



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

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined eighteenth and nineteenth periodic reports of El Salvador\*

1. The Committee considered the combined eighteenth and nineteenth periodic reports of El Salvador (CERD/C/SLV/18-19), submitted in one document, at its 2743rd and 2744th meetings (CERD/C/SR.2743 and 2744), held on 7 and 8 August 2019. At its 2762nd meeting, held on 22 August 2019, the Committee adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the combined eighteenth and nineteenth periodic reports of the State party. The Committee expresses its satisfaction at the open dialogue that it held with the delegation of the State party and the additional information brought to the Committee's attention.

#### B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure on 9 February 2015.

4. The Committee welcomes the State party's declaration of 23 March 2016, recognizing the competence of the Committee to receive and consider individual complaints in accordance with article 14 of the Convention.

5. The Committee also welcomes the adoption in 2018 of the Public Policy for Indigenous Peoples, the National Health Policy for Indigenous Peoples and the National Action Plan for Indigenous Peoples.

#### C. Concerns and recommendations

##### Statistical data and census

6. The Committee regrets the lack of statistical information disaggregated by ethnic group, gender and age on the demographic composition of the population that would allow it to evaluate the implementation of the Convention and public policies aimed at groups that face racial discrimination, in particular indigenous peoples, the population of African descent, migrants, refugees, asylum seekers, internally displaced persons, stateless persons and other non-citizens (art. 2).

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\* Adopted by the Committee at its ninety-ninth session (5–29 August 2019).



7. **In the light of its previous recommendation (CERD/C/SLV/CO/16-17, para. 9) and its general recommendation No. 4 (1973) concerning reporting by States parties with regard to the demographic composition of the population, the Committee urges the State party to take steps to:**

(a) **Have reliable, up-to-date and comprehensive data, disaggregated by ethnic group, gender and age, on the demographic composition of the population so as to take measures in compliance with the State party's obligations under the Convention;**

(b) **Ensure the participation of indigenous peoples and people of African descent in the validation and implementation of the methodology of the seventh census;**

(c) **Ensure that the principle of self-identification is incorporated into the seventh census for indigenous peoples and people of African descent;**

(d) **Develop an awareness-raising campaign for indigenous peoples and people of African descent prior to the census.**

#### **Definition of racial discrimination**

8. The Committee takes note of article 3 of the Constitution and article 30 of the 2016 Culture Act on equality and non-discrimination. However, the Committee reiterates its concern at the inadequate definition of racial discrimination in the State party's legal provisions, which does not incorporate all the elements of the definition of racial discrimination set out in the Convention, in particular with regard to racist hate speech. In this regard, the Committee is concerned about racist and discriminatory comments against indigenous persons by public officials (art. 1).

9. **Taking into account its general recommendations No. 14 (1993) on article 1, paragraph 1, of the Convention, No. 29 (2002) on descent-based discrimination, No. 15 (1993) on article 4 and No. 35 (2013) on combating racist hate speech, the Committee reiterates its recommendations to the State party to take measures to:**

(a) **Bring the current provisions on racial discrimination into line with the definition set out in article 1 of the Convention through the adoption of a primary law. In this context, the Committee stresses the usefulness of having a specific law designed to combat racial discrimination (CERD/C/SLV/CO/16-17, para. 11);**

(b) **Adopt a national policy to raise awareness of racial discrimination and foster intercultural dialogue in order to combat racial stereotypes, racist hate speech and all forms of racial discrimination (CERD/C/SLV/CO/16-17, para. 12).**

#### **Prohibition of racial discrimination**

10. The Committee is concerned that the State party's legislation, in particular the Criminal Code, does not cover all the types of offences listed in article 4 of the Convention (art. 4).

11. **The Committee recommends that the State party bring the current provisions on the offence of racial discrimination, particularly article 30 of the Culture Act and article 292 of the Criminal Code, into line with article 4 of the Convention (CERD/C/SLV/CO/16-17, para. 12).**

#### **Institutional framework to combat racial discrimination**

12. The Committee is concerned about the absence of a State body specifically dedicated to the elimination of racial discrimination. While the Committee takes note of the Directorate for Indigenous Peoples within the Ministry of Culture, it is concerned that implementation of the Convention with regard to indigenous peoples is limited to the area of cultural policies (art. 2).

13. **In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party take measures to:**

- (a) **Establish a public entity responsible for combating racial discrimination, with the authority to receive complaints of racial discrimination and with adequate financial resources and qualified staff;**
- (b) **Ensure adequate funding for the Office of the Human Rights Advocate;**
- (c) **Strengthen the Directorate for Indigenous Peoples by broadening its mission and ensuring adequate funding and qualified staff.**

#### **Structural discrimination**

14. The Committee takes note of the measures taken in the economic and social fields, such as the Government's Five-Year Development Plan 2014–2019, the 2014 Development and Social Protection Act and the 2017 Poverty Eradication Strategy. The Committee also notes the establishment of the Social Welfare Cabinet in 2019. However, it notes with concern that poverty and social exclusion continue to disproportionately affect indigenous peoples, the population of African descent, migrants, refugees, asylum seekers, stateless persons, internally displaced persons and non-citizens (arts. 2 and 5).

15. **Taking into account its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party adopt a comprehensive national policy to combat racial discrimination and racism that effectively promotes social inclusion and reduces the persistently high levels of poverty and inequality that affect members of indigenous peoples and persons of African descent, prioritizing measures to improve the standard of living of children belonging to these groups.**

#### **Situation of people of African descent**

16. The Committee takes note of the submission to the Legislative Assembly of a proposal to amend article 63 (2) of the Constitution to include recognition of the existence of the population of African descent. While the Committee notes the initiatives to recognize the history and culture of the population of African descent, it is concerned at the absence of a national policy for the protection of the rights of people of African descent. The Committee is also concerned at the absence of a State entity specifically dedicated to the population of African descent (arts. 2 and 5).

17. **In the light of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party take the necessary measures to:**

- (a) **Expedite the adoption of the constitutional amendment for the recognition of the existence of the State party's population of African descent;**
- (b) **Develop initiatives to protect the rights of the population of African descent with the participation of their communities and organizations;**
- (c) **Establish a public entity for the protection and promotion of the rights of the population of African descent.**

#### **Legal framework for the rights of indigenous peoples**

18. The Committee takes note of the constitutional recognition of indigenous peoples and the bill on the rights of indigenous peoples under consideration by the Legislative Assembly. The Committee notes that the Culture Act includes a chapter on the rights of indigenous peoples and notes the seven municipal ordinances on the rights of indigenous communities. However, it is concerned that normative and public policy development is based on the International Labour Organization (ILO) Indigenous and Tribal Populations Convention, 1957 (No. 107), which has lost relevance and validity in international law because of its assimilation-based perspective. Furthermore, the Committee is concerned at the lack of adequate consultation on legislation on indigenous peoples, in particular on municipal ordinances and the bill on the rights of indigenous peoples (arts. 2 and 5).

19. **The Committee recommends that the State party:**

- (a) **Expedite the ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) in the light of the Committee's repeated recommendations (CERD/C/SLV/CO/14-15, para. 15 and CERD/C/SLV/CO/16-17, para. 16);**
- (b) **Effectively implement the National Plan of Action for Indigenous Peoples;**
- (c) **Guarantee the right of indigenous peoples to participation and free, prior and informed consultation on legislative developments that affect their rights.**

#### **Lands, territories and natural resources**

20. The Committee is concerned at the low level of land tenure by indigenous peoples and people of African descent. It notes that the State party, through its Agrarian Reform Institute, keeps a land register for rural persons, but has no information on land tenure by indigenous peoples or persons of African descent. The Committee is also concerned about difficulties in accessing water, water scarcity and the presence of gangs that aggravate the situation (arts. 2 and 5).

#### **21. The Committee recommends that the State party:**

- (a) **Pursue its efforts to ensure access to land and territory through the granting of individual and collective property titles to indigenous peoples and people of African descent in the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples (CERD/C/SLV/CO/16-17, para. 17);**
- (b) **Implement the measures relating to the protection of lands, territories and natural resources set out in the National Plan of Action for Indigenous Peoples, which seek to guarantee the legal protection of the lands of indigenous peoples, the conservation and protection of lands, territories and natural resources, and food and nutritional security, on the basis of the indigenous world view and identity;**
- (c) **Maintain and strengthen the dialogue between the Ministry of the Environment and indigenous peoples' organizations, in particular on policies to deal with the climate crisis;**
- (d) **Adopt measures to guarantee access to water for indigenous peoples and communities of African descent, including measures to ensure protection against gang attacks.**

#### **Participation, prior consultation and free, prior and informed consent**

22. The Committee notes that the right of indigenous peoples to participate in decision-making that affects them is provided for in the Culture Act and that the right to consultation is provided for in article 32 of that Act, as well as at the local level through municipal ordinances. The Committee takes note of the Multisectoral Bureau of Indigenous Peoples under the Ministry of Culture, the provision on the establishment of an indigenous council in the bill on the rights of indigenous peoples, and the proposal by indigenous peoples' organizations for the establishment of the Intergovernmental Council of Indigenous Peoples of El Salvador. While the Committee notes that the State party has conducted consultations with indigenous peoples, it is concerned that such consultations were not conducted properly and systematically and with the participation of indigenous peoples' organizations (arts. 2 and 5).

23. **The Committee recommends that the State party adopt the necessary measures to guarantee the right of indigenous peoples to be consulted on any legislative or administrative measure likely to affect their rights, with a view to obtaining their free, prior and informed consent, ensuring that consultations are conducted in a timely, systematic and transparent manner with due representation of the peoples concerned and respecting the cultural characteristics and traditions of each people, including those relating to decision-making. To this end, the Committee encourages the State party to:**

- (a) **Take the process of drafting the National Plan of Action for Indigenous Peoples as an example of good consultation practice;**

(b) Give due consideration to the proposal for the creation of the Intergovernmental Council of Indigenous Peoples of El Salvador put forward by indigenous peoples' organizations;

(c) Conduct consultations on developing a protocol or other national institutional framework to ensure the right to consultation and free, prior and informed consent;

(d) Ensure due consultation in the elaboration and implementation of actions by the Ministry of Culture related to indigenous peoples;

(e) Promptly hold consultations on the bill on the rights of indigenous peoples as well as on the drafting and implementation of municipal ordinances;

(f) Harmonize the right to consultation provided for in municipal ordinances with national legislation, in compliance with the Convention.

#### **Indigenous peoples' social and cultural rights**

24. While noting the measures to revitalize the Nahuat-Pipil language, the Committee is concerned at the lack of similar measures with regard to the Pisbi language of the Kakawira people and the Potón language of the Lenca people. The Committee is also concerned about measures to promote indigenous handicrafts and the use of their traditional knowledge without consultation or consent by the indigenous peoples and without safeguarding their rights in this area (art. 5).

25. **The Committee recommends that the State party:**

(a) Develop a policy for the protection and promotion of all indigenous languages, regardless of their level of use, including the celebration of a national day for all indigenous languages;

(b) Adopt the necessary safeguards to ensure that indigenous handicrafts and traditional knowledge are properly protected and that their use is subject to consultation with indigenous peoples and equitable profit-sharing, taking into account article 8 (j) of the Convention on Biological Diversity.

#### **Situation of indigenous women and women of African descent**

26. The Committee notes the laws for the protection of women, such as the Act on Equality, Equity and the Eradication of Discrimination against Women and the Special Comprehensive Act for a Life Free of Violence for Women, and the equality and non-discrimination policy of the Agrarian Reform Institute. The Committee notes that the policy on rural, indigenous and campesino women is in the process of being drafted. However, the Committee notes with concern the lack of regulations and special measures for indigenous women and women of African descent. In the area of sexual and reproductive health, the Committee is also concerned about the criminalization of abortion in all circumstances, which has a greater impact on indigenous women and women of African descent (arts. 1, 2 and 5).

27. **In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to:**

(a) Intensify its efforts to combat the multiple discrimination faced by indigenous women and women of African descent, including by mainstreaming gender across all policies and strategies on racial discrimination;

(b) Take steps to ensure that indigenous women and women of African descent have access to education, employment and health care, taking into account cultural differences;

(c) Guarantee access to sexual and reproductive health for indigenous women and women of African descent and review legislation on abortion in order to ensure that it is consistent with other human rights, such as women's right to life and right to physical and mental health;

**(d) Adopt protection and prevention measures relating to gender-based violence against indigenous women and women of African descent, provide protection for victims and conduct thorough investigations into all cases of gender-based violence.**

#### **Situation of internally displaced persons, migrants and other non-citizens**

28. The Committee notes the adoption of the Special Migration and Aliens Act in 2019, which includes a prohibition on restrictions based on race and other factors and provides for protection measures for stateless persons. However, the Committee is concerned about the vulnerability of internally displaced persons, migrants and other non-citizens to racial discrimination and the lack of information on the subject (arts. 2 and 5).

29. **The Committee urges the State party to:**

**(a) Ensure, in law and in practice, the protection of migrants, refugees, asylum seekers, stateless persons, non-citizens and internally displaced persons in accordance with the Convention;**

**(b) Collect disaggregated data on the socioeconomic situation of these population groups and adopt special protection measures to prevent manifestations of racial discrimination.**

#### **Complaints filed with the courts**

30. The Committee notes that the Supreme Court of Justice has no register of cases of racial discrimination. In this regard, the Committee reiterates its concern at the information submitted by the State party according to which no complaints of racial discrimination have been filed before the State party's courts and tribunals (arts. 2 and 5).

**31. The Committee reiterates its recommendation on the implementation of information campaigns, in particular among the most vulnerable segments of the population, on human rights, especially on the right to non-discrimination, and on the available legal remedies. The Committee again recommends that the State party take account of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (CERD/C/SLV/CO/16-17, para. 13).**

#### **Enforcement of decisions on the protection of human rights**

32. The Committee takes note of the 2016 decision of the Supreme Court of Justice declaring the Amnesty Act unconstitutional and ordering the investigation of serious human rights violations that occurred during the period of internal conflict. The Committee takes note of the establishment of a special unit within the Office of the Attorney-General of the Republic for the investigation of cases that occurred during the internal armed conflict. The Committee is concerned at the lack of detailed information on effective reparations for victims, in particular indigenous victims and in respect of the Las Hojas and El Mozote massacres (arts. 2 and 5).

**33. The Committee recommends that the State party take the necessary steps to implement the decision of the Supreme Court of Justice, in particular with regard to the adoption of legislative measures relating to reparations for victims and the effective conduct of investigations, including in respect of the Las Hojas and El Mozote massacres. The Committee recommends that the State party take the necessary steps to adopt the Act on Comprehensive Reparation for Victims.**

#### **Intercultural education and health**

34. The Committee takes note of the National Health Policy for Indigenous Peoples and the measures to raise awareness and promote intercultural education. The Committee notes the development of a training centre for public institutions on the rights of indigenous peoples and the population of African descent. However, the Committee is concerned about the lack of information on the results of these measures and the absence of an intercultural health and education policy for people of African descent (arts. 2 and 7).

35. The Committee encourages the State party to pursue its efforts to strengthen intercultural health and education systems, in particular through the implementation, in coordination with indigenous peoples, of the National Health Policy for Indigenous Peoples and the actions envisaged in these areas under the National Plan of Action for Indigenous Peoples. The Committee recommends that the State party take measures in the areas of health and education that take into account the reality of the population of African descent.

#### **D. Other recommendations**

##### **Ratification of other treaties**

36. Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee encourages the State party to accede to the 1961 Convention on the Reduction of Statelessness. Lastly, the Committee recommends that the State party consider ratifying the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

##### **Amendment to article 8 of the Convention**

37. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111.

##### **Follow-up to the Durban Declaration and Programme of Action**

38. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

##### **International Decade for People of African Descent**

39. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and people of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

##### **Consultations with civil society**

40. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in

connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

#### **Dissemination of information**

41. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly made available to all State bodies entrusted with the implementation of the Convention, including municipalities, and publicized on the website of the Ministry of Foreign Affairs in the official and other commonly used languages, as appropriate.

#### **Follow-up to the present concluding observations**

42. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 17 and 19 above.

#### **Paragraphs of particular importance**

43. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 21, 27, 29 and 33 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

#### **Preparation of the next periodic report**

44. The Committee recommends that the State party submit its combined twentieth to twenty-second periodic reports by 30 December 2022, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports and 42,400 words for the common core document.

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