

## EL SALVADOR

### CAT A/55/44 (2000)

152. The Committee considered the initial report of El Salvador (CAT/C/37/Add.4) at its 422nd, 425th and 429th meetings, held on 9, 10 and 12 May 2000 (CAT/C/SR.422, 425 and 429) and adopted the following conclusions and recommendations.

#### 1. Introduction

153. El Salvador became a party to the Convention on 17 June 1996, without reservations. It has not made the declarations provided for in articles 21 and 22.

154. The report complies with the general guidelines regarding the form and contents of initial reports approved by the Committee.

155. The consideration of the report gave rise to a frank and constructive dialogue with the representatives of El Salvador, which the Committee appreciates and acknowledges.

#### 2. Positive aspects

156. The Constitution of the Republic gives legal force to all international treaties which have been ratified, while stipulating that the law may not change or derogate from a treaty's provisions while it is in force and that in the event of a conflict between the treaty and the law, the treaty shall take precedence.

157. The promulgation and effective observance of the new Penal Code and Code of Criminal Procedure, whose provisions include important guarantees for the protection of fundamental human rights, should contribute to better fulfilment of the State's obligations under the Convention.

158. Among those provisions, the Committee attaches particular importance to the following:

(a) The imprescriptibility of both penalties and criminal proceedings in the prosecution of crimes against humanity, including torture;

(b) The attribution of jurisdiction to national courts for the judgement of offences affecting internationally protected property or universally recognized human rights, regardless of by whom and where such offences are committed;

(c) The requirement of written orders authorizing detentions, and the establishment of strict time limits within which a detainee must be brought before a court and the court must give a ruling regarding the detainee's release or remand;

(d) The obligation for national courts to judge individuals charged with offences affecting internationally protected property, in the event that their extradition is rejected;

(e) The creation of the Office of the Procurator for the Protection of Human Rights and the significant activity undertaken by this institution, both in its duties of supervising respect and guarantees for human rights and in the development of human rights promotion and education programmes, particularly those intended for law enforcement personnel;

(f) The creation of prison supervision courts responsible for ensuring the proper enforcement of sentences and respect for the rights of all persons deprived of liberty;

(g) The human rights education activities conducted by the Salvadoran Institute of Human Rights, the Judicial Service Training Colleges and the National Public Security Academy;

(h) The fact that there is no provision in penal legislation which allows torture to be justified by invoking the order of a superior or public authority. On the contrary, the National Civil Police Organization Act expressly excludes that possibility and, under the general provisions of the Penal Code, both the physical perpetrator of the offence and the person or persons ordering it incur criminal liability.

### **3. Factors and difficulties impeding the application of the Convention**

159. The profound alteration in the habits of peaceful coexistence and respect for human rights brought about by the prolonged internal armed conflict that ended in 1992 has required not only the creation or transformation of legal and political institutions, but more fundamentally a process of cultural renewal, which is by nature lengthy.

### **4. Principal subjects of concern**

160. The country's penal legislation does not adequately define the offence of torture in terms consistent with article 1 of the Convention. The type of offence referred to in the Penal Code does not cover all the possible objectives of the offence according to the Convention.

161. There are no rules governing torture victims' right to fair and adequate compensation, at the State's expense, and no State policy providing for as full rehabilitation as possible of the victims.

162. The maintenance in the Code of Criminal Procedure of confessions made out of court is in contradiction with the Constitution, which gives legal force only to confessions made before a judicial authority.

163. There are no legal provisions opposing expulsion, return or extradition when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture.

164. During the period covered by the report, there have been numerous acts of torture and cruel, inhuman or degrading treatment, as well as disproportionate or unnecessary use of force by police and prison personnel, according to reports by the Office of the Procurator for the Protection of Human Rights and other reliable sources.

165. Cases of extrajudicial executions, whose victims show signs of torture, though very infrequent, would appear to reveal a persistence of the criminal practices employed during the armed conflict superseded by the Peace Agreements.

## **5. Recommendations**

166. The offence of torture should be defined in terms complying with article 1 of the Convention.

167. The right of torture victims to fair and adequate compensation at the State's expense should be regulated, with the introduction of programmes for as full as possible physical and mental rehabilitation of the victims.

168. Recognition of out-of-court confessions should be removed from the Code of Criminal Procedure, on the ground that it contravenes the relevant constitutional guarantee.

169. Legal provisions should be introduced opposing expulsion, return or extradition in circumstances referred to in article 3 of the Convention.

170. Human rights education and promotion activities should be continued, with the introduction of human rights training into formal education programmes intended for new generations.

171. The State is urged to adopt measures ensuring that any allegation of suspected torture is promptly and impartially investigated and, if proved, suitably penalized.

172. The declarations referred to in articles 21 and 22 of the Convention should be made.

173. The second report (first periodic report) should be submitted within the coming year, in order to keep to the schedule provided for in article 19 of the Convention.

174. The Committee hopes in due course to receive information and replies to the questions raised during consideration of the report, as offered by the representatives of El Salvador.