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HUMAN RIGHTS COMMITTEE
Seventy-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

EL SALVADOR

1. The Human Rights Committee considered the consolidated third, fourth and fifth periodic reports of El Salvador (CCPR/C/SLV/2002/3) at its 2113rd to 2115th meetings, on 22 and 23 July 2003 (CCPR/C/SR.2113 to 2115), and adopted the following concluding observations at its 2125th meeting, held on 30 July 2003 (CCPR/C/SR.2125).

A. Introduction

2. The Committee welcomes the consolidated third, fourth and fifth periodic reports of El Salvador, while regretting the delay in their submission. It notes that the consolidated reports contain valuable information on the changes that have taken place in a variety of legal and institutional domains, and on the difficulties and obstacles that the State Party is encountering in giving effect to the Covenant.

B. Positive aspects

3. The Committee applauds the efforts made by the State Party to consolidate and strengthen the

rule of law and democracy, and notes with satisfaction the legal and institutional changes in human rights that it has made in recent years as a result of the 1992 Peace Accords.

4. The Committee notes with satisfaction the State Party's accession to the Optional Protocol to the Covenant in June 1995.

5. The Committee applauds the establishment of a Human Rights Division in the National Civil Police (PNC) in June 2000 to provide support for the protection and promotion of human rights during the exercise of police duties. It also welcomes the delegation's statements about the approval in 2001, by Organization Act, of the Police Ethics Board, a watchdog body independent of the National Civil Police, although it regrets that the Board is still being set up.

C. Principal subjects of concern and recommendations

6. The Committee reiterates its concern at the General Amnesty (Consolidation of the Peace) Act of 1993 and the application of that Act to serious human rights violations, including those considered and established by the Truth Commission. While it notes the position of the State Party, which considers that the Act is compatible with the country's Constitution, the Committee considers that the Act infringes the right to an effective remedy set forth in article 2 of the Covenant, since it prevents the investigation and punishment of all those responsible for human rights violations and the granting of compensation to the victims.

The Committee reiterates the recommendation made in its concluding observations adopted on 8 April 1994, that the State Party should review the effect of the General Amnesty Act and amend it to make it fully compatible with the Covenant. The State Party should respect and guarantee the application of the rights enshrined in the Covenant.

7. The Committee expresses concern at the fact that the investigations into the killing of Mgr. Oscar Romero, the Archbishop of San Salvador and similar cases have been under the statute of limitations, even though the supposed perpetrators have been identified, without checking whether the decision is compatible with the State Party's obligations under international law.

The State Party should review its rules on the statute of limitations and bring them fully into line with its obligations under the Covenant so that human rights violations can be investigated and punished.

8. The Committee is sorry that the delegation did not give a proper answer to the question whether all military and court officials named in the report of the Truth Commission have been suspended from their duties as recommended by the Commission.

The State Party is encouraged to follow the recommendations made by the Truth Commission in its report and provide the information requested.

9. While it appreciates the steps that the State Party has begun to take to reform the judicial system, such as setting up the National Council of the Judiciary, the Committee is concerned that those reforms may not be sufficient to ensure compliance with article 14 of the Covenant.

The State Party is requested to provide more information on the new judicial system in its next report, emphasizing in particular the number of judges appointed following the reforms and their respective assignments.

10. While it appreciates the investigations mounted into lawyers, judges and prosecutors with fictitious qualifications so as to ensure that, as required by article 2, paragraph 3, of the Covenant, those involved in the administration of justice are professionally competent, the Committee notes that, despite the large number of cases investigated, there have been only two dismissals.

The State Party should pursue the investigations in order to ensure that the judicial system is staffed by people of the appropriate professional level.

11. The Committee is concerned at the conditions under which certain members of the National Civil Police are recruited, since those conditions do not disbar persons who might have committed violations of human rights or humanitarian law from recruitment.

The State party should take action to ensure that there is no one in the National Civil Police who has committed any violations of human rights or humanitarian law .

12. The Committee is concerned at reports of PNC involvement in violations of the right to life (art.6) and in torture, cruel, inhuman or degrading treatment and abuse of authority (art. 7), and regrets that it was unable to obtain precise information on the number of sackings that have resulted from cases of torture or similar conduct.

The Committee requests the State Party to supply precise information on this subject, and recommends compliance by PNC with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It also requests the State Party to consider establishing an external mechanism, independent of the National Civil Police, with the right to conduct inquiries and supervise the Police.

13. The Committee is concerned about various reports of threats received by the Procurator in the performance of her duties.

In the light of article 2 of the Covenant, the Committee urges the State Party to support the Office of the Procurator and provide it with full institutional backing so as to ensure its independence, and furnish the requisite physical and human resources for the Office to be fully operational. It also recommends the State Party to take additional steps to guarantee the security of all Office officials in the performance of their functions.

14. The Committee expresses its concern at the severity of the current law against abortion in the State Party, especially since illegal abortions have serious detrimental consequences for women's lives, health and well-being.

The State Party should take steps to bring its legislation into line with the Covenant as regards the protection of life (art. 6), so that women can be helped to avoid unwanted pregnancies and need not to resort to clandestine abortions that may put their lives in danger, as mentioned in the Committee's General Comment No. 28.

15. While noting the efforts made by the State Party to combat domestic violence, the Committee notes with concern that violence against women persists: this raises questions under article 9 of the Covenant. The Committee is also concerned at the high proportion of women within the National Civil Police who have been subjected to violence.

The State Party should take steps to ensure compliance with the Domestic Violence Act. The Committee also trusts that the institutional plan to incorporate the gender perspective within PNC

will be put into effect.

16. The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local "contravention orders") used to discriminate against people on account of their sexual orientation (art. 26).

The State Party should provide effective protection against violence and discrimination based on sexual orientation.

17. The Committee notes with concern that, despite the recent separation of prison facilities into pre-trial centres and sentence-enforcement prisons, prisons are still overcrowded and detainees awaiting or undergoing trial are still put together with convicted prisoners.

The State Party should take appropriate steps to prevent prison overcrowding and ensure that accused persons are segregated from convicted persons in accordance with article 10 of the Covenant.

18. The Committee is concerned at the wording of article 297 of the Criminal Code, which does not offer a suitable description of the crime of torture.

The State Party should offer stronger protection against torture and cruel, inhuman or degrading treatment or punishment (art. 7), in particular by clarifying the definition of the crime of torture given in article 297 of the Criminal Code and enforcing that article where necessary.

19. The Committee is sorry that the delegation was unable to explain the Legislative Assembly's reasons for not approving the establishment of a national commission of inquiry to track down children who disappeared in the conflict (arts. 6, 7 and 24).

The State Party is urged to submit detailed information on the numbers of children found alive and the numbers that died in the fighting. It is also invited to reconsider the establishment of a national commission on disappeared children and a compensation fund for young people who are found.

20. The Committee notes with concern the statements by the delegation admitting restrictions on the right to form trade unions, while remarking that such restrictions are not applied systematically.

The State Party should guarantee everyone the right to form and join trade unions for the protection of their interests, in conformity with article 22 of the Covenant.

21. The Committee has scheduled the submission of the sixth periodic report of El Salvador for 1 August 2007. It urges the State Party to circulate the consolidated third, fourth and fifth periodic reports and these concluding observations extensively within the country, and to bring the sixth periodic report to the attention of the non-governmental organizations and human rights groups operating in El Salvador.

22. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State Party should provide information on the recommendations given in paragraphs 7, 8, 12, 13 and 18 within one year. The Committee requests the State Party to provide in its next periodic report information on the other recommendations made in these concluding observations regarding the implementation of the Covenant.



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