



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

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**Committee on the Elimination of Racial Discrimination**

**Consideration of reports submitted by States  
parties under article 9 of the Convention**

**Combined sixteenth and seventeenth periodic reports**

**Republic of El Salvador\*, \*\***

[22 January 2013]

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\* This document contains the combined sixteenth and seventeenth periodic reports of the Republic of El Salvador, due on 30 December 2012. For the fourteenth and fifteenth periodic reports and the summary records of the meetings at which the Committee considered them, see documents CERD/C/SLV/CO/14-15 and CERD/C/SR.2015 and 2040, respectively.

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

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## Abbreviations and acronyms

ACOLGUA	Association of Lenca Communities of Guatajiagua
CCNIS	Salvadoran Indigenous Peoples National Coordinating Council
CDHES	Human Rights Commission of El Salvador
CENTA	National Centre for Agricultural and Forestry Technology
CICA	Central American Indigenous Council
CICACALCO	Ciudad de los Morros (Suchitoto) Indigenous Association
CODEFAM	Marianella García Villas Committee of Relatives of Victims of Violations of Human Rights
COFEPESCA	Confederation of Artisan Fishermen of Central America
COMADRES	Monsignor Oscar Arnulfo Romero Committee of Mothers and Relatives of Political Prisoners, Missing Persons and Assassination Victims of El Salvador
COMAFAC	Committee of Mothers and Christian Relatives of Prisoners, Missing Persons and Assassination Victims
COMSE	Establishment Committee
CONAMYPE	National Commission on Micro-Enterprises and Small Businesses
COREMHIPAZ	Committee for the Recovery of Historical Memory of Peace
CPDH	Madeleine Lagadec Centre for the Promotion of Human Rights
CSJ	Supreme Court
DC	Consumer Protection Authority
DGME	General Directorate of Migration and Aliens' Affairs
DIGESTYC	General Directorate of Statistics and Censuses
ECOS	Community health-care team
FANTEL	Proceeds from the Privatization of ANTEL
FGR	Attorney-General's Office
FISDL	Social Investment Fund for Local Development
FSV	Social Fund for Housing
IFAD	International Fund for Agricultural Development
IIDH	Inter-American Institute of Human Rights
ILO	International Labour Organization
ILP	Freedom and Progress Institute
INCAS	Agricultural union of independent indigenous workers of El Salvador
INDIO	National association of organized indigenous workers
ISDEMU	Salvadoran Institute for the Advancement of Women
ISTA	Salvadoran Institute of Agrarian Reform

LEPINA	Child and Adolescent Protection Act
LOMP	Public Legal Service Organization Act
MAG	Ministry of Agriculture and Livestock
MARN	Ministry of the Environment and Natural Resources
MINEC	Ministry of Economic Affairs
MINED	Ministry of Education
MINSAL	Ministry of Health
MRREE	Ministry of Foreign Affairs
MTPS	Ministry of Labour and Social Security
NGO	Non-governmental organization
PAHO	Pan-American Health Organization
OTL	Legal Protection Office of the Archbishopric of San Salvador
PAC	Capital contribution and credit programme
PATI	Temporary Income Support Programme
PNC	National Civil Police
PNIEMS	National Plan for Equality, Equity and Elimination of Discrimination against Salvadoran Women
PRIPESCA	Central American fishing and aquiculture integration process
PRO BÚSQUEDA	Association for Tracing Children Missing as a Result of the Armed Conflict
PRODEMOR	Rural Development and Modernization Project
PRODEMORO	Project for the Rural Development and Modernization of the Eastern Region
RIISS	Comprehensive and Integrated Health-Service Networks
RNPN	National Registry of Native Persons
SCULTURA	Cultural Secretariat of the Office of the President
SIBASI	Basic Comprehensive Health System
SI-EITP	Comprehensive Inclusive Full-time School System
SINAI	National indigenous union of independent artisans
SIS	Secretariat for Social Integration
STP	Technical Secretariat of the Office of the President
VMVDU	Department of Housing and Urban Development

## I. Introduction

1. The Government of El Salvador hereby submits its combined sixteenth and seventeenth periodic reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, in accordance with article 9 of the Convention and on the basis of the recommendations formulated by the Committee on the Elimination of Racial Discrimination in paragraph 30 of document CERD/C/SLV/CO/14-15.

2. The information provided in this report is the result of an inter-agency team effort coordinated by the Ministry of Foreign Affairs and involving the following institutions: Ministry of Health (MINSAL), Ministry of Education (MINED), Ministry of Labour and Social Security (MTPS), Ministry of Agriculture and Livestock (MAG), Department of Housing and Urban Development (VMVDU), Supreme Court (CSJ), Attorney-General's Office (FGR), Cultural Secretariat of the Office of the President (SCULTURA), Consumer Protection Authority (DC), Salvadoran Institute for the Advancement of Women (ISDEMU), Salvadoran Institute of Agrarian Reform (ISTA), Social Fund for Housing (FSV), Social Investment Fund for Local Development (FISDL), National Civil Police (PNC), General Directorate of Migration and Aliens' Affairs (DGME) and General Directorate for Statistics and Censuses (DIGESTYC).

3. This report has been drawn up in accordance with the instructions provided in the Compilation of Guidelines on the form and the content of reports to be submitted by States parties to the international human rights treaties of 3 June 2009 (HRI/GEN/2/Rev.6). The Committee's concluding observations regarding the implementation of the Convention by El Salvador and contained in document CERD/C/SLV/CO/14-15 have been taken into consideration.

4. As stated by the Government of El Salvador in its oral report to the Committee in August 2010, the presence of indigenous peoples in the Salvadoran territory is recognized. The traditional negation of that reality had clearly led to the marginalization of the population group in question.

5. During the current administration, the Government has been implementing measures conducive to changing earlier attitudes. On 12 October 2010, in the framework of the First National Indigenous Congress, President Mauricio Funes Cartagena stated the following: "Let us officially finish with the historical negation of the diversity of our peoples and recognize El Salvador as a multi-ethnic and multicultural society. We are a society enriched by diversity. We must recognize that and therefore promote our diverse human, cultural, productive and social processes. This Government, your Government, is resolved to put an end to the policy of hiding the indigenous peoples and consigning them to oblivion. Through this event, we express our full determination to undertake specific action for their moral and, to the extent of available resources, material compensation." It is on that basis that the current Government is working with the indigenous peoples.

6. Against that background, El Salvador's Programme for Government refers to indigenous peoples in the following terms: "The Government shall build on a fair appreciation of the cultural, historical and ethnic heritage of indigenous peoples as part of the process of development of the country's cultural identities. It shall acknowledge the existence and rights of native or indigenous peoples and promote their institutional and legal recognition and the exercise of internationally established personal and collective

rights.”<sup>1</sup> This approach demonstrates the interest of the current administration in the promotion and respect of the rights of the indigenous peoples.

7. The current Government established the National Directorate for Indigenous Peoples and Cultural Diversity, attached to the Cultural Secretariat of the Office of the President. That National Directorate is responsible for promoting the recognition of indigenous peoples at the level of policy and rules; mainstreaming issues concerning indigenous peoples into the various public institutions; supporting and highlighting the cultural expressions of indigenous peoples; and bringing into relief the country’s population of African descent.

8. During the Human Rights Council seventh universal periodic review, held on 9–19 February 2010, El Salvador extended an open invitation to special rapporteurs and relevant working groups and undertook to continue promoting human rights and supporting the universal periodic review mechanism towards ensuring that human rights are respected and guaranteed in all countries.

9. In fulfilment of those commitments, the current Government has established a policy of full recognition of its human rights obligations under international instruments, including the State’s obligation to align domestic legislation with international law.

10. Accordingly, on 13–17 August 2012 El Salvador was visited for the first time by the United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples. Professor James Anaya was thus able to obtain first-hand information on the status of indigenous peoples in the country.

11. Moreover, as part of the preparation of the third, fourth and fifth national reports on the implementation of the International Covenant on Economic, Social and Cultural Rights and in line with the recommendation contained in CERD/C/SLV/CO/14-15, paragraph 27, the Government prepared in 2010 an updated version of its core document (HRI/CORE/SLV/2011).

## II. Implementation of the articles of the Convention

### Article 1

#### A. Definition of racial discrimination

12. Article 3 of the Constitution provides as follows: “All persons shall be equal before the law. No restrictions based on nationality, race, gender or religion may be imposed on the exercise of civil rights.” Yet the four attributes specified in that provision are the usual but not the sole conceivable bases of inequality: “other possible causes of discrimination should be identified — mainly through legislation and constitutional rulings — by rational criteria”.<sup>2</sup>

13. El Salvador recently adopted the Act on Equality, Equity and Elimination of Discrimination against Women,<sup>3</sup> article 6.3 (on “Ground rules”) of which defines the principle of non-discrimination as follows: “[...] *De jure* or *de facto* prohibition, direct or indirect, of discrimination against women, such discrimination being defined as any gender-based distinction, exclusion or restriction aimed at or resulting in impairing or

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<sup>1</sup> Programme for Government, 2009–2014: “Hope is born, change is coming”.

<sup>2</sup> Stay of proceedings decision of 19 October 2000, *Amparo* 82–99, preambular paragraph III 1.

<sup>3</sup> Decree No. 645 of 17 March 2011, Official Journal No. 70, vol. 391, 8 April 2011.

preventing the exercise of women's fundamental human rights and freedoms in all areas, regardless of any socioeconomic, ethnic, cultural, political or personal circumstances."

14. According to the Act, the Government, through the Salvadoran Institute for the Advancement of Women (ISDEMU), shall adopt, for each administrative period, a national plan stating and developing, in a comprehensive and coordinated manner, the general outline of Government policy on and general strategy for equality and elimination of discrimination that must govern the goals and activities of State institutions. The National Plan for Equality shall be based on the principles and spheres of responsibility established by the law.

15. Thus mandated, the Institute submitted on 10 December 2012 to the President of the Republic the First National Plan for Equality, Equity and Elimination of Discrimination against Salvadoran Women (PNIEMS), outcome of a process of extensive consultation with many women from the entire country, institutional and community-organization representatives and delegates, feminist and women's organizations, trade unions, trade associations, cooperatives, departmental cabinets and municipal governments. The Plan is aimed at guaranteeing the fulfilment of the constitutional principle of equality and of the State's obligation to eliminate all forms of discrimination preventing Salvadoran women from fully carrying out their civic role.

16. In relation to the Committee's recommendation that El Salvador should incorporate in its domestic legislation a definition of racial discrimination that would include all elements set out in article 1 of the Convention and the Committee's request the State should provide information on affirmative action in the light of general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination (CERD/C/SLV/CO/14-15, para. 13), it should be noted that, as stated earlier, such a definition has not yet been incorporated as requested. Salvadoran legislation, however, establishes the principle of non-discrimination through various provisions (annex 1).

**B. Information on whether the legal system of the State party allows or provides for special measures to secure the adequate advancement of groups and individuals protected under the Convention**

17. The information requested in this section is contained in paragraphs 141–174 of El Salvador's core document, updated in 2010 (HRI/CORE/SLV/2011).

**Article 2  
Legal framework and general policies to eliminate racial discrimination**

18. This information is contained in paragraphs 184–197 and 224–247 of HRI/CORE/SLV/2011.

19. In relation to the Committee's recommendation that El Salvador should amend its legislation to prohibit racial segregation explicitly and to undertake all necessary measures to prevent, prohibit and eradicate all practices of that nature in territory under its jurisdiction (CERD/C/SLV/CO/14-15, para. 16), it should be noted that, as stated earlier, although there is no legislation prohibiting racial segregation explicitly, the principle of non-discrimination is contained in various legal provisions, and the protection of inhabitants against any segregationist practices is thereby guaranteed.

20. The State of El Salvador is endowed with a system of civil rights and liberties consisting of the Public Legal Service (Attorney-General's Office, Office of the Human Rights Advocate and Counsel-General's Office), the judiciary and the Ministry of Justice and Public Security, which support the application of the principle of non-discrimination. Clearly, however, El Salvador, heeding the important recommendations of the Committee, must promote legislation and measures to prevent, prohibit and eradicate any practice involving racial segregation.

21. In relation to the Committee's recommendation that El Salvador should repeal the Amnesty Act and its the Committee's reiterated recommendation (CERD/C/SLV/CO/13, para. 15) that the State party should put into effect the recommendation made by the Inter-American Commission on Human Rights to adopt a programme of reparation and, where possible, material compensation for the victims (CERD/C/SLV/CO/14-15, para. 18), it should be noted that, although the General Amnesty (Consolidation of Peace) Act remains in force, the current Government is committed to abandoning the view of earlier administrations that the Amnesty Act is necessary for maintaining peace in the country. Under the system of responsibilities of the State of El Salvador, only the legislature has the power to repeal or amend the Act in question.

22. In that connection, the Supreme Court, in its ruling of 26 September 2000, held that, although the Amnesty Act is constitutional, judges may decide not to apply it when giving judgements on specific cases, adding that "it shall be for the judge to decide in each specific case when this exception applies, by means of an interpretation in keeping with the Constitution", and that "if the events which gave rise to the civil responsibility of a public official or employee have not been covered by an amnesty — because they involve crimes which cannot be the subject of an amnesty — or if the amnesty granted breaches the Constitution, the obligation to provide compensation may be asserted before the competent courts".

23. Regarding the recommendation of the Inter-American Commission on Human Rights to adopt a programme of reparation and, where possible, material compensation for the victims, the Ministry of Foreign Affairs (MRREE), in cooperation with the Technical Secretariat of the Office of the President (STP), promoted in 2011 and 2012 a series of measures, including the creation of joint working teams of the Government and various civil society organizations and associations for human rights in order to compile a registry of victims and their relatives, particularly with respect to the massacre at El Mozote; and agreements to implement such measures as, *inter alia*, the introduction of the community health-care team (ECOS, established in February 2012), assistance for agricultural and mechanical production, improvement of access roads, housing construction, lodging of older persons without a family and supply of drinking water.

24. Moreover, the Technical Secretariat and the Ministry of Foreign Affairs have launched an ongoing dialogue between the State and the victims and their representatives with a view to formulating a reparation plan for the victims of the massacre at El Mozote. The plan is to include in particular the following measures: identifying the deceased and surviving victims of the massacre and their relatives and providing them with medical and psychosocial care; creating spaces for asserting the dignity of the victims; facilitating the return of displaced victims; and promoting a social development programme in the area of the massacre.

25. The State expects that dialogue to help to identify the collective priority needs of the victims' relatives, dispersed in various villages and towns, and to lead to a comprehensive plan for the above reparative action, to be undertaken by the State. The ongoing dialogue is coordinated under the stewardship of the Social Dialogue Unit of the Office of the President, the El Mozote Human Rights Promotion Association and representatives of the Legal Protection Office of the Archbishopric of San Salvador (OTL), with the participation of many economic and social institutions of the State.

26. The General Directorate of Statistics and Censuses of the Ministry of Economic Affairs (DIGESTYC/MINEC) is developing and setting up the Unified Registry of Victims of Grave Human Rights Violations at the El Mozote Massacre and of their Relatives, a key tool for identifying, characterizing and assisting the persons in question. The aforementioned participatory process helps to determine the various aspects that the preparation of a registry of such a type and scope should cover. The registry aims to determine not only the number of assassinated and surviving victims and their relatives, but also their characteristics, such as, *inter alia*, gender, age, living conditions and urgent needs.

27. Dialogue with the victims has led to a consensus as to the key elements determining the scope of the registry, for instance the definition of a victim and a forced displacement victim, the geographic area covered by the registry, procedural outlines for access to information between the General Directorate of Statistics and Censuses and the El Mozote Massacre Victims' Association, criteria for inclusion in and exclusion from the registry, and registration procedures, namely house-to-house inquiries to identify victims and petition-based closed-ended registration of victims of forced displacement.

28. In the case of *Massacres of El Mozote and nearby places v. El Salvador*, on which the Inter-American Court of Human Rights pronounced itself on 25 October 2012, the State, in keeping with the policy of respect for human rights, acknowledged and fully admitted to the acts in question. The Court took a positive view of that recognition and of the apologies offered by the President of the Republic to the victims and survivors of the massacres at the twentieth anniversary of the signature of the Peace Accords on 16 January 2012. In its judgement, the Court held the Republic of El Salvador "internationally responsible for the human rights violations perpetrated by the Salvadoran Armed Forces in the massacres committed on December 11–13, 1981, in the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo, the canton of Cerro Pando and the Cerro Ortiz cave in the municipality of Morazán. The Inter-American Court also determined that the enactment by the Salvadorian Legislative Assembly of the General Amnesty Law for the Consolidation of Peace and its subsequent application in this case by the Second First-Instance Court of San Francisco Gotera is contrary to the letter and spirit of the Peace Accords, which, understood in light of the American Convention, reveals a grave violation of the State's international obligation to investigate and punish the grave human rights violations of the massacres of El Mozote and nearby places".

29. Accordingly, the State of El Salvador shall pursue the dialogue and the activities launched, in line with the stipulations of the judgement (annex 2).

30. In accordance with the statement made by President of the Republic at the eighteenth anniversary of the signature of the Peace Accords on 16 January 2010, Executive Decree No. 57, establishing the National Commission on Reparations for the Victims of Human Rights Violations in the context of the Internal Armed Conflict, was adopted and entered into force in May 2012.

31. The Commission, designed as an institutional mechanism for preparing proposals for collective reparations to the victims of grave violations of human rights, includes the

Ministers of Foreign Affairs, Defence, Health and Finance, the Secretary for Social Integration and human rights organizations representing the victims.<sup>4</sup>

32. Through the Ministry of Foreign Affairs, the Ministry of Health (MINSAL) and the Secretariat for Social Integration (SIS), the Commission has held meetings with the Committee for Historical Memory (*Comité Pro Memoria Histórica*) and the Committee for the Recovery of Historical Memory of Peace (COREMHIPAZ) in order to share their contributions to an inclusive State policy on reparations.

33. On the basis of that dialogue, the Ministry of Foreign Affairs coordinated and carried out, during the last quarter of 2011, the first stage of the registration of victims. That involved joint work on the proposed content of registration forms, logistic organization, financial management and field work carried out by the individual organizations. Approximately 2,031 families that include direct and indirect victims were registered through that first effort. The Ministry of Economic Affairs, through the General Directorate of Statistics and Censuses (DIGESTYC), which also provides technical advice and computer support in view of the second stage of the registration, is helping significantly by ensuring the electronic processing of the data contained in the said forms.

34. Coordination with the Ministry of Health (MINSAL), through the Right to Health Unit and the Basic Comprehensive Health Systems (SIBASIs) of the various departments of the country, began in the second quarter of 2011 with a view to timely care for patients referred by the aforementioned organizations as emergency cases in view of their state of health. The development and ongoing improvement of health care procedures for victims have been possible thanks to the energetic and proactive involvement of those organizations.

### **Article 3 Apartheid**

35. El Salvador has been a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) since 30 November 1979. However, no system comparable to the apartheid regime exists in the country.

### **Article 4 Prohibition and punishment of discriminatory activities**

36. Under article 292 of the Criminal Code, “public officials or employees, law enforcement officers or public authorities who, on grounds of nationality, race, gender, religion or any other personal attribute, deny a 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”.

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<sup>4</sup> Those organizations are: Committee for the Recovery of Historical Memory of Peace (COREMHIPAZ); Committee of Mothers and Christian Relatives of Prisoners, Missing Persons and Assassination Victims (COMAFAC); “Monsignor Oscar Arnulfo Romero” Committee of Mothers and Relatives of Political Prisoners, Missing Persons and Assassination Victims of El Salvador (COMADRES); Legal Protection Office of the Archbishopric of San Salvador (OTL); “Madeleine Lagadec” Centre for the Promotion of Human Rights (CPDH); Human Rights Commission of El Salvador (CDHES); Association for Tracing Children Missing as a Result of the Armed Conflict (PRO BÚSQUEDA); and “Marianella García Villas” Committee of Relatives of Victims of Human Rights Violations (CODEFAM). With the exception of COREMHIPAZ, all of these organizations have grouped their efforts under the Committee for Historical Memory (*Comité Pro Memoria Histórica*).

37. Moreover, under article 246 of the same Code, “anyone who commits an act of serious discrimination in the workplace on the basis of gender, 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 requirements or an administrative sanction and does not redress the financial harm caused by such an act shall be liable to imprisonment for six months to two years”.

38. As can thus be seen from the legislation in force, El Salvador has adopted provisions that 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.

39. With regard to measures taken to counter discriminatory or racist platforms, there are in the country no organized or other propaganda activities which promote and incite racial discrimination. As mentioned, El Salvador has had no cases of public authorities or public institutions, national or local, promoting or inciting racial discrimination. Nevertheless, was such conduct to occur, article 292 of the Criminal Code would apply.

40. In 2006, El Salvador adopted the Government Ethics Act, which elaborates on the principles of public ethics as follows: “Article 4. Public servants shall act in accordance with the following principles of public ethics: ... (c) Non-discrimination. Attending to persons requiring or requesting public services, without any discrimination based on nationality, race, gender, religion, ideology, political opinion or social or economic condition.”

41. According to the Supreme Court, a search for open or concluded cases involving complaints for racial discrimination has turned up no such records in the following magistrate’s courts: Guaymango, department of Ahuachapán; Cuisnahuat, Caluco and Santo Domingo de Guzmán, department of Sonsonate; San Fernando, Cancaste and San Antonio Los Ranchos, department of Chalatenango; San Antonio, Cinquera and Jutiapa, department of Cabaña; Santa Clara, department of San Vicente; Paraíso de Osorio, department of La Paz; Nueva Granada, Estanzuelas and San Agustín, department of Usulután; Carlina, department of San Miquel; and Cacaopera, Gualococti, Guatajiagua, San Isidro, San Simón and Joateca, department of Morazán.

42. In relation to the Committee’s recommendation that El Salvador should expedite national consultations with a view to modifying domestic legislation in order to bring it into conformity with the Convention and should provide information and statistics on legal actions and penalties for acts of racial discrimination committed by public officials or private individuals (CERD/C/SLV/CO/14-15, para. 17), note should be made that the judiciary is sensitive to the issue. Although an inquiry carried out in various magistrate’s courts regarding victims of racial discrimination revealed no complaints of such treatment, care for victims is a key item on the agenda and in the activities of the country’s judicial centres, which include Units of Care for Victims of Offences.

43. As an institution attached to the Ministry of Justice and Public Security, the National Civil Police (PNC) carries out specific work with the indigenous peoples in the municipalities of Izalco and Nahuizalco, department of Sonsonate. The National Civil Police takes specifically into consideration the Municipal Ordinance on the Rights of Indigenous Communities Established in the municipality of Nahuizalco. Beginning in 2011, the Human Rights Unit of the National Civil Police has organized, in police stations throughout the country, specific workshops on “Groups facing conditions and situations of vulnerability”, including the peoples of indigenous and African origin. That Unit has

planned direct arrangements with all communities of indigenous peoples, regarding in particular the issue of security.

## **Article 5 (1)**

### **Information grouped under particular rights**

#### **A. Right to equal treatment before the tribunals and all other organs administering justice**

44. The Supreme Court (CSJ) implements the Constitution, the law and the regulations within its powers, as outlined in article 182 of the Constitution and further specified in secondary legislation. In that framework, in conducting their main activity, namely the administration of justice, the Supreme Court and the other courts are responsible for providing all person with maximum access to justice as broadly and freely as possible, without any discrimination based on gender, race, social or financial status, nationality or age.

45. There exist currently in the country 322 magistrate's courts competent to hear any type of complaint. There are also courts for specific types of cases.<sup>5</sup> Every court has an obligation to receive complaints or applications from anyone seeking access to justice, regardless of race. The information required for filing a complaint does not include race but only, for court- or administration-related reasons, the applicant's name, age, gender and address.

46. The judges or magistrates of the Supreme Court, chambers and courts responsible for implementing the Constitution, the international instruments signed or ratified by El Salvador and the secondary legislation embodied in the various codes have a duty to prohibit within their jurisdiction any discrimination based on a person's race.

#### **B. Other civil rights**

47. The right to freedom of movement and residence within the country and the right to cross the national borders are exercised in accordance with article 13 of the Universal Declaration of Human Rights and article 5 of the Constitution. However, all nationals and aliens must comply with the migration requirements established under the security policies implemented by the Government.

48. The General Directorate of Migration and Aliens' Affairs (DGME) regulates the free movement of nationals and aliens in accordance with article 5 of the Constitution, worded as follows: "All persons shall be free to enter, leave or remain in the national territory subject to restrictions established by law. No one may be obliged to change 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, prohibited from entering the national territory, denied a passport for return or other identification papers or prevented from leaving the country except by decision or judgement of a competent authority, handed down in accordance with the law." With regard to aliens, the General Directorate is guided by article 97 of the Constitution, which provides that "the cases and

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<sup>5</sup> Namely, 22 family courts, 9 labour courts, 26 civil courts, 46 criminal first-instance courts, 21 criminal trial courts, 3 children's and adolescents' courts, 20 juvenile courts (for under age offenders), 11 civil and commercial courts, 6 specialized courts (for complex offences and organized crime cases) and 6 general courts (for any type of case). The Supreme Court comprises four chambers which hear, respectively, administrative, civil, criminal and constitutional cases.

manner in which entry into and residence in the national territory may be denied shall be established by law”.

49. Strict compliance with the provisions of the above article 5 of the Constitution is guaranteed as regards the right to leave any country, including one’s own, and to return to one’s country. Migration checks set up at any border post of the country are carried out in accordance with the Migration Act, article 1 of which provides as follows: “Migration control shall involve organizing and coordinating the services that verify the documents nationals and aliens entering and leaving the national territory; dealing with problems caused by such movements; and monitoring the aliens’ compliance with the law relating to their stay and activities in the country.”

50. Accordingly, the General Directorate must ensure that the entry and exit of nationals and aliens meet migration requirements. In the particular case of returning nationals who lack identification documents attesting to their Salvadoran nationality, all means of investigation are used to verify the information provided and thus avoid arbitrary treatment or acts.

51. In connection with the right to nationality, article 90 (3) of the Constitution is flexible when it comes to granting nationality of origin to any national of the countries of the former Federal Republic of Central America. As nationals of origin, the persons concerned are entitled to opt for certain privileges.

52. The Constitution also regulates the issue of double or multiple nationality (art. 91); lays down the theoretical basis of *jus soli* in relation to a specific territory and of *jus sanguinis* in direct relation to one’s ancestors (art. 90, paras. (1) and (2)); and complements the provisions on nationality in articles 92–94, establishing constitutional principles regarding Salvadorans by birth and naturalized citizens born in foreign States (other than those of the former Federal Republic of Central America).

53. The Constitution as a set of normative principles and secondary legislation, through specific provisions, establish modalities for granting or abandoning, grounds for revoking and procedures for recovering Salvadoran nationality. Procedures by which aliens may opt for such nationality are based on strict compliance with the relevant legal framework.

54. As regards measures taken to ensure that certain non-citizen groups are not discriminated against in terms of access to citizenship or naturalization, the Aliens’ Department of the General Directorate of Migration and Aliens’ Affairs is the body responsible for assisting aliens in connection with the various services that they request as tourists, residents or applicants for naturalization. Recent measures adopted to prevent the above discrimination include the consideration of all aliens entering the country as tourists and the standardization of requirements, proceedings and procedures for all nationalities.

55. Under articles 29, 31, 39, 40, 42, 43, 46 and 47 of the Migration Act and the Special Rentier-Residents Act, permanent residents must have their resident’s card authenticated in the year of acquisition of permanent resident status and every two years thereafter. Remunerated activities may be freely exercised under article 45 of the Migration Act, which provides that “any permanent resident may freely engage in paid or profit-making activities”. That implies equal rights and obligations in the area of gainful employment, regardless of nationality and without prior authorization.

56. Regarding measures adopted to reduce the number of cases of stateless persons, it should be noted that, although it has not ratified the Convention relating to the Status of Stateless Persons, El Salvador has signed it and, as a result, any person issued a document attesting such status is subject to no restriction on the freedom of movement. Under article 41 of the Migration Act, Salvadorans having abandoned their nationality and, for any reason, returning to El Salvador are regarded as permanent residents.

57. Regarding the application of different standards of treatment in the case of persons seeking citizenship and non-citizen spouses (female and male) of citizens, the treatment is egalitarian as a matter of constitutional principle and legal provision, since under article 3 of the Constitution, “all persons are equal before the law. No restrictions based on nationality, race, gender or religion may be imposed on the exercise of civil rights”.

58. Under article 3 of the Aliens Act, “foreigners within the national territory shall enjoy individual guarantees on an equal footing with nationals, subject to the limitations set forth in the Constitution and the secondary legislation of the country”. The provisions referred to establish no relevant distinction between nationals and aliens, men and women, civil partners and spouses, or citizens and non-citizens.

59. The right to marriage and choice of spouse is enshrined in articles 32–36 of the Constitution (chapter II on social rights, section 1, on the family). Article 32 is worded as follows: “The family is the foundation of society and shall be protected by the State, which shall enact the necessary legislation and create appropriate organizations and services for the formation, well-being and social, cultural, and economic development of the family. Marriage is the legal basis of the family and rests on the equality of the spouses before the law. The State shall encourage marriage, whose absence, however, shall not affect the enjoyment of the rights accorded to the family.”

60. The Family Code provides as follows: “Marriage is the legal union entered into by a man and a woman in order to establish a full and permanent life together” (art. 11); and “marriage shall be constituted and contracted by the parties’ free and mutual consent, declared to an authorized official and celebrated in line with the form and other requirements established in this Code. The parties shall be deemed to have entered into a contract for life” (art. 12).

61. Article 12 of the Aliens Act provides as follows: “With the exception of political rights, foreigners within the national territory shall enjoy the same rights and be subject to the same obligations as nationals. On grounds of public order or reciprocity, the State may restrict or impose special conditions on such rights and obligations.” Under article 15 of the Act, “in respect of requirements for its celebration, effects, assets, the spouses’ mutual rights and obligations, divorce or annulment, the marriage of foreign nationals, shall be governed by Salvadoran law”.

62. In relation to the right to own property, alone or in association with others, the right to personal and collective property, without any distinction based on nationality, is enshrined in the Constitution, which provides as follows: “All persons shall have the right to life, physical and mental integrity, liberty, security, work, property and ownership and the right to be protected in the preservation and defence of these rights” (art. 2); “the inhabitants of El Salvador shall have the right to associate freely and to assemble peacefully and without weapons for any lawful purpose. No one may be obliged to belong to an association. No one may be limited in or prevented from exercising any lawful activity on grounds of not belonging to an association. Armed groups of a political, religious or trade-union nature shall be prohibited” (art. 7); and “every person may alienate freely his or her property in accordance with the law [...]” (art. 22).

63. Article 103 of the Constitution provides as follows: “[...] the right to private ownership shall be recognized and guaranteed as a conferred right. Intellectual and artistic property shall also recognized, for periods and in the manner specified by law. The subsoil shall belong to the State, which may grant concessions for its exploitation.” Under article 18 of the Aliens Act, “ownership, possession, methods of acquisition and registration of movable and immovable assets of foreigners, and any rights established on such assets, shall be governed by Salvadoran law”.

64. On the right to inherit, the provisions in force imply no differentiation between nationals and aliens. Thus, under article 22 of the Constitution, “every person may alienate freely his or her property in accordance with the law. Property shall be transferable in the manner established by law. The drawing up of a will shall be free”. The relevant provision of the Aliens Act is quoted in the preceding paragraph.

65. In relation to the right to freedom of thought, conscience and religion, article 6 (1) of the Constitution provides as follows: “All persons may freely express and impart their thoughts, provided that they do not disturb public order or cause harm to 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.” In connection with nationality, article 97 of the Constitution provides as follows: “The cases and manner in which entry into and residence in the national territory may be denied shall be established by law. Foreigners who participate directly or indirectly in internal politics shall forfeit the right to residence.”

66. The right to religiousness or religion is subject to no precondition or distinction. Article 25 of the Constitution provides for no difference between nationals and aliens and is worded as follows: “The free exercise of all religions, subject to no limitation other than the requirements of public morals and public policy, shall be guaranteed. No religious act shall serve to establish the civil status of persons.”

67. Under article 45 of the Migration Act, “the Ministry of the Interior shall grant permanent resident status to catholic priests and monks at the request of the competent church authority, which for the purposes of this Act shall be the Apostolic Nunciature or the Ordinary concerned”.

68. On the right to the freedom of opinion and expression, article 6 of the Constitution provides as follows: “All persons may freely express and impart their thoughts, provided that they do not disturb public order or cause harm to 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. In no case shall printing presses or their accessories or any other means of disseminating thoughts be confiscated as instruments of an offence. Print, radio, television and other media enterprises may not be taken over by the State or nationalized by expropriation or by any other procedure. This prohibition shall apply to the stocks and shares owned by their proprietors. The above-mentioned enterprises shall not apply different tariffs or engage in any other kind of discrimination on the basis of the political or religious nature of the material published or broadcast. The Constitution recognizes the right of reply as a means of protecting the fundamental rights and guarantees of the person. Public performances shall be subject to censorship in accordance with the law.”

69. With respect to the right to freedom of assembly and association, the Constitution provides as follows: “The inhabitants of El Salvador shall have the right to associate freely and to assemble peacefully and without weapons for any lawful purpose. No one may be obliged to belong to an association. No one may be limited in or prevented from exercising any lawful activity on grounds of not belonging to an association. Armed groups of a political, religious or trade-union nature shall be prohibited.”

70. In relation to the Committee’s recommendation that El Salvador should grant legal recognition to indigenous peoples in domestic law and to provide an update on the motion for Constitutional Reform for the Recognition of Indigenous Peoples in El Salvador (CERD/C/SLV/CO/14-15, para. 14), Constitutional Reform Agreement No. 5 of 25 April 2012 (Official Journal No. 84, vol. 395, 9 May 2012) aims to amend article 63 of the Constitution through the addition of the following clause: “El Salvador recognizes the

indigenous peoples and shall adopt policies to preserve and develop their ethnic and cultural identity, world view, values and spirituality.”

71. The preamble of the above Agreement states the following: “Throughout history, the identity of the indigenous population of El Salvador has been ignored. Accordingly, the Salvadoran State must admit that the population includes groups with distinct beliefs, traditions, culture and world view, entitled to special protection with regard to their specificity and their time-honoured ways of life and practices.” It is hoped that, during the current legislature, at least two thirds of the deputies will vote in favour of the Agreement, so that it is ratified.

72. Note should be taken of the Municipal Ordinance on the Rights of the Indigenous Community of Izalco (Official Journal, 25 April 2012), second such instrument to be adopted in the department of Sonsonate, after the Municipal Ordinance on the Rights of Indigenous Communities Established in the municipality of Nahuizalco, referred to in the August 2010 oral report to the Committee.

73. In February 2012, El Salvador signed the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, which provides for the protection of the knowledge of indigenous peoples relating to genetic resources. In order to promote the Protocol, the Ministry of the Environment and Natural Resources (MARN) began in March and April 2012 to organize, in the west of the country, workshops attended by many indigenous representatives of that area, who candidly stated their complaints and concerns.

74. In relation to the Committee’s reiterated recommendation that El Salvador should take the necessary legislative steps in order to ratify International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) (CERD/C/SLV/CO/14-15, para. 15), the Ministry of Labour and Social Security has drawn up an advisability assessment of that Convention, as a contribution to the related discussion. That assessment is currently examined by the Higher Labour Council, in search of an official position on the subject.

75. Through training for civil servants of State bodies, the Ministry of Foreign Affairs supports the Cultural Secretariat in the process of raising awareness of the situation and rights of the country’s indigenous peoples.

## **Article 5 (2)**

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

#### **A. The right to work**

76. In relation to the right to the work, the Ministry of Labour and Social Security (MTPS) is developing a strategy of decentralization and devolution of public employment services. Known as the National Employment Network, the strategy builds on a regional approach to such services, offered with the support of key local actors.

77. The National Employment Network currently comprises 58 job centres at the national level. They provide job placement services, occupational orientation, and information on advanced training courses and on the labour market. As a result, job placement indicators have increased by 85 per cent compared to previous years. That regional strategy enables enterprises to hire skilled labour from their own area, thereby reducing to a certain extent labour migration towards other municipalities.

78. The Ministry of Labour and Social Security has set up job centres in municipalities with a high concentration of indigenous people, such as, in the west of the country, Sonsonate and Izalco, department of Sonsonate; and, in the central zone, Tepecoyo, department of La Libertad; Cojutepeque, department of Cuscatlán; Santiago Nonualco, department of La Paz, and Nueva Concepción, department of Chalatenango (annex 3).

79. In the department of San Salvador, the municipalities of Panchimalco, Rosario de Mora, Santiago Texacuangos and Tonacatepeque have no job centres. The Ministry of Labour and Social Security employment agents, however, offer their services on a weekly basis through the Temporary Income Support Programme (PATI) of the Government. The support consists in occupational orientation, registration in a database and search for a decent job.

80. Thus, users of job centres set up in the above municipalities receive the following services: registration in the Ministry of Labour and Social Security database, job placement and employment-related guidance (through specialized workshops or personalized counselling).

## **B. The right to form and join trade unions**

81. According to the current records of the National Department of Social Organizations in the Ministry of Labour and Social Security, the following four professional associations of indigenous peoples are authorized:

(1) Integración Nacional de Indígenas Organizados (National association of organized indigenous workers) (INDIO), established on 19 March 2000, incorporated on 8 May 2000 and with a current membership of 65 (29 men and 36 women);

(2) Sindicato de Trabajadores Independientes Indígena Campesino de El Salvador (Agricultural union of independent indigenous workers of El Salvador) (INCAS), established on 20 March 2004, incorporated on 28 August 2006 and with a current membership of 38 (23 men and 15 women);

(3) Sindicato de Trabajadores Independientes Comunal Coordinador Nacional Indígena Salvadoreño (Salvadoran Indigenous Peoples National Coordinating Council) (CCNIS), established on 26 January 2006, incorporated on 4 April 2006 and with a current membership of 38 (15 men and 23 women);

(4) Sindicato Indígena Nacional de Artesanos Independientes (National indigenous union of independent artisans) (SINAI), established on 20 May 2006, incorporated on 13 September 2006 and with a current membership of 41 (26 men and 15 women).

82. The above associations were fully identified as indigenous upon establishment. As attributes such as ethnic group, race or religion of an association's membership are not verified, it is not known whether other legally registered organizations have indigenous members.

83. The National Department of Social Organizations has undertaken to launch a training, dissemination and counselling campaign on the right to organize, addressing the indigenous peoples.

## **C. The right to housing**

84. The Social Fund for Housing (FSV) Act and the related basic implementing regulations define clearly the use to be made of resources: they specify that the mission of

FSV consists in any action designed to provide workers with comfortable, healthy and safe housing. That mandate is reflected in institutional credit standards, particularly with regard to prerequisites to be met by borrowers. Those standards are clearly based on the policies governing access to housing or related support through FSV and contain no element conducive to discrimination based on political views, race, gender or religion.

85. That is corroborated by the results of the FSV credit programme, which in the period June 2009-June 2012 provided a total of 18,400 families with housing solutions in the amount of US\$ 277.32 million, of which 44.4 per cent were absorbed by women and 55.6 per cent by men.

86. In addition, in order to fulfil its mission, FSV may draw on various alternative sources of credit under a series of programmes, such as those providing loans for private and public sector workers, the “Casa para Todos” (homes for all) Programme, the “Vivienda Cercana” (nearby homes) Plan, the Contribution and Credit Programme (PAC), which is for workers with variable incomes, and the Retired Worker Credit Programme.

87. In order to highlight the housing concerns of indigenous peoples, the Department of Housing and Urban Development (VMVDU) organized in January 2012 between the head of the department and representatives of the Native People’s National Coordinating Authority of El Salvador and other indigenous groups a meeting, during which a working agenda was established by the two sides to facilitate discussion on the issue of indigenous housing based on full respect for the world view of the persons concerned.

88. The Department is currently formulating “Comarca Indígena” (indigenous area) pilot project for indigenous housing, in relation to which various meetings with indigenous leaders took place in the first half of 2012. In that process, the indigenous organizations’ views and recommendations, which are important, were taken into consideration with a view to their incorporation into the project.

89. Although the Department lacked actual experience with projects designed for the population groups in question, the bilateral meetings held with the Multisectoral Forum of Indigenous Peoples, which is coordinated by the Cultural Secretariat of the Office of the President, launched a process for outlining a preliminary conceptual framework for the above project, based on proposals formulated during the discussions. In that context, a problem tree, drawn up and discussed in a workshop held between social sector experts and native peoples’ representatives, helped to identify some of the causes of housing shortages in the indigenous sector.

90. The Department is aware of the need to launch a programme aimed at typical indigenous families, not only to show the State’s recognition of their existence, but also because the Salvadoran indigenous population deserves such a project. In that spirit, fund-raising through cooperation with national and international institutions shall proceed in parallel with the development of the preliminary framework and its various components.

91. One of the difficulties encountered in that process consists of a lack of financial and human resources for the feasibility assessment stage, which requires relevant ethnographic research on housing; and of basic information for project formulation, expansion and improvement. Accordingly, efforts are made to secure further technical assistance and coordination through inter-agency procedures, continue raising awareness of indigenous issues among VMVDU experts and keep developing the project outline, while at the same time seeking cooperation mechanisms.

92. According to the Salvadoran Institute of Agrarian Reform (ISTA), in three years of activity the Government has granted 34,325 ownership titles to peasants and plans to attain the level of 35,000 titles in the coming months, compared to 34,000 such titles granted during the preceding 20 years. The Government’s objective is 50,000 titles.

93. Many of the recipients of the above titles have been living on the land concerned since before the agrarian reform of 1980. Others joined them later under the pressure of poverty and the need to find a place for at least a rickety dwelling. Ownership titles entitle the beneficiaries to basic water-supply and lighting services for their houses and to technical assistance and agricultural packs from the Ministry of Agriculture and Livestock.

94. The Salvadoran Institute of Agrarian Reform enhances the legal certainty of housing tenure by developing appropriate policies, plans and programmes. Accordingly, as part of efforts to support poor population groups by facilitating access to land for women, the indigenous population and vulnerable population categories, the agreement known as “Proposed solution for persons demobilized from local government services (former paramilitaries)” was concluded in December 2011 between the Government and the associations of former paramilitaries. The agreement provided for, *inter alia*, granting building plots or sites to those demobilized in 1992 who had not received that benefit when the Peace Accords were signed on 16 January 1992.

95. In the above agreement, it was recommended to the Institute to implement Agricultural Community Settlement Projects and Farm Land Subdivisions in order to secure financing for former paramilitaries. The Rural Solidarity Programme was thereby initiated. At the same time, the Landless Peasants Programme was created for landless and financially and socially vulnerable persons or families that, not being former paramilitaries, do not qualify for the Rural Solidarity Programme. The Landless Peasants Programme provides resident indigenous communities engaged in farming with access to land allocated by the Institute within the agrarian legal framework in force, and in that manner enables them to exercise, as other beneficiaries, the right to improve their standard of living.

#### **D. The right to public health, medical care, social security and social services**

96. Addressing the citizens on 15 September 2010, the President of the Republic made the following statement: “The most far-reaching reform that we have launched is the creation of the new National Comprehensive Health System. That revolutionary initiative, that profound change, will make medical care available to every Salvadoran, starting with those who had never received such care before, the poorest, the excluded... In sum: health is my Government’s priority.” The Health Reform was officially launched on 20 September of the same year.

97. Backed by the current administration’s political will to build the National Comprehensive Health System in accordance with the citizens’ needs, the above reform aims to ensure the full exercise of the human right to health; and reveals a long-term commitment to eliminating inequalities in respect of health and progressing, on the basis of solidarity, towards universal coverage.

98. The Health Reform is based on the following eight key elements: (1) Comprehensive and Integrated Health-Service Networks (RIISS); (2) Emergency medical services; (3) Medicines and vaccines; (4) National Health Institute; (5) National Health Forum; (6) Intersectoral and intrasectoral work; (7) Health-related planning and strategic information; and (8) Human resources of the health sector. These factors are politically and institutionally crucial to the development, strengthening and sustainability of the reform.<sup>6</sup> Currently, 74 municipal and inter-municipal micro-networks, 16 departmental and 5 regional networks and the national network are in operation.

<sup>6</sup> Ministry of Health, Report on the Work of the Ministry, 2011–2012, p. 14.

99. The comprehensive health care model with a family- and community-based approach implemented by the Ministry of Health as part of the Reformation de Health relies on promotion, prevention, control of health factors by the citizens and search for solutions combining effectiveness, solidarity, equity and intersectoral action.<sup>7</sup>

100. The comprehensive health care model with a family- and community-based approach operates through the above networks, whose aim is to ensure access of the population to sustainable, appropriate and effective health services by means of a fair and efficient distribution of resources through community participation.<sup>8</sup>

101. The model is developed by family-oriented community health-care teams (family ECOSs), responsible for the health of the entire population under their purview and applying essential ethical and moral principles. To that end, such teams must know their environment and identify, together with the community and with the help of formal and informal leaders, the factors underpinning the health of the population concerned. Those factors include the self-identification of the indigenous family.<sup>9</sup>

102. Since 2010, that information has been obtained by means of the family record, a tool used for the identification of the social determinants of health at the community level. The record is filled out during a home visit aimed at an overall perception of the person, the family, their surroundings, environmental and housing conditions and interpersonal relations and the functioning of family ties.<sup>10</sup>

103. In 2010, the Ministry of Health incorporated into the family record, viewed as a country-wide Health Reform tool for the said identification of determinants, a component on indigenous peoples. Instructions for filling out the record include a definition of indigenous peoples, based on information provided by indigenous leaders and the relevant literature.

104. The family record has been used by family ECOSs (each comprising a physician, a nurse and a health worker) to obtain from every family in the team's area of responsibility information regarding the family's multicultural identification among the Nahuatl-Pipil, Lencas, Kakawira and Chortí peoples.<sup>11</sup> On the basis of that information, it has been determined that 8.8 per cent of the families covered by the comprehensive health care model with a family- and community-based approach at the national level identify themselves as indigenous.

105. In 2011, work was launched on drawing up a preliminary proposal for an intercultural approach to health in those areas with a strong indigenous heritage in which family ECOSs operate. That includes developing a critical path to defining the intercultural approach as part of the Intercultural Health Plan. Currently, that process, led by the National Directorate for Indigenous Peoples and Cultural Diversity and supported by the Pan-American Health Organization (PAHO), is in full progress and is aimed at facilitating the creation of spaces necessary for achieving synergy between the two models and raising awareness within the sectors concerned.

106. In view of the above facts and commitments to the indigenous population's health, the Brazilian Cooperation Agency (ABC) backed in 2012 a project entitled "Support for health care activities and training for indigenous councils in El Salvador" and aimed at

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<sup>7</sup> Ministry of Health, "Operational outline for the development of activities in family-oriented or specialized community health-care teams (family or specialized ECOSs)", p. 13. First edition 2011, Ministry of Health.

<sup>8</sup> *Ibid.*, p. 30.

<sup>9</sup> *Ibid.*, p. 41.

<sup>10</sup> *Ibid.*, p. 42.

<sup>11</sup> Corroboration of this last piece of information is pending.

assessing the health care situation of the country's indigenous peoples, developing a plan for training health workers in the intercultural approach and promoting activities related to social oversight by indigenous organizations, in coordination with the Cultural Secretariat of the Office of the President.

## **E. The right to education and training**

107. Under the Social Educational Plan 2009–2014, the inclusive full-time school model is implemented in line with a new attitude towards education and with a view to improving learning and ensuring access, retention and successful completion. The model aims at establishing schools that are equitably organized, provided with the technical and material resources required by their context, capable of self-evaluation, methodologically innovative, making use of local advantages and bent on steady improvement.

108. That model implies zero tolerance towards any type of discrimination, priority of the best interests of boys and girls in the educational process, promotion of all-round training in values, including personal diversity, use of various approaches to learning, and encouragement of the participation of the family and the community.

109. The Ministry of Education has initiated inclusive processes within the educational system and has worked on the implementation of an inclusive education policy (annex 4), the readjustment of the Ministry's relevant rules and the promotion of human rights education. That process is supported by the Inter-American Institute of Human Rights (IIDH) on the basis of a cooperation agreement signed with the Ministry of Education in December 2009.

110. As progress in strengthening comprehensive sexual education with a rights and gender approach from infancy through adolescence has shown, the Ministry of Education has taken into consideration Executive Decree 56 of 2010 on the prohibition of discrimination based on sexual orientation,

111. Administrative measures have been adopted in the areas of education and learning in order to combat prejudices that lead to racial discrimination. Accordingly, human rights education has been strengthened and a ministerial commission, in which all ministry directorates, departments and divisions participate, has been set up to review and manage human rights mainstreaming into every high-priority educational programme and to follow up on the implementation of relevant recommendations.

112. Currently, a pedagogical outline is being developed for the implementation of the relevant commitments and legal framework. Over and above holding awareness-raising and commitment-review meetings, the task of the above commission consists in ensuring that relevant information is disseminated to all schools of the country.<sup>12</sup>

113. Activities carried out under the Programme of Education in Human Rights, Values and Civic Mindedness include equal opportunities education; promotion of the human rights of children, adolescents, women, indigenous peoples and persons with disabilities; environmental and family education; and dissemination of information on the educational commitments enshrined in ratified international instruments and on their fulfilment.

114. Under the Social Educational Plan 2009–2014, curricula are being readapted in order to ensure the sustainability of processes launched through successful pilot projects. In the current year, the contents of nursery and first-, second- and third-cycle education were validated; the contents of secondary education are being developed; and teachers' training is being designed, first on a general human rights basis and subsequently in view of sexual

<sup>12</sup> Information provided by the Sonsonate departmental directorate of education, 13 August 2012.

education requirements specific to the psychological development of the various age groups.

115. With World Bank and Italian Development Cooperation funding, work is under way to integrate the above subjects into the training of teachers and other educational actors in the interests of inclusive education, related processes, and the elimination of any form of discrimination against any social group.

116. Non-discrimination measures in the educational system are facilitated by the Inclusive Education Policy, complemented by the Educational Social Plan 2009–2014, “Let’s go to school”, and the inclusive full-time school educational model aimed at reducing the drop-out rate, enhancing educational opportunities at school centres or community establishments, and promoting harmonious relations and the culture of peace in the school.

117. The profound changes systematically introduced into Salvadoran education since 2009 under the Comprehensive Inclusive Full-time School System (SI-EITP) facilitate the expansion of evolving school-community and school-region relations to the municipalities with an indigenous population.

118. The pedagogical component of the system includes a proposal, concerning the country as whole, for educational centres with community participation and a focus on the learners’ characteristics so as to identify the skills required for development in the local context. The related Pedagogical Technical Assistance and teacher’s training procedures are based on an approach respectful of intercultural relations.

119. In the regional organization component, particularly with regard to the developmental organizational model, consideration is given to setting up an establishment committee (COMSE) as a body providing advice and support to the school centre concerned.

120. In relation to the Committee’s recommendation that El Salvador should step up its efforts to improve the enjoyment by indigenous peoples of economic, social and cultural rights (CERD/C/SLV/CO/14-15, para. 19), efforts began under the current administration to involve especially the indigenous peoples and communities in various processes.

121. As mentioned in paragraph 7 above, the National Directorate for Indigenous Peoples of the Secretariat for Social Integration (SIS) was attached, as a manifestation of the current Government’s interest, to the Cultural Secretariat of the Office of the President, merging with the Indigenous Peoples and Multicultural Relations Programme to streamline functions and renamed Indigenous Peoples Coordinating Authority. Subsequently, in July 2012, the Secretary for Culture decided to consolidate the Directorate for Indigenous Peoples by transforming it into the National Directorate of Indigenous Peoples and Cultural Diversity, officially established in October 2012.

122. Currently, the National Directorate for Indigenous Peoples and Cultural Diversity of the Cultural Secretariat of the Office of the President is the sole State agency specialized in issues related to the indigenous peoples and therefore constitutes the organization where specific work is carried out to promote the rights of indigenous peoples. In that context, the activities of that Directorate have comprised three main lines of action.

123. The first main line of action is the pursuit of legal recognition, aimed at guaranteeing the economic, social and cultural rights of indigenous peoples. The following activities have been undertaken:

(a) Support for constitutional reform with a view to the recognition of indigenous peoples;

(b) Promotion and drafting of the Municipal Ordinance on the Rights of the Indigenous Community of Izalco, adopted by the municipal authorities concerned (Official Journal, 25 April 2012);

(c) Incorporation of the cultural rights of indigenous peoples into the draft Culture Act prepared by the Cultural Secretariat of the Office of the President;

(d) Support for the signature of the Nagoya Protocol, which provides for the protection of the knowledge of indigenous peoples;

(e) Coordination with the Secretariat for Social Integration in organizing events related to ILO Convention No. 169, including two working documents analyzing the viability of the Convention.<sup>13</sup>

124. The second main line of action consists in efforts to implement activities and projects together with State bodies. An initiative of the National Directorate, the Multisectoral Forum of Indigenous Peoples, involved in those efforts, comprises various official entities<sup>14</sup> and indigenous organizations and encourages the mainstreaming of the question of indigenous peoples into Government administration. In monthly meetings held since October 2011, the views and needs expressed by indigenous organizations have been taken into consideration with a view to developing projects and processes beneficial to the indigenous communities.<sup>15</sup>

125. The Multisectoral Forum is fully open to any indigenous organization. Its meetings have led to specific agreements with various State entities with a view to implementing activities, programmes and policies for the benefit of indigenous peoples. For instance, the Ministries of Agriculture and Livestock, the Environment and Natural Resources, Labour and Social Security, and Health, and the Department of Housing have helped to launch initiatives to mainstream the question of the indigenous peoples into various programmes and working agendas.

126. Moreover, the above meetings have addressed issues crucial to the indigenous peoples, such as the building of dams on the Sensunapán river in the municipality of Nahuizalco, department of Sonsonate.

127. In 2012, the Secretary for Culture of the Office of the President initiated a series of bimonthly meetings, attended by a broad range of male and female indigenous leaders, with a view to improving the coordination of work for indigenous groups. In such meetings, the indigenous representatives can discuss their needs and proposals directly with the Secretary for Culture. The National Directorate for Indigenous Peoples and Cultural Diversity also holds bilateral meetings with the indigenous organizations with a view to improved coordination of relevant work.

<sup>13</sup> One by the Ministry of Labour and Social Security and one by the National Directorate for Indigenous Peoples and Cultural Diversity of the Cultural Secretariat of the Office of the President.

<sup>14</sup> The following Government entities participate in the Forum: Ministries of Health, Labour and Social Security, the Environment and Natural Resources, Education, Agriculture and Livestock, Foreign Affairs, Tourism and the Interior, Department of Housing, Technical Secretariat of the Office of the President, Secretariat for Strategic Affairs of the Office of the President, and Office of the Human Rights Advocate.

<sup>15</sup> Native People's National Coordinating Authority, Salvadoran Indigenous People's National Coordinating Council (CCNIS), Association of Indigenous Communities of El Salvador (ACCIES), Indigenous Communities of Suchitoto (department of Cuscatlán), indigenous Communities of Cojutepeque (department of Cuscatlán), Nahuatl-Pipil Traditional Council of Nahuizalco (department of Sonsonate) and indigenous Communities of Cacaopera, Morazán, represented in the Winaka organization (Kakawira people).

128. Through meetings seeking optimal approaches to indigenous issues, the National Directorate for Indigenous Peoples and Cultural Diversity has also cooperated with the:

- (1) Ministry of Tourism to highlight the cultural expressions of indigenous peoples in the best way possible;
- (2) National Registry of Native Persons (RNPN) to improve the documentation of indigenous children and adolescents;
- (3) Ciudad Mujer (women's city) Programme,<sup>16</sup> a highly effective initiative for raising awareness of issues concerning indigenous women.

129. The third main line of action consists in the promotion of cultural activities of indigenous peoples. The National Directorate of Indigenous Peoples and Cultural Diversity has supported and contributed to various commemorative events, such as, *inter alia*, the seventy-ninth and eightieth anniversary of the 1932 genocide; the ceremony of the commencement of sowing in Cacaopera (2012); various activities of the Brotherhood of the Eternal Father of Izalco (Sonsonate); and the commemoration, by the Nahuatl-Pipil traditional council, of the World Environment Day in Nahuizalco (Sonsonate).

130. The Nahuizalco cultural centre, named Nahuatl-Pipil House because it focuses on indigenous culture, organizes periodically activities that highlight indigenous cultural expressions in the framework of celebrations and commemorations of dates important to the communities concerned.

131. The Central American Caribbean Cultural Corridor project, carried out in cooperation with the Organization of Ibero-American States (OIS) with the participation of the culture ministries and secretariats of all Central American and Caribbean countries, focuses on the culture of persons of African descent. Exceptionally, however, in El Salvador the project promotes the cultural expressions of indigenous communities, highlighting and revitalizing their crafts and dances in the framework of a cultural route developed in Cacaopera and Guatajiagua, department of Morazán; Panchimalco and the surrounding area, department of San Salvador; and Izalco, Nahuizalco and the surrounding area, department of Sonsonate.

132. Currently, the project is establishing networks of groups of indigenous dancers and craftsmen. Activities have been implemented to support and stimulate their work. On 12 October 2012, an encounter of indigenous dancers took place in the National Theatre, San Salvador, enabling various dancing groups to exchange their experience and show their art to the general public.

133. In the second half of 2011, the National Directorate of Indigenous Peoples and Cultural Diversity set up a Documentation Centre on Indigenous Peoples, which has already collected approximately 260 relevant items. In view of the scarcity of such articles, which are produced in the country, the National Directorate of Indigenous Peoples is preparing three studies on the municipalities of Nahuizalco (Sonsonate), Panchimalco (San Salvador) and Cacaopera (Morazán) in order to document the life, and especially the cultural expressions, of the resident indigenous communities (annex 5).

134. Support is provided to indigenous representatives for activities at the international level. In order to increase the global visibility of the indigenous peoples of El Salvador, two indigenous leaders who attended the United Nations Permanent Forum on Indigenous

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<sup>16</sup> Ciudad Mujer is a programme promoted by the Government through SIS to ensure the enjoyment of fundamental rights of Salvadoran women through specialized services related to sexual and reproductive health, comprehensive care in gender violence cases, economic empowerment and promotion of women's rights. The programme operates a child care facility which minds children while their mothers receive various services.

Issues in early May 2012 received guidance with regard to the organization of their reports, and appreciated such help.

135. The above National Directorate and the Ministry of Foreign Affairs facilitated an indigenous leader's access to a grant offered by the Government of Israel in connection with indigenous rural development.

136. With a view to the dissemination of information on El Salvador's commitments regarding indigenous issues, two workshops were held in the first half of 2012 in order to raise awareness of the rights of indigenous peoples. One was attended by public officials of the Multisectoral Forum of Indigenous Peoples and the second by public officials of various services of the Ministry of Foreign Affairs who were responsible for preparing this report. Moreover, talks have been organized in various sectors, including among students, on the rights and identity of the indigenous peoples.

137. The Salvadoran Institute for the Advancement of Women (ISDEMU) has developed a special awareness of and sensitivity towards the circumstances of indigenous women. Despite difficulties in accessing participatory forums, indigenous women of Morazán and the department of Sonsonate take part in advisory and social oversight councils designed to enable women to exercise their citizen's rights and play a leading role in monitoring and following up on policies, legislation, programmes and projects formulated and implemented in order to guarantee the rights of Salvadoran women. Those participants received training in order to be empowered in various areas.

138. Ventanilla Móvil (movable window) is an important activity that takes place once a month in Community Health Units and consists in offering information on such issues as women's rights and violence prevention. That activity has been developed in the municipalities of Cacaopera, Chilanga and Guatajiagua, department of Morazán, all with a strong native presence. In 2011 and 2012, forums were organized in cooperation with Feliciano Ama Foundation and Andrés Bello University in order to provide information on indigenous culture and on the life of indigenous women.

139. In the period 2009–2010, the Institute implemented good institutional practices through projects targeting indigenous women in Sonsonate, Ahuachapán and San Salvador and consisting of various productive activities designed to boost the economic potential of indigenous women.

140. The Ministry of Agriculture and Livestock (MAG) has established forums for effective dialogue and expression of the needs of indigenous peoples. In September 2011, the Ministry joined the Multisectoral Forum of Indigenous Peoples coordinated by the Cultural Secretariat.

141. In cooperation with the Multisectoral Forum, the Ministry supported the regional event entitled "Exchange among native communities on non-industrial fishing in Central America", held in December 2011 and sponsored by, *inter alia*, the project entitled "Support for the Central American fishing and aquaculture integration process" (PRIPESCA), the Confederation of Non-industrial Fishermen of Central America (COFEPESCA), the Central American Indigenous Council and the Central American Integration Secretariat (SICA) / Organization of the Fisheries and Aquaculture Sector of the Central American Isthmus (SICA/ OSPESCA). The goal of the event was to lay the basis for a specific programme to strengthen fishing by native communities in the SICA member countries. The outcome has been the identification of lines of action conducive to such a programme for responsible fishing by native communities recommended at the regional level.

142. In September 2012, the National Centre for Agricultural and Forestry Technology (CENTA) signed with the Jaguar Paths indigenous organization an agreement that includes

a series of training activities concerning the handling of maize and sorghum. Although the training ran into implementation problems due to failure of the members of the organization to attend, the action in question continues to figure on the work plan of the Centre, which for the first time has included an initiative for indigenous peoples in its Annual Plan. Moreover, CENTA has supported indigenous peoples in various ways, such as through the use of Creole flint corn and the distribution of firewood saving cooking stoves.

143. In January 2012, the Ministry of Agriculture and Livestock, through the General Directorate of Rural Development and with International Fund for Agricultural Development (IFAD) financing, launched the Rural Development and Modernization Project (PRODEMOR), whose area of implementation includes 66 municipalities, namely all municipalities in the departments of San Vicente, Cabañas, La Paz and Cuscatlán and 6 municipalities in the department of San Salvador (Tonacatepeque, Guazapa, San Martín, Panchimalco, Santiago Texacuangos and Rosario de Mora), and which, as the first project of the Ministry to specify activities clearly addressing native peoples, began in areas with indigenous communities and organizations.

144. In the framework of a similar initiative, the Rural Development and Modernization Project for the Eastern Region (PRODEMORO), support was provided to the Lenca Community Association of Guatajiagua (ACOLGUA) in the form of, *inter alia*, training, farm plans, advice on crops and water filters. The land where the project is developed has been acquired by the natives under the Spanish Banyola Solidaria project through the Freedom and Progress Institute (ILP).

145. Arrangements were made for agricultural packages to be distributed to 42 indigenous producers of the CIKACALCO organization of Suchitoto, department of Cuscatlán, and 52 producers of the Bautista Agricultural Producers' Association R.L., Indigenous Movement of Cuxcatan, canton of El Llano, Cojutepeque.

146. The Ministry of the Environment and Natural Resources (MARN) organized periodic meetings with the Commission of Indigenous Leaders. Coordinated action by the Ministry and the National Directorate for Indigenous Peoples and Cultural Diversity led to cooperation between the Ministry and the indigenous peoples through the establishment of a commission of indigenous male and female leaders, with which the Ministry meets periodically in order to address various issues of environmental interest.

147. The Ministry promoted the signature of the Nagoya Protocol which, as mentioned in paragraph 73 above, provides for the protection of the knowledge of indigenous peoples relating to genetic resources (plants and animals).

148. Generally speaking, spaces have been created to discuss local problems, such as the construction of dams on the Sensunapán river. The Ministry of the Environment and Natural Resources has held various meetings on that issue in order to provide relevant information and seek solutions to the related conflicts.

149. The Technical Secretariat of the Office of the President supports the work of the National Directorate of Indigenous Peoples and Cultural Diversity. In the second half of 2012, the Technical Secretariat established a forum for meeting with the indigenous peoples in order to arrive at specific decisions and implement processes in favour of those groups. By mutual agreement with the Technical Secretariat, indigenous leaders and representatives proposed a basic agenda, to be further developed by the current administration, on key aspects of the rights of indigenous peoples. That document will guide the Government in the implementation of measures crucial to the indigenous peoples of the country.

150. In relation to the Committee's recommendation that El Salvador should improve its census methodology (CERD/C/SLV/CO/14-15, para. 12), the Government, through the Technical Secretariat of the Office of the President and the Secretariat for Social Integration

(SIS), planned in 2012 a census of the entire population, with the participation of certain international organizations, with which discussions were held regarding the necessary financing. For lack of funds, the census has not yet taken place but the relevant observations and recommendations shall be taken into consideration with a view to securing the data necessary for all social indicators used. That information will also be collected through the next census which, according to the international norm of a ten-year interval, should take place in 2017.

151. The General Directorate of Statistics and Censuses (DIGESTYC), prior to the census and as was the case with the sixth population census and fifth housing census of 2007, shall in due time organize and plan the methods to be employed and analyze the data collection tools in close cooperation with international organizations ready to provide suitable advice and know-how.

152. Moreover, appropriate workshops will be organized with the participation of representatives of, *inter alia*, public and private institutions, NGOs and social organizations with a view to their active involvement in census planning and implementation.

153. In the meantime, certain State institutions have begun including information on the indigenous peoples in data compilations. Thus, the Ministry of Health (MINSAL) has incorporated a section on indigenous peoples into the family record, a tool used to collect data for the identification of the social determinants of health at community level. Although the primary goal of that tool is not census-taking, the data thereby collected will constitute a meaningful input in estimating the country's indigenous population.

154. The Ministry of Education has reviewed the methods of collecting information on the number of indigenous children registered in the educational system. The relevant statistics are based on the geographic location of the place of residence. Changes were made to the data collection form used for the census of school children and, since 2011, the family is expected to indicate whether it identifies itself as indigenous. Moreover, the Educational Support Committee for Indigenous Affairs has identified the schools attended by indigenous children in order to initiate an awareness-raising process as part of a plan for protecting the indigenous population.

155. In the absence of reliable data on the country's indigenous population, as indicated above, the characteristics of certain municipalities are studied in order to gain insights into the specificities of the groups concerned.

156. In relation to the Committee's recommendation that El Salvador should enhance efforts to improve the enjoyment of economic, social and cultural rights by Afro-descendants (CERD/C/SLV/CO/14-15, para. 20), it should be noted that least 7,441 persons of African descent lived in the country in 2007,<sup>17</sup> mainly in the San Salvador, Usulután, Santa Ana and Sonsonate departments. According to research, although no settlement of persons of African descent has yet been identified, the African phenotypical and cultural elements are observable in the country. Certain communities, such as in the municipalities of Atiquizaya, department of Sonsonate, and San Alejo, department of La Unión, acknowledge that their cultural heritage includes elements of African origin.

157. Contrary to the nationalist construct of a supposedly homogeneous country, the above findings establish the ethnic and cultural plurality of El Salvador. The issue of detecting the African heritage and any communities that identify themselves as being of African origin is currently in progress.

158. Against that backdrop, the Cultural Secretariat of the Office of the President decided to join in on the activities of the Office of the United Nations High Commissioner for

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<sup>17</sup> DIGESTYC, Population Census, 2007.

Human Rights (OHCHR); and participated in the Central American seminar and workshop held in September 2011 in connection with the International Year for People of African Descent. The purpose of the event was to analyze the situation of human rights of persons of African origin in the region and define activities for a regional agenda aimed at eliminating any violations of those rights.<sup>18</sup> The Cultural Secretariat also participated in the follow-up seminar and workshop of 2012 and plans to continue contributing to that important effort.

159. In December 2011, the OHCHR Regional Office for Central America, in coordination with the Cultural Secretariat of the Office of the President and the Office of the Human Rights Advocate, organized in El Salvador an event on the “Presence of people of African descent in El Salvador: challenges in building cultural diversity”, attended by the Secretary for Culture and the Human Rights Advocate. The event, which included expert reports highlighting African elements in the Salvadoran heritage, was organized in the framework of the International Year for People of African Descent, proclaimed by the United Nations General Assembly on 18 December 2009.

160. The audiovisual unit of the Cultural Secretariat is preparing a video on El Salvador’s heritage of African origin and its cultural, phenotypical and genetic manifestations. The video, prepared with objectivity and rigour, will help to highlight the presence of the people concerned and the related traditions in the country.

## **Article 6**

### **Effective remedies before the competent national courts and other State institutions**

161. Under criminal law, the State guarantees the rights and protection of victims. Article 106 of the Code of Criminal Procedure<sup>19</sup> sets forth explicitly the rights of victims.

<sup>18</sup> OHCHR, *Proceedings* of the Central American seminar and workshop for the International Year for People of African Descent, 2011, and of the related follow-up and evaluation seminar and workshop, 2012. Panama City, 2012.

<sup>19</sup> Code of Criminal Procedural, Legislative Decree No. 733, adopted on 22 October 2008 (Official Journal No. 20, vol. No. 382, 30 January 2009: “Rights of the victim”, art. 106. – “Victims shall have the right: (1) To be involved in and kept informed of all proceedings before the National Civil Police, the Office of the Attorney General and the courts, and to know the outcome of those proceedings; (2) To be informed of their rights and assisted by a lawyer of the Office of the Attorney General or by a special representative thereof, as appropriate; (3) To be assigned an interpreter or a person capable of explaining his or her affirmations, if necessary; (3A) TO BE INFORMED OF ANY DECISION CONCERNING THE APPLICABILITY OF A PLEA BARGAIN AND TO USE THAT POSSIBILITY IN ACCORDANCE WITH THIS CODE; (4) To give their opinion regarding any request that would benefit the accused, except if, having been called, they fail to appear in court; (5) To challenge decisions in favour of the accused, even when they have not been involved in the proceedings; (6) To be heard during the enforcement stage of the sentence before prisoners are granted leave of absence, conditional release or conditional suspension of the sentence; (7) To be notified if the complaint or accusation is abandoned or waived or of any other decision implying the discontinuation of the proceedings; (8) To provide evidence in person during the stages of the proceedings designated for that purpose in this Code, without prejudice to the powers of the prosecutor or the complainant; (9) To be compensated for harm arising out of the offence, and to have damage caused by the offence repaired or the claimed object returned; (10) If they are minors: (a) To have their best interests considered in the decisions taken during the proceedings; (b) To have their vulnerability recognized during the proceedings; (c) To receive assistance and specialized support; (d) To enjoy appropriate protection of their privacy and to proceedings held partially or totally in closed session lest information that may lead to their own or a relative’s identification should become known publicly; (e) To be able to testify in an environment that is not formal or hostile and recording

In particular, paragraph (2) of that article lays down the victims' right "to be informed of their rights and assisted by a lawyer of the Office of the Attorney General or by a special representative thereof, as appropriate".

162. In line with the principle of equality underpinning criminal law, the victims, without any distinction, are apprised of their guaranteed entitlement to information on their rights in the framework of criminal proceedings. Accordingly, legal assistance entails the obligation to keep them informed, starting with the possibility of associating themselves with the criminal proceedings and up to conclusion and any appeals, so that the counsel is aware of all elements necessary for making appropriate decisions with a view to obtaining damages.

163. Moreover, the State has adopted legislative and institutional measures through the promulgation of the Special Act on the Protection of Victims and Witnesses,<sup>20</sup> whose aim is to regulate the measures of protection and support provided to the victims, witnesses and anyone else who find themselves at risk or in danger as a result of their involvement in a criminal investigation or judicial proceedings or of their family ties with a person involved in such a case. The protection and support measures in question are to be applied without any distinction.

164. Under the above Act, the State created the Coordinating Commission of the Justice Sector, leading entity of the Victims and Witnesses Protection Programme. The Commission is administered by the Technical Executive Unit of the Justice Sector.

165. In relation to the costs and complexity of the judicial process, the national legal system is governed by the constitutional principle of free justice, given that under article 181 of the Constitution "the administration of justice shall be free of charge".<sup>21</sup> Accordingly, no civil servant or employee of the judiciary may receive payments or bonuses from persons appearing before a court for purposes of administration of justice, given that justice is accessible to all without any distinction.

166. Moreover, the Constitutional Chamber of the Supreme Court has established in its rulings<sup>22</sup> that the principle of justice free of charge takes, at the level of individual litigants, two forms or the shape of two rights: right to legal aid free of charge and right to the administration of justice free of charge.

167. As regards the right to free legal aid, article 194 (II) (2) of the Constitution provides as follows: "The Office of the Counsel-General shall be responsible for: [...] Providing legal aid to persons of limited financial means, and legal representation in the defence of their freedom and their labour rights [...]." Under that provision, the said responsibility of the Counsel-General imposes on him or her an obligation and by the same token entitles

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their testimony so that it can be replayed at the public hearing when necessary; and not to be interrogated personally by the accused, or face him or her, if they are under 12; (f) To give their opinion to the judicial or administrative authority before the latter makes a decision affecting them; (g) To have the Attorney General's Office immediately notified; (h) To have a counsel assigned to them to provide appropriate assistance and support during the proceedings, if they lack a legal representative or the latter's interests are incompatible with theirs or if the counsel is solicited by the victim with due discernment; (11) To enjoy the measures provided for under the applicable protection schemes; (12) To receive psychological or psychiatric support, if necessary; (13) To enjoy other rights established in this Code, in treaties in force and in other laws."

<sup>20</sup> Special Act on the Protection of Victims and Witnesses, Legislative Decree No. 1029, adopted on 26 April 2006 (Official Journal No. 95, vol. 371, 25 May 2006).

<sup>21</sup> Constitution, Decree No. 38 of 15 December 1983 (Official Journal No. 234, vol. 281, 16 December 1983), art. 181.

<sup>22</sup> Constitutional Chamber of the Supreme Court, Remedy of unconstitutionality, No. 53-2003, issued on 3 June 2005.

persons of limited financial means to request and obtain from his or her Office legal aid free of charge.

168. That right comprises a series of benefits to be provided to all persons who establish that they lack sufficient resources to dispute in a lawsuit to which they are a party or to initiate proceedings. The Public Legal Service Organization Act (LOMP) lists the following four main specific forms taken by that right: defence of the family and the minor; of workers' rights; and of rights *in rem* and personal rights; and public defender action in connection with individual freedom.

169. Persons who establish that they lack sufficient resources may request free legal aid. Under the Constitution, such persons may be individuals or legal entities, national or foreign with residence in the Salvadoran territory. In other words, the scope of the provision is broad and the sole criterion stipulated is the inadequacy of financial resources, as established by the law, without any reference to race.

170. Although the Constitution provides for the State's obligation to offer, through the Counsel-General, free legal aid, that is not the sole basis on which such aid may be obtained. There are also private bodies and NGOs that engage in such activities on a voluntary basis.

171. The second application of the principle referred to by the Constitutional Chamber is inferred from the aforementioned article 181, which establishes the obligation of judicial bodies to abstain from receiving benefits in exchange for administering justice. That obligation translates into the litigants' corollary right to free administration of justice. Ultimately, that right brings to bear the principle of equality of all persons before the law and the courts inasmuch as it constitutes a constitutional guarantee of all potential litigants' access to the judicial system. In fact, experience has amply shown that, in the various judicial systems, the costs of participation in proceedings is one of the obstacles to access to justice, given that the procedures for exempting persons of limited resources from such costs are particularly slow and ineffective.

172. Thus, the right to free administration of justice prohibits courts from collecting fees or payments in consideration for services rendered in the exercise of judicial duties. Such prohibition does not prevent the generation and receipt of procedural costs, the imposition of fines or the payment of damages, either at an early stage to pre-empt the malicious filing of an appeal, or subsequent to the conclusion of the proceedings.

173. As to national institutions authorized to receive and process individual complaints of racial discrimination, the principle of access to justice has been implemented at the constitutional and secondary legislation levels and governs the role of the authorities that administer justice. Under article 182 (5) of the Constitution, the Judicial Service is entrusted with "ensuring full and expeditious administration of justice, for which purpose the measures deemed necessary shall be adopted". Accordingly, any person enjoys a guaranteed right to protection and defence in respect of any act or omission affecting his or her legal status, including racial discrimination. Complaints are filed with, and the respective proceedings take place before, national authorities, such as the Office of the Human Rights Advocate,<sup>23</sup> the Office of the Counsel-General,<sup>24</sup> the Office of the Attorney-General<sup>25</sup> and the Government Ethics Tribunal.<sup>26</sup>

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<sup>23</sup> Constitution, Decree No. 38 of 15 December 1983 (Official Journal No. 234, vol. 281, 16 December 1983), art. 194.

<sup>24</sup> *Idem*.

<sup>25</sup> Constitution, Decree No. 38 of 15 December 1983 (Official Journal No. 234, vol. 281, 16 December 1983), art. 193.

## Article 7

### A. Education and teaching

174. The Ministry of Education (MINED) is working towards a gradual recognition of intercultural settings by the educational system and seeking to revitalize the Nahuatl language in areas with indigenous communities. The Cuna Náhuat (Nahuatl cradle) pilot project, a follow-up to the Nahuatl immersion programme, aims to create a new generation of Nahuatl speakers to succeed the older users of that language. The project was launched in 2010 and it is hoped that its findings will help to replicate the initiative in various indigenous areas. Under the project, 25 preschool boys and girls in the municipality of Santo Domingo de Guzmán, department of Sonsonate, attend two early learning sections using exclusively Nahuatl. The children come from homes where at least one person speaks the language. The project is implemented by four female Nahuatl speakers from the same municipality who have received training in early learning, first aid and other activities related to child development. They are supervised by an assistant teaching specialist.

175. Progress has been made in promoting a community centre for cultural development in the municipality of Izalco, where efforts to revitalize Nahuatl are under way, the teachers', students' and specialists' capacities to promote bilingual and Nahuatl intercultural education are being enhanced, and the Integrated Regional System of Inclusive Schools strategy is applied to 12 schools sharing, *inter alia*, the same geographic conditions and cultural bases. The above centre supports training in Nahuatl for bilingual teachers and the exploration, for the benefit of school children, of the local historical heritage with a view to the promotion of cultural identity.

176. The Comprehensive Citizen Support Management Programme, created in 2009, includes an effective component encouraging education in the areas of human rights, gender, art and culture, preserving ancestral values and culture and promoting indigenous cultural development, including the protection of Nahuatl. An agreement has been signed between the Ministry of Education and Don Bosco University (annex 6). The objective is to create, through a community cultural committee, educational networks addressing the indigenous population. Young educational professionals with a basic knowledge of Nahuatl transmit their cultural heritage to the new generation through, *inter alia*, instruction in traditional artistic expressions and the promotion of plastic-arts or music workshops.

177. The Izalco cultural centre seeks to provide training to students attending nearby schools or young persons not in the school system. Emphasis is placed on the indigenous world view and, for the youngest, on traditional music and dancing.

178. The Educational Support Committee for Indigenous Affairs, which, created in 2006 by Decision No. 15-0280 of the Education Department, had made no measurable impact and, for various reasons, was inactive, was reactivated on 2 May 2012. Currently, the Committee seeks to include among its members not only specialists of the Cultural Secretariat of the Office of the President and the Ministry of Education, but also a representative of every identified native group (Kakawira, Lenca and Nahuatl).

179. Since May 2012, monthly meetings have been held and a work plan has been drawn up for 2012–2013 (annex 7). Educational support will be provided to the indigenous population in cooperation with various national and local ministerial bodies. As part of the Committee's work, information available on each indigenous language has been compiled in respective primers (two for Nahuatl, one for Potón and one for Cacaopera or Kakawira)

<sup>26</sup> Government Ethics Act, Legislative Decree No. 1038, adopted on 26 April 2006 (Official Journal No. 90, vol. 371, 18 May 2006), art. 12 (e).

prepared by the Department of Literature of the University of El Salvador. The information has been reviewed and observations have been transmitted to the section for the preservation of indigenous culture of the Education Quality Improvement Project (funded by the World Bank). An operational plan for educational services for the indigenous peoples has been drawn up.

180. In 2011, the Ministry of Education began to compile data on the indigenous student population. Most of the 29,044 indigenous students (13,881 male and 15,163 female) identified in 12 departments live in the department of Sonsonate, followed by the departments of Morazán and Cuscatlán. Only in the departments of La Paz and Cabañas did no students identify themselves as indigenous.<sup>27</sup> In addition to the census of school children, the Educational Support Committee for Indigenous Affairs has identified schools attended by indigenous children in order to initiate an awareness-raising process as part of a plan for protecting the indigenous population (annex 8).

181. It is recognized that opting for a human rights education approach leads to focusing on the legal framework in force, which is based on the Constitution, ratified international instruments and other legislation protecting civil rights. Moreover, a commitment has been made to eliminating all forms of discrimination, particularly against the indigenous peoples, which have a long history of exclusion from society.

182. Consequently, in order to meet, within the educational system, the obligation to exclude from any act or practice any racial discrimination against persons, groups or institutions and to ensure that educational communities comply with that obligation, the Ministry of Education has introduced amendments to the General Education Act to prevent discrimination against pregnant or nursing adolescents.<sup>28</sup> The Child and Adolescent Protection Act (LEPINA), which is fully in force, facilitates the enforcement of the Convention on the Rights of the Child, particularly regarding the elimination of all forms of discrimination: according to the third preambular paragraph of the Act, “under the Convention on the Rights of the Child, ratified by the Republic of El Salvador on 27 April 1990, the States parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.

183. Referring to the principles of equality, non-discrimination and equity, article 11 of the above Act provides as follows: “All children and adolescents shall be equal before the Law. Accordingly, there shall be no justification for any distinction, exclusion, restriction or preference based on such criteria as gender, race, skin colour, age, language, religion, worship, opinion, membership, national, ethnic or social origin, financial status, special needs, physical or mental disability, birth or any other attribute of children, adolescents, and their parents, representatives or custodians that aim at or result in restricting or preventing the recognition, enjoyment or exercise of the fundamental rights of the persons in question [...]”

184. Progress has been made in revising textbook contents to eliminate any expressions conveying images, references, names or opinions that are stereotypical or degrade any groups protected by the Convention, and replace them with images, references, names or opinions underscoring the dignity inherent to all human beings and their equality in the enjoyment of human rights. In line with the Inclusive Education Policy and the legal framework in force, including agreements ratified by El Salvador, the Ministry of

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<sup>27</sup> MINED. Monitoring, Evaluation and Statistics Office. San Salvador, 26 July 2012.

<sup>28</sup> General Education Act, Reform Legislative Decree No. 735, 26 May 2011 (Official Journal No. 119, vol. 391, 24 June 2011), arts. 76-A and 98 (h).

Education has instructed teams of experts to include in the new textbooks, for all levels and types of education, chapters on the history and culture of the native peoples, migrants and minorities living in the national territory.

185. The promotion of language and images or any type of illustration embodying an inclusive and human rights approach respectful of the various cultures has been established as standard procedure for publications, such as textbooks, multimedia programmes and television broadcasts. That rule has guided textbook development and selection, as one may observe in the Cipotes Collection, part of the free textbook policy.

186. The Ministry of Education has arrived at the conclusion that intercultural education presupposes intercultural training and the revitalization of the Nahuatl language, not only in indigenous areas. The activities considered by the of Educational Support Committee for Indigenous Affairs point to three regions, whose names, as translated by linguists, are “Nahuatl territory” (central and western part of the country), “Lenca territory” (eastern region) and “Kakawira territory” (also in the east, specifically in the municipalities of Cacaopera, San Simón and the surrounding area).

187. Since 2010, the Government has been providing Don Bosco University with an annual US\$ 40,000 subsidy for the Programme for the Revitalization of the Nahuatl or Pipil language of El Salvador.

188. In relation to the Committee’s recommendation that programmes for the revitalization of the Nahuatl-Pipil indigenous language should be expanded to other indigenous languages (CERD/C/SLV/CO/14-15, para. 21), note should be made that the Nahuatl language primer has been produced in Braille and that in May 2012 the House of Culture for the Blind<sup>29</sup> transcribed into Braille a Nahuatl primer drawn up by Genaro Ramírez, Nahuatl speaker from Santo Domingo de Guzmán. It has been possible to send a few copies of that primer to various educational institutions for the visually impaired.

189. United Nations treaties and documents have been translated into Nahuatl. Around the middle of 2011, a translation office was set up in the former National Directorate for Indigenous Peoples of the Secretariat for Social Integration (SIS). The following documents were translated before the work of that office was discontinued for lack of funds: (1) United Nations Declaration on the Rights of Indigenous Peoples; (2) International Convention on the Elimination of All Forms of Racial Discrimination; (3) Convention on the Rights of the Child; and (4) Concluding observations of the Committee on the Elimination of Racial Discrimination, formulated at its seventy-seventh session, concerning El Salvador. In 2012, those translations were shared with the Ministry of Ministry of Foreign Affairs and are in the process of being authenticated as official documents of the State.

190. Referring to the suggestion to expand intercultural activities and programmes for the revitalization of Nahuatl-Pipil to other communities, the Ministry of Education points out that, although efforts have been made, including the dissemination of the Nahuatl national anthem, which is sung at public events in some rural and urban communities, it has so far been impossible to expand such activities and programmes for Nahuatl and other native languages to the educational centres of other municipalities for the following reasons: (a) The Nahuatl-speaking population is small, concentrated and mostly composed of elderly persons; consequently, the Ministry of Education is promoting the revitalization of the language in early childhood, and even that has been possible only with a small group of children; and (b) the preservation of Kakawira in Morazán is a long-standing need.

<sup>29</sup> Although the House of Culture for the Blind does not answer to the National Directorate for Indigenous Peoples and cultural Diversity but to the National Directorate for Cultural Development Spaces of the Cultural Secretariat, the work carried out by that establishment for the preservation of Nahuatl must be stressed.

191. The general national budget approved for 2013 provides for a US\$ 200,000 allocation to the Secretariat for Social Integration, to be distributed as basic universal pension<sup>30</sup> to elderly speakers of Nahuatl.

## B. Culture

192. The Central American Caribbean Cultural Corridor project, carried out in cooperation with the Organization of Ibero-American States (OIS) and the participation of Central American and Caribbean countries, focuses on the culture of persons of African descent. Exceptionally, however, in El Salvador the project promotes the cultural expressions of indigenous communities, highlighting and revitalizing their crafts and dances in the framework of a cultural route developed in the following three areas: Cacaopera and Guatajiagua, Panchimalco and its surroundings, and Izalco, Nahuizalco and their surroundings.

193. The first few activities to be carried out under this project are now under way and include, in particular, the compilation of information on cultural expressions of the above three areas, a meeting of the chiefs of indigenous dancing groups and the organization of local workshops for indigenous artisans. Coordination with the Ministry of Tourism is being promoted in order to revitalize the cultural corridor in question.

194. Part of the Caribbean Cultural Corridor project consists in a contest for young indigenous persons involved in culture preservation projects. Two winners have been awarded a prize consisting in a trip to Spain or another Spanish-speaking country.

195. Activities have been organized at the Nahuatl-Pipil House of Nahuizalco and other Houses of Culture.<sup>31</sup> The House of Culture of Nahuizalco, under the designation of Thematic Nahuatl-Pipil House, regularly coordinates its work with the municipality's Nahuatl-Pipil Traditional Committee, comprising the leadership of the local indigenous communities. The following events have thus been organized: Commemoration of the 1932 Genocide on 22 January 2012; The Victim's Turn seventh international meeting of poets (mainly on the subject of the indigenous peoples) and the Day of the Family, both in May 2012; the Day of the Environment and a culture day with indigenous communities, including the designation of an indigenous queen and tribute paid to a spiritual guide, in June 2012; and a *tiangué* (traditional market) on 23 June 2012.

196. In the current period, the National Directorate of Indigenous Peoples has organized with the Houses of Culture network of the Cultural Secretariat four activities to highlight and promote native culture and the rights of the indigenous peoples.

197. The Technical Secretariat of the Office of the President uses the proceeds from the privatization of ANTEL,<sup>32</sup> through the FANTEL fund, to support indigenous peoples by

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<sup>30</sup> Within the framework of the Nuestros Mayores Derechos ("Our elderly rights") Presidential Programme, a basic universal pension of US\$ 50 per month is granted to persons over 70 who have no income. In 2011, that pension was paid to 14,931 beneficiaries in 53 municipalities for a total amount of US\$ 7.1 million. For 2012, it is planned to expand the coverage of the programme to a total of 31,369 beneficiaries in 79 municipalities, the increase consisting of 5,926 beneficiaries in 5 urban municipalities and 10,500 beneficiaries in 21 additional rural municipalities, for a total amount of US\$ 20 million.

<sup>31</sup> Houses of Culture are spaces for the local promotion of art and culture, established in most of the municipalities of the country's 14 departments. The Network of Houses of Culture functions under the National Directorate for Cultural Development Spaces of the Cultural Secretariat of the Office of the President.

<sup>32</sup> The former National Administration of Telecommunications, public organization in charge of communications in the country.

promoting traditional crafts in, for instance, Nahuizalco, Panchimalco and Guatajiagua. Such support serves to preserve the country's cultural heritage and at the same time raise the standard of living of native groups through effective systems aimed at improving the productivity and competitiveness of artisan activities and broadening the local and international markets for handicraft products.

198. FANTEL allocations are used to finance the One Village One Product – OVOP El Salvador project, implemented by the National Commission on Micro-Enterprises and Small Businesses (CONAMYPE) with a view to helping the country's native peoples to preserve their identity and heritage by promoting the participation of the country's artisan communities in an annual display, at a single site, of traditional indigenous products ranging from the black clay pottery of Guatajiagua to handicrafts from Ilobasco, La Palma, Suchitoto, Panchimalco and Nahuizalco. That event was held at Paseo El Carmen, Santa Tecla, La Libertad, on 18–19 December 2011 and, given the impact of the marketing of the native handicraft and food products exhibited, will hopefully take place again at the same site in 2012.

199. In relation to the Committee's recommendation that El Salvador should continue to consult and expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, as well as with the Office of the Human Rights Advocate, in connection with the preparation of the next periodic report (CERD/C/SLV/CO/14-15, para. 23), as already mentioned, the National Directorate of Indigenous Peoples and Cultural Diversity has established the Multisectoral Forum of Indigenous Peoples, where State bodies involved in issues related to the indigenous peoples meet with indigenous organizations. The Technical Secretariat of the Office of the President has also opened a forum for dialogue with various indigenous leaders in the facilities the Office of the President with a view to drawing up a priority-based agenda for the current Government. The main areas of discussion are the legal framework, cultural identity and the indigenous economy.

200. The Ministry of Agriculture and Livestock and the Ministry of the Environment and Natural Resources have established forums for direct dialogue with the indigenous leadership with a view to coordinating in a tangible manner various activities of interest to the indigenous peoples.

201. In relation to the above recommendation of the Committee, a workshop was held on 5 December 2012. It was attended by representatives of the indigenous peoples of the country's three (western, central and eastern) regions and 11 institutions of the Executive belonging to the Multisectoral Forum of Indigenous Peoples, under the coordination of the Cultural Secretariat. The workshop comprised four working groups which discussed progress and challenges in such areas as, *inter alia*, health, education, employment, recognition and self-determination, and culture. The respective reports, containing the main findings of the workshop, appear in annex 9 to this document.

202. In relation to the Committee's recommendation that that the State party's reports should be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and indigenous languages, as appropriate (CERD/C/SLV/CO/14-15, para. 26), it should be noted that, while still attached to the Secretariat for Social Integration, the National Directorate of Indigenous Peoples produced a translation of the Committee's concluding observations on CERD/C/SLV/14-15. That document is currently being made available to the indigenous communities (annex 10).

203. The Government has taken significant steps in putting an end to negating the existence of the indigenous peoples. That negation had been part of Salvadoran culture and espoused by previous administrations. In order to be meaningful, the above recognition is

taking the form of, first and foremost, a gradual and systematic promotion of the economic, social, cultural and environmental rights of the groups concerned. That process also involves profound reflection on identity and, consequently, the acknowledgement of the shared ancestral roots of all Salvadoran men and women, heirs of the sublime Meso-American indigenous culture.

204. In that context, the Cultural Secretariat of the Office of the President has been designed as a body facilitating and supporting the process of mainstreaming the issue of the indigenous peoples into the structures of the State. Considerable work is carried out with all of the country's indigenous organizations through the Multisectoral Forum of Indigenous Peoples, promoting the proposals and requests of the indigenous communities before the State authorities, which, as mentioned, have launched processes of integration of the subject into their mechanisms.

205. Notable support has been lent to efforts such as the constitutional reform, the signature of the Nagoya Protocol, the municipal ordinances on indigenous rights and the draft Act on Culture and the National System of Culture, while respecting the indigenous peoples' right to consultation and to protection of their collective intellectual heritage. Yet there is still a need for further work in terms of promotion of the legal recognition of the indigenous peoples and the definition of a national policy on indigenous peoples that will reflect the standards of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant instruments.

206. Taken as a whole, the processes and activities referred to in this report clearly reveal an intention to give real meaning to the recognition of the indigenous peoples and, in that manner, to guarantee the full enjoyment of the human rights of that population.

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