

Country report
EL SALVADOR

IACHR Inter-American
Commission on
Human Rights

Situation of human rights in El Salvador



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Approved by the Inter-American Commission on Human Rights on

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This report addresses the human rights situation in El Salvador, after the on-site visit carried out by the IACHR from December 2 to 4, 2019. In particular, it analyzes issues related to citizen security; the situation of persons deprived of liberty; memory, truth, justice, and access to justice; the human rights situation of women and LGBTI persons; and the situation of migrants, displaced persons, and their economic, social, cultural, and environmental rights (ESCERs). In addition, it transversally addresses freedom of expression, the situation of human rights defenders and justice operators, and other groups at particular risk. It also offers recommendations aimed at assisting the Salvadoran State in strengthening its efforts to protect and guarantee human rights in the country.
2. The IACHR emphasizes and appreciates that the government of El Salvador, during its first six months in office, invited the Commission to conduct an *on-site* visit after 32 years. The Commission hopes that this report will help guide the efforts of the State to ensure the full observance of the human rights set forth herein and, in particular, to preserve the historical efforts and conquests achieved by the Salvadoran population after the internal conflict, such as the construction and strengthening of their democratic institutions.
3. As for citizen security, the IACHR welcomes the drastic reduction in the murder rate achieved during the first six months of the current government. The rate is now around 50 murders per 100,000 inhabitants, the lowest since the signing of the peace agreements. In this regard, the IACHR notes that the homicide rate per 100,000 inhabitants in 2015 was 103, in 2016 it was 80.9 and this downward trend has continued between 2017 and 2018, with rates of 60 and 51. After the visit, this trend has been reportedly maintained. Said progress was allegedly achieved thanks to the implementation of a new security policy under the Territorial Control Plan. The IACHR reiterates and stresses the importance of taking measures for the reconstruction of the social fabric as part of the plan established by the current government. For their part, civil society organizations denounced the lack of mechanisms for citizen participation, as well as the lack of transparency in the implementation of the Territorial Control Plan, in particular with regard to its design, implementation and effectiveness.
4. During the visit, the Commission received information on serious human rights violations in the context of the State's response to the situation of violence and insecurity, in which a policy of militarization is maintained. The IACHR was informed of possible cases of extrajudicial executions committed in alleged armed clashes between police officers and armed forces against alleged gang members, and the presence of "extermination groups" or "death squads" charged with carrying out social cleansing actions against gang members. According to what has been informed, between 2013 and 2019, there were only eight convictions of police officers prosecuted for the crime of homicide. Most of the cases were closed or dismissed by the Office of the Attorney General.

5. The IACHR is drawing attention to the increase in the number of disappearances in the country. According to the information provided by the Office of the Attorney General, 3,030 complaints of disappeared persons were reported between January and December 2019, which would account for an average of 10 disappeared persons per day. The Commission also received repeated complaints from victims about the actions of the authorities when they reported the disappearances of their relatives. Their complaints are not heard when they try to file a complaint. There are also delays in the investigation in cases in which the first hours are decisive.
6. The situation of the population deprived of liberty in El Salvador continues to be at serious risk, especially as a result of the implementation of citizen security policies in the prison system, which are preeminently punitive in nature. In this regard, the Commission notes with concern the deplorable conditions of detention, high levels of overcrowding in certain facilities, and permanent detentions in police detention centers. The IACHR notes that the State has recognized the health situation in prisons and welcomes the fact that the current administration has taken measures to improve health and reduce the levels of malnutrition found in criminal facilities.
7. Likewise, the IACHR observed first-hand how the extraordinary security measures ordered in 2016 increased the use of maximum-security regimes and, therefore, the extension of isolation. The Commission is concerned that 100 percent of the population deprived of liberty remains isolated from the outside world, and that procedures in maximum-security prisons are against what is suggested by international standards in this matter. In addition, no programs focused primarily on reintegration are implemented in security and maximum-security centers.
8. In police detention centers or *bartolinas*, designed for temporary detentions, a high number of people are packed (some of them have been prosecuted, while others are in pretrial detention) for periods exceeding the 72 hours established by law, and under conditions incompatible with international human rights law. The IACHR recognizes the efforts to transfer to penitentiary centers persons that have already been prosecuted and are held in *bartolinas*.
9. The Commission notes with concern the *de jure* and *de facto* obstacles to the fulfillment of the State's international obligations in the field of truth and justice, in particular, the application of legal types that prevent the prosecution and punishment of persons responsible for serious human rights violations, and the lack of access to files and information relevant to investigations. In this regard, it received information on the lack of collaboration from some institutions to provide documents relevant to the investigations, in particular from the Ministry of National Defense. The victims claimed that their voices are not being heard. They indicated that they "feel ignored," that they "have gone everywhere, and no one has heard" them, and that they feel that they "are not important." The victims and their families have said that they are revictimized by the justice system, underlining the lack of information on their cases and their outrage over the long time that has elapsed without progress.

10. In addition, during its visit, the Commission was informed about the prevalence of misogynistic, sexist and discriminatory sociocultural patterns that permeate the Salvadoran society as a whole and impact on the rights of women and lesbian, gay, bisexual, trans, diverse gender and intersex (LGBTI) persons to live a life free of violence and discrimination. These patterns create a context that facilitates said violations and lead to a situation of widespread impunity for these crimes.
11. With regard to women's rights, despite legislative advances, such as the adoption of the Law on Equality, Equity and the Elimination of Discrimination against Women, the Comprehensive Special Law for a Life Free of Violence against Women, as well as the "Ciudad Mujer" model, the IACHR received worrying information about the high prevalence of violence and sexual violence against women, in particular, against girls and adolescents in the country. What's more, it has been reported persistent violence and discrimination in the labor field, in particular in the textile industry and among home-based embroiderers. The Commission notes with concern the risk and the several forms of violence faced by women human rights defenders. It observes that women and girls who are victims of violence face persistent barriers to access judicial remedies, to have their cases properly prosecuted and to obtain reparations. In addition, the Commission reiterates its concern about the regulations criminalizing abortion in all circumstances in El Salvador.
12. The IACHR was informed of hate crimes, attacks, acts of discrimination, exclusion, denial of services, stigmatization and marginalization against Salvadoran LGBTI persons, among whom there are also high poverty rates. In addition, there are virtually no institutions for LGBTI persons in the country. The information obtained gives account of the lack of a budget dedicated to this matter or spaces to promote the articulation between state institutions and representatives of the civil society advocating for the rights of LGBTI persons. The Commission also notes the persistent barriers to the access to justice for LGBTI persons, given the lack of recognition of their gender identity and the existing bias among justice operators.
13. During the visit, the IACHR observed first-hand the serious situation in which internally displaced persons live in El Salvador. In particular, the Commission noted the reiterated violations of their human rights, including economic, social, cultural and environmental rights (ESCERs). In this regard, those same groups that are often discriminated against are victims of violence, reflected in the direct action of maras and gangs that drive displacement in El Salvador. In this context, poverty and inequality are visible elements of internal displacement, and are among the direct causes and consequences of it. The Commission recognizes the complexities of displacement, as well as the efforts that the Salvadoran State has been making to address the various challenges created by internal displacement.
14. The IACHR was also informed that El Salvador has the lowest per capita freshwater supply in Central America; water is a scarce resource in the country since its supply depends on water sources and basins located in third countries.

15. During its visit, the IACHR received complaints about the growing hostile environment for the exercise of freedom of expression in El Salvador, which would particularly affect independent journalists. Among the main concerns, a number of stakeholders mentioned a recurring stigmatizing discourse promoted by the government, both on social media and in other media formats, against independent media and journalists. The IACHR also received information from several organizations and media outlets about the restrictions on access to public information, mainly related to security, the environment, public expenditures and immigration agreements.

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CHAPTER 1
INTRODUCTION

INTRODUCTION

16. Within the framework of its mandate to promote and monitor human rights, the IACHR has continuously monitored the human rights situation in El Salvador. On June 5, 2019, the IACHR requested the Salvadoran State to authorize an *on-site* visit to the country during the same year. By note MPOAS-OAS-048/2019 dated July 2, 2019, the State granted its permission for the Commission to conduct the *on-site* visit and also expressed its interest in providing the best conditions for the development of the visit. The State proposed the visit to be held between December 2 and 6. By communication dated November 19, 2019, the IACHR confirmed the *on-site* visit to the country between December 2 and 4, 2019.
17. The IACHR visited El Salvador between December 2 and 4, 2019. The goal of the visit was to address the human rights situation in the country, in particular issues related to citizen security; the situation of persons deprived of liberty; memory, truth, justice and access to justice; the human rights situation of women and LGBTI persons; and the situation of migrants, displaced persons, and economic, social, cultural and environmental rights (ESCERs). In addition, the Commission transversally assessed freedom of expression, the situation of human rights defenders and justice operators, and of other groups at particular risk.
18. The visit delegation was made up of the then IACHR's President, Esmeralda Arosemena de Troitiño; its First Vice President, Joel Hernández; its Second Vice President, Antonia Urrejola; and Commissioners Flávia Piovesan, Margarete May Macaulay, who is also country rapporteur for El Salvador, and Luis Ernesto Vargas. The delegation also included the then Executive Secretary of the Commission, Paulo Abrão; Assistant Executive Secretary for Monitoring, Promotion and Technical Cooperation, María Claudia Pulido; Cabinet Chief of the Executive Secretariat, Fernanda dos Anjos; the then Special Rapporteur for Freedom of Expression, Edison Lanza; and the Special Rapporteur for Economic, Social, Cultural and Environmental Rights (ESCERs), Soledad García Muñoz, together with specialists from the Executive Secretariat.
19. During its visit, the IACHR delegation met with authorities of the three branches of the State and with autonomous bodies; with representatives and organizations of civil society, international organizations, academia and journalists. It also sought testimonies from victims of human rights violations and their families. As part of the visit, the IACHR conducted unrestricted visits to detention centers, in particular, the Zacatecoluca Maximum Security Prison, the Izalco Phase I Correctional Facility, the Tonacatepeque Social Insertion Center, the Izalco Women's Correctional Facility and the Sonsonate Detention Center. In addition, it traveled to the community of Las Anonas, in the department of San Vicente. Moreover, the IACHR visited shelters for women who were victims and survivors of violence and their children, and shelters maintained by civil society organizations, and visited a border community affected by the mobility and forced displacement phenomena affecting the country.

20. The Commission thanks the government of El Salvador for accepting to undergo international scrutiny only six months after president Nayib Bukele took office. The IACHR was invited to conduct a visit and to hold a frank and constructive dialog, at the highest level, with El Salvador's administration. The Commission was provided with relevant information and with logistics support. In particular, the IACHR thanks the Ministry of Foreign Affairs and other institutions for their cooperation in preparing and carrying out the visit.
21. It also recognizes and particularly appreciates the information provided by the State, as well as by civil society organizations. Similarly, the Commission highlights the efforts made by the victims of human rights violations and their families to present testimonies and complaints, both in writing and on site.
22. To prepare this report, the Commission compiled, analyzed and systematized information on the human rights situation in El Salvador in recent years. As part of this work, the IACHR used the information received before, during and after the visit; investigations carried out *ex officio*; inputs from its various mechanisms, such as public hearings, working meetings, Article 41 letters and precautionary measures; press articles; decisions and recommendations of specialized international organizations, among others.
23. The IACHR recognizes that many of the human rights issues in the country are structural and have remained unsolved since the armed conflict, namely: the levels of violence that affect the Salvadoran society; the impact of hard-handed citizen security policies on the human rights of the population; access to justice, truth and memory of the victims of the armed conflict; the precarious situation of the population deprived of liberty; the relationship between high levels of internal displacement and international migration and structural situations of poverty, inequality and violence; the prevalence of misogynist, sexist and discriminatory social and cultural patterns that impact the right of women and LGBTI people to live free from violence and discrimination. Furthermore, in addition to the persistence of structural problems, the Inter-American Commission addresses in this report the human rights situation of the Salvadoran population in the face of measures adopted in the context of the COVID-19 pandemic.
24. As presented in its preliminary observations, the IACHR emphasizes and appreciates that the government of El Salvador, during its first six months in office, invited the Commission to conduct an *on-site* visit after 32 years. As a result of this and in order to replicate the collaboration efforts made by the State of El Salvador during the visit, the Commission hopes that this report will help ensure the full observance of the human rights set forth herein and, in particular, to preserve the historical efforts and conquests achieved by the Salvadoran population after the internal armed conflict, such as the construction and strengthening of their democratic institutions, judicial independence and the rule of law. To this end, the IACHR urges the State to continue and double its efforts to comply with the recommendations made in this report, and to maintain an open, respectful and constant dialog with the Inter-American Commission, other international human rights bodies and the civil society.

25. In addition, within the framework of the Coordination and Timely Integrated Crisis Response Room (SACROI) installed for El Salvador and its various monitoring mechanisms, the IACHR will conduct a particular follow-up and pay special attention to the measures taken to preserve democratic institutions in the country and to improve the human rights situation of all people living in its territory.
26. The report first addresses citizen security, including the impacts of the measures adopted in response to the COVID-19 pandemic on citizen security and human rights. Chapter 2 covers serious violations of human rights in the context of the internal armed conflict in El Salvador, its impact on Salvadoran society and the State responses adopted in the years of the conflict and its aftermath. Chapter 3 assesses the situation of particular groups, including persons deprived of liberty, persons in the context of human mobility, women, LGBTI persons, indigenous peoples and persons of African descent, and human rights defenders. In Chapter 4, the IACHR other concerns relating to ESCERs. In chapter 5, the Commission analyses the situation of freedom of expression in the country. In Chapter 6, the IACHR summarizes its conclusions and makes a series of recommendations to the State.
27. On July 27, 2021, the IACHR transmitted a copy of the preliminary draft of this report to the Salvadoran State and requested that it submit its observations in accordance with its Rules of Procedure. The IACHR encouraged the submission of updated information from the State to be reviewed and included as appropriate in the report. On September 3, 2021, the IACHR received the information from the State, which, as pertinent, was incorporated into the text. Likewise, the IACHR takes note of the State's statements regarding facts or situations addressed that would be outside the time frame of the Commission's visit: "the draft report exceeds the temporal space of analysis and consideration of the on-site visit, given that, as already indicated, subsequent facts have been brought to the attention of the State, which has provided its pertinent and timely responses through those other mechanisms that are within the Commission's powers, it is therefore requested that all references to situations or facts subsequent to the on-site visit be deleted from the final report, as they are not consistent with what was examined in the context of the on-site visit and the Commission has not had the opportunity to comment on them in the context and for the purposes of the on-site visit"¹. On October 14th, 2021, the Commission approved the final version of this report, which addresses the facts known to the IACHR up to December 31, 2020.

¹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 2.



CHAPTER 2
CITIZEN SECURITY

CITIZEN SECURITY

28. Over the last few decades, the IACHR has closely monitored the situation of citizen security in El Salvador and its impacts on the enjoyment and exercise of human rights. The serious phenomenon of violence and insecurity has been one of the main issues of concern in the country. During the *on-site* visit, the Inter-American Commission noted a drastic reduction in the homicide rate during the first six months in office of the current administration, the lowest figures since the signing of the peace agreements. Below the Commission assesses the progress and challenges in this area.

A. *Background information*

29. Since the end of the armed conflict in 1992, El Salvador has been one of the countries with the highest rates of criminality in the region. Among the most representative data of this phenomenon is the high rate of homicides. According to official information, in 2015, the country had its record high with 103 homicides per 100,000 inhabitants, one of the highest rates globally at the time. Although the security mechanisms developed by the different governments gradually decreased these rates, in 2017, the homicide rate continued to be the highest in Central America with 60 homicides per 100,000 inhabitants.²
30. The phenomenon of violence in the country is related to the presence and activities of different criminal structures, mainly gangs and maras, such as Mara Salvatrucha (MS-13) and 18th Street (B-18) gangs. These groups reportedly have up to 60,000 members and a “social mattress” of about 500,000 people, which account for eight percent of the total population of El Salvador.³ It has been widely documented that maras and gangs exert great control and influence in some territories of the country, businesses, as well as in the daily lives of people, who are commonly affected by threats, extortion or widespread violence in the context of rivalries and confrontations between the same groups or with state forces. In turn, these structures are allegedly responsible for serious acts of sexual violence, sexual

² According to estimates by the International Crisis Group, based on the counts of homicides of the National Civil Police and the Office of the Attorney General of El Salvador, between 1993 and 2016, at least 93,000 homicides took place in El Salvador, over a half of which could be attributed to gangs. International Crisis Group, [El Salvador's Politics and Perpetual Violence](#), Report on Latin America No. 64, December 19, 2017, page 2; in 2017, El Salvador was the country with the highest rate of homicides in Central America. United Nations Office on Drugs and Crime, [Global Study on Homicide, Homicide: extent, patterns, trends and criminal justice response](#), July 2019, p. 17.

³ International Crisis Group, [Mafia of the Poor: Gang Violence and Extortion in Central America](#), April 6, 2017; International Crisis Group, [El Salvador's Politics and Perpetual Violence](#), Report on Latin America No. 64, December 19, 2017, p.9.

slavery, human trafficking, sexual exploitation against women and girls,⁴ as well as the forced internal displacement of entire families and migratory flows to other countries in the region.⁵

31. Although the prevalence of these groups has been a permanent concern on the agendas of different governments, through the development of public security strategies, these have been based primarily on a “hard-handed” approach to gangs, with the exception of a two-year “truce” (2012-2014). As a result, they have proved ineffective in addressing the structural causes or factors that reproduce and trigger violence. According to the information received, the strictly punitive effect of the security policies of the last two decades has been allegedly counterproductive, for example, because the measures of mass imprisonment contributed to aggravating the overcrowding and extreme precariousness of the Salvadoran prison system, as well as to expanding the influence and recruitment possibilities of these groups in detention centers.⁶

B. Information received during the visit

32. In its preliminary observations on the *on-site* visit, the IACHR welcomed the drastic reduction in the murder rate achieved during the first six months of the current government. The rate was around 50 murders per 100,000 inhabitants, the lowest since the signing of the peace agreements. On the occasion, the State also reported on the reduction of the incidence of crime during the same period.⁷ After the visit, this trend has been reportedly maintained. Thus, at the end of 2019, the homicide

⁴ In this regard, in August 2016, the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, visited El Salvador and received complaints of enforced disappearances, forced recruitment of children and the subjection of women, which included forcing young women and girls to become sexual partners of maras members. UN, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to El Salvador, A/HRC/33/46/Add.1, August 3, 2016.

⁵ In 2018, the UN Special Rapporteur on the human rights of internally displaced persons considered that internal displacement was “a hidden tragedy and publicly unacknowledged crisis” in El Salvador. Victims of violence and displacement have no choice but to take their safety into their own hands due to the lack of any effective protection system for internally displaced persons provided by the State. UN, Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on her visit to El Salvador, A/HRC/38/39/Add.1, August 23, 2018.

⁶ IACHR, [‘IACHR Completes 174th Period of Sessions’](#), November 20, 2019; 174 period of sessions, public hearing [“Violence and citizen security in El Salvador”](#), November 11, 2019; [“El rol del ejército en la seguridad interna en El Salvador: lo excepcional convertido en permanente](#). Re-conceptualización de la violencia en el Triángulo Norte,” Fundación Heinrich Böll-México Centroamérica y El Caribe, El Salvador, 2016; Plataforma por la Seguridad Ciudadana, proposals of civil society organizations for the drafting of a public policy on citizen security in El Salvador, November 2019; [“Dilemas y paradojas de la Fuerza Armada de El Salvador,”](#) Revista Factum, August 19, 2020.

⁷ IACHR, [press release no. 335/2019](#), [“The IACHR presents its preliminary observations following its on-site visit to El Salvador.”](#) December 27, 2019.

- rate reportedly decreased by 60 percent nationally;⁸ whereas, in 2020, a total of 1,332 homicides were recorded, against the 2,398 recorded in 2019. According to the available information, said progress was allegedly achieved thanks to the implementation of a new security policy under the Territorial Control Plan (PCT).⁹
33. During the visit, the Salvadoran State informed the IACHR that the Territorial Control Plan was aimed at guaranteeing the functions of prevention, combating crime, rehabilitation and reintegration in the field of citizen security in the country. In addition, it indicated that since June 20, 2019, the plan has been implemented in 12 of the 262 municipalities largely controlled by criminal structures, in order to limit their expansion and restore governability in these territories. As reported to the IACHR, the implementation of the Territorial Control Plan is headed directly by the president of the Republic and is divided into three phases, namely: 1) primary prevention and visible presence of the national police and the armed forces, so as to make a profile of and identify criminal structures in 17 municipalities, and fight them through direct intervention; control and discipline in detention centers, so as to improve their conditions; and deterrence of criminal behavior in the most vulnerable areas to transform the way in which people earn a living and subsist; 2) the reconstruction of the social fabric through the persecution and prevention of crime, with the goal of reactivating the social and economic fabric and giving opportunities to persons in vulnerable areas; to recover, clean up and refurbish spaces to improve the living conditions, promote coexistence and the sense of belonging; and support persons by providing them with different opportunities and options, transforming communities so that they are inserted into production; 3) the modernization of the tools, infrastructure and resources of the security forces.¹⁰
 34. The IACHR appreciates, once again, the Salvadoran State's recognition of citizen security as a priority and the efforts made since the implementation of the Territorial Control Plan to address this problem. It also acknowledged positive aspects of said plan, such as the efforts to restore governability in the territories, to prevent crime and particularly to reconstruct the social fabric.¹¹
 35. However, civil society organizations informed the IACHR that the PCT has not led to a substantial change with regard to the "hard-hand" policies implemented by previous administrations, such as the militarization of citizen security and the approach of punitive repression through criminal law. They also denounced the

⁸ National Civil Police (PNC), presentation "[Por estas razones están bajando los homicidios](#)," El Salvador, 2019; Ministry of Justice and Public Security, "[Homicidios cayeron hasta un 60% en los homicidios en 2019](#)," January 8, 2020.

⁹ According to public information, "National Civil Police (PNC) statistics indicate that between January 1 and December 31, 2020, 1,322 murders were recorded in the national territory, an average of 3.67 violent deaths each day. The figure is below the figure recorded for the same period during 2019, when 2,398 homicides were committed, with an average of 6.6 violent deaths each day in the country. In other words, in 2020 there were 1,076 fewer homicides than in 2019." Government of El Salvador, "[El Salvador cierra el 2020 con 1,076 homicidios menos que el año pasado](#)," January 1, 2021.

¹⁰ Ministry of Finance, [Propuesta de Financiamiento Plan de Control Territorial](#), 2019.

¹¹ IACHR, [press release no. 335/2019, "The IACHR presents its preliminary observations following its on-site visit to El Salvador."](#) December 27, 2019.

lack of mechanisms for citizen participation and the elimination of the Council for Citizen Security, an agency that promoted civil society participation.¹² Finally, as it was indicated in the context of the public hearing “Violence and citizen security in El Salvador”, held on November 11, 2019, the Territorial Control Plan allegedly had up to seven stages, of which only three have been publicly announced. To date, no details about their design and implementation have been published.¹³ According to the information received by the IACHR, the Territorial Control Plan, in its entirety, has been declared classified information under Article 19, b of the Law on Access to Public Information, for a period of seven years.¹⁴

36. In view of the lack of transparency in the implementation of the Territorial Control Plan, the IACHR notes that there are several questions about its effectiveness and about alleged informal agreements reached between gangs and the State. According to a report prepared by Crisis Group, statistical information reveals that there is reportedly no direct correlation between the implementation of the plan and the drastic reduction in homicides in the country. Since its implementation, police and military forces have been deployed in 22 prioritized municipalities; however, homicides have declined in other gang-affected areas in a similar manner. The Crisis Group’s report points out that, if the fall in homicides were the result of the implementation of the Territorial Control Plan, it would be natural to assume that the 22 prioritized municipalities would have shown better results in security indicators than those municipalities not included in the plan. Although the same report recognizes that the implementation of the plan may have contributed to a reduction in homicides, there could be another elements to be taken into account such as: the downward trend recorded before the current government took office; and the structural changes that gangs have experienced in recent years. In addition, this report includes as a potential element, “unofficial policies beyond the Territorial Control Plan, in particular an alleged informal understanding between officials and gangs to reduce violence and clashes between security forces and gangs.”¹⁵

¹² Instead, a Security Cabinet composed of government institutions was created, which operates without the participation of civil society. The institutions included are as follows: the presidential commissioner for Operations and Government Cabinet; the Ministry of Justice and Public Security; the Ministry of Governance and Territorial Development; the Ministry of Finance; the Ministry of Education, Science and Technology; the Ministry of National Defense; the Ministry of Labor and Social Security; the State Intelligence Agency; the National Civil Police; the Academy of Public Security; and the General Directorate of Correctional Centers. [Executive Decree No. 26](#), published on October 3, 2019.

¹³ IACHR, 174 period of sessions, public hearing “[Violence and citizen security in El Salvador](#),” November 11, 2019; IACHR, [press release No. 335/2019](#), “[The IACHR presents its preliminary observations following its on-site visit to El Salvador](#),” December 27, 2019.

¹⁴ CIDH, 180º período de sesiones, Audiencia “Audiencia general sobre la situación de derechos humanos en El Salvador”, 30 de junio de 2021.

¹⁵ According to the report, although additional police and military forces were deployed in prioritized municipalities, homicides have also declined in other gang-affected areas in a similar manner. If the fall in homicides were the result of the implementation of the Territorial Control Plan, it would be natural to assume that the 22 prioritized municipalities would have shown better results in security indicators than those municipalities not included in the plan. Moreover, the downward trend in homicides seems to have

37. In relation to "the lack of transparency of the PCT, questions about its effectiveness and alleged informal agreements between gangs and the State," the Salvadoran State indicated that its actions are based on the provisions of the Plan, whose "application, effectiveness and execution is carried out in strict adherence to the law. Consequently, it expressed its rejection of the above-mentioned questions, considering that "they should be contrasted with the abundant evidence of its effectiveness and its impact on the reduction of criminal acts in general and homicides in particular". Likewise, in its observations on the draft report, the State informed the IACHR that on January 28, 2021, during a virtual meeting of the Police Actions Roundtable, a space for dialogue with civil society organizations, it made an extensive presentation of the technical content of the PCT to State institutions and various civil society organizations, such as Counterpart International, Servicio Social Pasionista, FESPAD, IDHUCA and CRISTOSAL, among others. Also, it indicated that, between July and August 2021, it announced other phases of the Plan, "which include projects to strengthen the social fabric in different communities, such as the so-called Urban Centers of Well-being and Opportunities (CUBOS), through which reinsertion, reconstruction of the social fabric and socialization among citizens are promoted".¹⁶
38. The IACHR encourages the State to widely publicize the complete content of the Territorial Control Plan, as well as to restore spaces for citizen participation, such as the former Council for Citizen Security, so as to promote evaluation and accountability through mechanisms that promote social and political consensus for its implementation, as well as transparency and the fight against impunity and corruption. The IACHR also reiterates and stresses the importance of taking measures for the reconstruction of the social fabric as part of the plan established by the current government. During its visit, the Commission went to Los Cubos, in the Iberia community, to learn more about a youth initiative that creates socialization spaces through cultural and recreational activities. The IACHR welcomed this initiative to rebuild the social fabric and hopes that it can be replicated in other communities across the country.¹⁷
39. On the other hand, in the context of the State's punitive response to the situation of insecurity and violence, the IACHR is concerned about the persistent enforcement of anti-terrorist laws against suspected members of maras and gangs. In this regard, in 2015, the Supreme Court of Justice ratified several reforms to the Special Law against Acts of Terrorism, which classified some of the gangs and maras as terrorist groups.¹⁸ As a result, arrests of terrorist group members

begun shortly before Bukele took office and, therefore, before the implementation of his security plan. International Crisis Group, *Miracle or Mirage? Gangs and Plunging Violence in El Salvador*, Crisis Group's Report on Latin America No. 81, July 8, 2020.

¹⁶ Republic of El Salvador, *Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador"*, September 3, 2021., p. 3.

¹⁷ IACHR, [press release no. 335/2019, "The IACHR presents its preliminary observations following its on-site visit to El Salvador."](#) December 27, 2019.

¹⁸ Constitutional Chamber of the Supreme Court of Justice, ["Sala declara como grupos terroristas a pandillas denominadas MS y 18."](#) El Salvador, August 24, 2015.

increased from 16 in 2014 to 482 in 2015, criminalizing mainly young people and adolescents.¹⁹ In addition, according to data from the Office of the Attorney General of the Republic, between 2016 and September 2019, 18,356 persons were allegedly charged with the crime of terrorism, 3,086 of which were convicted and 6,983 of which were acquitted after spending approximately two years in provisional detention.²⁰

40. In this regard, in its observations on the draft report, the State stated that "most of the convicted gang members have been convicted for the crime of Unlawful Groupings, as provided for in the Criminal Code, and only those cases in which the conduct falls under the Special Law Against Acts of Terrorism are prosecuted in accordance with the said law".²¹
41. On several occasions, the Inter-American Commission has expressed its concerns regarding the application of anti-terrorist laws in this context. In this regard, it has said that the principle of legality in the area of anti-terrorist laws is one of the fundamental guarantees of due process and fair trial, which must be observed with particular attention by States in the course of anti-terrorist strategies. In the words of the IACHR itself, the principle of legality is "[o]f particular pertinence in the context of terrorism (...). Ambiguities in laws proscribing terrorism (...) undermine the propriety of criminal processes that enforce those laws."²² The IACHR also warns that the principle of legality is violated when terrorist crimes are classified and described in imprecise and ambiguous language that narrowly defines the punishable offense, contrary to the modern systems of criminal law that require very specific terminology with little or no room for interpretation, especially in cases in which the criminal types of terrorism may be confused with each other or with other criminal types that allow for broad interpretation, hindering the necessary legal certainty that the State must guarantee in this field.²³
42. The IACHR urges the Salvadoran State to take administrative, legislative and judicial measures to ensure that the legislation satisfies the principle of legality in both its content and its enforcement. It also calls upon the State to assure the effective fulfillment of all guarantees of due process and, in particular, presumption of innocence, as well as the precept that no one should be convicted of an offense

¹⁹ IAHR, 174 period of sessions, public hearing "[Violence and citizen security in El Salvador](#)," November 11, 2019;

²⁰ IACHR, [press release no. 335/2019, "The IACHR presents its preliminary observations following its on-site visit to El Salvador."](#) December 27, 2019.

²¹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 4.

²² IACHR, [Report on Terrorism and Human Rights](#), OAS/SER.L/V/II.116, Doc. 5 rev. 1, October 22, 2002, paras. 225-226, and Executive Summary, para. 17.

²³ IACHR, Application and allegations before the Inter-American Court of Human Rights in *Castillo Petruzzi et al. v. Peru*; referred to in: IACHR Court, *Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999 (merits, reparations and costs), Series C No. 52, para. 114. IACHR, Application and allegations before the Inter-American Court of Human Rights in *De la Cruz Flores v. Peru*; referred to in: IACHR Court, *De la Cruz Flores v. Peru*. Judgment of November 18, 2004 (merits, reparations and costs), Series C No. 115, para. 74.

except on the basis of individual criminal responsibility in the enforcement of the applicable law.

43. Moreover, the IACHR recalls that citizen security policies, which are heavily focused on the security forces exercising coercive control and punitive crackdowns by the criminal justice system, seek short-term results and thus fail to address the underlying causes of violence and pay insufficient attention to prevention.²⁴ In this regard, the Commission agrees with the conclusions reached by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, who, at the end of her mission to El Salvador, emphasized: “the massive imprisonment of alleged gang members, the normalization of emergency decrees, the imposition of the extraordinary security measures and the application of terrorism laws to gang activities are unlikely to address the root causes of violence and gang existence, or respond to the evident need for accountability.”²⁵
44. The IACHR has pointed out that to be truly effective, any public policy on citizen security must be supported by a strong political consensus and enjoy the support of broad sectors of the population, which is also central to strengthening democratic governance. In addition, such policies should strictly adhere to human rights and to democratic principles and the rule of law. In this regard, pursuant to Article 23 of the American Convention, the IACHR recalls that States have a legal obligation to organize the most all-inclusive systems for society’s participation in dealing with the prevention of violence and crime, as a way to strengthen democracy and the rule of law.²⁶ As indicated by the IACHR, the participation of the inhabitants in the management of public affairs and the design, implementation, monitoring, and evaluation of public policies, especially at the local level, is part of their civil and political rights, as well as a valuable strategic approach for reducing levels of insecurity and violence.²⁷
45. The IACHR reiterates that, without access to quality information, it is not possible to favor spaces for citizen participation. The right of access to information, recognized in Article 13 of the American Convention, is a fundamental tool for citizens to oversee the functioning of the State and public administration, through, *inter alia*, the informed exercise of political rights and, in general, towards the realization of other human rights, especially those of the most vulnerable groups. As a result, when designing, implementing and evaluating the public policy on citizen security, the authorities of the State must produce, organize and disseminate quality information. The production and dissemination of reliable information on the policy of citizen

²⁴ IACHR, [Violence, children and organized crime](#), OAS/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 414.

²⁵ UN, Report of the Special Rapporteur on Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, A/HRC/38/44/Add.2, December 7, 2018, para. 100.

²⁶ IACHR [Citizen security and human rights](#), OAS/Ser.L/V/II. Doc. 57, December 31, 2009, para. 53 and 207.

²⁷ IACHR, Violence, children and organized crime, OAS/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 515; IACHR, [Citizen security and human rights](#), OAS/Ser.L/V/II. Doc. 57, December 31, 2015

security is one of the State's positive obligations in order to protect and ensure the human rights at stake in the matter of citizen security.²⁸

C. *Militarization and use of force*

46. Even though the armed forces in El Salvador have been engaged, virtually without interruption, in the maintenance of order and public security since 1992, during the last decade, such involvement has intensified within the framework of different measures and decrees that have led to a permanent and *de facto* militarization of citizen security activities.²⁹
47. Between 2009 and 2014, the armed forces were assigned to security tasks, even within the prison system, by means of at least seven executive decrees, initially of a transitory nature, which extended their involvement.³⁰ In 2016, as part of a set of "extraordinary measures" to combat violence and insecurity, the executive branch sustained the participation of the military forces and ordered their expansion, as well as the creation of joint task forces, together with the National Civil Police, such as: the Territorial Intervention and Recovery Forces (FIRT), made up of 600 military officers and 200 police officers; the El Salvador Specialized Reaction Force (FES), made up of 600 military officers and 400 police officers; the Historic Center Task Force, made up of 400 reservists and 400 police officers; as well as the so-called Joint Community Support Groups (GCAC). In a report submitted at the end of 2016, the Office of the Attorney for the Defense of Human Rights (PDDH) received 1,012 complaints for human rights violations committed by the National Civil Police (PNC) and the army. Most of them were related to extrajudicial executions, threats, ill-treatment, torture, illegal detention and intimidation. Indeed, the highest proportion was registered between April and May, which was consistent with the launch of both the FES and the FIRT.³¹
48. Based on the information received during the on-site visit, the IACHR notes that the 2019 change of administration did not imply a substantial change in the policy of militarization of citizen security activities. Since June 2019, the executive branch has approved new decrees to "exceptionally" use the armed forces for the

²⁸ IACHR [Citizen security and human rights](#), OAS/Ser.L/V/II. Doc. 57, December 31, 2009, para. 183.

²⁹ IACHR, 174 period of sessions, public hearing "[Violence and citizen security in El Salvador](#)," November 11, 2019; IACHR, 177 ordinary period of sessions, public hearing "[Repression and militarization of public security in El Salvador](#)," October 5, 2020.

³⁰ "[El rol del ejército en la seguridad interna en El Salvador: lo excepcional convertido en permanente](#). Re-conceptualización de la violencia en el Triángulo Norte," Heinrich Böll Foundation-Mexico, Central America and the Caribbean, El Salvador, 2016

³¹ PDDH, [Informe especial de la señora Procuradora para la defensa de los derechos humanos, Licenciada Raquel Caballero de Guevara, sobre las ejecuciones extralegales atribuidas a la Policía Nacional Civil en El Salvador, período 2014-2018](#), August 2019.

maintenance of domestic peace and public security.³² The Territorial Control Plan (PCT), in its first phase, included the massive recruitment of 3,000 new agents of the armed forces assigned to “combat crime.”³³ Currently over 8,626 military officers are allegedly appointed to public security tasks.³⁴ According to information received, the budget for defense increased by 17.9 percent between 2019 and 2020.³⁵ The IACHR also learned that 50 out of the 109 million dollars of the loan requested from the Central American Bank for Economic Integration (CABEI) to finance phase III of the PCT were reportedly earmarked to increase the territorial deployment of the army in public security tasks during the next three years.³⁶

49. In its observations on the draft of this report, the Salvadoran State expressed its categorical rejection of the IACHR’s statement regarding the existence of a militarization policy. According to the State, “the military presence in itself cannot be understood as militarization, since it obeys a pre-established constitutional and legal framework, with specific tasks and taking into account that the National Civil Police is always in charge of public security actions, while the Armed Forces only support this activity. Likewise, it pointed out that it is working to strengthen the National Civil Police and the Crime Investigation Units, through investment in technology and the development of police resources.”³⁷
50. Pursuant to inter-American standards, the IACHR recalls that it is the civil police force that must primarily maintain public order and citizen security. Hence, the participation of the armed forces in security tasks must be extraordinary; i.e., any intervention must be justified, exceptional, temporary and restricted to what is strictly necessary under given circumstances. Furthermore, the armed forces must be subordinate and supplementary to the work of civil agencies, and the scope of their tasks shall not include the powers of law enforcement or judicial or ministerial police agencies. They shall also be regulated by means of legal devices and protocols on the use of force, and be governed by the principles of exceptionality, proportionality and absolute necessity, and in accordance with the respective training in the matter. They shall be supervised by competent, independent and technically capable civil bodies.³⁸
51. The Commission reiterates that police and military institutions are substantially and qualitatively different in terms of the purposes for which they were created, as well as in terms of their training and preparation. Therefore, it is essential to

³² “Transitory special provisions for the engagement of the armed forces in internal peacekeeping operations”, [Executive Decree No. 36](#), November 25, 2019; [Executive Decree No. 36](#), November 25, 2019.

³³ [Post](#) by the president of El Salvador, Nayib Bukele, in his Twitter Account, (@nayibbukele).

³⁴ IACHR, 180th session, “General Hearing on the Human Rights Situation in El Salvador,” June 30, 2021.

³⁵ IACHR, [press release no. 335/2019](#), “The IACHR presents its preliminary observations following its on-site visit to El Salvador,” December 27, 2019.

³⁶ El Faro, “[CABEI loan, a step further in Bukele’s militarization of public security](#),” March 8, 2020.

³⁷ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report “Situation of Human Rights in El Salvador”, September 3, 2021., p. 4.

³⁸ IAHR Court. Alvarado Espinoza *et al.* v. Mexico. Judgement of November 28, 2018. Series C No. 370, paras. 181 and 182.

take measures to strengthen the National Police through its purge and reconstruction, if deemed necessary, in order to regain citizen confidence.³⁹

52. Although the IACHR recognizes the existence of a Protocol for Joint Action between the National Civil Police and the Armed Forces,⁴⁰ it notes with concern that the permanent allocation of roles that need to be exceptionally carried out by civilian police forces to the armed forces can both lead to an increase in violence rates and in the number of human rights violations. Consequently, the IACHR urges the State of El Salvador to primarily strengthen the capacities of the police in order to move forward with the implementation of a plan so that the armed forces are gradually relieved of public security tasks, pursuant to the inter-American human rights standards.
53. Within the framework of the public hearing entitled “Repression and militarization of public security in El Salvador” held on October 5, 2020, civil society organizations informed that the permanent militarization of security tasks and the tendency to include the armed forces in activities that deviate from their constitutional and legal mandate had led to its undue use and to the denaturalization of the institution.⁴¹ As an example, they denounced the participation and support of the army to the head of the executive branch when he spoke before the Legislative Assembly on February 9, so as to exert pressure on the legislative branch for it to approve a loan aimed at funding the third phase of the Territorial Control Plan.⁴² According to public information, some deputies had been harassed by military officers and by security and intelligence state agencies, who threatened them with forcing them into the Assembly. Within this juncture, the head of the executive branch threatened with breaking the constitutional order and calling for an uprising.⁴³

³⁹ IACHR, Situation of Human Rights in Honduras, OAS/Ser.L/V/II. Doc. 42/15, December 31, 2015, para. 37. IACHR Situation of Human Rights in Guatemala. Diversity, Inequality and Exclusion, OAS/Ser. L/V/II. Doc. 43/15, December 30, 2015, para. 153, 174, para. 178. IACHR, Situation of Human Rights in Guatemala, OAS/Ser.L/V/II. Doc. 208/17, December 31, 2017, para. 352

⁴⁰ Protocol for Joint Action between the National Civil Police and the armed forces of El Salvador for the prevention, the fight against crime and the fight against corruption, in strict compliance with the law and respect for human rights. El Salvador, 2018.

⁴¹ IACHR, 177 period of sessions, public hearing “[Repression and militarization of public security in El Salvador](#),” October 5, 2020.

⁴² ElSalvador.com, “[Asamblea rechaza convocatoria a plenaria de Bukele](#),” February 7, 2020; La Prensa Gráfica, “[Bukele convoca "al pueblo" a presentarse en la Asamblea Legislativa este domingo](#),” February 8, 2020; France 24, “[El Salvador: Bukele busca aprobar sus planes al margen de la Asamblea Legislativa](#),” February 9, 2020.

⁴³ La Prensa Gráfica, “[Bukele dice que Dios le pidió "paciencia": tras militarizar Asamblea, presidente le da una semana para aprobar préstamo o convocará de nuevo](#),” February 9, 2020; El Faro, “[Bukele llama a la insurrección y la Fuerza Armada le jura lealtad](#),” February 9, 2020; on his Twitter account, the president stated: “The constitutional order has not been broken, the call is still in force, and the plenary has to be held on Sunday at 3 pm. If deputies do not attend the plenary, they will be breaking the constitutional order, and people may enforce Article 87 of the Constitution.” [Post](#) by the president of El Salvador, Nayib Bukele, on his Twitter Account, (@nayibbukele) on February 7, 2020.

54. The actions of the executive branch and the large military deployment in the legislative body were condemned both nationally and internationally for representing severe threats to democratic stability and to the rule of law.⁴⁴ The Supreme Court of El Salvador issued precautionary measures to suspend any such act resulting from the emergency session which was convened and ordered the executive branch to refrain from using the armed forces in activities that were against the purposes set forth in the Constitution and that “jeopardized a republican, democratic and representative form of government, as well as the principle of separation of powers.”⁴⁵ The IACHR also [called upon](#) the State to peacefully solve the crisis and to respect the separation of powers and the Constitution. Likewise, it stressed the importance of dialog, respect to institutions and the rule of law as essential conditions to comply with international human rights obligations.
55. In addition, the Inter-American Commission received information on serious human right violations occurred within the context of the State’s response to the situation of violence and insecurity the country is currently undergoing, such as potential cases of extrajudicial executions perpetrated in purported armed clashes between agents and alleged gang members.
56. In this regard, civil society organizations have stated that, within the last five years, at least 2,173 armed clashes have been recorded, which have led to the death of 1,930 people. Out of these casualties, 96.8 percent were citizens who were identified as gang members according to the official sources.⁴⁶ By the end of 2019, the number of recorded conflicts since 2014 rose to 2,514, in which 2,025 people died, out of whom 1,957 were civilians and 68 were police or military officers.⁴⁷ In addition to the high number of civilians killed when compared to the number of state agents who were murdered over the same period of time, according to an analysis carried out by the University Observatory for Human Rights of the Central American University, the fatality rate in these clashes was alarming and “clearly indicative of the excessive use of lethal force.” Thus, in 2019, the number of dead people (193) was allegedly higher than the number of injured people (76) among those identified as “criminals or gang members.”⁴⁸

⁴⁴ Local [statement](#) of the European Union, together with the Heads of Mission in El Salvador from Member States, February 9, 2020; Forbes Centroamérica, “[Abuso de fuerza de Bukele genera condena dentro y fuera de El Salvador](#),” February 12, 2020; Elsalvador.com, “[Militarización de Asamblea: La contundente condena internacional al fallido golpe](#),” February 20, 2020; Human Rights Watch, “[Presidente Bukele, la fuerza bruta no es el camino para El Salvador](#),” February 14, 2020.

⁴⁵ Supreme Court of Justice, [Constitutional Chamber, Unconstitutionality Proceeding No. 6- 2020](#), February 10, 2020.

⁴⁶ IACHR, Salvador. December 27, 2019.

⁴⁷ Institute of Human Rights, UCA, [Informe de Derechos Humanos 2019](#), pp. 13 and 14.

⁴⁸ The fatality rate is estimated by dividing the number of civilians killed by the number of injured persons. The rate indicates that any ratio greater than 1 is reportedly pointing to an excessive use of force and possible extrajudicial executions. Pursuant to the Observatory’s analysis, although there has been a reduction in recent years, the rate was 2.3 and 2.5 civilian deaths for each person injured in 2018 and 2019, respectively.

57. According to the information available from the University Observatory of Human Rights of the Central American University 2020, the armed clashes, registered as “illegitimate attacks by the police, were 181 nationwide in 2020, which is equivalent to one clash every two days approximately .” According to the Observatory, such figure accounts for a 38.43 percent decrease against the 294 clashes registered in the previous year.⁴⁹ Additionally, in 2020, the fatality rate was 1.39, which is below the 2019 rate of 2.54. The researcher that created the rate states that “any ratio greater than 1 is reportedly pointing to an excessive use of force and possible summary executions.” This is because, in authentic clashes, there are usually more people injured than killed, since the police seek to deter and not kill through the legitimate use of force.⁵⁰
58. Between 2014 and 2019, the Office of the Attorney for the Defense of Human Rights documented 48 possible cases of extrajudicial executions involving over 130 victims. The investigations carried out by the Office of the Attorney for the Defense of Human Rights in several of these cases revealed strong indicia that the deaths of alleged gang members did not occur in the context of an armed conflict, but that they were executions committed by state agents resulting from a pattern of abuse of the force and lethal violence. In some of these cases, there was a prior identification of the victim, based on a previous history of police abuse, harassment, arbitrary detentions, systematic harassment and even death threats and injuries suffered by the victims and perpetrated by the same agents who were later identified as responsible for their deaths.⁵¹
59. Besides, in 2018, the United Nations Special Rapporteur for extrajudicial, summary or arbitrary executions analyzed cases of “armed clashes”, in which she found that the *modus operandi* allegedly indicated that reported gang members were murdered in cold blood, and that the perpetrators or third parties later manipulated the crime scene, for example, placing weapons and drugs next to the bodies. With some exceptions, most cases reportedly indicated the commission of extrajudicial executions. Such conduct was allegedly facilitated by the lack of adequate judicial responses and investigations.⁵²
60. The IACHR has also been informed about the presence of “extermination groups” or “death squads” in charge of the social cleansing of gang members. Such groups reportedly act with the knowledge, participation or acquiescence of the state

University Observatory of Human Rights of the Central American University, Estado de Derechos Humanos en El Salvador. Informe Anual 2019, p. 15 and ss.

⁴⁹ University Observatory of Human Rights of the Central American University, Estado de Derechos Humanos en El Salvador. Informe Anual 2020, p. 18 and ss.

⁵⁰ Ignacio Cano, “[La policía y su evaluación. Propuestas para la construcción de indicadores de evaluación en el trabajo policial.](#)” Center for Development Studies, Citizen Security Area, Chile.

⁵¹ PDDH, [Informe especial de la señora Procuradora para la defensa de los derechos humanos, Licenciada Raquel Caballero de Guevara, sobre las ejecuciones extralegales atribuidas a la Policía Nacional Civil en El Salvador, período 2014-2018.](#) August 2019.

⁵² OHCHR, “[El Salvador End of Mission Statement.](#)” Agnes Callamard, Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions of the United Nations, February 2018.

security forces. Pursuant to the information gathered by the University Institute of Human Rights of the Central American University, within the last five years, the Office of the Attorney General has identified at least 10 different extermination groups and, between 2018 and January 2020, it managed to dismantle 8 different structures made up of at least 33 police officers, 9 members of the armed forces and 81 individuals, including former police officers. A total of 161 deaths, allegedly of gang members, were attributed to the ten extermination groups identified. The lack of investigations and the impunity that persists in these cases is a determining factor for the prevalence of these groups.⁵³

61. In most cases of homicides committed by state agents, the IACHR also notes the lack of an adequate, diligent investigation consistent with the seriousness of the events. During its visit, the IACHR was informed that, between 2013 and 2019, there were only eight convictions of police officers prosecuted for the crime of homicide. Most of the cases were closed or dismissed by the Office of the Attorney General. Likewise, in relation to the investigation of the cases documented by the Office of the Attorney for the Defense of Human Rights, the information available shows that merely 14 of the cases went to court. As for the remaining cases, the investigation made no progress in the administrative instance, and most cases were closed. Out of the 14 cases that reached an initial hearing, in 9 of them (64.3 percent) the Office of the Attorney General requested the provisional or definitive dismissal of the accused. In subsequent stages, only four cases reached the sentencing stage, of which two concluded with a conviction. In other words, out of the total number of cases prosecuted, only 14.3 percent concluded in a conviction.⁵⁴
62. As to the use of force by the State and its agents, the IACHR has considered that due to the irreversible consequences that could derive from the use of force, its use should be conceived as “a qualitatively and quantitatively limited last resort that intends to prevent a more serious event than the one provoked by the state reaction.”⁵⁵ Both the Commission and the Court have agreed that, for the use of force to be justified, the principles of legality, absolute necessity and proportionality must be met.⁵⁶
63. The IACHR underscores that, within their domestic legal system, States must also have an adequate regulatory framework that discourages any imperil to the right

⁵³ Institute of Human Rights, Central American University, [Informe de Derechos Humanos 2019](#), pp. 13 and 14; Report of Human Rights Organizations, Follow-up to the recommendations of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mrs. Agnes Callamard, prepared on the occasion of her official visit to El Salvador in 2018, July 2020. p. 19. In IACHR's files.

⁵⁴ PDDH, [Informe especial de la señora Procuradora para la defensa de los derechos humanos, Licenciada Raquel Caballero de Guevara, sobre las ejecuciones extralegales atribuidas a la Policía Nacional Civil en El Salvador, período 2014-2018](#), August 2019.

⁵⁵ IACHR, Report on the Situation of Human Rights Defenders in the Americas, OAS/Ser.L/V/II.124., Doc. 5 rev.1, March 7, 2006, para. 64.

⁵⁶ IACHR [Citizen security and human rights](#), OAS/Ser.L/V/II. Doc. 57, December 31, 2009, para. 114; IAHR Court. Goiburú *et al.* Peru. Preliminary objections. Merits. Merits, reparations and costs. Judgement of April 17, 2015. Series C No. 292, para. 265. IAHR Court, Nadege Dorzema *et al.* v. Dominican Republic. Merits, reparations and costs. Judgement of October 24, 2012, Series C No. 251, para. 85.

to life and, in particular, regulates by law the use of force and lethal force by law enforcement officials. Said regulation should provide that the use of force, including lethal force, should be informed by the principles of necessity, reasonableness, moderation and graduality, always considering: (1) the rights that are to be protected; (2) the legitimate end to be achieved, and (3) the risk that the police must face.⁵⁷

64. As established by the IACHR, in all cases where there are injured or dead people as a result of the action of armed or police forces, the State must urgently conduct diligent and impartial investigations in order to establish the facts and determine the criminal responsibilities that apply.⁵⁸ The IACHR recalls that the duty of respect and guarantee derived from Article 1.1. of the American Convention imposes the duty to document the cases in which law enforcement officials have used force and lethal force in the exercise of their functions, as well as to conduct the necessary internal and external investigations, including judicial investigations, to ensure that the actions were developed within the framework of legality. All such actions constitute the minimum measures necessary to prevent the occurrence of extrajudicial executions by state agents.⁵⁹

D. Complaints of disappearances in El Salvador in the current context of violence

65. During its visit the IACHR received alarming information on the lack of response by the state officials to the high number of complaints of disappearances in the last few years. According to the information provided by the Office of the Attorney General 3,289 disappearances were recorded in 2018 and 3,030 complaints of disappeared persons were reported between January and December 2019, which would amount to an average of 10 disappeared persons per day. Pursuant to public information, until October 5, 2020, the Office of the Attorney General recorded a total of 1,630 disappeared persons. In this regard, the Minister of Justice and Public Security stated that the number of disappearances would maintain a downward trend in 2020⁶⁰. The IACHR observes that, by the end of 2020, the Office of the Attorney General registered 2,151 victims of violations against freedom, i.e., 1,489 cases of deprivation of liberty and 662 disappeared persons, which accounts for a 30.45 percent decrease compared to 2019.

⁵⁷ IACHR [Citizen security and human rights](#), OAS/Ser.L/V/II. Doc. 57, December 31, 2009, para. 116. See also Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Eight United Nation Congress on Crime Prevention and Treatment of the Offender, Havana, August 27, 1990, UN Doc. A/CONF.144/28/Rev.1, 112 (1990).

⁵⁸ IACHR, Salvador. December 27, 2019.

⁵⁹ IACHR, Violence, children and organized crime, OAS/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 315.

⁶⁰ TCS Noticias, "[Fiscalía reporta un incremento en los casos de desaparecidos y autoridades de Seguridad lo rechazan](#)," October 14, 2020; El Diario de Hoy, "[Fiscalía registra 1,630 desaparecidos en nueve meses de 2020](#)," October 12, 2020.

66. The Commission also received repeated complaints from victims about the actions of the authorities, in particular the National Civil Police and the Office of the Attorney General, when they reported the disappearances of their relatives. They stated that they are not heard when they try to file a complaint. There are also usually delays in the investigation in cases in which the first hours are decisive. The relatives also reported that they are the ones who must present "clues" of the whereabouts of their relatives so that the cases "are not closed." The mother of a disappeared young man told the IACHR: "They send us to look for our children and we cannot do it because it is dangerous."
67. For its part, within the scope of the *on-site* visit, the State reported that, since 2017, the Office of the Attorney General has led the project "Institutional strengthening for cases of disappeared persons associated with organized crime to reduce impunity in El Salvador" for the period 2017- 2019. Based on the initiative, it drew up an Urgent Action Protocol and a search strategy for disappeared persons, launched in December 2018, and training sessions were held. Likewise, the State announced the creation of a specialized unit for cases of disappeared persons on July 11, 2019, which is dependent on the Office of the Attorney General of the Republic. The State indicated that this unit would implement its intervention strategy through the search and location of disappeared persons, and the criminal investigation and prosecution of the cases. It further reported on the donation of an information system for the disappeared and corpses network (SIRDEC) and the Forensic Dental and Clinical Information System (SICLICO), a tool that would strengthen the standardization of technical and scientific processes, coupled with the effective search and identification of disappeared persons. The IACHR received information on the instructions of the National Civil Police (PNC) for police service in the case of disappeared persons.
68. In its observations on the draft of the present report, the State indicated that, since August 24, 2021, the project "Institutional strengthening for cases of missing persons associated with organized crime to reduce impunity in El Salvador", is in its phase II; in the framework of the phase, it also implemented a Technical Roundtable that will work with specialists from all the institutions involved. Similarly, the State highlighted the positive impact of the use of the "Urgent Action Protocol and Strategy for the Search for Missing Persons" since 2019, as well as the "Instructions for the Urgent Search and Investigation of Cases of Missing Persons".⁶¹
69. Despite the efforts and measures taken by the State of El Salvador to tackle the phenomenon of enforced disappearance that has emerged in the current context of violence in the country, the Commission observes that there are significant challenges in the matter. In particular, in the absence of a legal definition or status to intervene in these cases, the authorities reportedly have to resort to different

⁶¹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 6.

criminal categories such as that of “deprivation of liberty.”⁶² This, in turn, leads to substantial difficulties in relation to the registration and systematization of official statistics on the number of disappeared persons and cases in which there could be evidence of enforced disappearance, loss or other types of absence. To date, the absence of a single registry and rules that clearly determine the powers and attributes of the authorities allegedly prompts differences in the data collected by each institution, for example, between the National Civil Police and the Office of the Attorney General. In particular, according to information submitted by civil society, to date, no State institution manages an exact data on disappeared persons, which raises concerns about a lack of State accompaniment to the families of disappeared persons; in the absence of precise data, it is difficult for the authorities to carry out specific actions; there are no mechanisms for responding to disappearances; There is no follow-up to the complaints to establish whether persons reported as missing have been found alive or dead.⁶³ In this regard, the International Committee of the Red Cross has stressed that the fact of not having a legal definition for an enforced disappearance “could eventually become an argument to justify inaction, lack of documentation and registration, or even the drive for a timely search.” It also “has a direct impact on the families of the disappeared and on their ability to be holders of rights and fully exercise such rights⁶⁴.”

70. In this regard, in its observations on the draft of the present report, the State specified that, as of December 2019, it incorporated the criminal offense “Disappearance of Persons” in Art. 148-A of the Criminal Code, “which not only provides for the deprivation of liberty, but also the concealment or disappearance of the victim; this conduct is punishable by 15 to 20 years of imprisonment”. Likewise, he pointed out that “in order to guarantee a comprehensive approach to the cases of missing persons”, the Attorney General’s Office is in the process of drafting the “Law of Disappearance of Persons”. Among its objectives is to include sanctions for all persons involved in the different stages of the disappearance of a person; to broaden the penal types related to the disappearance of persons; to

⁶² According to information from the Office of the Attorney General, “(...) the only legal type that makes them identifiable is that of deprivation of liberty. Since the crime of disappeared persons or enforced disappearance does not exist; scarce and recent classification of enforced disappearances of persons has taken place (...). Additionally, the disappearance of persons involves alternatives that must be identified, so that they are not part of the statistical bulk. Among them the following can be mentioned: people who are deprived of their liberty, but their perpetrator’s main objective is: a) kidnapping, b) extortion (since there are cases in which people have been threatened with deprivation of liberty in their residences or businesses, and such threat is used as an extortion); c) forced disappearance; d) deprivation of liberty focused on homicide; e) violation; f) human trafficking; g) illegal human smuggling (...)” According to a notice from the Office of the Attorney General, “the foregoing leads us to improve the work of one of our main partners, the National Civil Police, in its investigative role, since in the vast majority of cases, the victim’s whereabouts are unknown and, therefore, the legal status of deprivation of liberty is maintained (...)” Office of the Attorney General, Memorandum Ref. 61-UEPD-2019, December 9, 2019. In IACHR’s files.

⁶³ Fundación de Estudios para la Aplicación del Derecho (FESPAD), Report presented by the Fundación de Estudios para la Aplicación del Derecho -FESPAD- In the framework of the on-site visit of the Inter-American Commission on Human Rights, December 2019, p. 7. On file with the IACHR.

⁶⁴ International Committee of the Red Cross, Mission in El Salvador, [Estudio de compatibilidad entre el marco jurídico de la República de El Salvador y el marco jurídico internacional sobre personas desaparecidas y la protección de sus derechos y de los derechos de sus familiares](#), December 9, 2019.

strengthen the crimes already provided for in the Penal Code; to establish the competencies of the different institutions involved in the search, location and investigation of missing persons; to make effective the location of the missing person; create the National Commission for the Search of Missing Persons; create the Registry of Missing Persons; strengthen the "Missing Angel Alert" tool for cases with underage victims; and establish mechanisms for the protection of families who are victims of this crime, to facilitate the completion of procedures for the declaration of absence, declaration of heirs and parental authority of minors, and to ensure the protection of the assets of the missing person".⁶⁵

71. The Inter-American Commission reiterates that the duty of the State to investigate behaviors that affect the rights enshrined in the American Convention derives from the general obligation set forth in Article 1(1) thereof, together with the substantive right that should be protected or ensured, and the guarantees of due process of law and right to a fair trial under Articles 8 and 25 of the same instrument. In light of this duty, whenever state authorities become aware of a conduct that has affected the rights protected in the American Convention and is prosecutable *ex officio*, they must promptly begin a serious, impartial and effective investigation by all available legal means and oriented towards determination of the truth and the prosecution and eventual punishment of the perpetrators.⁶⁶ As it has been established by the Inter-American Court, the obligation of the States to investigate actions that affect the rights protected under the Convention remains regardless of the officer to whom the violation may eventually be attributed.⁶⁷ The IACHR also recalls that the lack of due diligence by the State fosters the systematic repetition of human rights violations and the absolute defenselessness of the victims and their relatives. That is why the victims of human rights violations or their families have the right to have all necessary actions taken to find out the truth through an effective investigation, the prosecution of those responsible for the crimes, the imposition of the pertinent sanctions and the compensation of the damages and losses sustained by the next of kin.⁶⁸
72. The IACHR calls upon the State to adopt all the necessary measures to ensure that the regulatory framework and actions of the authorities in cases of disappeared persons, including the investigation, systematization, and collection of information, comply with international standards. Likewise, it urges the State of El Salvador to promote the adoption of special legislation on enforced disappearance, in full consultation with the civil society, the victims and their family members.

⁶⁵ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 7.

⁶⁶ IAHR Court, Mampiripán Massacre v. Colombia. Judgement of September 15, 2005, Series C No. 134, p. 219; Moiwana Community v. Suriname. Judgement of June 15, 2005, Series C No. 124, para. 147; Serrano-Cruz Sisters v. El Salvador. Judgement of March 1, 2005, Series C No. 120, para. 63

⁶⁷ IAHR Court., González *et al.* ("Cotton Field") v. Mexico. Judgement of November 16, 2009. Series C No. 205, para. 291 Pueblo Bello Massacre v. Colombia. Judgement of January 31, 2006, Series C No. 140, para. 145

⁶⁸ IACHR, Right to truth in the Americas, OAS/Ser.L./V/II.152, Doc. 2, August 13, 2014, paras. 18.

E. Impacts of the measures adopted to face the covid-19 pandemic on citizen security and human rights

73. After its visit, the IACHR has followed up on the effects of the measures adopted in El Salvador to deal with the covid-19 pandemic, especially those regarding deprivation of liberty that have purportedly led to hundreds of complaints of arbitrary detention, forced confinements and other violations of human rights reported within this context. In this section, the IACHR analyzes their impact on citizen security and the fundamental guarantees of the rule of law.
74. In its observations on the draft of this report, the Salvadoran State indicated to the IACHR that these aspects "are not part of the time frame for analysis and consideration of the on-site visit. Likewise, it reiterated that it provided "a comprehensive and detailed report in July 2020, on the measures to prevent, address and contain the covid-19 pandemic, which was requested in accordance with Article 41 of the American Convention on Human Rights".⁶⁹
75. According to the information provided by the State, since the beginning of the covid-19 crisis, the Salvadoran State has adopted the necessary measures to protect the right to life, health and integrity of those persons within its jurisdiction. Such measures have been reportedly consistent with the evolution of the pandemic, and according to the State, "they stand out for having been firm and timely, right from the onset of the crisis, in order to avert the collapse of the national health services and guarantee access to timely medical treatment to the population." As indicated, the executive branch approved different "executive decrees containing extraordinary measures for the prevention and containment of the pandemic." Additionally, "it [the State] has promoted the adoption of legislative decrees to declare a state of national emergency as a result of the pandemic and to temporarily establish restrictions on certain constitutional rights exclusively in the context of the pandemic. This was duly informed by El Salvador to the OAS and the UN, in accordance with the international commitments currently in force."⁷⁰
76. In this regard, on March 14, 2020, the Legislative Assembly approved the Declaration of the State of National Emergency due to the Covid-19 Pandemic and the Law for the Temporary Restriction of Specific Constitutional Rights to Address the Covid-19 Pandemic. For its part, on March 21, the executive branch established a mandatory quarantine nationwide to contain the spread of the virus and authorized the public security authorities to "lead" people who unjustifiably breach the quarantine to "centers for containment of the pandemic" or to the

⁶⁹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 4.

⁷⁰ Report of the State of El Salvador to the Inter-American Commission on Human Rights on measures to prevent, attend to and contain the covid-19 pandemic, submitted in response to a request made based on Article 41 of the American Convention on Human Rights. July 20, 2020. In IACHR's files.

facilities determined by the Ministry of Health.⁷¹ On different occasions, the measure was extended and, through public statements, the executive branch requested the National Civil Police the greatest rigor to take those who did not comply with such measure to the containment centers.⁷²

77. According to public information, since the aforementioned decrees came into force, hundreds of people have been detained illegally or arbitrarily through an excessive use of force and under criteria which were subjective and not contemplated by law, such as people not wearing masks. According to official information, between March 21 and April 8, the National Civil Police conducted “1,255 temporary detentions.”⁷³ Between March 21 and June 1, the Office of the Attorney for the Defense of Human Rights registered the admission of 1,637 cases related with emergency measures, out of which 622 pertained to alleged violations of the right to personal liberty due to cases related to arrests for breaching the home quarantine.⁷⁴ According to public information, as of June 10, 2020, 2,424 people had been detained for failing to comply with home quarantine measures.⁷⁵ For its part, according to the information submitted by the civil society, as of August 28, 2020, 16,780 people were placed under state custody based on at least four categories: those accused of breaking the mandatory national lockdown; Salvadorans returning from abroad, people deported from the United States and Mexico, and individuals who had been or were suspected of having been in contact with covid-19 patients.⁷⁶
78. The IACHR observes that, in addition to the alleged arbitrariness of the detentions, the detentions reportedly put at serious risk the integrity and health of those people in the face of the covid-19 pandemic. Indeed, in the absence of pandemic containment centers regulated by the executive decree, people were transferred to police facilities or *bartolinas*, where they remained in precarious conditions, without measures to protect their health against possible infections and without

⁷¹ [Executive Decree No. 12. Extraordinary prevention and containment measures to declare the national territory as an area subject to sanitary control in order to contain the pandemic.](#) Presidency, March 21, 2020. Art. 5; [Executive Decree No. 14. Extraordinary prevention and containment measures to declare the national territory as an area subject to sanitary control in order to contain the pandemic. Extraordinary prevention and containment measures to declare the national territory as an area subject to sanitary control in order to contain the pandemic.](#) April 13, 2020.

⁷² “The @PNCSV [National Civil Police] has begun to comply with President @nayibbukele’s orders to be more rigorous with Salvadorans who breach the quarantine. All of them will be sent to containment centers for 30 days. Twitter account of the Presidency of the Republic of El Salvador (@PresidenciaSV), [post of April 7, 2020](#)..

⁷³ The National Civil Police (@PNCSV) [posted the following on April 8](#), 2020, on its Twitter account: “From April 3 to date, over 476 detentions have been registered for health prevention purposes, totaling over 1,200 since the beginning of #COVID19SVAAlert. Respect the home quarantine and do not be one of those who will be spending quarantine away from their families.” Twitter account of minister of Justice and Public Security of El Salvador, Rogelio Rivas, (@RogelioRivas), [post made on April 7, 2020](#).

⁷⁴ PDDH, “[Procurador Presentó Primer Informe A Sala De Lo Constitucional Relativo A Medidas COVID-19](#),” El Salvador.

⁷⁵ La Prensa, “[Sala admite a trámite controversia por Ley para proteger derechos durante la pandemia vetada por Bukele y ratificada por Asamblea](#),” July 1, 2020; PDDH, [Informe Preliminar sobre COVID-19 y derechos humanos en El Salvador](#), July 2020. El Salvador, p. 22.

⁷⁶ Amnesty International., [When protection becomes repression: mandatory quarantines under COVID-19 in the Americas](#), September 2020, p. 20.

being able to communicate with their relatives.⁷⁷ In spite of the fact that in the following weeks the State set up shelters as containment centers, the Office of the Attorney for the Defense of Human Rights found that they lacked adequate access to water, food and medical treatment.⁷⁸

79. According to public information, some shelters are reportedly overcrowded, among them, the one located in the Olympic Village occupied by 325 people. They have no separation measures based on people's situation of risk or vulnerability to covid-19, such as older people, people with preexisting conditions or country from which they came. On April 1, 2020, the IACHR was informed of the death of a 56-year-old person due to the lack of adequate medical care while he was in mandatory quarantine in a makeshift hotel set as a containment center. Until the date of approval of this report, the Office of Attorney General was allegedly investigating the causes for his death.⁷⁹
80. In this regard, in its observations on the draft of this report, the State indicated that, when the state of emergency was declared by COVID-19, multidisciplinary technical health teams went to provide technical advice and follow-up to the shelters set up, one of the first visited being the one located in the Villa Olímpica. It also prepared the "Guidelines for the care of persons affected by violence in COVID-19 shelters".⁸⁰
81. The measures adopted by the State within the context of the pandemic also affected human rights defenders. The Commission received information regarding at least two human rights defenders who were detained when they left their homes to get medicine or food. They were allegedly arrested to be tested for covid. The police reportedly informed them that they were going to perform a covid test only and then release them. Nonetheless, both human rights defenders ended up being held for over a month in a "containment center". Both defenders were purportedly released after having been deprived of their liberty for 38 days.⁸¹

⁷⁷ Human Rights Watch, El Salvador: Police, April 15, 2020. Amnesty International, Center for Justice and International Law (CEJIL), Due Process of Law Foundation (DPLF) The Mesoamerican Initiative for Women Human Rights Defenders (IMD), [Open letter to President Nayib Bukele regarding measures taken due to covid-19](#), April 30, 2020; El Faro, "Presentan denuncia colectiva ante CIDH por detenciones durante la cuarentena," May 19, 2020.

⁷⁸ PDDH, "[Procurador DDHH Verifica Condiciones En Centros De Contención Por Cuarentena Por Coronavirus](#)", El Salvador.

⁷⁹ Revista Gato Encerrado, "[Dijeron que mi esposo había muerto, pero no de qué: las muertes no contadas por el Gobierno](#)," April 2, 2020; El Faro, "[Todos esos van para afuera, aquí ya no caben](#)," April 8, 2020; El Faro, "[El último mensaje de Óscar Méndez: Dígale a los doctores que vengan a verme, por favor](#)," April 3, 2020. Diario El Mundo, "[Ministerio Salud investigará muerte de ingeniero Méndez si hay 'hechos que tuvieran que ver'](#)," April 8, 2020.

⁸⁰ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 5.

⁸¹ Civil society report, Incremento de violencia digital en contra de defensoras en el marco de la pandemia COVID – 19, June 18, 2020. In IACHR's files.

82. Within this critical context, as part of proceeding no. 148-2020, the Constitutional Chamber of the Supreme Court of Justice resolved that all those who were still deprived of their liberty in police or administrative units other than a sanitary quarantine facility based on said decree should be promptly taken to their homes or place of residence so that they could comply with home quarantine, thus abiding by the sanitary protocols set forth by the health authorities and any other protocols required.⁸² The Constitutional Chamber of the Supreme Court of Justice of El Salvador stated that the legislation in force did not allow security forces to detain people in confinement centers merely for having failed to comply with home quarantine. At the time, the IACHR welcomed the resolution of the Constitutional Chamber and urged the corresponding authorities to comply with the measures ordered.⁸³ For its part, despite such ruling, the executive branch sent a message to toughen the measures against people who breached the quarantine. That night hundreds of people were arrested and taken to police stations.⁸⁴
83. Faced with this situation, the Constitutional Chamber of the Supreme Court of Justice reiterated that the executive branch, the National Civil Police, the armed forces and any other authority were constitutionally prohibited from depriving persons who failed to comply with the quarantine order of their liberty through confinement or forced sanitary isolation, provided that Legislative Assembly did not pass a law.⁸⁵ However, the executive branch once again sent the message that the detentions would continue,⁸⁶ and new executive decrees were issued.⁸⁷
84. Subsequently, in a follow-up order issued on April 15, 2020, the Constitutional Chamber of the Supreme Court of Justice ratified that the legislative decree that regulated the state of national emergency for the covid-19 pandemic did not contain the legal authorization necessary to apply an automatic and forced confinement or sanitary isolation measures for those who failed to comply with the home quarantine ordered by the government. Hence, it stated that National Civil Police was constitutionally forbidden from depriving persons who violated the home quarantine order of their liberty through confinement or forced sanitary isolation, as long as the Legislative Assembly did not pass a law establishing said

⁸² Constitutional Chamber of the Supreme Court of Justice, [Habeas Corpus No. 148-2020](#), March 26, 2020.

⁸³ "The @IACHR welcomes the follow-up order to Habeas Corpus 148-2020, issued by the @SalaCnaISV of #ElSalvador, which recognizes human rights protection measures, in accordance with Resolution 1/20 "Pandemic and Human Rights in the Americas. 1/3" IACHR Twitter Account (@IACHR), published April 16, 2020.

⁸⁴ Human Rights Watch, [El Salvador: President Defies Supreme Court](#), April 17, 2020.

⁸⁵ Constitutional Chamber of the Supreme Court of Justice, [Habeas Corpus No. 148-2020](#), March 26, 2020.

⁸⁶ La Prensa Gráfica, "Coronavirus: Gobierno de El Salvador advierte que continúan "retenciones" por violar cuarentena," April 9, 2020; Twitter account of Nayib Bukele, president of El Salvador (@nayibbukele), [post of April 9, 2020](#).

⁸⁷ FESPAD, [Defendiendo derechos humanos en El Salvador en tiempos de COVID-19](#), February 16, 2021, p. 25; Ministry of Health, [Executive Decree No. 19, Extraordinary prevention and containment measures to declare the national territory as an area subject to sanitary control in order to contain the covid-19 pandemic](#), April 13, 2020; Ministry of Health, [Executive Decree No 20, Regulation for covid-19 isolation, quarantine, inspection and surveillance](#), April 13, 2020.

measures in compliance with all the requirements enshrined in the Constitution and in case law.⁸⁸

85. In response to the ruling, the executive branch stated that it would not abide by such decision and stated that the Constitutional Chamber of the Supreme Court of Justice had no powers "to decide on sanitary measures, nor to decide on epidemiological restrictions."⁸⁹ Additionally, since the beginning of the pandemic, it publicly disqualified the work of organizations and institutions for the defense of human rights, including the Office of the Attorney for the Defense of Human Rights. For example, on March 29, the executive branch pointed out that: "Sometimes it seems like there are some 'human rights' organizations that only work so that more human beings die. When it was due to crime, I thought it was ideological, but now they are also on the side of the virus. What are these organizations looking for?"⁹⁰
86. In the following months, the IACHR became aware of a broad set of provisions ordered by the executive and legislative branches, which, in addition to suspending the rights of the population, in some cases they illegitimately led to a climate of general and legal uncertainty regarding the measures in force in the face of the health crisis. As indicated, the Constitutional Chamber of the Supreme Court of Justice purportedly rendered some of these provisions unconstitutional and others continued to be reviewed.⁹¹
87. The Commission recalls that, as part of the effective judicial protection enshrined in Article 25.2.C of the American Convention, States are obliged "to ensure that the

⁸⁸ Constitutional Chamber of the Supreme Court of Justice. San Salvador, [Follow-up resolution of Habeas Corpus No. 148-2020](#), April 15, 2020.

⁸⁹ The government of El Salvador will continue to fully enforce Executive Decree No. 19. All its provisions remain unchanged. We are going to fight against the pandemic and we, the Salvadorans, are going to win. [Post on April 16, 2020](#) by the president of El Salvador, Nayib Bukele, on his Twitter account, (@nayibbukele).

⁹⁰ [Post on March 29, 2020](#) by the president of El Salvador, Nayib Bukele, on his Twitter account, (@nayibbukele).

⁹¹ Among the laws passed by the Legislative Assembly are the following: Declaration of the State of National Emergency due to the Covid-19 Pandemic contained in Legislative Decree No. 593 of March 14, 2020; Law for the Temporary Restriction of Specific Constitutional Rights to Contain the Covid-19 Pandemic, set forth in Legislative Decree No. 594 of March 14, 2020 (declared unconstitutional); Law for the Temporary Restriction of Specific Constitutional Rights to Contain the Covid-19 Pandemic set forth in Legislative Decree No. 611 of March 19, 2020. (declared unconstitutional); Regulatory Law for Isolation, Quarantine, Inspection and Surveillance due to Covid-19 set forth in Legislative Decree No. 639 of May 5, 2020. (declared unconstitutional). For its part, the executive branch approved the following, among others: Executive Decree No. 18 of May 16, 2020, which establishes the National State of Emergency due to the Covid-19 Pandemic. (under review in Unconstitutionality Proceeding No. 63- 2020 and subject to a precautionary measure that suspends its effects) (currently repealed); Executive Decree No. 19 of May 19, 2020, which establishes the State of National Emergency for the Covid-19 Pandemic. (under review in Unconstitutionality Proceeding No. 63- 2020 in connection with Executive Decree No. 18 and subject to a precautionary measure that suspends its effects). Report of the State of El Salvador to the Inter-American Commission on Human Rights on measures to prevent, attend to, and contain the covid-19 pandemic, submitted in response to a request made based on Article 41 of the American Convention on Human Rights. July 20, 2020. In IACHR's files.

competent authorities enforce such remedies when granted.”⁹² Additionally, the provisions governing the independence of the judicial order must be made in an appropriate way so as to ensure the timely execution of the judgments without any interference by other branches of government and guarantee the binding and mandatory nature of the decisions of last resort.⁹³ In a rule of law, all public authorities, within the framework of their jurisdiction, must abide by judicial decisions and push forward the execution of these decisions without hindering the purpose and scope of the decision or unduly delaying its enforcement.⁹⁴

88. Along those lines, the Commission has stated that compliance with the rulings issued by the judiciary is closely related to the very concept of the jurisdictional function of the State. The main purpose of this function is to satisfy the execution of the right and the guarantee of the legal system and individual freedom in specific cases and through decisions that oblige the parties to the respective process, so as to attain peace and social harmony. Failure to comply with rulings not only affects legal certainty, but also violates the fundamental principles of the rule of law. The enforcement of judicial rulings thus constitutes a basic aspect of the very essence of the rule of law⁹⁵, that is, the principle of the rule of law that governs even the State itself and its authorities.
89. In this regard, in its Resolution 1/20 entitled “Pandemic and Human Rights in the Americas”, the IACHR recommended that States, including El Salvador, guarantee that arbitrary detentions were not made while the states of emergency or restrictions on the circulation of individuals were in force, and detentions should be made with due judicial control, in accordance with the inter-American standards. It also recommended ensuring that any and all restrictions or limitations placed on human rights to protect health in the context of the covid-19 pandemic complied with the requirements of international human rights law. In particular, such restrictions must comply with the principle of legality, be necessary for a democratic society and therefore be strictly proportionate to achieving the legitimate purpose of protecting health.⁹⁶
90. Given this context, the IACHR reiterates that the restrictions and measures to address the pandemic must ensure, at all times, full respect to the human rights of the population. This includes abiding by inter-American standards in the adoption

⁹² IACHR Court, [Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs.](#) Judgement of July 5, 2011. Series C No. 228, para. 103.

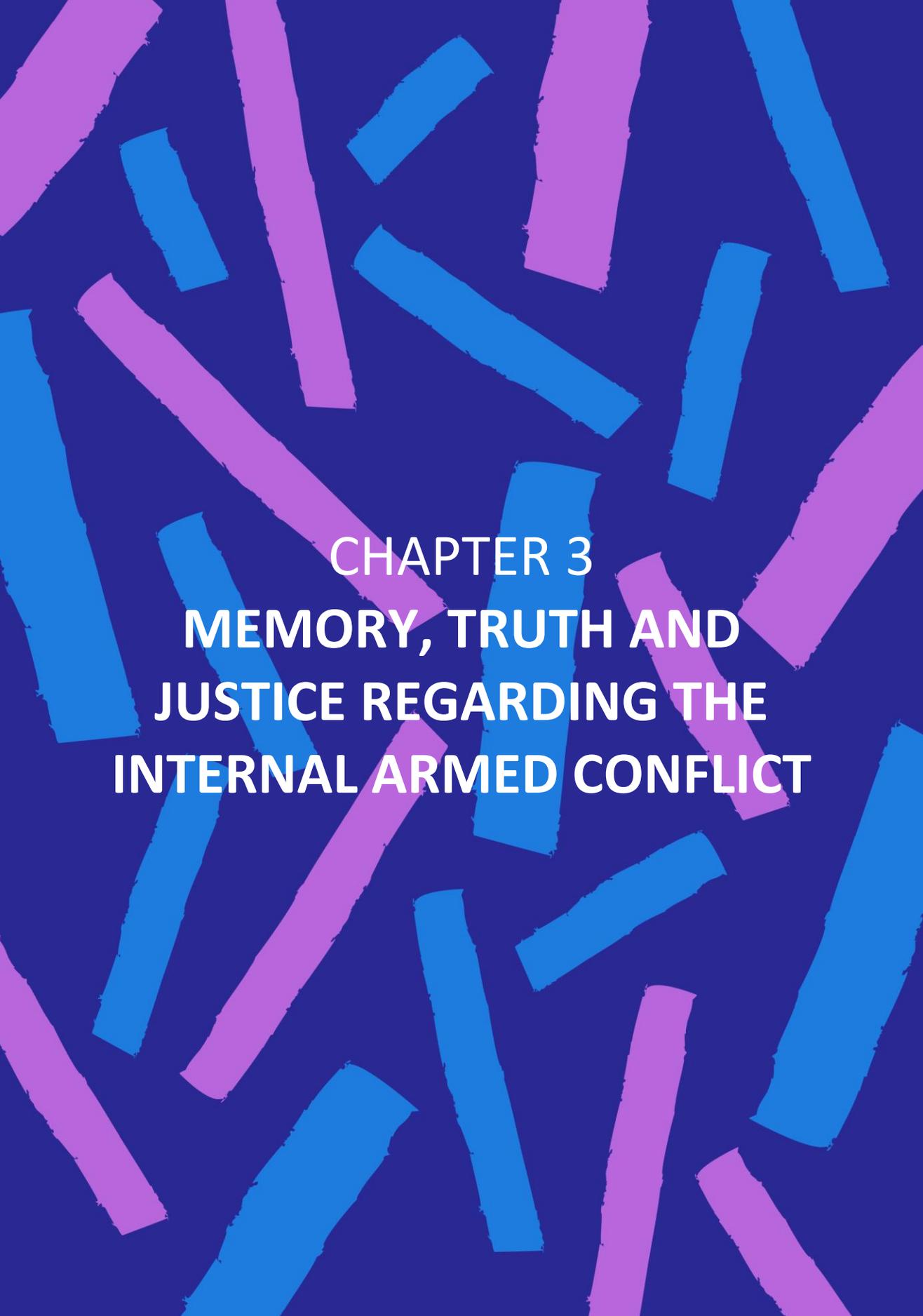
⁹³ IACHR Court, [Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs.](#) Judgement of July 5, 2011. Series C No. 228, para. 106.

⁹⁴ IACHR Court, [Furlán and family v. Argentina. Preliminary objections, merits, reparations and costs.](#) Judgement of August 31, 2012. Series C No. 246, para. 211.

⁹⁵ IACHR, [Application before the Inter-American Court of Human Rights in Members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic \(Case 12,357\) against the Republic of Peru.](#), April 1, 2008, paras. 51-54.

⁹⁶ IACHR, press release no. [76/20](#), “The IACHR Calls on the OAS States to Ensure that the Emergency Measures They Adopt to Address the Covid-19 Pandemic Are Compatible with their International Obligations,” Washington, D.C., April 17, 2020; IACHR, [Resolution No. 1/2020, Pandemic and Human Rights in the Americas](#), adopted by the IACHR on April 10, 2020. Recommendation 37.

of custodial measures. As it has been stated, States must ensure that illegal or arbitrary detentions are not made and guarantee the persons subject to their jurisdiction the possibility of exercising effective remedies against acts that affect their rights. In this regard, the Inter-American Commission also reiterates to the State of El Salvador the importance of duly complying with the rulings issued by the judicial authorities as a way to materialize the protection of such rights



CHAPTER 3
MEMORY, TRUTH AND
JUSTICE REGARDING THE
INTERNAL ARMED CONFLICT

MEMORY, TRUTH AND JUSTICE REGARDING THE INTERNAL ARMED CONFLICT

91. The Inter-American Commission has been following up on the serious violations of human rights committed in the context of El Salvador's internal armed conflict, its impacts on Salvadoran society, and the State responses adopted during and after the conflict. On two specific occasions, during its 2019 *on-site* visit, the IACHR met with survivors and relatives of victims of the internal armed conflict, as well as with civil society organizations, to learn about their concerns, demands and opinions regarding their rights and the fulfillment of the State's human rights obligations under the transitional justice framework.
92. On December 2, the first meeting took place in the Parish of Divine Providence, San Salvador, a site that preserves the memory of the facts related to the assassination of Monsignor Oscar Arnulfo Romero, as well as his history advocating for human rights. The following day, the second meeting was held at the Gregoria Herminia, Serapio Cristian and Julia Inés Contreras School, in Tecoluca. The school was given this name as a reparation derived from the judgment of the Inter-American Court in the Contreras *et al.* case. This place was chosen by the IACHR because, according to members of the Salvadoran civil society, visiting this region would make it possible to hear people affected by several massacres perpetrated in the vicinity. The IACHR reiterates its gratitude to all the people who were present and to those who shared their valuable testimonies, as well as to the organizations that have provided information and logistics support to ensure the presence of victims in these places.
93. The message repeated during the different interventions was that the victims claim that their voices have not been heard. They say that they "feel ignored," that they "have walked up and down and no one has listened to them," and that they "are not important." They urge that those responsible be investigated and punished, and "they want the new generations to know the truth, so that it does not happen again." The victims and their families have said that the justice system has revictimized them, underlining the lack of information on the cases and their outrage over the long time that has elapsed without any progress. They also question the content of the bill for a National Reconciliation Law, described at that time as a violation of human rights, as well as the fact that individuals identified as having participated in the armed conflict have contributed to the drafting of the bill. In addition, at the meeting held with sectors of the Salvadoran civil society on December 2, the Commission also received complaints about the lack of access to military files that are essential to clarify the serious human rights violations committed during that period, and the need for a law to guarantee victims' rights, in particular psychosocial care.

A. *Impunity and right to truth*

94. In its latest report on El Salvador in 1994, the Inter-American Commission noted that the observance of the peace agreements and their effective implementation meant remarkable and inexorable progress toward the country's democratization and the consolidation of a culture of peace that replaced the violence that prevailed in the past. At that time, the IACHR also had the opportunity to call for compliance with the recommendations made by the Truth Commission to El Salvador regarding the adoption of general and more specific measures, including those related to overcoming impunity and making reparations to the victims. In addition, the IACHR stated that the Amnesty Law adopted in 1993, enacted in response to the contents of the report of the Truth Commission, constituted a violation of the international obligations assumed by El Salvador when it ratified the American Convention on Human Rights.
95. Twenty-two years after the publication of that IACHR Special Report on El Salvador, the Amnesty Law continued to be a legal obstacle to investigating the serious crimes committed in that context, identifying those responsible, applying sanctions and finding the truth. In 2016, the Constitutional Chamber of the Salvadoran Supreme Court of Justice declared the unconstitutionality of this law, as part of cumulative proceeding of unconstitutionality no. 44-2013/145-2013, a historic decision that was [hailed](#) by the Inter-American Commission on Human Rights.⁹⁷ In addition, on July 13, 2018, as part of the follow-up of said decision, the Constitutional Chamber issued a resolution ordering the Legislative Assembly to enact "a new national reconciliation and victim assistance law that takes into account their rights and all measures related to preserving and promoting collective memory."⁹⁸ It also stated that the victims of the armed conflict, the associations representing them and other sectors of society interested in contributing to the development of such piece of legislation should be consulted. After two deadline extensions, the Constitutional Chamber established February 28, 2020, as its final date of enactment.⁹⁹
96. Through its available mechanisms, the IACHR has closely monitored the drafting process of the above-mentioned law, ensuring that its contents are aligned with the inter-American *corpus iuris* with regard to human rights.¹⁰⁰ It has also

⁹⁷ Supreme Court of Justice, Constitutional Chamber, [Unconstitutionality Decision No. 44-2013/145-2013](#), July 13, 2016.

⁹⁸ Supreme Court of Justice, Constitutional Chamber, [Follow-up to the Unconstitutionality Decision of July 13, 2016, 44-2013/145-2013](#), July 13, 2018.

⁹⁹ Supreme Court of Justice, Constitutional Chamber, [Follow-up regarding compliance with the Unconstitutionality Decision of July 13, 2016, 44-2013/145-2013](#), July 12, 2019; Supreme Court of Justice, Constitutional Chamber, [Follow-up regarding compliance with the Unconstitutionality Decision of July 13, 2016, 44-2013/145-2013](#), November 29, 2019.

¹⁰⁰ IACHR, Annual Report, Chapter IV, Section A: Development of Human Rights in the Region, 2019, para. 269; CIDH, IACHR, Annual Report, Chapter IV, Section A: Development of Human Rights in the Region, 2020, para. 361; IACHR, press release [2/20](#), "IACHR Calls on the State of El Salvador to Ensure the Rights of the Victims of

repeatedly expressed concern about a number of versions of the preliminary draft law, which contained elements that would prevent clarifying, investigating and prosecuting actions that amount to serious violations of human rights or crimes against international law, such as genocide, crimes against humanity and war crimes, or punishing those responsible. Likewise, the United Nations High Commissioner for Human Rights and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence commented on the consequences of adopting a regulation that is contrary to the international obligations of the State in relation to the serious crimes committed during the armed conflict.¹⁰¹

97. On February 26, 2020, the Legislative Assembly adopted Legislative Decree No. 575 “Special Law on Transitional and Restorative Justice for National Reconciliation,” which, two days later, was vetoed by the president for being unconstitutional.¹⁰² Among other reasons, the veto indicated that this law was “an Amnesty Law aimed at reducing the sentence of those responsible for crimes against humanity and war crimes, including other provisions concerning the victims of these crimes, such as some measures intended to guarantee their right to truth, to comprehensive reparation and to guarantees of non-recurrence.” The IACHR has also noted that the Constitutional Chamber held a follow-up hearing on October 30, 2020, with the aim of verifying compliance with the resolutions contained in Unconstitutionality Decision 44-2013.¹⁰³
98. The IACHR notes with particular concern that certain provisions of the Legislative Decree could lead to a situation of defenselessness for the victims and perpetuate impunity. In this regard, the Commission stresses that the deadlines set in the decree for the Office of the Attorney General to act could curtail the conduct of investigations, the prosecution of cases and the reopening of such cases in the event that further evidence is obtained.¹⁰⁴ The decree also states that its scope will

[the Internal Armed Conflict](#),” January 10, 2020; IACHR, press release [335/19](#), “[IACHR presents its preliminary observations following its on-site visit to El Salvador](#),” December 27, 2019; IACHR, press release [274/19](#), “[IACHR Completes Successful Forum on Transitional Justice in El Salvador, Reminds the State of the Applicable Inter-American Standards](#),” October 25, 2019; IACHR, press release [123/19](#), “[IACHR notes with concern the passage of the National Reconciliation Bill in El Salvador, which contains provisions contrary to human rights](#),” May 21, 2019; IACHR, press release [104/19](#), “[IACHR Concerned about Bill that Would Leave Unpunished Serious Human Rights Violations of El Salvador’s Past](#),” April 25, 2019; IACHR, public hearing “Right to Truth and Historical Impunity in the Context of the Internal Armed Conflict in El Salvador,” 173 period of sessions, September 26, 2019; IACHR, public hearing “Trials and Amnesty Laws in El Salvador,” 171 period of sessions, February 14, 2019; IACHR, “Letter requesting information dated month xx,” 2019, in IACHR’s files.

¹⁰¹ OHCHR, “[Bachelet urges El Salvador’s legislators to refrain from reinstating amnesty for serious human rights violations](#),” March 6, 2019; OHCHR, “[El Salvador: Legislative Assembly must not pass “de facto amnesty” bill for rights violations, say UN experts](#),” May 16, 2019; UN News, “[Bachelet urges El Salvador’s legislators to refrain from reinstating amnesty for serious human rights violations](#),” May 23, 2019; Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on its visit to El Salvador, A/HRC/45/45/Add.2, July 9, 2020, para. 28-36.

¹⁰² Diario Co Latino, “[Asamblea aprueba Ley de Reconciliación](#),” February 27, 2020; Legislative Assembly, [Opinion No. 22](#), February 26, 2020; Transparencia, [Veto over Legislative Decree No. 575](#), February 28, 2020, p. 2.

¹⁰³ Judicial Documentation Center, 44-2013, Unconstitutionality, October 5, 2020.

¹⁰⁴ Legislative Assembly, [Opinion No. 22](#), February 26, 2020, Article 60.

be restricted to acts that can be defined as “crimes against humanity or war crimes, as stipulated by law,”¹⁰⁵ thus excluding serious human rights violations. The IACHR recalls that, in addition to having obligations with respect to violations of international criminal law, the State also has a reinforced duty to guarantee the rights to truth, justice and reparation when serious violations occur, adopting measures of non-repetition.¹⁰⁶ Therefore, the Commission is alarmed by the fact that this piece of legislation also reaffirms the application of the 1993 Amnesty Law to any action that is not classified as an international crime.¹⁰⁷

99. The Commission notes that the decree establishes that the crime classification that was in force when the actions were committed will be applied.¹⁰⁸ In this regard, it is important to note that enforced disappearance is a crime of a continuous and permanent nature, and its effects do not stop until the whereabouts or location of the victim are determined and the victim’s identity established.¹⁰⁹ In addition, the Commission and the Inter-American Court have pointed out to the Salvadoran State that the criminalization of forced disappearance, incorporated in 1999, has not been amended to comply with international standards on forced disappearances, with regard to the elements of the crime and the sentence corresponding to the seriousness of the crime.¹¹⁰ In this regard, the IACHR urges the State to criminalize such crime in accordance with its central elements as established in the appropriate international instruments, applying the crime of enforced disappearance to the acts committed where appropriate. It also calls upon the State to adopt the necessary measures to ratify the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, the Commission recalls that the prohibition of crimes against humanity is clearly accepted and recognized as a peremptory rule of international law; therefore, such actions exist as crimes whether or not the conduct has been criminalized under national law.¹¹¹
100. In addition, the IACHR notes that, according to the text approved by the Assembly, prison sentences may be commuted, requiring only the presence of the victims;¹¹² and they may also be reduced to a fourth of their length in cases where the person prosecuted “expressly recognizes their degree of participation in the facts, apologizes to the victims, collaborates with the clarification of the facts, and, where possible, helps locate the whereabouts of the victims or their remains, and evidence of the facts.”¹¹³ The Commission stressed that crimes against humanity

¹⁰⁵ Legislative Assembly, [Opinion No. 22](#), February 26, 2020, Articles 1, 59, 61, 62, 68.

¹⁰⁶ IACHR, Report The Right to Truth in the Americas, August 13, 2014, para. 76.

¹⁰⁷ Legislative Assembly, [Opinion No. 22](#), February 26, 2020, Article 68.

¹⁰⁸ Legislative Assembly, [Opinion No. 22](#), February 26, 2020, Article 62.

¹⁰⁹ IACHR Court, *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary objections, merits, reparations and costs. Judgement of November 24, 2010. Series C No. 219, para. 179.

¹¹⁰ IACHR Court, *Sisters Serrano Cruz v. El Salvador*. Preliminary objections, merits, reparations and costs. Judgement of March 1, 2005. Series C No. 120, para. 162, 174.

¹¹¹ IACHR Court, *Herzog et al. v. Brazil*. Judgement of March 15, 2018. Series C No. 353, paras. 212, 220-221.

¹¹² Legislative Assembly, [Opinion No. 22](#), February 26, 2020, Article 61.

¹¹³ Legislative Assembly, [Opinion No. 22](#), February 26, 2020, Article 67.

have a series of characteristics that make them different from other crimes; and that States, therefore, have an international obligation not to leave these crimes unpunished and to ensure the proportionality of the penalty.¹¹⁴ Although even in cases of serious human rights violations, international law admits that certain circumstances may lead to a reduction in the sentence, such circumstances require a more demanding analysis and requirements in terms of the legally protected rights affected, the gravity of the facts, and the obligation of States to investigate, judge and punish those responsible for crimes against humanity.¹¹⁵

101. Based on those principles, the IACHR calls on the State of El Salvador to ensure that the framework of transitional justice functions as a system of useful incentives, conducive to truth-telling, identification and punishment of perpetrators, and reparations to victims of human rights violations.¹¹⁶ In this regard, it emphasizes that neither such legislation nor other rules shall prevent the State from investigating, trying and sanctioning those persons accused of human rights violations or international crimes.
102. The Commission recalls that the Inter-American Court of Human Rights has ordered El Salvador to effectively investigate facts related to serious human rights violations committed during the internal armed conflict in four different cases.¹¹⁷ With regard to the reform of the justice system made to comply with these international obligations, the IACHR [welcomed](#) the creation in 2016 of the Special Prosecution Division under the Office of the Attorney General for crimes committed during the armed conflict. It also notes the adoption of a Policy on Investigations and Criminal Prosecutions of Crimes against Humanity and War Crimes committed in the context of the armed conflict in El Salvador.¹¹⁸ This policy aims to "establish criteria and guidelines for the efficient and responsible investigation of such crimes, based on the principle of due diligence, in order to enable victims to exercise their right of access to justice, to know the truth of the events that occurred, to overcome impunity and to ensure the reparation derived from the exercise of the criminal action in the competent courts"¹¹⁹. The IACHR also recognizes the State's efforts to train justice operators in transitional justice

¹¹⁴ IACHR, [press release 60/17, "IACHR Expresses Concern over Argentine Supreme Court Decision,"](#) May 15, 2017.

¹¹⁵ IACHR, [press release 185/2018, "IACHR Expresses Concern over the Granting of Conditional Release to those Convicted of Serious Human Rights Violations in Chile,"](#) August 17, 2018.

¹¹⁶ IACHR, Report The Right to Truth in the Americas, August 13, 2014, para. 85.

¹¹⁷ IAHR Court. *Serrano-Cruz Sisters v. El Salvador*. Merits, reparations and costs. Judgement of March 1, 2005. Series C No. 120, p. 107; IAHR Court. *Contreras et al. v. El Salvador*. Merits, reparations and costs. Judgement of August 31, 2011. Series C No. 232, p. 88; IAHR Court. *Massacres of El Mozote and nearby places v. El Salvador*. Merits, reparations and costs. Judgement of October 25, 2012. Series C No. 252, p. 148; IAHR Court. *Rochac Hernández et al. v. El Salvador*. Merits, reparations and costs. Judgement of October 14, 2014. Series C No. 285, p. 86-87.

¹¹⁸ Office of the Attorney General, [Policy on Criminal Prosecution of Crimes against Humanity and War Crimes committed in the context of the armed conflict in El Salvador](#), December 2018.

¹¹⁹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 2.

through technical cooperation agreements signed with the IACHR itself.¹²⁰ The Commission calls on the State to deepen the specialized training and awareness-raising activities for justice operators about international obligations related to serious human rights violations.

103. According to the information provided by the State in its observations on the draft of this report, the Specialized Unit of the Office of the Attorney General is investigating 177 cases that occurred during the armed conflict, of which 20 have been prosecuted under the criminal legislation of 1974. Of the cases prosecuted, one of them is at the sentencing stage while another is at the Preliminary Investigation stage.¹²¹ Likewise, as of the date of completion of this report, no convictions for such crimes were recorded. Furthermore, according to data published by the National Commission on the Search for Disappeared Persons in the context of the armed conflict (CONABUSQUEDA), until August 2020, the Office of the Attorney General had not prosecuted any cases of forced disappearance of adults during the armed conflict.¹²² In this regard, the IACHR has received information about the challenges faced by the institutions responsible for this task, as well as certain cases that illustrate the obstacles that prevent the victims from revealing the truth and getting justice about such violations.
104. In this regard, the Office of the Attorney General has indicated that it has a team of five prosecutors assigned to the Special Prosecution Division¹²³ which civil society organizations and the Office of the Attorney for the Defense of Human Rights have criticized as insufficient, considering the complexity of such investigations and the amount of cases investigated and prosecuted.¹²⁴ The University of El Salvador has also noted that, in the Office of the Attorney General's budget for the years 2017, 2018 and 2019, no special resources have been earmarked for investigating war crimes and crimes against humanity, or for operating the Special Prosecution

¹²⁰ IACHR, [press release 274/19, "IACHR Completes Successful Forum on Transitional Justice in El Salvador, Reminds the State of the Applicable Inter-American Standards,"](#) October 25, 2019; IACHR, [press release 144/19, "IACHR Applauds Successful High-Level Dialogue on Transitional Justice in El Salvador,"](#) June 10, 2019.

¹²¹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 8; Office of the Attorney General, Memorandum of the Coordinator of the Prosecution Group Investigating Crimes related to the Internal Armed Conflict, Subject: Report Submission, December 9, 2019, in IACHR's files, p. 2.

¹²² CONABUSQUEDA, "[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador,](#)" August 2020, p 119.

¹²³ Office of the Attorney General, Memorandum of the Coordinator of the Prosecution Group Investigating Crimes related to the Internal Armed Conflict, Subject: Report Submission, December 9, 2019, in IACHR's files, p. 3.

¹²⁴ IDHUCA, [Informe de Derechos Humanos 2019](#), February 2020, p. 21 ; UES, information presented by the University of El Salvador to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 4, 2019, December 4, 2019, in IACHR's files, p. 4; Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019, December 18, 2019, in IACHR's files, p.19; PPDH, Informe complementario por temas específicos presentado a la Comisión Interamericana de Derechos Humanos, en su visita *on-site* en diciembre de 2019 a El Salvador, sobre la situación de los Derechos Humanos. December 2019, in IACHR's files, p. 30.

Division established to that aim.¹²⁵ The Office of the Attorney for the Defense of Human Rights has also stated that the victims have described the creation of specialized courts as a dignifying measure, as they would contribute to getting justice in their cases.¹²⁶

105. Another aspect mentioned by civil society and victim organizations has been the lack of involvement and communication with victims in the context of the investigations and proceedings. In this regard, they have pointed out their frustration at the absence of news on complaints made years ago and at the lack of progress on the investigations, despite having provided information and evidence relevant to continue investigating.¹²⁷ The Commission has held that, even though the effective search for the truth is the State's responsibility, and may not be made to depend on the procedural initiative of the victim or his/her next of kin or their offer of evidence, the victims or their families must be allowed to participate in all phases of the respective proceedings, so that they can make suggestions, receive information, provide evidence and make arguments.¹²⁸
106. The IACHR urges the Salvadoran State to ensure that the justice agencies responsible for investigating, prosecuting and punishing individuals involved in serious human rights violations or international crimes have the necessary human and material resources to carry out their tasks in an appropriate, independent and impartial manner, as ordered by the Inter-American Court of Human Rights.¹²⁹ It also calls on El Salvador to ensure the participation of victims and their families in these proceedings. The Commission is extremely concerned about the fact that the victims affected by such atrocious crimes and the Salvadoran society have been waiting for so many decades, but no significant progress has been made in clarifying what occurred, punishing those responsible and repairing the damage suffered by the victims. In this regard, the IACHR stresses that the infamous assassination of Monsignor Oscar Arnulfo Romero, a case that has shocked the international community and has been widely condemned, has been open for over 41 years with no substantial progress.¹³⁰

¹²⁵ UES, Information presented by the University of El Salvador to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 4, 2019, December 4, 2019, in IACHR's files, p. 4.

¹²⁶ PPDH, Consulta Con Víctimas De Graves Violaciones A Derechos Humanos Ocurredas En El Contexto Del Conflicto Armado. Informe Final, February 25, 2020, in IACHR's files, p. 9.

¹²⁷ COPPEs, List of Cases of Torture Victims from the Committee of Former Political Prisoners of El Salvador, December 2, 2019, in IACHR's files, p. 1; Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019. December 18, 2019, in IACHR's files, p. 20.

¹²⁸ IACHR, Report [The Right to Truth in the Americas](#), August 13, 2014, para. 80; IACHR, [Gelman v. Uruguay](#). Judgment of February 24, 2011 (merits and reparations), para. 187.

¹²⁹ IAHR Court, Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs. Judgement of October 25, 2012. Series C No. 252, para. 319.D; IAHR Court, "Las Dos Erres" Massacre v. Guatemala. Preliminary objections, merits, reparations and costs. Judgement of November 24, 2009. Series C No. 211, para. 233.F.

¹³⁰ CEJIL, "[A 40 años de su asesinato, El Salvador sigue sin hacer justicia en el caso de Monseñor Oscar Arnulfo Romero](#)," March 24, 2020.

107. Furthermore, the Commission notes with concern that *de jure* and *de facto* obstacles exist to fulfilling the State's international obligations related to truth and justice. Particularly, regarding the application of legal concepts that make it impossible to prosecute and punish those responsible for serious human rights violations; as well as the lack of access to files and information relevant to the investigations.
108. Indeed, the Commission was dismayed by the decision of the Criminal Chamber of the Supreme Court of Justice dated September 8, 2020, concerning the extrajudicial execution of six Jesuit priests and two women in the above-mentioned case, in which the absolute nullity of the corresponding criminal proceedings was determined and the dismissal of all charges against the accused was confirmed based on the statute of limitations of the criminal action.¹³¹ According to the reasoning in the decision, a trial that had already expired was reopened, and the non-applicability of statutory limitations to crimes against humanity was decided retroactively, since such rule was incorporated into the Salvadoran legal system in 1998, when the current Code of Criminal Procedure entered into force.¹³²
109. The Commission reaffirms the consolidated jurisprudence of the inter-American human rights system establishing that the State may not invoke the statute of limitations, the non-retroactivity of criminal law or the *ne bis in idem* principle, or any other similar exception, to decline its duty to investigate and punish those responsible for serious human rights violations.¹³³ When dealing with serious violations of human rights, the extent of the infringement of the victims' rights not only authorizes, but also demands an exceptional limitation of the guarantees in criminal proceedings for the accused, such as the guarantee of *ne bis in idem*.¹³⁴ In other words, the judicial authorities have an obligation to reopen these cases, since impunity for these events alone affects the essence of social coexistence and in turn prevents any form of legal security. The Inter-American Court has also indicated that, because of the declarative nature of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, States must apply its content even if they have not ratified such Convention, applying it even to crimes committed prior to its entry into force, since it is not the conventional rule that would be applied, but a pre-existing customary rule.¹³⁵

¹³¹ Supreme Court of Justice, Criminal Chamber, Judgment on Criminal Cassation Appeal Reference 3CAS2019, September 8, 2020, p. 26; IDHUCA, [Informe de Derechos Humanos 2020](#), March 2021, p. 24.

¹³² Supreme Court of Justice, Criminal Chamber, Judgment on Criminal Cassation Appeal Reference 3CAS2019, September 8, 2020, p. 20.

¹³³ IAHR Court, Barrios Altos v. Peru, Judgement of March 14, 2001. Merits. Judgement of March 14, 2001, Series C No. 75, p. 41; IAHR Court, Almonacid Arellano *et al.* v. Chile. Preliminary objections, merits, reparations and costs. Judgement of September 26, 2006. Series C No. 154, p. 151; IACHR, Report No. 136/99. Case 10,488. Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos; y Celina Mariceth Ramos. El Salvador. December 22, 1999, para. 203.

¹³⁴ IAHR Court, Bámaca Velásquez v. Guatemala. Monitoring compliance with judgment. Resolution of the Inter-American Court of Human Rights dated November 18, 2010. para. 44.

¹³⁵ IAHR Court, Herzog *et al.* v. Brazil. Judgement of March 15, 2018. Series C No. 353, para. 214-216.

110. In addition, in recent years, the Commission has been following up on the existing difficulties to fully and consistently access files which may help clarify and investigate the serious violations perpetrated in the context of the internal armed conflict, especially those committed by the security forces who had an active role in such conflict.¹³⁶ During the hearing held in 2019 and the *on-site* visit, the State reported that a commission within the armed forces had been created to prepare draft instructions aimed at ensuring that the information and documents found in military units were protected and preserved, as well as regulating the access to such information by victims and organizations representing them.¹³⁷ However, the Commission has not received any additional information on the activities or results of this initiative.
111. In turn, the Chamber under the Office of the Attorney General for crimes committed during the armed conflict noted that some institutions have failed to provide documents that are relevant to the investigations.¹³⁸ Such obstacles have also been reported by civil society organizations and the Office of the Attorney for the Defense of Human Rights.¹³⁹ In particular, the Commission has been informed that the Ministry of National Defense has allegedly responded to requests under the Access to Public Information Law with reports stating that such documents do not exist.¹⁴⁰ Similarly, on several occasions, the Ministry of National Defense has allegedly denied access to the information required by the Institute on Access to Public Information or hindered inspection efforts made by this institution, which oversees the access to public information on military files.¹⁴¹
112. In addition, the Ministry of National Defense has made use of legal instruments to delay the delivery of information by turning to the Administrative Litigation Chamber and challenging the resolutions adopted by the Institute on Access to Public Information.¹⁴² As part of proceeding no. 220-14, the Administrative

¹³⁶ IACHR, press release [32/18](#), “[IACHR Welcomes Decisions on Clarifying Forced Disappearances in El Salvador](#),” February 20, 2018; IACHR, public hearing “Twenty-five years after the Commission on the Truth for El Salvador,” 167 period of sessions, February 26, 2018; IACHR, press release [74/18](#), “[IACHR Urges El Salvador to Comply with the Recommendations from the Truth Commission’s Final Report, 25 Years after its Publication](#),” April 2, 2018; IACHR, public hearing “Search Process for Persons Disappeared During the Armed Conflict in El Salvador,” 169 period of sessions, October 1, 2001; IACHR, public hearing “The Right to Truth and Historical Impunity in the Context of the Internal Armed Conflict in El Salvador,” 173 period of sessions, Washington, D.C., September 26, 2019.

¹³⁷ IACHR, public hearing “The Right to Truth and Historical Impunity in the Context of the Internal Armed Conflict in El Salvador,” 173 period of sessions, Washington, D.C., September 26, 2019.

¹³⁸ Office of the Attorney General, Memorandum of the Coordinator of the Prosecution Group Investigating Crimes related to the Internal Armed Conflict, Subject: Report Submission, December 9, 2019, p. 3, in IACHR’s files.

¹³⁹ PPDH, Situación de Derechos Humanos en El Salvador, Report presented to the Inter-American Commission on Human Rights during its *on-site* visit in December 2019, December 2019, p. 18.

¹⁴⁰ University of El Salvador, Information presented by the University of El Salvador to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 4, 2019, December 4, 2019, in IACHR’s files, p. 1; IDHUCA, [Informe de Derechos Humanos 2019](#), February 2020, p. 18.

¹⁴¹ Diario El Mundo, “[Defensa se excusa con la pandemia para no entregar documentos relacionados al asesinato de cuatro periodistas holandeses](#),” February 6, 2020; ElSalvador.com, “[Fuerza Armada bloquea acceso a comisiones del Instituto de Información a inspección de archivos](#),” March 6, 2020.

¹⁴² Supreme Court of Justice, Administrative Litigation Chamber, [Judgment Reference No 220-2014](#), January 17, 2017.

Litigation Chamber has ordered the Ministry of National Defense to reconstruct information on military operations, but such order has not been followed. In addition, the Commission has received complaints about the lack of compliance with a series of habeas corpus decisions issued by the Constitutional Chamber of the Supreme Court of Justice in recent years. Such decisions required giving access to information on enforced disappearances committed in the context of the internal armed conflict and, when such information did not exist, investigating their possible destruction or lack of documentation in due course, promoting their reconstruction and identifying those responsible in the event of a crime.¹⁴³

113. The IACHR and its Special Rapporteurship for Freedom of Expression have indicated that the right of individuals to access information held by the State establishes a positive obligation for the State to provide the requested information in a timely, complete and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate reasons for impeding access.¹⁴⁴ However, as indicated by the Constitutional Chamber, the IACHR and the SRFE, the States must fulfill their obligation to search the required information on mass human rights violations by all possible means, making a substantive effort, in good faith, and contribute all the necessary resources to reconstruct the information that was supposedly destroyed.¹⁴⁵ In addition, since the victims of serious human rights violations and their relatives, as well as society as a whole, have the right to know the truth, under no circumstances may a State agency refuse to provide state-held information that might help establish the facts surrounding such violations to the authorities investigating human rights violations. This information must be provided to judges, as well as to autonomous investigation agencies.¹⁴⁶
114. In spite of this, the Commission and its Special Rapporteur for Freedom of Expression have become aware of the events occurred on September 21, 2020, in the Archives of the Salvadoran Armed Forces' Joint Chiefs of Staff, on which [they have expressed their serious concern](#). On this occasion, and in subsequent episodes occurred in other military units, officials of the Ministry of National Defense allegedly prevented an inspection to the archives of the Salvadoran Armed Forces' Joint Chiefs of Staff ordered by the investigative court in San Francisco Gotera, Morazán, in the context of a case regarding the massacre in El Mozote and nearby sites.¹⁴⁷ Indeed, the government publicly explained that it refused to comply with

¹⁴³ Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019. December 18, 2019, p. 3, 11, 12, 17, 18, in IACHR's files.

¹⁴⁴ Special Rapporteur for Freedom of Expression, IACHR, Report The Inter-American Legal Framework regarding the Right to Access to Information. December 30, 2009; para. 24.

¹⁴⁵ Special Rapporteur for Freedom of Expression, IACHR, Report The Inter-American Legal Framework regarding the Right to Access to Information: Second Edition, March 7, 2011, para. 93.

¹⁴⁶ Special Rapporteur for Freedom of Expression, IACHR, Report The Inter-American Legal Framework regarding the Right to Access to Information: Second Edition, March 7, 2011, para. 81.

¹⁴⁷ IDHUCA, Letter "Preocupación por la vulneración de los derechos de las víctimas del conflicto armado, en particular de la Masacre de El Mozote, cometida por el Gobierno del Presidente Nayib Bukele," September 22, 2020, p. 3; Gato Encerrado, "[El peregrinaje del juez y las víctimas del caso El Mozote por acceder a los archivos militares](#)," November 5, 2020.

this court decision for various reasons, including the risk of disclosing information that was strategically valuable for the State.¹⁴⁸ In this regard, it is stressed that, in cases of human rights violations, state authorities cannot resort to mechanisms like official secrecy or confidential information, or cite the public interest or national security, to refrain from providing information required by the judicial or administrative authorities in charge of pending investigations or other judicial proceedings.¹⁴⁹

115. In view of the foregoing, the Commission [reiterates its call](#) on the State of El Salvador to take urgent, decisive steps to organize, systematize and make available to victims, judicial authorities and society as a whole all the documentation available, including materials on operations, administration, financial issues, sanitation, public relations and any other issue. Public availability must be made ensuring that sensitive aspects are protected appropriately. In addition, as determined by the Inter-American Court in the case of the Massacres of El Mozote and nearby places,¹⁵⁰ the Commission urges the State to investigate, through its competent public institutions, the conduct of the officials who have obstructed the investigation and have permitted the facts to remain unpunished since they occurred and then, following an appropriate proceeding, apply the corresponding administrative, disciplinary or criminal sanctions, as appropriate, to those found responsible.

B. Responses to cases of forced disappearance

116. With regard to the search for victims of enforced disappearance during the armed conflict, the IACHR [has hailed](#) the State of El Salvador for establishing the National Commission on the Search for Disappeared Persons in the context of the armed conflict, whose design and operation were agreed on by the government and civil society organizations. In this regard, CONABUSQUEDA was established as an institutional search mechanism additional to the National Commission to Search for Children Who Disappeared during the Internal Armed Conflict, which was created in 2010 in response to the judgment in the case of the Serrano-Cruz Sisters.¹⁵¹
117. According to information published by the National Commission to Search for Children Who Disappeared during the Internal Armed Conflict, between 2011 and May 2020, the institution has resolved 107 of the 349 cases reported, having

¹⁴⁸ El Faro, "[La noche en que Bukele despreció al juez, las víctimas, la Sala y los congresistas republicanos,](#)" September 25, 2020; NSV Noticias, video "[Cadena Nacional de 24 de septiembre de 2020,](#)" September 24, 2020.

¹⁴⁹ IACHR, Report [The Right to Truth in the Americas](#), August 13, 2014, para. 113.

¹⁵⁰ IAHR Court, Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs. Judgement of October 25, 2012. Series C No. 252, p. 148.

¹⁵¹ IAHR Court, Serrano-Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgement of March 1, 2005. Series C No. 120, p. 107.

achieved 38 reunions, 16 locations and 38 locations of deceased persons.¹⁵² The IACHR has also [noted](#) that CONABUSQUEDA has developed a National Plan for the Search of Adults, as well as its first exhumation, with the support of the Guatemalan Forensic Anthropology Foundation. In addition, the IACHR appreciates the publication of the report “Forced Disappearance in the Context of the Armed Conflict in El Salvador”¹⁵³ in August 2020, as an important step to assess the phenomenon of forced disappearance by state agents and belligerent actors since the 1970s and during the armed conflict from 1980 to 1992, as well as drawing a road map to address the issue.

118. According to this report, there is currently no estimate as to determine the number of victims who disappeared, although the Truth Commission of El Salvador has registered 3,880 victims of forced disappearance from direct sources, and 1,057 victims from indirect sources. In addition, the UN Working Group on Enforced or Involuntary Disappearances has presumably recorded a list of 2,281 cases of enforced disappearance during the Salvadoran armed conflict, while human rights organizations have estimated about 8,000 cases.¹⁵⁴ The Asociación Pro-búsqueda, which carries out valuable work in investigating cases of children who disappeared or were involuntarily separated from their families during the internal armed conflict in El Salvador, indicated to the IACHR that “the number of children given up for adoption may amount to over 30,000, and at least 10 percent of them, i.e., approximately 3,000 children, may have been victims of forced disappearance.”¹⁵⁵
119. In the face of this enormous challenge, it is urgent that the State makes every effort at its disposal to give effective responses to these victims and their families by working to determine the fate or the whereabouts of the disappeared persons through all possible means. In addition, in the event that any of the victims are found alive, the State must provide adequate means for re-establishing their identity and make the necessary efforts to facilitate family reunification, or if the victims are found to be deceased, their previously identified remains must be returned to their next of kin as soon as possible.¹⁵⁶
120. The IACHR notes that both search commissions were created through an executive decree. However, in order to ensure greater legal certainty and the sustainability of these policies over time, the IACHR calls on the State to adopt a law regulating

¹⁵² National Commission to Search for Children Who Disappeared during the Internal Armed Conflict, [Statistics: September 2011 to May 2020](#), 2020.

¹⁵³ CONABUSQUEDA, “[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador](#),” August 2020, p.

¹⁵⁴ CONABUSQUEDA, “[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador](#),” August 2020, p. 20

¹⁵⁵ Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019. December 18, 2019, in IACHR’s files, p. 7.

¹⁵⁶ IAHR Court, *Rochac Hernández et al. v. El Salvador*. Merits, reparations and costs. Judgement of October 14, 2014. Series C No. 285, para. 196-199.

the search for disappeared persons.¹⁵⁷ In addition, it is important to regulate every aspect of the exhumations carried out as part of the investigations into enforced disappearances, as well as the rights of family members related to the absence of disappeared persons.¹⁵⁸

121. The IACHR also considers it important that the State follows up on the recommendations provided in the aforementioned report published by CONABUSQUEDA with the support of the OHCHR, which identifies priorities and strategies for overcoming the challenges faced when providing responses to the forced disappearance of persons. In particular, the IACHR highlights the recommendations that point to the need to expand the budget allocated for CONABUSQUEDA, strengthen its institutional aspects and increase its technical-scientific capacities and those of the Institute of Legal Medicine, establishing a coordination framework between these bodies and the Office of the Attorney General.¹⁵⁹ The Commission also takes note of the information provided by the Institute of Legal Medicine regarding existing expert services and the development of a project for the creation of a genetic profile bank.¹⁶⁰ The Commission also notes that, on January 20, 2021, the Legislative Assembly approved Legislative Decree No. 815, which creates the National DNA Data Bank.¹⁶¹
122. In this regard, the IACHR urges the State to strengthen the capacities of the institutions conducting search and identification activities, ensuring that they possess the necessary human, financial, logistic, scientific and other resources to conduct efficient investigations and to determine the whereabouts of the victims, in a coordinated action with their families.¹⁶² To this end, it is also important to strengthen inter-institutional cooperation between the entities involved in this task, as well as to achieve full collaboration between the institutions that may have information relevant to clarify the facts. Finally, the IACHR [reiterates](#) its recommendation to the State to create a genetic profile bank aimed at clarifying the truth and attaining justice in the cases of children, adolescents and adults who were forcibly disappeared during the internal armed conflict.

¹⁵⁷ PPDH, Situación de derechos humanos en El Salvador, report presented to the Inter-American Commission on Human Rights during its *on-site* visit in December 2019, December 2019, p. 18; Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019. December 18, 2019, in IACHR's files, p. 22; CONABUSQUEDA, "[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador](#)," August 2020, p.

¹⁵⁸ CONABUSQUEDA, "[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador](#)," August 2020, p. 132, 133, 134.

¹⁵⁹ CONABUSQUEDA, "[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador](#)," August 2020, p. 22, 133.

¹⁶⁰ Institute of Legal Medicine, Ref-memo-dg-0960-2019, December 23, 2019, in IACHR's file, p. 20-22.

¹⁶¹ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 28.

¹⁶² IAHR Court, Rochac Hernández *et al.* v. El Salvador. Merits, reparations and costs. Judgement of October 14, 2014. Series C No. 285, para. 198.

C. Comprehensive reparation policy

123. With regard to the measures adopted to redress the victims of the internal armed conflict, the IACHR [has congratulated](#) the state for the progress it has made and applauded its commitment to complying with the measures set out in the sentence passed by the Inter-American Court of Human Rights in relation to the massacre in El Mozote and surrounding areas. In addition, during its *on-site* visit in 2019, the Commission was informed that the government was carrying out an institutional reorganization process and was adapting the work plans for all competent bodies to promote reparation measures from a comprehensive national perspective. The Commission has also learned of the Technical Guidelines for the Care of Victims of Serious Human Rights Violations,¹⁶³ published by the Ministry of Health, which the IACHR encourages the State to implement.
124. However, it is concerned that the elimination of the Secretariat for Social Inclusion in June 2019 has affected the implementation of the reparation program for victims of serious human rights violations in the context of the internal armed conflict, established by Executive Decree No. 204 of 2013.¹⁶⁴ While the IACHR has learned about the limitations of this program and the demands for a reparation policy that addresses the various impacts suffered by the victims, in accordance with inter-American human rights standards,¹⁶⁵ the Commission considers it urgent that the program be immediately re-established until a system that is more favorable for the victims is established.
125. Likewise, while noting that Legislative Decree No. 575, Special Law on Transitional and Restorative Justice for National Reconciliation, deals with aspects related to reparation for the victims, the IACHR stresses the importance that any supplementary legislation connected to such policies, as well as their implementation and monitoring, take into consideration the input and engagement of victims and civil society. The Commission has asserted that participation of the public in the cycle of public policymaking makes it possible for the identification of

¹⁶³ Ministry of Health, "[Lineamientos técnicos para atención a personas víctimas de graves violaciones de Derechos Humanos](#)," April 2019.

¹⁶⁴ Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019. December 18, 2019, in IACHR's files, p. 24; El Faro, "[Cancillería: 'El programa de reparación a víctimas de la guerra desapareció'](#)," September 24, 2019; El Faro, "[La reorganización de Bukele manda al limbo los programas para las víctimas de la guerra](#)," August 26, 2019.

¹⁶⁵ DPLF, 'Madeleine Lagadec' Center for the Promotion of Human Rights, Cristosal. [Proposed Reforms to the Government Reparations Program \(Executive Decree No. 204 of 2013\)](#), April 2021; PPDH, Consulta Con Víctimas De Graves Violaciones A Derechos Humanos Ocurridas En El Contexto Del Conflicto Armado. Informe Final, February 25, 2020, in IACHR's files, p. 4; Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights during its *on-site* visit to El Salvador from December 2 to 6, 2019. December 18, 2019, in IACHR's files, p. 23; FESPAD, [Comunicado: Primer año de gobierno de Nayib Bukele](#), June 4, 2020; CONABUSQUEDA, "[La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador](#)," August 2020, p. 17, 26; PPDH, Situación de Derechos Humanos en El Salvador, report presented to the Inter-American Commission on Human Rights during its *on-site* visit in December 2019, December 2019, in IACHR's files, p. 18.

problems, the drafting of the policy, its implementation and evaluation to incorporate the experiences, perspectives and viewpoints of the persons and groups who are the holders of the rights that are being targeted for safeguarding.¹⁶⁶ In this regard, the Commission welcomes the consultation carried out by the Office of the Attorney for the Defense of Human Rights in 2020 to find out the problems faced by victims of serious violations during the armed conflict and their families, as well as their demands and proposals to the State.¹⁶⁷ According to the Office of the Attorney for the Defense of Human Rights, 604 people from 89 communities and 12 departments participated in the initiative.

126. In addition, the IACHR stresses that a reparation policy must incorporate a broad notion of comprehensive reparation, which means that it must include different types of remedies to adequately address the different dimensions of the damage suffered by all victims.¹⁶⁸ The IACHR considers that some relevant aspects of any reparation system include the adoption by the State of solid legal and institutional frameworks that ensure its legal certainty, sustainability, autonomy and impartiality to fulfill its mandate.¹⁶⁹ The Commission also stresses the importance of identifying and addressing the special or aggravated impact that victims suffer with regard to their rights based on specific vulnerability factors, structural or historical discrimination, and the intersection of these factors.
127. Finally, the Commission reiterates that truth, justice, reparations and guarantees of non-repetition are supplementary pillars of transitional justice, and that none of these elements may be substitutes for one another.¹⁷⁰ As the victims have said repeatedly throughout the visit, there is a sense of invisibility and hopelessness about State responses nearly three decades after peace was restored in the country. The magnitude of the violence perpetrated in the context of the internal armed conflict, which affected at least 75,000 people directly, calls for far-reaching measures by the State to restore confidence in government institutions. In this regard, the Commission urges the State to implement measures that recognize and respond to the damage caused in this context, but also to take measures to ensure the non-repetition of the serious human rights violations that have left a mark on the country.

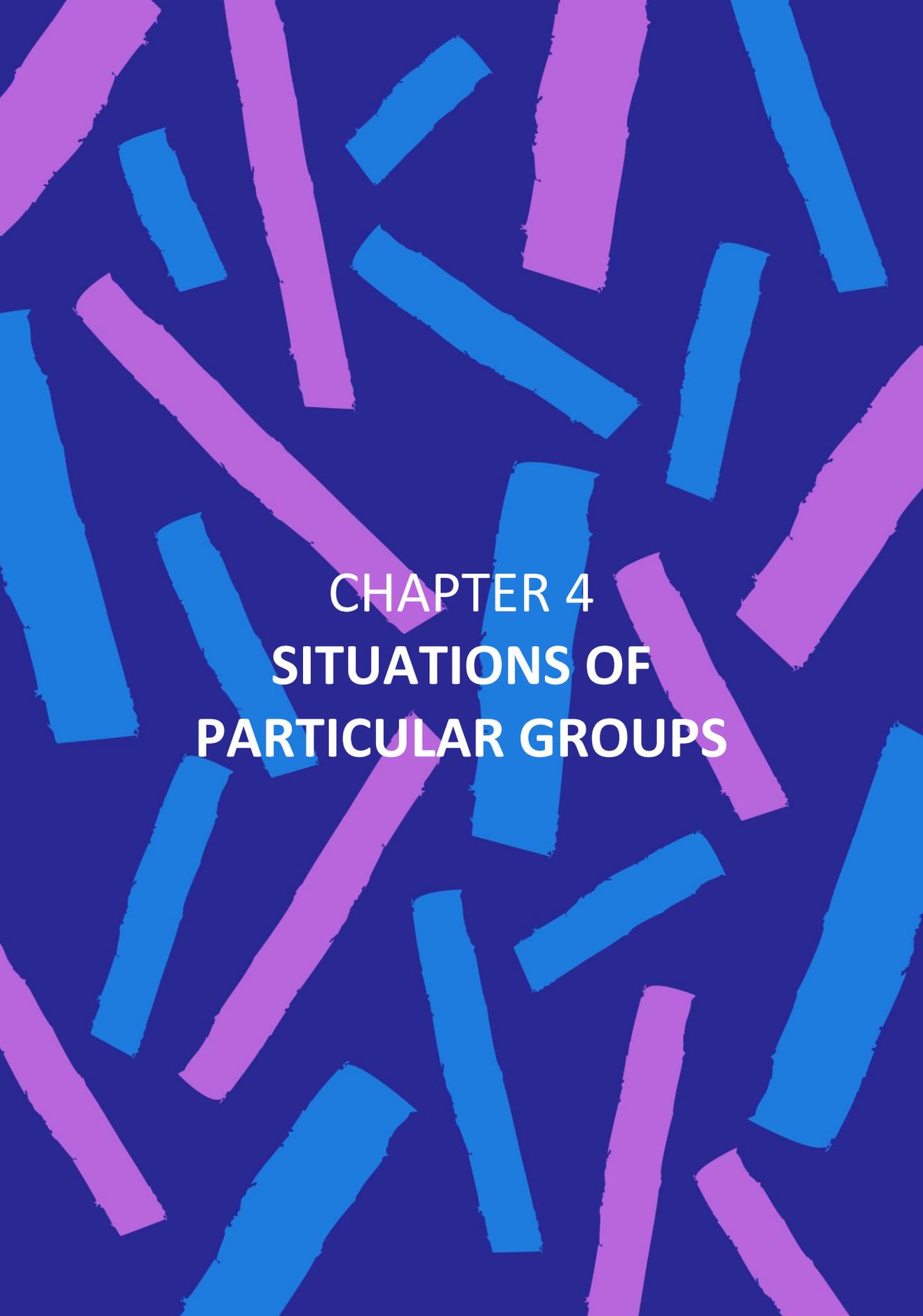
¹⁶⁶ IACHR, Report Public Policy with a Human Rights Approach, September 15, 2018, para. 57.

¹⁶⁷ PPDH, Consulta Con Víctimas De Graves Violaciones A Derechos Humanos Ocurredas En El Contexto Del Conflicto Armado. Informe Final, February 25, 2020, in IACHR's files.

¹⁶⁸ IACHR, [Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. \(Guerrilha do Araguaia\) \(Case 11,552\) against the Federal Republic of Brazil](#), March 26, 2009, par. 243.

¹⁶⁹ Human Rights Council, [Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence](#), A/HRC/42/45, July 11, 2019.

¹⁷⁰ IACHR, Report [The Right to Truth in the Americas](#), August 13, 2014, para. 49.

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CHAPTER 4
SITUATIONS OF
PARTICULAR GROUPS

SITUATIONS OF PARTICULAR GROUPS

A. *Persons Deprived of Liberty*

128. The situation of persons deprived of liberty in El Salvador has been of special concern to the IACHR in recent years.¹⁷¹ During the IACHR's *on-site* visit, the authorities of El Salvador informed the IACHR about a series of actions carried out in recent years for the rehabilitation and resocialization of the imprisoned population, with the exception of those in security and maximum security facilities; measures for the construction and upgrading of prisons to reduce overcrowding; the implementation of the Penitentiary Information System (SIPE); as well as training for its staff on human rights, health, safety, prison treatment and prison administration.¹⁷² The IACHR recognizes the efforts made by the State and, in particular, encourages the initiatives presented by the prison authorities aimed at rehabilitation and re-socialization so that they can be progressively replicated in all detention centers.
129. During the visit to the country and through the information collected, the IACHR observed, however, that the situation of the population deprived of liberty in El Salvador continues to be serious, especially as a consequence of the implementation of citizen security policies in the prison system, predominantly punitive in nature, which place the rights to life and integrity of this population at serious risk. In this regard, the IACHR notes with concern the deplorable conditions of detention, high levels of overcrowding in certain facilities and permanent detentions in police detention centers. Likewise, the IACHR observed first-hand how the extraordinary security measures ordered in 2016 increased the use of maximum-security regimes and, therefore, the extension of isolation.
130. In its observations on the draft of this report, the Salvadoran State considered that the expression "deplorable conditions of detention" is a "generalization of the conditions of detention centers in El Salvador. According to the State, during the visit of the IACHR, it presented ample information on the conditions of the penitentiary centers through the "Report on the Penitentiary System in El

¹⁷¹ IACHR, 175 period of sessions, public hearing "[Impact of extraordinary measures on the rights of persons deprived of their liberty in El Salvador](#)," May 10, 2018; IACHR, press release no. [11A/18](#), "[Annex: Conclusions and Observations on the IACHR's Working Visit to El Salvador](#)," January 29, 2018; IACHR, 156 period of sessions, public hearing "[Human Rights Situation of Persons Deprived of their Liberty in El Salvador](#)," October 19, 2015; IACHR, press release no. [104/10](#), "[IACHR Office of the Rapporteur attests to structural deficiencies in the prison system in El Salvador](#)," October 20, 2019.

¹⁷² General Directorate of Correctional Centers, Report for the Inter-American Commission on Human Rights, El Salvador, December 2019.

Salvador". In addition, it emphasized that the IACHR visited four centers without restrictions and in accordance with its own requirements.¹⁷³

131. According to information from the General Directorate of Correctional Centers, until December 28, 2020, the penitentiary system had a population deprived of liberty of 36,691 people, of which 92.28 percent were men and 7.72 percent were women. These figures do not consider the high number of people detained in *bartolinas* or police facilities.¹⁷⁴ In this regard, the State indicated that, in 2021, it began a process of progressive transfer of persons detained in *bartolinas* to penitentiary centers in order to guarantee their fundamental rights.¹⁷⁵

Total population ¹⁷⁶ N= 37,190		Legal status		Main age groups	
Men no. = 34,401 (92.50%)	Women no.= 2,789 (7.50%)	Convicted persons	Prosecuted persons	Between 18 and 25 years old	Between 26 and 35 years old
		28,102 (75.56%)	9,088 (24.44%)	7,471 (20.09%)	16,091 (43.27%)

132. In particular, the Inter-American Commission notes with concern the high levels of prison occupation that persist in El Salvador. At the end of 2020, according to the World Prison Population List, El Salvador ranked second in the world with the highest incarceration rate, with 562 persons deprived of liberty per 100,000 inhabitants.¹⁷⁷ Below, the IACHR analyzes the information received on the precarious conditions of detention and high levels of overcrowding registered in detention centers in El Salvador, the excessive application of pretrial detention and the impact of extraordinary security measures on the human rights of persons deprived of liberty. The Commission also addresses the lack of a differentiated

¹⁷³ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 9.

¹⁷⁴ Official prison statistics gathered by the General Directorate of Correctional Centers as of December 28, 2020. General Directorate of Correctional Centers, "[Estadística Penitenciaria al 28 de diciembre de 2020](#)," December 2020.

¹⁷⁵ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 10.

¹⁷⁶ According to the statistics of El Salvador, the most recurrent crimes among the penitentiary population are as follows: homicide with 15,736 cases (32.32%), extortion with 7,888 cases (16.20%), robbery with 3,751 cases (7.7%), drug-related crimes with 3,679 cases (7.56%), conspiracy with 4,126 cases (8.57%) and rape with 2,858 cases (5.87%). Official prison statistics gathered by the General Directorate of Correctional Centers as of December 28, 2020. General Directorate of Correctional Centers, "[Estadística Penitenciaria al 28 de diciembre de 2020](#)," December 2020.

¹⁷⁷ Institute for Criminal Policy Research, [World Prison Population List](#), London, 2018, p.2.

approach regarding groups at special risk and, finally, the effects of the emergency measures adopted in the face of the covid-19 pandemic.

1. Overcrowding and pretrial detention

133. According to information gathered during the Commission's visit to El Salvador in December 2019, the average occupancy rate in the prison system reached 142 percent. As of December 2020, the rate of overcrowding in places of detention was 136 percent¹⁷⁸. However, overcrowding levels in some penitentiaries probably rise to 600 percent, such as the San Francisco Gotera Correctional Facility, with a maximum capacity of 280 persons, which housed up to 1,730 individuals. During its visit, the IACHR found that some cells in particular had a high level of overcrowding, for example, at the Izalco Phase I Correctional Facility, where it established that 94 individuals were held in cells with capacity for 28. Such penitentiary center apparently has an occupancy rate of 270 percent.¹⁷⁹ According to the Salvadoran State, the overcrowding figures correspond to data from 2019, so it highlighted that "compared to data from 2016, they correspond to a reduction in overcrowding of approximately 160%, which shows a positive evolution."¹⁸⁰
134. According to the information gathered, the excessive use of provisional or pretrial detention, the tightening of security policies and the absence of alternative measures to incarceration appear to be the main factors driving high levels of overcrowding in El Salvador's prisons. In particular, with regard to provisional detention, the Code of Criminal Procedure of El Salvador provides that this measure may last exclusively for the indispensable time justifying the need for its application, not to exceed 12 months for less serious crimes and 24 months for serious crimes.¹⁸¹ However, between 2012 and 2015, 315 writs of habeas corpus were brought before the Constitutional Chamber of the Supreme Court concerning an excessive length of pretrial detention.¹⁸² On 28 December 2020, 9,088 inmates remained in provisional detention.¹⁸³

¹⁷⁸ IACHR, 180th period of sessions, Hearing "General Hearing on the Situation of Human Rights in El Salvador," June 30, 2021.

¹⁷⁹ According to the information gathered during the *on-site* visit, the penitentiary system had a maximum capacity of 27,387 individuals and housed a total of 38,627 inmates in December 2019. General Directorate of Correctional Centers, Report for the Inter-American Commission on Human Rights, El Salvador, December 2019, p. 15.

¹⁸⁰ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 10.

¹⁸¹ [Code of Criminal Procedure](#), January 30, 2009, sections 8, 331 *et seq.*

¹⁸² UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure. Seventh periodic reports of States parties due in 2016: El Salvador, November 22, 2016, para. 136.

¹⁸³ Official penitentiary statistics compiled by the General Directorate of Correctional Centers as of December 28, 2020. General Directorate of Correctional Centers, "[Estadística Penitenciaria al 28 de diciembre de 2020](#)," December 2020.

135. The IACHR is also concerned that, in accordance with the Code of Criminal Procedure, replacing pretrial detention with another precautionary measure is not appropriate for a broad range of offenses.¹⁸⁴ As a result, in practice, pretrial detention seems to be often applied based on the type of offense, with no sufficient and individualized consideration of each case to determine whether the necessary conditions for detention are met. For instance, the United Nations Human Rights Committee has noted that prohibiting the application of alternative measures to provisional detention for the offence of “public disorder” could lead to restrictions on the right to peaceful assembly and freedom of association, as well as entail a form of criminalization against human rights defenders.¹⁸⁵ In addition, with regard to women's rights, considering the absolute criminalization of abortion, the IACHR also notes that the application of provisional detention and the absence of alternative measures to imprisonment may have a disproportionate impact on criminalized women facing obstetric emergencies.¹⁸⁶ In this context, the Committee on the Elimination of Discrimination against Women has shown concern about the conditions of women in detention facilities due to the lengthy pretrial detention periods, the difficulties that women face in receiving legal advice and the problems in gaining appropriate access to accommodation, health and sanitary facilities,¹⁸⁷ which will be discussed later in this report.
136. The Commission and the Court have indicated that pretrial detention is limited by the principles of legality, presumption of innocence, necessity and proportionality.¹⁸⁸ The Court has also indicated that it is a precautionary measure, not a punitive one,¹⁸⁹

¹⁸⁴ As set forth in El Salvador's Code of Criminal Procedure: “No alternative precautionary measure shall be ordered in the case of the following charges: simple homicide; aggravated homicide; kidnapping; sexual assault of any kind; sexual assault against a minor or intellectually disabled person; aggravated sexual offenses; aggravated robbery; extortion; fraud in public administration; offenses covered by the Drug-Related Activities Regulation Law; and offenses covered by the Money and Assets Laundering Prevention Law.” [Code of Criminal Procedure](#), January 30, 2009, section 331.

¹⁸⁵ UN Human Rights Committee, Concluding observations on the 7th periodic report of El Salvador, CCPR/C/SLV/CO/7, May 9, 2018, para. 37.

¹⁸⁶ With regard to the application of pretrial detention and its disproportionate impact on women, on July 29, 2019, the IACHR brought Case 13,069, Manuela and family v. El Salvador before the Inter-American Court of Human Rights. The case refers to a series of violations during the criminal proceeding that led to a conviction for the crime of aggravated homicide against the victim in the case, which took place in a known context of criminalization of abortion in El Salvador. In particular, the IACHR concluded that the State violated the right to not be arbitrarily deprived of liberty, the principle of presumption of innocence, and the right to judicial protection, since pretrial detention was ordered based on the seriousness of the crime committed, applying a legal provision whereby in the case of aggravated homicide and other crimes, pretrial detention cannot be replaced with any other measure. IACHR. Report No. 153/18. Case 13,069. Merits. Manuela and family. El Salvador. December 7, 2018; para. 83-93.

¹⁸⁷ Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined 8th and 9th periodic reports of El Salvador](#), March 9, 2017, para. 48.

¹⁸⁸ IACHR, [Report on the Use of Pretrial Detention in the Americas](#). OAS/Ser.L/V/II. December 30, 2013; para. 20. IAHR Court. López Álvarez v. Honduras. Judgement of February 1, 2006. Series C No. 141, para. 67; García Asto and Ramírez Rojas v. Rojas. Judgement of November 25, 2005. Series C No. 137, para. 106; Palamara Iribarne v. Chile. Judgement of November 22, 2005. Series C No. 135, para. 197; Acosta Calderón v. Ecuador. Judgement of June 24, 2005. Series C No. 129, para. 74.

¹⁸⁹ IAHR Court, Suárez Rosero v. Ecuador. Judgement of November 12, 1997. Series C No. 35, para. 77.

and, because it is the most severe precautionary measure that can be applied, must be applied exceptionally. Considering the stances of both bodies of the inter-American system, the rule should be that the accused remains free while the establishment of criminal responsibility is weighed.¹⁹⁰ The IACHR recalls that the mandatory imposition of pretrial detention based on the type of offense is not only a violation of the right to personal liberty as enshrined in Article 7.3 of the American Convention, but also amounts to a kind of anticipated sentence,¹⁹¹ and constitutes an illegitimate interference by legislators in the powers of judicial authorities to analyze the case.¹⁹²

137. Consequently, the Commission urges the State to adopt measures aimed at making a rational use of detention, such as applying pretrial detention rules in accordance with procedural standards, and promoting, regulating and applying alternative measures to deprivation of liberty.

2. Detention conditions

138. In relation to detention conditions, during the visit, the Commission found that detention centers had poor infrastructure, unhealthy conditions, lack of hygiene, inadequate medical care and poor and inadequate access to water. In addition, it noted the absence of programs focused primarily on reintegration in high and maximum-security centers, which house approximately 16,000 people. These conditions, together with high overcrowding levels, pose a serious threat to the health of detainees.
139. In this regard, in its observations on the draft of this report, the Salvadoran State requested to specify the detention centers in which such conditions were found, given that in El Salvador "every penitentiary center has a prison clinic where the necessary medical care is provided to persons deprived of liberty".¹⁹³ In addition, it noted that cleaning campaigns are carried out in all of them, "even increased since the COVID-19 pandemic, as regulated in the Protocol for the prevention and control of COVID-19 in prisons in El Salvador".¹⁹⁴ In relation to the absence of

¹⁹⁰ IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OAS/Ser.L/V/II. December 30, 2013; para. 21; IACHR Court, *López Álvarez v. Honduras*. Judgement of February 1, 2006. Series C No. 141, para. 67; *Palamara Iribarne v. Chile*. Judgement of November 22, 2005. Series C No. 135, para. 196; *Acosta Calderón v. Ecuador*. Judgement of June 24, 2005. Series C No. 129, para. 74.

¹⁹¹ IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/II,163. Doc. 105, July 3, 2017, para. 91; IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/II., Doc. 46/13, December 30, 2013, para. 151.

¹⁹² IACHR, Situation of Human Rights in Honduras, OAS/Ser.L/V/II. August 27, 2019; para. 339; IACHR, Situation of Human Rights in Honduras, OAS/Ser.L/V/II. Doc. 42/15. December 31, 2015, para. 558; IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OAS/Ser.L/V/II. December 30, 2013; para. 137.

¹⁹³ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 10.

¹⁹⁴ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 10.

programs focused on reintegration in security and maximum security centers, the State indicated that "there are such programs and specific treatment for persons deprived of liberty" in these centers, as detailed in the report on the Prison System presented to the IACHR.¹⁹⁵

140. The IACHR observed, and the State acknowledged, the recurrent respiratory and skin diseases affecting individuals deprived of liberty. In addition, prison authorities stated that about 60 percent of all tuberculosis cases in the country occur among people who are incarcerated in penitentiaries, with a prevalence of almost 6,000 patients per 100,000 inhabitants, which is "the highest prevalence in the region." In this regard, the Commission takes into consideration the fact that the State has recognized the seriousness of tuberculosis in prisons, and welcomes measures taken by the new administration to counter this high incidence, including early detection initiatives, health plans and other measures to improve health and reduce overcrowding in penitentiaries. The State also reported on measures taken to reduce the levels of malnutrition found in penitentiaries when the new administration took office.¹⁹⁶
141. In its comments to the draft of this report, the State highlighted the reduction in the rate of tuberculosis infections in prisons. According to what it indicated, by 2019, it experienced a 34% reduction, or 700 cases. It also noted that, since 2014, the DGCP developed joint actions with the Ministry of Health, in application of the national standard, such as the national guidelines for the prevention and control of tuberculosis; the guide for the control of tuberculosis in the prison population; the guide for the management of tuberculosis and HIV as a collaborative activity; the end TB Strategy and other topics related to TB; among others, which has resulted in an increase in the detection of cases for their timely treatment.¹⁹⁷
142. The IACHR recalls that the capacity of centers of deprivation of liberty should be determined taking into account criteria such as the actual floor space available per inmate; ventilation; lighting; heating; access to toilets; number of hours that inmates spend confined to their cells or sleeping quarters; and the number of hours that they spend outside; as well as other basic infrastructure elements such as clinics, and space and equipment needed to exercise, work and engage in recreational activities. At a minimum, each inmate must have enough space to

¹⁹⁵ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 10-11.

¹⁹⁶ General Directorate of Correctional Centers, Report for the Inter-American Commission on Human Rights, El Salvador, December 2019, p. 15.

¹⁹⁷ According to the information provided by the State, the official figures of TB cases in prisons are: 2015 (832 cases); 2016 (1,078 cases); 2017 (1,949 cases); 2018 (2,017 cases); 2019 (1,327 cases); 2020 (952 cases); January to June 2021 (339 cases). In this context, it considered "evident the decrease in TB cases, having for each year an average of 90% success rate in the treatment of the disease". Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 10.

sleep lying down, to walk freely within the cell or sleeping quarter, and to accommodate their personal possessions.¹⁹⁸

143. As part of the *on-site* visit, the IACHR toured the Tonacatepeque Social Insertion Center for minors, where it confirmed the poor infrastructure of the facilities, which was recognized by the State itself. It also noted that the center provides education up to the third grade of secondary school, as well as other educational and recreational activities that can contribute to the effective social reintegration of adolescents deprived of liberty. As it was reported during the *on-site* visit, as of September 30, 2019, a total of 503 individuals remained housed in the four centers for social integration administered by the Salvadoran Institute for Comprehensive Child and Adolescent Development (including 58 women and 445 men). Of this total, 45 were between 14 and 16 years of age; 181 were adolescents between 16 and 18 years of age; and 275 were adults aged 18 and over.¹⁹⁹
144. As the IACHR has pointed out, on many occasions detention centers can expose adolescents to greater vulnerability and violence, especially when criminal organizations are strongly influential in such facilities. The IACHR welcomes the initiatives undertaken to treat inmates with respect and human dignity, with a view to their effective and constructive reintegration into society. At the same time, the IACHR encourages the State to ensure that the conditions of detention for persons under the age of 18 are in conformity with international standards. Furthermore, it reminds the State that the deprivation of liberty of children and adolescents must be an absolutely exceptional measure and must be particularly governed by the principles of rehabilitation and reintegration.²⁰⁰
145. In addition, the IACHR is particularly concerned about the conditions of detention observed in police detention centers, also known as *bartolinas*. These police centers, designed for provisional arrests, usually house a large number of inmates, some of whom have been brought to trial or are in pretrial detention, for periods exceeding those established by law and under conditions incompatible with international human rights law. According to data provided to the IACHR, at the end of 2018, the National Civil Police (PNC) determined that the stable population in these facilities comprised 5,131 individuals.²⁰¹ According to information provided by civil society, as of December 31, 2020, it was reported that 3,606 persons were housed in *bartolinas*. This number exceeds their capacity of 1,523 inmates, which accounts for an overpopulation rate of 173.11 percent.²⁰²

¹⁹⁸ IACHR, [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OAS/Ser.L/V/II. Doc. 64, December 31, 2011, para. 465.

¹⁹⁹ Statistical data provided by the Salvadoran Institute for Comprehensive Child and Adolescent Development during the *on-site* visit. In IACHR's files.

²⁰⁰ IACHR, [Violence, children and organized crime](#), OAS/Ser.L/V/II, Doc. 40/15, November 11, 2015, paras. 438 and 439.

²⁰¹ IDHUCA and University Observatory on Human Rights, "Privados de Libertad 2018," year 2018.

²⁰² University Observatory on Human Rights, University of Central America, *Estado de Derechos Humanos en El Salvador. Informe Annual, 2020*, p. 79.

146. In 2018, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions observed that, in spite of not being designed to hold people for over 72 hours, “the vast majority of detainees have been held there for months, sometimes years, with several deaths in custody.” She also described alarming levels of overcrowding, barely allowing the detainees to move or rest, as well as a lack of access to food, warm clothes, and personal hygiene materials.²⁰³
147. In the context of its *on-site* visit, the IACHR toured the *bartolina* run by the Sonsonate police, where it observed deplorable conditions of overcrowding and a lack of basic services to ensure decent conditions of detention, to the extent that detained persons are provided with food by their own family members. At the site, the IACHR interviewed people who had been held in cells with capacity for approximately 12 persons for over 26 months. In some cases, these cells housed 99 inmates. As a result, the IACHR observed that detained persons can only remain in their cells sitting down. Among the most serious cases, the IACHR interviewed an 80-year-old man who was held in this cell. The Commission also became acquainted with the case of a woman who was arrested seven days after giving birth and whose baby was taken to the *bartolina* only twice a day to be breastfed. At the time of the visit, the *bartolina* had a population of 357 detainees.
148. The IACHR notes that, at the end of 2018, the National Civil Police announced a project aimed at increasing center capacity. Through this project, in February 2018, it managed to increment center capacity to a maximum of 2,950 individuals.²⁰⁴ At the same time, the State ordered the transfer to penitentiaries of persons who were being held in *bartolinas* pending trial, which resulted in a sharp decrease in overpopulation rates.²⁰⁵ According to information provided by civil society, the current administration has firstly followed a policy of transferring persons being held pending trial from *bartolinas* to penitentiaries, seeking to reduce the number of inmates in police delegations.²⁰⁶ The IACHR welcomes these efforts and urges the Salvadoran State to adopt urgent measures to put an end to the use of police units as housing facilities for periods exceeding 72 hours, as established by national law.²⁰⁷
149. With regard to the situation of women deprived of liberty, the Commission was informed during its visit to El Salvador that, within the last 15 years, the population of female inmates has increased by ten times because, in this country, unlike others in the region, the main crime for which women are imprisoned is extortion. As it has been indicated, it is mostly women who are responsible for collecting the so-called “rent” and are therefore more likely to be identified and detained. The

²⁰³ United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, A/HRC/38/44/Add.2, December 7, 2018, para. 60.

²⁰⁴ Rapid Intervention Operation (OIR) implemented by the National Civil Police. Resolution PNC-UAIP-232-201; IDHUCA and University Observatory on Human Rights, “Privados de Libertad 2018,” year 2018, p. 1.

²⁰⁵ IDHUCA and University Observatory on Human Rights, “Privados de Libertad 2018,” year 2018, p. 1

²⁰⁶ IDHUCA and University Observatory on Human Rights, information provided to the IACHR through an online meeting, July 11, 2019.

²⁰⁷ [Constitution of the Republic of El Salvador](#), Article 13.

Commission has received information on the efforts made by the State to ensure that all women deprived of liberty in El Salvador are in facilities exclusive for women, in particular the Ilopango Correctional Facility, the Minimum-Security Prison, which was visited by the IACHR, and the Prison Farm of Izalco. With regard to the latter, the Commission notes that, while some shortcomings and deficiencies remain, the conditions of deprivation of liberty for women housed with their children have improved. Progress must be continued and reinforced.

150. Furthermore, the Commission is concerned about the vulnerable situation in which trans women deprived of liberty are. According to the information received by the Commission, trans women serve their sentences in men's prisons, in which they constantly face violations of their human rights and suffer or are at risk of suffering violence based on their gender identity and expression, both by state agents and by other persons deprived of liberty. According to the information received, trans women have reported that "on their arrival at the penitentiaries, they are gang-raped by other individuals deprived of liberty or subjected to forced penetrations with batons by security agents," actions that are apparently not reported because of fear of reprisal.²⁰⁸ In fact, the IACHR delegation was informed that there are no official figures regarding LGBTI persons deprived of liberty, and the lack of recognition of sexual identity has prevented trans and gender-diverse persons from being properly identified by prison authorities.²⁰⁹
151. The State, for its part, informed the IACHR that it already has a Penitentiary Center in which it exclusively shelters "persons deprived of liberty who have been prosecuted and convicted and belong to the LGBTI community (Jucuapa Preventive and Sentence Enforcement Center), in order to provide them with specialized attention, in accordance with international human rights standards, avoiding any discrimination on grounds of sexual orientation or gender identity, in accordance with Agreement No. 26 of February 16, 2021, issued by the Ministry of Justice and Public Security". It also reported that the Gender Unit of the General Directorate of Penal Centers is working on "the approval of a Protocol to address the issues raised by the IACHR, which includes measures for the prevention of violence against LGBTI persons, procedures for filing complaints about violence and abuse, etc".²¹⁰
152. In this regard, the IACHR recalls that trans women are at a heightened risk of sexual violence because of their routine imprisonment in male facilities, without regard to the specificities of the person or the case.²¹¹ The IACHR recalls that the State must protect the life and personal integrity of LGBTI persons or those perceived as such from acts of violence exerted against them by other detainees. Therefore, it urges El Salvador to adopt urgent and effective measures to ensure the life,

²⁰⁸ Salvadoran LGBTI Federation, Situación de personas LGBTI en El Salvador, information received during the IACHR's *on-site* visit to El Salvador. December 2019. IACHR's files.

²⁰⁹ Information received during the IACHR's *on-site* visit to El Salvador. December 2019. IACHR's files.

²¹⁰ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 11-12.

²¹¹ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#). OAS/Ser.L/V/II.rev.2 Doc. 36. 2015, ¶para.155.

personal security and integrity of LGBTI persons or those perceived as such in all detention centers. It also requests the State to adopt measures to prevent violence against LGBTI persons or those perceived as such who are deprived of liberty, including effective and independent complaint procedures to report rape and abuse; tailored risk assessment when they arrive to the center; careful collection of data on LGBTI persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials and police officers. Caution must be exercised in collecting data on the prevalence of LGBTI persons and of violence based on prejudice in places of detention, given the inherent risks of further victimization, stigmatization and abuse.

3. Extraordinary security measures

153. During its visit, the Commission received plenty of information on how the situation of persons deprived of liberty has deteriorated as a result of the extraordinary security measures aimed at combating crime implemented in El Salvador in recent years. These measures have been planned and managed by criminal facilities themselves.
154. On April 1, 2016, the Legislative Assembly issued the Special, Temporary and Extraordinary Provisions for Penitentiaries, Prison Farms, Intermediate Centers and Temporary Detention Centers, which established “urgent” and “provisional” measures for a maximum period of one year in seven detention centers, so as to “ensure the effectiveness of the prison system” and “protect society from criminal actions” occurring in prisons. The measures adopted include the prohibition of all kinds of visits, the suspension of hearings and the confinement or isolation of detainees:²¹²

“Article 2: In cases where there are signs that an organization proscribed by law is engaged in destabilization attempts; that persons deprived of liberty take part in activities related to criminal acts, whether committed, planned or performed inside or outside the facilities; or that the life or physical integrity of individuals is at risk, the following measures may be adopted:

- a) open temporary detentions centers;
- b) transfer detainees from and to different penitentiaries and prison farms, including those created to comply with a special detention system;

²¹² Legislative Assembly, [Legislative Decree No. 321](#), April 1, 2016.

- c) restrict or limit the displacement of detainees through confinement or isolation in special cells, among other measures, as a last resort;
- d) restrict or suspend visits of all kinds, for as long as necessary, as well as the entry of persons other than members of the prison administration. Duly accredited public and private defenders will be allowed to exercise the right to communicate with the interns they represent in specially designated areas;
- e) stipulate that participation in re-educational and work-habit training activities be compulsory; and
- f) take other measures that are necessary to fulfill the purpose of this decree, including those set forth in Article 23 of the Penitentiary Law that have not been mentioned above.

The minister of Justice and Public Security will apply such measures gradually, assessing and amending them accordingly when changes in the security conditions of the facilities in question are made.

155. According to information from the Office of the Attorney for the Defense of Human Rights, during the first year that these measures were applied, that is to say in 2016, and as a result of inhumane conditions of *isolation*, the rates of patients with tuberculosis and, consequently, the number of deaths from that disease increased by 400 percent. In addition, between January and November 2016, it was reported that 47 individuals died after being attacked or suffering health collapses in prisons, which shows that permanent cell confinement has not guaranteed the life and health of persons deprived of liberty.²¹³
156. Moreover, although the measures were temporary, the previous administration extended its validity on two occasions. Firstly, through Legislative Decree No. 602, dated February 16, 2017, the Legislative Assembly extended their validity until April 30, 2018. However, its scope of application was reduced to six penitentiaries.²¹⁴ Secondly, the Legislative Assembly decided to extend them once again for a six-month period, ending in October 2018.²¹⁵ In this regard, the IACHR and the OHCHR have expressed concern over this decision, especially because, as a result of it, thousands of people have been placed in prolonged and isolated detention under truly inhumane conditions.²¹⁶ In addition, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions made a call

²¹³ PPDH, Informe Preliminar sobre el impacto de las medidas extraordinarias para combatir la delincuencia en el ámbito de los derechos humanos, El Salvador, June 2017, pp. 29-30.

²¹⁴ Legislative Assembly, [Legislative Decree No. 602](#), February 16, 2017.

²¹⁵ Permanent Mission of El Salvador to the OAS, Report to the IACHR on the Impact of Extraordinary Measures on the Rights of Persons Deprived of Liberty, September 11, 2018.

²¹⁶ OHCHR, "[Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador](#)", San Salvador, November 17, 2017; IACHR, press release no. 63/18, "[IACHR Calls on El Salvador to Not Renew Extraordinary Measures in Detention Centers](#)," March 26, 2018.

to the State to repeal these measures, as he considered that their main objective “is to dehumanize detainees.”²¹⁷ For its part, the State informed the IACHR that its implementation had produced favorable results to control organized crime, as evidenced by a decline in homicides and other crimes committed by order of detainees held in Salvadoran prisons.²¹⁸

157. Subsequently, in August 2018, the Legislative Assembly made a permanent amendment to the Penitentiary Law to include these extraordinary measures, with the aim of “having a common regulatory framework sufficient to maintain order and stability in the country’s prisons.”²¹⁹ In particular, through Legislative Decree No. 93, the law was amended to include measures such as: conducting online hearings and judicial proceedings without the presence of the person being prosecuted;²²⁰ restricting communications at will;²²¹ and granting discretionary powers to prison directors to suspend all kinds of visits, order the mass transfer of detainees from and to different prisons, and restrict displacement by ordering cell confinement.²²²
158. Particularly, in relation to the holding of virtual hearings, the State informed the IACHR that they are carried out in accordance with Article 138 of the Code of Criminal Procedure, “ensuring in all cases the possibility of contradiction of the parties and the safeguarding of the right of defense that every person has, to which effect the Inter-institutional Protocol for the Development of Hearings and Proceedings by means of Videoconferences has been approved”.²²³
159. In 2019, under the Territorial Control Plan, the executive branch continued to implement extraordinary measures as part of the State’s policy to combat crime. These measures were to be planned by the penitentiaries themselves. Thus, on

²¹⁷ United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, A/HRC/38/44/Add.2, December 7, 2018, para. 59.

²¹⁸ Report of the State of El Salvador, Impacto de las Medidas Extraordinarias sobre los derechos de las Personas Privadas de Libertad, Note from the Permanent Mission of El Salvador to the OAS, NV-OEA-75/2018, September 11, 2018.

²¹⁹ Report of the State of El Salvador, Impacto de las Medidas Extraordinarias sobre los derechos de las Personas Privadas de Libertad, Note from the Permanent Mission of El Salvador to the OAS, NV-OEA-75/2018, September 11, 2018; “[Press release - Extraordinary security measures to be made permanent in penitentiaries](#)”, August 16, 2018.

²²⁰ Legislative Assembly, [Legislative Decree No. 93](#), August 31, 2018. Article 91-A.

²²¹ Legislative Assembly, [Legislative Decree No. 93](#), August 31, 2018. Article 80-A *et seq.*

²²² Article 14-A grants discretionary powers to the directors of penitentiaries to: “suspend visits in whole or in part, for a maximum of thirty days, due to force majeure causes; construction works, expansions or infrastructure renovations; technological adaptations; complex or high-risk hearings; searches or detection of offences; mass transfers; health problems of inmates; and improvements of the facilities in general. In addition, visits of any kind may be suspended for a maximum of thirty days, in the entire facilities or in a sector thereof, when there are indications that inmates may engage in destabilization attempts in the facilities, or take part in activities related to criminal acts, inside or outside the penitentiaries. Both the present and the preceding subparagraphs shall be subject to the procedure established in Articles 23 and 24 of this Law regarding information, confirmation or revocation by the corresponding bodies. Legislative Assembly, [Legislative Decree No. 93](#), August 31, 2018.

²²³ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report “Situation of Human Rights in El Salvador”, September 3, 2021., p. 12.

June 20, 2019, a state of emergency in all prisons in the country was ordered,²²⁴ with the exception of the Ilopango Prison, which is a women’s prison. On June 29, the executive branch ordered the director of Correctional Centers to extend the measure “indefinitely.”²²⁵ According to public statements by members of the judicial branch, the ban on the transfer of defendants to attend judicial hearings thwarted 369 judicial proceedings.²²⁶ In addition, operations to transfer “high-risk” detainees to other penitentiaries appear to have resulted in a total of 2,600 relocations as of July 1.²²⁷ The IACHR observes that, contrary to the Salvadoran Penitentiary Law, the state of emergency remained in force until September 3, 2019.²²⁸ Subsequently, on April 25, 2020, the president decreed again, and for an indefinite period, the maximum emergency in the penitentiary centers where the inmates who would belong to criminal organizations would be detained.²²⁹

160. The Commission has repeatedly condemned the application of extraordinary measures. In particular, the IACHR has recognized that, while it is the State’s responsibility to prevent and combat crime, the ongoing existence of these so-called extraordinary measures has led to serious violations of the rights of people who are deprived of liberty, such as obstacles to guaranteeing due process; limited remote participation in proceedings through videoconferences; the repeated suspension of judicial hearings; prolonged or indefinite isolation in inhumane conditions; effects on health; and the suspension of the visit regime.²³⁰
161. In its visit, the IACHR noted that, as a result of these measures, both those included in the Penitentiary Law and those established by the executive branch, 100 percent of the detainees remain isolated from the outside world. In fact, according to

²²⁴ According to official information, “the purpose of the measure is to stop detainees from giving orders to members of criminal structures.” While the state of emergency remained in force, 529 inmates were transferred from the Izalco Correctional Facility to Quezaltepeque; 495 from Quezaltepeque to Izalco; and 18 from Quezaltepeque to Ilopango. In total, 1,042 detainees were transferred. Another of the measures implemented was the suspension of communication with the outside in all penitentiaries. General Directorate of Correctional Centers, “[Continúan medidas para evitar delitos desde los centros penales](#),” June 21, 2019.

²²⁵ “Mr. Director of [@CentrosPenales](#), please take tougher measures and extend the state of emergency indefinitely. Minister [@merino_monroy](#), send the Special Forces, helicopters and PRAI patrol cars to find these criminals.” Twitter account of Nayib Bukele, ([@navibbukele](#)), president of El Salvador, [posted](#) on June 29, 2019.

²²⁶ La Prensa Gráfica, “[Medidas de emergencia en centros penales han frustrado más de 360 diligencias, dicen jueces y magistrados](#),” July 2, 2019.

²²⁷ La Prensa Gráfica, “[Bukele ordena dar un trato más estricto a pandilleros en prisión](#),” July 1, 2019.

²²⁸ Directorate General of Correctional Centers, “[Centros penales levanta emergencia en el sistema penitenciario pero la seguridad se mantiene](#),” September 3, 2019.

²²⁹ Under the Prisons Act, prison directors can only declare states of emergency for 15 days. After that time, the Directorate of Penal Centers must request a new state and argue the reasons. This declaration must be notified immediately to the Office of the Human Rights Procurator and the Office of the Attorney-General of the Republic. In addition, it shall be subject to review for revocation, confirmation or modification by the competent Prison Supervision and Sentence Enforcement Judge. Prisons Act, articles 23 and 24.

²³⁰ IACHR, press release no. [335/19](#), “[IACHR presents its preliminary observations following its on-site visit to El Salvador](#).” Washington, D.C., December 27, 2019; IACHR, ‘press release no. [11A/18](#), “[Annex: Conclusions and Observations on the IACHR’s Working Visit to El Salvador](#),” January 29, 2018.

Articles 79 and 79-A of the Penitentiary Law, visits of all kinds are prohibited in maximum-security centers, while in medium-security centers, family visits are restricted and the prohibition of conjugal visits prevails.²³¹ In practice, however, this restriction seems to be applied to persons housed in other centers as well. In the context of its visit to the Izalco Correctional Facility and to a *bartolina*, the IACHR was informed that family visits are not permitted, which is contrary to the principle of presumption of innocence, since these centers house persons being held pending trial, in administrative detention or without conviction.²³²

162. With regard to persons deprived of liberty due to administrative detention, the State informed the IACHR that, by virtue of its constitutional and legal mandate, "the actions of the Office of the Attorney General of the Republic (FGR) are limited to strict compliance with and application of the regulations in force under the constitutional principles of human dignity, legality, equality before the law, legal security, presumption of innocence, among others, and the human rights approach". Consequently, it pointed out that "the investigation and prosecution, as well as the application of administrative detention, adhere to the legal definition and procedures established in the Criminal and Criminal Procedure Codes in force at the time of the facts under investigation, and in the Criminal Prosecution Policy (PPP), a first-order instrument in the prosecutorial work in punitive matters".²³³
163. With regard to maximum-security prisons, the Commission is concerned that isolation is apparently used against international standards in this matter. In particular, the IACHR found that persons in isolation have no access to sunshine; have no contact with other inmates, except with their cellmates; and do not engage in any academic, labor, recreational or social reintegration activity. They are also not allowed to receive clothing, personal toiletries or medicines from outside. These rules are applied long term to "highly dangerous" or "more dangerous" persons, who are usually mara or gang leaders. In this regard, the Commission condemns the use of isolation, which is clearly contrary to deprivation of liberty standards.²³⁴ Prolonged isolation and incommunicado status are, in themselves, forms of cruel and inhumane treatment, harmful to the mental and moral integrity of the individual and contrary to the right of every detainee to the due respect of their human dignity. It also puts personal integrity at a special risk situation, whose

²³¹ Legislative Assembly, [Legislative Decree No. 93](#), August 31, 2018.

²³² In addition, in 2018, civil society organizations reported that, as a result of the measures implemented, some inmates were unable to contact their families for over two years. Persons deprived of liberty under "permanent confinement" are reportedly entitled to one hour of sunshine, three times a week. Some of them have reportedly stayed in permanent confinement for three months. In addition, such organizations said that this measure is often used as a form of punishment against persons accused of attacking state agents. IACHR, 175 period of sessions, public hearing "[Impact of extraordinary measures on the rights of persons deprived of freedom in El Salvador](#)," May 10, 2018.

²³³ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 13.

²³⁴ In this regard, IACHR, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas," OAS/Ser/L/V/II.131, document approved by the Commission at its 131 period of sessions, held from March 3 to 14, 2008, Principle XXII.3.

consequences may last throughout the lives of the persons subjected to these measures.²³⁵

164. The Commission reiterates its call to the Salvadoran State to strike a balance between the security measures imposed and the budgetary deficiencies observed in detention centers, in order to guarantee human resources, adequate medical services, infrastructure and more guards, which are necessary to meet applicable inter-American standards.

4. Situation of persons deprived of liberty in the context of the covid-19 pandemic

165. After visiting the country, the IACHR learned about the implementation of new security and emergency measures in prison centers, which, in the context of the covid-19 pandemic, could seriously jeopardize the life, health, integrity and dignity of persons deprived of liberty.
166. On April 25, 2020, the president of El Salvador ordered a state of maximum emergency in prisons where inmates belonging to criminal organizations are presumably detained. Among these measures, he ordered measures including a 24-hour indoor lock-up, solitary confinement for leaders of criminal organizations, a cutoff in inmates' communications with their families and the cancellation of all activities.²³⁶ These measures were established for an indefinite period of time in response to an increase in the number of homicides recorded during the weekend of April 24, which is contrary to the 15 days established under national legislation.²³⁷
167. According to public information, using his Twitter account, the deputy minister of Justice and general director of Correctional Centers of El Salvador reported that persons deprived of liberty who were members of different gangs would share the same cells. This policy was allegedly implemented in the Izalco Correctional Facility, the Zacatecoluca Maximum-Security Prison, and the Ciudad Barrios, San

²³⁵ IAHR Court, *Espinoza González v. Peru*. Judgment of November 20, 2014, para. 186.

²³⁶ On its Twitter account, the executive branch said the following: "Mr. Director [@OsirisLunaMeza](#) ordered a state of maximum emergency in all [@CentrosPenales](#) where gang members are held; information from intelligence services indicates that murders have been ordered from such penitentiaries. Total lockdown 24 hours a day, every day, while police operations are ongoing. Twitter account of Nayib Bukele ([@nayibbukele](#)), president of El Salvador, [posted](#) on April 25, 2020.

²³⁷ Under the Penitentiary Law, directors of penitentiaries may only order a state of emergency for 15 days. After that time, the General Directorate of Correctional Centers must request a new state of emergency and account for the reasons for it. Such order must be notified immediately to the Office of the Attorney for the Defense of Human Rights (PPDH) and the Office of the Attorney General of the Republic. In addition, it shall be subject to review for revocation, confirmation or amendment by the competent Judge of Penitentiary Oversight and Sentence Application. [Penitentiary Law](#), Articles 23 and 24.

Francisco Gotera, and Quezaltepeque prisons.²³⁸ In this regard, there are videos on social media accounts managed by the government of El Salvador that show individuals who are deprived of liberty being subjected to inhumane, degrading treatment in the context of the relevant transfer operations. In particular, this footage shows guards keeping inmates in their underwear, with no shoes, all next to each other. In addition, these individuals were allegedly subjected to invasive searches by prison staff members. On April 27, the executive branch ordered inmates to be isolated by completely sealing all cells to avoid communication between them or with the corridors.²³⁹

168. On April 29, 2020, in a press release, the IACHR noted that holding members of different criminal organizations in the same space may trigger clashes or riots that could lead inmates to lose their lives or suffer injuries. Furthermore, in the context of the covid-19 pandemic, the conditions of isolation and confinement faced by individuals held in maximum-emergency settings entail greater risks for the inmates' health and integrity.²⁴⁰ According to information provided by civil society organizations, since the state of emergency was declared, at least 108 persons deprived of liberty have been infected with the virus. However, as indicated above, there appears to be no official information on the number of infections, deceased persons or tests performed.²⁴¹
169. In a communication dated May 14, 2020, the Salvadoran State informed the IACHR that the General Directorate of Correctional Centers did not declare a state of emergency on the basis of Articles 23 and 24 of the Penitentiary Law, "given that the security and maximum-security rules established in Articles 79 and 79-A of the Penitentiary Law are already strict." In this regard, the State pointed out that "actions have been carried out aimed at complying with the special detention system." Consequently, the measures implemented are determined and covered by Article 103 of the Penitentiary Law, such as: 1. Enforcing the sentence or detention in isolation, in a special cell or wing, a measure that is also enshrined in Article 45 N 1 of the Criminal Code. 2. Restricting the detainees' freedom of movement within the detention center. 3. Cutting-off communications. 4. Restricting family visits and

²³⁸ "In carrying out president @nayibbukele's order_ , we are completing strategic searches in penitentiaries where gang members are held: the Izalco Correctional Facility, the Zacatecoluca Maximum-Security Prison, and the Ciudad Barrios, San Francisco Gotera, and Quezaltepeque prison centers." Twitter account of Osiris Luna Meza (@OsirisLunaMeza), deputy minister of Justice and director general of Correctional Centers, [posted](#) on April 25, 2020.

²³⁹ "From now on, all cells housing gang members in our country will remain sealed. Inmates will no longer see the outside of their cell. This will prevent them from communicating through signs to the outside. They will remain inside, in the dark, with their friends from other gangs." Twitter account of Nayib Bukele, (@nayibbukele), president of El Salvador, [posted](#) on April 27, 2020.

²⁴⁰ IACHR, press release no. 93/20, "[IACHR Calls on El Salvador to Protect the Rights of Individuals Who are Deprived of Liberty](#)," Washington, D.C., April 29, 2020.

²⁴¹ Tiempos Nuevos Teatro (TNT) Association; Agrupación Ciudadana para la Despenalización del Aborto; Azul Originario; Cristosal; Due Process of Law Foundation (DPLF); Fundación de Estudios para la Aplicación del Derecho (FESPAD); Los Siempre Sospechosos de Todo y el Servicio Social Pasionista (SSPAS), Request for a special hearing: "The prison system: impacts and effects on the human rights of persons deprived of liberty", September 22, 2020. In IACHR's files.

prohibiting conjugal visits (Article 79, last subitem of the Penitentiary Law) for as long as the security measures and the prohibition of family and conjugal visits continue based on Article 79-A of the Penitentiary Law applicable to the maximum-security regime.” According to the information received, these measures were implemented in five medium-security centers and two maximum-security centers, affecting a total of 3,222 persons deprived of liberty.²⁴²

170. In relation to the temporary nature of the measures implemented, the State informed the IACHR that, “since the measures being implemented in medium-security and maximum-security centers are expressly contained in the Penitentiary Law, as well as in the General Regulations of the Penitentiary Law (RGLP), they depend on the validity of these legal instruments. Therefore, their validity is indefinite.” Finally, with regard to the measure establishing confinement in cells with sealed windows and doors, the State indicated to the IACHR that “it has not been applied in the way presented by different media outlets; much less with the scope that has been indicated. In that sense, screens are progressively being installed in the cells of medium-security and maximum-security prisons to block the vision and impede communication through hand gestures to members of maras or gangs. These screens are being located at considerable distances, so as not to affect natural lighting or ventilation.”²⁴³
171. With regard to treatment and prevention measures to control the spread of covid-19 in detention facilities affected by security measures, the State told the IACHR that it has implemented the measures established in the Protocol for Covid-19 Prevention and Control in Prison Centers of El Salvador, including: “continuous 21-day working days; staff reduction; creation of quarantine areas; procedures for entry of DGCP and food-related staff to the centers; transfer of detainees over the age of 60 with chronic illnesses to the Santa Ana Comprehensive Health Care Center for Persons Deprived of Liberty with Chronic Degenerative Diseases (CAIS), etc.” Finally, in its communication dated May 14, 2020, the Salvadoran State reported that the prison system allegedly has no confirmed cases of covid-19, which demonstrates the effectiveness of the measures taken.²⁴⁴
172. The IACHR has urged States in the region to adopt urgent measures to guarantee the health and integrity of persons deprived of liberty and that of their families, in the face of the health emergency, as well as to ensure decent and adequate conditions of detention in centers of deprivation of liberty, consistent with inter-

²⁴² According to the information received, the prisons under the security regime are: Izalco Phase I, Izalco Phase II, Quezaltepeque, Ciudad Barrios and San Francisco Gotera; maximum security: Zacatecoluca and Izalco Phase III. General Directorate of Correctional Centers. Official letter SAJ-904/2020, San Salvador, May 14, 2020. In IACHR’s files.

²⁴³ General Directorate of Correctional Centers, Official letter SAJ-904/2020, San Salvador, May 14, 2020. In IACHR’s files.

²⁴⁴ General Directorate of Correctional Centers, Official letter SAJ-904/2020, San Salvador, May 14, 2020. In IACHR’s files.

American human rights standards.²⁴⁵ In particular, under the IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the Salvadoran State has the inescapable duty to adopt concrete and immediate measures to ensure the rights to life, health, and personal integrity of persons deprived of liberty.²⁴⁶

173. With regard to the containment and prevention measures, the IACHR reminds the States of the need to clearly define and report the reasons for imposing such restrictive measures, their estimated initial duration and the term for their revision. Furthermore, it is essential to apply the measures transparently and without discrimination, ensuring that all detainees have equal access to protection and mitigation measures, with special attention to the needs of people in vulnerable situations. The implementation of protection measures must be carried out diligently and adequately to prevent people in isolation from suffering ill-treatment or any type of stigmatization, marginalization or violence.²⁴⁷
174. Likewise, under Resolution 1/2020 entitled "Pandemic and Human Rights", the Commission has recommended that Member States establish protocols to ensure security and good order in prison units, in particular, to prevent acts of violence related to the pandemic, adhering to inter-American standards on the matter. In addition, it has recommended that all measures to limit contact, communications, visits, release and educational, recreational or employment-related activities be taken very carefully after a strict review of proportionality.²⁴⁸
175. The IACHR notes that El Salvador must ensure conditions of detention that respect all inmates' dignity, provide healthcare services to individuals who are deprived of liberty and implement conditions of confinement in compliance with the relevant international standards.²⁴⁹ These measures are particularly urgent considering that the consequences of the pandemic put these individuals particularly at risk.²⁵⁰

²⁴⁵ IACHR, press release 66/20, "[The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic](#)." Washington, D.C., March 31, 2020.

²⁴⁶ IACHR, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas" (Principle I).

²⁴⁷ IACHR, press release 66/20, "[The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic](#)." Washington, D.C., March 31, 2020.

²⁴⁸ IACHR, [Resolution 1/2020: Pandemic and Human Rights in the Americas](#), adopted on April 10, 2020.

²⁴⁹ IACHR, "[Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#)," adopted by the Commission during its 131 period of sessions, held from March 3 to 14, 2008.

²⁵⁰ IACHR, press release no. 93/20, "[IACHR Calls on El Salvador to Protect the Rights of Individuals Who are Deprived of Liberty](#)," Washington, D.C., April 29, 2020.

B. Women and LGBTI Persons

176. During its visit, the Commission received information on the prevalence of misogynistic, sexist and discriminatory sociocultural patterns that permeate the Salvadoran society as a whole and impact the rights of women and lesbian, gay, bisexual, trans, gender-diverse and intersex (LGBTI) persons to live a life free of violence and discrimination.²⁵¹
177. As discussed in this section, these have resulted in normalizing and tolerating violence against women and LGBTI persons, as well as created an enabling context for such behavior, and led to widespread impunity for these crimes. In the paragraphs below, the Commission addresses the impact of violence and discrimination on the rights of women and LGBTI persons in El Salvador.

1. Women's rights

178. In recent years, the Commission has recognized El Salvador's efforts to develop a legal framework for the protection of the fundamental rights of women and girls, and to implement policies, programs and mechanisms for assistance, protection and prevention of violence and discrimination.²⁵² In particular, at the end of its visit to the country, the IACHR recognized that the adoption of the Law of Equality, Equity and Eradication of Discrimination against Women, and the Comprehensive Law for a Life Free of Violence against Women have resulted in the development of a legal framework in keeping with the inter-American standards in the matter, based on which public policies, plans and specialized programs have been developed. Similarly, the Commission has repeatedly recognized the Ciudad Mujer model, implemented in the country since 2011, as one of the best practices in the region for the advancement and promotion of the rights of women and girls, especially those who are in a situation of vulnerability or have suffered serious violations of their rights.²⁵³
179. Despite these advances, regarding the right to life, the Commission notes with concern that El Salvador continues to be the country with the highest number of murders of women in the region. Although there seems to be a slow decline in this

²⁵¹ PPDH, El Salvador, Informe complementario por temas específicos presentado a la Comisión Interamericana de Derechos Humanos, en su visita *on-site* en diciembre de 2019 a El Salvador, sobre la situación de los Derechos Humanos, information received during the IACHR *on-site* visit to El Salvador, December 2019. In IACHR's files.

²⁵² IACHR, press release O11A/18, "[Conclusions and Observations on the IACHR's Working Visit to El Salvador.](#)" January 29, 2018.

²⁵³ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), November 14, 2019, OAS/Ser.L/V/II. Doc.233/19, paras. 36-39.

record in recent years,²⁵⁴ according to data from the ECLAC Gender Equality Observatory for Latin America and the Caribbean, at least 232 murders of women were reported across the country in 2018.²⁵⁵ The Observatory also recorded 113 femicides, reflecting a 3.5-point reduction in the rate of femicide per 100,000 inhabitants. According to public information, 130 femicides were reported during 2020, mostly during quarantine restrictions in the wake of the covid-19 pandemic.²⁵⁶ According to the Institute of Legal Medicine, the main perpetrators are romantic partners or individuals known to the victims.²⁵⁷ In addition, the IACHR warns that the violent deaths of women show signs of special hatred and cruelty, such as cases of suffocation, hanging and machete attacks. The Commission has also been informed of cases of violence against women perpetrated by National Civil Police agents, including the case of the assault against Carla Ayala in December 2017.²⁵⁸

180. In addition to the above, the Commission is concerned about the high prevalence of sexual violence against women and, in particular, its impact on children and adolescents in the country.²⁵⁹ According to data from the Office of the Attorney General, 6,142 women were victims of sexual violence in 2018, including 2,600 rapes.²⁶⁰ In 2019, the Office of the Attorney General recorded 6,421 cases of sexual violence,²⁶¹ while in the first half of 2020, 2,491 cases were recorded.²⁶² The IACHR warns that these acts of violence particularly affect girls between the ages of 10 and 17, resulting in high numbers of teenage pregnancy. In 2018, the Violence Observatory under the Ministry of Education reported 87 acts of sexual violence against female students and recorded a total of 173 pregnant students. For its part, the Office of the Attorney General recorded 70 and 25 acts of sexual violence against girls in schools or educational centers in 2019 and the first half of 2020,

²⁵⁴ REDFEM, Balance del Derecho de las mujeres a una vida libre de toda forma de violencia, November 25, 2019.

²⁵⁵ ECLAC, Gender Equality Observatory for Latin America and the Caribbean, [Indicators \(Femicide or feminicide\)](#), accessed on February 12, 2020.

²⁵⁶ El Mundo, “El 2020 cerró con 130 feminicidios, el 67% en cuarentena,” February 1, 2021.

²⁵⁷ Data obtained from the transparency portal of the Supreme Court of Justice.

²⁵⁸ According to public information, on September 29, 2017, five PNC officers reportedly sexually assaulted a policewoman in a farm belonging to the Association of Retired Members of the PNC (AMIRPON), located on the beach of Conchalío, department of La Libertad. Additionally, on December 31, 2017, a PNC officer reportedly attempted to murder a policewoman, who was apparently his romantic partner, at a police subdelegation where both performed functions. The case of the disappearance and subsequent murder of police agent Carla Ayala, in which several members of the Salvadoran police are apparently involved, remains unpunished. La Prensa Gráfica, “[Policías acusados de violar a compañera siguen activos](#)” January 20, 2018. Elsalvador.com, “[Fiscalía contradice versión PNC sobre el suicidio de mujer policía en delegación de Mejicanos](#),” January 3, 2018. Diario La Huella, “[Agentes de la PNC señalados en feminicidio de Carla Ayala se enfrentan este lunes a la justicia](#),” November 17, 2019.

²⁵⁹ El Faro, “[Violencia sexual: una epidemia histórica en El Salvador](#),” November 25, 2019.

²⁶⁰ Ministry of Justice and Public Security, [Informe Anual: Hechos de Violencia contra las Mujeres 2018](#), p. 21.

²⁶¹ Ministry of Justice and Public Security, [Informe Anual: Hechos de Violencia contra las Mujeres 2019](#), p. 15.

²⁶² Ministry of Justice and Public Security, [Informe Semestral: Hechos de Violencia contra las Mujeres Enero-Junio 2020](#), p. 15.

respectively.²⁶³ In turn, in 2018, the Ministry of Health reported 710 pregnant adolescents, including four 10-year-old girls.²⁶⁴ In 2019, 614 pregnant adolescents were recorded; while 243 cases were recorded during the first half of 2020. Despite the high prevalence of sexual violence, the Commission was informed that these acts are normalized and overlooked, that there is no effective approach to eradicate them for good, and that they are characterized by a very high level of impunity.

181. The IACHR also notes that, although many of these pregnancies occur in girls below the legal age of sexual consent and therefore constitute rape, the health care providers who take care of these pregnancies apparently do not duly report the cases to a public prosecutor.²⁶⁵ In addition, the Commission notes that teenage pregnancies and relationships between girls and men who are 20 years older than them continue to be naturalized, leading to the idea that teenage pregnancy is not the result of sexual violence, and therefore, it is not a crime and need not be reported or punished.²⁶⁶ The Commission has highlighted that a marked difference in the ages of the spouses in a child marriage can mean different levels of maturity, education and skills to function independently in a community. In that sense, a notable difference in age further deepens the inequalities in historically unequal power relations between women and men, and makes victims more helpless against different forms of violence based on the intersectionality of their gender and age.²⁶⁷
182. The Commission has also emphasized the serious impact that forced pregnancy, in particular resulting from sexual violence, could have, including social isolation and suicide. By the same token, the Commission has received troubling information regarding the prevalence of maternal mortality caused by self-inflicted wounds among young women. According to this information, at least 32 pregnant women have committed suicide in El Salvador between 2011 and 2018. One-third of the women who die from suicide in El Salvador are reported to be girls or adolescents.²⁶⁸ These deaths have been associated with cases of pregnant girls who end their lives when faced with the lack of options for unwanted pregnancies resulting from rape, which lead to discrimination and social stigma. In this regard, the Inter-American Court and the United Nations Committee on the Rights of the Child have recognized that the effects of violence against children can be extremely

²⁶³ Ministry of Justice and Public Security, [Informe Anual: Hechos de Violencia contra las Mujeres 2019](#), Ministry of Justice and Public Security, p. 84, [Informe Semestral: Hechos de Violencia contra las Mujeres Enero-Junio 2020](#), p. 17.

²⁶⁴ Ministry of Justice and Public Security, [Informe Anual: Hechos de Violencia contra las Mujeres 2018](#), 2019, p. 26.

²⁶⁵ Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019, in IACHR's files.

²⁶⁶ PPDH, [Informe Especial sobre el estado de los derechos sexuales y reproductivos con énfasis en niñas, adolescente y mujeres](#), February 2016.

²⁶⁷ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), November 14, 2019, OAS/Ser.L/V/II. Doc. 233/19, para. 221.

²⁶⁸ IACHR, press release 11A/18, "Annex: Conclusions and Observations on the IACHR's Working Visit to El Salvador." January 29, 2018. Univision, Pulitzer Center, ["Las niñas suicidas de El Salvador,"](#) May 2019. La Prensa Gráfica, ["La violencia que hace que las niñas y mujeres salvadoreñas traten de suicidarse,"](#) May 16, 2019. La Prensa Gráfica, [32 mujeres y adolescentes se suicidaron en El Salvador estando embarazadas,](#) May 30, 2019 UNFPA, [¿Sin opciones? muertes maternas por suicidio.](#) First edition. El Salvador, May 2019.

serious. Violence against children has multiple consequences, including “psychological and emotional consequences (such as feelings of rejection and abandonment, affective disorders, trauma, fears, anxiety, insecurity and destruction of self-esteem),” which can even lead to attempted or actual suicide.²⁶⁹ In cases where sexual violence has resulted in a forced pregnancy in girls and adolescents, the IACHR has emphasized the importance of adopting appropriate protocols to guarantee legal, timely and free access to emergency contraceptive methods and truthful, sufficient and impartial information to access the legal termination of pregnancy, especially when it comes to young girls, with no discrimination or any other type of criminal consequences.²⁷⁰

183. Furthermore, while gang violence against women, including threats, disappearances, murders, rape and sexual slavery, is publicly known, the Commission has been informed that the relationship between gangs and violence among women, as well as the impact on their rights, has not been analyzed in depth. In general, for fear of reprisals, women do not report these acts of violence, so this phenomenon has not yet been adequately proven or addressed to prevent it and effectively protect women. According to information provided by the Ministry of Justice and Public Security, there is no sufficient information as to the number of women who have been victims of violent deaths related to gangs. Therefore, the data available is still scarce.²⁷¹ The Commission generally notes that, while it is males that bear the brunt of the violence and activities of organized crime, both as victims and as aggressors, it should be noted that female adolescents are also seriously affected by violence and organized crime. In this regard, it is noted that female adolescents are victims of violence in these contexts, but at the same time, have roles that link them to the activities of organized crime; some are traditional gender roles such as caregiving, but others are active members of criminal groups.²⁷²
184. The Commission notes the complex situation of women and girls in organized crime contexts, given that, on the one hand, some of them join gangs voluntarily, while, on the other hand, others live with gang members in their communities as mothers, sisters, daughters or partners. In addition, the IACHR has repeatedly mentioned the negative impact that the actions of organized crime groups have on the protection and guarantees of the rights of women and girls, and has warned of their heightened risk of being victims of gender-based violence by organized crime or as a result of anti-crime policies.²⁷³ In light of the above, the Commission calls on the State of El Salvador to adopt a gender perspective when designing,

²⁶⁹ IAHR Court, Guzmán Albarracín *et al.* v. Ecuador. Merits, reparations and costs. Judgement of June 24, 2020. Series C No. 405, para. 156; Human Rights Committee, General Observation No. 36, Article 6. Right to life, September 3, 2019, Doc. CCPR/C/GC/36, para. 3.

²⁷⁰ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), November 14, 2019, OAS/Ser.L/V/II. Doc.233/19, para. 260.

²⁷¹ Ministry of Justice and Public Security, [Informe Anual: Hechos de Violencia contra las Mujeres 2018](#), 2019, p. 17.

²⁷² IACHR, [Violence, children and organized crime](#), November 11, 2015. OAS/Ser.L/V/II, Doc. 40/15, para. 239.

²⁷³ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), November 14, 2019, OAS/Ser.L/V/II. Doc. 233/19, paras.191 and 194.

implementing, monitoring and assessing measures and policies to fight violence and crime, taking into account the special impact that women suffer on the enjoyment and exercise of their rights as a result of high levels of social violence and criminality.

185. Furthermore, the Commission notes with concern the risk situation endured by women human rights defenders and the various forms of violence they face. According to information from the Salvadoran Network of Women Human Rights Defenders, at least 157 attacks against women human rights defenders were recorded between 2015 and 2016. In addition, according to the Regional Monitoring System of Attacks against Women Defenders, there has been an increase in risk factors for human rights defenders in the context of the covid-19 containment measures.²⁷⁴ In this regard, women who defend land, territories, women's rights, and sexual and reproductive rights could be the main victims of aggression as a result of their work. In particular, the Commission notes that these violent acts include harassment, smear campaigns, sexual assault, and misogynist and sexist insults.²⁷⁵
186. The IACHR has warned that women human rights defenders are continually facing individuals or groups who, in addition to condemning their participation in public life and their leadership role in the defense of human rights, their territories and their traditions, make use of sexist stereotypes to discredit their work.²⁷⁶ In addition, women who advocate issues that in themselves challenge established sociocultural patterns are also at increased risk of being the victims of specific acts of violence against them. Thus, women human rights defenders engaged in the field of women's rights and, in particular, in the area of sexual and reproductive rights and the rights of lesbian, bisexual, trans, gender-diverse and intersex (LBTI) women are particularly discredited, attacked and assaulted both for being women and as a result of the very rights they defend.²⁷⁷

²⁷⁴ Mesoamerican Initiative for Women Human Rights Defenders, [El Salvador: Organizaciones preocupadas por incremento de violencia digital contra defensoras](#), June 19, 2020.

²⁷⁵ Salvadoran Network of Women Human Rights Defenders, Agrupación Ciudadana para la Despenalización del Aborto, Colectiva Feminista para el Desarrollo Local, Movimiento de Mujeres de Santo Tomás (MOMUJEST), Asociación de Jóvenes Feministas Ameyalli, Asociación Mujeres Transformando, Colectivo de Mujeres Periodistas de El Salvador, COMCAMIS TRANS, Center for Reproductive Rights and Center for Justice and International Law (CEJIL), Informe Situación de las Mujeres, information received by the IACHR as part of its *on-site* visit to El Salvador, December 2019. In IACHR's files.

²⁷⁶ IACHR, Precautionary measures 939/18 and 1067/18, [Yerling Marina Aguilera Espinoza et al. \(17 human rights defenders\)](#), Nicaragua. September 17, 2018, para. 65; IACHR Court, [Women victims of sexual torture in Atenco v. Mexico](#), Preliminary objections, merits, reparations and costs. Judgement of November 28, 2018. Series C No. 371, para. 216.

²⁷⁷ IACHR, [Integral Protection Policies for Human Rights Defenders](#), OAS/Ser.L/V/II. Doc. 207/17. 2017, para. 43; IACHR, [Preliminary observations from the IACHR's visit to Honduras, 2018](#); IACHR, press release no. 066/19, ["Brazil must ensure justice for rights defender Marielle Franco killed a year ago, say UN and IACHR experts,"](#) March 14, 2019; Equality Bahamas. [Equality Bahamas Supports Erin Greene](#), January 20, 2019; Tribune242. ["I have been discriminated against my sexuality,"](#) June 12, 2013.

187. In addition, the Commission has established that violence and discrimination do not affect all women equally and has considered that there are women who are exposed to a heightened risk of enduring the violation of their rights, as a result of several factors in addition to their gender, such as being indigenous, Afro-descendant, lesbian, bisexual, trans and intersex women; women with disabilities, migrant women and older women, as well as other particular contexts of risk.²⁷⁸
188. In relation to the above, the IACHR calls on the State of El Salvador to fulfill its obligations to eradicate structural risk factors faced by women, as well as comply with its duty to protect and investigate the cases of women in particularly vulnerable situations, such as indigenous women, Afro-descendants, migrants, women with disabilities, journalists, human rights defenders, older adults and politicians.²⁷⁹ Based on the above, the State must implement comprehensive, culturally appropriate prevention strategies and protection measures with an intersectional and specialized perspective, in order to guarantee the rights of all women, and in particular, to ensure that women are able to carry out their work on the protection of human rights, have political participation and representation, and exercise their right to freedom of expression and opinion, free from all forms of violence and discrimination.

1.1. Access to justice for women

189. With regard to access to justice for women victims of violence, the Commission highlights the State's efforts in this area. Regarding the prosecution of violent crimes against women, the IACHR notes that the Comprehensive Law for a Life Free of Violence against Women has given way to a major legislative reform in which at least 21 policy-making bodies have been created, reformed or eliminated with regard to family, criminal, labor, childhood and adolescence matters. In addition, femicide is being applied with increasing frequency; in 2012, 10 percent of violent deaths of women were classified under this type of criminal offense, reaching 73 percent in 2017. In addition, since making violent comments against women has been classified as a crime, a series of daily behaviors and practices have been evidenced that perpetuate a system of hatred and contempt towards women. In addition, El Salvador has made progress in implementing a National System of Data, Statistics and Information on Violence against Women (SNDVM), which has managed to issue at least five reports on the situation faced by women. According to information provided by the State in its comments on the draft of this report, as a strategy to combat impunity for crimes against women, there have been created nationwide six Specialized Care Units for Women, UAEM, located in the departments of San Salvador, Santa Ana, Sonsonate, San Vicente, La Libertad and

²⁷⁸ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), November 14, 2019, OAS/Ser.L/V/II. Doc. 233/19, para.126.

²⁷⁹ IACHR, [Towards Effective Integral Protection Policies for Human Rights Defenders](#). OAS/Ser.L/V/II. Doc. 207/17. 2017.

San Miguel, which have multidisciplinary teams composed of psychologists, childcare workers, social workers and legal staff.²⁸⁰

190. Similarly, the Commission welcomes the creation and establishment of specialized courts²⁸¹ who watch over the right of women to a life free of discrimination and violence. This has enabled progress to be made towards a justice system specialized in investigation and judgment, which recognizes the inequalities that women face when accessing the justice system, applying human rights standards.²⁸² Additionally, in its observations on the draft of the present report, the State indicated to the IACHR²⁸³ that, since May 2018, the Office of the Attorney General has had the National Directorate for Women, Children, Adolescents, LGBTI Population and other Vulnerable Populations, whose function is the standardization, creation and coordination of criteria, strategies and guidelines that allow the staff of the Office of the Attorney General to provide comprehensive attention to the investigation process and to the victims of violence; and that, in every prosecutor's office in the country, Units for Crimes Related to Children, Adolescents and Women in their Family Relationships (UNAM) have been established, which are responsible for the investigation and prosecution of cases involving children, adolescents and women. In addition, the IACHR notes that, in November 2018, the Office of the Attorney General adopted the Criminal Prosecution Policy on Violence against Women, which establishes the criteria and guidelines to be applied in the investigation of cases on violence against women.
191. During its visit to the country, the Commission visited a shelter for women who were victims and survivors of violence and their children. The IACHR delegation assessed the conditions of the shelter and determined that they were very favorable and safe. The multidisciplinary work carried out by several state agencies was also noted, under the coordination of the Salvadoran Institute for the Development of Women (ISDEMU), to provide women with physical protection, support in their legal processes, and assistance for their integral recovery and their return to a life free of violence. In this regard, the Commission calls on the State to strengthen this model of protection, in particular by providing sufficient resources to open and maintain more shelters, and support their expertise in the care of women who are victims of domestic violence, human trafficking and other forms of violence.
192. Even with this institutional framework in place, the IACHR notes that challenges for women and girls who are victims of violence persist with regard to having full access to judicial remedies, having their cases properly prosecuted and obtaining

²⁸⁰ Republic of El Salvador, Observations of the State of El Salvador to the Draft Report "Situation of Human Rights in El Salvador", September 3, 2021., p. 14.

²⁸¹ Supreme Court of Justice, Gender Unit, [Creación de los Juzgados Especializados para una vida libre de violencia](#), July 2017.

²⁸² REDFEM, Balance del Derecho de las mujeres a una vida libre de toda forma de violencia, November 25, 2019.

²⁸³ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 14.

reparations. According to data from the 2017 National Survey on Violence against Women, women show a very low level of confidence in the administration of justice, as only 6 out of 100 women report acts of violence against them. These figures drop to a 0-percent-rate of complaints in cases of violence against Afro-descendant and indigenous women.²⁸⁴ Similarly, the Commission has received some worrying information that indicates difficulties in integrating a gender perspective into the work of the Office of the Attorney General, as well as a lack of capacity and specialization in such Office and, in general, insufficiently trained court officials. Furthermore, only three specialized courts have been established. These courts have almost universal jurisdiction to deal with acts of violence against women, but lack the power to try sexual offenses; have insufficient basic furniture, technical equipment and fully trained staff; and are overwhelmed to address the issue of violence against women in their country. For example, the Investigative Court in San Salvador has apparently collapsed, although it started operating in 2017. In addition, despite the mandate included in the Law of Equality, Equity and Eradication of Discrimination against Women, and in international agreements to repeal laws with discriminatory content, inadequate and discriminatory rules and practices persist that favor impunity in cases of violence against women, specifically violent acts within romantic relationships and sexual violence.²⁸⁵

193. The Commission reminds the State of El Salvador that Article 7(b) of the Convention of Belém do Pará expressly enshrines the obligation of States to act with due diligence to prevent, investigate and punish all forms of gender-based violence against women, girls and adolescents, by all appropriate means and without undue delay.²⁸⁶ Under this duty, States must organize their entire government structure, including the legislative framework, public policies, law enforcement bodies such as the police, and the judicial system, to prevent, investigate, punish and provide reparation in cases of gender-based violence, with a comprehensive approach involving all state sectors, including the areas of health, education and justice.²⁸⁷ The IACHR has also highlighted the link between the duty of due diligence and the obligation of States to ensure access to adequate and effective judicial remedies for victims of gender-based violence and their families.²⁸⁸

²⁸⁴ DIGESTYC (General Directorate of Statistics and Census), [Encuesta Nacional de Violencia Contra las Mujeres - El Salvador](#), 2017.

²⁸⁵ REDFEM, [Encuesta Nacional de Violencia Contra las Mujeres - El Salvador](#), November 25, 2019.

²⁸⁶ IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OAS/Ser.L/V/II. Doc. 67. 2006, para. 28; IACHR, press release no. 41/15, "[Joint Press Release of the UN and IACHR Rapporteurs](#)." 2015. See also CEDAW. [General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#). CEDAW/C/GC/28. 2010, para.18.

²⁸⁷ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OAS Ser.L/V/II. Doc.63. December 9, 2011; para. 41; IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#). OAS/Ser.L/V/II.rev.2 Doc. 36. 2015, para. 268; and IACHR, [The Right of Women in Haiti to be Free from Violence and Discrimination](#). OAS/Ser.L/V/II. Doc. 64. 2009, para. 80.

²⁸⁸ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OAS Ser.L/V/II. Doc.63. 2011, para. 43.

194. The Commission has stressed that the failure to act with due diligence is not only a violation of the obligation of States to guarantee this right, but also constitutes in itself a form of discrimination in the access to justice.²⁸⁹ Thus, access to justice implies the impartial, independent, unbiased and duly trained intervention of state officials. Failure to comply with the duty of due diligence, especially with regard to the investigation, prosecution and punishment of acts of gender-based violence, promotes an environment of impunity that facilitates and promotes the repetition of acts of violence in general, and sends a message that violence against women can be tolerated and accepted. This contributes to perpetuating and accepting such violence in society, engendering feelings of insecurity in women, and creating growing distrust among women in the justice administration system.²⁹⁰

1.2. Health and sexual and reproductive rights of women

195. In the area of sexual and reproductive rights, the Salvadoran State has reported that efforts have been made through the National Sexual and Reproductive Health Policy adopted in 2012, and through the actions of the Ministry of Health's Comprehensive and Integrated Sexual and Reproductive Health Care Unit, and the National Strategic Plan for the Reduction of Maternal, Perinatal and Neonatal Mortality. The IACHR has learned that in 2016, the Ministry of Health submitted to the Legislative Assembly a bill on sexual and reproductive health, which is still pending discussion. Measures have also been taken to ensure free access to contraceptives in health care facilities, and long-term contraception methods have been promoted, in addition to the application of emergency contraception. In 2017, the National Cross-Sector Strategy for the Prevention of Child and Adolescent Pregnancy was adopted, with a focus on prevention, special protection, access to justice, and the restitution of rights. The Reproductive and Sexual Health Component of the Ciudad Mujer program features a multidisciplinary team of professionals who provide specialized services to women, while the Ciudad Mujer Joven program is implementing the Strategy for the Prevention of Child and Adolescent Pregnancy.²⁹¹
196. Notwithstanding the above, the Commission is concerned about reports that at least 36 women have died from preventable chronic diseases and another 13 from

²⁸⁹ IACHR, [Democratic Institutions, the Rule of Law and Human Rights in Venezuela. Country Report](#), OAS/Ser.L/V/II. Doc. 209, 2017, para. 343.

²⁹⁰ IACHR Court, [Gutiérrez Hernández et al. v. Guatemala](#). Preliminary objections, merits, reparations and costs. Judgement of August 24, 2017. Series C No. 339, para.176; IACHR, [The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from violence and Discrimination](#), OAS/Ser.L/V/II.117 Doc. 1 Rev. March 17, 2003, para. 7; IACHR, Application before the Inter-American Court of Human Rights. [Ivette González et al. \("Cotton Field"\) v. Mexico](#). Cases 12,496, 12,497 and 12,498. November 4, 2007, para.151; IACHR, Report No. 170/11 Case 12,578. Merits. [María Isabel Véliz Franco et al. v. Guatemala](#). 2011, para. 135; and IACHR, Report No. 72/14. Case 12,655. [Merits. IV. Bolivia](#), 2014, para. 182.

²⁹¹ United Nations General Assembly, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - El Salvador](#), A/HRC/WG.6/34/SLV/1, August 20, 2019, paras. 68 and 69.

ectopic pregnancies. Such deaths could have been prevented if women had the possibility of legally interrupting unsafe pregnancies, which goes against the legislation in force in the country, which criminalizes abortion in all circumstances. In addition, the Commission notes that the prevalence of discriminatory gender patterns limits education on, access to and distribution of contraceptive methods, particularly to women, girls and adolescents. Also, while emergency oral contraceptives are legal for women who are victims of sexual violence, they are distributed at the discretion of health operators.²⁹²

197. In this regard, in its observations on the draft of the present report, the State has pointed out to the IACHR the existence of reform projects under study in the Legislative Assembly, for the possible modification of the Penal Code regarding the criminalization of abortion.²⁹³

1.3. Impact of the total criminalization of abortion on women's rights

198. The Commission reiterates its concern about the legislation that currently criminalizes abortion in all circumstances in El Salvador.²⁹⁴ While the Criminal Code establishes sentences of up to 12 years for the crime of abortion, the Commission has learned that at least 74 women who have suffered obstetric complications have been convicted of aggravated homicide and sentenced to 40 years in prison. based on the suspicion of induced abortion.²⁹⁵ In this regard, the Office of the Attorney for the Defense of Human Rights of El Salvador informed the IACHR that it was carrying out a “study on the guarantees of due process in criminal proceedings against women for crimes related to obstetric emergencies in El Salvador,” through which they have gathered information indicating that no women have been convicted of voluntary self-induced abortion, abortion without consent, aggravated abortion, inducing or facilitating the means for an abortion, unintentional abortion, injuries to the unborn, or unintentional injuries to the unborn, although women have been prosecuted or convicted for killing their children from 1999 to 2018.²⁹⁶

199. During its visit to the minimum-security prison in Izalco, the IACHR delegation was able to hear firsthand the testimonies of 13 other women who are currently deprived of liberty for convictions related to obstetric emergencies, including the

²⁹² Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

²⁹³ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 14.

²⁹⁴ IACHR, press release no. 042/18. "[IACHR Urges El Salvador to End the Total Criminalization of Abortion.](#)" March 7, 2018.

²⁹⁵ Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

²⁹⁶ PPDH, El Salvador, Informe complementario por temas específicos presentado a la Comisión Interamericana de Derechos Humanos, en su visita *on-site* en diciembre de 2019 a El Salvador, sobre la situación de los Derechos Humanos, information received during the IACHR *on-site* visit to El Salvador, December 2019. In IACHR's files.

case of a woman who was sentenced to 30 years in prison for aggravated homicide after she had an out-of-hospital birth when the 9-1-1 emergency service failed to come to her assistance following her emergency call.²⁹⁷ In addition, as part of its *on-site* visit, the IACHR met with 15 women who, having been sentenced in such context, were released after having their sentences reviewed or commuted, including a woman who spent 17 years in prison. Based on their accounts, the IACHR warns of the serious consequences that these sentences have on women's lives, including the breakdown of family ties, the loss of custody of their other children, and the difficulties to resume work and to earn an income after being released from prison.²⁹⁸ According to information provided by civil society, from 1998 to 2019, 181 women have been criminally prosecuted for obstetric emergencies,²⁹⁹ and at least 14 of them were reported to continue deprived of liberty as of January 2020.³⁰⁰

200. After hearing the testimonies of 29 women who have been deprived of liberty for crimes related to obstetric emergencies, the Commission notes with great concern that there was a pattern of criminalization against women who were between the ages of 18 and 19 at the time of their convictions, most of whom were poor and became pregnant as a result of rape, or were not aware of their pregnancy. These women have been systematically sentenced to 30-year prison sentences after being reported, for the most part, by health care providers such as doctors and nurses.
201. In relation to the above, the Commission is concerned that, in seeking medical assistance in cases of obstetric emergencies, women are at risk of being reported by medical staff, some of whom act for fear of the consequences that this prohibitive legislation can have,³⁰¹ and it prevents such staff from providing adequate medical care. These complaints and the rules on which they are based are also in clear contradiction to the principles of medical and professional secrecy, and could also contravene women's right to privacy. In addition, the Commission notes that investigations in these cases have resulted in the lengthy provisional detention of vulnerable women, who are held in inappropriate prisons. Many of them are even questioned without their lawyers present, sometimes while they are still under medical treatment.³⁰² Women are detained in alleged flagrancy, and under domestic law, the use of detention without a court order can be

²⁹⁷ Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

²⁹⁸ Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

²⁹⁹ Agrupación Ciudadana por la Despenalización del Aborto, [Informe: del hospital a la cárcel](#), 2019.

³⁰⁰ El Comercio, "[Mujeres de El Salvador son Criminalizadas por abortar](#)," January 28, 2020.

³⁰¹ Article 133 of the 1998 Criminal Code provides that "any person who performs an abortion with the consent of the woman, or any woman who causes her own abortion or accepts that other persons perform it, shall be punished with imprisonment for two to eight years."

³⁰² Salvadoran Network of Women Human Rights Defenders, Agrupación Ciudadana para la Despenalización del Aborto, Colectiva Feminista para el Desarrollo Local, Movimiento de Mujeres de Santo Tomás (MOMUJEST), Asociación de Jóvenes Feministas Ameyalli, Asociación Mujeres Transformando, Colectivo de Mujeres Periodistas de El Salvador, COMCAMIS TRANS, Center for Reproductive Rights and Center for Justice and International Law (CEJIL), Informe Situación de las Mujeres, Information received by the IACHR as part of its *on-site* visit to El Salvador, December 2019. In IACHR's files.

disproportionately extended, in possible violation of inter-American standards in the matter.³⁰³

202. Based on the above, and as observed by the Commission during its visit to the country, all known cases show evidence of possible violations of due process. These include violations of the principle of presumption of innocence, since all women have been treated as responsible for the ‘murder of their children’ from the beginning of the proceedings; the inability to defend themselves, be heard by a judge, or have legal representation; possible non-compliance with the principle of proportional justice and individual treatment of each case; and judgments delivered without conclusive scientific or objective evidence against the accused, in trials where they are subjected to discriminatory gender stereotypes and treated as “bad mothers” and “child killers” by the judges themselves. In this regard, the Commission views with great concern how these women have faced violence and discrimination in the hands of the entire state system throughout their proceedings, including the action of health care providers; police officers and security agents; prosecutors and investigators; public defenders, judges and other justice operators; and prison staff.
203. The Commission emphatically reiterates its call on the Salvadoran State to take the necessary measures to put a moratorium on the application of Article 133 of the Criminal Code, to carefully review the convictions in all the cases related to obstetric emergencies, with a view to ensuring fair trials, free of stereotypes and in full compliance with the rules of due process for each of the women in these circumstances and, if proven not guilty, to release them immediately; and to end the absolute criminalization of abortion in the country. The Commission understands that sexual and reproductive rights include rights related to non-discrimination, to life, to personal integrity, to health, to dignity and to access to information, among others.³⁰⁴ Along these lines, States have a fundamental obligation to ensure timely and adequate access to health services that only women, female adolescents and girls need because of their sex/gender and reproductive function, free from all forms of discrimination and violence, in accordance with existing international commitments on gender equality.³⁰⁵
204. The Commission reiterates the adverse impact of laws that criminalize abortion with absolute priority over women’s rights to life, personal integrity and health, and their right to live a life without violence or discrimination in cases of health risks, non-viable fetuses and pregnancies resulting from sexual violence or

³⁰³ IACHR, press release no. 255/19, “[IACHR Brings El Salvador Case before IA Court](#),” October 10, 2019.

³⁰⁴ IAHR Court, *Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary objections, merits, reparations and costs. Judgement of November 28, 2012. Series C No. 264; IAHR Court, *Gelman v. Uruguay*. Merits and reparations. Judgement of February 24, 2011. Series C No. 221, para. 97; IAHR Court, *Xákmok Kásek v. Paraguay*. Merits and reparations. Judgement of August 24, 2010, Series C No. 214.

³⁰⁵ IACHR, press release No.165/17. “[IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women’s Sexual and Reproductive Rights](#).” October 23, 2017

incest.³⁰⁶ This is due to the fact that such provisions impose a disproportionate burden on the exercise of the rights of women and girls, thus creating a context that facilitates unsafe abortions.³⁰⁷ The absolute criminalization of abortion is contrary to the State's international obligations to respect, protect and guarantee women's rights to life, health and integrity.³⁰⁸ Furthermore, the Commission points out the direct consequences of the absolute criminalization of abortion and its relationship with maternal morbidity and mortality figures,³⁰⁹ given that, due to the absence of legal, safe and timely options, many women undergo dangerous and even fatal practices; refrain or are discouraged from requiring medical services, or go through obstetric emergencies without the necessary medical care; or, if forced to proceed with the pregnancy, are subjected to prolonged and excessive physical and psychological suffering.

205. Therefore, the Commission reiterates to the State of El Salvador its obligations in this area, as well as its duty to remove all *de jure* and *de facto* obstacles that impede women's access to required maternal, sexual and reproductive health services, including sexual and reproductive health information and education. These measures must take into account the special risk, lack of protection and vulnerability faced by girls and adolescents, as well as women in particular situations of exclusion.³¹⁰ The IACHR also calls upon the State to adopt legislation aimed at guaranteeing the right of women to effectively exercise their sexual and reproductive rights, in the understanding that the denial of voluntary termination of pregnancy under specific circumstances constitutes a violation of the basic rights of adult women, girls and adolescent women.³¹¹

³⁰⁶ IACHR, [Situation of Human Rights in Honduras](#). OAS/Ser.L/V/II. Doc.146/19. 2019, para. 267; IACHR, [press release no. 165/17, "IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women's Sexual and Reproductive Rights."](#) October 23, 2017

³⁰⁷ IACHR, [Annual Report 2018. Nicaragua](#). Chapter IV.B., para. 219; IACHR, [Annual Report 2018. Dominican Republic](#). Chapter V, para. 94.

³⁰⁸ IACHR, [Situation of Human Rights in Honduras](#). OAS/Ser.L/V/II. Doc.146/19. 2019; IACHR, [Annual Report 2018. Nicaragua](#). Chapter IV.B., para. 219.

³⁰⁹ IACHR, [Annual Report 2018. Chapter III. Activities of the Thematic and Country Rapporteurships and Promotion and Training Activities](#), paras. 200 and 293. For example, the Office of the President of Uruguay reported how applying the voluntary interruption of pregnancy law, together with an improvement in maternity resources, led to a reduction in maternal mortality. In addition, regarding the voluntary interruption of pregnancy, it highlighted that 9,719 procedures were performed in 2016 and 9,830 in 2017, an 1.1percent increase, and that there were no cases of maternal mortality due to this procedure. See Presidency of Uruguay, ["Uruguay no registra casos de mortalidad materna por interrupción voluntaria del embarazo."](#) May 29, 2018.

³¹⁰ IACHR, [press release no.165/2017, "IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women's Sexual and Reproductive Rights."](#) October 23, 2017.

³¹¹ IACHR, [Annual Report 2018. Nicaragua](#). Chapter IV.B., para. 219; IACHR, [press release no.133/17, "IACHR Welcomes Approval of Chilean Law Decriminalizing Abortion on Three Grounds."](#) September 5, 2017. IACHR. Press Release No. 165/17, ["IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women's Sexual and Reproductive Rights."](#) October 23, 2017; IACHR, [press release no. 042/18, "IACHR Urges El Salvador to End the Total Criminalization of Abortion."](#) March 7, 2018.

1.4. Violence and discrimination against women in the workplace

206. With regard to the various forms of violence and discrimination faced by women and girls in El Salvador, the Commission has received worrying information that indicates a deeply violent context against women of all ages, in all areas and social settings. In this regard, the Commission was informed of the prevalence of violence and discrimination against women in the workplace. According to the information obtained, in 2018, out of more than 1,020 complaints for workplace violence, 60 percent of them were complaints of sexual harassment at the workplace. In addition, the IACHR was informed that the Ministry of Labor has apparently eliminated the office responsible for monitoring these acts. Trans women, for their part, are completely excluded from access to formal employment.³¹²
207. The Commission notes the situation of women journalists, who face discrimination on the basis of both trade and gender, as well as several forms of violence, including harassment, insults, threats and murders, as it was the murder case of journalist Karla Turcios.³¹³ In the Diagnosis on the Work Environment of Women Journalists and Social Communicators in El Salvador made by the Office of the Attorney for the Defense of Human Rights, it is clear that many women journalists work on precarious contracts, getting paid less than the minimum wage or receiving no labor benefits, such as social security (ISSS) and pension (AFP) benefits. In addition, 90 percent of respondents described discriminatory practices against them, with 88 percent reporting verbal violence, and 96 percent reporting sexual harassment by their colleagues. Furthermore, 100 percent of the women journalists surveyed reported having suffered sexual harassment while conducting field work.³¹⁴ In this regard, the IACHR calls on the State, with the support of ISDEMU, to implement processes of gender training for journalists, communicators and their leaders; and to encourage the media to create a gender policy with a view to promoting practices that contribute to eradicate exclusion, discrimination, harassment and violence against women journalists and communicators.
208. Furthermore, the IACHR was informed of the situation of women workers in the textile industry and home-based embroiderers. According to civil society organizations, domestic service workers are exposed to discrimination, humiliation, and verbal violence, such as the absence of labor protection and social security, and in many cases even sexual violence inflicted by their employers. In the case of textile *maquilas*, it is reported that women workers generally face precarious working conditions and violations of their human rights within the workplace, including long working hours, unattainable goals, very low wages, lack

³¹² Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

³¹³ BBC, "[Feminicidios: cómo la muerte de la periodista Karla Turcios llevó a El Salvador a declarar una alerta nacional](#)," December 4, 2018.

³¹⁴ PPDH, [Diagnóstico sobre el Entorno de Trabajo de las Mujeres Periodistas y Comunicadoras Sociales en El Salvador](#), 2018.

of access to social security benefits, and physical and mental occupational health problems.

209. Based on the information and testimonies gathered during the visit, it was observed that women working in these sectors are generally at serious risk as a result of their socio-economic status and gender; the high job insecurity in which they perform their functions; the lack of specific guarantees to protect their labor rights, including their occupational health and social security; and the failure of state institutions to address these challenges and protect their human rights effectively.
210. Moreover, it was indicated that domestic workers in El Salvador face high structural job insecurity and informal employment conditions. Despite their important work as housekeepers and family helpers, their contribution to the country's economy is not recognized; on the contrary, they are usually the object of serious stigma, labor abuse, negative gender stereotypes, and constant social and institutional discrimination.
211. Domestic work in El Salvador is mostly carried out by women, and in many cases by girls. The Commission notes that this type of work has no social recognition and is often neglected, creating disproportionate impacts on women. Discrimination against them ranges from teasing and derogatory comments that underestimate them, to labor exploitation and sexual violence, including rape and harassment. These forms of violence affect these workers specifically in their workplace and are characterized by intersectionality, at least because of their gender and socio-economic status. Given that the domestic service sector has been regarded as a private space in the social imaginary, it has been ignored as a space of wealth creation and public participation for the women who work in it.
212. In the case of girls, the IACHR notes that girls in poverty are exposed to child labor and to situations that may represent abuse and exploitation, including modern forms of slavery. The Commission has noted that while engaging girls in productive activities for economic reasons is common in the region and is perceived by families as a contribution to the family economy as well as a survival strategy,³¹⁵ child labor hinders or prevents schooling and the exercise of other rights, such as the right to rest and leisure. The IACHR recalls that Article 32 of the Convention on the Rights of the Child provides that States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
213. Domestic workers are at the bottom of the labor pyramid as a result of women's lack of alternatives to integrate into other productive activities offering better conditions and, mainly, because of their gender. The Commission notes with

³¹⁵ IACHR, press release no. 256/19. [“On the International Day of the Girl Child, the IACHR Stresses States’ Obligation to Grant Special, Reinforced Protection to Girls’ Fundamental Rights.”](#) October 11, 2019.

concern that the regulatory and auditing function of the State in such spaces is usually highly deficient because of the gender roles that mainstream society assigns to such workers, so that the household activities they perform are not actually considered jobs. In turn, fragmentation and lack of unity among workers in the sector seriously hinders the exercise of freedom of association and collective bargaining to seek better working conditions. In this context, the IACHR views positively the decision of the Constitutional Chamber of the Supreme Court of Justice of El Salvador in File No. 145-2020 ordering that a minimum wage be established for workers in this economic sector.³¹⁶

214. With regard to women workers in the textile industry, it has been indicated that in many cases they support their households; that they tend to have a low level of education; and that many are women of reproductive age, although the age range is wide. In addition, they reported that the work schedules implemented in this economic sector create problems in their diet; progressive loss of vision; severe headaches; sleep problems; depression and anxiety; permanent muscle and bone pain, particularly in the hands and arms; as well as a number of problems in their sexual and reproductive health, including pregnancy-related issues or an increased risk of urinary infections or gynecological problems related to the working conditions to which they are exposed.
215. In particular, the aggravated threats faced by textile industry workers performing their tasks from home were mentioned. Such workers' labor is part of the supply chain of a number of national and transnational corporations in El Salvador that prefer outsourcing their manufacturing needs. The Commission was informed that, within these supply chains, a number of intermediaries are involved who cloud the employment relationship with these women and the responsibilities of companies and the State, directly affecting the collective bargaining, wages or general protection options given to workers in this sector.
216. In addition, embroiderers working from home in El Salvador tend to cover production costs that usually correspond to the employer, such as infrastructure, tools and basic services such as electricity, water, and communication, indirectly maximizing company profits to the detriment of the workers' quality of life. During the visit, several of these workers were interviewed, and they indicated that for each embroidered product they make, they receive between USD 1.50 and 2.50, that their monthly income ranges from USD 56 to 80, and that their workday can be up to 16 hours in order to make a living. Similarly, the geographical dispersion of home-based embroiderers makes it difficult to create organizations, which limits the exercise of trade union rights for these workers. During the interviews, it was noted with concern that the workers reported threats of dismissal and non-payment by their employers and supervisors for having organized themselves for labor purposes.

³¹⁶ Supreme Court of Justice, [File 145-2020. Unconstitutionality](#), February 28, 2020.

217. The problems observed include the lack of labor registration to provide state protection to these workers and recognize their contribution to wealth creation, as well as open up institutional spaces to create decent working conditions for them. In the case of the textile industry, and particularly when workers perform their tasks from home, the IACHR is concerned about the fact that written labor contracts are rarely signed, and when they are, companies impose business or service agreements to reduce costs and evade labor responsibilities, a situation that is similar in the domestic labor sector, where there are no written contracts either. Thus, the public and private spheres are blended because the tasks are performed by women in their homes, which means that working hours, spaces, goals, roles and guaranteed compensation are not clear or defined for these workers.
218. Although in 2018 the government established a minimum wage of USD 300 for home-based embroiderers, the individuals interviewed indicated that companies still do not comply with such obligation, and that the Ministry of Labor and Social Security does not conduct inspections or apply the appropriate sanctions. In general, the IACHR was informed that companies and employers do not have incentives to comply with existing regulations because sanctions are either not implemented or are usually too low or too lenient. In general, it is observed that domestic service workers and home-based embroiderers are seriously limited in their right to work and in their access to fair and equitable conditions, such as working hours, rest days, annual paid leave, holidays, bonus, severance pay, maternity leave, overtime pay and health insurance, and in many cases they fail to earn a minimum living wage, among other issues.
219. In this regard, the IACHR stresses that Articles 6 and 7 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) set forth that “everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence”, and that this right “presupposes that everyone shall enjoy that right under just, equitable and satisfactory conditions.” Likewise, Article 45 of the OAS Charter recognizes the right to work and provides that work should be performed under conditions, including a system of fair wages, that ensure life, health and a decent standard of living. Equitable and satisfactory work conditions are a prerequisite to enjoy other rights and result from the right to carry out work freely chosen or accepted. The IACHR understands that to comply with the minimum content of this right, one of the essential elements is for States to regulate and take actions aimed at ensuring their effective compliance, in particular by auditing and punishing any violations by state and private employers. This becomes especially important in view of the existing unequal and abusive forms of labor treatment that arise from precarious labor relations. This means that if a State is aware that a company or an employer has had harmful effects on the enjoyment of this right, it must take actions to investigate and eventually punish

these violations, as well as to provide integral reparations for the victims through legitimate processes that comply with the recognized rules of due process.³¹⁷

220. The IACHR recalls that the proper observance and the guarantee of women's right to work, free of any form of discrimination and in equal conditions, is a critical factor in eradicating poverty, empowering women and ensuring their autonomy. The constraints on the exercise of women's right to work have repercussions on their exercise of their other human rights, including their economic, social and cultural rights in general.³¹⁸
221. The IACHR has already expressed its great concern about those groups whose human rights are especially at risk, such as domestic workers and women working in textile *maquilas*, since usually their labor rights are not adequately protected, and laws and regulations still do not afford them the necessary protections.³¹⁹ The IACHR notes that women have easier access to underpaid market segments, where they tend to apply the skills they have learned performing their gender roles, as it can be seen in the textile industry in El Salvador.
222. For the Commission, when these work arrangements in *maquilas*, particularly when performing textile work from home, do not offer workers due guarantees to protect their human rights, they perpetuate economic and social inequalities to the detriment of women, who, having few opportunities for decent employment, resort to this type of jobs to make a living, although in most cases they are not sufficient to guarantee them a decent and dignified existence. In addition, *maquilas* reproduce the traditional roles that society and institutions have assigned to women, thereby preventing them from making progress in achieving effective equality, and making it difficult for them to overcome poverty and social marginalization. Embroidery is considered a typical female work, and is undervalued, which translates into compensation and recognition levels that do not match the human effort invested, in addition to the housework that women usually must perform because of their gender roles. This situation affects the autonomy of women in all spheres as a result of the working conditions they face in their daily lives and lead to gender-related violence and workplace discrimination.
223. The IACHR considers that due regulation and labor inspections are some of the essential measures that States must implement to promote and monitor that this right is respected. Such regulatory frameworks must clearly establish the States' obligations and the legal effect of the responsibilities of the businesses under their jurisdiction, whether national or transnational, when they are involved in infringing upon human rights. States must also recognize, for example, that business conduct can result in negative impacts on human rights, and that the

³¹⁷ IACHR, Business and Human Rights: Inter-American Standards. OAS/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019.

³¹⁸ IACHR, The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OAS/Ser.L/V/II.143 Doc. 59, November 3, 2011, para. 84

³¹⁹ IACHR. The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OAS/Ser.L/V/II.143 Doc. 59, November 3, 2011, para. 114

delegation of the implementation of mechanisms to safeguard rights in the businesses themselves, without due guarantees that remain under the control of the State, could weaken the role of States as a guarantor and lead to the breach of their international obligations.³²⁰

224. With regard to labor inspections, it must be guaranteed that processes are objective and independent, that the staff are adequately trained, and industries and areas that are sensitive or at risk are well identified. It must also be ensured that supervisory institutions have the authority to enter workplaces without prior notice and without reservations to verify working conditions, as well as receive direct information from workers through mechanisms to ensure confidentiality and to facilitate victims' access to justice, without pressure, intervention or retaliation by their employers. For particular cases such as textile work performed at home, the State must design specific strategies that address these phenomena in a different manner and seek the effective participation of these workers. It must also ensure that sanctions against private actors are adequate and proportional to the seriousness of the damage caused.³²¹
225. Against this backdrop, strengthening the regulatory frameworks related to these labor arrangements and business monitoring in this area are fundamental steps to guarantee the right to work, and fair and equitable conditions. The State must ensure corporate accountability and comprehensive reparation to victims; gather statistical data and records of the companies involved; and make comprehensive gender-sensitive public policies aimed at protecting the labor rights of the workers in these labor arrangements, including protection of social security rights, decent wages, rest, occupational health and collective bargaining for labor purposes, as well as the right to live a life free of violence, ensuring the effective participation of workers in any process initiated.
226. The Commission was also aware of the fact that in the context of the covid-19 pandemic, women working in *maquilas* were suspended or dismissed by their employers in order to comply with the compulsory social distancing measures established by the State. According to the complaints received, the terminations or suspensions of these contracts did not consider labor rights guarantees for these women, who were already in a vulnerable situation. In addition, the possibility of receiving health care in this context was reduced by lack of payment of the workers' health insurance. In relation to women working from home in this industry, the lack of written contracts with employers, payments that fall below minimum wage and the absence of social security guarantees are factors that directly impact on their living conditions in the context of the pandemic. In some cases, women reportedly handed over the garments they made before the adoption of the measures taken by the State to deal with the pandemic, but did not receive any payment or compensation from their employers. In view of the economic recovery, the IACHR

³²⁰ IACHR. Business and Human Rights: Inter-American Standards. OAS/Ser.L/V/II IACHR/REDESCA/INF.1/19, November 1, 2019, para. 112

³²¹ IACHR. Business and Human Rights: Inter-American Standards. OAS/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019.

also notes the State's duty to ensure that companies implement biosafety guidelines to protect all workers from possible viral infections.

227. With regard to domestic workers, they are in a situation of precariousness and similar risk when their employment relationship is terminated by their employers. In some cases, it has been reported that domestic workers were compelled to stay in their houses, where they work, so that they would continue to carry out their duties; however, they claim that this context often meant an increase in working hours; suspended or reduced wages; exposure to the risk of infection due to a lack of biosafety measures; physical, including sexual, and psychological violence; and the inability to stay or communicate with their families.
228. With regard to that situation, the IACHR recalls that in its Resolution 1/2020, it stressed the importance of protecting human rights, and particularly the economic, social, cultural and environmental rights, of working people who are at higher risk in the face of the pandemic and its consequences. It also recommended that measures be taken to ensure that all working people have income and means of subsistence, and that there must be adequate protection of jobs, wages, freedom of association and collective bargaining, pensions and other social rights related to employment and trade unions. It also recalls that the same resolution provided that States must enhance services that provide a response to gender violence during confinement, as well as require that businesses respect human rights, adopt due diligence processes in the area of human rights and hold themselves accountable for possible abuses of and negative impacts on human rights, particularly for the effects that pandemic situations tend to have on the economic, social, cultural and environmental rights of the most vulnerable people and groups, including women working in these sectors.³²²

2. Rights of LGBTI persons

229. With regard to the protection and safeguard of the rights of LGBTI persons, the Commission is concerned about the absence of an institutional response in this area. In the past 10 years, the IACHR has observed significant progress in public policies that made it possible to address the specific needs of the LGBTI population in terms of health, employment, safety and inclusion. As part of such progress, the IACHR welcomed the creation of the Directorate of Sexual Diversity; the adoption of Executive Decree No. 56 which includes “provisions to prevent any form of discrimination by state bodies on the basis of gender identity and/or sexual orientation;” the LGBTI Institutional Inclusion Index to monitor the implementation of Decree 56; as well as the Technical Guidelines for the

³²² IACHR, Resolution 1/2020: Pandemic and Human Rights in the Americas, April 10, 2020. Recom. 5, 19 and 51.

Comprehensive Health Care of the LGBTI Population, and the Policy of LGBTI Population Assistance adopted by the Ministry of Justice and Public Security.³²³

230. Furthermore, according to the information received, after the Secretariat for Social Inclusion was eliminated in 2019, the Gender and Diversity Unit was created under the Ministry of Culture, but it lacks the resources, the mandate and the approach of its predecessor.³²⁴ The Commission also notes that the adoption of a five-year plan for the rights of LGBTI persons and the enactment of the Gender Equality Law are still pending. The Commission is concerned that the little progress achieved so far is at risk of backsliding or disappearing, since, according to the information obtained, there is no budget allocated to this issue; labor fairs previously promoted are no longer organized;³²⁵ and there is no coordination between state institutions and civil society defenders of the rights of LGBTI persons.
231. In this regard, the Commission has considered that the recognition of the rights of LGBTI persons is a fundamental factor to achieve equality, dignity and non-discrimination, as well as to combat the violence faced by these individuals, in order to build a fairer society. States have an obligation to design and implement projects that promote cultural changes in order to ensure respect and acceptance for persons whose sexual orientation, actual or perceived gender identity, gender expression, or sexual characteristics differ from the patterns most widely accepted by society, based on the binary system of sex and gender. The Inter-American Commission recalls that failure to recognize the existence of LGBTI persons and to provide them with the protection everyone else enjoys leaves them in a situation of absolute vulnerability to various forms of inequality, discrimination, violence and exclusion.³²⁶ In view of the above, the Commission recommends that the State of El Salvador adopt or amend laws, as well as guidelines, programs and regulations, with a view to prohibiting all forms of discrimination based on the sexual characteristics of individuals, as well as their sexual orientation, identity or gender expression, whether actual or perceived.
232. The IACHR also considers it important to implement policies for the collection and analysis of statistical data on violence and discrimination affecting LGBTI persons, and on the various aspects of lesbian, gay, bisexual, transgender, and gender diverse and intersex lives (for example, education, work, housing, health), in coordination with all branches of the State, in a disaggregated and systematic manner. In addition, such data should be used in the design, implementation and

³²³ Salvadoran LGBTI Federation, Situación personas LGBTI en El Salvador, information received during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

³²⁴ PPDH, El Salvador, Informe complementario por temas específicos presentado a la Comisión Interamericana de Derechos Humanos, en su visita *on-site* en diciembre de 2019 a El Salvador, sobre la situación de los Derechos Humanos, information received during the IACHR *on-site* visit to El Salvador, December 2019. In IACHR's files.

³²⁵ Transparencia Activa, "[Ofertan 350 plazas de trabajo para personas de la diversidad sexual](#)," October 27, 2014.

³²⁶ IACHR, [Report on Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas](#), December 7, 2018, OAS/Ser.L/V/II.170 Doc. 184, paras. 40 and 265.

evaluation of state actions and policies directed at these people, as well as to formulate any relevant changes in existing policies.

2.1 Violence and discrimination

233. In relation to violence and discrimination against LGBTI persons, the IACHR has learned that over the last 5 years at least, hundreds of lesbian, gay, bisexual, trans, gender-diverse and intersex persons have been threatened, murdered, forcibly disappeared or forcibly displaced across international borders to save their lives, although there is no official record to properly analyze the extent of such violence. As it has been informed to the IACHR, “as of November 2019, hate crimes, assaults, acts of discrimination, exclusion, denial of services, stigma and marginalization remain the reality for Salvadoran LGBTI persons, who face high poverty rates, low level of education, murders and low life expectancy beyond 33 years of age.”³²⁷
234. According to information from the Ministry of Justice of El Salvador, between 2015 and June 2019, 692 acts of violence against LGBTI persons were reported, including 72 murders; in most of the recorded acts of violence, the victims were trans persons.³²⁸ Similarly, according to figures reported to the IACHR by the COMCAVIS TRANS organization, over 600 murders of LGBTI individuals have been recorded in El Salvador since 1993, and 151 cases of forced displacement of persons belonging to this group were recorded between 2018 and September 2019. Civil society organizations have reported murders against trans persons,³²⁹ including the cases of Jade Camila Díaz, whose body was found on November 9, 2019 in the Torola River, department of Morazán; Anahy Rivas, who was suffocated and thrown out of a moving vehicle in San Salvador in October that same year; and [Camila Díaz Córdova](#), murdered after returning to the country when her refugee application to the United States for constant death threats was denied.³³⁰ Moreover, as reported to the Commission during its visit to the country, hate crimes soared in 2019, as evidenced by the six murders of trans women occurred in the 20 days preceding the Commission's visit. In 2020, the Commission received reports of acts of discrimination and violence against actual or perceived LGBTI

³²⁷ Salvadoran LGBTI Federation, “Situación de personas LGBTI en El Salvador,” information received during the IACHR’s *on-site* visit to El Salvador. December 2019. In IACHR’s files.

³²⁸ Ministry of Justice of El Salvador, “[Hechos de Violencia contra las Mujeres en El Salvador](#),” June 2019.

³²⁹ Agencia Presentes, “[Crímenes de odio siguen impunes en El Salvador: exigen investigarlos](#),” November 4, 2019.

³³⁰ Washington Blade, “[Tres policías de El Salvador detenidos por el asesinato de mujer trans deportada de EEUU](#),” July 9, 2019.

persons,³³¹ such as the murders of Briyit Michelle Alas, Tita Andrade Umaña, and Katherine Rosemary Duvall, among others.³³²

235. In addition, the Commission has been aware of the extortion and death threats against LGBTI human rights defenders, such as Karla Avelar, executive director of COMCAVIS TRANS, who in 2017 was the victim of intimidation and was finally forced to seek international protection in Ireland.³³³ In addition, in the context of its *on-site* visit, the IACHR delegation heard the testimonies of Isabela González and Aldo Alexander Peña, who claimed to have suffered violence inflicted by PNC staff, which evidences the violence and discrimination faced by LGBTI persons in the country. Of the cases that have been reported, the IACHR notes that many of the victims were in a special situation of vulnerability, as their gender identity and expression intersected with other factors such as their work as rights defenders,³³⁴ their migrant status or background,³³⁵ and their work as sexual workers.³³⁶
236. Finally, with regard to LGBTI persons' access to health, the Commission was informed that, although guidelines have been adopted for their care, there is no specialized care policy that responds to the specific needs of these individuals. As a result of the lack of recognition of these people's rights and the lack of respect for their gender identity, the State apparently offers no specific services for them yet, and social insurance does not cover their physical or mental health needs, which is particularly concerning in the case of people with HIV/AIDS, and trans and gender-diverse gender people who engage in sexual work.³³⁷

2.2 Access to justice

237. With regard to access to justice for LGBTI persons, the IACHR warns that, since 2015, El Salvador has amended its criminal legislation,³³⁸ incorporating aggravating circumstances to murder or crime threats based on hatred for a person's race, ethnicity, religion, political opinion, gender identity and expression, or sexual orientation. On May 15, 2018, the Office of the Attorney General opened the National Directorate for Women, Children, Adolescents, LGBTTTIQ Persons and Vulnerable Groups, which aims to combat crimes committed against women

³³¹ Infobae, "[La discriminación sigue afectando a defensores LGTBI de DD.HH. en El Salvador](#)," November 24, 2020.

³³² IACHR, "[The IACHR Regrets the Murder of Briyit Michelle Alas, a trans woman](#)," January 21, 2020; Agencia Presentes, "[Asesinan y prenden fuego a Tita, trans de 32 años, en El Salvador](#)," March 16, 2020; Agencia Presentes, "[Asesinan a mujer trans en El Salvador: activistas reclaman investigación](#)," September 11, 2020.

³³³ Washington Blade, "[Trans activist from El Salvador seeks refuge in Ireland](#)," October 23, 2017.

³³⁴ France 24, "[Body of missing Salvadoran trans activist found](#)," October 11, 2019.

³³⁵ NBC News, "[Trans woman killed in El Salvador after U.S. deportation, rights group says](#)," February 21, 2019.

³³⁶ El Salvador.com, "[Mujer trans fue asesinada y luego lanzada de vehículo en el bulevar Los Héroes](#)," October 28, 2019.

³³⁷ Information obtained during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

³³⁸ Art.129 and 155 of the Criminal Code, <https://www.asamblea.gob.sv/node/1366>

and other vulnerable groups.³³⁹ In this regard, the Commission learned of the assassination of Camila Díaz Córdoba, a trans woman who was beaten by three police agents after her arrest and died three days later due to multiple lesions.³⁴⁰ According to public information, the officers were convicted for aggravated murder.³⁴¹

238. However, the Commission notes with great concern the deep barriers that persist in the access to justice for LGBTI persons, given the lack of recognition of their gender identity and the prejudices that persist among justice operators. Thus, the IACHR has been informed that there are no laws punishing all forms of discrimination and acts of violence on the grounds of sexual orientation and gender identity, which leads to their invisibility and normalization. In this regard, the IACHR is concerned about the levels of impunity with regard to hate crimes, which are categorized as simple homicides.³⁴²
239. The Commission has stressed that family members and friends of victims are frequently deterred from reporting the killings of their lesbian, gay, bisexual or trans relatives or friends, due to the high levels of prejudice and hostility against non-normative sexual orientations and gender identities held by authorities and other members of their communities. Oftentimes, when the crime is reported, the information regarding the sexual orientation or gender identity of the victim is either concealed or overlooked.
240. In this regard, the Commission reiterates that OAS Member States have the duty to prevent and combat impunity, including cases of violence against LGBTI persons. When States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated.³⁴³ Therefore, the Salvadoran State must act with due diligence to prevent, investigate, prosecute, punish and redress human rights violations perpetrated by state or private actors against LGBTI persons, through comprehensive and effective measures that promote a rigorous investigation and ensure an effective access to justice for LGBTI persons, particularly those subjected to acts of violence and discrimination.³⁴⁴

³³⁹ Salvadoran Network of Women Human Rights Defenders, Agrupación Ciudadana para la Despenalización del Aborto, Colectiva Feminista para el Desarrollo Local, Movimiento de Mujeres de Santo Tomás (MOMUJEST), Asociación de Jóvenes Feministas Ameyalli, Asociación Mujeres Transformando, Colectivo de Mujeres Periodistas de El Salvador, COMCAMIS TRANS, Center for Reproductive Rights and Center for Justice and International Law (CEJIL), Informe Situación de las Mujeres, Information received by the IACHR as part of its *on-site* visit to El Salvador, December 2019. In IACHR's files.

³⁴⁰ IACHR, [Annual Report 2019](#), Chapter IV A, para. 274.

³⁴¹ El Salvador.com, "[Tres policías condenados a 20 años de prisión por homicidio de mujer trans](#)," July 28, 2020.

³⁴² Salvadoran LGBTI Federation, Situación de personas LGBTI en El Salvador, information received during the IACHR's *on-site* visit to El Salvador. December 2019. In IACHR's files.

³⁴³ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2 Doc. 36. 2015.

³⁴⁴ IACHR, [Report on Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas](#), December 7, 2018, OAS/Ser.L/V/II.170 Doc. 184, para. 12.

C. *Persons in the Contexto of Human Mobility*

1. Background information

241. During its *on-site* visit, the IACHR made some relevant observations regarding the integral protection of human rights in the context of human mobility. In particular, the Commission makes special reference to individuals who are in situations of international mobility, as well as the protection framework for victims of forced internal displacement, mainly as a result of violence. In this regard, violence, reflected in the direct action of the maras and gangs that drive displacement in El Salvador, is part of the same discrimination conditions often affecting the victims. In this context, the IACHR notes that poverty and inequality are visible elements of internal displacement, and are part of the direct causes and consequences of it.³⁴⁵
242. The visit allowed the IACHR to directly observe the serious situation of the internally displaced persons in El Salvador. In particular, the infringement of their human rights, including economic, social, cultural and environmental rights, was evident and reiterated. The Commission also notes the impact on the social fabric that the phenomenon of internal displacement continues to have in the country. The Commission recognizes the complexities of displacement, as well as the efforts that the Salvadoran State has been making to address the various challenges posed by internal displacement. However, these individuals and their families are forced to face extremely concerning living conditions that result from the lack of specialized protection from the State to reduce the risk factors of displacement; prevent forced displacement; assist its victims humanely; and ensure durable and secure measures of family reunification and voluntary return or resettlement for the effective restoration of those rights.

2. Forced internal displacement in El Salvador

243. Despite the various efforts made by the State in this regard, the IACHR was able to determine that the problem of internal displacement is one of the greatest human rights challenges currently faced by El Salvador.
244. Among the recent measures taken by El Salvador, the IACHR highlights the following: i) the study “Characterization of internal mobility due to violence in El Salvador”, ii) the implementation of security policies to address violence, iii) the

³⁴⁵ During the visit, the Commission was able to collect testimonies, statements and documents directly from civil society organizations, international organizations and individuals in different contexts of human mobility. The team of the Rapporteurship on the Rights of Migrants gathered such information in San Salvador and in towns outside the capital city, paying special attention to individuals who were internally displaced because of violence and organized crime, who live in border regions of the country, although their exact location is omitted to protect their confidentiality and personal integrity.

country's accession to the Comprehensive Regional Protection and Solutions Framework (MIRPS), and iv) the recent adoption of the Special Law for the Comprehensive Care and Protection of Persons in Conditions of Internal Forced Displacement in early 2020. Despite these measures, failure to identify the victims prior to the adoption of these measures, the absence of a specialized data collection system, and the lack of an institutional structure designed to protect displaced persons have prevented effective and sustainable protection of the rights of persons affected by internal displacement. In fact, some studies indicate that the problem is much more serious than the one described in the above-mentioned 2018 report, since a total of 1,216,000 displacements associated with violence³⁴⁶ (not counting displacement from natural disasters) have reportedly occurred between 2016 and 2019.³⁴⁷

245. With regard to forced internal displacement, the report entitled “Characterization of internal mobility as a result of violence in El Salvador” notes that between 2006 and 2016, 1.1 percent of the Salvadoran population has been forced to leave their usual places of residence. In this regard, the report states that among the main causes of forced displacement in El Salvador are violence or crimes committed against the population, and economic reasons.³⁴⁸ The IACHR also notes that, according to information provided by UNHCR, 71,500 Salvadorans are estimated to have been forcibly displaced between 2006 and 2016 within their country’s borders.³⁴⁹ According to the Ministry of Justice and Public Security, in 1.1 percent of resident families at least one of their members was forced to change their residence as a result of violence. Similarly, women are particularly affected by this issue, since they make up 54 percent of the displaced population.³⁵⁰
246. Thus, since 2017, United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons on her visit to El Salvador, highlighted the challenge of internal displacement is a hidden and publicly unacknowledged crisis, which has even been described as a humanitarian crisis given the high number of people affected, and the nature and magnitude of the difficulties that they must face.³⁵¹ This situation was observed by the IACHR during its visit, noting that the right to live a dignified life and the right to development of these people are seriously limited by internal displacement.

³⁴⁶ Executive branch, [El Salvador: Caracterización de la movilidad interna a causa de la violencia en El Salvador](#). Final report, March 2018.

³⁴⁷ It should be noted that, according to the methodology used by the IDMC, the number of displacements is not equal to the number of displaced persons, since one person can be displaced multiple times.

³⁴⁸ Executive branch, [El Salvador: Caracterización de la movilidad interna a causa de la violencia en El Salvador](#). Final report, March 2018.

³⁴⁹ UNHCR, “[UNHCR welcomes new law in El Salvador to help people internally displaced by violence](#).” January 10, 2020.

³⁵⁰ UNHCR, “[UNHCR welcomes new law in El Salvador to help people internally displaced by violence](#).” January 10, 2020.

³⁵¹ A/HRC/38/39/Add.1. [Report of the Special Rapporteur on the human rights of internally displaced persons on her visit to El Salvador](#).

247. For its part, the Civil Society Roundtable against Forced Displacement due to Violence and Organized Crime presumably documented hundreds of victims of forced displacement, the majority of them in response to threats, homicides, attempted homicide or bodily harm.³⁵² Recently, the most up-to-date figures from the Internal Displacement Monitoring Centre (IDMC) indicated that, by the end of 2019, there would be a total of 454,000 new displacements related to conflict and violence in El Salvador, and a total of 1,900 new disaster-related displacements.³⁵³
248. The IACHR has pointed out that internal displacement is the lead-up to external displacement. Indeed, the UNHCR records that, as of the end of 2019, a total of 54,300 Salvadorans have applied for asylum worldwide. This makes El Salvador the seventh country of origin of new asylum-seekers worldwide. In addition, there appears to be a total of 136,292 Salvadoran asylum-seekers who are waiting for a resolution.³⁵⁴ All the accounts received by the Commission mention the difficulty to obtain or even the impossibility of obtaining consistent and timely information, consular support and assistance for the recovery and repatriation of their relatives' mortal remains.

3. State's response to prevent the causes of forced displacement

249. In more detail, the IACHR celebrates the adoption of a number of measures aimed at preventing the causes of forced displacement. In this respect, the IACHR notes that on July 13, 2018, the Constitutional Chamber of the Supreme Court of Justice issued Amparo Decision No. 411/17 recognizing that forced displacement results from both the context of violence and insecurity in El Salvador's gang-controlled areas, and the systematic human rights violations caused by organized crime. As a result, the Constitutional Chamber ordered the following measures to several state bodies: i) recognize victims and categorize them formally; ii) design and implement public policies and action protocols aimed at preventing displacement; iii) perform protective actions for displaced persons and ensure their return to their homes; and iv) sign cooperation agreements at the national and international levels to ensure the protection of victims and witnesses.
250. On that occasion, in a press release dated August 18, 2018, the IACHR and the UN's Special Rapporteur on the human rights of internally displaced persons welcomed such decision. In particular, they urged the State to: i) comply with the ruling; ii) keep taking actions towards the prevention of internal displacement, the protection of internally displaced persons, their assistance while the displacement lasts and their return, resettlement and reintegration; iii) continue to gather data on the various forms taken by this problem; iv) draft and implement adequately

³⁵² IACHR, [Internal displacement in the Northern Triangle of Central America, public policy guidelines](#), OAS/Ser.L/V/II. Doc. 101, July 27, 2018, para. 37.

³⁵³ IDMC, [El Salvador – Country information](#).

³⁵⁴ UNHCR, [Global Trends, Forced Displacement in 2019](#), June 18, 2020, pp. 42 and 79.

- funded public policies; and v) adopt a specific law that focuses on preventing internal displacement.³⁵⁵
251. Similarly, the Commission takes note of the measures adopted in the field of care and protection for persons suffering from some form of social violence, such as: i) adoption of victim assistance protocols; ii) creation of four local victim assistance offices located in national hospitals; iii) creation of shelters; iv) procurement of victim rescue equipment for coastal areas; v) creation of the Strategy for the Prevention of Human Trafficking and Migrant Smuggling; and vi) creation of protection programs for victims of forced internal displacement.
252. In addition, it is emphasized that the National Directorate of the Civil Police has reportedly provided legal assistance to a total of 7,519 persons and psychological care to a total of 8,743 persons. Finally, the Commission notes that family groups have apparently been transferred to different towns and that five new victim assistance centers are scheduled to be opened by 2020. However, one of the challenges posed by the covid-19 pandemic is the reported closure of at least 16 centers of assistance for victims of forced internal displacement located in hospitals and town halls.³⁵⁶
253. According to the information provided by the State, human mobility and forced displacement are part of the perspective of the Territorial Control Plan. In addition, the State reported the country's recent accession to the Comprehensive Regional Protection and Solutions Framework (MIRPS), whose commitments include the development and implementation of a national action plan in close collaboration with displaced communities, national and local institutions, civil society organizations and international organizations.
254. In its observations on the draft of this report, the State reported that it has a specialized data collection and compilation tool on internal mobility and is in the process of implementing the Single Registry System for Victims. It also indicated that the National Directorate for Victims and Forced Migration of the Ministry of Justice and Public Security plans to conduct a new study to describe the phenomenon of forced internal displacement. Additionally, it indicated that the Directorate of Attention to Victims and Forced Migration currently has six Local Offices of Attention to Victims in the Mayor's Offices of the main departmental capitals and fourteen local Offices of Attention to Victims in the main public hospitals and one Office in the General Management of Attention to Migrants.³⁵⁷
255. In addition, the State reported that the Ministry of Health, through its Office for attention to victims of all forms of violence, implements the Technical Guidelines

³⁵⁵ IACHR, press release no. 178/18, "[IACHR and the UN's Special Rapporteur on the Human Rights of Internally Displaced Persons Welcome Decision Made by El Salvador's Constitutional Chamber on Internal Displacement Caused by Violence](#)," Washington, D.C., August 10, 2018.

³⁵⁶ National Civil Police, Government of El Salvador, [Memoria de Labores 2019-2020](#), June 1, 2020.

³⁵⁷ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 14-17.

for comprehensive health care for persons affected by violence, which clearly describe the steps to follow for the comprehensive care of persons affected by violence, including the LGTBI population and the population affected by forced internal mobility, including the timely reporting to the Attorney General's Office, the National Civil Police and the Child and Adolescent Protection Boards.³⁵⁸

4. Impact of internal forced displacement

256. The IACHR notes that internal forced displacement causes multiple and sustained impacts on human rights as a whole. In this regard, the Commission stresses the serious impact this issue has on social rights, particularly on the rights to housing, work, education and health. Displacement also seriously affects the impoverishment and deterioration of living conditions for these individuals and their families, a situation that can be understood as a *de facto* lack of protection. In addition, the IACHR observes that forced displacement, at the time of its occurrence, usually results in an infringement of the rights to free movement and personal integrity.
257. Furthermore, the IACHR notes that, according to official information from El Salvador, the immediate impacts of forced displacement in that country have caused emotional or psychological disorders for 70 percent of the population, as well as economic impacts caused by the loss of property in places of origin (42 percent), temporary or definitive family separation in almost 30 percent of cases, loss of income sources (28 percent), and disruption of children's education (22 percent).³⁵⁹
258. With respect to the right to housing, the IACHR considers that internal displacement prevents the effective enjoyment of this right, since the immediate consequence of displacement is that victims are forced to flee their homes or usual places of residence. This entails leaving their life projects behind and in most cases, losing land, houses and other property and estate, as well as having several rights affected as a result of uprootedness and displacement. In all the interviews carried out by the Commission in the context of its visit to El Salvador, displaced persons described in detail that they had to flee their homes extremely quickly because of the violence and threats, and that in many cases, they were not even able to enter their homes and take some of their belongings.
259. The Commission also notes and is concerned about the fact that many of the victims of forced displacement are at constant risk of becoming homeless. This is because of the absence of government temporary shelter programs aimed at providing durable solutions. In other cases, although displaced persons continue

³⁵⁸ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 14-17.

³⁵⁹ Executive branch, [El Salvador: Caracterización de la movilidad interna a causa de la violencia en El Salvador](#). Final report, March 2018, p. 10.

to live in their homes, they hide and often live in overcrowded places, since they are constantly threatened and harassed by gangs. For the Commission, this situation also affects the right to housing, as individuals are unable to live safely and have a normal life.

260. Furthermore, violence also affects the proper enjoyment of the victims' right to work, resulting in deteriorated living conditions and diminishing their chances of access to other fundamental rights, such as health and education. In many cases, people reported that their low socio-economic status has worsened because they had to abandon their income sources suddenly, and they have little or no access to decent jobs or state programs that attend to and alleviate their situation. Before being displaced, affected individuals also see a substantial reduction in their income, as criminals extort and threaten them with inflicting physical harm.
261. In the case of displaced women, the IACHR observes that they are more affected because, for example, in some cases the little paid work they may find is precarious and highly vulnerable, which puts their integrity and health at risk. For example, they may perform domestic work in very bad conditions, with payments of up to USD 2 per day, while in other cases they are prevented from working because of threats against them and their families. In these cases, economic losses are not limited to the initial displacement, but continue as a result of displaced persons' difficulties to find new jobs, which puts them in a situation of permanent vulnerability.
262. With regard to these individuals' right to education, the Commission notes with concern that educational services tend to be limited, and that schools' socialization and social reproduction functions, such as fostering values and civics, are constrained by internal violence in El Salvador. In this regard, educational institutions and the fundamental role they play, which has an immediate impact on children and, more generally, on society, are undermined, which thwarts development possibilities for these people.
263. The Commission has also learned that children are recruited in schools to join gang criminal activities, as well as utter threats and inflict gender-based violence against girls. Therefore, the physical control that gangs may exert in an area where a school is located may directly and seriously limit the possibilities of access to public education. In many cases, families do not have any alternatives and are unable to access schools located in other areas, since they are also threatened by gangs who control those other places. In fact, once children and adolescents become the victims of displacement, they face a serious risk of school dropout, not only because of the security problems in the areas where they relocate, but also because of bureaucratic obstacles that prevent them from enjoying the right to education, such as the need for certificates from previous schools to register in a new institution.³⁶⁰
264. Furthermore, the right to health is seriously affected, particularly the mental health of individuals and families as a whole, by the extreme experiences of

³⁶⁰ IDMC (2020), [El Salvador: Country Information](#).

violence and fear they have, to which children are even more vulnerable. The IACHR stresses how important it is for the State to deepen and expand comprehensive psychological and psychosocial care programs that are focused on this segment of the population, with sufficient resources and trained staff. The Commission has also received information that, given their displacement situation, the victims face serious obstacles to access the public health system. This is because, as they have to relocate, they often have less access to specialized health care centers and medical treatment.

265. In a testimony, a victim reported having cancer in addition to atopic dermatitis, which prevents him from working in the countryside; since he has forcibly moved to a rural area where the State's presence is minimal, his livelihood and health care are limited and seriously threatened. Similarly, another victim reported serious impacts on his mental health as a result of the painful moments he had experienced in leaving everything behind, as well as in losing contact with his son, who had to leave the country for fear of being murdered. In view of the above, the IACHR notes that in order to effectively guarantee the right to health, the State must not only direct its efforts to providing specific medical services to this segment of the population, but must also address the issue of displacement comprehensively, since it is the main factor affecting their health.
266. The IACHR has pointed out that forced displacement is a continuous and multiple violation of human rights. The Commission has therefore reiterated the obligation of States not to carry out actions that would lead to the forced displacement of individuals against their will, or contribute to third parties that engage in activities causing this situation.
267. Furthermore, the IACHR has emphasized the obligation of States to adopt policies, laws and all the necessary measures to ensure the comprehensive protection of persons affected by internal displacement from a human rights approach that responds effectively to humanitarian crises, in accordance with international standards in the matter. In addition, complex and multidimensional problems; human rights violations in contexts of displacement and forced mobility; and the need for development require responses that incorporate an intersectional analysis of such factors.
268. Finally, the Commission also recalls that the Guiding Principles on Internal Displacement should be applied as a subsidiary source to adopt internal measures and public policies that protect displaced persons. The IACHR also reiterates that, in accordance with such Guiding Principles, States have four main obligations: i) to prevent forced displacement; ii) to protect and aid displaced persons during displacement; iii) to provide and facilitate humanitarian assistance; and iv) to facilitate the safe return, resettlement and reintegration of internally displaced persons.

5. Human mobility in the context of the covid-19 pandemic

269. With regard to the outbreak of the covid-19 pandemic, the IACHR learned that since January 23, early preventive measures were adopted, such as the public health emergency declaration,³⁶¹ and that the first case of covid-19 in the country was registered on March 18. In this context, the IACHR has commended a series of actions addressing the different impacts on the human rights situation of individuals in contexts of human mobility in El Salvador. Among these measures, the IACHR highlights the public health emergency declaration on March 14, and the adoption of several actions, such as school closures, mandatory preventive isolation for persons entering the country from abroad, and restrictions on the movement of persons within the Salvadoran territory.³⁶² The IACHR also notes that the government issued decrees prohibiting the entry of non-resident diplomatic or foreign persons,³⁶³ the return of Salvadoran persons from abroad, and the deportation of persons from the United States and Mexico.³⁶⁴
270. In its observations on the draft of the present report, the State highlighted the orderly and safe return of Salvadoran persons who remained outside the national territory due to the emergency situation caused by the COVID-19 pandemic through the installation of the Operations Center for Remote Consular Assistance. Likewise, it referred to the articulated work of national institutions, the support of international cooperation and private enterprise, and the diplomatic efforts made.³⁶⁵
271. With regard to the impacts of the health measures adopted in the context of the pandemic, the IACHR notes that the situation of displaced persons was aggravated, both because of the direct impacts of the pandemic and as a result of the changes in the institutional structure, designed to assist victims of forced displacement, such as the Directorate of Victim Services under the Ministry of Justice and its local offices. The IACHR notes that these agencies have been reportedly redirected to respond to the measures adopted by the government with regard to the care of covid-19 cases, including shelters and logistics related to rain emergencies. This has led to the denial

³⁶¹ Government Gazette, [Ministerial Agreement No. 301](#), January 23, 2020, p. 43.

³⁶² Government Gazette, [Presidential Executive Decree No. 12](#), March 11, 2020, p. 10-11; Government Gazette, [Legislative Decree No. 593](#), March 14, 2020; Government Gazette, [Legislative Decree No. 593](#), March 14, 2020, p. 2-3.

³⁶³ Government Gazette, [Presidential Executive Decree No. 13](#), March 14, 2020, p. 15.

³⁶⁴ The IACHR's recognition of these measures can be found at: IACHR, Annual Report, Chapter IV.A., section on El Salvador.

³⁶⁵ In its observations on the draft of this report, the State reported that through the mechanism of precautionary measures it has documented how the COVID-19 Operations Center for remote consular assistance, whose executing arm was the Diplomatic and Consular Representations of El Salvador around the world, was responsible for providing information and guidance on the measures adopted by the Salvadoran Government in the context of the pandemic and the declaration of a national emergency; to develop a registry of Salvadoran persons abroad stranded in vulnerable conditions or affected by COVID-19; and to give due follow-up and attention to the needs identified, seeking a favorable outcome for each case, in application of the Protocol for Consular Attention to the COVID-19 pandemic, from the diplomatic and consular network. Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 14-17.

of care for non-covid-19 patients, as well as to the disregard for the particular conditions of vulnerability faced by victims of forced displacement, which have worsened due to this health crisis context.³⁶⁶ This adds to the difficulties already faced by poor and extremely poor communities in accessing the technological and economic means necessary to receive distance education.

272. In this regard, victims of forced displacement, who were already experiencing unfavorable economic conditions, have seen a significant deterioration of their situation due to the pandemic and the absence of state measures aimed at guaranteeing their rights, despite the fact that an institutional system for their protection will be reportedly established this year. Accordingly, the IACHR recalls that in its Resolution 1/2020, it established that the measures adopted by States to prevent and provide care for the virus should fully respect human rights, and differentiated approaches should be implemented with respect to particularly vulnerable groups, including internally displaced persons. The IACHR also stresses that recent national laws and the United Nations Guiding Principles on Internal Displacement set forth that this segment of the population should be prioritized when providing care and protection, even in an emergency context. In relation to the total or partial closure of borders, the IACHR warned that imposing a general measure to prevent the admission of refugees or asylum seekers, or migrants of a particular nationality, if there is no evidence of a health risk and no measures are adopted to protect them upon their return, is discriminatory and contrary to applicable international and inter-American human rights obligations and commitments. In the same context, the Commission highlighted the need to create and accelerate mechanisms to repatriate persons stranded because of covid-19-related measures, and to establish channels for cooperation, information exchange and coordination between countries of origin, transit and destination to ensure repatriation processes.³⁶⁷ The IACHR also urged the State to promptly and safely coordinate the assisted return to the country of its nationals and residents. This is based on the resolutions issued by the Constitutional Chamber of the Supreme Court of Justice; Resolution 1/20 on Pandemic and Human Rights; and Resolution 4/19 containing the Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking.³⁶⁸
273. In addition, the IACHR considers it essential to guarantee the principles of non-discrimination of people in a situation of human mobility in all protection services and policies in the context of the COVID-19 pandemic, including post-pandemic economic and social recovery actions. In particular, it calls on the State to give priority, in its health and education policies, to ensure effective access for displaced

³⁶⁶ El Mundo. "[Nuevamente sin protección los desplazados internos.](#)" June 9, 2020.

³⁶⁷ IACHR, press release no. 077/20, "[The IACHR urges States to protect the human rights of migrants, refugees and displaced persons in the face of the COVID-19 pandemic.](#)" Washington DC, April 17, 2020.

³⁶⁸ IACHR [@CIDH]. (July 10, 2020.) *On July 6, the Constitutional Chamber (@SalaCna1SV) issued a judgment confirming the constitutionality of Article 1 of Decree 621, which orders the State to facilitate the return of Salvadoran people stranded abroad during the covid-19 pandemic* [tweet]. Twitter <https://twitter.com/CIDH/status/1281628588714921985?s=20>

children and adolescents in conditions of safety and adaptation to the context of the pandemic.

274. While the IACHR recognizes how complex internal displacement can be and the efforts that the Salvadoran State has been making to address the several challenges that it poses, the IACHR is extremely concerned about the living conditions that these individuals and their families are forced to face because of the lack of specialized protection by the State to reduce the risk factors for displacement, including the exposure of displaced individuals to violence inflicted by gangs and maras.

D. Indigenous and Afro-Descendant Peoples and Communities

275. With regard to the rights of indigenous peoples and communities, the Commission notes the need to improve the disaggregated statistical information on the several peoples in the country, including the Nahua, Pipil, Lenca, Kakawira and Maya Chorti peoples, as well as the need to establish a legal framework to achieve a greater protection of their rights. The 2007 census estimates that the indigenous population accounted for 0.2 percent of the national population, 15.1 percent of which was identified as Lenca; 31.3 percent as Cacaopera or Kakawira; 26.6 percent as Pipil, and 27 percent as “Others.” The census statistics have been criticized since the questions used in it led to the collection of inaccurate information on the population of certain indigenous peoples and the underestimation of the indigenous population in general. Other estimates indicate that the indigenous population accounts for 10 to 12 percent of the national population.³⁶⁹
276. The Commission also notes that there are socioeconomic inequalities that affect the enjoyment of the human rights of indigenous peoples. A 2003 World Bank report indicates that 61.1 percent of the country’s indigenous peoples live in poverty compared to the national average of 25.7 percent, and 38.3 percent of the indigenous peoples are in extreme poverty against the national average of 18.9 percent.³⁷⁰ In his report on indigenous peoples in El Salvador, the former UN Special Rapporteur on Indigenous Peoples noted that the historical factors of persecution and discrimination, which resulted in many indigenous peoples losing their identities and cultures, particularly after the massacre of around 30,000 indigenous people in 1932 (known as “La Matanza”), contributed to the absence of knowledge about the socioeconomic conditions of these peoples. This has hindered the creation of public policies to respond to these peoples’ basic needs in a

³⁶⁹ UN, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum: The situation of indigenous peoples in El Salvador](#), A/HRC/24/41/Add.2 (June 25, 2013), para. 6.

³⁷⁰ Indigenous Peoples, CONCULTURA, CTMPI, World Bank – RUTA, [Perfil de los pueblos indígenas en El Salvador](#), San Salvador, February 2003, p. 38.

culturally appropriate and coordinated manner.³⁷¹ The need for the State to develop disaggregated statistical information to conduct public policies on behalf of indigenous and Afro-descendant peoples was pointed out by the UN Committee on the Elimination of Racial Discrimination. It also recommended incorporating the criterion of self-identification of indigenous peoples and ensuring their participation in the validation and implementation of the next census.³⁷²

277. However, the IACHR notes that the State took a positive step by ratifying in 2014 a constitutional amendment that recognized indigenous peoples and provided that the State should adopt policies to “preserve and develop their ethnic and cultural identity, cosmovision, values and spirituality.”³⁷³ Former UN special rapporteurs on indigenous peoples have recommended the ratification of the ILO Convention 169 on Indigenous and Tribal Peoples, and have said that such ratification and any relevant constitutional reforms should be supported by a legal, political and institutional framework so that the rights of indigenous peoples can be better protected and exercised.³⁷⁴
278. The Commission recommends that the State strengthen the legal, political and institutional framework for the protection of the rights of indigenous peoples. It supports the calls for the Salvadoran State ratification of Convention 169 on Indigenous and Tribal Peoples, and also brings the attention to the inter-American standards on the rights of indigenous peoples that derive from the American Convention on Human Rights and the related jurisprudence of the inter-American human rights system. In line with the above-mentioned international and inter-American standards, the IACHR recommends the adoption of measures in consultation with indigenous peoples for the recognition and protection of their cultural identity, their lands, territories and natural resources, participation, consultation and free, prior and informed consent, and their economic, social and cultural rights, among others. It also recommends that efforts be expanded to obtain disaggregated statistical information on indigenous peoples in the country, including the self-identification criterion, and to facilitate the participation of indigenous peoples to that aim.
279. As for the human rights situation of Afro-descendants in El Salvador, the IACHR regrets the limited information available. According to public information, the 2007 State Population and Housing Census reported that about 7,000 people were recognized as Afro-descendants (0.1 percent of the total population). Nevertheless, World Bank data point out that the countries in Central America with the highest concentration of Afro-descendant population are Costa Rica, Panama, Nicaragua,

³⁷¹ UN, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum: The situation of indigenous peoples in El Salvador](#), A/HRC/24/41/Add.2 (June 25, 2013), paras. 42-3.

³⁷² UN, Committee on the Elimination of Racial Discrimination, “Concluding Observations on the Combined Periodic Reports 18 and 19 of El Salvador,” CERD/C/SLV/CO/18-19 (September 13, 2019), para. 7.

³⁷³ [Constitution of El Salvador, 1983](#), with amendments up to 2014, Art. 63.

³⁷⁴ UN, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum: The situation of indigenous peoples in El Salvador](#), A/HRC/24/41/Add.2 (June 25, 2013), para. 70; EFE, “[Relatora de la ONU destaca “paso crucial” de El Salvador al reconocer indígenas](#),” July 2, 2014.

Honduras and El Salvador (10,000).³⁷⁵ The IACHR also notes research studies that have indicated that in El Salvador the percentage of the urban population living in poor neighborhoods, according to ethnic-racial origin, is 50 percent of people of African descent, while 40 percent are non-Afro-descendants. In terms of access to basic services, there is also racial disparity; with regard to access to water, 68 percent are Afro-descendants, and 76 percent are non-Afro-descendants; and with regard to access to sewerage, 35 percent are Afro-descendants, and 43 percent are non-Afro-descendants.³⁷⁶

280. Through its monitoring work and according to public sources, the IACHR is aware of the petitions submitted by the Afro-descendant population to the government of El Salvador to reform the Constitution and to be recognized by the State. The Commission also notes the submission of documents to the Legislative Assembly requesting the inclusion of Afro-descendants in political and social discussions.³⁷⁷
281. The Inter-American Commission reminds the State of El Salvador of the inter-American standards on the rights of persons of African descent and against racial discrimination, and it calls for the inclusion of the Afro-descendant, ethnic-racial and self-identification variable in all the statistical systems in the country. It also urges the State to take affirmative action with an intersectional approach and an intercultural perspective, in a coordinated manner and at all levels, to ensure the full enjoyment and exercise of the rights of Afro-descendants and to improve their living conditions, as well as to guarantee their representation in all decision-making spaces on action plans, public policies and projects by promoting channels of permanent communication with grassroots and Afro-descendant civil society organizations so that their participation is guaranteed at the different stages of design, implementation, monitoring and evaluation of said policies and plans.

E. Human Rights Defenders

282. During its *on-site* visit to the country, the Inter-American Commission received information about several barriers and the reduction of the civic space that hinder the defense of human rights in El Salvador. In this regard, the Commission noted with particular concern an increase in stigmatizing speeches seeking to delegitimize the advocacy work carried out by human rights organizations. It observed that in many cases these pronouncements were made by the highest spheres of the State through electronic and communication media.
283. The IACHR has received continuous information on stigmatizing speeches and messages made by State authorities that would have the purpose of discrediting

³⁷⁵ Forbes Centroamérica, "[Población afrodescendiente en El Salvador exige reconocimiento y respeto del Estado](#)," December 10, 2019.

³⁷⁶ World Bank, [Afro-descendants in Latin America Toward a Framework of Inclusion](#), 2018, p. 18 and 58

³⁷⁷ Forbes Centroamérica, "[Población afrodescendiente en El Salvador exige reconocimiento y respeto del Estado](#)," December 10, 2019.

the defense activities conducted by human rights defenders. In this regard, the information provided shows the existence of a repeated discourse on the part of the authorities to stigmatize people who have a different opinion from their policies, linking them to criminal groups.³⁷⁸

284. The IACHR has stated that the repetition of stigmatizing statements can contribute to exacerbating the climate of hostility and intolerance among different sectors of the population, which could lead to an affectation of the life and personal integrity of the defenders, increasing their vulnerability. In particular, the Commission has pointed out that public officials should refrain from making statements that stigmatize human rights defenders, or that indicate that human rights organizations are acting improperly or illegally, only because they participate in the promotion and protection of human rights.³⁷⁹ The Commission stresses that the work of human rights defenders is essential to the building of a solid and lasting democratic society, and they play a leading role in the process of achieving the rule of law and strengthening democracy.
285. The Commission is also concerned that there is no record of the attacks on human rights defenders in El Salvador. Civil society organizations informed the IACHR that the State invisibilizes these attacks. They noted that these attacks are allegedly attributed to insecurity, and not under the assumption that they could have been committed as a result of the defenders' advocacy work.³⁸⁰ In this regard, it is also not possible for the Commission to identify progress in investigations into crimes committed against human rights defenders.
286. Similarly, during its visit to the country, the Commission received information on the lack of public policies with a differentiated gender approach, particularly in relation to the discrimination and violence faced by women with political roles, women human rights defenders, indigenous women, women of African descent, women with disabilities and older women.³⁸¹ In this regard, the Commission has been informed of the efforts made by civil society organizations to create a legal framework for the protection and defense of human rights defenders in El Salvador. It is aware that in 2018 the bill entitled "Law for the Recognition and Integral Protection of Human Rights Defenders and for the Guarantee of the Right to Defend Human Rights" was presented before the Legislative Assembly.³⁸² The Commission has been informed that as of the date of publication of this report, this bill is still being discussed in the Legislative Assembly.³⁸³

³⁷⁸ Notes. SACROI COVID-19 social forum with El Salvador, May 12, 2020.

³⁷⁹ IACHR, [Situation of Human Rights in Honduras](#), OAS/Ser.L/V/II. Doc. 146, August 27, 2019, para. 167

³⁸⁰ Information provided by civil society organizations in a technical meeting with the IACHR.

³⁸¹ IACHR, press release no. 335/2019, ["IACHR presents its preliminary observations following its on-site visit to El Salvador"](#), December 27, 2019.

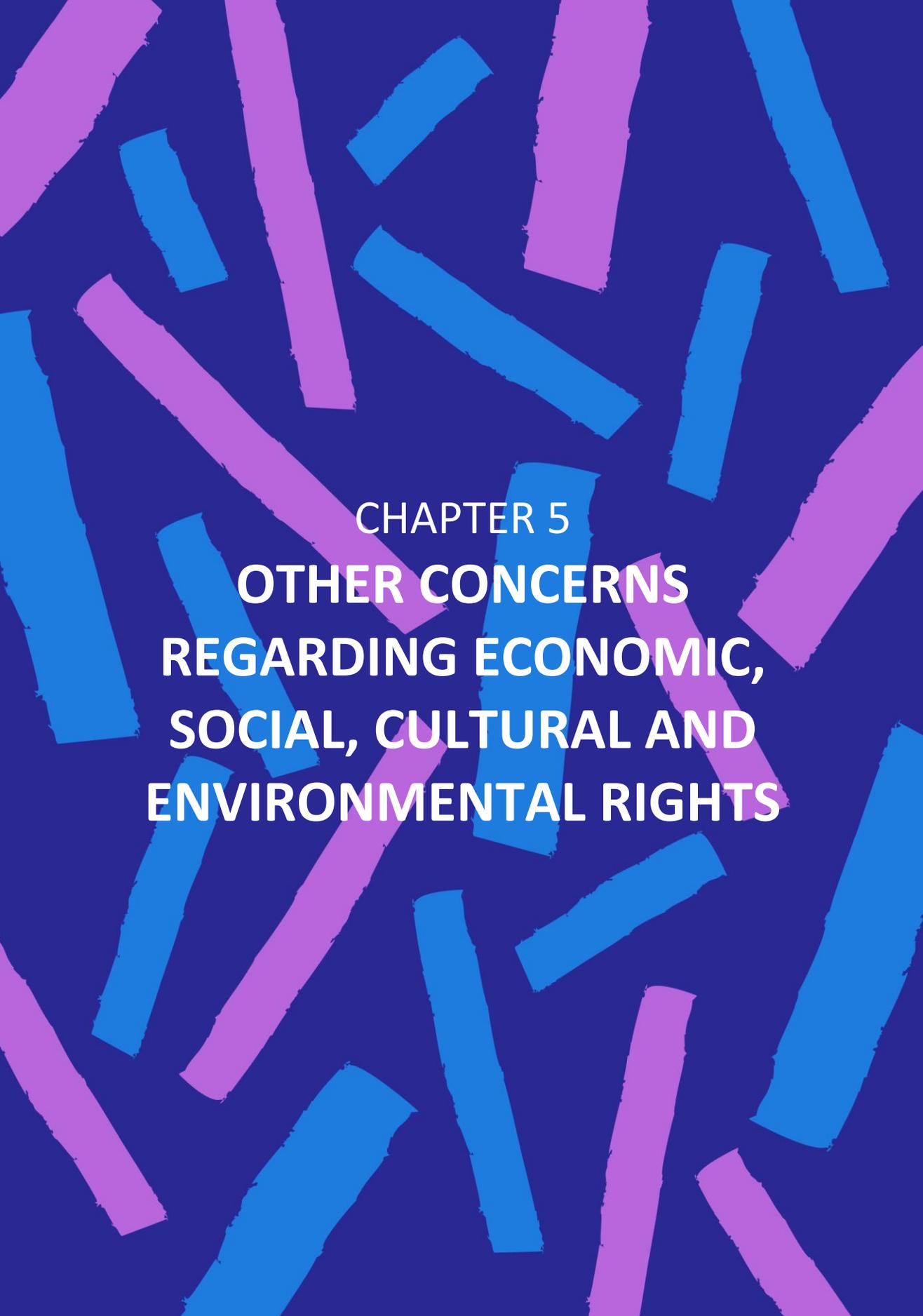
³⁸² FESPAD, [Defensores/as de derechos humanos en El Salvador, Informe situacional 2018-junio 2019](#), December 2019, p. 37.

³⁸³ SWI, ["Exigen al Congreso salvadoreño aprobar ley de protección a defensores de DDHH"](#), February 4, 2021.

287. In this regard, within the framework of the United Nations Universal Periodic Review, El Salvador was recommended the adoption of laws that effectively recognize and protect all human rights defenders, including LGBTI defenders, and establish comprehensive public policies to ensure a safe and enabling environment for human rights defenders, journalists and other civil society actors.³⁸⁴
288. The Commission has pointed out that the effective and comprehensive protection of human rights defenders ultimately depends on the political will of States and on the development of comprehensive public policies for prevention and protection.³⁸⁵ In the current Salvadoran context, it is essential that the discussion of a law on the protection of defenders be resumed, as well as the implementation of a comprehensive policy on the protection of human rights defenders, which guarantees adequate treatment of cases of human rights violations of activists.

³⁸⁴ UN, Human Rights Council, [Report of the Working Group on the Universal Periodic Review](#), 43 period of sessions, A/HRC/43/5, January 2, 2020, recommendations 103.76 and 103.77.

³⁸⁵ IACHR, [Guía Práctica sobre lineamientos y recomendaciones para la elaboración de planes de mitigación de riesgos de personas defensoras de derechos humanos](#), April 28, 2021, p. 15 and 22.



CHAPTER 5
OTHER CONCERNS
REGARDING ECONOMIC,
SOCIAL, CULTURAL AND
ENVIRONMENTAL RIGHTS

OTHER CONCERNS REGARDING ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS

A. *Poverty and exclusion*

289. According to data from the 2018 Social Panorama of Latin America report, prepared by the Economic Commission for Latin America (ECLAC), poverty rates in the region would have decreased over the last few decades, but extreme poverty would have increased.³⁸⁶ With regard to El Salvador, the report indicates that, since 2000, income inequality has decreased considerably. In 2001, it was estimated that the country would have had 23.3% of its population with incomes below 50% of the average, while in 2017, the population in these conditions would be 16.2%, representing a decrease of 7 percentage points. Likewise, El Salvador would have managed to reduce the poverty rate between 2016 and 2017 by 2.7 percentage points, since in 2016 an average of 40.5% would have been estimated and in 2017 of 37.8%. As for extreme poverty, the country would have had a rate of 10.7%, while in 2017 it would have reduced the rate to 8.3%.³⁸⁷
290. In its observations to the draft Report, the State pointed out that the Multipurpose Household Survey recorded in 2019 that 22.8% of households were in poverty in the country; of these 4.5% were in extreme poverty, while 18.3% were in relative poverty. Disparities are accentuated by area of residence: rural areas presented 24.8% of households in poverty (5.2% in extreme poverty and 19.6% in relative poverty); while urban areas presented 21.7% of households in poverty (4.1% in extreme poverty and 17.5% in relative poverty). The lowest levels of poverty were registered in the Metropolitan Area of San Salvador, where it was around 15.4%.³⁸⁸
291. Violence, poverty and lack of access to social rights, as well as to job opportunities are among the determinants of forced internal displacement and migration in El Salvador as in other Central American countries. According to data from the General Directorate of Migration and Aliens, the first cause of migration is economic reasons (54.7% of migrants), followed by family reunification (12.4%) and insecurity (10.7%).³⁸⁹
292. Furthermore, according to a study by the United Nations Development Programme (UNDP), 85.8 per cent of Salvadoran households suffer from at least some

³⁸⁶ CEPAL, [Panorama Social América Latina 2018](#).

³⁸⁷ CEPAL, [Panorama Social América Latina 2018](#).

³⁸⁸ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 17.

³⁸⁹ Forced displacement monitoring system in the Northern Triangle of Central America: Signs of a crisis. Forced internal displacement due to violence in El Salvador, Guatemala and Honduras, 2018, p.19

deprivation in relation to home overcrowding, lack of access to social security, job instability, lack of access to drinking water, health services and sanitation. This percentage is equivalent to more than 1.6 million households. In turn, just over two out of three households have between one and three of the aforementioned deprivations linked to COVID-19 risks; and 15% report deprivation; 29.9%, two deprivations; and, 24.3%, three deprivations.³⁹⁰ In this context, within the framework of its annual report, the Special Rapporteur for the ESCER took note of the episodes recorded at the end of May 2020, when in the midst of the home quarantine decreed by the executive, thousands of people from the peripheries and rural sectors of El Salvador, had to resort to ordering food from the streets calling for help to anyone to ask for food.³⁹¹

293. For its part, in the context of the COVID-19 pandemic, the Salvadoran State adopted measures to alleviate people's living costs. At the beginning of the health crisis, it issued an order to stop payments for basic services for a period of three months.³⁹² A total of 1.2 million people benefited from the \$300 given by the Government of El Salvador as aid for the COVID-19 emergency, according to a report presented by the president of the Court of Accounts of the Republic, Carmen Elena Rivas, to the Political Commission of the Legislative Assembly.³⁹³
294. Additionally, in its observations on the draft of the present report, the State indicated that the proposed Social Development Plan 2019-2024 (PDS) contains concrete actions in the short and medium term, with a long-term vision, in the fight against poverty, in early childhood care, in the creation and consolidation of a new education and health system, in the fight and elimination of the scourge of violence, in the generation of employment and contributory and non-contributory social protection, in order to move towards social transformation. Moreover, it stated that social investment for the five-year period will be progressive in order to advance towards the universality and guarantee of fundamental human rights for the entire Salvadoran population, prioritizing spending on the most vulnerable and excluded populations, based on the principle of distributive justice and closing inequality gaps. It also indicated that, within the framework of the National System of Development, Protection and Social Inclusion and its Subsystem of Universal Social Protection, it will continue to develop and strengthen social policy and the respective programs, to provide security to people in the face of the risks and challenges they face in the life cycle, particularly for those who lack contributory

³⁹⁰ The six deprivations that account for these risks are: access to safe drinking water, access to health services, overcrowding, access to sanitation, underemployment and access to social security. UNDP, COVID-19 and vulnerability: a view from multidimensional poverty in El Salvador, UNDP LAC C19 PDS No. 12, May 2020, p. 14

³⁹¹ See Chicago Tribune, White Flags Call for Pandemic Aid, May 19, 2020; El Faro, People Behind White Flags, May 29, 2020; El Faro, "If I Stay Home, I Will Starve," March 18, 2020; Factum. White blankets and hunger. May 22, 2020.

³⁹² Presidency of the Republic of El Salvador. The government of President Nayib Bukele Plan for Response and Economic Relief to the National Emergency against the COVID-19. March 18, 2020.

³⁹³ The Graphic Press, Salvadoran Government gave \$300 to 1.2 million citizens: 100,000 are unknown how they were selected, May 14, 2020.

social security and those who are in conditions of economic, social and environmental vulnerability.³⁹⁴

295. The Commission considers that individuals, groups and communities living in poverty face a series of amalgamated obstacles that have a serious impact on the effective enjoyment of human rights.³⁹⁵ These obstacles are aggravated in the case of groups historically discriminated against, such as women, children and adolescents, indigenous peoples, populations of African descent, migrants, persons deprived of liberty, persons with disabilities, the LGBTI population and the elderly.³⁹⁶
296. The IACHR observes that, in addition to experiencing deprivations that directly impact the exercise of their rights, historically, people living in poverty in El Salvador have been particularly affected by acts of violence both during the internal armed conflict and after the restoration of peace. This situation also implies unequal access to justice and low or no participation in the processes of building public policies or making decisions. In this regard, the Commission takes note of the measures planned and adopted to combat poverty and calls on the State to continue to implement public policies aimed at eradicating poverty and extreme poverty in a comprehensive, transversal and human rights approach, in a scenario of broad citizen participation and transparency.

B. Right to drinking water

297. During the IACHR's visit, the State affirmed its commitment to prioritize the realization of the right to water and also stressed that water is a public resource that has not been privatized. It stressed that coverage in urban areas reaches about 90 percent, but that rural areas are for the most part still affected by the lack of access to drinking water. It also indicated that efforts have been made in recent years to ensure the effective realization of this right, as well as to reduce the gaps in inequalities of access, as evidenced by the adoption of the National Plan for Drinking Water and Sanitation (PLANAPS) in 2018 to achieve universal access over the next 20 years. However, there are still significant gaps and challenges, such as creating an inventory of water resources and treatment plants that allow for comprehensive management, as well as guaranteeing effective access to water as a human right, in particular for groups located outside the urban areas and in rural areas, where 99 percent of people lacking access to water, an essential element to guarantee other human rights, live.³⁹⁷

³⁹⁴ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 17-22.

³⁹⁵ IACHR, Report 'Poverty and Human Rights', September 7, 2017, p. 543.

³⁹⁶ IACHR, Report 'Poverty and Human Rights', September 7, 2017, p. 544.

³⁹⁷ UN Special Rapporteur on the human right to safe drinking water and sanitation, [Water and sanitation: UN expert calls on the El Salvador to protect the most disadvantaged](#), May 18, 2016.

298. In this regard, the IACHR is particularly concerned about unequal access to water, considering that the most vulnerable segments of the population and those with fewer economic resources are the most affected. With regard to urban populations, 85 percent are reported to have home connections, while in rural populations, approximately 618,000 people do not have access to drinking water, and less than 60 percent have home connections.³⁹⁸ These figures match the information provided by civil society organizations, who indicated to the IACHR that about 600,000 people have no access to safe drinking water, not even when it rains. In addition, they highlighted how the most vulnerable segments of the population are seriously and disproportionately impacted by the lack of access to drinking water. On that occasion, they stressed the particular risks faced by girls and women, the risks of violence and discrimination associated with the care roles they often play, their higher economic burdens due to their lack of access to safe water, and harassment and complaints against them for defending the right to water and the environment.
299. The IACHR was also informed that El Salvador has the lowest per capita freshwater supply rate in Central America, with water being a highly vulnerable resource in the country, as it depends on water sources and basins located in other countries. In many cases, this situation is aggravated by the possibility of transboundary pollution of the water resources supplied to the Salvadoran population, coupled with the effects of climate change that affect the so-called dry corridor where the country is located.
300. Among the problems identified were the lack of water production in wells administered by the National Water Sewerage Administration (ANDA); discontinuous and poor-quality water services; groundwater deterioration and pollution; overexploitation of springs; poorly managed distribution services; lack of equity in the fees charged for water supply; and prioritization of the increasing commercial, agriculture, or industrial water demand over human water consumption. In many cases, land use change threatens the protection of water sources by failing to apply a human rights approach and by favoring special economic interests and other business activities instead.
301. In this regard, special concern was voiced with regard to the “Ciudad Valle El Angel” urban project and the “Acropolis-Sonsonate” residential project. The former plans to build 3,500 land lots for houses, 3,000 apartments, office buildings and shopping centers, which would use approximately 240 liters of water per second, thus potentially affecting the existing ecosystems and surrounding communities. There is currently a cooperation agreement in place between the company and the ANDA to drill eight deep-water wells, and the environmental feasibility of the project has apparently been confirmed, although the permit granted by the Ministry of Environment and Natural Resources is reportedly pending. This has been the case despite the fact that communities have allegedly submitted almost 5,000 letters against the project during the public consultation

³⁹⁸ UN Special Rapporteur on the human right to safe drinking water and sanitation. [Water and sanitation: UN expert calls on the El Salvador to protect the most disadvantaged](#). May 18, 2016.

period, and a claim of unconstitutionality in relation to the project was filed on October 4, 2019. As for the second project, environmental and cultural impacts have already been noted in the Tacuscalco archaeological site and surrounding communities, caused by the discharge of sewage into the Ceniza river, which supplies water to over 8,000 people. In addition, information was received about the actions of companies that reportedly have no environmental permits or that exert pressure on the authorities to implement projects and favor their interests. Additionally, non-compliance with regulations on the discharge of sewage, as well as the non-suitability of such regulations with regard to the rights to water and to a healthy environment, has been reported.

302. During the visit, it was observed that there were challenges related to the coordinated and comprehensive management of water resources. For instance, it was indicated that there were rural water management boards that generally did not have state support. These boards supply populations with limited economic resources and, of the systems they operate, only about 1.5 percent meet the chlorination requirement. Corruption and pressure from town halls and private actors on these boards to control the use of water resources have also been reported. Despite the public service supposedly offered by such community entities, in some cases, complaints have been filed against their members for water theft, aimed at discouraging claims on that right. In this regard, it was stressed that one of the great challenges associated with this problem is the lack of centralized control over water and the actors involved in its administration and distribution, since apparently there is no independent regulatory mechanism to monitor the performance of either the National Water Mains and Sewers Administration (ANDA) or the local authorities from a human rights perspective,³⁹⁹ despite the fact that PLANAPS established the National Council for Drinking Water and Sanitation (CONAPS) and the Council for Regulation and Social Control.
303. Given this context, with regard to the right to water, the Commission recalls that it has stressed the importance of Articles 3 and 34 of the OAS Charter in relation to the protection of such right, and has noted that according to several OAS General Assembly resolutions and, in particular, the Social Charter of the Americas, the right to water is fundamental for life and central to environmental sustainability, and non-discriminatory access by the population to safe drinking water and sanitation services contributes to the objective of combating poverty.⁴⁰⁰ The IACHR also stresses that Article 11 of the Protocol of San Salvador recognizes that everyone shall have the right to live in a healthy environment and to have access to basic public services, including access to drinking water.
304. The inter-American jurisprudence has addressed a number of issues relating to access to water by interpreting the content of a series of human rights enshrined in inter-American instruments. The IACHR understands that access to water is

³⁹⁹ A/HRC/33/49/Add.1. [Report by the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation on his mission to El Salvador](#). August 3, 2016.

⁴⁰⁰ IACHR, [Annual Report 2015](#), Chapter IV.A, Access to Water, 2015, paras. 22-25; OAS, [Social Charter of the Americas](#), 2012, Art. 9.

necessary to guarantee the right to life and the right to personal integrity, and that it is an inherent aspect of the right to health, in addition to its close relationship with other social rights, such as food or housing. In view of this perspective, States should take measures to ensure that the minimum acceptable level of access to water for human consumption in adequate quantity and quality is guaranteed without discrimination. Furthermore, they should refrain from engaging in practices or activities that prevent or restrict access to safe drinking water on an equal footing, in particular with respect to persons, groups and communities that have historically suffered discrimination.

305. They must also prevent third parties, including business actors, from undermining access to water by taking internal measures to prevent, for example, such actors from denying or hindering access to water, or polluting water resources, wells and other water distribution systems. The IACHR has clearly stated that under the inter-American human rights system, there are state obligations in the area of human rights explicitly linked to the actions of non-state actors, such as businesses, as well as specific standards for the effective respect and protection of said rights in such contexts. Thus, States, as recipients of international obligations, must take special care in their compliance; and businesses must pay due attention so their behavior corresponds with the respect of human rights, and is not just as a responsibility based on a basic social expectation, but a legal consequence of compliance with States' obligations in these contexts.⁴⁰¹
306. In this regard, the Commission also recalls that the Court has recognized the autonomous protection of the human right to water under Article 26 of the American Convention, and has stressed that availability, quality and accessibility are elements of the right to water that must be considered when analyzing its legal protection.⁴⁰²
307. The Commission has considered the special relationship between the protection of the environment and human subsistence, noting that environmental degradation can adversely affect access to water and the enjoyment of several human rights. Thus, in addition to an international human rights framework that creates specific obligations for States in relation to the right to water and the environment, States have also committed themselves to achieving specific targets within the framework of the Sustainable Development Goals, in particular, for universal and equitable access to water at an affordable price; the reduction of water pollution; the protection of related ecosystems such as forests, wetlands and rivers; and transboundary cooperation and local community participation in water management. In addition, the Commission stresses the need for a right-based approach in water and environmental policies and regulatory frameworks, particularly in contexts of transboundary water management and use; activities of government-owned companies and multinational corporations; implementation of investment treaties; and execution and financing of development projects.

⁴⁰¹ IACHR, *Business and Human Rights: Inter-American Standards*. OAS/Ser.L/V/II IACHR/REDESCA/INF.1/19, November 1, 2019, para. 66.

⁴⁰² IACHR Court, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Merits, reparations and costs. Judgement of February 6, 2020. Series C No. 400, paras. 222-230.

308. For its part, in its comments on the draft of this Report, the State indicated that it has prioritized improving the water distribution and supply networks to ensure an equitable distribution of the resource for the population, which for decades has suffered from the lack of drinking water. In this regard, it pointed out that among the strategic objectives with a focus on results of the Institutional Strategic Plan 2019-2024 of ANDA is the increase "by 2024 the coverage of water services to 77.8% nationwide". He also indicated that the Executive Branch has submitted to the Legislative Assembly the draft General Law on Water Resources, which aims to regulate the integrated management of water, its sustainability, guarantee the human right to it, as well as legal security for a better quality of life for all the inhabitants of the country, promoting economic and social development, through the sustainable use of water resources, all based on the Constitution of the Republic, environmental law and international instruments related to the subject.⁴⁰³
309. The IACHR takes note of the actions taken by the State to make positive progress in the recognition of the right to water as a human right in legislation and those aimed at increasing access to drinking water. The IACHR is also concerned about the existence of current limitations to the justiciability of water; the absence of a centralized supervisory body; unequal access to water, with a special impact on historically discriminated populations; weak regulations against economic projects; the pollution of water resources; and the challenges posed by climate change, among others, demand immediate action by the State to meet the obligations arising from the inter-American system in relation to the right to water.
310. For its part, in the context of the covid-19 pandemic, this situation is even more pressing since the guarantee of the right to water is a *sine qua non* condition for effective health measures to prevent the spread of the virus. In spite of this, the IACHR has received information about problems with access to safe drinking water by people in poverty or poor economic conditions, people deprived of liberty and rural communities. The IACHR stresses that Resolution 1/2020 recommended that States ensure that the measures taken to address the pandemic and its consequences incorporate as a priority the content of the human right to health and its basic and social determinants, which are related to the content of other human rights, such as life, personal integrity, and access to safe drinking water.
311. In light of the above, to fulfill its obligations, it is necessary for El Salvador to take steps to incorporate proper guarantees for the human right to water into its legal system, and create prevention policies and due diligence parameters to reduce risks and avoid violations of such right. It is also imperative to ensure that effective legal remedies and procedures exist to provide reparations to victims, such as accountability systems for state and non-state actors, including businesses, regarding the content protected by that right.

⁴⁰³ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 23-25.



CHAPTER 6
**THE RIGHT TO FREEDOM
OF EXPRESSION**

THE RIGHT TO FREEDOM OF EXPRESSION

A. *Intimidation and discrediting attack on journalists and the media*

312. In a context of serious affectations to democratic institutions, the IACHR, since its on-site visit, received complaints about the growing hostile environment for the exercise of freedom of expression in El Salvador, which would particularly affect independent journalists. Among the main concerns, several actors mentioned a recurring stigmatizing discourse promoted from the governmental spheres. The alleged official hostility includes intimidating messages and disqualification from their work, accusing certain journalists, for example, of spreading "fake news", of "mercenaries" and "paid feathers", as well as amplifying the dissemination of comments from users who criticize journalists on social networks.⁴⁰⁴ According to the information received, such accusations would usually occur after publications or journalistic investigations that document alleged cases of government corruption, arbitrary use of public funds, or questionable behavior by members of the executive branch. The recurrent use of these messages by government actors would contribute to creating a degrading environment towards the press, entrenching the growing social perception of journalists and media as "enemies" of the Salvadoran people.
313. Media outlets El Faro, Revista Factum, Diario de Hoy and La Prensa Gráfica were reportedly harassed and stigmatized by the president and other government officials because of their journalistic articles, coverage and investigations.⁴⁰⁵ For example, in 2019, the IACHR and its Special Rapporteurship for Freedom of Expression learned of a statement made by the president against Revista Factum on social media, which read as follows: "Today FACTUM graduated from fake news by 'interpreting' tweets that MADE NO SENSE AT ALL. Journalistic method? Where? @FitoSalume, you should tell your employee @HsilvAvalos to stop behaving as a journalistic hit man. It is my understanding that this is a circus owner issue"⁴⁰⁶
314. Other degrading statements by the executive branch against certain media were also recorded in 2020, such as the following: "They are hardly paid for this." ⁴⁰⁷"If

⁴⁰⁴ Human Rights Watch. March 17, 2021. [One of the first victims of Bukele's legislative victory in El Salvador may be freedom of the press](#); Twitter account of Nayib Bukele (@nayibbukele). [May 3, 2020](#); Twitter account of Nayib Bukele (@nayibbukele). [September 27, 2020](#).

⁴⁰⁵ El Salvador Gram. February 20, 2020. "Bukele acusa a Factum, El Faro y EDH de «tergiversar» sus palabras: «¿No se sienten tristes de haber caído tan bajo?», dice;" APES. June 26, 2020. "Presidente Bukele lanza otro ataque digital los periódicos El Faro, Factum, EDH y LPG;" La Prensa Gráfica. August 6, 2020. "Condenan amenazas a la prensa de El Salvador por Gobierno de Bukele."

⁴⁰⁶ Nayib Bukele's Twitter account (@nayibbukele). [April 30, 2019](#).

⁴⁰⁷ Twitter account of Nayib Bukele, president of El Salvador (@nayibbukele). [February 20, 2020](#).

someone believes that they [...] do real journalism..."⁴⁰⁸ "Don't they feel sad that they have fallen so low and thrown their entire trajectory in the trash?"⁴⁰⁹ "The elections are coming [...] Everyone is starting to take their own side. What they have always done."⁴¹⁰ Are they going to apologize for continuing to share fake news, or have they made a habit of it?"⁴¹¹ The IACHR and its Special Rapporteurship for Freedom of Expression also tracked the public statements made by the president during a national broadcast on September 24, 2020, in which he announced that El Faro was allegedly under investigation for money laundering.⁴¹²

315. In its preliminary observations, the IACHR noted that in the case of women with political roles, it has been observed that their exercise of their political rights is seriously affected by the prevalence of discriminatory gender stereotypes that place them in domestic roles, ignore their fundamental role in public spaces, and lead to acts of violence against them. The Commission notes that online attacks involving gender stereotypes take particularly vicious forms against women human rights defenders and women journalists, especially online attacks and threats aimed at intimidating, delegitimizing and silencing them. According to what has been reported, this narrative is aggravated after the targeting of specific individuals by state authorities.
316. For example, in its 2019 Annual Report, the IACHR recorded the case of El Faro journalist Valeria Guzmán, who, after publishing on October 4, 2019, a report entitled "El puente construido en Twitter todavía no existe en Torola" (The bridge built on Twitter does not exist in Torola yet), allegedly received numerous threats.⁴¹³ Additionally, in 2019 journalist of Foco TV Karen Fernández was attacked on social media by government supporters after the president retweeted a statement that the journalist had made in TV program República SC in Canal 33.⁴¹⁴
317. In 2020, the IACHR and its Special Rapporteurship for Freedom of Expression were informed of a case of online harassment against journalist of Gato Encerrado Carmen Valeria Escobar due to her investigations into several cases of corruption

⁴⁰⁸ Twitter account of Nayib Bukele, president of El Salvador (@nayibbukele). [June 25, 2020](#).

⁴⁰⁹ Twitter account of Nayib Bukele, president of El Salvador (@nayibbukele). [February 20, 2020](#).

⁴¹⁰ Twitter account of Nayib Bukele, president of El Salvador (@nayibbukele). [June 25, 2020](#).

⁴¹¹ Twitter account of Nayib Bukele, president of El Salvador (@nayibbukele). [May 3, 2020](#).

⁴¹² El Faro. September 25, 2020. Bukele announces on national network that Treasury investigates El Faro for money laundering; Factum. September 25, 2020. Bukele attacks the national press while claiming to defend it; CPJ. October 2, 2020. Without offering evidence, Salvadoran President Bukele announces an investigation into money laundering against the El Faro news website.

⁴¹³ APES. October 9, 2019. "[Periodista de El Faro es amenazada por Twitter](#)"; Knight Center. September 6, 2019. "[Periodistas salvadoreños advierten sobre falta de acceso a fuentes oficiales y poca tolerancia a la crítica del nuevo gobierno](#)."

⁴¹⁴ El Liberal. July 14, 2019. "[Denuncian nuevo caso de ciberacoso de parte de seguidores del presidente Bukele contra periodista](#)"; Twitter account of journalist Karen Fernández @KarenAlessaF. [July 14, 2019](#); Twitter of the Salvadoran Network of Women Human Rights Defenders (@rdefensoras). [July 13, 2019](#).

involving officials of the executive branch.⁴¹⁵ The journalist was reportedly threatened and insulted on social media by Carlos Hermann Bruch, a candidate for deputy for political party Nuevas Ideas, as well as by government supporters. In addition, members of her family were reportedly targeted for reprisals at work allegedly linked to an investigation by the journalist.

318. The IACHR notes that in 2020, the Legislative Assembly of El Salvador authorized the creation of a special commission to investigate harassment against journalists. The commission was created to investigate cases of harassment and threats to the press because of their work or editorial line by public officials and state agents, and the alleged use of state funds to finance digital attacks on opponents.⁴¹⁶ On November 12, said commission presented a final report, which was approved by the plenary of the legislative branch, concluding that the president of the Republic together with several of his senior officials were reportedly the main responsible for the systematic attacks on journalists, for which public funds would have been used.⁴¹⁷ The commission referred that, taking advantage of their positions, they would have "intimidated" and "discredited the work of journalists," thus possibly committing acts constituting crimes". In addition, with regard to the audit to which El Faro was subject to, it warned that the audit could constitute an indirect restriction on the right to freedom of expression and on the press. Finally, the commission recommended that the president, his ministers, vice ministers and other officials "cease harassment, discrimination, insults and ill-treatment against journalists."
319. The Office of the Special Rapporteur for Freedom of Expression has pointed out that those who engage in debates of general interest are part of a public space that they are also called upon to protect.⁴¹⁸ For its part, the Inter-American Human Rights System has indicated that while it is legitimate for public officials to make criticisms, corrections, or objections regarding specific reports in the media, they must observe a special duty of care and ensure that their pronouncements do not harm the rights of those who contribute to public deliberation through the expression and dissemination of their thought and must attend to the context in which they express themselves. It is also particularly important that they condemn attacks on the press

⁴¹⁵ Salvadoran Network of Women Human Rights Defenders / Facebook. [August 12, 2020](#); Focos TV's Twitter account (@focostv). [December 3, 2020](#); IACHR. 178 period of sessions, [public hearing no. 4. "Situation of freedom of expression in El Salvador."](#) December 3, 2020.

⁴¹⁶ La Prensa Gráfica. August 12, 2020. "[Asamblea Legislativa acuerda Comisión Especial para la investigación del acoso a periodistas](#);" La Vanguardia. August 13, 2020. "[El Congreso salvadoreño autoriza comisión para investigar acoso a la prensa](#);" Deutsche Welle (DW). August 13, 2020. "[Parlamento investigará acoso a la prensa en El Salvador](#);" Legislative Assembly of El Salvador. August 13, 2020. "[Crean Comisión Especial que investigará acoso a periodistas por su trabajo o línea editorial](#)."

⁴¹⁷ Yahoo! Noticias. November 12, 2020. "[El Gobierno salvadoreño ataca a periodistas con fondos públicos, según el Congreso](#);" Gato Encerrado. November 13, 2020. "[Asamblea determina que en El Salvador se viola el derecho de libertad de expresión y prensa](#);" Infobae. November 13, 2020. "[Piden a gobierno salvadoreño el cese de acoso a periodistas](#);" El Faro. November 16, 2020. "[Asamblea: "Bukele y sus funcionarios son los principales actores de acoso contra periodistas."](#)"

⁴¹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 17, 2021. The Office of the Special Rapporteur for Freedom of Expression calls for people who hold or aspire to hold elected office in Peru to contribute with their discourse to the protection of human rights. Press release R126/21.

and promote the role they play in democratic societies. According to the Inter-American Court of Human Rights, such statements by public officials could constitute an indirect restriction on the right to freedom of expression.⁴¹⁹

B. Diversity and pluralism in public debate

320. In its observations on the draft of this report, the Salvadoran State indicated that it has invested in human and technological resources to provide quality information and expand the coverage of the national channel and public radio. Likewise, it expressed that "the strengthening of the state media and its journalistic exercise contributes to provide the population with a variety of informative spaces, public and private, with different positions and points of view that allow them to select and conclude their own opinion on the national reality, contributing to the construction of a truly participative democracy and where the collective decisions of the Salvadoran people are respected".⁴²⁰
321. In this regard, the State pointed out that it has reorganized and revitalized the National Public Media System to allow the positioning of the public media among the most important news references in the country. Likewise, it stated the government's openness with the media, indicating that "press releases, official communiqués, radio messages, television, newspapers and any other traditional means of communication necessary to bring timely messages to Salvadorans have been added to the national chains"; and also highlighting the relationship of government institutions with the press to generate content regarding the government's activities. In addition, the State pointed out that the main form of communication of the Government in the current administration has been through the Internet, with the Salvadoran people having direct means of communication with the different government institutions.⁴²¹
322. On the other hand, the Office of the Special Rapporteur for Freedom of Expression has been informed of concerns about the potential government capture of public debate in which there would be institutional efforts to position the official narrative as the only legitimate and truthful one⁴²² through the use of state media; privately owned media

⁴¹⁹ Inter-American Court of Human Rights. *Rios and Others v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 139.

⁴²⁰ Republic of El Salvador, *Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador"*, 3 de septiembre de 2021, p. 25-26.

⁴²¹ Republic of El Salvador, *Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador"*, 3 de septiembre de 2021, p. 25-26.

⁴²² Deutsche Welle (DW). October 4, 2020. "Bukele and his government are the main source of disinformation in the country"

administered by the State⁴²³ and the reduction of independent news spaces. Various actors have reported to the Rapporteurship on the instrumentalization of state media – Channel 10, Radio Nacional, and Diario El Salvador – for political purposes and for the dissemination of government propaganda.⁴²⁴

323. During 2020, around 70 journalists were reportedly dismissed from Channel 10. This list would include journalist Mónica Rodríguez, who was fired on October 2 after working for 9 years at El Salvador Television (TVES) as an editor and news anchor.⁴²⁵ According to the journalist, when notifying her of her dismissal, the Presidential Palace claimed that it was due to "suppression of the place and loss of reliability."⁴²⁶ According to the information available, prior to the dismissal, the reporter was allegedly harassed inside the media for refusing to write the journalistic notes in the line they demanded.
324. In addition, the Office of the Special Rapporteur has been informed about the alleged granting of state advertising guidelines in a non-transparent manner and under a logic of "reward or punishment" according to the attachment or distance of the editorial line of the medium to the official narrative.⁴²⁷ In this context, community radios, the investigative media and some traditional media whose news lines maintain criticism of government management would usually be the most affected. In short, as has been pointed out, the advertising pattern would function in practice as a mechanism of economic pressure that leads to phenomena of self-censorship within some media. In this context, the Office of the Special Rapporteur also received information on the reduction of information spaces for reasons that could be linked to government pressures.
325. The IACHR and its Rapporteurship recall that direct or indirect pressures aimed at silencing the information work of social communicators are incompatible with freedom of expression. In this sense, the distribution of official advertising must be guided by democratic criteria and pre-established, public and transparent

⁴²³ Legislative Assembly Special Commission. ' CONAB is using the media that are administered by the entity and have been seized from radio and telecommunications entrepreneurs' Special Commission confirms the commission of abuses against journalists | Legislative Assembly of El Salvador. October 20, 2020

⁴²⁴ El Diario de Hoy. October 2, 2020. Government is turning Channel 10 into an official propaganda medium; La Prensa Gráfica. October 4, 2020. APES: State media are not to broadcast propaganda; Deutsche Welle (DW). October 12, 2020. Noticiero El Salvador: Pre-electoral journalism?; Virtual meeting with civil society organizations and journalists. May 5, 2021. Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴²⁵ El Diario de Hoy. 2 de octubre de 2020. [Gobierno está convirtiendo al Canal 10 en un medio de propaganda oficialista](#); La Vanguardia. 4 de octubre de 2020. [Al menos 70 periodistas despedidos del canal estatal, según el periódico EDH](#).

⁴²⁶ IM Defenders. October 9, 2020. [Alerts Human Rights Defenders] EL SALVADOR / The Salvadoran government unjustifiably dismisses journalist Mónica Rodríguez.

⁴²⁷ La Prensa Gráfica. 4 de octubre de 2020. APES: Medios del Estado no son para difundir propaganda; Asociación de Radiodifusión Participativa de El Salvador (ARPAS). Informe sobre situación y peligros de los medios comunitarios en El Salvador. 2021. Archivo de la Relatoría Especial para la Libertad de Expresión; Reunión virtual con organizaciones de la sociedad civil y periodistas. 5 de mayo de 2021. Archivo de la Relatoría Especial para la Libertad de Expresión.

procedures, which guarantee conditions of equal opportunities. Principle 13 of the IACHR's Declaration of Principles on Freedom of Expression states that "the use of state power and public finance resources; the granting of tariff perks; arbitrary and discriminatory allocation of official advertising and official credits; the granting of radio and television frequencies, among others, with the aim of pressuring and punishing or rewarding and privileging social communicators and the media according to their information lines, violate freedom of expression and must be expressly prohibited by law. The media have the right to do their work independently."

C. Access to public information

326. During its visit, the IACHR also received information from several organizations and media outlets about the restrictions on access to public information, mainly related to security, the environment, public expenditures and immigration agreements. On the other hand, several media outlets denounced restrictions on access to government press conferences. The IACHR has received complaints alleging a deliberate strategy of opacity on the part of government authorities aimed at diminishing the State's obligations of transparency and accountability.
327. In 2020, El Salvador's government increased the existing restrictions on the right of access to information. Since the outbreak of the covid-19 pandemic, there was an almost total closure of institutional channels of communication and public information.⁴²⁸ This was seen not only in the suspension of the administrative deadlines for requests for access to information, but also in the prohibition on journalists to ask questions at official press conferences.
328. According to media reports, the Information and Response Offices denied information on issues such as recruitment statistics, quarantine centers, public emergency purchases, tests to detect the progress of covid-19, applications for shelter or economic compensation, persons detained for circulating in public spaces, among other topics.⁴²⁹ On the other hand, they point out that the information proactively published by the State on emergency purchases, the amount of inputs available or direct contracting has been minimal.⁴³⁰
329. This situation would be aggravated by various irregularities in the administration of the Institute for Access to Public Information (IAIP). In July 2020, the Group Promoting the Law on Access to Public Information and civil society organizations alerted the IACHR to attempts by the Executive Branch to control the IAIP, to the

⁴²⁸ Twitter account of Edison Lanza (@EdisonLanza). [June 10, 2020](#).

⁴²⁹ El Faro. April 9, 2020. "[El Gobierno también puso en cuarentena el acceso a la información pública](#)," APES. April 18, 2020. "[Ministerio de Trabajo de Usulután niega información pública a periodistas](#)," Article 19, Office for Mexico and Central America. July 9, 2020. [Informe especial C.O.V.I.D: Libertad de expresión e información durante pandemia de COVID-19 en México y CA](#).

⁴³⁰ Revista Factum. June 2, 2020. " [Toda la información que nos negaron](#)."

detriment of its independence.⁴³¹ Along these lines, information was received about the amendments to the Regulations of the Law on Access to Public Information that the Executive branch would have made by executive decree, granting greater powers to the president of the IAIP, weakening the collegiate decisions in the plenary session of the Institute.⁴³² Decree 34, signed on August 26, 2020 and in force since August 31, would have eliminated the possibility that citizens had to challenge the candidacies in the election of commissioners of the Institute; and would have put more obstacles in the way of the process of requesting the declassification of classified information.

330. In this regard, in its observations on the draft of this report, the State indicated to the IACHR that the Law on Access to Public Information (LAIP) provides as competence of the Institute for Access to Public Information to know about the classification of classified information, through a procedure that is paired with the procedure for access to public information (Art. 66 LAIP) and, in case of disagreement, it enables the initiation of the appeal procedure (Art. 82 LAIP) or even the filing of a complaint for possible violations of the LAIP (Art. 76). The State indicated that, in this sense, the legislation in force does not stipulate a separate procedure for the declassification of classified information and it is legally applicable to process it in accordance with the provisions of the law, in other words, through the appeal procedure.⁴³³
331. Additionally, the Salvadoran State pointed out that the amendments to the LAIP Regulations, in relation to the powers of the Commissioner President of the IAIP, are of an administrative nature and that, to a large extent, were taken from Articles 10 to 21 of the Internal Operating Regulations of the IAIP of 2015. It indicated that the main task of the IAIP's collegiate, to hear the cases submitted to its knowledge, has not been modified, having entered approximately 215 cases, during 2021, which are being handled by the plenary. It indicated that the main function of the IAIP, which is to ensure the correct application of the LAIP, guaranteeing the exercise of the right of access to public information and the protection of personal data, has not been modified either.⁴³⁴
332. The IACHR reinforces joint statement with experts in freedom of expression of the United Nations and the Organization for Security and Cooperation in Europe, in

⁴³¹ El Mundo. July 9, 2020. Organizations denounce attempt to control and roll back the work of the IAIP; YSUCA. July 9, 2020. Civil Society organizations fear that the government will try to control IAIP; El Diario de Hoy. July 24, 2020. Organizations alert the OAS rapporteur about the Executive's attempt to control the Institute for Access to Information.

⁴³² El Diario de Hoy. September 8, 2020. Bukele reform of LAIP regulations and weakens citizens' access to public information, lawyer complaint; Gato Encierro. September 9, 2020. Bukele exceeded its regulatory authority and passed a disguised reform to the LAIP; El Faro. September 11, 2020. Bukele creates a less transparent IAIP via executive decrees; Factum. September 12, 2020. Bukele dictates new rules and appoints a commissioner to move away from transparency.

⁴³³ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 25-26.

⁴³⁴ Republic of El Salvador, Observaciones del Estado de El Salvador al Proyecto de Informe "Situación de los Derechos Humanos en El Salvador", 3 de septiembre de 2021, p. 25-26.

which they called on States to promote and robustly implement their laws on access to information during the pandemic. The rapporteurs emphasized the crucial function that journalism serves in a public health emergency, particularly when it aims to inform the public of critical information and monitor government actions.⁴³⁵

333. In this section, the IACHR addressed serious allegations regarding restrictions and attacks on freedom of expression and access to information that together weaken the rule of law. The IACHR renews its call to the Salvadoran State to reestablish these essential elements of representative democracy. Likewise, it places itself at the disposal of the State to contribute in this direction.
334. Finally, another issue of concern to the IACHR and its Special Rapporteurship for Freedom of Expression has been the process of opening and accessing files to investigate the crimes committed during the armed conflict. This issue is discussed in detail in the chapter on memory, truth and justice of this report.

⁴³⁵ IACHR, Special Rapporteurship for Freedom of Expression, "[COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts.](#)" Press release R58/20. March 19, 2020.



CHAPTER 7
**CONCLUSIONS AND
RECOMMENDATIONS**

CONCLUSIONS AND RECOMMENDATIONS

335. The Commission thanks the government of El Salvador for accepting to undergo international scrutiny only six months after president Nayib Bukele took office. The IACHR was invited to conduct a visit and to hold a frank and constructive dialog, at the highest level, with El Salvador's administration. The Commission was provided with relevant information and with logistics support. In particular, the IACHR thanks the Ministry of Foreign Affairs and other institutions for their cooperation in preparing and carrying out the visit.
336. The IACHR recognizes the efforts made since the new administration took office in June 2019, in particular, the drastic decline in the murder rate to historic lows, even since the signing of the peace agreements in 1992. The IACHR reiterates and stresses the importance of taking measures to reconstruct the social fabric as part of the Territorial Control Plan established by the current administration, and encourages the replication of such initiatives to other communities in the country. In addition, citizen participation in the design and implementation of any citizen security policy is essential. However, the Commission is particularly concerned about the allegations and information received on cases of extrajudicial executions perpetrated during armed confrontations between state agents and alleged gang members, as well as the increase in the number of disappearances. In these cases, it is urgent to act with due diligence in resolving these cases and combating the prevailing impunity.
337. The impact of violence and its resulting impunity is particularly serious for individuals living in poverty, migrants, asylum-seekers, refugees and internally displaced persons, women, children and adolescents, among other groups, who are commonly affected by sexual violence, threats, extortion or the violence that ravages the country.
338. The IACHR is concerned about the precarious situation of the population deprived of liberty in El Salvador, as a result of the current deplorable conditions of detention, high levels of overcrowding in certain facilities, the excessive application of pretrial detention, and permanent detentions in police detention centers. The IACHR notes the State's recognition of the health situation in prisons, and welcomes and encourages the current administration to take measures to improve health, reduce overcrowding in penitentiaries, and combat the levels of malnutrition in such penitentiaries.
339. Similarly, the Commission noted first-hand the impacts that the implementation of extraordinary security measures has had on the human rights of persons deprived of liberty, and the effects of incorporating these measures into the law. In addition, the increase in the use of maximum-security prisons and the application of

prolonged isolation, in practice, keeps the entire population deprived of liberty in El Salvador completely isolated from the outside world.

340. Thirty years after the signing of the peace agreements, the Inter-American Commission considers it essential to guarantee the right to truth, justice and comprehensive reparation to the victims of the armed conflict. The Commission considers it urgent that the State strengthen and deepen its efforts to combat impunity for past crimes. In particular, the State should take urgent measures to guarantee public, technical and systematic access to state-held files containing useful and relevant information to investigate cases of human rights violations during the armed conflict.
341. The Inter-American Commission reiterates its commitment and willingness to cooperate with the Salvadoran State in fulfilling its international human rights obligations. To this end, it considers that the present report will help guide the State's efforts in this area, as well as deepen technical and permanent cooperation with the IACHR.
342. Pursuant to the provisions of Article 41.b of the American Convention on Human Rights, based on the observations made during the *on-site* visit, and the analysis of the additional information included in this report, the Commission reiterates and adapts the recommendations addressed to the State of El Salvador:
 1. Make the Territorial Control Plan public, enable the civil society to participate in it, and create outreach work around citizen security policies, including the Territorial Control Plan.
 2. Urgently conduct diligent and impartial investigations in all cases where civilians are injured or killed by police or military forces, in order to establish the facts and determine the corresponding criminal responsibilities.
 3. Strengthen the capacities of the National Police Force so as to make headway on implementing the plan to gradually replace the armed forces performing public security tasks, in accordance with inter-American human rights standards.
 4. Adopt a National Reconciliation Law in accordance with inter-American standards on transitional justice, particularly with regard to holding perpetrators of serious human rights violations accountable for their actions and in relation to the participation of victims.
 5. Investigate, judge, and, where appropriate, sanction crimes that constitute serious human rights violations perpetrated during the internal armed conflict.
 6. Ratify the Inter-American Convention on the Forced Disappearance of Persons, the International Convention for the Protection of All Persons from

Enforced Disappearance, and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

7. Organize all documentation on the security forces that acted during the internal armed conflict, systematize this, and make it publicly available to victims, authorities of the justice and search system, and society as a whole, ensuring that sensitive aspects are protected appropriately, in the latter case, and reconstructing any files that were destroyed or documents that were not produced when they should legally have been.
8. Adopt a legal framework regulating a national policy for the search of victims of forced disappearance and a law regulating the creation of a genetic information bank; exhumation proceedings; and a law regulating the rights of the relatives of the victims of disappearances.
9. Provide the CNB, CONABÚSQUEDA, and the Institute of Legal Medicine with the human, economic, logistic, scientific and other resources needed for investigating into and determining the whereabouts of the disappeared persons.
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.
11. Create spaces to hear the victims of the internal armed conflict, allowing them to express their needs with regard to different state services on the matters of truth, memory, justice, and reparation for serious human rights violations.
12. Establish a crime prevention policy that aims at using imprisonment as a last resort and entails applying alternative measures and granting minimum guarantees to all people who are deprived of their freedom.
13. Take urgent, necessary measures to cease the use of police facilities as places in which prisoners are held for long periods of time.
14. Ensure that there are sufficient human and financial resources in penitentiaries to guarantee compliance with minimum standards on detention conditions for people who are deprived of their freedom, in accordance with inter-American standards.
15. Guarantee regular visits to prisoners at penitentiaries, to which end the State should review Article 79-A of Decree 93, Reforms to the Penitentiary Law.

16. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and establish a national mechanism for the prevention of torture.
17. Pass the Organic Law on the Office of the Attorney General and grant it a budget that will allow it to act consistently with the workload assigned to it.
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.
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.
20. Adopt the measures needed to guarantee that special assistance is provided for women who are deprived of liberty, while including a gender perspective.
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.
22. Review the cases of women who are serving severe prison sentences for aggravated murder in relation to obstetric emergencies or complications, and prioritize requests to commute sentences that they are currently serving.
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.
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.

25. Strengthen the institutional capacities of the Salvadoran Institute for the Development of Women (ISDEMU) so that it has greater autonomy to prevent, punish and eradicate violence against women.
26. Ratify the Inter-American Convention Against All Forms of Discrimination and Intolerance.
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.
28. Adopt a comprehensive plan to protect and guarantee the human rights of LGBTI persons from a human security perspective, including their access to justice, education, healthcare and employment, and promote the participation of civil society organizations in the design and drafting of this plan.
29. Provide training for state officials, especially judicial staff members, on the rights of LGBTI persons.
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.
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 Attorney General.
32. Pass a comprehensive regulatory framework on forced displacement that includes lasting solutions as part of the framework for implementing the MIRPS and guarantees the provision of support and advisory services on comprehensive coordination mechanisms for protecting human rights.
33. Refuse to implement measures, policies or agreements that in any way impose the recognition of El Salvador as a safe third country.
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.
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.

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.
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.
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.
39. Promote the adoption of measures to implement inter-American standards on business and human rights.
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.
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.
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.
43. Ratify the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).
44. Adopt measures and allocate resources for the effective creation of a national authority in charge of overseeing that access to water from a human rights perspective is guaranteed by national and local authorities, and businesses involved in its administration or distribution. Similarly, such authority must ensure that water-use permits and agreements with

companies on this resource do not jeopardize the effective realization of the human right to water.

45. Adopt specific policies to ensure access to water in the context of the pandemic, especially by vulnerable communities, including people living in poverty and extreme poverty, women, children and adolescents, among others.
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.
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.
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.
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.
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.