatemala, Honduras and El Salvador, May 2023.

protect and guarantee the rights of LGBTI individuals in all the specified areas, in a participatory manner with civil society organizations. Therefore, it concluded that the recommendation remains **partially fulfilled**.<sup>154</sup>

#### *Information on compliance*

182. By 2024, the State affirmed that the domestic legal system recognizes the equality of all persons before the law, without exceptions, and that it has adopted actions for the prevention of crimes and comprehensive protection. In this regard, it reported applying the "Protocol of Action for the Investigation of Aggravated Crimes for Reasons of Hate for Gender Identity and Expression or Sexual Orientation" of 2020, which seeks to enhance access to justice; as well as the "Policy of Inclusion and Access to Justice aimed at vulnerable population" and the "Protocol of Attention to Population in Vulnerable Situations", both of 2022. It also indicated that the Deputy Prosecutor's Office for Women, Children, Adolescents, and other Vulnerable Groups (hereinafter "FAMNA") continues to promptly investigate crimes against women, children, adolescents, LGBTI population, and other vulnerable groups and noted that FAMNA is comprised of a national directorate; 19 specialized care units (hereinafter referred to as "UAEMNA") at the national level; a unit focused on investigating femicide, and another unit that addresses gender issues.<sup>155</sup>

183. The Commission gathered information provided by civil society, which indicates a lack of progress by the State in implementing a comprehensive protection plan and human rights for LGBTI individuals. In this regard, it was noted that legislative shortcomings persist, such as the recognition of gender identity and protection against discrimination based on gender identity and sexual orientation, considering that proposals of this nature were shelved in 2021. Additionally, it was brought to the Commission's attention that, since 2022, discriminatory government actions have intensified, including non-compliance with court rulings and the lack of visibility of these individuals in public records. Furthermore, an alleged absence of policies guaranteeing equal access to public services was highlighted, along with decisions in the healthcare system that render trans women invisible, such as the Ministry of Health's order from February 2024 to withdraw materials on sexual diversity from health units.<sup>156</sup>

184. Likewise, civil society pointed out that the current Government would have regressed in the implementation of the plan indicated in the recommendation, considering that more than 300 people from the Secretariat of Culture have been dismissed for allegedly promoting agendas incompatible with its vision and withdrawing material on sexual and reproductive health from the curricula, eliminating topics on gender violence and sexual orientation. According to suggests, the primary challenge for recognizing the rights of the LGBTIQ+ population is the approval of a Gender Identity Law, which would enable legal reforms to ensure fundamental rights without discrimination.<sup>157</sup>

185. Likewise, the Commission learned through the Observatory of Human Rights of the LGBTI population in the country, according to which decisions are being adopted that imply important institutional setbacks in the protection of their rights, such as the elimination of the Directorate of Sexual Diversity of the Secretariat of Social Inclusion, the suppression of institutional records to give visibility to people in their diversity.<sup>158</sup>

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

186. The IACHR warns that the measures reported by the State, in addition to repeating those from previous years, do not constitute a specific and focused comprehensive plan to protect and guarantee the rights of LGBTI persons in terms of the recommendation under follow-up, including access to justice, health, and employment. Nor are there any actions aimed at implementing specific measures from a human security perspective and with the participation of civil society.

<sup>154</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 172-177.

<sup>155</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>156</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>157</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>158</sup> Observatorio de Derechos Humanos de la población LGBTI, *Boletín No. 1 enero - marzo 2024*. (Available only in Spanish).



187. On the contrary, the perception expressed by civil society regarding the recent weakening of the recognition of LGBTI persons in the country is of concern, which in turn indicates the need to strengthen the participation of these actors in the elaboration of the measure requested by this recommendation. Given the need for additional information on the articulation of these protection measures in a Comprehensive Plan that covers all the aforementioned aspects, the IACHR considers that the recommendation remains **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

188. The IACHR urges the State to adopt the Comprehensive Protection Plan indicated in this recommendation. In this regard, it reiterates the importance of this strategy, including all the sectors indicated in the recommendation (health, employment, education, and access to justice), and that its construction guarantees the adequate participation of civil society. Likewise, the IACHR invites the State to identify the time of adoption of the measures that make up this Plan intending to identify whether they are updated and adopted in compliance with this recommendation.

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

189. For the follow-up report for the year 2023, the Commission identified that the State reported a significant number of training activities provided by the Public Prosecutor's Office that involve the rights of LGBTI persons and are aimed at various sectors of the civil service as the executive body, the same entities of the Public Prosecutor's Office and the Supreme Court of Justice. The IACHR also valued the training and education activities for judicial personnel and prison staff and appreciated that several had the support of civil society organizations. However, the Commission identified the need for additional information on the content and scope of the training topics, particularly concerning justice operators. In the meantime, it concluded that the level of compliance with the recommendation was **partially substantial**.<sup>159</sup>

*Information on compliance*

190. By the year 2024, the State referred to training processes on the human rights of LGBTIQ+ persons provided to the civil servants of different entities:<sup>160</sup>

- The Human Rights School of the PDDH developed the Basic Course on Human Rights, for which it specified the type of training, date, place, and beneficiaries of ten training processes, mostly on human rights of the LGBTIQ+ population and HIV, aimed at 285 civil service members from 2021 to June 2024. Of these, three were delivered virtually in 2021, four in person in 2023, and three in person in 2024. The target audience included mainly executive entities, PGR, and PPDH.
- Three training processes (one in 2021, one in 2022, and one in 2023) through 6 training days for personnel of the multidisciplinary teams of the Judicial Branch and the National Civil Police.
- Seven training processes, consisting of 18 workshops for 257 members of the PPDH, were developed with the support of LGBTIQ+ organizations. They addressed issues of sexual diversity, gender, human rights, stigma, and discrimination, hate crimes, psychosocial support for LGBTIQ+ people, gender-based violence, and the current legal framework. Two workshops were held in 2020, two in 2021, one in 2022, and two in 2023.

<sup>159</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, paras. 178-188.

<sup>160</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

- The PPDH conducted the Course on Equity and Human Rights for People with HIV and the LGBTIQ+ Population to reduce stigma and discrimination, in coordination with FANCAP and USAID. This initiative aimed to enhance the knowledge of technical staff from various public institutions in central, western, and eastern El Salvador. In this context, two training sessions were reported, one in 2023 and the other in 2024, consisting of a total of 10 workshops attended by 268 participants from both the PPDH and other public institutions, including the PGR, the FGR, the National Civil Police, the Salvadoran Social Security Institute, ISDEMU, five municipalities, the Ministries of Justice, Public Security, and Public Health, hospitals, and more.
- The Training, Analysis and Research Center (hereinafter "CEFAI") of the PGR provided nine workshops and courses during the period 2023-2024 with 135 participants from its staff on topics related to the rights of LGBTIQ+ persons, gender-based violence, new masculinities, women with disabilities and women in situations of violence, gender-based violence in women and girls with disabilities.

191. For its part, it was reported to the Commission by civil society that, in response to a request for information to the PGR on training processes on the rights of LGBTI persons, they were informed that, in 2023, 14 processes with 110 hours of duration would have been conducted for 176 women and 74 men and that, in 2024, a process of eight hours would have been conducted for five women. Furthermore, according to the same response, the PGR implemented two instruments to attend to vulnerable populations in 2023-2024, namely, a Policy of Inclusion and Access to Justice in force since 2022, which includes specialized attention to the LGBTI population and training actions to promote their inclusion. In addition, a Protocol of Attention for these populations, from 2023, which seeks to strengthen the mechanisms of attention. In addition, it was reported that, according to this same response, the PGR established dialogues with civil organizations to coordinate human rights programs, conducting workshops in seven departments, focused on non-discrimination and LGBTI rights.<sup>161</sup>

192. In the same line, it was pointed out by civil society that, in another response provided in 2023 by the PGR to a request for information, this entity would have provided 64 hours of continuous training to its staff, benefiting 11 men and 45 women on human rights issues of LGBTIQ+ people and diverse women. According to the same response from the PGR that was reported by civil society, in 2024, eight hours of training would have been conducted, which included five women on diverse voices, needs and challenges of LGBTIQ+ people.<sup>162</sup>

193. Likewise, in terms of challenges for the fulfillment of this recommendation, it was pointed out that one of the main challenges is to overcome the fear caused by hate speech or "anti-rights" towards LGBTIQ+ people, which, according to what was pointed out to the Commission, has limited the request and reception of training on rights, affecting the awareness and adequate response in public services.<sup>163</sup>

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

194. The IACHR identifies that the State continued with the report of training activities on human rights of LGBTIQ+ persons to officials of various executive entities, the PGR, the PPDH, the Judiciary, the National Civil Police, the FGR, the Salvadoran Social Security Institute, the ISDEMU, municipalities, hospitals, among others; The Commission notes that not all these activities correspond to the year 2024, but some were carried out in the years 2020, 2021, 2022 and 2023, as well.

<sup>161</sup> FUNDE, Response to the follow-up questionnaire, October 4, 2024. According to this organization, this information corresponds to data provided by the PGR in response to a public information request cited as follows: Unidad de Acceso a la Información Pública de la Procuraduría General de la República under reference: 94- UAIP(P)-2024-RES, October 02, 2024.

<sup>162</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024. According to this organization, this information corresponds to data provided by the PGR in response to a public information request cited as follows: PGR, Request Number UAIP /23-09-2024/102, Exp. 102-UAIP(P)-2024, September 30, 2024.

<sup>163</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

195. Considering that the State has continued to report training measures, the IACHR identifies the importance of having information confirming how the continuity and obligatory nature of these measures is guaranteed and how they are focused on justice operators. In the meantime, it concludes that this recommendation continues with a **substantial partial level of compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

196. To declare full compliance with this recommendation, the IACHR considers it relevant to have information to confirm (i) the obligatory nature and continuity of the reported measures, with a particular focus on justice operators as addressees, and to indicate (ii) how many of these officials have been trained specifically on the requested topic in the last year.

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

197. For the 2023 follow-up report, the Commission identified the Automated Management System of the Prosecution Process (hereinafter "SIGAP") of the FGR as a relevant compliance measure. In addition, the Commission took note of the 2022-2023 work report of the FGR in which, according to the State, data on gender-based violence against the LGBTI population would be included; however, it identified that this provides information on crimes related to gender-based violence against women, but not specific data regarding LGBTI persons. Likewise, the IACHR recalled the importance of linking this system with records from other entities and emphasized the importance of the statistical data in this recommendation being useful for preventing, investigating, and eradicating acts of violence and discrimination. In this sense, it concluded that this recommendation continued to be **partially complied with**.<sup>164</sup>

*Information on compliance*

198. For 2024, the State reiterated that the FGR's SIGAP records criminal proceedings, which is useful for decision-making, strategies, and responding to information requests. It explained that SIGAP has been implemented since 2012 and was subsequently modernized to integrate new technologies, improve the availability of information, and facilitate the collection of inputs for case analysis, incidents, geographic areas, and other factors such as vo investigative decisions. In addition, it pointed out that the auxiliary prosecutors must complete fields such as the one related to the condition of the vulnerability of the persons involved in each case to "adopt the necessary measures for their adequate approach," including the LGBTI population. On the other hand, the State pointed out that the Central Reserve Bank (BCR) oversees generating the main statistical data with the following disaggregation: geographic location, income, sex, age, education, family status, ethnicity, migratory status/internal displacement, disability, and other relevant characteristics in national contexts. It noted that with this information, indicators are analyzed, and pertinent information is highlighted.<sup>165</sup>

199. For its part, civil society expressed to the Commission its concern with the fact that violence against LGBTI persons is made invisible as a discriminatory practice; as it was pointed out, this would be highlighted by the fact that the annual reports of violence against women in 2019, 2020 and the first half of 2021 of the National Data System have included data on this type of violence and that, for the annual report of 2021, it was allegedly eliminated. According to what was pointed out to the Commission, this implies a setback in the recognition of violence against these people. In addition to the above, civil society organizations reported information to the Commission about the following events:<sup>166</sup>

<sup>164</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 190-194.

<sup>165</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>166</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

- On February 22, 2024, the President of the Republic stated in an interview conducted by the director of the organization Moms for Liberty that gender ideology is prohibited in El Salvador because it promotes “unnatural, anti-God, and anti-family” ideas in education. Furthermore, as the organizations pointed out, the president stated that these ideologies would not be allowed in primary and secondary schools and that, furthermore, it is important that the curriculum does not include gender ideology.<sup>167</sup> In this regard, the Commission became aware of a video in which the President makes these statements.<sup>168</sup>
- The Ministry of Education issued a memorandum on February 28, 2024, in which it allegedly requested the exclusion of materials and content related to “gender ideology” from public schools under penalty of sanctions and dismissal<sup>169</sup>. Regarding this specific allegation, the IACHR also became aware of a tweet published on February 27, 2024, by the Minister of Education of El Salvador, explicitly stating the elimination of “any use or trace of gender ideology from public schools.”<sup>170</sup>
- The Ministry of Health had removed material on sexual diversity from health units and HIV clinics<sup>171</sup>.

200. Additionally, the Commission learned more information from civil society highlighting challenges in obtaining data on violence against LGBTIQ+ individuals. In this context, a study was referenced showing that, in 2020 and 2021, the National Civil Police provided some statistics; however, a trend of concealing information was later identified. Furthermore, it was observed that the PGR lacks the tools to inclusively identify individuals served, and the PDDH acknowledged the absence of a monitoring system for LGBTIQ+ rights violations, although both entities noted their collaboration to raise awareness and prevent discrimination within their institutions. Moreover, it was mentioned that a lack of interest in LGBTIQ+ rights has hindered the establishment of monitoring units to compile statistics, leaving civil society organizations with international support to generate the data.<sup>172</sup>

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

201. The Commission recalls that the content of the recommendation requests the adoption of data related to acts of violence and discrimination against LGBTI persons in the country with specific characteristics, namely, that they are (i) statistical, (ii) public, (iii) periodically updated, (iv) duly disaggregated. In this sense, it identifies that the SIGAP of the FGR had been reported as a state measure of compliance and that, although it is indicated that the auxiliary prosecutors must complete fields such as whether the individual involved in each case belongs to the LGBTI population to “adopt the necessary measures for their adequate approach”, this information is not sufficient to conclude an advance in the level of compliance with this recommendation insofar as it does not allow concluding how the four characteristics indicated are met. The same is true of the information provided concerning the data generated by the BCR.

<sup>167</sup> Quoted: Diariocolatino, [Bukele cambia su discurso respecto a la ideología de género](#), February 29, 2024. (Available only in Spanish). Also see: Radioamericahn, [Bukele dice que escuelas de El Salvador no existe espacio para la ideología de género](#), (Available only in Spanish).

<sup>168</sup> Radioamericahn, [Bukele dice que escuelas de El Salvador no existe espacio para la ideología de género](#), February 27, 2024. (Available only in Spanish).

<sup>169</sup> La Prensa Gráfica, [Ministerio de Educación amenaza con despidos si se difunde “ideología de género” en escuelas públicas de El Salvador](#), February 29, 2024. (Available only in Spanish).

<sup>170</sup> Pineda R, José Mauricio, [@JMauricioPineda], (2024, February 27), “Confirmado: todo uso o rastro de la ideología de género lo hemos sacado de las escuelas públicas”. [Tweet], <https://x.com/JMauricioPineda/status/1762545694190023000?mx=2>. (Available only in Spanish).

<sup>171</sup> La Prensa Gráfica, [MINSAL retira material sobre diversidad sexual de unidades de salud y clínicas VIH](#), February 28, 2024. (Available only in Spanish).

<sup>172</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024, cited its [Estudio sobre el Acceso a la Justicia de las Personas LGBTIQ+, especialmente de la Población Trans en Guatemala, Honduras y El Salvador](#), May 2023. (Available only in Spanish).

202. In addition, the Commission considers it pertinent to emphasize the importance of allocating resources for the collection and analysis of the statistical data requested in the recommendation and that, recognizing the fundamental and historical role of civil society in these tasks, there should be mechanisms for receiving information from these groups to encourage joint and participatory work for the analysis and design of laws, policies, programs, and other decisions.<sup>173</sup>

203. Likewise, the IACHR has noted the concerns expressed by civil society regarding a perceived trend of concealment of information regarding acts of violence against LGBTI persons and calls on the State to make efforts to collect this information, considering that it is essential to identify and make progress in combating this type of violence. Consequently, the Commission determines that this recommendation continues to be **partially complied with**.

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

204. The IACHR will conclude that this recommendation has attained the level of compliance when it has sufficient information regarding efforts to collect and systematize data on violence against LGBTIQ+ persons that are (i) statistical, (ii) public, (iii) periodically updated, (iv) duly disaggregated, and (v) related to acts of violence and discrimination against LGBTI persons in the country. In this regard, the IACHR reiterates its invitation to clarify how existing registries, or those under construction, ensure coordination between entities in order to have unified and reliable statistics on acts of discrimination and violence against LGBTI persons. Likewise, for the IACHR it is essential that these registries include a broadened notion of acts of violence and discrimination against LGBTI persons and therefore invites to specify what type of acts are included in the reported registries.

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

205. In the 2023 Follow-up Report, the IACHR valued the relevance of the instruments reported by the FGR to strengthen the investigation of crimes against LGBTI persons, as well as the inter-institutional and consultation efforts for the development of the reported Protocols of action in the investigation and legal assistance. For its part, the IACHR was informed of research presented by civil society that concluded that significant challenges persist in access to justice for LGBTI persons. The IACHR invited the State to continue with the establishment of a plan of action articulated between the Executive and the Public Prosecutor's Office that leads to increased access to justice for these people. In this sense, it reiterated the call to strengthen this inter-institutional strategy and considered that this recommendation continues to be **partially complied with**.<sup>174</sup>

*Information on compliance*

206. For the year 2024, the State reiterated that the FGR has an Action Protocol for the Investigation of Aggravated Crimes on Grounds of Hatred of Gender Identity and Expression or Sexual Orientation, dated November 2020, with guidelines for the investigation and proof of aggravating circumstances on the grounds of hatred of gender identity and expression or sexual orientation, and the special status of the victim of aggravated crimes on those grounds. It indicated that this document involves other institutions, so the Prosecutor Training School of the FGR has developed workshops with the National Civil Police and the IML and has socialized the instrument with its staff.<sup>175</sup>

<sup>173</sup> IACHR, *Thematic Report: Advances and Challenges Toward the Recognition of the Rights of LGBTI Persons in the Americas*, OEA/Ser.L/V/II.170, Doc. 184, Dec. 7, 2018.

<sup>174</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 196-205.

<sup>175</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

207. For its part, the Commission received information provided by civil society, according to which access to justice for LGBTI persons continues to be limited in the country due to the opacity of information management and deficient data records in the justice sector.<sup>176</sup>

208. It was particularly highlighted that much of the data regarding this population is allegedly subject to confidentiality and that the Judiciary would not have provided data on gender identity and sexual orientation in cases of hate-motivated homicide, given that this information is not regulated by the Law on Access to Public Information (hereinafter "LAIP"). Additionally, it was noted that civil society, through the Observatorio Nuestra Mirada LGTBI, has proposed legal frameworks, protections, legal support, awareness programs, and inclusion in public policies to combat discrimination. However, many LGBTI individuals still do not report abuses due to a lack of confidence in institutions, fear of reprisals, ignorance, discrimination, and complications in the procedures.<sup>177</sup>

209. For its part, civil society pointed out the importance of promoting training and sensitization of state personnel, avoiding religious prejudices, and improving sexual and reproductive health education for young people, currently hindered by the Ministry of Education.<sup>178</sup>

*Analysis and level of compliance with the recommendation*

210. The Commission notes that the information provided by the State does not allow it to identify progress in fulfilling this recommendation, given that the Protocol of Action from the FGR was issued prior to the publication of the 2021 Country Report. The effectiveness of this measure will depend on the State reporting how it has contributed to the effective strengthening of access to justice for LGBTI victims of violence, through a coordinated effort among various institutions of the Executive and the Public Prosecutor's Office.

211. Furthermore, in line with the concerns expressed by civil society regarding the statements and decisions of government authorities, the Commission identifies that the facts reported regarding the denial of protection of sexual orientation and gender identity represent an essential obstacle to progress in the implementation of this recommendation. In this regard, it is recalled that the requested strengthening would consist of a coordinated effort between the various institutions of the Executive and the Public Prosecutor's Office. In this sense, the Commission considers that this recommendation continues to be **partially complied with**.

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

212. To guide compliance with this recommendation, the IACHR emphasizes the importance of the State strengthening an inter-institutional action plan between the entities that make up the Public Prosecutor's Office and the Executive bodies that are relevant to enhancing access to justice for LGBTI persons, considering the challenges diagnosed around this issue. Likewise, with respect to the reported protocols, it invites you to provide additional information regarding their recent implementation and results obtained to assess whether these constitute specific measures of compliance with this recommendation.

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

**Recommendation No. 32.** Pass a comprehensive regulatory framework on forced displacement that includes lasting solutions as part of the framework for implementing the MIRPS and guarantees the

<sup>176</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>177</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>178</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.



provision of support and advisory services on comprehensive coordination mechanisms for protecting human rights.

213. For the follow-up report for the year 2023, the IACHR noted that the framework referred to in this recommendation is additional to the Special Law for the Comprehensive Care and Protection of Persons in Conditions of Internal Forced Displacement of 2020, as it refers to normative actions of accompaniment and advice on comprehensive protection coordination mechanisms, within the framework of the MIRPS. The Commission considered that the measures reported by the State, including the agreement for actions focused on women and the Protocol for Comprehensive Care for Applicants and Refugees, can contribute to the objective of the recommendation. However, it requested information on their content and additional measures, such as, for example, the regulation of the Inter-Institutional Technical Commission for the Care and Protection of Persons in Conditions of Internal Forced Displacement or the Special Law of 2020. In this sense, it considered that the recommendation was **partially complied with**.<sup>179</sup>

#### *Information on compliance*

214. In 2024, the State recalled that El Salvador joined the Regional Integrated Framework for Protection and Solutions (MIRPS) in 2019, committing to address forced displacement as part of this initiative for Central America and Mexico. In this framework, it noted the creation of a National Response Plan featuring 49 commitments in areas such as protection, health, education, and employment for displaced persons, refugees, and asylum seekers. Among the advancements, it highlighted the approval of the Law for the Integral Protection of Internally Displaced Persons in 2020 and the strengthening of the Commission for the Determination of Refugee Status (referred to as “CODER”) to expedite asylum applications. Additionally, it noted the implementation of visits and information sessions coordinated with the General Directorate of Migration and Alien Affairs at border points and the international airport.<sup>180</sup>

215. In addition, the State indicated that, to assist the victims of displacement, the Ministry of Justice and Public Security implemented psychological, social and legal support programs. It also stated that it has collaborated with the Ministry of Education for the school inclusion of displaced minors and has created Urban Centers for Welfare and Opportunities (hereinafter “CUBO”) in various localities, achieving the recovery of territories and, according to the Directorate of Attention to Victims, a decrease in cases of forced displacement due to violence. It also noted that four care centers called “*A Tu Lado*” were established in several cities to provide information services, legal advice, psychological care, and case management for the displaced population and asylum seekers, with 2,910 people assisted in 2024.<sup>181</sup>

216. In addition, the State reported that it has also made progress in implementing the Protocol for Comprehensive Care for Applicants and Refugees, launched in 2023, which seeks to ensure dignified treatment for those seeking protection in the country. In this regard, it stated that this protocol is part of the national efforts aligned with the MIRPS, in collaboration with UNHCR, to strengthen regional cooperation and share the responsibility to protect displaced persons in the region.<sup>182</sup>

217. For its part, the IACHR received information provided by civil society according to which, in response to a request for information made to the Presidential House in 2022, it was informed that there is a project in process for the drafting of the regulations of the Special Law for the Attention and Integral Protection of Persons in Conditions of Internal Forced Displacement or a regulatory framework for the operation of the Inter-Institutional Technical Commission for the Attention and Protection of Persons in Conditions of Internal

<sup>179</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023, paras. 207-216.

<sup>180</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>181</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>182</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024. Cited: UNHCR, El Salvador: Monthly Report No. 3, March 2024. (Available only in Spanish).

Forced Displacement. However, it was noted that its content is unknown, as well as progress on the installation of the Inter-Institutional Commission mentioned above.<sup>183</sup>

*Analysis and level of compliance with the recommendation*

218. The IACHR positively values the information provided by the State regarding the creation of the National Action Plan with commitments for the operationalization of the protection of forcibly displaced persons and refugees in areas such as protection, health, education, and employment, as well as the actions reported by the Ministry of Justice and Public Security and the Ministry of Education to provide psychological, social and legal support mechanisms, and in education.

219. Despite this information, the Commission recalls that this recommendation is focused on the approval of a comprehensive regulatory framework on enforced displacement within the framework of the MIRPS that is aimed at guaranteeing the accompaniment and advice of the comprehensive coordination mechanisms for the protection of human rights, which may consist of the regulations of the Special Law adopted in 2020 or with a regulatory framework for the operation of the Inter-Institutional Technical Commission for the Attention and Protection of Persons in Conditions of Internal Forced Displacement, on which the State did not report information regarding its operation. Considering the type of compliance measure requested, the Commission considers that this recommendation continues to be **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

220. The IACHR will declare progress in the fulfillment of this recommendation when it has information indicating the adoption of a specific regulatory framework that is comprehensive on forced displacement and includes durable solutions within the framework of the implementation of the MIRPS, which may consist of the regulation of the Special Law adopted in 2020 or a regulatory framework for the operation of the Inter-Institutional Technical Commission for the Attention and Protection of Persons in Conditions of Internal Enforced Displacement.

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

221. For the follow-up report of 2023, the Commission considered that the State had implemented several actions to strengthen consular services for Salvadoran persons abroad, a component of which, was declared fully complied with. Regarding the component of the recommendation that requests measures to strengthen transnational coordination in the search for missing and deceased migrants, as well as the strengthening of mechanisms for collecting, guarding and analyzing forensic data and genetic banks, the IACHR identified documentation efforts by CONABÚSQUEDA and the Vice-Ministry of Diaspora and Human Mobility of the Ministry of Foreign Affairs. However, it pointed out that, in order to advance in compliance with said components, actions are needed to strengthen the systematization of this data and transnational coordination with authorities in other countries. In this regard, it considered that the recommendation had advanced to a **partial level of compliance**.<sup>184</sup>

*Information on compliance*

222. For 2024, the State reported that it had implemented various measures to strengthen the search for and assistance to missing migrants. It indicated that the Protocol of Assistance and Humanitarian Management is implemented through the Ministry of Foreign Affairs to provide support to Salvadorans abroad,

<sup>183</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>184</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023, 223-233.

and the Forensic Data Bank of Missing Migrants has been strengthened, with DNA sampling days in 2024 to identify remains of migrants who died in migratory route. In addition, it was indicated that the Ministry of Foreign Affairs also participates in the Foreign Support Mechanism for Search and Investigation (hereinafter "MAEBI"), in which it collaborates with Mexico to report crimes against nationals in their passage through that country and to carry out searches for Salvadorans in hospitals and shelters.<sup>185</sup>

223. The State also indicated that it has strengthened its consular services, expanding its presence abroad with 19 new representations in the last five years, including consulates in the U.S., Mexico, and Europe, for 103 diplomatic representations and consulates worldwide. It also indicated that it has improved the issuance of passports in 81 consulates, reducing delivery times to 45 minutes; that consular offices provide comprehensive care to migrant children and adolescents with their families in Mexico and the United States, and that the Vice-Ministry of Diaspora and Human Mobility is working on projects to expand and improve consular services.<sup>186</sup>

224. Regarding the search for missing persons, the State indicated that CONABÚSQUEDA carried out a mission to Honduras in November 2023 for inter-institutional coordination on Salvadorans who disappeared in that country. It also stated that the project to strengthen this search commission, in collaboration with the Guatemalan Forensic Anthropology Foundation and USAID, aims to set up a bank of genetic profiles of persons who disappeared during the armed conflict and the systematization of information in the Single Registry of Missing Children and Adults (RENIPAD), to make progress in the identification and location of missing persons.<sup>187</sup>

225. For its part, the Commission received information from civil society, according to which the PDDH has a Department for the Care of Migrants and instructions on how to begin the search for a missing family member in migratory transit. It was also indicated that the Ministry of Foreign Affairs, together with the Regional Center on Migration (hereinafter "CRM") and the International Committee of the Red Cross (hereinafter "ICRC") holds workshops to coordinate the identification and transfer of deceased migrants and the search for missing persons in this context, considering requests from the Committee of Relatives of Deceased and Disappeared Migrants (hereinafter "COFAMIDE"). However, it was noted that this committee has approached Mexican authorities but has received minimal response.<sup>188</sup>

226. In addition, civil society pointed out that El Salvador's Forensic Data Bank of Unaccounted Migrants is an inter-institutional effort that began work in August 2010 and is made up of the Ministry of Foreign Affairs, COFAMIDE, the PDDH and the Argentine Forensic Anthropology Team (EAAF).<sup>189</sup>

*Analysis and level of compliance with the recommendation*

227. The IACHR recalls that, as of 2023, it declared the component of this recommendation related to the strengthening of consular services for Salvadoran persons abroad to be fully complied with, although it values the information provided in 2024 by the State regarding this objective, including the implementation of the Protocol for Assistance and Humanitarian Management to provide support to Salvadorans abroad.

228. Regarding the component of the recommendation that requests measures to strengthen transnational coordination in the search for missing and deceased migrants, as well as the strengthening of mechanisms for the collection, custody, and analysis of forensic data and genetic banks, the Commission identifies as relevant measures the actions for taking samples for the Forensic Data Bank of Missing Migrants, as well as the participation in MAEBI and the CONABÚSQUEDA mission to Honduras. However, it identifies the importance of additional information demonstrating the results of these and other strengthening actions, specifying how, in practice, transnational coordination in the search for migrants has been optimized.

<sup>185</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>186</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>187</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>188</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>189</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

Considering the importance of additional efforts to strengthen these mechanisms, the Commission considers that this recommendation continues to be **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

229. The IACHR identifies that progress in compliance with this recommendation requires specific measures and information indicating the practical results of the reported measures, including the strengthening of the Forensic Data Bank of Missing Migrants, participation in the MAEBI or CONABÚSQUEDA's coordination with authorities in other countries. Likewise, it will be helpful to specify how civil society or relatives of migrants reported missing participate in implementing these compliance measures.

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

230. For the 2023 follow-up report, the IACHR highlighted the role of the Internal Forced Displacement Unit of the PGR, reported by the State and recognized by civil society, in providing assistance to this population and offering them protection and solutions to their situation. In addition, it highlighted the relevance of some initiatives reported to prevent and identify the risks of forced displacement, as well as efforts in school insertion of children and teenagers; access to job training programs; immediate health care, and assistance to migrant women. Likewise, the IACHR identified that, although a decrease in the percentage of forced internal displacement was reported, a significant number of cases would continue to be reported, as well as obstacles in guaranteeing and respecting the human rights of internally displaced persons. The Commission considered that the recommendation was **partially complied with**.<sup>190</sup>

*Information on compliance*

231. By 2024, the State indicated that, since the approval of the Special Law for the Attention and Integral Protection of Internally Displaced Persons in 2020, it has implemented various measures to protect this population. It indicated that the PGR established the Internal Forced Displacement Unit (hereinafter "UDFI"), which identifies, assists and offers solutions to displaced persons. It reported that between August 2023 and May 2024, the UDFI benefited 1,788 people through legal advice, psychological support, and humanitarian aid, in addition to facilitating access to labor rights, housing, and basic services to improve their living conditions and prevent further displacement.<sup>191</sup>

232. The State also reported launching the Linkage Project to reintegrate returned minors, financed by the MIRPS Fund and supported by the OAS. The project provides seed capital for entrepreneurship and scholarships in technical areas, benefiting families and promoting their economic autonomy. Likewise, it stated that in the labor field, the "My First Job" program, in collaboration with UNHCR, facilitates the inclusion of displaced youth in the labor market, reaching 616 hires with the support of 184 companies and reinforcing their social inclusion.<sup>192</sup>

233. Likewise, the State reported that in September 2024, the National Council for Early Childhood, Childhood and Adolescence (hereinafter "CONAPINA") signed an agreement with UNHCR to strengthen the protection of displaced and vulnerable children. The agreement includes the implementation of the Growing Together Act, the development of care protocols, and the improvement of safe spaces for psychosocial support. In addition, it stated that UNHCR works with the State and civil society in remodeling and technical support for

<sup>190</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023, 235-248.

<sup>191</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>192</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

the comprehensive care of children affected by violence and displacement, ensuring safe spaces and promoting durable solutions for this population at risk.

234. Likewise, the State again referred to the establishment of the “A tu lado” support centers (also reported in the framework of recommendation number 32) in San Salvador, Santa Ana, San Vicente and San Miguel to orient and provide specialized services to persons in mobility conditions, including those internally displaced.<sup>193</sup>

235. For its part, the Commission received information provided by civil society according to which some roadmaps for the care of displaced persons with the participation of State institutions at the district level have been promoted by organizations such as EDUCO and Cristosal in seven municipalities and that there is no evidence of policies to promote access to housing, work, health and education especially aimed at the needs of the population at risk and/or in a situation of displacement.<sup>194</sup>

236. In addition, the IACHR accessed additional information from civil society according to which, although the State report entitled “A New El Salvador”, dated 2024, indicates that the Directorate for Attention to Victims of the Ministry of Justice and Public Security attends to internally displaced persons, this type of displacement would now involve, under the exception regime, State agents as the perpetrators. According to what was indicated to the Commission, this would make it difficult for victims to seek help from government institutions, instead receiving support from human rights organizations.<sup>195</sup>

237. Additionally, it was noted that, from the beginning of the regime until June 2024, the organizations registered 985 victims of forced displacement. It was also reported that, despite the existence of a 2020 law that protects internally displaced persons, no regulations have been implemented to define prevention and action routes, limiting support to victims; and it was indicated that, in 2023, forced displacement increased compared to 2022, with threats as the main cause, followed by violence against women and abuse of authority. According to civil organizations, 72% of the cases identify the National Civil Police as responsible, followed by gangs and other state agents. Likewise, according to a civil society registry, in 2023, 588 cases of displacement were reported, while in 2024, 472 cases were registered.<sup>196</sup>

238. In its observations to this report, the State requested “greater methodological rigor for the incorporation of information from sources such as civil society organizations,” considering that it does not identify the basis for the claim that internal displacement in El Salvador “now involves state agents as perpetrators under the state of emergency.” El Salvador reiterated that it has promoted programs for the reintegration of returned migrants and internally displaced persons within the framework of the National Reintegration Plan, although it indicated that the main achievement in terms of human mobility has been the drastic improvement in security through the Territorial Control Plan. He also indicated that the unprecedented reduction in violence has transformed the country, with the result that migration for security reasons has practically disappeared as a determining factor in human mobility. In addition, he pointed out that the strengthening of security has generated confidence in the population, which is reflected in a notable decrease in forced internal displacements and in the return of Salvadorans who now find a stable and safe environment for their development.<sup>197</sup>

<sup>193</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>194</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>195</sup> Servicio Social Pasionista(SSPAS), Response to follow-up questionnaire, October 4, 2024. Cited: El Salvador, Cristosal registra 946 víctimas de desplazamiento forzado en el régimen de excepción, December 15, 2023. (Available only in Spanish). La Prensa Gráfica, Reportan 946 casos de desplazamiento forzado por régimen, December 23, 2023. (Available only in Spanish).

<sup>196</sup> Servicio Social Pasionista(SSPAS), Response to follow-up questionnaire, October 4, 2024. Cited: El Salvador, Cristosal registra 946 víctimas de desplazamiento forzado en el régimen de excepción, December 15, 2023. La Prensa Gráfica, Reportan 946 casos de desplazamiento forzado por régimen, December 23, 2023. (Available only in Spanish).

<sup>197</sup> State of El Salvador, Note MPOEA-OEA-011/2025, Observations on the draft of Chapter V, February 13, 2025.



*Analysis and level of compliance with the recommendation*

239. The IACHR notes that the State continued to report the relevance of the role of the UDFI of the PGR as a mechanism to provide assistance and protection to persons in situations of forced internal displacement, as well as a considerable number of benefits in terms of legal advice, psychological support and humanitarian aid. It also values positively the program “My First Job” which, in collaboration with UNHCR, facilitates the inclusion of displaced youth in the labor market, as well as the agreement signed in 2024 between CONAPINA and UNHCR to strengthen the protection of displaced and vulnerable children for the implementation of the Growing Together Act, the development of care protocols and the improvement of safe spaces for psychosocial support. Likewise, the IACHR identifies the relevance of the support spaces “A tu lado” to provide specialized attention to the population in conditions of mobility, including internal displacement.

240. In addition, the Commission has taken note of measures reported regarding the reintegration of returned migrants, although, as reported, their relevance to the implementation of this recommendation is unclear, considering that the latter refers specifically to persons in a condition of forced internal displacement and who, therefore, have remained in their own country.

241. The IACHR has also taken careful note of the concerns expressed by civil society that the levels of forced internal displacement in the country are still high and are motivated, among other reasons, by the effects of the emergency regime. This concern is heightened by the fact that this situation makes it difficult for government institutions to receive support. In this sense, despite the State measures reported, for the Commission, obstacles persist in guaranteeing and respecting the human rights of internally displaced persons that require the strengthening of comprehensive programs and measures to guarantee their rights. In this regard, it considers that the recommendation under follow-up continues to be **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

242. The IACHR identifies that progress in complying with this recommendation depends on reliable information that makes it possible to conclude that the measures reported by the State are sufficient, in terms of results, to provide attention to persons in conditions of forced internal displacement in the country. In this sense, the Commission urges the realization of a comprehensive diagnosis that considers the concerns expressed by civil society regarding the causes of forced internal displacement, the increase in these cases, and that allows to understand to what extent the reported measures should be strengthened or new instances of attention should be created.

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

243. For the follow-up report for the year 2023, the Commission took note of the Productive Reintegration Program with Psychosocial Attention, assistance spaces offered by the Department of Attention to Migrant Persons, and programs for young, returned migrants. Likewise, it valued the Human Mobility Policy presented by the Ministry of Foreign Affairs and the International Organization for Migration (hereinafter “IOM”) and identified the importance of knowing its content to comprehensively assess the actions to address the conditions and needs of children, victims of trafficking, persons with disabilities, LGBTI persons, the elderly and persons with medical needs, under the terms of this recommendation. The Commission considered that this recommendation advanced to a level of **partial compliance**.<sup>198</sup>

<sup>198</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 250-256.



*Information on compliance*

244. For the year 2024, the State indicated that, in November 2023, it launched the Human Mobility Policy that addresses the reintegration of returned migrants, especially the most vulnerable, such as children, the elderly, and those with specific protection needs. It also noted that the development of this policy underwent the following stages: agenda building and identification of the situation to be addressed, with a situational diagnosis in 2022; and design and/or formulation, with two phases of consultation. It also informed that the action plan of this policy has indicators and annual goals for each of its strategic lines and is consistent with the National Coordination Mechanism on Human Mobility, of 2023, and the National Implementation Plan of the Global Compact for Safe, Orderly and Regular Migration, of 2024. In addition, it indicated that a software to monitor the development of this measure is under construction, as well as an evaluation and follow-up plan.

245. Likewise, the State indicated that, as of 2023, it is formulating the National Plan for the Reintegration of Returned Persons 2025-2029, which coordinates efforts for sustainable reintegration and human rights, aligned with the Global Compact for Safe, Orderly and Regular Migration.<sup>199</sup>

246. The State also indicated that, in order to facilitate the reintegration of the persons mentioned in this recommendation, it has implemented projects such as “Reintegratech”, which offers digital training to young returnees to improve their job opportunities, and the Project for Change for Returnees, which trains young people in commerce, increasing their employability in coordination with local companies. It also reported that the “Transforming Lives” credit line offers financing to returnees to start or expand their businesses, and that, for the elderly, psychosocial care days have been organized and food kits and basic needs have been delivered.<sup>200</sup>

247. Likewise, the State referred to projects such as the inauguration of the Rincón Azul Store at the airport, which sells products made by returned entrepreneurs, and the “Cancillería Certifica” program to guarantee the quality of their products. In this regard, it was indicated that the Ministry of Foreign Affairs has also established agreements with national organizations to strengthen support to returnees in sectors such as technology, agriculture and housing, in order to create a support network for their economic and social reintegration.<sup>201</sup>

248. For its part, the Commission received information provided by civil society according to which the National Directorate for Attention to Victims and Forced Migration of the Ministry of Justice and Public Security faces difficulties in effectively addressing displacement and forced migration, mainly due to a lack of budget and the absence of a concrete plan of action. In addition, it was noted that, although there are regulations such as the Special Law for the Attention and Integral Protection of Persons in Condition of Internal Forced Displacement, its implementation is limited, since the necessary regulations to operationalize its provisions have not yet been adopted.<sup>202</sup>

249. It was also noted that civil society organizations make up for some of the governmental shortcomings and provide assistance to affected persons, but that it is necessary to strengthen institutional responses to meet the needs of migrants and displaced persons, who still lack adequate institutional support. It was also pointed out that the main challenges include the allocation of an adequate budget and the development of a regulation that specifies the roles of each institution involved, thus ensuring a coordinated and effective response to protect people in vulnerable situations.<sup>203</sup>

250. In its observations to this report, the State asked the IACHR to declare the level of substantial partial compliance with this recommendation, taking into account the development of the Human Mobility Policy and its implementation; the construction of the National Plan for the Reintegration of Returnees 2025-

<sup>199</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>200</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>201</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>202</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>203</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

2029; the reported projects in the areas of training and employability; financial support and entrepreneurship; comprehensive assistance and care; and institutional strengthening and intersectoral cooperation.<sup>204</sup>

*Analysis and level of compliance with the recommendation*

251. The IACHR values positively the information provided by the State regarding the stages that have taken place for the development of the Human Mobility Policy and its implementation in 2023. It also identifies that, according to publicly available information, this initiative was launched with the support of the International Organization for Migration (IOM), as a “crucial framework for the care and protection of Salvadorans on the move, as well as for the sustainable reintegration of returnees”<sup>205</sup>. On this matter, the Commission recognizes that the development of this Policy may contribute to the development of this recommendation and, in this sense, invites the State to report its results.

252. The Commission values the construction of the National Plan for the Reintegration of Returned Persons 2025-2029, which is under development and is awaiting the next stages of its design and implementation, specifically, its impact on benefiting migrant returnees in vulnerable situations, such as children, the elderly, persons with disabilities, LGBTI persons, and victims of trafficking. Considering that this plan is under development, the Commission invites the State to continue sharing information about its progress and invites the establishment of special mechanisms on its internal evaluation and identification of results.

253. Likewise, the IACHR values positively the projects reported by the State in the areas of training and employability; financial support and entrepreneurship; assistance and comprehensive care; and institutional strengthening and intersectoral cooperation. In this sense, the Commission identifies that the adoption of relevant measures on this recommendation continues and considers that the recommendation has advanced to a level of **substantial partial compliance**.

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

254. In order to advance in the full compliance with this recommendation, the IACHR invites the State to share information on the development and evaluation of the Human Mobility Policy and the National Plan for the Reintegration of Returned Persons 2025-2029, especially with respect to its differentiated coverage of the needs of each of the groups identified in the recommendation, namely children, victims of trafficking, persons with disabilities, LGBTI persons, the elderly and persons with medical needs.

#### 4. Human rights defenders

**Recommendation No. 37.** Adopt a legal framework for the protection and defense of human rights defenders and implement a comprehensive policy for the protection of human rights defenders, taking all necessary measures to put an end to the stigmatization and degrading accusations emanating from the State or its agents in order to prevent violence against journalists, human rights defenders and in accordance with Inter-American standards that establish special responsibilities for public authorities in the exercise of their freedom of expression.

255. For the 2023 follow-up report, the IACHR indicated that it was not aware of any actions in compliance with the recommendation. Regarding the adoption of a normative framework, it recalled that, despite the fact that a proposal has been presented, the bill for the recognition and comprehensive protection of human rights defenders and for the guarantee of the right to defend human rights, it was shelved. In addition, it noted with concern allegations regarding the increase in threats, harassment, persecution and violations of

<sup>204</sup> State of El Salvador, Note MPOEA-OEA-011/2025, Observations on the draft of Chapter V, February 13, 2025.

<sup>205</sup> OIM Norte de Centroamérica, Gobierno de El Salvador y OIM presentan Política de Movilidad Humana, December 1, 2023. (Available only in Spanish).

personal freedom and integrity against human rights defenders, especially journalists and women, as well as regulations and administrative practices that would hinder their work. In this sense, the Commission emphasized the need for comprehensive policies and specialized programs for the protection of the persons mentioned in the recommendation, which would also be supported by the reduction of the number of aggressions against them and the suppression of hostile or dangerous environments for their work. In addition, it considered that the recommendation was **pending compliance**.<sup>206</sup>

#### *Information on compliance*

256. By 2024, the State indicated that it has an institutional structure to protect human rights defenders and journalists. It stated that the FGR investigates crimes against these groups, rigorously applying the law without discrimination. It also stated that the State implements mechanisms for complaints and protection against harassment and reprisals, including possible abuses of force by State agents and that, in this regard, it created the Office of Citizen Attention for Internal Control (hereinafter "ODACCI") within the National Civil Police, which handles complaints of human rights violations committed by both operational and administrative personnel. According to the State, these efforts underscore the State's commitment to the protection of these fundamental actors.<sup>207</sup>

257. For its part, the Commission received the information provided by civil society according to which there are no state measures to stop the stigmatization and attacks against human rights defenders, nor a regulatory or adequate framework or a comprehensive policy to ensure their safety. In this regard, it was pointed out that the current government has weakened the protection of these persons through legal reforms and an intensive use of the exception regime. Among the reported effects of these measures are the severe restriction of guarantees of freedom of expression and other fundamental rights, the accusations of these people, and difficulties in accessing a fair defense.<sup>208</sup>

258. It was also highlighted that human rights organizations and defenders of democracy face state surveillance and persecution and that the emergency regime, implemented in 2022, has led to arbitrary detentions and abuses of power, affecting mainly vulnerable populations. In addition, some recent reforms that implied greater restrictions were specified.<sup>209</sup> In this regard, it was stated to the IACHR that initiatives such as the proposed law on "Foreign Agents" seek to control the activities and finances of civil organizations, requiring additional oversight and restricting their operations. According to what was stated to the Commission, this legislation reflects a context of systematic repression that hinders the joint work between institutions and civil society, seriously affecting the rule of law and democracy in the country.<sup>210</sup>

259. Likewise, it was pointed out to the Commission that women defenders, in particular, face discrimination and violence, often with the institutional support of hate speeches, and that there are no specific

<sup>206</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 258-284.

<sup>207</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>208</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024. Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024. Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024; Servicio Social Pasionista (SSPAS), Response to follow-up questionnaire, October 4, 2024; the latter cited Mesa por el Derecho a Defensor Derechos, *Informe de agresiones contra personas defensoras y periodistas: análisis de casos 2023*, May 2024 (available only in Spanish) and noted that, according to this report, from "2020 to 2023, 693 aggressions against defenders and journalists were registered, mainly in the areas of defense of freedom of expression, women's rights, and defense of the environment and territory, with state agents being the ones who are indicated as mostly responsible (46.5%) during 2023, being stigmatizing statements the most frequent aggression modalities (42 cases), followed by arbitrary detention (12) and restriction to the journalistic exercise (12)".

<sup>209</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024; some cases from 2024 were reported regarding detentions of women linked to the defense of human rights while pregnant, as well as cases opened against the Movimiento de Víctimas del Régimen de Excepción (Movir) and the Comité de Familiares de Personas Presas y Perseguida Política en El Salvador (Copappes). Asociación Mujeres Transformando, Response to the follow-up questionnaire, October 4, 2024.

<sup>210</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024.

norms to guarantee their rights.<sup>211</sup> In addition, differential effects of discrimination and violence were noted with respect to defenders of land, natural resources and labor rights.<sup>212</sup>

260. In its observations to the present report, the State indicated that it reaffirms its commitment to the protection of human rights, guaranteeing safe conditions for human rights defenders and promoting policies that ensure respect and dignity for the victims of violence. In this regard, it requested recognition that:

- The Territorial Control Plan has been a key factor in the protection of human rights defenders and in guaranteeing the rights of gang victims.
- The eradication of criminal structures has improved security for those who work to defend fundamental rights, eliminating threats and risks that in the past limited their work.
- The strengthening of the justice system has guaranteed more effective access to protection for victims of gang violence, ensuring that they can report incidents without fear of reprisals.
- The creation of specialized courts for organized crime has made it possible to speed up legal proceedings against gang members, providing effective justice for those affected by these criminal groups.

261. On the other hand, regarding initiatives such as the proposed “Foreign Agents” law, the State affirmed that although a draft Foreign Agents Law was presented to the Legislative Assembly in 2021, this measure was not intended to affect social organizations, but rather to promote transparency in foreign funding, as part of the Government's commitment to ensure that international cooperation activities contribute to economic and social development, and to guarantee that the resources channeled into the country achieve the best results and are oriented towards the priorities of the Government, for the benefit of the real needs of the population. In addition, he indicated that the content and scope of this law were not new on the international scene, and that countries with a long democratic tradition and important partners of El Salvador have similar laws. It clarified that this law was not approved and that any promotion of an initiative of this nature will be subject to prior consensus with the relevant national actors and must observe the law-making process provided for in the Constitution. In addition, the State indicated that the information on this law does not correspond to the time frame that was defined with the Commission prior to the issuance of the report on its *in loco* visit.<sup>213</sup>

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

262. The Commission recalls that the follow-up of this recommendation is aimed at establishing whether the State has adopted a legal framework for the protection and defense of human rights defenders and whether it has implemented a comprehensive protection policy in their favor. From the information provided by the State, the IACHR does not identify concrete measures aimed at this purpose. Although the State reported the creation of the Office of Citizen Attention for Internal Control (hereinafter “ODACCI”) within the National Civil Police, as well as the Territorial Control Plan, the eradication of criminal structures, the strengthening of the justice system and the creation of specialized courts for organized crime, the IACHR requests additional and detailed information that will allow it to conclude that these are effective protection measures, in the terms indicated by the recommendation.

263. On the other hand, the IACHR shares the concern of civil society regarding the context of threats, harassment, persecution and violations of freedom and integrity against human rights defenders that has been reported<sup>214</sup>. For the Commission, these positions reinforce the importance and urgency of adopting compliance measures. In this sense, it concludes that the recommendation is still **pending compliance**.

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<sup>211</sup> RED-FEM, Response to follow-up questionnaire, October 4 and 22, 2024; cited: ORMUSA: [Estudio sobre situación actual de las mujeres como defensoras de derechos humanos en El Salvador](#), July 11, 2023. (Available only in Spanish). Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>212</sup> Asociación Mujeres Transformando, Response to follow-up questionnaire, October 4, 2024.

<sup>213</sup> State of El Salvador, Note MPOEA-OEA-011/2025, Observations on the draft of Chapter V, February 13, 2025.

<sup>214</sup> RED-FEM, Response to the follow-up questionnaire, October 4 and 22, 2024. Asociación Mujeres Transformando, Response to the follow-up questionnaire, October 4, 2024. Cristosal Foundation, Response to the follow-up questionnaire, October 4, 2024. Pasionista

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

264. As in 2022 and 2023, the IACHR reiterates the need for the State to adopt a legal framework for the protection and defense of human rights defenders and to implement a comprehensive policy in their favor. These must include protection measures that support the work carried out by defenders, activists, and journalists and, at the same time, guarantee adequate treatment of cases that result in human rights violations. Likewise, the IACHR insists on the need for the State to urgently adopt all necessary measures to put an end to the stigmatization and degrading accusations against journalists and human rights defenders, considering the context described above.

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

265. For the follow-up report for the year 2023, the IACHR recalled that its Report on the Situation of Environmental Human Rights Defenders in Northern Central American Countries, published by the IACHR in April 2023, noted that information on crimes against human rights defenders is limited in the country. Thus it is not possible to have an approximate number of attacks and other acts of violence committed against them, and that the lack of investigation and punishment of those responsible for these crimes has led to high rates of impunity. In this context, the IACHR identified no known State measures to comply with this recommendation and concluded that the recommendation is still **pending compliance**.<sup>215</sup>

*Information on compliance*

266. By the year 2024, the State affirmed that it has an institutional framework to guarantee the free exercise of the work of human rights defenders and pointed out that the criminal prosecution of threats or attempts against the life, integrity, security or any other right of these persons is effectively carried out by the FGR, regardless of the actors or perpetrators. It indicated that this entity processes with due diligence any complaint or illegal act brought to the prosecutor's attention, including those against human rights defenders and pointed out that this entity is part of the national system for the protection of human rights. The State pointed out that the prosecutorial functions and services are deployed throughout the national territory, free of charge, through the Prosecutor's Offices located in each departmental capital and in peripheral cities, and through the Specialized Investigation Units. In addition, it stated that the State has submitted its observations and different requests regarding particular cases under processing by the IACHR, within the framework of precautionary measures granted, and that it is awaiting a response.<sup>216</sup>

267. In its observations to this report, the State pointed out that the Territorial Control Plan has been a key instrument in the protection of human rights, having dismantled the criminal structures that for decades systematically violated the rights of thousands of Salvadorans. It stated that, due to this strategy, the main perpetrators of human rights violations have been brought to justice and are facing legal proceedings in compliance with current legislation. In addition, he indicated that this plan has managed to drastically reduce the rates of violence, preventing the gangs from continuing to operate with impunity; that specialized courts have been established for organized crime, and that the justice system has been strengthened with effective measures that guarantee due process, allowing the victims of these crimes to access justice in a more agile and secure manner. He pointed out that the State's commitment to guaranteeing human rights includes the protection of human rights defenders, who can now carry out their work without fear of reprisals from criminal structures. In this sense, he asked the IACHR to recognize these advances, highlighting the importance of the Territorial Control Plan as a model of success in the fight against crime and the protection of human rights, and

Social Service (SSPAS), Response to the follow-up questionnaire, October 4, 2024; the latter cited Mesa por el Derecho a Defender Derechos, Informe de agresiones contra personas defensoras y periodistas: análisis de casos 2023, May 2024.

<sup>215</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 286-291.

<sup>216</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

affirmed that El Salvador has a solid institutional framework that guarantees the free exercise of the work of defending human rights.<sup>217</sup>

*Analysis and level of compliance with the recommendation*

268. In the framework of the follow-up of this recommendation, the IACHR has taken note of the State's claims, and the information provided on the Territorial Control Plan. However, it does not identify specific measures of compliance in terms of investigation and institutional strengthening for the prosecution and punishment of those materially and intellectually responsible for crimes against human rights defenders, which is the specific object of this recommendation. With regard to the Territorial Control Plan, the information provided is not sufficient to verify how, in practice, this measure has involved carrying out effective investigations with due diligence in order to identify, prosecute and punish the perpetrators and masterminds of crimes against human rights defenders. In this sense, it identifies that this recommendation is still **pending compliance**.

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

269. Reiterating the guidelines for implementation of this recommendation from previous years, the IACHR urges the State to take the necessary actions to carry out investigations to identify, prosecute and punish the individuals responsible both materially and intellectually for crimes committed against human rights defenders. These actions should include a transparent registry of complaints and events related to these crimes, with the purpose of evaluating how the investigation, prosecution and punishment activities contribute to combating impunity in cases of this nature.

## 5. Indigenous Peoples and People of African Descent

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

270. In Chapter V of the 2023 Annual Report, the IACHR appreciated the fact that a census is being prepared that will consider international recommendations on indigenous and Afro-descendant persons. It also reiterated its concern about the absence of data and statistics on the human rights situation of the Afro-descendant population and tribal communities and called on the State to address the need to compile detailed and updated statistical information to serve as a basis for the formulation of public policies. In addition, it stressed the importance of including self-identification as Afro-descendant in all data collection systems and of using the category of ethno-racial origin instead of the terms race, ethnicity or lineage. Consequently, it considered that this recommendation is **pending compliance**.<sup>218</sup>

*Information on compliance*

271. For the year 2024, the State affirmed that the Central Reserve Bank (hereinafter "BCR") launched the VII Population Census and VI Housing Census, highlighting those 17 years had passed without updated data on the number of Salvadorans living in the territory. In this regard, it indicated that this instrument allowed for the collection of "disaggregated demographic information with a territorial approach on the characteristics of the population and its environment" and facilitates the monitoring of social policies on income and social protection, as well as the improvement of labor policies with a rights-based approach.

<sup>217</sup> State of El Salvador, Note MPOEA-OEA-011/2025, Observations on the draft of Chapter V, February 13, 2025.

<sup>218</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023, paras. 293-296.



272. The State also stated that the Ministry of Culture is currently conducting a population census under the direction of the Central Reserve Bank and that the latter has consulted “in a timely manner” with organizations of indigenous peoples and Afro-descendants, as well as with the Ministry of Culture, in order to receive input that will ensure the proper formulation of the census instrument with respect to these groups, and clarified that the census process is underway. Additionally, the State indicated that the Ministry of Culture is conducting a census of the linguistic community of speakers of the Náhuat language in El Salvador.<sup>219</sup>

273. In its observations to this report, the State indicated that it has concluded its VII Population and VI Housing Census, which included a question for the self-identification of the Salvadoran population. It stated that, according to the results of this census, 68,148 people consider themselves to belong to an indigenous people, which represents 1.1% of the total population. It reported that, according to the disaggregated data, the identified indigenous population is as follows: 43.2% Nahuat Pipil; 20.4% Lenca; 9.2% Kakawira (Cacaopera); 5.9% Maya Chortí; 3.2% Maya Pocomames; 0.3% Xinca; 0.2% Mangué and 0.1% Mixe or Alagüilac. In addition, it reported that among the recognized indigenous languages spoken by the population are Nahuat with 1,135 speakers, Pisbi (Cacaopera) with 24 speakers and Potón (Lenca) with 32 speakers. According to the State, this progress in the learning and preserving the Nahuat language is possible thanks to the efforts of communities and teaching projects that seek to revitalize this cultural jewel. In addition, he mentioned that this data includes both native speakers and neo-Nahuatl speakers, who have recently learned the language. Likewise, according to the population census, 23,690 people self-identify as African descent, of whom 13,183 are women and 12,507 are men.<sup>220</sup>

*Analysis and level of compliance with the recommendation*

274. The Commission positively values the information provided by the State during the year 2024 and notes that, thanks to recent census measures, relevant data on the indigenous population and people of African descent have been updated. In this regard, it is not clear to the Commission if the VII Population Census and VI Housing Census of the BCR would be the same or additional to the one reported by the Ministry of Culture, so it invites the State to provide information in this regard.

275. The IACHR recalls that the issuance of this recommendation was based on the need to improve the collection of disaggregated statistical information on the different peoples that exist in the country, which include the Nahua, Pipil, Lenca, Kakawira and Maya Chortí peoples, as well as the need for a legal framework for greater protection of their rights; in addition, at the time, it regretted the scarce information available on Afro-descendants. Considering the importance of compliance measures and that the censuses were effectively carried out, yielding relevant statistical data for the populations indicated in the recommendation, the IACHR concludes that this recommendation has advanced to a level of **partial compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

276. To make progress in complying with this recommendation, the IACHR requests additional information on:

- (i) the details of the design, implementation and analysis of the censuses carried out, specifying whether there was consultation and participation of indigenous peoples and people of African descent in the design of the methodology and, if so, the details of its implementation.
- (ii) the measures that the State will continue to implement to generate comprehensive statistical records regarding the persons indicated in the recommendation, which will be useful in the adoption of measures to respond to their particular needs.

<sup>219</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>220</sup> State of El Salvador, Note MPOEA-OEA-011/2025, Observations on the draft of Chapter V, February 13, 2025.

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

277. For the follow-up report for the year 2023, the State informed that it is analyzing the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, as well as the Convention on Indigenous and Tribal Peoples 169 of the International Labor Organization to decide whether to refer them to the Legislative Assembly for consideration and possible ratification. It reiterated the importance of ratification of these instruments and, in the meantime, concluded that the recommendation was **pending**.<sup>221</sup>

*Information on compliance*

278. For the year 2024, the State indicated that the ratification process of international instruments requires various consultations on constitutional aspects, legality and other analyses. In this regard, it indicated that the referral to the Legislative Assembly of ILO Convention 169 and the Inter-American Convention mentioned in this recommendation.<sup>222</sup>

*Analysis and level of compliance with the recommendation*

279. In view of the absence of updated information on the ratification of the instruments mentioned in the recommendation, the IACHR reiterates what it stated in its follow-up report of 2022, indicating that this constitutes an indispensable step for the respect and guarantee of all human rights, and the prevention and eradication of all forms of discrimination. As the aforementioned Inter-American Convention and ILO Convention have not been ratified, the IACHR considers that this recommendation is **pending compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

280. The Commission reiterates its invitation to the State to promote the ratification of both instruments and to inform the Commission on the substantial progress of this process.

**F. Economic, social, cultural and environmental rights**

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

281. For the previous follow-up report, the State reported on the monitoring of labor rights by the General Directorate of Labor Inspections; the employment promotion policies of the Ministry of Labor and Social Welfare; the fiscal policy 2019-2024 that seeks to modernize the tax system and actions of the Ministry of Environment and Natural Resources (hereinafter "MARN") on extractive activities. For its part, the IACHR and its REDESCA highlighted its concern about the impact of megaprojects and metal mining on the environment in a country with scarce water availability. The Commission considered that the recommendation was pending compliance and requested specific measures to promote standards regarding (i) extractive activities, (ii) provision of essential public services, and (iii) fiscal or tax policies, considering vulnerable individuals and groups.<sup>223</sup>

<sup>221</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), paras. 298-300.

<sup>222</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>223</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), December 31, 2023, paras. 302-310.

*Information on compliance*

282. For the year 2024, the State pointed out that, as part of the second mandate of the current government, the El Salvador Economic Plan has been implemented, which includes three stages:

- The first seeks to develop a food security approach through the installation of AgroMercados and the construction of food supply centers.
- The second is about technology and focuses on boosting macroeconomic growth, within which the State highlighted the first Tier III certified Commercial Data Center in the country that will offer advanced services such as colocation, public and private cloud, and dedicated spaces for people.
- The third seeks to strengthen the country's logistics infrastructure through an investment of US\$1,615 million, which, according to the government, is the most significant to date in El Salvador.

283. With respect to essential public services, the State pointed out that the Salvadoran Water Authority (hereinafter "ASA") issued the Special Regulation for the Determination of Fees for the Use and Development of Water Resources, according to which the Water Boards and community organizations that provide water distribution services for human consumption will not pay any fee. The State indicated that this measure especially benefits inhabitants of rural areas, where a large number of populations of indigenous and Afro-descendant descent are located.<sup>224</sup>

284. For its part, the Commission learned information from civil society according to which the MARN is in charge of implementing the regulatory framework for the respect and guarantee of human rights in the face of business activities, including extractive industries. According to information obtained by an organization that responded to the IACHR questionnaire, the MARN reported to have presented, in June 2022, the National Environmental Policy, valid for 5 years.<sup>225</sup> According to this information, this policy seeks to "address the main environmental challenges and problems affecting Salvadoran society today," such as "the negative implications on the natural hydrological regime, the impact of climate change, environmental sanitation, damage to (...) biodiversity and the degradation of unique and vulnerable ecosystems (...) and the need for a more energetic and effective environmental management".<sup>226</sup>

285. The Commission was also informed that the general purpose of the National Environmental Policy is to "incorporate sustainability criteria into the development model in the face of major climate and environmental challenges" and, in addition, its specific objectives, problems to be addressed and strategic guidelines were indicated, namely, the management of water resources to ensure their security over time; climate risk management and the transition to a low-carbon economy; the integration of biodiversity into economic and social development activities; and the promotion of environmental management that favors the protection and conservation of resources.<sup>227</sup>

286. According to the information provided to the IACHR, although the policy is broad and addresses important concerns, it is insufficient to guarantee human rights in the face of extractive activities with unfavorable conditions for the right to water and a healthy environment. In this regard, it was indicated

<sup>224</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>225</sup> Foro del Agua El Salvador, Response to the follow-up questionnaire, October 4, 2024. In this regard, this organization noted that the information on this national policy was provided by MARN in response to a previously made request (which was allegedly admitted by the entity on October 2, 2024, through reference No. MARN-2024-00238).

<sup>226</sup> Foro del Agua El Salvador, Response to the follow-up questionnaire, October 4, 2024. In this regard, this organization quoted excerpts from the response issued by MARN (which was allegedly admitted by the entity on October 2, 2024, through reference No. MARN-2024-00238).

<sup>227</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

to the Commission that this policy would have the following shortcomings that prevent full compliance with the recommendation under follow-up:<sup>228</sup>

- It allegedly does not make direct reference to the structural causes of the ecological crisis, but rather “attributes the deterioration of environmental conditions to the absence of an adequate territorial planning framework and an excessive institutional framework”. According to the report, “the policy allegedly does not identify the bases of a neoliberal economic model, based on extractivism and overexploitation of natural resources, as the main cause of ecological injustice”.
- The application of this policy is allegedly taking place in a context of strengthening of the neoliberal model which, according to what was pointed out to the Commission, would facilitate the “conditions for extractivist companies to develop their economic activity”. In this regard, it was pointed out, for example, the opinion of the Legislative Assembly of September 2, 2024 to create the Directorate of Territorial Planning and Construction to reduce the processing time of construction permits; provisions on income tax exemption for investors in construction; the exoneration of water use fees for the sugarcane agro-industry or an eventual reactivation of the extractive activity of Metallic Mining.

287. In addition, in this regard, information was provided to the IACHR on the concern of civil society regarding the granting of environmental permits to companies and industries that allegedly degrade life in the territory. In this regard, the following cases were:<sup>229</sup>

- A surf tourist circuit that would be carried out in territories of the Icacal community, Intipuca, in the department of La Unión;
- The use of 100 blocks for solar panels and electricity generation to feed a bitcoin mining plant in Finca Santa Adelaida, affecting the communities of Chorro Arriba, Chorro Abajo, Cuntán and Cuyagualo, in the district of Izalco, Sonsonate Este, department of Sonsonate;
- The mega-project of the Pacific Airport that allegedly caused the forced displacement of numerous families without fair compensation and that was allegedly initiated without an approved environmental impact study. It was pointed out that, although the Autonomous Port Executive Commission (CEPA) is conducting the environmental analysis, the work is underway with irreversible damage to the communities, flora and fauna, and that the airport is being built in a wetland area protected by the Ramsar Convention, crucial for the regulation of the biosphere and water recharge, and a vital wildlife corridor.

288. Likewise, information collected by REDESCA suggests possible situations of persecution against activists opposed to gold and other metals mining, which in turn could have potential effects on water use and the environmental situation.<sup>230</sup> In 2017, El Salvador's legislature voted to ban gold and other metals mining in what was considered a historic event. However, five activists, who were instrumental in the campaign against mining because of its effects on water, were charged for events that occurred in the 1980s unrelated to the issue and placed under house arrest.<sup>231</sup> Although the charges against these individuals were finally dropped in October,<sup>232</sup> this situation raises the possibility of persecution of activists opposed to possible attempts to reverse the ban on gold mining.

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

289. Based on the information provided by the State, the IACHR values the adoption of the El Salvador Economic Plan and the exemption of the water resources fee for water boards and community

<sup>228</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>229</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>230</sup> Truthout, [Champions of El Salvador's Historic Mining Ban Face Legal Persecution](#), January 11, 2024.

<sup>231</sup> Truthout, [Champions of El Salvador's Historic Mining Ban Face Legal Persecution](#), cited above.

<sup>232</sup> The Guardian, [Environmentalists acquitted after contentious murder trial in El Salvador](#), October 19, 2024.

organizations that provide water distribution services for human consumption with benefits for rural inhabitants. For its part, the Commission has taken careful note of the information provided by civil society regarding the importance of the National Environmental Policy, as well as its alleged insufficiency to guarantee human rights in the face of extractive activities. It also takes note of possible persecution of activists opposed to extractive activities linked to gold mining. In this regard, the Commission urges the State to assess the concerns expressed and to indicate the concrete measures it has adopted to incorporate standards on business and human rights with respect to these activities. Pending this specific information, the Commission identifies that this recommendation remains **pending compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

290. The IACHR recalls that the analysis of compliance with this recommendation is based on identifying concrete State measures that implement Inter-American standards related to business and human rights, specifically with regard to extractive activities, the provision of essential public services and fiscal policies or tax practices, with special consideration for individuals and groups in situations of vulnerability.<sup>233</sup>

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

291. For the previous follow-up report, the State reported that the Ministry of Education, Science and Technology (hereinafter "MINEDUCYT") has integrated human rights issues into the school curriculum through the subject Moral, Civility and Civics (hereinafter "MUC") and teacher training. It also noted that, under the "My New School" program, the social studies subject in the third cycle of basic education is being reformed, with a focus on human rights. In addition, the Commission learned that, as of 2022, the Inclusive Education program integrates content for students with disabilities and technical assistance for teachers. The IACHR determined that this recommendation has advanced to be partially complied with and requested information on the time, manner, place and results of the implementation of the program and reformed curricular content on equality, non-discrimination and citizen coexistence.<sup>234</sup>

*Information on compliance*

292. By the year 2024, the State reported that the curricula for the Second Cycle of Basic Education and Secondary Education in the subject of Social Studies include themes of equality, non-discrimination and citizen coexistence; that all educational levels integrate critical and responsible participation in society as a competency, and that the "grade and unit objectives" as well as the "content and achievement indicators" seek that students participate in the family, school and society.<sup>235</sup>

293. In addition, the State pointed out that the "My New School" curriculum renewal process is underway for all programs and subjects at different educational levels, which seeks that the Third Cycle of Basic Education integrates themes of equality, non-discrimination and citizen coexistence to the subject of Social Studies, at a theoretical and practical level, with content on interculturalism, human rights and citizen participation. Regarding the latter, it pointed out that the new curricula began in 2024 and that the curricular reform will be carried out gradually in the other educational levels.<sup>236</sup>

294. The State also pointed out that the entire student population of the Third Cycle of Basic Education, as well as the teaching staff, have textbooks with the new contents for the Social Studies subject at the national level in the public sector. It pointed out that the contents of the Third Cycle Social Studies Program

<sup>233</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), December 31, 2023, para. 310.

<sup>234</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), December 31, 2023, paras. 312-317.

<sup>235</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>236</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

include topics such as national and international mechanisms and instruments and institutions to guarantee human rights; collective and specific rights; political and cultural transformations, including women's rights; guarantees for a dignified life; citizen actions to promote the rights of vulnerable populations; defense mechanisms and citizen participation. Finally, the State clarified that the subject Moral, Civility and Civics in El Salvador was incorporated into the national curriculum as of Legislative Decree No. 278 of 2016 and that its implementation began as of 2018.<sup>237</sup>

295. For its part, the IACHR heard allegations from civil society regarding alleged statements by state authorities, including representatives of the Ministry of Education, Health and Culture, contrary to the promotion of educational content on equality and non-discrimination, specifically with regard to diverse sexual orientations and gender identity.<sup>238</sup>

296. In its observations to the present report, regarding the allegations made by civil society on statements made by state authorities that they consider contrary to the promotion of educational content on equality and non-discrimination, specifically with regard to diverse sexual orientations and gender identity, the State noted that the recommendation refers to a specific measure related to the school curriculum. In this sense, it pointed out that the objective element of analysis should be the inclusion or not of such content in the school curriculum, and not what is related to statements by public officials. In addition, the State confirmed that the statements cited correspond to the values and vision of the Government of the current President.<sup>239</sup>

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

297. The Commission identifies that the "My New School" curriculum renewal process for all programs and subjects at different educational levels is a relevant measure to comply with this recommendation. Considering that it began with the integration of equality, non-discrimination and citizen coexistence in the subject of Social Studies in the Third Cycle of Basic Education, as of 2024, the IACHR encourages the completion of the process for the other educational levels, provided that it is in accordance with Inter-American human rights standards.

298. In this regard, the Commission identifies the importance that this process be used as a mechanism to enhance the inclusion of the contents indicated in the recommendation within the school curriculum. In this sense, it invites that, in addition to completing its implementation, the Commission be informed about mechanisms that ensure its sustainability and, in addition, the measurement and monitoring of its results.

299. Also, considering the allegations made by civil society regarding the lack of inclusion of content related to the rights of LGBTIQ+ persons, the Commission requests specific information explaining how this reform process ensures the inclusion of Inter-American standards that prevent any type of discrimination or violence against these persons, based on their sexual orientation and gender identity or expression.

300. For its part, the IACHR has taken note of the State's observation that the objective element of analysis of this recommendation should be the inclusion or not of content in the school curriculum, and not the statements of public officials. In this regard, the IACHR identifies that the prohibition stated by the President

<sup>237</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>238</sup> The reported facts were as follows: in September 2022, the Ministry of Education allegedly censored educational content on sexual orientations in the "Aprendamos en casa" slot on Channel 10, which is state-owned media; on February 7, 2024, the Minister of Education allegedly published on his X account the message: "all use or all traces of gender ideology we have removed from public schools"; on February 28, 2024, the Ministry of Health allegedly ordered to remove from health units all material related to sexual diversity to specify the gender identity of patients; on June 17, 2024, the Ministry of Culture allegedly censored the play "Immoral" of the queer collective Proyecto Inari, qualifying it as not suitable for families and canceling its second performance; on June 27, 2024, the President announced in his X account the dismissal of more than 300 people from the Ministry of Culture pointing out that dismissals impacted "those who promote agendas that are not compatible with the vision of this Government....". Red Feminista frente a la Violencia contra las Mujeres (RED-FEM), Response to the follow-up questionnaire, October 4, 2024.

<sup>239</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.



of the Republic of a gender ideology in schools<sup>240</sup>; the information on an alleged memorandum from the Minister of Education on February 28, 2024 excluding materials and content related to “gender ideology” from public schools, and his statement of February 27, 2024 informing the elimination of “any use or trace of gender ideology from public schools”<sup>241</sup> does have an impact on the analysis of compliance with this recommendation. For this reason, the Commission invites the State to provide specific information on the scope of the prohibition indicated by the authorities with respect to the school curriculum and the specific material that has been eliminated, if any.

301. For the IACHR, it is relevant to have this information in order to assess whether the prohibition of the material referred to by these authorities has any impact on the inclusion in the school curriculum of issues of equality, non-discrimination, coexistence, tolerance and peaceful conflict resolution, inclusion and respect for human rights. Pending this information, the Commission considers that this recommendation remains **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

302. The Commission invites the State to report on progress in the implementation of the “My New School” curriculum renewal process or similar processes that develop the components of the recommendation at the different educational levels. In addition, to guarantee and report on its mechanisms for sustainability and internal measurement and follow-up, with a view to ensuring its continuity over time, as well as its results. Also, considering the allegations made by civil society regarding the lack of inclusion of content related to the rights of LGBTIQ+ persons, the Commission requests specific information to explain whether this reform process ensures the inclusion of the Inter-American standards that prevent any type of discrimination or violence against these persons based on their sexual orientation and gender identity or expression. In addition, it invites the State to specify, if applicable, the scope of the material or the prohibition of what the authorities have indicated as “gender ideology”.

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

303. In the previous follow-up report, the IACHR assessed progress in the implementation of the General Law on Water Resources (hereinafter “LGRH”); in the adoption of the Special Regulation for the Determination of Fees for the Use and Development of Water Resources and the Guidelines for Transparency in the Canon; in the socialization of the LGHR by the ASA, and in the latter’s support to the water boards. In this sense, it identified progress in the recognition of the right to drinking water and sanitation, and in the administration of the resource as a public good from a rights-based approach. In turn, it awaited the adoption of the General Regulations of the LGHR; it identified challenges to ensure that water use permits and agreements with companies do not jeopardize this right and considered that the recommendation advanced to the level of **substantial partial compliance**.<sup>242</sup>

<sup>240</sup> Diariocolatino, Bukele cambia su discurso respecto a la ideología de género, 29 February 2024; Radioamericah, Bukele dice que escuelas de El Salvador no existe espacio para la ideología de género; Radioamericah, Bukele dice que escuelas de El Salvador no existe espacio para la ideología de género.

<sup>241</sup> La Prensa Gráfica, Ministerio de Educación amenaza con despidos si se difunde “ideología de género” en escuelas públicas de El Salvador, February 29, 2024. Pineda R, José Mauricio, [@JMauricioPineda], (2024, February 27), “Confirmed: all use or trace of gender ideology we have removed from public schools.” [Tweet], <https://x.com/JMauricioPineda/status/1762545694190023000?mx=2>.

<sup>242</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023, paras. 319-327.

*Information on compliance*

304. For 2024, the State indicated that the LGRH issued guidelines for water management policies to consider the needs of rural and indigenous populations and respect the traditional and cultural uses of this resource. It also reiterated information provided in 2023 according to which the ASA issued the “Special Regulation for the determination of fees for the use and exploitation of water resources” which establishes that the Water Boards and community organizations that provide the service of water distribution for human consumption will not pay fees, with special benefit for inhabitants of rural areas, and communities of indigenous and Afro-descendant descent.<sup>243</sup>

305. In addition, the State indicated that it had issued guidelines for water supply activities to apply the coefficient based on the social interest or purpose of its use and exploitation for the cultivation or production of food that make up the basic food basket or for the generation of public electric power. These guidelines state that the administration of this resource must consider the regular, permanent and free access that every person must have to a quantitatively and qualitatively adequate and sufficient food supply.<sup>244</sup>

306. The State also indicated that the ASA and the National Aqueduct and Sewer Administration (hereinafter “ANDA”) signed an Interinstitutional Cooperation Agreement to coordinate technical, legal, administrative, scientific and financial efforts to ensure the application of the regulations in force. In addition, it stated that ANDA will allocate US\$4,940,000 million, from the fees for the use of the resource, to initiatives that improve the access and quality of water and sanitation services.<sup>245</sup>

307. Likewise, the State indicated that the ASA attends to requests from natural or legal persons to use and exploit the water resource for purposes other than domestic use, for which it must determine the availability of the resource, in accordance with the priority uses established by the LGRH or possible effects on other sources of supply. Within this process, the dissemination and publication of these processes in newspapers and other digital platforms and municipalities is foreseen (Art. 77 LGRH), and citizens may oppose the issuance of the authorization (Art. 78 LGRH) when they consider that there is a possible infringement. The State pointed out that, once the authorization is issued, the ASA can carry out water audits (Art. 86 LGRH) or determine liability for non-compliance with the conditions set in the authorization.<sup>246</sup>

308. For its part, the Commission learned that on October 3, 2024, the ASA responded to a request for information from an organization stating that the General Regulations of the LGRH are being prepared and that they will include water planning. In addition, it was pointed out that this law establishes the aspects to be regulated by the secondary regulation.<sup>247</sup> On this matter, although the importance of adopting such regulation was recognized, concern was expressed that it has not been approved, almost three years after the adoption of the LGRH and more than two years since its entry into force, and that its elaboration is part of an “opaque, inconsistent process, without information and without citizen and community participation”, without the participation of organizations working for the human right to water, sustainability and water justice. In this regard, particularly, the El Salvador Water Forum (composed of two hundred Rural and Urban Water Boards and sixty civil society organizations) regretted not having been invited to participate, despite being active in the implementation of the LGRH with the presentation of complaints, requests and briefs before the ASA.<sup>248</sup>

<sup>243</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>244</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>245</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>246</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>247</sup> On these aspects, articles 18.1 (attributions of the president of the ASA); 27.a (attributions of the Executive Directorate of the ASA); 35.d (Subsectors and Competent Entities, in matters of Water for industrial, agro-industrial, recreational and other purposes); 46.2 (Compliance indicators on design, elaboration and application of planning instruments); 47 final paragraph (specific objectives and content of water planning); 48.3 (Criteria to formulate the National Integrated Water Resources Management Plan); 67 final paragraph (requirements to authorize water transfers); 73 final paragraph (Scope of Authorizations); 86.1 (Water Audits); 98 final paragraph (exploration permit and information on exploration results); 110 final paragraph (fee for use and exploitation of water resources); 113 (fee for discharge); 115.2 (costs of obtaining the requested information and studies); 116 (fee for use of public water assets); 123 final paragraph (guidelines for the use and conservation of water resources); and 136.e (proportionality and basis for sanctions). Foro del Agua El Salvador, Response to the follow-up questionnaire, October 4, 2024.

<sup>248</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

309. As to whether the State has taken actions to allow the participation of civil society in the implementation and regulation of the LGRH, it was reported to the IACHR that the ASA had responded to the El Salvador Water Forum that the Sub-Directorate of Territorial Management of that entity would be in charge of promoting it. However, the concern that only 486 water boards (out of a total of almost 2,500 water boards registered in 2015) have been submitted for registration in the National Registry of Water Resources, created by the ASA, was reported to the Commission, while at the same time that 18,731 companies have completed the registration of their respective water source before the same entity. According to what was reported to the Commission, this situation responds to the fact that the LGRH is being implemented with “a clear anti-communal bias (...) characterized by a policy that treats companies and water boards as equals, despite having different purposes and there existing tremendous technical, legal and, above all, financial asymmetries between both (...)”.<sup>249</sup>

310. In this regard, the Commission heard the request of the Water Forum of El Salvador that (i) the Sub-Directorate of Territorial Management of the ASA comply with the LGRH and implement a program of information, technical and financial support that responds to the needs of the water boards and addresses the deficiencies of these organizations in their legalization process. In addition, concern was expressed that (ii) despite the “opposition” mechanism of the LGRH that allows a person or community to expose if they are affected by a project authorization, the ASA has eliminated other participation mechanisms and maintains the confidentiality of information for up to seven years on inter-institutional cooperation agreements with ANDA for the financing of works, activities and projects, by limiting the social audit.<sup>250</sup>

311. Finally, the Water Forum of El Salvador requested a response to its requests, such as the one presented to the ASA with a proposal of the contents for a General Regulation of Attention to Rural and Urban Water Boards, the result of the discussion with more than one hundred rural and urban water boards of the departments of San Salvador, La Libertad, Cuscatlán, La Paz, Chalatenango and Morazán. The same was requested in relation to a proposal presented on July 30, 2024, where it is demanded that, in view of the food crisis, the Regulation for the Determination of Fees be reformed so that there is a symbolic canon for the use of water for food irrigation. Finally, it pointed out the absence of the appointment of the civil society representative in the ASA Board of Directors.<sup>251</sup>

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

312. The IACHR identifies that the State reiterated, as of 2023, the “Special Regulation for the determination of fees for the use and development of water resources”. In addition, it positively values the adoption of guidelines so that water management policies consider the needs of rural and indigenous populations and respect the traditional and cultural uses of this resource; so that water supply activities apply the coefficient based on the interest or social purpose of its use and exploitation for cultivation or food production or the generation of public electricity, as well as the allocation of investment for improvements to water and sanitation services.

313. For its part, the Commission recalls that, since the year 2023, it identified challenges regarding the component of the recommendation that calls for ensuring that use permits and agreements with companies on water resources do not jeopardize the effective realization of the human right to water. In this regard, it took note of the drafting of the General Regulation of the LGRH, which, according to information provided by civil society, is still in the formulation phase.

314. The Commission identifies this instrument as an opportunity to develop guidelines on the signing of water agreements in favor of companies and to emphasize the participation of civil society in the administration of water resources, as well as access to information on the granting of permits, signing of agreements, project financing, among other matters. However, the allegations of civil society regarding the

<sup>249</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>250</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>251</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

opacity and restriction of this process, and the lack of participation of the Water Forum of El Salvador, are of concern. For the Commission, it is essential that the regulation of this tool is aimed at guaranteeing the participation of civil society in the regulation of water use permits and agreements with companies, considering that the objective is to ensure that the effective realization of the human right to water is not put at risk. Considering the importance of strengthening this component of the recommendation, the IACHR considers that the recommendation continues to be complied with at a **substantial partial level**.

*Measures and information to advance in the fulfillment of the recommendation*

315. The IACHR will assess progress in compliance with the recommendation when the State (i) proves that it has provided civil society with spaces for effective participation in the process of implementation and regulation of the General Law on Water Resources, which requires guaranteeing access to information regarding the administration of this public good and (ii) provides information on measures adopted to ensure that water use permits and agreements with companies on this resource do not jeopardize the effective realization of the human right to water, considering the perspective of civil society.

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

316. For the 2023 follow-up report, the State highlighted that it is analyzing, together with riparian countries, transboundary water protection measures and referred to studies with Honduras on the behavior of the Ocotepeque; project management in the Central American Integration System (SICA) and the Central American Commission on Environment and Development (CCAD); updating the Regional Climate Change Strategy (ERCC), and a possible accession to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes. The Commission noted that the recommendation remained partially complied with, for which it recalled that, although in 2022 it was aware of the treaty on the integrated management of transboundary watersheds with Guatemala, it would be awaiting information on the negotiation of a treaty with Honduras under the terms of the recommendation.<sup>252</sup>

*Information on compliance*

317. For the year 2024, the State pointed out that the LGRH created the International Watercourse Management Committee that will be integrated by a representative of the ASA, the MARN, as well as the Ministries of Housing, Agriculture and Livestock (hereinafter "MAG"), National Defense, Local Development and Foreign Affairs. It pointed out that this makes it possible, as requested by law, for the State to negotiate and sign international treaties and conventions on international drainage basins or transboundary basins facing international watercourses, in accordance with the Constitution and applicable international principles. The State noted that both ASA and the International Watercourse Management Committee received a visit of an expert from the Water Convention Secretariat; and participated in the Water Conference in New York in 2023 and in the Working Group on Monitoring and Evaluation of the Water Convention in Switzerland.<sup>253</sup>

318. For its part, the IACHR received information from civil society indicating that the MARN allegedly reported on Transboundary Development initiatives to promote the Participatory Master Plan for the Trifinio Region and the Development of Climate Resilient Regional Value Chains that Strengthen Ecosystem Water Services and Generate Rural Income in the Tri-national Basin of the Lempa River in the Trifinio. In addition, regarding whether the State has promoted the participation of civil society to ensure the integrated and sustainable management of shared transboundary water basins, the Commission received information

<sup>252</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), December 31, 2023, paras. 329-337.

<sup>253</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

according to which the British Embassy in the country, in coordination with the Government, presented the project “Resilient and Biodiverse Landscapes of Northern Mesoamerica” which seeks to allocate 2 million dollars to the Trifinio Plan in Metapán. It was also noted that in June 2024, leaders of the countries of the Trifinio region renewed their commitment to the Trifinio Plan’s cross-border cooperation, sustainable development and Central American integration.<sup>254</sup>

*Analysis and level of compliance with the recommendation*

319. The IACHR recalls that, since 2022, the IACHR has been aware of the conclusion of a treaty on the integrated management of transboundary watersheds between the Republic of El Salvador and the Republic of Guatemala,<sup>255</sup> for which reason it had been awaiting information on the negotiation of a treaty with Honduras on similar terms. In this sense, the Commission identifies that the State has adopted actions relevant to the management of transboundary waters, although specific information is required on the referred negotiation, as well as on the effective functioning of the International Watercourse Management Committee referred to in the LGRH. According to the information provided, this body will make possible the negotiation and signing of treaties and agreements with respect to international drainage basins or transboundary basins facing international watercourses. Considering its importance in achieving the objective stated in the recommendation, the IACHR identifies that this recommendation continues to be **partially complied with**.

*Measures and information to advance in the fulfillment of the recommendation*

320. The Commission reiterates that progress in the fulfillment of this recommendation will be based on actions to promote the adoption of a cooperation treaty with Honduras that will allow for coordinated action in the face of various challenges in this area. In addition, considering the most recent information from the State, the Commission invites the State to report on the functioning of the International Watercourse Management Committee referred to in the LGRH and on its efforts to negotiate and adopt agreements on the integrated and sustainable management of shared transboundary water basins.

**Recommendation No. 43.** Ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

321. For the 2023 follow-up report, the State reported that it was analyzing the ratification of the Escazú Agreement, while civil society indicated that no measures had been taken in this regard and criticized the approval of environmental permits for projects in protected areas that could negatively affect the environment and the rights of local communities, which would generate concerns about the right to a healthy environment and reprisals against community opposition leaders. The IACHR considered that this recommendation remained pending and urged the State to strengthen the approval process of the aforementioned agreement.

*Information on compliance*

322. For the year 2024, the State indicated that the Escazú Agreement continues in the analysis stage and round of consultations. In addition, it indicated that “the ratification of international treaties is part of an exercise of national sovereignty” and requires a process provided for in the Constitution with phases of consultations with various institutions and analysis of constitutional and legality aspects, which, in addition, may require control between different agencies.<sup>256</sup>

<sup>254</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>255</sup> IACHR, *Annual Report 2022 - Chapter V of El Salvador*, March 11, 2023, para. 230.

<sup>256</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.



323. For its part, civil society indicated to the Commission that the State has not taken steps to adhere to or ratify the Escazú Agreement, although its approval is being discussed since 2019 and despite its relevance in guaranteeing access to information and protecting environmental defenders. In this regard, it was pointed out that the ratification of this instrument would provide useful legal instruments in favor of transparency, public participation and access to justice in environmental matters.<sup>257</sup>

324. Particularly, it was indicated to the Commission that the relevance of this agreement lies in the fact that an increase in the difficulties to access public information has been identified as a result of the use of reserved classification of information, which is allegedly blocking access to data on projects, activities and state investments for several years. Additionally, it was pointed out that there would be government opposition to adhere to the Escazú Agreement as it would run counter to extractive megaprojects, infrastructure and tourism and considering an alleged existence of smear campaigns against environmental defenders from the State.<sup>258</sup>

*Analysis and level of compliance with the recommendation*

325. The IACHR reiterates that the Escazú Agreement is a key instrument that is complementary to the instruments and obligations of the Inter-American system on environmental rights and that, according to what REDESCA stated in its 2022 annual report, “reinforces principles and obligations established in Inter-American norms and jurisprudence on the right to a healthy environment, highlighting the need to guarantee the so-called access rights to ensure their validity, such as the effective protection of the right of individuals to defend the environment”.<sup>259</sup> Pending progress towards the adoption of the Escazú Agreement, the IACHR considers that this recommendation is still **pending compliance**.

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

326. The IACHR reiterates that progress in compliance with this recommendation requires strong measures aimed at the ratification of the Escazú Agreement.

**G. The right to Freedom of Expression**

**Recommendation No. 48.** Take the necessary measures to ensure a safe working environment for journalists and respect for the independence of the media. In particular, ensure that official advertising and frequency allocation are guided by democratic criteria and in accordance with international human rights standards. Also incorporate measures to ensure that state media operate under international standards on public media.

327. For the 2023 follow-up report, the IACHR welcomed the decision of the Legislative Assembly in November 2023 to decriminalize the dissemination of messages alluding to gangs, although it noted the need for other measures to strengthen civic space and provide adequate conditions for the work of defenders and journalists, considering the prevalence and seriousness of reports of attacks against them. Likewise, the Commission highlighted that additional information was needed on the two remaining components of the recommendation, namely the application of democratic criteria for official advertising and the allocation of frequencies, and international standards on public media versus state-owned media; it also concluded that the recommendation was still **pending compliance**.<sup>260</sup>

<sup>257</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>258</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024. Cited Centro de Estudios para la Democracia (CESPAD), El Salvador: exigiendo Escazú pese al cierre del espacio cívico, 2023.

<sup>259</sup> IACHR, *REDESCA 2022 Annual Report*, March 6, 2023, para. 356.

<sup>260</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 355-367.



*Information on compliance*

328. For 2024, the State affirmed that it rejects any aggression or attack on the free exercise of freedom of expression and that El Salvador has a “duly structured institutional framework to guarantee the free exercise of the work of human rights defenders”, including journalists and communicators. It also indicated that the Attorney General’s Office of the Republic (hereinafter “FGR”) rigorously prosecutes crimes against these persons and that, as part of social control in a democratic rule of law, “there are several digital and written newspapers, and totally independent media, some of them with a critical line towards the Government”.<sup>261</sup>

329. In addition, the State indicated that, in accordance with the Telecommunications Law, the General Superintendence of Electricity and Telecommunications (hereinafter “SIGET”) has the function of planning, administering, monitoring and controlling the radio spectrum. It pointed out that this entity has updated the regulation to ensure that access to spectrum frequencies is equitable and non-discriminatory, which includes sound and television broadcasting. It also indicated that it has facilitated citizen participation in the concession of the radio electric spectrum, and has guaranteed that interested parties have access to frequencies and contribute to the diversity of the media.<sup>262</sup>

330. The State also indicated that SIGET promotes access to information and participation in the assignment processes, for which it publishes the forms and requirements through digital channels. It also indicated that it ensures that its actions support a rational and sustainable use of the spectrum in an inclusive telecommunications environment aligned with international standards. According to the State, these actions “consolidate the conditions for journalists and human rights defenders to carry out their work in a context that respects and protects the principles of freedom of expression and access to information”.<sup>263</sup>

331. The Commission also received information from civil society indicating the ineffectiveness of measures to protect journalists and eradicate violence against them. Likewise, an alleged systematic refusal to investigate the facts of espionage against journalists and members of civil society organizations was alleged, both by the Presidential Commissioner for Human Rights and Freedom of Expression<sup>264</sup> as well as by the Court of Auditors of the Republic and even judicial authorities<sup>265</sup>. According to what was reported, this hinders the public from knowing if there was a bidding procedure or if the company that provides espionage services through the spy software Pegasus was hired illegally.<sup>266</sup>

332. In particular, the Commission obtained information on a decision of the Disputes Chamber of the Supreme Court of Justice, which reportedly confirmed the inadmissibility of a lawsuit filed against decisions of the Court of Auditors. The latter, in turn, allegedly declared the inadmissibility of carrying out a special examination to investigate the alleged use of public funds for the acquisition of espionage services. In this regard, it was reported that the court based its decision on serious considerations such as “it cannot examine acts of which it gained knowledge in the exercise of the auditing function” and that “the administrative litigation courts cannot directly protect human rights regulated in international treaties”.<sup>267</sup>

<sup>261</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>262</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>263</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>264</sup> SSPAS, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>265</sup> The Cristosal Foundation indicated that it has filed requests to investigate the alleged use of public funds for espionage; however, it indicated that authorities of the Court of Accounts of the Republic have refused to exercise oversight powers and judicial authorities have refused to admit a lawsuit against this refusal. Fundación Cristosal, Response to the follow-up questionnaire, October 4, 2024.

<sup>266</sup> Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024.

<sup>267</sup> Particularly, reference was made to the decision of reference 20-22-RA-SCA of the Administrative Litigation Chamber, dated March 29, 2023 (notified on April 13, 2023) which denied an appeal filed on October 31, 2022 for the admission of a complaint against unfavorable acts of the agencies of the Court of Accounts of the Republic. The challenged decisions allegedly were (i) the declaration of inadmissibility of a complaint filed on February 8, 2022 before the Department of Citizen Participation of the Court of Accounts of the Republic to investigate the allocation of funds for the acquisition of *Pegasus* or the contracting of the company *NSO Group Technologies Ltd* and (ii) the confirmation of this declaration by the Management Body of the Court of Accounts of the Republic. Fundación Cristosal, Response to the follow-up questionnaire, October 4, 2024.

333. In terms of figures, the Commission and its Office of the Special Rapporteur for Freedom of Expression (RELE) received information according to which, in 2023, 311 attacks on the press were recorded, with an increase of 66% over the year 2022; it also indicated that, from March to May 2024, 50 cases of different types of attacks on journalists were recorded, about which, as it was pointed out to the Commission, a context of impunity prevails that allows the repetition of these acts and leads to self-censorship of journalists.<sup>268</sup> The Commission also received reports from civil society organizations on attacks on journalists in the digital sphere. Between October 1, 2023 and January 10, 2024, 4,057 attacks were recorded on social networks, of which 655 (16%) were directed at women journalists.<sup>269</sup> According to publicly available information, attacks against the press occur in a context of increasing harassment, threats and stigmatization, including by high-ranking State officials, with the alleged aim of delegitimizing journalistic work.<sup>270</sup>

334. In addition, the IACHR received information from civil society according to which the reforms to the Special Law for the Intervention of Telecommunications, of November 2022, facilitate the wiretapping of individuals considered to be opponents, including people who practice journalism. According to this information, with this reform, the State does not need the Pegasus *malware*, since an order from the prosecutor's office without exhaustive grounds is sufficient. It was also stated that "the lack of access to public information and impunity on the part of the State have made it impossible to investigate these espionage acts".<sup>271</sup>

335. In addition to the latter, recent reports from civil society organizations have expressed their concern and demanded that the Government be held accountable for the revelations of a journalistic investigation, according to which high-ranking State officials have agreed to establish a center for espionage against journalists and political opponents.<sup>272</sup>

336. Finally, the IACHR and its Special Rapporteurship learned of public reports of limitations on private correspondence, intimidation tactics such as financial audits and allegations of manipulation of official advertising. These practices are denounced as a strategy to silence critical media. According to civil society reports, government advertising is mostly allocated to media favorable to the Government, while being reduced or withdrawn from those that criticize the administration.<sup>273</sup>

337. In its observations to the present report, the State indicated that it reaffirms its commitment to freedom of the press and expression, guaranteeing that journalists and media outlets can operate without undue restrictions. It indicated that the reports that question the situation of press freedom in El Salvador lack technical and methodological rigor, presenting unverified data or biased interpretations that do not reflect the reality of the country. In this sense, it requested to take into account reliable sources and to recognize the State's respect for the principles of pluralism of information and the free exercise of journalism. It also indicated that the country has promoted an environment where the media have unrestricted access to public information, and where protection mechanisms for journalists have been strengthened, guaranteeing their safety and the development of their work without interference. It urged the IACHR to recognize these advances and to consider information based on evidence and technical methodologies to prepare its reports.<sup>274</sup>

<sup>268</sup> On these figures, the [report on freedom of the press 2023](#) and the [first quarterly report of aggressions against journalists in El Salvador 2024](#), both from the Centro de Monitoreo de Agresiones Contra Periodistas of APES, were cited. SSPAS, Response to the follow-up questionnaire, October 4 and 22, 2024. (Available only in Spanish).

<sup>269</sup> APES, [Informe sobre violencia digital basada en género hacia mujeres periodistas](#), 2024; La Prensa Gráfica, [Informe señala violencia digital contra periodistas en El Salvador](#), January 24, 2024; Infobae, [Estudio señala que mujeres reciben 16 % de ataques en X contra periodistas en El Salvador](#), January 24, 2024. (Available only in Spanish).

<sup>270</sup> (IAPA), [IAPA and CPI warn of worsening press freedom in El Salvador](#), September 13, 2024. (Available only in Spanish).

<sup>271</sup> SSPAS, Response to follow-up questionnaire, October 4 and 22, 2024.

<sup>272</sup> El Faro, [Presidencia ordenó una operación de espionaje contra periodistas y políticos](#), November 7, 2024; Asociación de Periodistas de El Salvador (APES), [La APES exige al Gobierno que rinda cuentas sobre revelación de plan para espiar a periodistas](#), September 20, 2024. (Available only in Spanish).

<sup>273</sup> Inter American Press Association (IAPA), [IAPA and CPI warn of worsening press freedom in El Salvador](#), September 13, 2024. (Available only in Spanish).

<sup>274</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

338. Likewise, in its observations, the State indicated that the civil society information on the reforms to the Special Law for the Intervention of Telecommunications of November 2022 and its possible misuse by the FGR, makes abstract evaluations of the internal legislation of El Salvador, without any basis in concrete facts to support such considerations.<sup>275</sup>

*Analysis and level of compliance with the recommendation*

339. The Commission recalls that the first component of the recommendation calls for measures to guarantee a safe working environment for journalists and for the independence of the media. In this regard, the IACHR has taken note of the State's rejection of any aggression or attack on the free exercise of freedom of expression and its affirmation of the existence of an institutional framework that, as indicated, guarantees the free exercise of the work of journalists and communicators.

340. However, the IACHR expresses its concern with the allegations coming from civil society indicated above regarding the continued prevalence of attacks on journalists, as well as the hostile climate that has prevailed since 2023 for the exercise of journalistic work in the country.<sup>276</sup> In this regard, the IACHR and RELE reiterate that journalism is the primary and principal manifestation of freedom of expression and that those who practice journalism and the media keep society informed on matters of public interest and contribute to the existence of a broad, robust and pluralistic public debate.<sup>277</sup> Likewise, the Commission has repeatedly held that an independent and critical press is a fundamental element for the validity of the other freedoms that make up the democratic system and the rule of law. For this reason, States have the obligation to create the conditions for journalists to be able to exercise their function freely, independently and safely.<sup>278</sup>

341. Considering the concerns expressed and the imperative need for the protection of journalism, the Commission identifies that the information submitted by the State does not identify practical measures of compliance that demonstrate due attention or adequate investigation of the facts that impede a safe working environment for journalism and for the independence of the media. Of particular concern to the Commission is the information provided by civil society regarding the alleged prevalence of a systematic refusal to investigate acts of espionage against journalists, on which it calls for a diligent approach<sup>279</sup>.

342. With respect to the second component of this recommendation, namely the application of democratic criteria for official advertising and frequency allocation, the IACHR has taken note of the State's assertion that SIGET is in charge of planning, managing, monitoring and controlling the radio spectrum and that it updated the regulation to ensure equitable and non-discriminatory access. The Commission appreciates this information; however, in order to determine its relevance to compliance with this component, it identifies the need for information that specifies the content and results of the actions reported by SIGET regarding the democratization of frequency allocation.

343. Finally, with respect to the third component of the recommendation on the application of international public media standards to state media, the Commission does not identify specific information on state measures that contribute to its compliance. Considering the lack of identification of measures aimed at implementing the three components of the recommendation, the Commission considers that this recommendation remains **pending compliance**.

<sup>275</sup> State of El Salvador, Note MPOEA-OAS-011/2025, Observations to the draft of Chapter V, February 13, 2025.

<sup>276</sup> RELE, Annual Report 2023, OEA/Ser.L/V/II, Doc. 386, December 6, 2023, para. 644.

<sup>277</sup> RELE, Annual Report 2023, OEA/Ser.L/V/II, Doc. 386, December 6, 2023, para. 660.

<sup>278</sup> IACHR, Inter-American Legal Framework on the Right to Freedom of Expression, OEA/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009, para. 8 and para. 165 et seq.

<sup>279</sup> SSPAS, Response to follow-up questionnaire, October 4 and 22, 2024. Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

*Measures and information to advance in the fulfillment of the recommendation*

344. The IACHR reiterates that progress in compliance with this recommendation requires the adoption of practical measures that (i) guarantee a safe working environment for journalists, as well as respect for the independence of the media (considering the hostile context for the practice of journalism that has been denounced); (ii) the application of democratic criteria on official advertising and frequency allocation, and (iii) international public media standards for state-owned media.

**Recommendation No. 49.** Guarantee the right of access to public information in accordance with the guidelines of the Inter-American legal framework and adopt the necessary measures to remove the barriers that impede its effective compliance.

345. In the 2023 follow-up report, the IACHR took note of the measures reported by the State, including the Law on Access to Public Information (hereinafter "LAIP") and the functions of the Institute for Access to Public Information (hereinafter "IAIP"). However, it expressed its concern about the allegations made by civil society regarding limitations to the right of access to information through the classification of information as reserved used by the three branches of government, which allegedly has a differentiated impact with respect to information on citizen security. The Commission considered that it is essential to address the allegations of inordinate and disproportionate use of classification of information as reserved and urged the State to identify and overcome barriers to access to public information. For these reasons, it considered that the recommendation is **pending compliance**.<sup>280</sup>

*Information on compliance*

346. For the year 2024, the State affirmed that access to public information is a fundamental right that arises from freedom of expression and consists of the power to "seek, receive and disseminate data, ideas or information of any kind, public or private, that are of 'public interest' (...)" as a mechanism for social control of public administration. It indicated that it is governed by the principle of maximum disclosure, according to which the information held by the obligated entities is public and its dissemination is unrestricted, except for the exceptions established by law, for which it cited the IACHR, the Inter-American Court of Human Rights, as well as the Principles on the Right of Access to Information of the Inter-American Juridical Committee.<sup>281</sup>

347. In addition, the State pointed out that the right of access to public information is subject to restrictions under the LAIP, including the one that indicates that it may be limited in the case of information classified as reserved. In this regard, it explained that this reservation applies when there are legitimate objectives, values or legal rights that could be equal or more relevant than the referred right and that could be harmed by the publication of the information, especially when it is a superior legal right.<sup>282</sup>

348. Likewise, the State explained that the classification of information as subject to reserve is established by law and not "in a whimsical manner or due to circumstances that are not expressly detailed in the Constitution or the Law". It pointed out that this figure seeks to "balance transparency in public administration with the protection of legitimate interests, such as national security and the protection of personal data" and that the IAIP determines that for this limitation to be valid, it is required to comply with the criteria of legality (that the reserve is established by law); reasonableness (that the adoption of this limitation is reasoned and justified to reduce arbitrariness in the actions of officials), and temporality (that the restriction is subject to a term defined by law).<sup>283</sup>

<sup>280</sup> IACHR, *Annual Report 2023, Chapter V: El Salvador*, December 31, 2023, paras. 369-378.

<sup>281</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>282</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>283</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

349. Likewise, the State indicated that the classification of information as reserved requires compliance with one of the grounds for exception in Article 19 of the LAIP and that it must be determined that the “release of the information could effectively threaten the legally protected interest and that the harm that could be caused by the release of this information would be greater than the public interest in knowing the information”. In addition, it indicated that access to public information admits two exceptions, namely, “when the disclosure of the information may cause harm to a legally protected public interest, such as public safety or national security” or when “the need to preserve the private life and patrimony of individuals” is identified.<sup>284</sup>

350. Also, the State stated that any person can use two mechanisms to report a possible disproportionate use of the reserve classification, namely:<sup>285</sup>

- The appeal before the obligated entity or the IAIP (to require the obligated entity to deliver the requested information when the denial was unjustified). The State pointed out that this appeal may be filed by itself or through a representative and that the IAIP may confirm the resolution of the information officer of an obligated entity or revoke or modify such resolution.
- The sanctioning procedure, according to which the IAIP may hear and process administrative sanctioning procedures against public servants and/or officials who have incurred in any violation of the LAIP. In this regard, it indicated that one of the serious infractions indicated by this law consists of “Invoking as reserved information that does not comply with the characteristics indicated in the LAIP”. In this regard, the State clarified that this infraction only proceeds when the Institute has determined by means of a legal opinion that the information is of a public nature.

351. For its part, the Commission learned of civil society concerns about the opacity and lack of transparency in the country’s public administration and the refusal of institutions and political actors to provide information that by law should be done *ex officio*.<sup>286</sup> In this regard, it was pointed out that the following are among the types of impediments to access to information:

- *Formal*: When mandatory forms are required or unfounded requirements on lack of coincidence of the applicant’s signature with the *Documento Único de Identidad* (Single Identity Document);
- *Unavailability of information*: When there is a lack of response; delivery in formats that cannot be processed; outdated information in transparency portals and indexes of reserved information; and
- *Substantive*: With declarations of classifications of reserved information, non-existence, deregulation of norms that allow access to information through guidelines of the entity in charge, new jurisprudential criteria or the creation of laws that do not establish its obligatory nature, such as the lack of access to procurement information as of the new Public Procurement Law.<sup>287</sup>

352. Regarding findings that report these shortcomings in access to information, it was reported that, according to a January 2024 report by Transparency International, on the perception of corruption in 2023, El Salvador fell 10 positions in the world ranking due to the weakening of the LAIP, the outdated transparency portals of public institutions and the lack of justification in the classification of information as

<sup>284</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>285</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

<sup>286</sup> SSPAS, Response to follow-up questionnaire, October 4 and 22, 2024; Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024.

<sup>287</sup> Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024.



reserved. In this sense, El Salvador is allegedly in 126th place out of 180, with a score of 31 out of 100, which is allegedly its lowest score since 2012.<sup>288</sup>

353. In addition, it was informed that, according to a civil society study, “out of 1,463 information requests made by 15 entities (including civil society organizations and media) between June 2019 and December 2023, only 394 obtained a response”, which, as it was pointed out, implies that more than 73% of the information requests were not answered favorably by the obligated entities and that “of the information that was delivered, 15% obtained a partial response”. In addition, it was stated that, of the lists reviewed, “34.7% (508) of the requests are related to the use of public resources and contracting”, followed by information on sources of financing and purpose.<sup>289</sup>

354. In the same vein, it was reported to the Commission that the Report on Freedom of Expression 2023 “*Pienso dos veces antes que aparezca mi nombre*” of the University Observatory of Human Rights (hereinafter “OUDH”) of the Universidad Centroamericana José Simeón Cañas reported that, of 1455 requests for information from citizens, less than 50% were answered satisfactorily and that, in many cases, only a link was provided without substantive information.<sup>290</sup> The OUDH also analyzed 18 public institutions in relation to the *ex officio* delivery of information in 2023 and concluded that “most of these institutions refuse to share information”.<sup>291</sup> Likewise, it was noted that the country registers setbacks according to the *Open Budget Survey* on access to budget information, opportunities for participation and oversight of public resources, positioning it as the country with the least budget transparency in the region. In addition, it was noted that the level of opportunities for public participation in budget approval process was extremely low.<sup>292</sup>

355. Likewise, the Commission received information from civil society according to which the excessive denial of information is accompanied by an inoperability of the IAIP<sup>293</sup> and that there has been a recent structured blocking of access to information from the social network accounts of the ministries for civil society and the media.<sup>294</sup> Additionally, the Commission received information from the Water Forum of El Salvador according to which the difficulties to access public information have increased, due to the use of the classification of information as reserved, which is allegedly “blocking access to data on projects, activities and state investments for several years, generally justified with unconvincing arguments”. In this regard, it was noted that several requests for information from this organization have been denied.<sup>295</sup>

356. Finally, the IACHR received some information that was allegedly obtained in response to a request to the IAIP according to which, from 2019 to June 2024, 9 sanctions were allegedly imposed for the very serious infraction of “delivering or disseminating reserved or confidential information”; 236 sanctioning procedures were allegedly carried out, 80% initiated by complaints; 120 appeals were allegedly filed for “classification of information as reserved”, 107 for “refusal to provide information due to non-existence of information”, 105 for “partial provision of information”, 72 for “reserved information” and 68 for “lack of response”. In addition, it was pointed out that from January 2023 to August 2024, the IAIP would have heard 205 appeal processes, 90 of which were allegedly resolved in favor of the citizen.<sup>296</sup>

<sup>288</sup> SSPAS, Response to follow-up questionnaire, October 4 and 22, 2024, which cited: La Prensa Gráfica, El Salvador es cada vez menos transparente y brinda menos acceso a la información, según especialistas, September 27, 2024. Fundación Cristosal, Response to the follow-up questionnaire, October 4, 2024. (Available only in Spanish).

<sup>289</sup> SSPAS, Response to follow-up questionnaire, October 4 and 22, 2024, which cited: OUDH, Quarterly Bulletin January-March 2024. The information would have been submitted by Cristosal. Fundación Cristosal, Response to follow-up questionnaire, October 4, 2024.

<sup>290</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>291</sup> El Caribe, Alertan libertad de expresión está en “grave situación” en El Salvador, July 23, 2024. (Available only in Spanish)

<sup>292</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>293</sup> In this regard, it was noted that the Citizen Action report on the IAIP’s performance in 2023 revealed that, for that year, it resolved only 131 cases. Fundación Cristosal, Response to the follow-up questionnaire, October 4, 2024.

<sup>294</sup> Cristosal Foundation, Response to follow-up questionnaire, October 4, 2024.

<sup>295</sup> Foro del Agua El Salvador, Response to follow-up questionnaire, October 4, 2024.

<sup>296</sup> It was noted that this response was given in response to Request UAIP Reference 046-2024 of October 2, 2024. FUNDE, Response to the follow-up questionnaire, October 4, 2024.



*Analysis and level of compliance with the recommendation*

357. Despite the information provided by the State, the Commission recalls that the importance of this recommendation lies in promoting actions that, in a context of shortcomings in access to public information, demonstrate an unequivocal strategy and intention of the State to guarantee the right of access to public information. In this regard, the Commission reiterates its concern about the allegations of civil society regarding limitations to the right of access to information through the figure of reserve used by various State agencies, as well as the shortcomings that have been identified in the diagnoses on transparency and access to information.

358. The IACHR reiterates that it is essential that the State effectively address the allegations presented regarding the disordinate and disproportionate use of the classification of information as reserved as a mechanism that limits access to public information. In this sense, it invites the State to identify the alleged barriers, including the figure of the reserved information, and to adopt the necessary measures so that these do not hinder access to information, as well as to provide the maximum amount of information in an *ex officio* manner, in accordance with the obligation of active transparency. Pending these advances, the IACHR considers that this recommendation is still **pending compliance**.

*Measures and information to advance in the fulfillment of the recommendation*

359. The IACHR reiterates that it is essential that the State identify the obstacles and limitations present in access to public information and, based on this prior diagnosis, adopt the necessary compliance measures. These may consist of the adoption of regulations or institutional strengthening tools to combat the obstacles identified.

**Recommendation No. 50.** To give its consent for a working visit by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, which would allow that Office to monitor and gather information directly on the situation of the right to freedom of expression in El Salvador.

360. For the 2023 follow-up report, the State expressed its willingness to facilitate the monitoring of the situation of the right to freedom of expression through the Office of the Special Rapporteur for Freedom of Expression (RELE) of the IACHR, responding to written requests and holding dialogues. However, the State pointed out that conversations with different actors should not be limited to a physical space and that the visit is one more means of gathering information. The Commission invited the State to continue the dialogue and facilitate the collection of information in the field and concluded that the compliance with the recommendation remained **pending**.<sup>297</sup>

*Information on compliance*

361. For the year 2024, the State indicated that it will maintain a dialogue with the Commission through the figure of the Presidential Commissioner for Human Rights and Freedom of Expression, including RELE. It indicated that it will maintain its permanent collaboration with the Commission and will generate opportunities for rapprochement in accordance with its national interests and priorities.<sup>298</sup>

*Analysis and measures to advance in the implementation of the recommendation*

362. The IACHR invites the State to continue a dialogue and to establish joint working mechanisms to identify information on the situation of the right to freedom of expression in El Salvador. In addition, it reiterates the importance of enabling spaces to gather information directly on site and to have conversations

<sup>297</sup> IACHR, [Annual Report 2023, Chapter V: El Salvador](#), December 31, 2023, paras. 381-384.

<sup>298</sup> State of El Salvador, Note MPOEA-OAS-168/2024, Response to IACHR questionnaire, October 23, 2024.

with a variety of actors, including representatives of the State and members of civil society, on issues related to its mandate. In this sense, the Commission considers that the recommendation remains **pending compliance**.

### III. SUMMARY TABLE OF THE LEVEL OF COMPLIANCE WITH RECOMMENDATIONS

363. The following table shows the level of compliance by the State of El Salvador with respect to the 38 recommendations of the Report on the Human Rights Situation in October 2021 that were analyzed in this follow-up report:

Subject of the recommendation	Number recommendation	2023 Level of compliance	2024 Level of compliance
Memory, truth and justice	4	Pending	Pending
	5	Partial	Partial
	6	Pending	Pending
	7	Pending	<b>Partial</b>
	8	Partial	Partial
	9	Partial	Partial
	10	Partial	Partial
	11	Partial	Partial
Prevention of torture and other cruel, inhuman or degrading treatment or punishment	16	Pending	Pending
Operation of the Office of the Attorney General of the Republic	17	Substantial partial	<b>Partial</b>
<b>Discrimination</b>	26	Pending	Pending
<b>Particular group situations - Women</b>	18	Partial	Partial
	19	Substantial partial	<b>Total</b>
	21	Substantial partial	Substantial partial
	22	Partial	Partial
	23	Pending	Pending
	24	Partial	Partial
	25	Total	
<b>Particular group situations - LGBTI people</b>	27	Pending	Pending
	28	Partial	Partial
	29	Substantial partial	Substantial partial
	30	Partial	Partial
	31	Partial	Partial
<b>Situations of particular groups - people in the context of human mobility</b>	32	Partial	Partial
	33	Total	
	34	Partial	Partial
	35	Partial	Partial
	36	Partial	<b>Substantial partial</b>
<b>Situations of particular groups - human rights defenders</b>	37	Pending	Pending
	38	Pending	Pending
	46	Pending	<b>Partial</b>

<b>Situations of particular groups - indigenous peoples and people of African descent</b>	47	Pending	Pending
<b>DESCA</b>	39	Pending	Pending
	40	Partial	Partial
	41	Substantial partial	Substantial partial
	42	Partial	Partial
	43	Pending	Pending
	44	Total	
	45	Partial (cessation of monitoring)	
<b>Right to freedom of expression</b>	48	Pending	Pending
	49	Pending	Pending
	50	Pending	Pending

#### IV. CONCLUSIONS

364. Full compliance with the IACHR's recommendations by OAS Member States is essential to ensure the full enjoyment of human rights in the region and to strengthen the effectiveness of the Inter-American Human Rights System. In the exercise of its mandate to follow up on these decisions, the Commission prepares reports in which it identifies the progress, challenges and setbacks in the adoption of the compliance measures that, through its various working mechanisms, it has requested of the States.

365. This follow-up report analyzes the implementation of the recommendations that the Commission issued in its country report on the "Situation of Human Rights in El Salvador," approved by the IACHR on October 14, 2021.<sup>299</sup> The recommendations analyzed were formulated based on the findings and information obtained by the IACHR before, during and subsequent to its on-site visit carried out from December 2 to 4, 2019. These were addressed to the State to guide it in addressing structural human rights problems affecting the country that require a diligent response.

366. In the aforementioned country report, the IACHR included 50 recommendations on the following thematic areas: three related to citizen security; eight on memory, truth and justice; one on prevention of torture and other cruel, inhuman or degrading treatment or punishment; one on the functioning of the Attorney General's Office; one on discrimination; seven on women; five on LGBTIQ+ persons; five on persons in the context of human mobility; five on persons deprived of liberty; two on behalf of human rights defenders; two on indigenous peoples and Afro-descendants; seven on ESCR; and three on freedom of expression.

367. After the publication of the country report, the IACHR prepared two follow-up reports on these recommendations through chapters V of its annual reports corresponding to the years 2022<sup>300</sup> and 2023.<sup>301</sup> This follow-up report is the third to be published in relation to 38 recommendations out of the 50 issued and excludes follow-up on twelve of these decisions, namely:

<sup>299</sup> IACHR, Country Report "Situation of Human Rights in El Salvador", OEA/Ser.L/V/II Doc.278/21, October 14, 2021.

<sup>300</sup> IACHR, Annual Report 2022, Chapter V: El Salvador, March 11, 2023.

<sup>301</sup> IACHR, Annual Report 2023, Chapter V: El Salvador, December 31, 2023; IACHR, Report State of Emergency and Human Rights in El Salvador, June 28, 2024.

- three on citizen security<sup>302</sup> and five on the rights of persons deprived of liberty<sup>303</sup> considering that, during the year 2024, the IACHR published two reports that have an impact on this follow-up.<sup>304</sup>
- four additional recommendations, namely one on women, one on people in the context of mobility and two on ESCR, due to the fact that in previous years it declared the cessation of its follow-up.<sup>305</sup>

368. Based on the General Guidelines for Follow-up on IACHR Recommendations and Decisions, this follow-up report identifies the compliance measures adopted, progress made, and challenges regarding the implementation of the recommendations analyzed.<sup>306</sup> For its preparation, the IACHR received information both from the State of El Salvador and from some civil society organizations. In addition, it relied on the relevant information it has learned through its monitoring of the human rights situation in the country. For each recommendation, the Commission culminated its diagnosis by indicating the specific information that the State has not yet submitted or the measures that have yet to be adopted to determine progress in the level of compliance with the recommendation.

369. For this follow-up report, the Commission concluded that, of the 38 recommendations analyzed, one has a level of total compliance (3%); 4 have a level of substantial partial compliance (10%); 19 are partially compliant (50%), and 14 are pending compliance (37%). In addition, it determined that, for the year 2024, five of these decisions had a change in their level of compliance, namely, recommendation number 7 advanced from pending to partial compliance; recommendation number 19 from substantial partial to full compliance; recommendation number 36 from partial to substantial partial; and recommendation number 46 from pending to partial. In addition, two recommendations, numbers 17 and 29, regressed in their level of compliance from substantial partial to partial. The IACHR reiterates to the State the importance of effectively complying with the recommendations that have not been fully complied with. Below are the main findings of the IACHR regarding compliance with the recommendations, according to the following thematic areas.

370. Regarding the **recommendations on memory, truth and justice**:

- The adoption of a National Reconciliation Law on transitional justice is still pending. Its elaboration should be speedy, participatory and consider contributions from victims and civil society (recommendation number 4).
- There has not been a significant increase in the number of cases prosecuted for serious human rights violations perpetrated during the armed conflict. A substantial partial level of compliance will be assessed when most of these facts are in the stage of prosecution and punishment (recommendation number 5).
- Ratification of the Inter-American Convention on Forced Disappearance of Persons, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (recommendation 6) is pending.
- The Ministry of National Defense reported partial measures to systematize the documentation of the security forces that acted during the armed conflict and progress was made in a cooperation agreement between the national search commissions and the Supreme Court of Justice. However, there is a lack of

<sup>302</sup> Recommendations No. 1, 2 and 3 of the Report.

<sup>303</sup> Recommendations No. 12, 13, 14, 15 and 20.

<sup>304</sup> IACHR, Report State of Emergency and Human Rights in El Salvador, June 28, 2024; IACHR, Follow-up Report: Recommendations on Persons Deprived of Liberty, Guatemala, Honduras and El Salvador, OEA/Ser.L/V/II Doc. 126/24, June 7, 2024. (Available only in Spanish).

<sup>305</sup> Recommendations No. 25, 33, 44 and 45.

<sup>306</sup> IACHR, General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc.385/23 (second edition), Nov. 20, 2023. (Available only in Spanish).

actions on access to this documentation and for the reconstruction of destroyed archives or documents not generated that legally should have been produced (recommendation number 7).

- There are partial measures on the adoption of the regulatory framework of the national policy for the search for persons, although the issuance of a law on the disappearance of persons and regulation of the national data bank, exhumation processes and the rights of family members are pending. Also, the project "Improvement in the identification and Closure for Missing Persons" , which will seek to implement a genetic profile bank, was valued (recommendation number 8).
- It is important for the State to have a specific diagnosis to identify whether the functional load of the CNB, CONABÚSQUEDA and the IML can be adequately developed with the budget and resources at its disposal (recommendation number 9).
- Despite the relevance of Executive Decree No. 204 of 2013, this measure does not supplement a state reparation policy that contemplates the different impacts suffered by the victims, in accordance with Inter-American human rights standards; the adoption of this policy remains pending (recommendation number 10).
- The CNB and CONBÚSQUEDA continue to offer some reparation measures with the scope of satisfaction that allow the participation of family members, civil society, national and international organizations and state entities. However, it is important to increase state efforts to open spaces for listening to the victims, guaranteeing their real and effective inclusion (recommendation 11).

371. Regarding recommendation number 16 on the **prevention of torture and other cruel, inhuman or degrading treatment or punishment**, the report identified that the ratification of the Optional Protocol to the Convention on this matter is still pending, as well as the creation of the National Mechanism for the Prevention of Torture. Regarding recommendation number 17 related to the **functioning of the State Attorney General's Office**, it determined a setback in its level of compliance based on information received indicating a decrease in the budget allocated to the entity. Regarding recommendation number 26 on **non-discrimination**, it noted that the ratification of the Convention against all Forms of Discrimination and Intolerance is still pending.

372. On the recommendations related to **women's issues**:

- A technical diagnosis is needed to determine whether or not there is still a need to strengthen the system for monitoring protection measures and to increase resources for the network of shelters, as well as to adopt the measures indicated by its findings (recommendation number 18).
- The IACHR reported the continuity of training for State officials, particularly justice operators, on the gender perspective and Inter-American standards on gender-based violence and discrimination. The IACHR declared that it will no longer monitor this recommendation, although it urged the State to maintain the continuity, obligatory nature and gender perspective of these training measures for civil servants. (recommendation number 19).
- Efforts continue to be made to strengthen the specialized courts for a life free of violence and discrimination, and to reduce congestion levels. However, the effectiveness of measures to strengthen these judicial instances should be monitored and measures to clarify the competencies of justices of the peace, family and specialized courts should be reinforced (recommendation number 21).
- There is no clear information on whether, at this time, there are women with prison sentences for aggravated homicide based on facts related to obstetric emergencies or complications and whether sufficient measures have been taken to review all of these cases (recommendation number 22).

- The absolute criminalization of voluntary termination of pregnancy persists even when its denial in certain circumstances imposes a disproportionate burden on the exercise of women's rights, creates a context that facilitates unsafe abortions, and disregards international obligations to respect, protect and guarantee their rights to life, health and integrity (recommendation number 23).
- Ratification of ILO Conventions 177 and 189 is still pending, and protection measures are urgently needed for women working in the textile industry, especially in maquilas and in the home-based sector, as well as for domestic service workers (recommendation number 24).

373. On the recommendations related to **LGBTI persons**:

- The Gender Identity Law has not been adopted to recognize not only the change of name and image in identity documents, but also the rectification of the sex marker in identity documents, including birth certificates and passports (recommendation number 27).
- Beyond isolated actions, it is necessary to advance, in a specific and focused manner, in the adoption of a comprehensive plan to protect and guarantee the rights of LGBTI people, including access to justice, health and employment (recommendation number 28).
- Training activities on the human rights of LGBTIQ+ persons were reported for civil servants of different executive entities, the PGR, the PPDH, the Judicial Branch, the National Civil Police, the FGR, the Salvadoran Social Security Institute, the ISDEMU, municipalities, hospitals, among others, although not all correspond to the year 2024. However, there are concerns about the impact that an exclusionary State agenda on issues of sexual orientation and gender identity could have on the specific content of the training programs provided to civil servants (recommendation number 29).
- The adoption of data related to acts of violence and discrimination against LGBTI persons in the country complying with specific characteristics, namely, that they be (i) statistical, (ii) public, (iii) periodically updated, (iv) duly disaggregated, is important (recommendation number 30).
- It is necessary to emphasize the strengthening of an inter-institutional action plan between the entities that make up the Public Prosecutor's Office and the executive entities that are relevant to strengthening access to justice for LGBTI persons (recommendation number 31).

374. Regarding the recommendations related to the issue of **people in the context of human mobility**:

- The creation of the National Action Plan with commitments for the operationalization of the protection of forcibly displaced persons and refugees in the areas of protection, health, education and employment was valued, although a comprehensive regulatory framework on forced displacement with durable solutions is needed, within the framework of the implementation of the MIRPS (recommendation number 32).
- Progress was made in the collection of samples for the Forensic Data Bank of Missing Migrants, as well as participation in MAEBI and the CONABÚSQUEDA mission to Honduras. However, information is needed on their results and other strengthening actions, specifying how, in practice, transnational coordination in the search for migrants has been optimized (recommendation number 34).
- The relevance of assistance and protection actions for internally displaced persons, the program "My First Job" on labor inclusion of displaced youth and the support spaces "At your side" were recognized. Also, the persistence of obstacles in guaranteeing and respecting the human rights of internally displaced persons was identified, which requires the strengthening of comprehensive programs (recommendation number 35).



- The information on the development of the Human Mobility Policy and its implementation in 2023, as well as the construction of the National Plan for the Reintegration of Returned Persons 2025-2029 was positively valued, and it was considered that it is important to establish special mechanisms on its internal evaluation and identification of results (recommendation number 36).

375. Regarding the recommendations on human rights defenders, the report identifies the importance of a legal framework for the protection and defense of human rights defenders and a comprehensive protection policy in their favor (recommendation number 37), as well as shortcomings in the investigation and institutional strengthening for the prosecution and punishment of those materially and intellectually responsible for crimes against human rights defenders (recommendation 38).

376. In relation to the recommendations regarding **indigenous peoples and persons of African descent**, the follow-up report welcomed the conduct of censuses that made it possible to update statistical data on indigenous peoples and Afro-descendants, requesting details on the methodology applied and whether there was consultation and participation of the populations in question (recommendation 46). In addition, ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Intolerance and Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples is still pending (recommendation 47).

377. Regarding the recommendations on **economic, social, cultural and environmental rights**, this follow-up report:

- Values the adoption of the El Salvador Economic Plan and the exoneration of the water resources canon for water boards and community organizations that provide water distribution services for human consumption. It also stressed the importance of strengthening the National Environmental Policy to guarantee human rights in the face of extractivist activities (recommendation 39).
- Identifies the curriculum renewal process "*Mi Nueva Escuela*" as a relevant compliance measure that should be implemented at all educational levels. In addition, it took note of the allegations made by civil society regarding the lack of inclusion of content related to the rights of LGBTIQ+ persons (recommendation 40).
- Notes the adoption of guidelines so that (i) water management policies consider the needs of rural and indigenous populations and (ii) water supply activities apply the coefficient based on the social interest or purpose of its use and exploitation for cultivation or food production or generation of public electricity. In addition, it reiterated challenges to ensure that use permits and agreements with companies on water resources do not jeopardize the effective realization of the human right to water and the importance of drafting the General Regulations of the LGRH (recommendation 41).
- Recognizes relevant actions in the management of transboundary waters, although it reiterated that actions are required to promote the adoption of a cooperation treaty with Honduras that would allow for coordinated action in the face of various challenges in this area. It also requested information on the functioning of the International Watercourse Management Committee referred to in the LGRH and on its efforts to negotiate and adopt agreements on the integrated and sustainable management of shared transboundary water basins (recommendation 42).
- Notes that ratification of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean or "Escazú Agreement" (recommendation 43) is still pending.

378. Regarding the recommendations related to **freedom of expression**, this follow-up report:

- Highlights the need for practical compliance measures that demonstrate due attention and proper investigation of facts that impede a safe working environment for journalism and media independence. It notes the concern with the alleged prevalence of a systematic refusal to investigate acts of espionage against journalists and calls for them to be addressed diligently. In addition, it requests information on the content and results of the actions reported by SIGET regarding the democratization in the allocation of frequencies and does not identify actions on the application of international standards of public media to the operation of state media (recommendation number 48).
- Indicates the importance of promoting actions that, in a context of shortcomings in access to public information, demonstrate an unequivocal strategy and intention of the State to guarantee the right of access to public information. In addition, it reiterates its concern regarding allegations of limitations to the right of access to information (recommendation number 49).
- Invites the State to continue a dialogue and to establish joint working mechanisms to identify information on the situation of the right to freedom of expression in El Salvador (recommendation number 50).

379. Finally, the Commission is grateful for the information provided by both the State and civil society organizations for the preparation of this follow-up report. It also reiterates its willingness to provide technical assistance to promote the implementation of the recommendations analyzed, in accordance with applicable Inter-American standards.

## PARTIAL REASONED VOTE OF COMMISSIONER CARLOS BERNAL PULIDO ON CHAPTER V EL SALVADOR OF THE 2024 ANNUAL REPORT

With all due respect for my colleagues and in accordance with Article 19.1 of the Rules of Procedure of the Inter-American Commission on Human Rights ("the Commission" or "the IACHR"), I hereby submit a partial reasoned vote on certain points raised by the majority of the plenary of the Commission in Chapter V on the State of El Salvador ("the Chapter" or "Chapter V-El Salvador") of the 2024 Annual Report (the "Report" or the "Annual Report").

I emphasize the relevance of this chapter of the annual report for the observance and guaranteeing of human rights in the region. Nevertheless, in this explanation of my vote I will analyze, in particular, references made in the Chapter to sexual and reproductive rights, abortion, gender identity, comprehensive sexual education, and use of language.

In particular, I will state that Chapter V: (i) contains considerations that pose a risk to pregnant women and ignore the comprehensive needs of women; (ii) non-existence of an obligation to guarantee the rectification of the sex marker on identity documents for persons who identify as transgender; and (iii) contains problematic considerations regarding measures taken by the State in connection with comprehensive sex education for children and adolescents.

### **1. Chapter V contains considerations that pose a risk to pregnant women and ignore women's comprehensive needs (*necesidades integrales de las mujeres*)**

Next, I will address the following issues: (i) the non-existence of the right to abortion and the extent to which the state may regulate this matter (*margen de configuración estatal*); (ii) the lack of protection of the unborn; (iii) the violation of the principle of subsidiarity and lack of protection of the unborn in relation to so-called obstetric emergencies; and (iv) inaccuracies/lack of precision of the Report with respect to considerations on special protection measures granted by the State to pregnant women.

#### **1.1. Non-existence of the right to abortion and state leeway with respect to the criminalization of abortion**

In paragraph 161, the majority of the Commission stated that "However, the IACHR reiterates the considerations expressed in 2022 and 2023, in the sense of observing that the absolute criminalization of voluntary termination of pregnancy persists even when, as it has stated, its denial in certain circumstances imposes a disproportionate burden on the exercise of women's rights, creates a context that facilitates unsafe abortions, and disregards the international obligations to respect, protect, and guarantee their rights to life, health and integrity."

In addition, paragraphs 164 and 165 stated that:

"164. Regarding the State's request to limit this recommendation to the adaptation of protocols requested by the I/A Court H.R. as a guarantee of non-repetition in the case of Beatriz et al. v. El Salvador, the IACHR clarifies that the measures requested by the Court are in response to the declaration of international responsibility in a specific case. For its part, the recommendation of the 2021 Country Report under follow-up refers to the adaptation of the Salvadoran regulatory framework in accordance with all applicable inter-American standards, and considering the findings and concerns that were pointed out at the time, namely:

(i) That "at least 36 women had reportedly died from preventable chronic diseases and another 13 from ectopic pregnancies", which could have been prevented if the women had had the possibility of legally terminating their unsafe pregnancies;

(ii) That the prevalence of discriminatory gender patterns limits education on the subject and access to and distribution of contraceptives, particularly to women, girls and adolescents, and that, although emergency oral contraception is legal for women victims of sexual violence, it is reportedly being distributed at the discretion of health operators.

(iii) That the IACHR has reiterated its concern about the regulations that criminalize abortion in all circumstances in El Salvador

165. Considering that this recommendation requires the adaptation of the existing regulatory framework to all applicable inter-American standards, and that no regulatory adaptation measures have been identified to remedy the restrictions to access, without discrimination, of women, girls and adolescents to sexual and reproductive health services, the IACHR concludes that compliance with this recommendation is still pending."

First, as I did regarding the 2022 and 2023 reports, I reiterate that there are no binding sources in international law -and especially in the American Convention or other treaties that make up the inter-American system- that contemplate (i) the so-called right to abortion or (ii) a corresponding obligation for states to provide abortion services. That said, states have ample leeway - by virtue of the principles of subsidiarity or complementarity and representative democracy - to take measures to protect the life of the unborn child - which is indeed protected by the American Convention<sup>307</sup>- including, although it is not the only means, the use of criminal law.

Regarding the non-existence of the right to abortion, former I/A Court H.R. Judge Eduardo Vio Grossi established in his opinion partially dissenting from the judgment in the case of *Manuela et al. v. El Salvador*:

"In this regard, it is indisputable that (...) there is no inter-American or international legal norm, whether conventional, international custom, or general principle of law, that recognizes abortion as a right. There are only resolutions of international bodies, most of which are made up of international officials and not representatives of States: decisions which, in addition to not being binding, are not interpretative of current international law but rather reflect aspirations for it to change in the direction they suggest."<sup>308</sup>

In fact, in the case of *Beatriz v. El Salvador* in which the supposed existence of a "right to abortion" was alleged by the IACHR and the victims' representation, it is worth noting that, in the judgment, the Court did not establish the existence of such a right.<sup>309</sup> This is further evidence of the non-existence of a binding legal source from which an alleged right to abortion is derived.

That said, I emphasize that this leeway derived from the non-existence of a right to abortion and the convergence of competing rights is increased thanks to the fact that it is incumbent upon States to define punishable conducts and their consequences, and to the automatic referral made, according to the I/A Court H.R., by Article 7.2 of the American Convention to domestic law in matters related to deprivation of liberty - legal exception principle (*principio de reserva de ley*)-.<sup>310</sup>

In addition, I also emphasize that the sections in which such assessments are formulated are not such as to prove unequivocally the existence, in the inter-American System, of a clear and binding parameter that could

<sup>307</sup> ACHR. Article 4.

<sup>308</sup> Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of *Manuela et al. v. El Salvador*, Judgment of November 2, 2021, (Preliminary Objections, Merits, Reparations, and Costs). Paragraph 13

<sup>309</sup> I/A Court H.R. Case of *Beatriz et al. v. El Salvador*. Merits, Reparations, and Costs. Judgment of November 22, 2024. Series C No. 549.

<sup>310</sup> I/A Court H.R. Case of *Romero Feris v. Argentina*. Merits, Reparations, and Costs. Judgment of October 15, 2019. Series C No. 391. Par. 77.

serve as a basis for rejecting the models of criminalization of abortion as negative. The conventional parameter that does exist and that is mandatory is Article 4 of the ACHR which, as I have said on other occasions, contemplates protection of the right to life from conception and demands the existence of regulatory frameworks that do not leave pregnant women devoid of all protection.

This is relevant if one bears in mind that, based on a close reading of Articles 31, 76, and 77 of the American Convention, it is only through consensus -- provided by the States signing and ratifying amendments or treaties -- that international obligations can arise that are in addition to those already contemplated in the ACHR.

Thus, I conclude that, in the absence of a right to abortion in the inter-American human rights system (IHRS) and given the absence of clear rules regarding criminalization models, States have considerable leeway in this regard.

Likewise, I emphasize that the Report did not substantiate the claim that the prohibition of abortion leads to the consequences mentioned, or why it is an absolute prohibition in the State of El Salvador.

## 1.2. Lack of protection for the unborn in the Report

Secondly, I emphasize that references to abortion ignore the other person whose right to life is also protected by conventions: the unborn person. Thus, they ignore the necessary balance that must exist between competing rights of all internationally protected persons. In this regard, it should be noted that pregnant women are also subjects of law and holders of the right to life. A pronouncement on abortion always implies a position on a practice that necessarily implies the termination of the life of a dignified human being and that Article 4 of the ACHR protects, so it is necessary to expressly recognize the rights of the unborn person as part of the weighing up of considerations required in any case of abortion.

In this regard, Article 1.2 of the ACHR clearly establishes that, for the purposes of the Convention, a "person" is every human being.<sup>311</sup> Thus, in light of the Convention, human rights are not only recognized for persons who have already been born, but must be protected for all individuals from conception, who are to be considered human beings. Moreover, the I/A Court H.R. itself, in its advisory opinion 22, indicated that, unquestionably, the term "person" is equivalent to the term "human being" for the purposes of the ACHR.<sup>312</sup>

In light of the above, it is clear that the unborn person (*persona en gestación*) is a human being.<sup>313</sup> Furthermore, the Universal Declaration on the Human Genome and Human Rights states that "the human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity."<sup>314</sup>

The consequence of recognizing the unborn as a person/human being is that he/she becomes a holder of rights. Thus, the ACHR establishes in its articles on rights the formula "Every person (...)."<sup>315</sup> Likewise, the instruments for the protection of human rights generally recognize the ownership of rights by members of the human species, especially the right to life.<sup>316</sup>

Furthermore, in the Artavia Murillo judgment, the I/A Court H.R. determined that "the protection of the right to life is not absolute, but gradual and incremental as the development of the fetus progresses." This implies that, irrespective of the concepts of gradualness and incrementality (with which I take issue), the Court has

<sup>311</sup> ACHR. Article 1.2 "For the purposes of this Convention, person means every human being."

<sup>312</sup> I/A Court H.R. OC-22/16. Ownership of rights of legal persons in the inter-American human rights system. Advisory Opinion of February 26, 2016. Series A. No. 22. Par. 48.

<sup>313</sup> Kaluger, G., and Kaluger, M., Human Development: The Span of Life, The C.V. Mosby Co., St. Louis, 1974, pp. 28-29.

<sup>314</sup> Universal Declaration on the Human Genome and Human Rights. Article 1.

<sup>315</sup> American Convention on Human Rights. Articles 4, 5, 7, 8, 10, 11, 12, 13, 14, 16, 18, 20, 21, 22, 24, and 25.

<sup>316</sup> International Covenant on Civil and Political Rights. Preamble, par. 3; American Convention on Human Rights, par. 3. Preamble; African Charter on Human and Peoples' Rights: Preamble, par. 6; Geneva Declaration on the Rights of the Child. Preamble, par. 1; American Declaration of the Rights and Duties of Man. Article 1; Universal Declaration of Human Rights. Preamble, par. 1; Declaration of the Rights of the Child. Preamble, par. 2; European Convention on Human Rights. Preamble, par. 2.

already established that persons in gestation must be protected by the State in their "right to life." In the same vein, in the *Cuscul Pivaral* case,<sup>317</sup> the I/ A Court H.R. applied the ACHR to a fetus (*persona en gestación*) and also applied Article 19 of the ACHR, thus recognizing the legal status of the fetus as a child.

In the same vein, I emphasize that the preamble of the Convention on the Rights of the Child states that the child needs protection and care both before and after birth.<sup>318</sup> This implies that in light of the Convention on the Rights of the Child (CRC), the unborn child is a child in need of special care. This was reiterated in the preparatory work for the International Covenant on Civil and Political Rights.<sup>319</sup>

### 1.3. Inadequate approach to the use of contraceptive methods

Paragraph 164 included the following:

"ii) That the prevalence of discriminatory gender stereotypes limits education on the subject and access to and distribution of contraceptives, particularly to women, girls and adolescents, and that, although the emergency oral contraceptive is legal for women victims of sexual violence, it is being distributed at the discretion of health operators."

In this regard, I emphasize that it is not enough that the use of contraceptive methods be approved to guarantee women's sexual and reproductive rights, but that these measures must be accompanied by education and awareness-raising measures on the use of contraceptive methods in general, information on the specific physical effects they entail, and their impact on the right to health. I emphasize that freedom in decision making is not limited to the provision of options. True freedom comes when sufficient information is provided to make decisions.

In this regard, the World Health Organization has indicated that the choice of contraceptive methods will depend on "**the person's general state of health**", among other criteria.<sup>320</sup> This is important, since it shows that **not every method is suitable for every person** and that, in this context, the supply of such methods may represent a health risk in specific cases. Thus, it is essential that people receive adequate guidance on existing contraceptive methods so that they can make an informed choice of the most appropriate option for them.

Only with proper guidance can it be guaranteed that people who use contraceptive methods give their informed consent, an essential guarantee that derives from the text of the Convention.<sup>321</sup> With respect to informed consent, the Inter-American Court has stated that:

"the concept of informed consent consists in a prior decision to accept or to submit to a medical act in the broadest sense, which has been freely obtained – in other words, without threats or coercion, improper induction or incentives – and given after obtaining **adequate, complete, reliable, comprehensible and accessible information, provided that this information has really been understood, which would allow the individual to give their full consent**. Informed consent is the positive decision to submit to a medical act resulting from a decision process, or prior, free and

<sup>317</sup> I/A Court H.R. Case of Cuscul Pivaral v. Guatemala. Judgment of August 23, 2018. "That said, the Court has indicated that extreme poverty and the lack of adequate medical care for women during pregnancy and postpartum are causes of high maternal mortality and morbidity. Therefore, States must implement appropriate health policies that allow it to provide assistance with suitably qualified personnel during births; policies to prevent maternal mortality by providing adequate prenatal and postpartum controls, and legal and administrative instruments relating to health policies that record cases of maternal mortality adequately. The Court has also recognized that, under Article 19 of the Convention, the State must assume its special position of guarantor with greater care and responsibility and take special measures focused on the principle of the best interest of the child."

<sup>318</sup> Convention on the Rights of the Child, Preamble.

<sup>319</sup> "The main reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death penalty should not be applied to pregnant women was to save the innocent life of the unborn child." United Nations. General Assembly, Report of the Third Committee on the Draft International Covenants on Human Rights. A/3764. P. 40.

<sup>320</sup> Family planning. Contraception methods. <https://www.who.int/news-room/fact-sheets/detail/family-planning-contraception>.

<sup>321</sup> I/A Court H.R. Case I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329.



informed choice, which constitutes a two-way mechanism of interaction in the physician-patient relationship.”<sup>322</sup>

In relation to this, in the case of *I.V. v. Bolivia*, the Court criticized the fact that the victim never had the possibility of knowing and weighing up alternative contraceptive methods.<sup>323</sup> In this case, the I/A Court H.R. emphasized the importance of people having the necessary data to make an informed decision. In this framework, the Court highlighted the importance of free choice of addressing the effects or impacts of the method.<sup>324</sup>

Thus, the autonomy of individuals in the choice of contraceptive methods can only be guaranteed when they have the capacity to consent to their use or non-use based on the necessary information.

#### **1.4. Obstetric emergencies: violation of the principle of subsidiarity and lack of protection of the unborn child**

In paragraphs 141 to 152, the Commission reiterated the recommendation in which it asked El Salvador to review cases of women sentenced to severe prison sentences for aggravated homicide, related to alleged obstetric emergencies or complications, and to give priority to processing ongoing requests for commutation of sentences. In particular, in paragraph 151, it stated:

"Likewise, the IACHR recalls that this recommendation was issued in response to the Commission's repeated concern, based on a series of data, testimonies, and cases it heard about in connection with its on-site visit, regarding a context of criminalization of women for the crime of homicide, with the common denominator that the facts they were accused of were related to obstetric complications. For the IACHR, it is important to have access to specific official information submitted by the State to understand whether this context persists and whether the requested review measures have been adopted to remedy it. Based on the information it received, the Commission finds that compliance with this recommendation has been partial."

In this regard, I reiterate that I fully agree that the State should not condemn women for obstetric emergencies or complications. What I disagree with is that a body such as the Commission should interfere in an intense manner in national criminal proceedings and decisions, without sufficient factual and legal grounds for doing so, and, moreover, through considerations that place the right to life of newborn children in serious danger.

First, I am concerned about this recommendation because (i) it disregards the principle of subsidiarity, and (ii) it paints a picture of illegitimacy with respect to all convictions imposed by the State in these cases -even when they may be properly substantiated-.

Logically, the majority's rejection of the sentences imposed leads to the need to revoke those sentences. That is, it implies a pronouncement by which the majority position seeks to replace the national authority and considers that the persons convicted in the cases did not commit the crimes envisaged in domestic law, and therefore the State should not individualize or enforce any penalty against them. Therefore, the majority position far exceeded the limits on the inter-American Commission's sphere of confidence. In effect, the Commission acted like a *fourth criminal instance*, without any type of motivation and in a scenario in which such an assessment is not appropriate.

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<sup>322</sup> I/A Court H.R. Case *I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329.

<sup>323</sup> *Ibid.*

<sup>324</sup> I/A Court H.R. Case *I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329.

In this regard, the jurisprudence of the I/A Court H.R. recognizes that not even this Court, as the highest authority of the regional human rights system, can replace the national authority in assigning individual punishments for crimes envisaged under domestic law.<sup>325</sup>

This erroneous position with which I take issue not only resulted in a manifest violation of the principle of subsidiarity or complementarity, but also severely jeopardized the legal right to life of newborn children. If the convicted persons really committed crimes, then the majority's rejection of those convictions would constitute a disastrous precedent of denying protection of human life.

As on other occasions, I recall that the State has a particular duty to protect the rights of children. From this duty derives the international obligation to investigate, prosecute, and punish human rights violations against children.<sup>326</sup> This is a consideration that must be taken into account in the analysis of these cases, where there are serious concerns about the arbitrary deprivation of life of newborns.

### **1.5. Inaccuracies/lack of precision with respect to special protection measures granted by the State to pregnant women**

Paragraph 162 stated that:

"In addition, since 2022, the IACHR has ascertained that measures such as the Nacer con Cariño Law, PIEGS, or the Crecer Juntos Law prioritize maternity protection, establishing a distinction in the protection and guaranteeing the right to reproductive health, depending on whether a pregnancy continues or not. In this regard, the IACHR considers that there are still restrictions in the regulatory framework and in health policies that hinder the access of women, girls, and adolescents to sexual and reproductive health services without discrimination. In this regard, the IACHR reiterates that States have the obligation to provide medical care without discrimination, which implies that under no circumstances may conditions be imposed on the provision of medical care for women who require it."

The report did not clearly state how exactly these measures prioritize maternity, and how this approach could be discriminatory. The protection of pregnant women, in certain contexts, implies a differentiated treatment for them, guaranteeing that they receive adequate and reinforced medical care, taking into account both their well-being and that of the fetus (*persona en gestación*). It is important to emphasize that prioritizing maternity protection should not, in principle, be considered a discriminatory act. On the contrary, pregnant women require special protection measures<sup>327</sup> and are entitled to receive them from the State<sup>328</sup>, as this is essential for their health and that of their child. In this regard, with regard to the prioritization of protection, I reiterate to the Commission that not all unequal treatment is discriminatory.<sup>329</sup> The distinction discussed in this case must be analyzed in light of criteria of reasonableness and proportionality, and not just taken for granted.

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<sup>325</sup> I/A Court H.R. Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2009. Series C No. 207. Par. 87. I/A Court H.R. Case of García Ibarra et al v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 17, 2015. Series C No. 306. Par. 167.

<sup>326</sup> I/A Court H.R. Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations, and Costs. Judgment of October 14, 2014. Series C No. 285. Paragraph 135; I/A Court H.R. Case of V.R.P, V.P.C, et al. v. Nicaragua. Preliminary Objections, par. 292; I/A Court H.R. Case of Guzmán Albarracín et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of June 24, 2020. Series C No. 405. Par. 120, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350. par. 164.

<sup>327</sup> I/A Court H.R. Case of the Xákmok Kásek Indigenous Community v. Paraguay Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214. Par. 233.

<sup>328</sup> I/A Court H.R. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146. Par. 177.

<sup>329</sup> I/A Court H.R. Case I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329. Par. 240.

## 2. No obligation to guarantee the rectification of the sex marker on identity documents for persons who identify as transgender

Paragraph 182 of the report states "the IACHR reiterates the importance of the State adopting a gender identity law that recognizes not only the change of name and image in identity documents, but also the rectification of the sex marker in identity documents, including birth certificates and passports." This is reiterated in paragraph 367 of the recommendations. In this regard, I reiterate that the American Convention does not expressly contemplate a right to gender identity, nor is there a binding instrument in the inter-American system that establishes an obligation to adapt identification documents to gender identity.

As I have indicated, recognizing new rights that are not in the Convention through an interpretation that does not follow the procedures established in the Convention itself would undermine Articles 31, 76, and 77, ignoring the original will of the States that ratified the Convention.

Therefore, any pronouncement in which any of the organs of the IHRS applies a right that is not established in the binding instruments of international law that govern its activity will be an act violating the literal meaning of the American Convention and will exceed the scope of the competencies of the IACHR or the I/A Court H.R., as the case may be. Such an irregular constitutive act would also undermine the principles of good faith and *pacta sunt servanda*.<sup>330</sup>

In light of the above, given that there is no right under the Convention to gender identity that is binding on States, it is possible to affirm that there are no correlative obligations to recognize this right either.

On the other hand, although I am not unaware that OC-24/17 asserted the existence of the so-called "right to gender identity" and a supposed obligation to adapt identification documents to gender identity in the terms indicated in this Chapter, I emphasize that the Advisory Opinions of the I/A Court H.R. are not entitled to contemplate rights or obligations other than those expressly contemplated by the American Convention.<sup>331</sup>

In this regard, first, Article 68 of the Convention is clear in stating that the States are obliged to comply with the decisions rendered by the Court, "in any case in which they are parties." This provision is important in that (i) it is the only one that refers to the legal value of the Tribunal's pronouncements and (ii) it expressly limits the binding nature of those pronouncements to the States party to a case, thus limiting the addressee of the obligations -the State party to a case- and the context in which the pronouncement is issued -that is, litigation-. This position has also been supported by some exponents of legal doctrine (*sectores de la doctrina*), also based on the principle of State consent as the basis of conventional law.<sup>332</sup>

Secondly, specifically regarding OC-24/17, consideration should be given to Article 64 of the ACHR, which limits the competence of the Court to issue advisory opinions regarding the Convention or treaties of the inter-American system. Thus, given that OC-24/17 establishes alleged rights not contemplated in the ACHR, nor in any other treaty of the ISHR, their binding nature is even more questionable.

Thirdly, to derive obligations or so-called rights not contemplated in the Convention, based exclusively on an advisory opinion, would contravene the principle of *pacta sunt servanda* that governs international treaty law, by virtue of which States are only bound to comply with that to which they have expressed their consent.<sup>333</sup>

<sup>330</sup> Vienna Convention on the Law of Treaties. Article 26.

<sup>331</sup> I/A Court H.R. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to name change, gender identity, and rights derived from a same-sex relationship (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18, and 24, in relation to Article 1 of the American Convention on Human Rights). Advisory Opinion OC-24/17, November 24, 2017. Series A, No. 24.

<sup>332</sup> Systematization of the criticisms in: González Domínguez, P. (2017). The doctrine of conventionality control in light of the principle of subsidiarity. Constitutional Studies 15(1), 55-98.

<sup>333</sup> Vienna Convention on the Law of Treaties.

Fourth, although the I/A Court H.R. has affirmed that advisory opinions are parameters of conventionality control,<sup>334</sup> I emphasize that an open and transparent inter-American dialogue is still needed to further discuss this position, which is not expressly derived from the American Convention, or any other international instrument that is binding upon States. I call attention to the fact that there is still no consensus regarding this matter, either in the States of the region or in academic circles; for that reason, important constitutional courts still refrain from invoking the notion of conventionality control and from incorporating advisory opinions as a parameter.<sup>335</sup>

Finally, I note that some authors have indicated that broadening the effects of advisory opinions could facilitate distortions in the way the inter-American system operates and, thus, weaken it, since (i) it entails equating decisions issued as part of the Court's advisory functions with the text of the convention itself,<sup>336</sup> and (ii) it blurs the differences between the jurisdictional and advisory functions of the Court. Some have even pointed out that these interpretations by the Court generate legal uncertainty, since there is no certainty as to the effects associated with the issuance of advisory opinions.<sup>337</sup>

On the contrary, as I have stated in previous explanations of my votes, gender identity, based on *self-determination* or *self-perception*, poses serious risks to the rights of individuals, in general, and, in particular, to population groups with special inter-American protection, such as women. Insisting that States change even the sex markers on identity documents increases these risks, as it completely dilutes gender differentiation and hampers implementation of affirmative measures for women.

The Commission must deliberate deeply on this matter, from a human rights perspective and with a differential approach, in order not to harm or frustrate affirmative measures in favor of women or other population groups with special inter-American protection.

If it is enough for a person to state that he/she *perceives herself* as a woman for the State to automatically recognize her as such, without any additional regulation or reasonable requirement, affirmative measures in favor of women will most likely lose their effectiveness, and the States will end up erasing the very identity of women and of any other population group.

On this, the then Judge Elizabeth Odio Benito was clear, explaining that:

"[...] the central subject of feminism (and, in this case, of violence against women because they are women) is women and the specific oppression they suffer, its origin and impact. If we confuse the feminist struggle and replace the subject of feminism, if the subject of feminism ceases to be the biological woman but rather a strange and confusing variable of subjective identities, we must consider and prepare to deal with the more than foreseeable negative impact it would have on decades of feminist struggle and theory. And not only feminism would disappear, but also the theory of human rights, which is also based not on feelings or self-perceptions, but on objective and scientific categories. Thus, one might ask: if sex, a material and scientific category, disappears, absorbed by "gender identity", an individual subjective perception, what would gender-based violence be based on? And what is the female sex reduced to? How would rape and other crimes of sexual violence against women be documented? How would the violence suffered by trans people be documented if the change of sex is something confidential that cannot be documented? What about wage differentials? What about discrimination in access to education at all levels, formal and informal? There are many, many more questions. But these few are enough to show the chaos and the regression we are facing."<sup>338</sup>

<sup>334</sup> I/A Court H.R. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. par. 41. 31.

<sup>335</sup> Ramírez, F. G. (2023). A critical look at conventionality control. *Journal of Law and Social Sciences*, (28), 101-142; Palacios, D. L. (2017). Inter-American conventionality control at the national level: a notion still under construction. *Revista Direito e Práxis*, 8, 1389-1418.

<sup>336</sup> Colombo, I. (2022). A critical analysis of the doctrine of conventionality control. *Omnia. Law and Society*, 5 (1), pp. 83-116.

<sup>337</sup> Colombo, I. (2022). A critical analysis of the doctrine of conventionality control. *Omnia. Law and Society*, 5 (1), pp. 83-116.

<sup>338</sup> I/A Court H.R. Case of Vicky Hernández et al. v. Honduras. Merits, Reparations, and Costs. Judgment of March 26, 2021. Series C No. 422. Partially dissenting opinion of Judge Odio Benito, Par. 15.

I take advantage of the considerations of then Judge Elizabeth Odio Benito to insist on the defense of the value that exists in being biologically female or male, which is not equivalent to *reducing* the identity of a person only to his or her biological sex.

Therefore, if international human rights law erases biological sex and measures with a differential approach based precisely on the criterion of biological sex, it would deprive the protection of population groups such as women of any rational basis. If the majority position is maintained in the promotion of absolute legal recognition of *self-perceived* or *self-determined* gender identity, it will hinder -if not nullify- the effectiveness of countless special protection measures.

### 3. Considerations regarding measures taken by the State in relation to comprehensive sex education for children and adolescents

Paragraphs 116 and 202 of the report indicate:

"In addition to the above, civil society organizations reported to the Commission information regarding the following facts:

- That, on February 22, 2024, the President of the Republic stated in an interview conducted by the director of the organization Moms for Liberty that a gender ideology is prohibited in El Salvador, due to its promotion of "unnatural, anti-god, and anti-family" ideas in education. In addition, according to the organizations, the president stated that these ideologies would not be allowed in schools and colleges and that it is also important that the curriculum does not include gender ideology. In this regard, the Commission was told about a video in which the President makes these statements.
- That the Ministry of Education issued a memorandum on February 28, 2024 in which it reportedly requested that materials and contents related to "gender ideology" be banned from public schools. Persons contravening this ban would be subject to punishment or dismissal. Regarding this specific allegation, the IACHR was also informed about a tweet published on February 27, 2024 by the Minister of Education of El Salvador, explicitly announcing the elimination of "any use or trace of gender ideology from public schools."

In the same vein, paragraph 186 stated: "Likewise, civil society told the Commission that the current Government had reportedly decided not to go ahead with the plan indicated in the recommendation, given that more than 300 people from the Secretariat of Culture had reportedly been dismissed for allegedly promoting agendas incompatible with its vision and that material on sexual and reproductive health had been removed from the curricula, which no longer addressed topics relating to gender violence and sexual orientation. According to this information, the main challenge for recognition of rights of the LGBTIQ+ population is the approval of a Gender Identity Law, which would allow legal reforms to guarantee basic rights without discrimination."

Finally, paragraph 305 included the following: **"Also, considering the allegations made by civil society regarding the lack of inclusion of content related to the rights of LGBTIQ+ persons, the Commission requests specific information to explain whether this reform process ensures the inclusion of the inter-American standards aimed at preventing any type of discrimination or violence against these persons, based on their sexual orientation and gender identity or expression.** In addition, it invites the State to specify, where applicable, the scope of the material or the prohibition of what the authorities have called "gender ideology." This is reiterated in paragraphs 302 and 380.

In this regard, I will make reference to the fact that with these considerations: (i) the IACHR jeopardizes the duty to protect the best interests of children and adolescents and to avoid hypersexualization and (ii) the IACHR omitted the right of parents to choose the education of their children.

### 3.1. The IACHR jeopardizes the duty to protect the best interests of children and adolescents and to prevent hypersexualization

With these considerations, the majority of the Commission's members failed to consider a risk that derives from its considerations on comprehensive sex education (CSE) for the best interests of children and adolescents: hypersexualization.

The IACHR failed to mention that the best interests of children and adolescents is a guiding principle that should govern all state actions. Indeed, this principle is enshrined in binding instruments of the Universal Human Rights System (UHRS), the Inter-American Human Rights System (IAHRS), and the European Human Rights System (EHRS).

In the UHRS, the best interests of the child are enshrined in the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Indeed, the CRC states in Article 3.1 that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." and the CEDAW, in Article 5.b, enshrines the obligation of States parties to "ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases."

In the inter-American system, the American Convention on Human Rights establishes that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

This principle has been extensively developed by the Committee on the Rights of the Child in General Comment 14. In that Comment, the Committee held that the best interests of the child is an umbrella term that encompasses three dimensions, namely: (i) a fundamental right of the child, (ii) a basic and interpretative principle and (iii) a procedural rule<sup>339</sup>.

Regarding the content of this principle, the Committee held that it implies that any action involving a child must consider the best interests of the child as a primary consideration.<sup>340</sup> Hence, according to the Committee, the application of this principle means that not only should the interests of the child be considered, but also that his or her interests should take precedence whenever they conflict with other principles or interests.

Accordingly, all public policies implemented by States within the framework of their functions must take into account the interests of children and adolescents as an essential consideration. As a public policy, Comprehensive Sexuality Education must also be governed by the best interests of the child.

In this regard, I would like to point out a growing concern regarding sex education policies, that is, the hypersexualization of children and adolescents. Hypersexualization represents a risk that disproportionately affects the childhood population. This has been recognized by the Committee on the Rights of the Child in General Comment 20, which states that "[t]he digital environment can also expose adolescents to risks, including (...) **over-sexualization**."<sup>341</sup> This has been reiterated by the Committee in several reports, in which it has stated that hypersexualization is a problem that must be addressed by the States, since it jeopardizes the rights of children and adolescents.<sup>342</sup>

<sup>339</sup> Committee on the Rights of the Child. General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, par. 1. CRC/C/GC/14,

<sup>340</sup> Committee on the Rights of the Child. General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, par. 1. CRC/C/GC/14,

<sup>341</sup> General Comment No. 20 (20) on the implementation of the rights of the child during adolescence,

<sup>342</sup> Consideration of the reports submitted by States parties under article 44 of the Convention. Fifth periodic reports of States parties due in 2012; Committee on the Rights of the Child. Combined fifth and sixth periodic reports submitted by the Plurinational State of Bolivia under article 44 of the Convention, due in 2015.



Sex education, therefore, should be a means to prevent the hypersexualization of children and adolescents<sup>343</sup> and not a mechanism to promote it. Consistent with this, the ECtHR has established that for sex education to be in keeping with the Convention, it must aim to provide children with **correct, accurate, objective, and scientific knowledge on the subject, presented in an age-appropriate way.**<sup>344</sup>

Complaints about the hypersexualization of educational materials have been filed all over the world; this calls for strict regulation by the States and vigilance and research in these matters.<sup>345</sup> In the United States, multiple bills have been introduced to establish the right of parents to know the education their children receive in matters such as gender identity.<sup>346</sup> In addition, many States have banned educational materials that include references contrary to the best interests of the child.<sup>347</sup>

### 3.2. The IACHR omitted parents' rights to choose their children's education

In its considerations, the IACHR completely omitted the right of parents to choose their children's education. In this regard, I draw attention to the wording of Article 12.4 of the ACHR, which states that "[p]arents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions." (Bold added).

The same guarantee has been provided for in the International Covenant on Civil and Political Rights<sup>348</sup>, the International Covenant on Economic, Social and Cultural Rights<sup>349</sup>, the Convention on the Rights of the Child,<sup>350</sup> and the Additional Protocol to the European Convention on Human Rights.<sup>351</sup> According to the ECHR, the **right of parents to choose their children's education, including sex education**, is an aspect of the right to respect for private and family life protected by the ECHR.<sup>352</sup>

Thus, there is a consensus on the existence and recognition of this parental right. The Inter-American Commission has understood that the right of parents to choose the education of their children (i) must be interpreted in conjunction with the rights of children and adolescents, especially the right to education<sup>353</sup> and (ii) must respect the provisions of the inter-American instruments that establish that education must be oriented to train children to respect human rights, public freedoms, and tolerance.<sup>354</sup>

Of course, I agree with those criteria. However, it must not be forgotten that: (i) all types of education must be respectful of the best interests of children as a guiding principle, and (ii) the right of parents to choose the education of their children is derived from the right to education of children itself; therefore, there is a false dilemma in considering that these two rights are incompatible.

<sup>343</sup>Universidad de la Sabana. The hypersexualization of childhood. <https://www.unisabana.edu.co/portaldenoticias/al-dia/la-hipersexualizacion-de-la-infancia/>.

<sup>344</sup>ECHR. Case of Macatė v. Lithuania.

<sup>345</sup> See: Quadatrin Mexico. Imponen ideología de género e hipersexualización en libros: asociaciones. (They impose gender ideology and hypersexualization in books: associations.) 2023. <https://mexico.quadratrin.com.mx/imponen-ideologia-de-genero-e-hipersexualizacion-en-libros-asociaciones/>; Debate. New Ministry of Education (SEP) textbooks teach about inclusion, and physical pleasures? (*¿y placeres del cuerpo?*) 2023. <https://www.debate.com.mx/cultura/Nuevos-libros-de-texto-de-la-SEP-ensenan-sobre-inclusion-y-placeres-del-cuerpo-20230802-0073.html>; Infobae. Inappropriate content in SEP books: parents show pages that "promote hypersexualization." 2023. <https://www.infobae.com/mexico/2023/08/29/contenido-inapropiado-en-libros-de-la-sep-papas-exhiben-paginas-que-promueven-la-hipersexualizacion/>; Texas Values. Austin ISD Sex-Ed Curriculum, <https://txvalues.org/wp-content/uploads/2014/04/AISD-Sex-Ed-Curriculum-Presentation-final.pdf>; Foxnews. Transgender lesson gets New York 7th-grade teacher suspended. 2023. <https://www.foxnews.com/us/transgender-lesson-gets-new-york-7th-grade-teacher-suspended>.

<sup>346</sup> See: <https://www.future-ed.org/legislative-tracker-2023-parent-rights-bills-in-the-states/>.

<sup>347</sup> See: <https://www.kmuw.org/education/2023-12-18/kansas-school-district-restricts-books-that-mention-nudity-sexual-orientation-or-gender-identity/>; <https://www.cbsnews.com/news/florida-public-schools-ban-teach-gender-identity-sexuality/>; <https://www.cnn.com/2023/05/27/politics/iowa-law-gender-identity-book-ban/index.html>.

<sup>348</sup> Article 18.4.

<sup>349</sup> Article 13.3.

<sup>350</sup> Article 14.2.

<sup>351</sup> Article 2.

<sup>352</sup> ECHR, Kjeldsen, Busk Madsen and Pedersen, par. 53; Dojan et al, cited above, paras. 78–83.

<sup>353</sup> IACHR. Study: Inter-American Standards on Freedom of Religion and Belief.

<sup>354</sup> IACHR. Study: Inter-American Standards on Freedom of Religion and Belief.

Thus, the ECtHR, in its interpretation of Article 2 of Protocol No. 1, has stated that<sup>355</sup> the right of parents to respect for their philosophical and religious convictions is based on the fundamental right to education. According to the European Court of Human Rights, although entitlement to this right rests with the parents, it also rests with the children, who have the right to education and teaching.<sup>356</sup>

Undoubtedly, this right affects sex education for children and adolescents because sex education, like any other type of education, must be framed within the scope of protection of conventional law, recognized by international human rights law, which grants parents the right to choose the education of their children, in accordance with Article 12.4 of the Convention. However, the Commission did not take this right into account in its report.

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<sup>355</sup> The general principles enunciated by the ECtHR are mainly derived from the judgments handed down in the following cases: *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (ECtHR 1976/5); *Campbell and Cosans v. United Kingdom* (ECtHR 1982/1); *Valsamis v. Greece* (ECtHR 1996, 70), and *Folgero et al. v. Norway* (ECtHR 2007/53).

<sup>356</sup> Case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (STEDH 1976/5 of December 7, section 52).