

Observations on the State of Indigenous Human Rights in El Salvador

Prepared for:
The Universal Periodic Review Working Group
of the United Nations
Human Rights Council

Submission date: March 2019

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*, and on its website: www.cs.org. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

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I. Background Information

The population of El Salvador is roughly 6,187,271.ⁱ A 2007 census found that only 0.2% of the population was Indigenousⁱⁱ, but this number has been rejected by academics and Indigenous organizations.ⁱⁱⁱ Indigenous associations cite a 2005 household survey by the Economy Ministry, which put the proportion of Indigenous Peoples at 10% of the total population.^{iv} A previous UPR recommendation by Colombia urged El Salvador to “Make progress with the qualitative census of Indigenous Peoples from El Salvador.” Unfortunately, this has not been realized. The country’s Indigenous population are the Nahua-Pipil, Lenca, Cacaopera, and Maya Chorti^v

To understand the current state of affairs of Indigenous Peoples, it is imperative to understand the country’s history. In 1932, in response to a rural Indigenous uprising, the government systematically killed 35,000 - 50,000 people in a massacre, ‘La Matanza.’^{vi} Indigenous Peoples were especially at risk.^{vii} “Many Indigenous people were deterred from using their traditional clothing or practicing their customs for fear of losing their lives. Many adopted the mainstream language and catholic religion restricting traditional practices to the privacy of their homes.”^{viii} During the 1980-1992 civil war, Indigenous Peoples were targeted by death squads^{ix} and their cultures and identities were gravely impacted. This also led to the mainstream belief that Indigenous Peoples are a thing of the past and have assimilated into mainstream society.^x Today, Indigenous people of El Salvador are rediscovering and reconstructing their identities.^{xi}

El Salvador has endorsed the UN Declaration on the Rights of the Indigenous Peoples (UNDRIP)^{xii} and has taken steps to give Indigenous Peoples better protection by modifying Article 63 of the constitution to include Indigenous Peoples.^{xiii} The modified version of Article 63 states: “El Salvador recognizes Indigenous Peoples and will adopt policies for the purpose of maintaining and developing their ethnic and cultural identities, cosmovisions, values and spirituality.”^{xiv}

II. Past UPR Recommendations supported by El Salvador

The following recommendations remain largely not implemented:

1. Intensify efforts to prevent and eliminate discrimination against Indigenous children, children with disabilities, and girls (Malaysia)
2. Enact and enforce laws and implement programmes directed specifically at combating discrimination and promoting the rights of Indigenous Peoples (United States of America)
3. Promote a legal framework providing legal certainty for the protection of the rights of Indigenous Peoples (Mexico)
4. Make progress with the qualitative census of Indigenous Peoples from El Salvador (Colombia)
5. Establish mechanisms for consultation with Indigenous Peoples to adopt policies and legislation that promote their rights (Mexico)
6. Further develop more inclusive school programmes to ensure better integration of children with disabilities and Indigenous children (Angola)
7. Adopt measures to further the enjoyment of economic, social and cultural rights by Indigenous Peoples (Italy)

8. Increase efforts to combat discrimination and violence against women and impunity for such crimes, through national institutions, including the ISDEMU and the Secretariat for Social Inclusion (Costa Rica)
9. Intensify efforts to prevent and combat violence against women and girls, domestic violence and the violent deaths of women (Turkey)

III. Ongoing Rights Violations

1. Education

There is a disparity in the attainment and access to education between rural and urban people.^{xv} With the majority of Indigenous Peoples living in rural areas,^{xvi} this disparity in education greatly affects Indigenous communities. Approximately 70% of primary schools in rural areas only offer education below the grade of four or five.^{xvii} In contrast, 90% of the urban primary schools offer education below and above the grade of five.^{xviii} This lack of access to education is a major contributing factor to the high rate of illiteracy among the rural population of El Salvador.^{xix}

Under Article 14(2) of UNDRIP, Indigenous children have the right to all levels and forms of education in the state without discrimination.^{xx} Under the current education system, rural and Indigenous children have substantially less access to education than urban children. Indigenous children are being discriminated against due to their geographic location and lack the same opportunities as urban children. By not providing the same opportunities, El Salvador has violated Article 14(2) of the UNDRIP.

In 1932, General Hernández imposed a ban on speaking the Indigenous language of Nawat to further his vision of the nation. Since then, Indigenous languages are almost entirely silent. Although grassroots efforts currently exist to revitalize Indigenous language use in El Salvador, the State has given no official support to bilingual education or incorporating Indigenous languages in the education system for Indigenous children, in violation of UNDRIP Article 14.^{xxi}

2. Land Rights

The Indigenous Peoples in El Salvador lost most their land rights during the 1932 uprising and the civil war in the 1980s.^{xxii} Only approximately 5% of Indigenous Peoples have legal certainty in regard to land tenure. Though the Government has initiated a significant effort to land titling, Indigenous Peoples have only marginally benefited from this.^{xxiii} Of the 28,000 titles granted under the government program from 2009 until 2012, only 307 of these titles were awarded to families identified as Indigenous.^{xxiv}

Article 26 of UNDRIP guarantees Indigenous Peoples the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired.^{xxv} Article 28 of UNDRIP grants Indigenous Peoples just, fair, and equitable compensation, for the lands, territories, and resources which they have traditionally owned.^{xxvi}

Though El Salvador has made some attempts to give Indigenous Peoples collective titles to their traditional lands, the majority of Indigenous Peoples still have no legal rights to their traditional lands. In violation of Article 26, El Salvador has not provided the Indigenous Peoples an adequate opportunity to reclaim their traditional lands. Furthermore, in violation of Article 28, El Salvador has provided no just,

fair, or equitable compensation for the land taken from the Indigenous communities during the 1932 uprising and the 1980s civil war. By failing to grant title to the Indigenous Peoples' land rights, or provide just compensation for these lost lands, El Salvador is in violation of both Article 26 and 28 of UNDRIP.

In March 2017, El Salvador, a country with deposits of gold and silver, became the first and only country in the world to ban all metallic mining, in a major success of organizing by Indigenous Peoples and other grassroots organizations. However, decades of gold mining has left serious toxic contamination on Indigenous lands for which communities continue to suffer. In 2006 there were 31 mining concessions, covering an area of 1,088 square kilometers, 5.17% of the national territory. El Salvadorians also face consequences of mining that is ongoing in neighboring Guatemala. For example, the Cerro Blanco mine, located in the Guatemalan municipality of Asunción Mita, bordering on western El Salvador, is part of the Ostua-Guija-Lempa basin. The pollution generated by the mine runs into Lake Guija, in El Salvador, and from there to the Lempa River, which winds through this country, supplying water that is processed for use in irrigation and for human consumption. Article 29 of UNDRIP states that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous Peoples without their free, prior and informed consent, and that states shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of Indigenous Peoples, as developed and implemented by the Peoples affected by such materials, are duly implemented.

3. Health

Many Indigenous people in El Salvador, especially in rural communities where a large percentage of Indigenous Peoples live, either lack access to or have limited access to drinking water.^{xxvii} 90% of the surface water in El Salvador is contaminated, which results in poorer people having to drink contaminated water.^{xxviii} Since clean water from tap will at best flow once or twice a week^{xxix}, rural residents are left with little choice but to drink contaminated water. If the Indigenous Peoples are forced to fetch water in territories controlled by gangs, these individuals are exposed to robbery, rape, and other attacks.^{xxx}

Article 24(2) of UNDRIP states that Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health.^{xxxi} Article 1 of UNDRIP guarantees that all Indigenous Peoples are protected by the Universal Declaration of Human Rights.^{xxxii} Article 25 of Universal Declaration of Human Rights grants that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.^{xxxiii}

Access to clean water is arguably the most basic component of a healthy life; insomuch that an individual cannot lead a healthy life without clean water. The failure of El Salvador to provide access to clean water to Indigenous people is a clear violation of Article 25 of Universal Declaration of Human Rights because a person cannot have an adequate standard of living without clean water. Following this reasoning, El Salvador is also in violation of UNDRIP Article 24(2) because it is not possible to reach the highest attainable standard of physical health if the person lacks clean drinking water.

4. Women's Rights

Women and girls in El Salvador have lower education levels, higher school dropout rates, and nearly double the illiteracy rate of their male counterparts. Salvadoran women also have lower participation in the formal workforce and lower incomes. These gender disparities are magnified for Indigenous women and the intersections of marginalized identities.

Violence against women is a pervasive problem in El Salvador. The country suffers from a high rate of domestic violence, rape, and brutal femicide.^{xxxiv} Violence against women is both normalized and institutionalized.^{xxxv} When these crimes are reported, they rarely result in a conviction.^{xxxvi} Among Indigenous women in El Salvador, there are high rates of domestic violence^{xxxvii} and little resources to help or support women who have been victims of gender based violence.^{xxxviii} Indigenous women are among the most vulnerable populations in regards to gender based crimes in El Salvador.^{xxxix} The normalized culture of violence cannot be understood outside of the context of violence and genocide inflicted on the nation in recent generations.

Article 22 of UNDRIP states that Particular attention should be paid to the rights of Indigenous women, including the full protection and guarantees against all forms of violence and discrimination.^{xl} Article 1 of UNDRIP also guarantees that Indigenous women's human rights are protected.^{xli}

The failure of the Salvadoran government to provide greater protection to women from violence, or to provide support resources to victims, highlights the government's failure to give particular attention to the rights of Indigenous women. By failing to prosecute individuals who commit physical or sexual violence against women, Article 22 of UNDRIP is violated because the government is not providing protection against violence committed against Indigenous women. Furthermore, the high rate of gender-based violence, coupled with Indigenous women's limited ability seek legal justice or have access to support networks, violates Article 1 of UNDRIP by denying these women their most basic human rights.

Another issue affecting Indigenous women is the criminalization of abortion. Under influence of Catholicism, an imposed colonial religion, abortion is criminalized in El Salvador beginning in 1988, with no exceptions, meaning that abortion for any reason a criminal act. However, more than 35,000 women obtain clandestine abortions in El Salvador every year and in 2011 at least 11% of people who underwent an illegal abortion in the country died (Nikolau). Confounding factors experienced by Indigenous women include increased poverty, reduced access to medical care and contraceptives, and increased rate of sexual violence, which all contribute to criminalization of abortion having a disproportionate effect on Indigenous women and may exacerbate existing conditions of poverty and malnutrition and basic human rights.

5. Communication Rights

UNDRIP article 16 guarantees Indigenous Peoples access to their own forms of media. Yet, Indigenous voices are often excluded from the mainstream media. As an alternative, Indigenous and rural communities use community radio as tool for language and cultural revitalization, human rights education, democracy building, and community organizing. Indigenous youth in particular use community radio to make their voices be heard and work collectively to find solutions to their local issues, especially when they are trying to recover their identity as Indigenous Peoples in their territories. Community radio and other media is a means for youth to connect to their cultures, connect to the community and connect with more youth. However in 2015, El Salvador's Supreme Court ruled that

auction system to sell radio frequency licenses was unconstitutional. Expanding the allocation of radio frequencies to include public or community radio has faced strong opposition from commercial radio, which is controlled by five corporate consortiums. In 2016, there is a reform of the Telecommunications Law, which acknowledges community radio and other non-profit stations, and established alternate mechanisms for them to participate in the allocation of frequencies, such as direct allocation and a tendering process.

Despite this change in legislation, community radio in El Salvador is extremely persecuted. Some stations have been shut down while members of others have received death threats, notably Radio Victoria. Maricela Ramos of Radio Victoria fled to Ecuador in 2011 after being threatened for her reporting on the impact of mining in Rio Lempa. She is now back on the air, but other radio workers have been lost to violence. Before his murder in 2009, environmentalist and anti-mining activist Marcelo Rivera had a weekly radio show. In 2016, Nicolás Humberto García, the director of Radio Expresa in Tacuba, was murdered. Gang warfare is endemic in the country, and the motive for García's murder was likely connected to his broadcasts of violence-prevention programs.

IV. Questions

1. What steps are being taken to provide greater education opportunities to rural and Indigenous children?
2. What efforts are being taken to ensure that Indigenous Peoples are able to hold title to their traditional lands?
3. How is El Salvador addressing the issue of water pollution and the lack of access that Indigenous Peoples have to clean drinking water?
4. What actions are being taken to ensure that Indigenous women are protected from gender-based violence?
5. How is El Salvador addressing the need for Indigenous community radio in their territories?

V. Recommendations

1. Support educational priorities for maintaining historical memory of violence against Indigenous Peoples during El Salvador's civil war.
2. Support the revitalization of Indigenous languages by promoting the use of Indigenous languages in public education settings.
3. Allocate space in the radio spectrum for Indigenous community radio stations, as allowed by the reformed 2016 Telecommunications Law.
4. Protect the safety of Indigenous community journalists by complying with Human Rights Council Resolution 33/2 on the safety of journalists and make special accommodations for rural community communicators.
5. Address the legacy of toxic waste and contamination from mining that still affects Indigenous farmlands and groundwater.

6. Take steps to ensure access to clean water in rural areas in consultation with Indigenous Peoples and support water preservation and treatment systems by Indigenous communities in their territories.
7. Improve Indigenous women's access to the justice system, particularly in cases of domestic violence and sexual violence.
8. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit El Salvador.
9. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.

ⁱ The World Factbook: El Salvador. *Central Intelligence Agency*, 26 February 2019, <https://www.cia.gov/library/publications/the-world-factbook/geos/es.html>.

ⁱⁱ "06 Poblacion Indigena.pdf" available at <http://www.digestyc.gob.sv/index.php/temas/des/poblacion-y-estadisticas-demograficas/censo-de-poblacion-y-vivienda/poblacion-censos.html>

ⁱⁱⁱ Ayala, Edgardo. Native People of El Salvador Finally Gain Recognition. *Inter Press Service News Agency*, 14 May 2012, <http://www.ipsnews.net/2012/05/native-people-of-el-salvador-finally-gain-recognition/>.

^{iv} Ibid.

^v Ibid.

^{vi} El Salvador Indigenous Peoples. *Minority Rights*, 26 February 2019, <https://minorityrights.org/minorities/Indigenous-Peoples-2/>.

^{vii} Ibid.

^{viii} Ibid.

^{ix} Ibid.

^x Ayala, *supra* note 2.

^{xi} Anaya, James. Report of the Special Rapporteur on the rights of Indigenous Peoples; The situation of Indigenous Peoples in El Salvador. June 2013. (Translated from Spanish into English) (Hereinafter Anaya Report).

^{xii} Ibid. at 6.

^{xiii} El Salvador Amends Constitution to Recognize Indigenous Peoples. *Cispes*, 19 June 2014, <http://cispes.org/blog/el-salvador-amends-constitution-recognize-Indigenous-Peoples>.

^{xiv} Ibid.

^{xv} Anaya Report, *supra* note 10, at 21.

^{xvi} Ibid.

^{xvii} El Salvador - Preprimary & Primary Education. *StateUniversity.com*, 26 February 2019, <http://education.stateuniversity.com/pages/423/El-Salvador-PREPRIMARY-PRIMARY-EDUCATION.html>.

^{xviii} Ibid.

^{xix} Ibid.

^{xx} United Nations Declaration on the Rights of Indigenous Peoples, 2007, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, (hereinafter UNDRIP).

^{xxi} Ayala, Edgardo. EL SALVADOR: An Indigenous Language That Refuses to Die. *Inter Press Service News Agency*, 13 October 2009, <http://www.ipsnews.net/2009/10/el-salvador-an-Indigenous-language-that-refuses-to-die/>.

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- xxii Anaya Report, *supra* note 10, at 12
- xxiii Ibid.
- xxiv Ibid.
- xxv UNDRIP, *supra* note 20.
- xxvi Ibid.
- xxvii Gies, Heather. Once lush, El Salvador is Dangerously Close to Running Dry. *National Geographic*, 2 November 2018, <https://www.nationalgeographic.com/environment/2018/11/el-salvador-water-crisis-drought-climate-change/>.
- xxviii Ibid.
- xxix Ibid.
- xxx Ibid.
- xxxi UNDRIP, *supra* note 20.
- xxxii Ibid.
- xxxiii Universal Declaration of Human Rights, Article 25.
- xxxiv Manjoo, Rashida. Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Follow-up Mission to El Salvador. 14 February 2011, <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/country%20report/america/el%20salvador/el%20salvador%20srvaw.pdf?vs=601>.
- xxxv Dennis, Rebecca. El Salvador: One of the Most Dangerous Places in the Western Hemisphere for Women and Girls. *PAI*, 18 January 2018, <https://pai.org/blog/el-salvador-one-dangerous-places-western-hemisphere-women-girls/>.
- xxxvi Ibid.
- xxxvii Anaya Report, *supra* note 10, at 15.
- xxxviii Manjoo, *supra* note 34, at 21,22.
- xxxix Ibid.
- xl UNDRIP, *supra* note 20.
- xli Ibid.