



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

Distr.  
GENERAL

CERD/C/471/Add.1  
19 May 2005

ENGLISH  
Original: SPANISH

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9  
OF THE CONVENTION**

**Thirteenth periodic reports of States parties due in 2004**

**Addendum**

**EL SALVADOR\* \*\***

[10 February 2005]

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\* This document contains the ninth to the thirteenth periodic reports of El Salvador, due on 30 December 1996, 1998, 2000, 2002 and 2004 respectively, submitted in one document. For the third to the eighth periodic reports submitted in one document, and the Committee's concluding observations, see document CERD/C/258/Add.1 and the *Official Records of the General Assembly, Fiftieth Session, Supplement No. 18 (A/50/18)*, paras. 460-498.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

GE.05-41901 (E) 191005 211005

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## Introduction

1. The Government of El Salvador hereby submits its thirteenth periodic report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, in accordance with article 9 of the Convention. This document contains the ninth, tenth, eleventh, twelfth and thirteenth periodic reports due in 1996, 1998, 2000, 2002 and 2004 respectively.
2. The delay in El Salvador's submission of its reports to the Committee is basically due to the circumstances that have prevailed in the country during the past decade, characterized by the armed conflict that ended in January 1992, followed by a process of verification and gradual implementation of the peace agreements that lasted until 1997; and to the adverse effects of natural disasters such as hurricane Mitch and the earthquakes of January and February 2001, which had a major impact on the day-to-day functioning and coordination of Salvadoran institutions.
3. The Government wishes to state that the Salvadoran population does not comprise groups with differing racial characteristics and that, consequently, there cannot be said to be any discrimination on grounds of race; moreover, nationals of other countries enjoy all economic, social and cultural rights on the same basis as Salvadoran nationals.
4. Racial mixing is prevalent in El Salvador and there is no marked difference between whites (*ladinos*) and Indians. El Salvador has thus acquired a homogeneous, racially mixed (*mestizo*) society in which the traditions, legends and customs recalling its indigenous past have survived, along with crafts and dances.
5. There is no black population in El Salvador as it is the only country in Central America without a Caribbean coast.
6. Moreover, also unlike other Central American countries with territories large enough to permit their inhabitants to move around easily and support themselves, the population of El Salvador has had to keep to a restricted area, which has encouraged and increased racial mixing.
7. The information contained in this report is the result of an inter-agency team effort coordinated by the Ministry of Foreign Affairs and involving the following institutions, among others: the Supreme Court, the Attorney-General's Office, the Ministry of Labour and Social Security, the Ministry of Health and Welfare, the Ministry of Education, the National Civil Police (PNC) and the National Council for Culture and the Arts (CONCULTURA).
8. The report was prepared in accordance with the guidelines contained in HRI/GEN/2/Rev.2, of 7 May 2004 (Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties). It also takes account of the Committee's comments on El Salvador's implementation of the Convention contained in A/50/18, paragraphs 460 to 498 (concluding observations on El Salvador, by the Committee on the Elimination of Racial Discrimination, 22 September 1995).

9. The Government of El Salvador submits this report in fulfilment of its obligations as a State party to the Convention and wishes to draw particular attention to the constitutional and legal principles on non-discrimination and human rights which guide the Government's approach to both domestic and international policy.

10. The Government of El Salvador takes this opportunity to express its firm resolve to establish a constructive dialogue with the international bodies which monitor compliance of the provisions and obligations of this Convention and of the other human rights instruments to which El Salvador is a party.

## **INFORMATION CONCERNING ARTICLES 2 TO 7 OF THE CONVENTION**

### **Article 2**

#### **Legislative framework for the protection of fundamental rights and non-discrimination**

11. El Salvador ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1979 and the Convention on the Elimination of All Forms of Discrimination against Women in 1981.

12. In fulfilment of its obligations under the Convention, the State of El Salvador has incorporated into its Constitution and subsidiary legislation provisions to ensure implementation. Article 144 of the Constitution provides that all treaties signed by El Salvador constitute laws of the Republic and take precedence over subsidiary legislation, in the following terms: "The international treaties concluded by El Salvador with other States or international organizations shall constitute laws of the Republic once they have entered into force, in conformity with the provisions of the treaties in question and of this Constitution. The law may not change or derogate from that which has been agreed in a treaty in force for El Salvador. In the event of a conflict between the treaty and the law, the treaty shall take precedence."

13. In addition, title I, sole chapter, article 1, of the Constitution, recognizes the individual as the source and the object of the activity of the State, in the following terms: "El Salvador recognizes the individual as the source and the object of the activity of the State, which is organized for the attainment of justice, judicial security, and the common good. In consequence, it is the duty of the State to ensure that the inhabitants of the Republic enjoy liberty, health, culture, economic well-being and social justice."

14. Article 3 of the Constitution states: "All persons are equal before the law. No restrictions on the exercise of civil rights may be established that are based on differences of nationality, race, sex or religion. Hereditary offices or privileges shall not be recognized."

15. In the area of education, science and culture, the Constitution states that education in any educational institution may not be denied on grounds of racial difference; as stated in article 58: "No educational establishment shall refuse to admit students on the ground of the nature of their parents' or guardians' union or on the ground of social, religious, racial or political differences."

16. With regard to non-discrimination in health, chapter VIII (Obligations, rights and prohibitions), first section (Obligations), article 33, of the Health Code of El Salvador, states:

“Health professionals, technicians, auxiliaries, hygienists and assistants have the obligation to provide the best of care to all who seek their professional services, taking full account of their human condition and without distinction on grounds of nationality, religion, race, political conviction or social class; inter alia.”

17. Similarly, under article 47, the Ministry of Health and its various departments must promote the social well-being of the community without distinction on the grounds of ideology or creed.

18. Discrimination in employment on racial grounds is also prohibited in subsidiary legislation. Under article 246 of the Criminal Code, discrimination in employment is a criminal offence:

**“Discrimination in employment**

Article 246. Anyone who commits an act of serious discrimination in the workplace on the basis of sex, pregnancy, origin, civil status, race, social status or physical condition, religious or political beliefs, membership or non-membership of a trade union or adherence or non-adherence to its agreements, or kinship with other workers in the enterprise and who does not restore the situation of equality before the law in accordance with the requirements or administrative sanctions imposed and does not make good the financial harm caused by such an act shall be liable to imprisonment for six months to two years.”

19. In the area of discrimination in employment, the Administrative Systems Unit of the Supreme Court made a study of the cases brought before the country’s major criminal courts from the time when the current criminal legislation entered into force (i.e. between 20 April 1998 and 25 August 2004). Only three cases were found to relate to discrimination, and these were classed as discrimination in employment. As to the outcomes, two of the cases were rejected and one was dismissed.

20. During the period covered by this report, only one application for *amparo* was made to the Constitutional Division in respect of discrimination on the grounds of the applicant’s nationality (Panamanian). In that case, the complaint against the authority in question (Ministry of Health and Welfare), of violation of the right to equal treatment, was dismissed since the applicant had failed to provide sufficient grounds for consideration of the case on the merits.

21. Article 17 of the Criminal Code recognizes the equality of all persons under the law, without distinction on grounds of nationality, sex, race or religion, and punishes anyone who violates that equality; it also makes such conduct an offence under article 292. These articles read as follows:

**“Application of criminal law to individuals**

Article 17. The criminal law shall be applied equally to all persons who at the time of the offence are aged over 18 years. Persons below that age shall be subject to a special regime.

Notwithstanding the provisions of the preceding paragraph, the criminal law of El Salvador shall not apply when the person in question enjoys privileges under the Constitution of the Republic and international law or when they enjoy immunity in certain matters, in accordance with the Constitution of the Republic.”

**“Infringements of the right to equality**

Article 292. Any public official or employee or agent of any authority or public authority who, on grounds of nationality, race, sex, religion or any other attribute of an individual, denies that person any of the individual rights recognized under the Constitution, shall be liable to one to three years’ imprisonment and shall be disqualified from exercising their functions or holding their post during that time.”

22. With regard to war crimes and crimes against humanity, including genocide, book II, title 19 (Crimes against humanity), of the Criminal Code, defines in article 361 the offence of genocide and provides for a heavy penalty; moreover, under article 99, that penalty is imprescriptible; while under article 34 of the Code of Criminal Procedure, proceedings for this class of offence are also imprescriptible. The articles read as follows:

**“Genocide**

Article 361. Anyone who, with the purpose of partially or totally destroying a specific human group by reason of its nationality, race or religion, murders or causes serious bodily or mental injury to members of the group or subjects them to conditions which make it difficult for them to survive or imposes upon them measures designed to prevent them from protecting or effects the forcible displacement of persons to other groups shall be sentenced to imprisonment for 10 to 25 years.

This sentence may be increased to 30 years if the person responsible for any act of genocide is a civilian official or military officer.

The proposal of acts of genocide and conspiracy to commit such acts shall be punished by 6 to 12 years’ imprisonment; and public incitement to commit genocide shall be punished by 4 to 8 years’ imprisonment.”

**“Prescription of penalties**

Article 99. A custodial sentence imposed by a final judgement is extinguishable by prescription in any period equal to the sentence, but in no case less than three years.

Non-custodial sentences lapse after three years.

The penalty for an offence lapses after one year.

The penalties for the crimes of genocide, torture and enforced disappearance of persons are imprescriptible.

Proceedings shall not be subject to prescription in the following cases: torture, acts of terrorism, kidnapping, genocide, violation of the laws and customs of war, enforced disappearance of persons, and political, ideological, racial, sexual or religious persecution, provided that the act in question commenced subsequent to the entry into force of this Code.”

**“Statute of limitations**

Code of Criminal Procedure, article 34. Where criminal proceedings have not yet been instituted, the right of action lapses:

- (a) After a period equal to the maximum sentence, for crimes carrying custodial sentences, but in no case more than 10 or less than 3 years;
- (b) After three years for crimes carrying non-custodial sentences; and
- (c) After one year for offences.

Prescription shall be determined by reference to the principal penalty and shall extinguish proceedings also in respect of subsidiary penalties.

Proceedings shall not be subject to prescription in the following cases: torture, acts of terrorism, kidnapping, genocide, violation of the laws and customs of war, enforced disappearance of persons, and political, ideological, racial, sexual or religious persecution, provided that the act in question commenced subsequent to the entry into force of this Code.”

23. As stated above, there is no racial discrimination in El Salvador. However, El Salvador undertakes not to encourage, defend or support such behaviour, whether by private individuals or organizations.

24. Accordingly, values training programmes have been launched and are being run by the Ministry of Education, with the aim of developing and strengthening values training within the education system, at all levels and in its various forms and areas, and encouraging the education community to become involved in developing activities and experiences to help promote the daily application of moral values, which can and should be shared in society.

25. The broad strategy of the programme is as follows: to develop self-esteem as a basis for self-respect and respect for others, for nature, for one’s heritage and for objects; to develop imagination and creativity as a basis for individual and social development; to promote individual and social responsibility; to emphasize the value and virtue of perseverance, based on the development of other values and virtues such as determination, constancy, responsibility, order, etc.; to develop personal skills by promoting art, culture and sport; and to develop an ongoing training programme for school heads and primary teachers in the area of values training.

26. The values training programmes aim to provide members of the education community with opportunities to develop ways of being, feeling and acting which can give individuals dignity as persons and as members of a community. The main values training programmes are:

- (a) Values education in school;
- (b) Environmental education;
- (c) Gender-sensitive education;
- (d) Values-training support programmes:
  - Recreational programmes and competitions
  - Physical education and sports
  - Preventive programmes;
- (e) School infrastructure and maintenance;
- (f) Reform of the secondary school system;
- (g) Technical education system (secondary and higher education);
- (h) Monitoring and evaluation of higher education.

27. There is also a programme called “Strengthening values”, which was launched in January 2000 at the initiative of the National Secretariat for the Family, which brought together key sectors of the media in a partnership to develop initiatives for the strengthening and promotion of values in society. This resulted in the creation of a radio spot and a weekly column in the press.

28. In addition, a special project, “The values collection”, was organized from August to December 2003 in cooperation with the *Diario de Hoy* newspaper, involving the publication of 20 collectable fascicles on values. Linked to this project was the publication of *El Libro de Valores* (“The values book”), a collected edition of all the published instalments. A regular annual publicity campaign on the subject was also set up as part of the programme. *El Libro de Valores* contains chapters on, inter alia, solidarity, tolerance, freedom, respect, prudence, generosity, responsibility, friendship, perseverance, loyalty, honesty, humility, strength, gratitude, kindness, justice, industriousness and peace.

29. The book gives basic definitions of values and contains stories, fables, tales and well-known sayings; it also gives sketches of personalities and institutions whose life and work are worthy exemplars of desirable values. The collection was made available in two stages, first to 461 schools in rural and urban fringe areas in the 14 departments of the country, and then to the 1,545 schools in the 14 departments taking part in the Healthy School programme.

30. Another outcome of the partnership between the National Secretariat for the Family and *Diario de Hoy* was a book entitled *El Libro de la Convivencia* (“Living together”). The partnership made it possible to publish, free of charge, 15 glossy fascicles containing advice and basic standards of behaviour, with the aim of inculcating universal human values in the reader.

Fascicle titles include: “Correction without ill-treatment”, “Non-violence”, “Forgiveness”, etc. Initiatives to promote and reinstate values have targeted the urban and rural population nationwide, particularly children, young people and families.

31. El Salvador has no laws or regulations that might promote racial discrimination, and if it did, the necessary efforts would be made to amend them.

32. No records of cases of racial discrimination are kept, but, as mentioned above, both the Constitution and subsidiary legislation contain provisions expressly prohibiting acts of discrimination on grounds of race.

33. El Salvador has organizations of all kinds and the legal bases to create them, provided they do not harm any sector of the population or contravene the law in any way. Initiatives have also been taken to promote interaction and involvement between different cultures and races, notably in events of a sporting, cultural, artistic or scientific nature.

34. As stated previously, El Salvador does not have different racial groups and has therefore not considered it necessary to take specific social, economic or cultural measures; special measures are in place, however, to prevent discrimination against certain vulnerable groups such as women, children, young people, people with disabilities and the elderly.

### **Article 3**

#### **Apartheid**

35. El Salvador has been a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid and the International Convention against Apartheid in Sports since 1979.

36. As stated in previous reports, El Salvador has no system comparable to the apartheid regime. Nevertheless, in a draft reform of the Criminal Code, apartheid is defined as a crime within El Salvador, in accordance with the international obligations assumed by this country, and particularly those deriving from its ratification of the International Convention on the Elimination of All Forms of Racial Discrimination.

### **Article 4**

#### **Suppression and punishment of discriminatory activities**

37. As mentioned above, under article 292 of the Criminal Code: “Any public official or employee or agent of any authority or public authority who, on grounds of nationality, race, sex, religion or any other attribute of an individual, denies that person any of the individual rights recognized under the Constitution, shall be liable to one to three years’ imprisonment and shall be disqualified from exercising their functions or holding their post during that time.”

38. Similarly, under article 246: “Anyone who commits an act of serious discrimination in the workplace on the basis of sex, pregnancy, origin, civil status, race, social status or physical condition, religious or political beliefs, membership or non-membership of a trade union or adherence or non-adherence to its agreements, or kinship with other workers in the enterprise

and who does not restore the situation of equality before the law in accordance with the requirements or administrative sanctions imposed and does not make good the financial harm caused by such an act shall be liable to imprisonment for six months to two years.”

39. Thus, as can be seen from the laws it has passed, El Salvador has made efforts to preclude all acts or ideas based on racial superiority or hatred, as well as all acts of violence or incitement to violence against any race or group of persons of another colour or ethnic origin.

40. With regard to measures taken to counter discriminatory or racist platforms, El Salvador has no organized or other propaganda activities which promote and incite racial discrimination.

41. As already mentioned, El Salvador has had no cases of public authorities or public institutions, national or local, promoting or inciting racial discrimination.

42. Nevertheless, were such conduct to occur, article 292 of the Criminal Code would apply: this prohibits all authorities and public institutions, national and local, from encouraging acts which promote or incite racial discrimination.

## **Article 5**

### **Legislative framework for the protection of fundamental rights and non-discrimination**

#### **(a) Right to equal treatment before the tribunals**

43. Regarding the Constitution, the Constitutional Division of the Supreme Court stated in an *amparo* judgement of 23 October 2001: “The Constitution is a legal instrument which, as well as containing regulations governing the State’s political life, organizing its society, structuring its institutions and limiting bias and arbitrary action on the part of its rulers, also establishes safeguards for the rights of citizens without any discrimination whatsoever and the power to restrict those rights in the circumstances provided for by law and by order of the competent authority.”

44. The Constitution establishes, inter alia, the obligation of the State to ensure the enjoyment of freedom, health, culture, economic well-being and social justice; in addition, the title on fundamental individual rights and guarantees establishes everyone’s right to life, physical and moral integrity, freedom, etc.; it also makes provision for compensation, in accordance with the law, for harm of a moral nature and establishes the principle of equality.

45. The Constitution, as the prime source of Salvadoran law, is clear as to the protection due from the State not only to its own nationals but also to all those resident in El Salvador, since the rights recognized and protected are accorded because they are inherent in the human person and to that extent not subject to distinction on the basis of nationality, other than in very specific cases.

46. The Supreme Court, as the highest authority in the judicial system, through its Constitutional Division, has established case law on the principles of equality, non-discrimination and equal treatment before the law.

47. The relevant judgement states that: “Equality is a principle which derives from human nature itself and whose foundation lies in the fact that its source and its object are one and the same. It can be seen as a relationship that allows everyone to enjoy their fundamental rights and to be accorded all due respect, without arbitrary discrimination. The right to equality is a constitutional right, provided for in article 3 of the Constitution, which justly and explicitly states that the equality of everyone before the law is guaranteed.”

48. In an *amparo* judgement of 29 November 2001, the Supreme Court stated that: “There are two constitutional aspects to the principle of equality: (a) equality before the law; and (b) equality in the application of the law. The first implies that, given a similar basis in fact, the consequences should be identical, with no arbitrary or unwarranted inequality. The second, which applies in the judicial sphere, implies that judicial decisions should contain similar reasoning for similar bases in fact even where cases are tried by different courts, and should avoid violating that principle through the manifestly unequal application of similar provisions of the law in similar cases.”

49. As to the scope of the principle of equality in the court’s application of the law, in a judgement of 26 August 1998, the Constitutional Division held that equality “is the subjective right, inherent in (every individual), to receive equal treatment, one which the authorities are obliged and constrained to respect and which requires that an identical basis in fact must give rise to identical consequences in law; this extends also to equality in the application of the law, such that a court may not arbitrarily vary its judgement in substantively similar cases unless it has adequate and reasonable grounds for setting aside precedent”.

**(b) Right to security of person**

50. As to the right to security of person, the National Civil Police provides protection to, and guarantees the personal safety and freedom of, members of the general public; it also prevents and combats all kinds of crime for the purpose of maintaining peace, order and security in urban and rural areas, having strict regard for human rights.

51. The National Civil Police Act, chapter III (Duties of the police), article 23, states: “The duties of the National Civil Police are: to enforce laws, regulations and ordinances; and to protect and guarantee the free exercise of citizens’ rights and freedoms throughout the land; among others.”

52. Under chapter V of the statute of the National Civil Police, article 31: “The police have a duty to: (1) Respect human rights, the Constitution and the law, whatever the circumstances in which they are called upon to carry out their mission.”

53. The PNC statistical records show no cases or complaints to date implicating members of the police force, public officials or private individuals in violations of the right to security of person, in violence or in attacks on personal integrity, on grounds of race.

54. In addition, as part of its programme to promote human rights within the police force, the PNC Human Rights Unit organizes, at the national level, annual information days on human rights, with particular emphasis on the most vulnerable groups.

**(c) Right to participate in elections**

55. Political rights are recognized to all Salvadorans - whether by birth or by naturalization, and without any distinction on grounds of race, sex or religion - who have reached the age of 18. These rights include: the right to vote; the right to form political parties in accordance with the law and to join existing parties; and the right to hold public office, subject to the provisions of the Constitution and subsidiary legislation.

56. In this regard, article 77 of the Constitution provides that an absolute prerequisite in order to vote is to be registered on the electoral roll, which is drawn up independently by the Central Election Board and is quite distinct from all other official registers.

57. Under article 78, the ballot shall be free, direct, equal and secret.

58. The right to vote also includes the right for all Salvadorans by birth or by naturalization to vote in referendums as provided for by the Constitution.

**Other civil rights**

59. Under article 1 of the Constitution, El Salvador recognizes the human person as the source and object of the activity of the State, which is organized for the attainment of justice, judicial security and the common good.

60. In consequence, it is the duty of the State to ensure that the inhabitants of the Republic enjoy liberty, health, culture, economic well-being and social justice.

61. Furthermore, article 2 provides as follows: "Everyone has the right to life, to physical and moral integrity, to liberty, to security, to work and to own property, and to be protected in maintaining and defending these rights. The right to honour, to personal and family privacy and to personal dignity shall be guaranteed. Compensation shall be provided under the law for moral prejudice."

62. Under article 3, all persons are equal before the law. No restrictions on the exercise of civil rights may be established that are based on differences of nationality, race, sex or religion. Hereditary offices or privileges shall not be recognized.

**Right to freedom of movement**

63. Under article 5 of the Constitution: "All persons shall be free to enter and remain in the territory of the Republic and to leave it, subject to the limitations established by law. Nobody shall be obliged to change their domicile or residence except by order of a judicial authority in the special cases and subject to the requirements established by law. No Salvadoran shall be expatriated, or prohibited from entering the territory of the Republic, or denied a passport for their return or other identification papers. Nor shall they be prohibited from leaving the country except by decision or judgement of a competent authority handed down in accordance with the law."

**Right to enter and leave the country**

64. This right, too, is recognized under article 5 of the Constitution: “All persons shall be free to enter and remain in the territory of the Republic and to leave it, subject to the limitations established by law. No Salvadoran shall be expatriated, or prohibited from entering the territory of the Republic, or denied a passport for their return or other identification papers. Nor shall they be prohibited from leaving the country except by decision or judgement of a competent authority handed down in accordance with the law.”

**Right to a nationality**

65. Article 90 of the Constitution accords nationality by birth in the following cases: “Persons born in the territory of El Salvador; children born abroad to a Salvadoran father or mother; persons originating in the other States which constituted the Federal Republic of Central America who, being domiciled in El Salvador, declare to the competent authorities that they wish to become Salvadorans; they are not required to renounce their nationalities of origin.”

66. There are two ways in which a foreigner may obtain Salvadoran nationality - by birth and by naturalization. The legal basis for the acquisition of nationality is set forth in the Constitution (arts. 90-100); the Aliens Act; the Migration Act; and, for Salvadoran nationality by birth, the 23 April 2001 judgement of the Constitutional Division of the Supreme Court.

67. Anyone may apply for nationality by birth if they are covered by article 90, paragraph 3, of the Constitution, which states: “The following are Salvadoran by birth ... persons originating in the other States which constituted the Federal Republic of Central America who, being domiciled in El Salvador, declare to the competent authorities that they wish to become Salvadorans; they are not required to renounce their nationalities of origin.”

68. The procedure for requesting nationality by birth involves submitting various personal documents such as a birth certificate, photographs and a passport, and completing an application form (Aliens Act, art. 38). The Ministry of the Interior then examines the application and the documents submitted, issues its decision (Aliens Act, art. 43) and sends a certificate to the applicant, with a copy to the Department of Migration, the Attorney-General’s Office, the Ministry of Foreign Affairs and the applicant’s municipality of residence (Aliens Act, art. 44, para. 3).

69. Anyone may seek nationality by naturalization if they are covered by article 92 of the Constitution, which states: “The following may become Salvadoran by naturalization: anyone of Spanish or Spanish American origin who has been resident in El Salvador for a year; nationals of any other country who have been resident in El Salvador for five years; anyone who is granted nationality by Act of Parliament for outstanding services to the country; and any foreigner, male or female, who is married to a Salvadoran and has been resident in the country for two years, whether before or after the marriage. Nationality by naturalization is granted by the competent authorities in accordance with the law.” Thus there are no restrictions of race, colour or nationality, for example, preventing anyone from seeking Salvadoran nationality.

70. The Constitution also gives Salvadorans by birth the right to hold dual or multiple nationality, in accordance with article 91, which states: “Salvadorans by birth have the right to hold dual or multiple nationality.” Thus there is no impediment on grounds of race to the acquisition of Salvadoran nationality.

### **Right to marriage**

71. Under article 6 of El Salvador’s Family Code: “Everyone has the right to form their own family, in accordance with the law.” Article 7 states: “The State shall encourage marriage. Its actions to that end shall be coordinated by the Procurator-General’s Office and shall be geared towards establishing a firm basis for the stability of marriage and more effective fulfilment of family duties.”

72. Article 12 states: “Matrimony is contracted and entered into by free and mutual consent of the parties, as declared to an authorized official and celebrated in accordance with the form and other requirements established in this Code; the parties are deemed to have entered into a contract for life.”

73. The commitment to encourage marriage is also reflected in article 32 of the Constitution, which states: “The family is the fundamental basis of society and shall have the protection of the State, which shall enact the necessary legislation and create the appropriate organizations and services for its formation, well-being and social, cultural, and economic development. Marriage is the legal basis of the family and rests on the juridical equality of the spouses. The State shall promote matrimony, but the absence thereof shall not affect the enjoyment of the rights accorded to the family.”

74. There is no restriction of any kind on Salvadorans marrying foreigners; this is borne out by the fact that, to date, the Department of Migration’s records show 2,308 cases of permanent residents marrying Salvadoran nationals.

### **Right to own property**

75. This right is also recognized in the Constitution, under articles 102, 103 and 105:

“Article 102. Economic freedom is guaranteed in all matters not prejudicial to the interests of society. The State encourages and protects the private ownership of property in order to augment the country’s wealth and make the benefits thereof available to the greatest possible number of its inhabitants.”

“Article 103. The right to private ownership is recognized and guaranteed as a social function. Intellectual and artistic property is also recognized, for periods and in the manner specified by law.”

“The subsoil belongs to the State, which may grant concessions for its exploitation.”

“Article 105. The State recognizes, promotes and guarantees the right to private ownership of rural estates, whether individual, cooperative, communal or by any other kind of community, and may not for any reason reduce the maximum land holding established as a property right in this Constitution.”

### **Right to inherit**

76. The right to inherit is governed by article 22 of the Constitution, which states: “Everyone has the right to dispose of their property freely under the law. Property is transferable in the manner established by law. There shall be no restrictions on the making of wills.”

### **Right to freedom of thought, conscience and religion**

77. These rights are established in articles 6 and 25 of the Constitution in the following terms: “Article 6. All persons may freely express and impart their thoughts, provided that they do not disturb public order or damage the morals, honour or privacy of others. Exercise of this right shall not be subject to prior examination, censorship or security, but any person who in exercising it breaks the law shall be held liable for the offence committed.”

78. In no case shall printing presses or their accessories or any other means of disseminating thought be confiscated as instruments of an offence.

79. Enterprises engaging in communication in print, by radio or by television, and other publishing enterprises, shall not be subject to takeover by the State or to nationalization either by expropriation or by any other procedure. This prohibition shall apply to the stocks and shares owned by their proprietors.

80. Article 25 recognizes the free exercise of all religions subject to no other limitation than the requirements of public morals and order. No act of religion shall be used to establish the civil status of persons.

### **Right to freedom of opinion and expression**

81. As mentioned above, this right is governed by article 6 of the Constitution.

### **Right to freedom of peaceful assembly and association**

82. The freedom of assembly and association is a right established in article 7 of the Constitution, which states: “The inhabitants of El Salvador have the right to associate freely and to assemble peacefully and without weapons for any lawful purpose. Nobody may be obliged to belong to an association.”

83. El Salvador also has the legal structure necessary to promote freedom of association, in the form of an Act on Non-Profit Associations and Foundations, which states (art. 1): “The purpose of this Act is to establish a special legal regime which shall apply to non-profit associations and foundations.”

84. Indigenous communities, for example, have successfully developed their *cofradías* (brotherhoods) and *cacicazgos* (chieftainships) as a means of maintaining their customs and spreading knowledge of their culture, and at the same time defending their rights as indigenous peoples.

85. These communities have various kinds of organizations, such as the *Alcaldía del Común* (People's Council), the *cofradías* with their associated *mayordomías* (guilds), and their councils, as well as their families, all of which are characteristic community organizations, as well as some of the traditional authorities which still survive.

### **Economic, social and cultural rights**

#### *Right to work*

86. The right to work is enshrined in article 2 of the Constitution, which states that: "Everyone has the right to life, to physical and moral integrity, to liberty, to security, to work and to own property, and to be protected in maintaining and defending these rights."

87. In view of the foregoing the State is obliged to use all means at its disposal to provide manual and professional workers with an occupation, and to ensure them and their families the economic conditions for a dignified existence. Likewise, it is obliged to promote work and employment for persons with physical, mental or social impairments or disabilities.

88. Employment is regulated by the Labour Code, the main purpose of which is to harmonize relations between employers and workers by defining their rights and obligations; it is based on general principles aimed at improving the living conditions of workers, in particular as set out in chapter II, second section, of the Constitution.

89. All Salvadorans and foreigners enjoy the right to free choice of employment, without any restrictions other than those prescribed by law.

90. The right to just and favourable conditions of work is recognized in the following articles of the Constitution: second section, articles 32 to 57, on work and social security. It is also recognized in various provisions of the Labour Code, including article 2 concerning aspects regulated by the Labour Code; article 12 concerning the principle of equal opportunities and treatment in employment; articles 55 to 57 concerning dismissal; articles 58 to 60 concerning compensation for unfair dismissal; and articles 62 to 64 concerning work subject to special schemes).<sup>1</sup>

91. It is also protected under the Labour and Social Security (Organization and Functions) Act,<sup>2</sup> article 1 of which states: "The Act defines the scope and composition of the labour and social security sector; the sphere of competence, functions and organizational structure of the Ministry of Labour and Social Security and its relationship with social security institutions.

92. In addition, El Salvador has ratified the following International Labour Organization (ILO) conventions:

- (a) Workmen's Compensation (Agriculture) Convention, 1921 (No. 12);

- (b) Forced Labour Convention, 1930 (No. 29);
- (c) Labour Inspection Convention, 1947 (No. 81);
- (d) Equal Remuneration Convention, 1951 (No. 100);
- (e) Abolition of Forced Labour Convention, 1957 (No. 105);
- (f) Indigenous and Tribal Populations Convention, 1957 (No. 107);
- (g) Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- (h) Labour Inspection (Agriculture) Convention, 1969 (No. 129);
- (i) Minimum Wage Fixing Convention, 1970 (No. 131);
- (j) Minimum Age Convention, 1973 (No. 138);
- (k) Occupational Safety and Health Convention, 1981 (No. 155);
- (l) Workers with Family Responsibilities Convention, 1981 (No. 156);
- (m) Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159);
- (n) Worst Forms of Child Labour Convention, 1999 (No. 182).

93. With a view to establishing harmonious relations between workers and employers, the Legislative Assembly issued Legislative Decree No. 859 of 21 April 1994 (published in the Official Gazette (No. 87 bis, vol. 323, 12 May 1994)), which refers to the establishment of the Higher Labour Council as a consultative body of the executive for the purposes of institutionalizing dialogue and promoting economic and social consultation between the public authorities and employers' and workers' organizations.

94. Similarly, on 11 April 1996, the Labour and Social Security (Organization and Functions) Act was passed. The Act establishes that it is the duty of the Ministry of Labour and Social Security to formulate, implement and monitor policies relating to labour relations, labour inspection, occupational safety and health, the working environment, social security and welfare and labour migration, as well as to promote, coordinate and assist in devising policies relating to employment, social security, professional training and cooperatives in the sector concerned.

95. The principle of equal remuneration for work of equal value was recognized first of all in the preamble to the Constitution of the International Labour Organization, adopted in 1919, and subsequently in the text of the constitutions of the ILO member States, it being considered that the failure of any nation to offer humane conditions of labour is an obstacle in the way of other nations which desire to improve conditions in their own countries.

96. The Constitution of El Salvador is no exception and enshrines this principle in article 38.1, which states: “When employed in the same enterprise or establishment and in identical circumstances, workers shall receive equal remuneration for equal work irrespective of their sex, race, religious beliefs or nationality.”

97. This principle is reflected in article 123 of the Labour Code, pursuant to which: “Workers who perform the same work in the same enterprise or establishment and in identical circumstances shall receive equal remuneration irrespective of their sex, age, race, colour, nationality, political opinion or religious beliefs.”

98. Both provisions are closely related to ILO Convention No. 100 concerning Equal Remuneration (1951), ratified by El Salvador on 12 October 2000, which makes it obligatory for ILO member States to apply the principle to all workers by means of national laws or regulations, legally established or recognized machinery for wage determination, collective agreements between employers and workers, or a combination of these various means.

99. The provisions are also related to ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation (1958), ratified by El Salvador on 14 July 1994, which establishes the principle that each member for which the Convention is in force undertakes to formulate and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation.

100. This principle is enshrined in article 12 of the Labour Code, which states that: “The State shall ensure respect for the principles of equal opportunity and equal treatment in employment and occupation, including access to vocational training.” The effective implementation of these principles implies that workers’ remuneration must be satisfactory.

101. The Constitution sets forth this principle in its article 9, which states that: “No one shall be obliged to perform work or provide personal services without fair compensation and his or her full consent, except in case of public emergency or other cases prescribed by law.”

102. Article 38.2 of the Constitution (second section, Labour and social security) further develops this principle when it states that: “All workers are entitled to be paid a periodically reviewed minimum wage. This wage is based primarily on the cost of living, the type of work, the method of remuneration, the production area, and other similar criteria. It must be sufficient to meet a worker’s normal material, moral and cultural household needs.”

103. The Labour Code also prescribes that wages shall be determined freely, but shall not be less than the minimum wage established in the manner laid down in the Code; similarly, failure to observe the principle of equal remuneration for men and women entitles the workers concerned to request the equalization of their wages (arts. 122 and 124). Lastly, under article 127 of the Labour Code, wages must be paid to the person concerned in full and on time.

104. With regard to the protection of employment, article 37.1 of the Constitution provides that labour is a social function, enjoys the protection of the State and is not considered as an article of commerce. Under article 37.2: “The State shall use all means at its disposal to provide

manual and professional workers with an occupation, and to ensure them and their families the economic conditions for a dignified existence. Likewise, it shall promote work and employment for persons with physical, mental or social impairments or disabilities.”

105. The foregoing implies that since labour is the principal factor in the country’s social and economic development, it warrants State protection, in other words, the State is obliged to generate sources of employment for its citizens. That calls for the adoption of an active employment policy as part of a coordinated economic and social policy, with a view to strengthening the labour market by expanding opportunities for vocational training, employment, access to resources and technical assistance, and providing for the organization of labour in such a way as to guarantee social harmony and create conditions of equality for the enjoyment of the benefits of development.

106. To that end, El Salvador has adopted an active policy of promoting full, productive and freely chosen employment as an important objective of the State, which has taken steps to ensure the enjoyment of justice, legal security and the common good.

*Right to form and join trade unions*

107. Article 47 of the Constitution (chap. II, Social Rights, second section, Labour and social security) provides that employers and workers in the private sector, without any distinction based on nationality, sex, race, religious beliefs or political opinions and regardless of the activity or the nature of the work performed, shall have the right of free association for the defence of their respective interests and to form professional associations and trade unions. Workers in autonomous public institutions shall have the same right.

108. This principle is fully developed in article 204 of the Labour Code, which provides that the following persons shall have the right of free association to defend their common economic and social interests by forming professional associations or trade unions, without any distinction based on nationality, sex, race, religious beliefs or political opinions: employers and workers in the private sector and workers in autonomous public institutions. It is prohibited to be a member of more than one trade union.

109. The result is that people can fully exercise the right of freedom of association through workers’ or employers’ associations whose purpose is to improve and defend the common and professional interests of their members.

110. The functions, duties and powers of these associations are set forth in their statutes in accordance with the law and the Constitution (Labour Code, art. 229), with the proviso that associations composed of employers and workers may not operate in the country since the law prohibits the organization and functioning of mixed associations.

111. Proof of the fact that the right to form and join trade unions is fully exercised in El Salvador are the 339 trade unions, 17 federations and 3 confederations duly registered with the National Department of Social Organizations.

112. All workers' trade unions require a minimum of 35 members to be set up and to operate. A minimum of seven members is required in the case of employers' associations (Labour Code, arts. 211.1 and 212).

113. The legal existence of any trade union is evidenced by the publication in the Official Gazette of the decision conferring legal personality on it or by the certificate issued by the Ministry of Labour and Social Security.

*Right to housing*

114. Pursuant to article 2 of the Constitution, everyone has the right to life, to physical and moral integrity, to liberty, to security, to work and to own property, and to be protected in maintaining and defending these rights.

115. Furthermore, article 119 of the Constitution provides that: "The construction of housing is declared to be of social benefit. The State shall ensure that as many Salvadoran families as possible become owners of their homes. It shall encourage all farm owners to provide resident workers with hygienic and comfortable accommodation, and appropriate facilities for seasonal workers; and it shall provide the owners of small farms with the necessary resources for that purpose."

*Right to public health*

116. As for the right to health, in order to satisfy the health requirements of the population the Government of El Salvador has decreed that primary health-care services should be free of charge. In all public health institutions health care is provided to those who request it, without any distinction based on belief, race or social condition. This is a constitutional right.

117. Under article 65 of the Constitution: "The health of the inhabitants of the Republic constitutes a public good. The State and individuals shall be obliged to ensure the protection and restoration of personal health. The State shall determine national health policy and shall monitor and oversee its implementation."

118. With a view to ensuring effective enjoyment of the right to health, the State recognizes health as a public good and accords great importance to primary health care, understood as being essential health care available to all individuals and members of the community without any distinction.

119. To extend health services to the municipalities most in need, a mobile hospital strategy has been implemented which will allow surgical operations and other procedures to be carried out by mobile teams. Indigenous peoples living in the interior of the country benefit from the same health services as the rest of the population.

120. To reach the greatest number of schoolchildren the Healthy School programme has also been implemented, in cooperation with the Ministry of Education and the Ministry of Health, covering 4,088 educational establishments and 750,000 children. All in all the Healthy School programme embraces more than 4,000 educational establishments in rural and marginal urban areas providing them with daily meals for 160 days.

121. Moreover, pursuant to article 146 of the Health Code (sect. 31, Preventive immunization) all people living in El Salvador are obliged to be properly vaccinated and revaccinated against whooping cough, diphtheria, tetanus, poliomyelitis, measles, tuberculosis and other diseases as deemed necessary by the Ministry of Health without any distinction. These vaccinations are made available to the population at large through campaigns organized by the Ministry, irrespective of the social conditions, religion, nationality, etc., of the target population.

122. With regard to the prevention and treatment of endemic, occupational and other types of diseases, the Human Immunodeficiency Virus (Prevention and Control) Act is being implemented (AIDS Act, 2001); its purpose is to prevent, monitor and regulate treatment of the HIV infection and to establish the obligations of persons carrying the virus and to define in general terms the national policy for the comprehensive treatment of HIV/AIDS, as well as to protect the individual and social rights of persons living with HIV/AIDS. Campaigns aimed at preventing sexually transmitted diseases (STDs) among different age groups are being carried out.

123. Under the Ministry of Health and Welfare's national programme for the treatment of STDs/HIV/AIDS universal access to antiretroviral treatment has been available in El Salvador since 2001 to all persons with HIV/AIDS who require treatment on the basis of criteria laid down in treatment protocols; there has been an increase in the prevention of mother-to-child transmission as a result of the free test administered to all pregnant women.

124. Moreover, efforts to locate and identify cases of tuberculosis have been stepped up. People suffering from the disease are guaranteed antituberculosis treatment through the DOTS strategy (directly observed treatment, short course). The tuberculosis prevention and control programme has national coverage, runs on a permanent basis, and forms an integral part of the work of the health bodies; treatment is completely free for any person who requests and needs it.

125. Education on the prevention and treatment of health problems is being provided through different strategies aimed at raising people's awareness of their responsibility in preventing disease and in seeking the appropriate type of treatment in the event of illness.

126. Coverage of health services has been extended to the most vulnerable groups through the essential health and nutrition services strategy (SESYN), which operates in the most vulnerable areas - 11 municipalities in the department of Ahuachapán and 9 municipalities in the department of Sonsonate - from which 147,101 inhabitants benefit.

127. Other activities that have been stepped up and targeted at the most vulnerable groups include:

Coverage of prenatal care (54 per cent);

Post-natal check-ups (47 per cent);

Check-ups for infants under one year (73 per cent).

*Right to education and training*

128. In El Salvador the right to education is recognized as a human right, and therefore no one may or should be denied the right to enjoy it; this is stated in the Constitution in the following articles:

“Article 53. The right to education and culture is inherent in the human person; consequently, it is a fundamental obligation and purpose of the State to preserve, promote and ensure the exercise of this right”;

“Article 54. The State shall organize the education system for which it shall create the necessary institutions and services. Natural and legal persons are guaranteed the freedom to establish private teaching centres.”

129. As stated in article 1 of the General Education Act education is a process of continuing personal, cultural and social training based on a holistic concept of the human being, his or her dignity, rights and duties.

130. Furthermore, according to article 3 of the Act, the main objectives of national education include:

To develop to the full the physical, intellectual and spiritual potential of Salvadorans, thereby preventing the imposition of restrictions on those who are capable of attaining a higher level of excellence;

To develop balanced study plans and programmes based on the indivisibility of learning so as to forge a fitting image of the human person in the context of the country's economic and social development;

To design teaching programmes in such a way as to ensure that all cognitive information promotes the development of mental functions and encourages sound habits and commendable feelings;

To cultivate a creative imagination, habits of thinking and planning, persistence in the pursuit of objectives, the establishment of priorities, and the development of a critical capacity.

131. Data from the Ministry of Education reflect an increase in national education coverage. In 2003 the overall enrolment rate at the pre-school level was 43.2 per cent, with 51.7 per cent in urban areas and 33.4 per cent in rural areas. The overall enrolment rate for basic education was 96.4 per cent for the same year; the overall enrolment rate for middle school education rose from 32.3 per cent in 1992 to 46.3 per cent in 2003.

132. It should be noted that the education system in El Salvador is available to indigenous children without any discrimination.

*Right to equal participation in cultural activities*

133. Pursuant to article 53 of the Constitution, the right to culture is inherent in the human being; consequently, it is a fundamental obligation and purpose of the State to preserve, promote and ensure the exercise of this right.

134. In El Salvador there exists a national network of cultural centres that promote popular participation in culture (without any discrimination) and are responsible for maintaining customs and traditions.

135. The Ministry of Education also has a project entitled “San Jacinto Recreational Cultural District”, intended to convert cultural and recreational services for people living in the San Jacinto area into an integrated system, to be known as the Recreational Cultural Complex, thereby preserving its historic character and ecological and landscape resources.

136. This project was launched in January 2003 to link up in a harmonious setting the buildings of the Museum of Natural History, the Military Museum, the Natural History Museum, the Zoological Park, the Saburo Hirao Park, the Venustiano Carranza Park, and squares and places of historical interest in the area, so as to create a new urban centre.

137. In addition, in 1996 the Ministry of Education and the National Council for Culture and the Arts launched efforts to encourage citizen participation as a driving force for promoting culture among Salvadoran people with a view to consolidating basic strategies to facilitate sociocultural development. To that end, the following objectives have been defined:

To contribute to cultural development by creating forums that allow and ensure access and participation by communities and the population at large in the organization and enjoyment of different cultural events at the local, regional and national levels;

To promote and disseminate forms of cultural expression with a view to promoting and encouraging culture among Salvadorans;

To strengthen and enhance the Salvadoran cultural identity with the participation of civil society;

To protect, preserve, restore and publicize the nation’s cultural heritage;

To support the development of an education system that conveys a holistic idea of culture and is closely related to and consistent with a national arts policy;

To strengthen the sense of belonging among Salvadorans.

138. Areas of cultural development are to be focused on:

(a) Cultural development forums, covering activities such as Floral Games, craft fairs, upgrading of cultural centres, cyberculture information centres, and identifying, promoting and publicizing traditional recreational games;

(b) Promotion and dissemination of culture: cultural and artistic activities including conferences and book presentations, writers' meetings, exhibitions, entertainment programmes including information and scientific and cultural programmes, teacher training, distance learning and continuing education;

(c) Arts: improving art teaching, promoting and publicizing the arts, encouraging creativity and artistic activity through festivals, training workshops and support to persons and groups engaging in artistic activities, inspection and refurbishment of the National Arts Centre for Educational Reform;

(d) Cultural heritage: the focus is on enhancing the value of and publicizing the national heritage in the form of documents and books, furniture and property, with reference to archaeological, historic, contemporary and intangible assets. This involves identification, research, conservation and protection of the national cultural heritage. The main activities will be the fitting out and display of exhibits at the Dr. David J. Guzman National Museum of Anthropology, restoring the National Palace, repairing infrastructure, and providing equipment and books for the National Library.

*Right of access to any place or service intended for use by the general public*

139. There is no national legislation which prohibits access to places and services intended for public use such as transport, hotels, restaurants, cafes, shows and parks.

### **Protection of vulnerable groups**

140. In addition to the information already contained in the report concerning action taken by the State authorities to protect people against all discriminatory acts, disaggregated information on vulnerable groups is provided below.

#### *Protection of women*

141. In keeping with the international instruments ratified by the country, including the Convention on the Elimination of All Forms of Discrimination against Women, and the activities of the Committee on the Elimination of Discrimination against Women (CEDAW) and the Fourth World Conference on Women: Action for Equality, Development and Peace, in February 1996 the Government and the Legislative Assembly set up the Salvadoran Institute for the Advancement of Women (ISDEMU) by Legislative Decree No. 644.

142. The Institute's mandate is to draw up, give advice on and ensure the implementation of the national policy on women, which is the outcome of a process of national consultation approved by the Council of Ministers.

143. The Institute's goals are to draw up, supervise, implement, give advice on and ensure the implementation of the national policy on women; to promote to that end the comprehensive development of women in El Salvador; to formulate, supervise, manage and monitor the implementation of the national policy on women; and to encourage the effective participation of women's organizations, the community and other civil society organizations in preventing and resolving problems facing women.

144. The Institute's mission is to promote and encourage the comprehensive development of women through the formulation and implementation of the national policy on women and to coordinate its effective implementation with citizen participation and encourage transparent management that includes measures to raise the awareness and consciousness of Salvadoran society concerning gender mainstreaming, equal opportunities and respect for women's rights.

145. It aims to be the lead institution in coordinating and managing action to promote equal opportunities for men and women, effective integration, and access to the benefits of the development of Salvadoran society.

146. The Institute is responsible for formulating, supervising, implementing and ensuring compliance with the national policy on women. To ensure follow-up it has established a national system for following up policy implementation.

147. The national policy on women embraces:

Legislation;

Health;

Labour;

Citizen and political participation;

Family;

Violence;

Agriculture;

Environment;

Media and culture.

148. It should be noted that in 2002 El Salvador submitted its sixth periodic report on implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

#### *Protection of indigenous peoples*

149. Unlike other Latin American countries, the cultural identity of the indigenous peoples of El Salvador is not immediately apparent since they do not have cultural traits by which an indigenous person from other areas is identified such as language and traditional dress.

150. Although in El Salvador there is no specific legislation providing for recognition of indigenous peoples, under the Constitution all persons are acknowledged as equal before the law and may enjoy civil rights without any discrimination based on nationality, race, sex or religion. Furthermore, article 58 provides that no educational establishment may refuse to admit students on the grounds of the nature of the marital union of their parents or guardians or on social, religious, racial or political grounds.

151. Article 62 provides that the indigenous languages spoken in El Salvador form part of the cultural heritage and shall be preserved, disseminated and respected.

152. This is the responsibility of the National Council for Culture and the Arts, which houses an Indigenous Affairs Unit, established in 1955. Its goal is to work for the recognition of and to provide support to Salvadoran indigenous peoples and organizations with a view to the dissemination and promotion of their culture. To that end cultural and scientific activities have been carried out at the national and international levels for the purpose of raising awareness among the Salvadoran population of the indigenous peoples and their cultural importance by raising their profile.

153. The mandate of the Indigenous Affairs Unit is to establish forums that enable and facilitate relations at different levels between indigenous community bodies and organizations, the Government of El Salvador, non-governmental organizations, and national and international cooperation agencies and institutions, as well as people and professionals dealing with indigenous affairs. The work done is of national scope, and takes place above all in the neediest municipalities, in most cases need being ascertained through approaches to local indigenous leaders.

154. Although there are no public policies on indigenous peoples as such, they are covered by public policies relating to the Salvadoran population as a whole. In addition, El Salvador has adopted measures to promote the cultural rights of indigenous peoples. The most important work has been carried out since 1988 and consists above all in preserving and disseminating the Nahuatl language by different methods, most often in the informal education system.

155. Indigenous peoples are also represented on the Multisectoral Technical Committee (CTMPI), set up in 2001. It brings together the Ministry of Health and Welfare, the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of the Environment, the Ministry of Agriculture and Livestock, and the indigenous peoples, and is chaired by the National Council for Culture and the Arts. It aims to take a global approach to the sociocultural problems of the indigenous peoples. In 2005 it is intended to revitalize the Committee, which has served to pool the resources of the Government, the indigenous peoples and international cooperation agencies.

156. The Committee's first task was the compilation of the Indigenous Profile of El Salvador, with the support of the World Bank; it was completed in 2001. In 2000, reflecting increased awareness of the situation of indigenous peoples in El Salvador, an agreement to conduct the study was signed by the Ministry of Education, the National Council for Culture and the Arts, the World Bank and the Technical Assistance Unit RUTA of the Ministry of Agriculture and Livestock. The study was carried out on a participatory basis with a view to producing a preliminary study on indigenous peoples in the country.

157. Indigenous representatives participated in the study and in compiling the document, which contains information on the indigenous peoples: their history, skills and knowledge; the main characteristics defining the indigenous person in El Salvador; the most representative indigenous organizations, and maps showing the indigenous peoples' current location and situation by means of indicators, including land use and incidence of poverty.

158. Another form of participation by the indigenous peoples is their direct contact with the Indigenous Affairs Unit, to which they submit matters for consideration. The Unit endeavours to find the necessary ways and means of resolving them.

159. Five ethnolinguistic congresses, in 1992, 1993, 1994, 1996 and 2001, and two indigenous peoples' symposia, have been held in El Salvador (the Indigenous Affairs Unit was established as a result of the third ethnolinguistic congress). In 2000 and 2001, the Indigenous Affairs Unit of the National Council for Culture and the Arts focused on the theme of intercultural education and preventive health and conducted 14 national workshops.

160. Other noteworthy activities by the Indigenous Affairs Unit include the revival of the Nahuatl language. The National Council for Culture and the Arts conducted a pilot programme to research the Nahuatl language in the west of the country, with the support of the Inter-American Indian Institute. Classes in the Nahuatl language were provided in 16 basic education schools from first to sixth grades in the departments of Sonsonate and Ahuachapán. The result is the publication of textbooks in the Nahuatl language. The following texts were also published: *Estudios Lingüísticos*, San Salvador, 1997; *Report of the IV Linguistic Congress*, San Salvador 1999. The Second Central American Indigenous Day on the Earth, the Environment and Culture was held in San José in 2000, in cooperation with the Salvadoran National Indigenous Coordinating Council (CCNIS).

161. In 2002, the National Council for Culture and the Arts also started working with indigenous women, and from 27 to 30 June 2002 the First Encounter of Indigenous Women was held in El Refugio, La Palma and Chalatenango with 150 participants. Its objectives were to visualize the role of aid in national development and to encourage an exchange of experience among women indigenous leaders nationwide. What is being proposed for the future is to seek ways of building on those experiences through local projects proposed by the leaders themselves.

162. In summary, the Indigenous Affairs Unit has worked in various areas with a view to raising awareness and opening up new forums for working with indigenous peoples in El Salvador.

163. In the field of education, El Salvador has laid emphasis on reviving and encouraging ancestral languages within the informal education system. For that purpose CONCULTURA has published literature by indigenous authors, such as a Pipil-Spanish/Spanish-Pipil dictionary, *Estudios Lingüísticos*, San Salvador, 1997, the Declaration of Human Rights was translated into Nahuatl Pipil and published in San Salvador in 1998. In the network of cultural centres there is an indigenous director in the community of Santo Domingo de Guzmán, Sonsonate; he teaches Nahuatl in his community's formal education system. Eight national workshops on intercultural education have taken place with the assistance of the United Nations Children's Fund (UNICEF). Support has been provided by indigenous teachers from Guatemala, the Ministry of Education and the Department of Bilingual Intercultural Education (DIGEBI). This is funded mainly by the Organization of Ibero-American States (OIS).

164. Training has been provided for two indigenous women in health matters and community museums in Washington DC, Bolivia and in Mexico. The training was carried out with the support of the Indigenous Fund, the World Bank and the Inter-American Indian Institute; at present they are involved in work being done in the communities of Cacaopera, Morazán and Sonsonate.

165. In the area of health a participatory study was conducted of indigenous peoples, health and living conditions in El Salvador. The study involved 12 communities in 7 departments and concluded with the publication of the book *Pueblos Indígenas, Salud y Condiciones de vida en El Salvador* ("Indigenous peoples, health and living conditions in El Salvador"), San Salvador, 1999. This project is significant because it was implemented with the participation of the Salvadoran National Indigenous Coordinating Council, which conducted the interviews in the field. It was funded by the Pan American Health Organization (PAHO). Five workshops on preventive health were organized at the national level with the support of UNICEF. The cultural centres in Izalco and Nahuizalco, communities where there is an indigenous presence, have carried out activities to promote traditional medicine, especially ethnobotany.

166. In the field of human rights the National Council for Culture and the Arts organized an indigenous peoples' rights day in 1999, with the assistance of the Inter-American Indian Institute. At the event there was discussion of ILO Convention No. 169 and the American Declaration on the Rights of Indigenous Peoples.

167. With regard to the environment, a forum on indigenous peoples and biological diversity was held in 1999, in cooperation with the Ministry of the Environment and Natural Resources and the Salvadoran National Indigenous Coordinating Council with a view to disseminating the Convention.

168. Moreover, the Department of Statistics and Censuses (DIGESTYC) is currently seeking funding for the planning of the next population census (2006-2007) and is considering the establishment of technical round tables to draw up the census questionnaire, which will include questions on the population's ethnic or racial origin.

#### *Protection of refugees*

169. Since the signing of the peace agreements in El Salvador, and the voluntary repatriation of thousands of Salvadoran families who were refugees abroad, El Salvador is no longer recognized as a country of origin for refugees but has become for the time being a country of destination for refugees.

170. The new Act on the determination of refugee status was approved in July in El Salvador and published in the Official Gazette (No. 148, vol. 356, 14 August 2002). The approval of the legislation was an important step in formalizing the determination of refugee status in El Salvador and the region.

171. The new instrument sets forth clear procedures under which refugees may request asylum and national institutions may examine their cases in accordance with the standards laid down in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

172. It is important to mention that pursuant to article 2 of the Act its provisions must be interpreted and applied in keeping with the principles of non-discrimination, non-refoulement, family reunification and voluntary repatriation, and in the manner that best guarantees the effectiveness of human rights and the fundamental guarantees laid down in the Constitution and in international treaties ratified by the State.

173. The new Act also provides for the establishment of a Commission for the Determination of Refugee Status (CODER), which is under the supervision of the Ministry of Foreign Affairs and the Ministry of the Interior. Previously, the Office of the United Nations High Commissioner for Refugees (UNHCR) was responsible for the determination of refugee status and the Government endorsed its decisions; however, since the withdrawal of UNHCR from the country in 1997 it is the Government that decides on refugee matters.

174. Article 35 of the Act, title VI, sole chapter (Rights and duties of refugees), provides that:

“Article 35. Persons who are refugees shall enjoy the individual and social rights recognized under the Constitution, treaties and laws, with the exceptions and limitations laid down by those legal instruments. Likewise they shall be obliged to respect the Constitution, the laws and the authorities of the Republic.”

#### *Protection of migrants*

175. Specifically for the protection of migrants, El Salvador has ratified the International Convention on the Protection of All Migrant Workers and Members of Their Families, approved by the United Nations General Assembly in December 1990; it was signed by El Salvador on 13 September 2002 and the instrument of ratification was deposited on 14 March 2003.

176. Article 7 of the Convention states that: “States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”

177. In addition these instruments guarantee the fundamental right of access to education for the children of migrant workers under the same conditions as nationals of the host country. They also provide that access to pre-schools or public schools may not be denied or restricted because of the parents’ situation as illegal migrants.

#### **Article 6**

178. With a view to guaranteeing the rights enshrined in the Constitution, the remedy of *amparo* has been established, and is developed further in the Constitutional Procedure Act. Article 3 of the Act states that: “Any person may submit a petition of *amparo* to the Constitutional Division of the Supreme Court of Justice in respect of violation of the rights accorded by the Constitution.”

179. The remedy of *amparo* is available in respect of all acts or omissions by any authority or official of the State or its subsidiary bodies or against final judgements handed down by the Division of Administrative Disputes that violate constitutional rights or hamper their enjoyment. When the injured party is the State, the Constitutional Division is obliged to order the discontinuation of the act in question.

180. Concerning the right to judicial protection, the Constitutional Division, in its decision of 30 August 2001 issued under the *amparo* procedure, stated that: “The right to judicial

protection has been established in the Constitution - article 2 - with the essential aim of giving effect to all the legal categories of rights relating to the individual, and to the power to appeal in due form against acts by individuals or the State that undermine the preservation, maintenance and defence of or entitlement to those categories of rights.”

181. This right constitutes explicit recognition of the recourse available to any person of bringing a legal action before the competent State organ to secure acknowledgement of a violation of one of these categories of fundamental rights. This constitutional provision obliges the State of El Salvador to offer the full protection of the courts to all its subjects against arbitrary or illegal acts that affect their legal rights.

182. The Constitutional Division considered the question of the right of access to justice in a judgement handed down in *amparo* proceedings on 9 February 1997, stating that: “We wish to draw attention to the following essential aspects of the right to access to justice: (a) free access to the courts, both single-judge and collegiate, in accordance with the procedures prescribed by law; (b) the right to obtain from the court a reasoned decision based on the law; (c) trial proceedings in which the parties are given the opportunity to exercise all the rights, obligations and responsibilities involved so that they may put forward their arguments in defence of their rights; (d) effective implementation of the judgement.”

183. With regard to the right to appeal, the Constitutional Division in its judgement in connection with *amparo* proceedings (ref. 714-1999) of 19 November 2001 stated that: “The right to appeal is a constitutional legal right whereby it is possible to challenge the content of a decision that causes harm so that the authority which took the decision or any other authority as appropriate may hear the case.”

184. The right to impugn or appeal against a decision falls within the proceedings provided for under the Constitution, and, as such, while grounded in law, is protected under the Constitution as a right of citizens which offers genuine protection by the courts.

185. Lastly, Salvadoran legislation has classified as an offence infringement of the right to equality, set forth in article 292 of the current Criminal Code under title XIV (Offences relating to the fundamental rights and guarantees of the individual), sole chapter (Fundamental rights and guarantees of the individual), which states: “Any public official or employee or public authority agent who on the grounds of nationality, race, sex, religion or any other personal circumstance denies a person any of the individual rights recognized by the Constitution shall be sentenced to a term of imprisonment of one to three years and shall be disqualified from holding the post or employment for the same period.”

186. It should be noted that in criminal matters, the Code of Criminal Procedure provides for the following remedies:

(a) Remedy of reconsideration. This remedy is admissible during a hearing only if the matter can be decided immediately without suspension of the proceedings. An application for reconsideration also signifies notice of intention to seek judicial review if the defect indicated in the application is not corrected and the judgement causes harm to the applicant. This remedy is available only against decisions on a legal point or interlocutory matter raised in the proceedings, when the court which handed down the decision is able to revoke or amend it;

(b) Remedy of appeal. This remedy is available against decisions of municipal courts and examining magistrates, provided that such decisions are appealable and also cause harm to the applicant. It is also available against decisions of an examining court in cases of preliminary proceedings for judicial misconduct and against court decisions on award of costs. The application must be submitted in writing with due supporting arguments to the court which handed down the decision within a time limit of five days. If the defendant is involved the application may be made orally in the respective notification;

(c) Remedy of judicial review. This remedy is available when the judgement is based on disregard or incorrect application of a legal rule. When the incorrect application of the cited rule constitutes a procedural error the remedy is admissible only if the applicant has sought correction of the error in due time or has given notice of his intention to apply for judicial review, except in the case of an annulment which cannot be revoked, in cases involving a defect in the judgement, and in cases of the annulment of the panel's verdict. Apart from the specific cases provided for by law, this remedy is available only against final judgements or acts terminating proceedings or a sentence, or which make it impossible for them to be continued, or which reject the quashing of a sentence, and against decisions terminating abbreviated proceedings;

(d) Remedy of judicial review of the facts. This remedy is available against an executory sentence, at any time but only for the benefit of the accused, in the following cases: (i) when the facts forming the basis for the sentence are incompatible with the facts established therein or in another executory sentence; (ii) when the disputed sentence is based on documentary evidence or the evidence of witnesses which has been declared false in a subsequent judgement; (iii) when the sentence has been handed down as a result of a perversion of the course of justice, bribery or violence or any other improper act whose commission has been declared in a subsequent judgement; (iv) when the sentence directly and manifestly violates a constitutional guarantee; (v) when subsequent to the sentence new facts or evidence come to light which separately or in conjunction with the facts and evidence already examined in the proceedings make it clear that the offence did not take place, that the accused did not commit it, or that it is not a punishable act; and (vi) when a more favourable criminal law should be applied.

## Article 7

### Information - the media

187. In El Salvador campaigns run by the Ministry of Education, have been launched aimed at raising awareness of and preventing violence; in cooperation with the United Nations Development Fund (UNDP) another campaign has been launched for the implementation of a programme entitled "Towards a society without violence", involving public security bodies such as the National Civil Police and the Metropolitan Police Force.

188. The "Towards a society without violence" programme has been supported by UNDP in El Salvador since 1998, and meetings, debates, research and analysis have been organized that serve as a basis for multisectoral policies to deal with the complex problem of violence in the country. The programme is being carried out with the participation of various actors representing public and private institutions.

189. Specifically, the programme aims to strengthen national capacity to understand and analyse the problem of violence, to train staff specialized in dealing with the problem, to strengthen national capacity to formulate, evaluate and implement policies, programmes and projects for preventing and dealing with violence, and to raise the awareness of citizens and the media.

190. There are also the campaigns by the Ministry of Education on education and values, which as mentioned in paragraphs 24 and 25 of the report, are intended to intensify and improve training on values at the different levels, and in the different types and sectors of the national education system, and to encourage the participation of the education community in the development of activities and experiences conducive to the daily practice of values that may and must be shared by society.

191. El Salvador also has the programme already mentioned in paragraphs 26 to 29 entitled “Strengthening values”, which has established a strong alliance with the media and has allowed for the development of activities to strengthen and promote values in Salvadoran society.

#### **Notes**

<sup>1</sup> The Labour Code of El Salvador may be consulted at the following address:  
<http://www.mtps.gob.sv/imagenes/codigo/codigo%20de%20trabajo.pdf>

<sup>2</sup> The Labour and Social Security (Organization and Functions) Act may be consulted on line at: <http://www.mtps.gob.sv/imagenes/ley/LEY%DE%20ORGANIZACION.pdf>

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