

## EL SALVADOR

### CCPR A/39/40 (1984)

68. The initial report of El Salvador was placed on the agenda for the twentieth session following a decision taken at the 462<sup>nd</sup> meeting, on 28 July 1983, to give it priority in view of the serious situation in the country (CCPR/C/SR.462/Add.1). At its 465<sup>th</sup> meeting, held on 24 October 1983, the Committee was informed that the Permanent Representative of El Salvador to the United Nations Office at Geneva had requested postponement of the consideration of the initial report of his country pending the submission of a supplementary report which would reflect the new political constitution that was being drafted. The Permanent Representative was, however, willing, if the Committee so wished, to appear before the Committee in order to answer factual questions but that he would be unable to deal with legal issues.

69. At the 467<sup>th</sup> meeting, held on 25 October 1983, the Chairman announced (CCPR/C/SR.467) that at an informal meeting held earlier in the day, a decision had been taken, in agreement with the Permanent Representative of El Salvador, to consider the report during the present session subject to his reservations.

70. The Committee considered the initial report of El Salvador (CCPR/C/14/Add.5) at its 468<sup>th</sup>, 469<sup>th</sup>, 474<sup>th</sup> and 485<sup>th</sup> meetings held on 27 October, 1 and 9 November 1983 (CCPR/C/SR.468, 469, 474 and 485). The representative of El Salvador replied to members' comments and questions during all of these meetings. In this way, a more direct dialogue than usual for the consideration of initial reports was conducted. For convenience, however, the summaries below are grouped in the ordinary manner.

71. In his introductory statement, the representative of El Salvador pointed out that his country was facing an extraordinary situation in which violent internal conflicts were shaking the foundations of the country with terrible effects. He explained that following the coup d'etat of 1979, profound economic and social changes had taken place and that machinery had been created to ensure respect for human rights. These changes gave rise to struggles which were not yet concluded. Terrorism was adamant on breaking up this process of development. Rebels had taken up arms against the Government, causing social unrest and hampering the efforts being made to revitalize the national economy. He mentioned internal and external causes of the crisis affecting his country. Among the external causes were the revolutionary ideas which had invaded Latin America, especially after the Cuban revolution. His Government firmly rejected foreign intervention, which only served to exacerbate an already difficult situation.

72. The representative also stated that as long as military action continued, there would be violations of human rights in general and of the basic right to life in particular; that in the conflict excesses had been committed on both sides and that the magnitude of the problem was such that it was beyond the powers of the judiciary to investigate cases with due speed, although machinery had now been established to ensure respect for human rights and the Government's own Human Rights

Commission currently published details of cases. He stressed that the difficulties of the existing situation were not primarily of a legal nature and that what was required was a comprehensive solution. He explained the various avenues his Government was exploring towards peace as well as the various peace efforts that were being undertaken at the international level. He would welcome any suggestions from members of the Committee which might assist his Government.

73. Members of the Committee welcomed the readiness of the Government of El Salvador to conduct a frank and constructive dialogue with the Committee with a view to promoting human rights in El Salvador. It was noted that the statement of the representative confirmed that it would be appropriate for the Committee to use a new method in discussing the situation, instead of focusing on the legal position described in the report. The problem in that country was not one of legal structure but the product of a combination of social, political and economic factors going back many years. There was, therefore, no point in blaming the East-West conflict for the tragic situation in El Salvador; nor could Cuba which had struggled for independence against dictatorship, be held responsible for that. It was said that everyone was aware of the difficult situation in which the Salvadorian people were plunged, struggling as they were for their self-determination against foreign backed military and paramilitary units and against the police whose actions had caused thousands of victims. The solution of the problem could not be reached by allowing foreign military advisers to help the Government in the armed confrontation with the guerillas, which in itself represented foreign interference. The social explosion which had culminated in the guerilla movement had deep roots, and a solution must involve a quest for social justice through dialogue between the parties to the conflict. In this connection, one member wondered whether the Government would accept the offer made by its opponents to begin negotiating without prior conditions. Another member pointed out that he was reluctant to engage in a discussion of the matter because not all the parties involved in the events in El Salvador were represented before the Committee.

74. In relation to article 2 of the Covenant, it was noted that whereas the Covenant was said to have been incorporated in El Salvador's internal law, its provision could not be invoked directly before the judicial system or administrative authorities and it was asked whether that implied that internal law rather than the Covenant should be invoked and, if so, whether complaints relating to violations of the Covenant had already been brought before the courts; what results were achieved in the light of the adoption of decrees suspending various rights and freedoms and what remedies against violations of human rights were available in the country under the present circumstances. In this connection, information was requested on the competence and activities of the national Human Rights Commission and on its legal links with the authorities.

75. With reference to article 4 of the Covenant, it was noted from the report that the state of emergency in El Salvador had been extended several times but that its proclamation and extension had never been notified to the other States parties to the Covenant in conformity with article 4 of the Covenant. In this respect, it was maintained that the requirement to notify any derogation from the provisions of the Covenant under that article together with the reasons for such derogation was no mere formality, and that it could lead Governments to abandon their plans with respect to certain derogations because, all things considered, they did not find them absolutely essential. The report contained little information on the consequences that a state of emergency entailed for human rights and on the measures taken to curb their violation. Recalling the statement of the representative of El Salvador to the effect that his Government would welcome advice from the Committee, one

member advised the Government to respect fully all provisions of the Covenant, especially article 4. In the view of another member, El Salvador would appear to be not in a state of emergency but rather in one of civil war, to which rules such as those of article 3 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War should apply. So long as it remained the official policy to protect the power of some and to ensure the exploitation of Salvadorian people, the violations of basic human rights would continue.

76. Commenting on article 6 of the Covenant, members referred to the great number of civilian deaths in the civil war in El Salvador, many of which were attributed to the security forces of the State and related rightist extremists and to the reported abduction and disappearance of the President and other members of the (non-governmental) Salvadorian Commission of Human Rights of thousands of intellectuals known to be opposed to government policies, and they wondered whether that was not the result of an official policy and, if not, what steps the Government had taken to investigate the situation and prosecute those responsible and to defend the right to life in accordance with the Covenant; whether the Government was applying strict regulations on the use of fire-arms by the security forces and, if so, whether punishment was inflicted on members of those forces who abused their authority and, particularly, whether there had been a single conviction for murder in this respect. Information was also requested on the exact number of persons who had disappeared and on whether there was a governmental body to which the families of missing persons could apply for information. Noting that, according to new procedures established in El Salvador in 1980, persons under 16 years of age may be tried for certain serious crimes, one member asked whether that meant that the death sentence could be imposed on minors under 16 years of age and whether there had been any such cases or if minors had always been granted a reprieve.

77. As regards articles 7 and 10 of the Covenant, members expressed their concern over the reported allegations suggesting that torture was widely and routinely used by police in interrogations, in particular in the so-called "cain section" at the headquarters of the national police, and they requested information on measures taken to punish those responsible and on the number of police officers who had been tried and sentenced for acts of torture, and acts of terrorism committed against members of the medical profession. Reference was also made to the reported mistreatment of prisoners and of inhuman and tragic conditions of detention and it was asked whether the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials had been brought to the knowledge of military personnel and prison staff and whether the reported abuses had been committed through ignorance of those norms.

78. In relation to articles 9 and 14 of the Covenant, members noted that whereas no mention had been made in the report of derogations relating to the provisions of those articles, the procedures established under Decree No. 507 of 1980 were hardly consistent with the provisions of the Covenant. It was pointed out that this Decree, for example, contained a series of provisions having the effect of prolonging pre-trial detention far beyond what had been envisaged in the Covenant, that it provided for a secret investigation procedure that was absolutely contrary to the provision of the Covenant and that it denied the right of the accused to examine the witnesses against them.. In this connection, it was pointed out that although article 4 of the Covenant permitted measures derogating from some of the provisions of article 14, such measures must not go beyond "the extent strictly required by the exigencies of the situation"; and that although the establishment of military tribunals in times of emergency was not rare, such tribunals may not carry investigative procedures

to such extent as to violate basic human rights. More information was requested on the procedures of those tribunals; on the rights of the accused, such as possibilities of appeal; on the relationship of the establishment and procedures of military tribunals to the Covenant; and on the reported intimidation of judges, jurors and witnesses.

79. With regard to articles 18 and 19 of the Covenant, members requested more information on the measures taken to ensure freedom of religion and of expression and it was asked whether the report of persecution of a large number of university professors was correct and, if so, whether their only fault had been that of expressing their views on the situation; whether all newspapers really enjoyed the same rights and how many newspapers had been suspended at the time of elections.

80. Commenting on article 25 of the Covenant, one member noted that the Salvadorian Government was endeavouring to guarantee constitutional stability through the electoral process and he pointed out that it was difficult to imagine the kind of elections that could take place in a situation of armed confrontation. Another member noted from the report that constitutional guarantees had been suspended "except in the case of political parties which were authorized to seek electoral support and carry out election propaganda without being subject to the restrictions imposed by the suspension of constitutional guarantees", which prompted questions concerning the criteria applied to decide that some parties might continue to enjoy their rights and others not. Information was requested on the measures taken to ensure respect for the political rights enshrined in article 25 of the Covenant.

81. As regards article 27 of the Covenant, information was requested on minorities, particularly aborigines, which existed in the country, their participation in political life, the extent to which they were involved in the internal conflict and the manner in which their cultural identity was being preserved and protected.

82. Questions were also raised in relation to other articles of the Covenant, particularly as regards the position of El Salvador concerning the right of the Namibian and Palestinian peoples to self-determination and independence under article 1 of the Covenant and the rights of women under article 3. A number of references were made to the reports by Mr. Pastor Ridruejo, the Special Rapporteur of the Commission on Human Rights, with a view to stressing the need of implementing the recommendations set forth therein.

83. Replying to questions raised by members of the Committee, the representative of the State party stressed that his Government was seeking peace and understanding and, to that end, had created a Peace Commission which had proposed that members of the opposition should lay down their arms and take part in the forthcoming elections for which purpose they would have to constitute themselves as political parties and receive legal recognition from the Central Council for Elections. The opposition, however, had not accepted that proposal and had demanded instead that a new government formed of the existing authorities and guerrilla groups should be constituted and that the armed forces should be integrated with the guerrilla groups. The Government of El Salvador had rejected that suggestion, but the Peace Commission intended to continue the dialogue, which was the recommendation of the international community and a means of arriving at a peaceful solution. He admitted that the solution in El Salvador and in Central America in general lay in the acceptance of pluralism and that every country should establish the system of its choice and that the Salvadorian

Government, for its part, was prepared to go along with either Marxist or democratic régimes. He also pointed out that a number of different movements were trying to influence Salvadorian political life and that his Government hoped to receive international understanding and co-operation in its search for a solution which would ensure the success of the forces of peace. Noting that there were possibly 50 foreign military advisers in El Salvador, he stated that their presence was not at all the same thing as foreign military intervention, but a form of co-operation in the military area.

84. Replying to questions under article 2 of the Covenant, the representative stated that the provisions of the Covenant could be invoked directly before the judicial or administrative authorities because they were incorporated in the country's internal legislation. As to the competence and functions of the national Human Rights Commission, he explained that it was to ensure the enjoyment of the inalienable rights of the individual and to recommend appropriate measures for the effective observance of human rights. The Commission could hear complaints and initiate inquiries and, to that effect, it could require the Office of the Prosecutor, the Courts of the security forces, to furnish information in respect of complaints, for example with regard to alleged disappearances. Stressing that the Commission had very broad legal power and that it had been doing important work, he explained that, in the first half of 1983, it had heard 504 complaints and had secured the release of 45 persons. In addition, 91 persons alleged to have disappeared had been located and several detainees had benefited from the Amnesty Decree.

85. Replying to a question raised under article 4 of the Covenant, he pointed out that the state of siege had resulted in the partial suspension of some articles of the Constitution regarding the freedom of persons to enter and leave the Republic, the right to free dissemination of ideas, the inviolability of correspondence and the right of association for illicit purposes. Denying that the situation in his country was one of civil war to which rules such as those of article 3 of the Fourth Geneva Convention of 1949 should apply, he stated that El Salvador had a legitimate Government which exercised its powers with internal and international competence; that the left-wing and right-wing guerrillas were clandestine groups indulging in crime and terrorism outside the legal framework of the nation; and that those groups were engaged in a rebellion, and not an insurrection, against their legitimate Government and that such a crime was punishable under civil and military law.

86. As regards article 6 of the Covenant, the representative stated that the Government was not responsible for the 30,000 deaths caused by the events taking place in his country and he refuted any suggestion of a policy of official repression against the people of El Salvador. He pointed out that a number of persons had fallen victim to political violence and terrorism, while others had died as a result of being caught in skirmishes. As to the question of disappearances, he referred to the complaints received by the United Nations Commission on Human Rights, Working Group on Enforced or Involuntary Disappearances, regarding El Salvador and to the efforts of his Government to investigate all cases brought to its attention and indicated that some of the persons concerned had not actually disappeared but were in detention and that the Government had reported the details of the charge against them and their place of detention; that when a person was in fact missing, it was very difficult to find any information; and that there were instances of young people who had gone underground and taken pseudonyms while others had been found buried in unidentified graves. His Government was assuming its full responsibilities, which were to restore public order and to ensure the safety of its citizens and the enforcement of the law, but the task was a difficult one and there

was no easy solution.

87. Commenting on questions raised under articles 7 and 10 of the Covenant, the representative stated that the law established severe penalties for those found guilty of committing excesses or abuses against detainees; that guidelines for the treatment of detainees had been laid down; that the Salvadorian Human Rights Commission and the Red Cross had given lectures to the appropriate authorities in an effort to promote good treatment of detainees; and that there had been cases of abuses and excesses where the guilty had been punished after careful investigation. In this respect, he referred to the recent annual report of the Ministry of Defence to the Assembly which stated that 202 persons had been punished for violations of human rights. He also stated that the Special Representative of the Commission on Human Rights had visited prisons and had found them spacious and well-ventilated and that his Government had signed an agreement on detention with the International Committee of the Red Cross which enabled the Red Cross to find out about the detention of prisoners and to come and talk to them with a doctor without Government witnesses.

88. Replying to questions raised under articles 9 and 14 of the Covenant, he indicated that there was no secret detention but only a secret initial investigation; that Decree No. 507 did not involve any violations of human rights guaranteed under the Covenant; and that it had been promulgated because of the need to deal with the emergency situation. He informed the Committee that in the light of the new Constitution, the Human Rights Commission of El Salvador had been requested to analyse Decree No. 507 with a view to submitting a draft revised version to the Constituent Assembly for consideration and approval and that, in addition, a committee had recently been set up to review criminal legislation. He undertook to bring members' observations on the Decree to the Government's notice, and he hoped that this exceptional measure would be repealed under the new constitution. He also pointed out that the military tribunals dealt with serious crimes against the State and other crimes against peace and customary law, including terrorism, sabotage, subversive association and other crimes specified in article 376 of the Penal Code. A number of problems affected the judicial system, such as shortage of funds and staff and inadequate means of investigation, an unduly heavy work-load which delayed proceedings, cumbersome legal procedures, the difficulty of gathering evidence when people were afraid to give legal testimony and intimidation of and attacks on judges. Instances of corrupt justice had occurred and had given rise to the appropriate proceedings.

89. In connection with questions raised under article 19 of the Covenant, the representative stated that there had been no press censorship, despite the threat posed by clandestine groups and that the climate of opinion in the country had been affected by the general situation, but the press was permitted to criticize the Government, as could be seen from a reading of the newspapers.

90. Responding to comments made under article 25 of the Covenant, he referred to the 1982 elections, in which 85 per cent of the electorate had voted and during which the state of siege had been lifted and he pointed out that the election had been a reflection of the will of the people and had showed that elections could be held even in a situation of violence. He also stated that, prior to the 1982 elections, the political parties had been authorized to carry out election campaigns over a periods of several months and that the fact that they enjoyed freedom of association had been illustrated recently by the demonstrations held in San Salvador in connection with some aspects of the agrarian reform.

91. Replying to questions raised under article 27 of the Covenant, the representative stated that El Salvador comprised a homogenous blend of races and the small groups of minorities had no major presence in the country; that the indigenous population were probably no more than 15,000 persons and that their language and culture had nearly disappeared. However, they had organized themselves into a National Association of Salvadorian Indigenous Populations, which had held two congresses, the most recent having been held in 1983. The Government was engaged in various efforts to support such groups; the Ministry of Labour was working on employment problems and linguists and anthropologists on linguistic and cultural problems.

92. He replied briefly to the few questions raised under articles 1 and 3 of the Covenant indicating his country's support for the inalienable rights of the Namibian and Palestinian peoples, the rights of women, family and children. He also made several references to the reports of the Special Rapporteur of the United Nations Commission on Human Rights in support of some of his replies and views.

93. The representative of El Salvador stated that his Government was fully prepared to submit a further report in the light of the legal reforms that were being instituted.

94. The Chairman declared that the Committee had not completed its detailed consideration of the report and that the timing of the Committee's further consideration would depend on the time of submission by the Government of El Salvador of the supplementary report to which it had referred in its communication prior to this discussion and which he had stressed should be as early as possible. He trusted that the representative of El Salvador would transmit to his Government the deep concern of the Committee regarding the tragic situation and loss of life in El Salvador. It was the Committee's conviction that efforts must continue in the Committee, in other United Nations bodies and in other organizations to assist El Salvador to revert to a normal situation as soon as possible.

## CCPR A/42/40 (1987)

149. The Committee considered the supplementary report of El Salvador (CCPR/C/14/Add.7) at its 716<sup>th</sup>, 717<sup>th</sup> and 719<sup>th</sup> meetings, on 1 and 2 April 1987 (CCPR/C/SR.716, 717 and 719).

150. The Chairman recalled that the initial report of El Salvador (CCPR/C/14/Add.5) had been considered by the Committee at its twentieth session held from 24 October to 11 November 1983. <sup>6/</sup> At that time the representative of the State party had said that he could not provide information about the legal situation, as a new constitution was under discussion in the Constituent Assembly. It had therefore been agreed that El Salvador would submit further information on the new constitution and regarding progress in the implementation of the provisions of the Covenant and that, pending receipt of such information, the consideration of the State party's initial report would be suspended. The supplementary report had been submitted in June 1986 and was currently before the Committee for consideration, in accordance with the procedure for initial reports.

151. The report was introduced by the representative of the State party who referred to the difficult social and political circumstances that had characterized his country's history, particularly during the current century. He informed the Committee that, after several decades of rule by a series of military dictatorships, a coup d' eta, motivated by a national consensus on the need for change, had occurred in 1979. After further years of unrest in the country, during which some 600 leaders of the Christian Democratic Party had been killed by extremists of the left or right, legislative elections had been held in 1984 followed, in 1985, by presidential elections. Thus, the democratic process had been consolidated in El Salvador. Since 1980, a number of successful agrarian and economic reforms had been undertaken to assist the less favoured sections of the population, particularly the peasants. Despite such positive developments and the unity of the whole civilian population in its desire for peaceful progress, the destabilizing activities of both right- and left-wing extremists had continued and the country was still facing a situation of terror and intimidation. The representative wished to stress that his Government had never refused to co-operate with United Nations organs or representatives dealing with situations affecting human rights in his country.

152. Turning to the report, the representative drew attention to the new Constitution, which had been adopted in 1983 after wide-ranging discussions. He pointed out that its first two chapters were centred not on the State, as was customary, but on the human person and individual rights and fundamental guarantees. His delegation had come before the Committee with the intention of co-operating fully with it and was eager to hear the Committee's recommendations.

153. Members of the Committee, while recognizing the great difficulties posed by El Salvador's troubled history and the problems that had been faced since 1979 in establishing a pluralistic democratic régime, regretted that the report did not follow the guidelines established by the

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<sup>6/</sup> [Official Documents of the General Assembly], Thirty-ninth Session, Supplement No.40 (A/39/40), paras. 68-94



Committee. It was very difficult for the Committee to discharge its responsibilities under article 40 of the Covenant on the basis of the supplementary report submitted by the State party, which merely cited articles of the Constitution that corresponded to various articles of the Covenant. A Constitution only provided a general framework, whereas the Committee also needed to know about the laws that gave effect to the Covenant and the concrete measures relating to its implementation or the reasons for its non-implementation. Members noted that the report was particularly deficient in information about practical difficulties and problems, such as the prevalence of torture and disappearances, whose importance had been stressed by members in 1983 when the earlier report submitted by the State party had been considered.

154. Some members of the Committee, while agreeing that it was not satisfactory to have detailed information only on the subject of the Constitution and very little on the enabling legislation and its practical implementation, nevertheless considered that, given the difficult circumstances prevailing in El Salvador, the attitude of the State party had been positive and left no doubt of the Government's attachment to human rights. They hoped that the Government of El Salvador would do everything possible to provide the information needed for the proper discharge of the Committee's duties under article 40 of the Covenant.

155. With regard to article 2 of the Covenant, members of the Committee requested additional information about the administrative and juridical régime in El Salvador, which guaranteed the exercise of human rights, and asked whether the provisions of the Covenant could be invoked in the courts. They also asked about measure taken to promote awareness of and respect for the provisions of the Covenant, especially among administrative and law enforcement officials, and about the role played by the Salvadorian Human Rights Commission, mentioned in paragraphs 22 and 23 of the report. Noting the statement in paragraph 49 of the report that, in an action of unconstitutionality, the final judgement of the Supreme Court of Justice was binding "as a rule", one member wondered whether that phrase implied possible exceptions and, if so, what such exceptions might be.

156. With reference to article 4 of the Covenant, members of the Committee noted that there seemed to be two different juridical régimes in El Salvador, one based on the Constitution of 1983 and the other on the special legal order established under the state of emergency, which corresponded to the reality that people actually experienced in their daily lives. For example, criminal procedures under the state of emergency (Decree No.50) were entirely different from those prescribed under the constitutional system. It was therefore difficult for the Committee to understand the situation in El Salvador with respect to the implementation of the Covenant, and its problems were compounded by the fact that the supplementary report did not provide detailed information concerning the practical application of the state of emergency and the suspension of constitutional rights. The report also failed to make clear the precise extent to which rights covered in the Covenant had been affected by the state of emergency.

157. Regarding the declaration of the state of emergency and its duration, members of the Committee wished to know specifically how many times article 29 of the Constitution had been invoked since its entry into force in 1983 and whether the Government had on each occasion duly notified the Secretary-General of the United Nations, pursuant to its obligations under article 4, paragraph 3, of the Covenant, how often the state of emergency had been extended by the action of the Legislative Assembly and the Council of Ministers, respectively, how long the suspension of

constitutional guarantees was expected to last, and whether the state of emergency was, in fact, still in force, either de jure or de facto. Regarding the application of the state of emergency, members asked whether persons deprived of their rights during a state of emergency were able to have recourse to the remedy of habeas corpus or amparo, what the powers and functions of the Salvadorian Human Rights Commission were during a state of emergency, and under what circumstances human rights workers, including members of the Human Rights Commission, had been arrested in May 1986. One member commented that, to fulfil its role properly, the Committee would need to be given additional information about the situation in El Salvador with respect to almost every area covered by the Covenant, notably, the right to life, liberty and security of person, the right to a fair trial, freedom of movement, freedom of expression and freedom of assembly.

158. In connection with article 6, members expressed concern over the continuation of political violence in the country, including assassinations, murders, torture and disappearances of union leaders and others, and referred to reliable reports indicating that more than 1,800 civilians had been killed and 300 persons had disappeared in 1986. While the number of cases of killings and disappearances had decreased from previous levels, the situation could hardly be considered satisfactory. Recalling that the representative of the State party had admitted during the discussion of the initial report that his Government lacked the capacity to cope with investigations of deaths caused by political violence, one member wondered what improvements had been made in the system of investigation since 1983. In the same connection, he noted that nothing was said in the supplementary report about the possible establishment of an independent body for investigating such deaths, which had at one time been contemplated by the Government, and asked whether any persons had been brought to justice for political killings. It was also asked whether any law had been enacted to prevent extrajudicial executions, including deaths caused by firing on demonstrators, and whether inquiries had been pursued with a view to ending such abuses by sectarian forces.

159. Regarding the death penalty, members wished to know whether any crimes of the sort referred to in paragraph 68 of the report carried the death penalty, what offences under military legislation carried the death penalty and whether that penalty also applied to civilians tried under military law, and how the restrictions relating to the imposition of the death penalty on minors and pregnant women, as provided in article 6, paragraph 5, of the Covenant, were being observed, particularly in view of the state of emergency.

160. With reference to article 7 of the Covenant, members noted that, despite the prohibition of torture and degrading treatment under article 27 of the Constitution, information from various sources indicated that detainees were frequently tortured, often during pre-trial detention. Noting further that some 90 per cent of the former detainees who had been examined by experts after their release had been found to carry traces of torture, members asked how many cases of the use of torture by prison or police authorities there had been, how many investigations had been carried out, in how many cases those responsible had been punished, how many formal convictions of torturers had been pronounced by the courts, and what compensation had been provided to torture victims. It was also asked whether the prohibition of torture and ill-treatment of prisoners featured in the training of law enforcement officials.

161. In connection with article 9 of the Covenant, members noted that violations of the rights covered under that article were still being reported and that the number of cases of arrests and

detention, under Decree No. 50 of February 1984, had risen to more than 1,000 during 1986. In that regard details were requested as to the number of political and other detainees, the trends with respect to the number of arrests and the length of periods of detention. Further, it was observed that the provisions of Decree No. 50, under which it was possible to hold a person in administrative detention for eight days and to deny him access to relatives or legal counsel for up to 15 days, were not compatible with the Covenant.

162. Regarding article 10 of the Covenant members wished to know what measures had been taken by the Government to prevent the mistreatment of detainees, what controls had been established over the action of the police forces and over the administration of detention centres, particularly establishments under military administration, and how the rights of persons arrested under article 243 of the Code of Penal Procedure (arrest without a warrant) were guaranteed. The representative was also asked to comment on a television broadcast that had shown detainees signing confessions - an event that suggested a lack of adequate safeguards of the persons concerned. Members also noted that the General Assembly, in its resolution 41/157, had expressed the view that continuing violations of human rights were taking place in El Salvador and that the judicial system was unable to rectify matters and punish those responsible. In that regard they wished to know specifically what medical services were available to detainees and to what extent officials received instruction about the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials. They also requested details of specific cases illustrating actual practice relating to the treatment of detainees.

163. With reference to article 14 of the Covenant, one member stated that he would welcome the representative's comments on the observation that the report was silent about the administration of justice and that the judiciary appeared to be ineffective. Another member wished to know what powers were still wielded by the military authorities following the lifting of the state of emergency and on what legal basis.

164. Regarding article 17 of the Covenant, one member wondered what measures the Government had taken to provide protection against arbitrary or unlawful interference with privacy, family, home or correspondence and against unlawful attacks against honour and reputation.

165. In connection with article 18 of the Covenant, one member referred to the apparent lifting of the prohibition against political propaganda by the clergy or criticism of the Government during religious services - which he characterized as a positive development. He asked how that change had been reflected in practice if the prohibition had, indeed, been removed.

166. In connection with article 19 of the Covenant, one member wished to know what possible justification there could have been for restricting freedom of opinion during the state of emergency. In his view, the situation did not warrant any derogation from the provisions of article 19, paragraph 1, of the Covenant. Attention was also drawn to the committee's general comment relating to article 19 (No. 10 (19), 7) which stressed that the right to freedom of opinion should never be restricted or suppressed. Another member wondered why the emergency provisions had been formally extended to the rights set forth in article 19 at all, since it was clear that those rights were being exercised in practice.

167. In connection with article 25 of the Covenant, one member referred to a reported strike by 27 members of the Legislative Assembly in El Salvador and asked for an explanation of that incident. He also wished to have additional information concerning participation in political activity and the progress made in the exercise of political rights.

168. With reference to article 26 of the Covenant, one member wished to know why article 3 of the Constitution contained no specific safeguard against discrimination on the grounds of political or other opinion. It was also observed that the provisions relating to adultery in the Penal Code were discriminatory with regard to women and therefore not compatible with the Covenant.

169. Replying to questions raised by members concerning article 2 of the Covenant, the representative of the State party said that, under article 144 of the Constitution, international treaties were integrated into domestic law and could be invoked before the courts. In case of conflict between a treaty provision and domestic law, the former prevailed. The rights inscribed in the Constitution were being taught to members of the armed forces, and a first training course of that type had been held for 5,000 members of the police force on 25 November 1986. It was planned that by October 1987, some 85 per cent of the members of the security forces would have been given such training, which was being organized in co-ordination with the International Committee of the Red Cross, the Catholic Church and the Salvadorian Human Rights Commission.

170. Responding to questions raised by members of the Committee with respect to Decree No. 50 and the state of emergency, the representative said that the state of emergency had been lifted on 12 January 1987. Decree No. 50 had been abrogated and would be replaced by a new law relating to penal procedures during a state of emergency. It was also planned to create a new office of Procurator-General for Human Rights, to be elected by the Legislative Assembly. During the state of emergency the guarantees relating to freedom of movement, expression, association and non-interference with correspondence had been suspended. Freedom of assembly had also been restricted except for religious purposes. The state of emergency had not affected freedom of opinion, nor had the status or careers of judges been affected.

171. Regarding the arrest of certain activists during the state of emergency, the representative said that Luz Janet Alfaro, Vilma Sayonara Alfaro and Dora Angélica Campos had all admitted participation in terrorist activities and had subsequently been amnestied and freed. They had made a trip to Europe at the beginning of 1987 and had left a dossier with the Centre for Human Rights, which could be consulted. Trade-union representatives who had been detained had engaged in illegal or terrorist acts and had not been arrested for their trade-union activities. Following a meeting

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7/ Ibid., Thirty-eight Session, Supplement No. 40 (A/38/40), annex VI

in 1985 between President Duarte and the Director-General of ILO, a contact group had been sent to El Salvador in January 1986 to look into the situation relating to trade unions, but the number of alleged cases of violation of trade-union rights referred to the ILO Committee on Freedom of Association had been very low.

172. In connection with questions raised under article 6 of the Covenant, the representative said that the Government under President Duarte had demonstrated its determination to put an end to grave violations of human rights by co-operating with the competent organs of the United Nations and the Organization of American States. Immediately upon taking power, the Government had dismantled the G-2 Section of the Policía de Hacienda, which had been implicated in such violations and those responsible had been brought to trial. In all, more than 1,000 members of the armed forces or security forces had been charged with human rights violations and those involved in such well-known cases as the murder of four American nuns and two agricultural advisers had been condemned and were currently in prison. However, it was often difficult to prove such violations in court and trials were often delayed by administrative shortcomings. A commission was currently undertaking a study of the judicial system with a view to improving the implementation of relevant constitutional and treaty provisions. In carrying out that task, El Salvador was counting on technical assistance from the United Nations and from friendly countries, such as Spain.

173. With reference to articles 7 and 10 of the Covenant, the representative acknowledged that abuses of detainees had been very frequent at an earlier stage of the crisis, but said that such abuses had diminished greatly since the start of the democratization process. He stated that the practice of torture was not resorted to in Salvadorian detention centres - a fact that had been confirmed by the most recent report of the Special Representative of the Commission of Human Rights. After learning of incidents of maltreatment, the authorities had instituted a system of medical examinations and of filming the interrogations of detainees so as to preclude the possibility of their recurrence. Detention centre personnel were employees of the Ministry of Justice. Their duties were defined precisely and they operated under strict supervision. Detainees could receive medical care at clinics placed at the disposal of the detention centre administration.

174. Regarding article 9 of the Covenant, the representative said that the security forces and armed forces had received precise orders concerning the manner in which arrests were to be carried out. Pursuant to an agreement concluded between the Government and the International Committee of the Red Cross, the name, date and place of arrest, and place of detention of all persons who had been taken into custody were communicated to the International Committee of the Red Cross. Red Cross delegates and members of the Salvadorian Human Rights Commission were authorized to visit detainees at any of the centres.

175. Regarding article 14 of the Covenant, the representative explained that the judicial system of El Salvador comprised the Supreme Court of Justice and courts of first and second instance. Judges of the Supreme Court of Justice and of the courts of second instance were civil servants elected by the Legislative Assembly to serve terms of five and three years respectively. Judges and magistrates were independent and in the exercise of their functions were subject only to the Constitution and the laws. An effort was currently under way, under the aegis of special reform and revision commission, to improve the penal system from the administrative, technical and legal standpoint.

176. Responding to questions raised concerning article 25 of the Covenant, the representative stated that, in order to strengthen the rule of law and broaden political participation to include the entire population and with a view to the legislative elections scheduled in 1988 and presidential elections in 1989, a thorough effort was being made to revise and update the electoral lists.

177. With reference to article 26 of the Covenant, the representative explained that the inequality in the treatment of men and women with respect to adultery would be corrected under a planned revision of the Penal Code.

178. Finally, the representative of the State party explained that any errors and omissions found in the supplementary report had been due to his country's inexperience and to the lack of qualified personnel. He was confident, however, that, with the help that the Centre for Human Rights would be able to provide pursuant to General Assembly and commission on Human Rights resolutions, El Salvador's future reports would be more complete and would conform better to the provisions of the Covenant. His Government was determined to continue to co-operate, to the best of its ability, with the Committee and with other organs dealing with human rights.

179. Although deeply concerned by the human rights situation in El Salvador, members of the Committee expressed their appreciation to the representative of the State party for the additional information he had provided and for having made available a number of additional documents relating to the human rights situation in his country. However, they felt that the sum of information provided to the Committee by the Government of El Salvador did not amount to a full initial report. Members nevertheless expressed satisfaction about the State party's readiness to conform more closely in the future to the Committee's guidelines for the preparation of reports.

180. The Committee requested the State party to submit another supplementary report before the end of 1988 so as to enable the Committee to consider it together with the second periodic report of El Salvador. The deadline for the submission of the latter was set for 31 December 1988.

## CCPR A/49/40 (1994)

209. The Committee considered the second periodic report of El Salvador (CCPR/C/51/Add.8) at its 1310<sup>th</sup> to 1313<sup>th</sup> meetings, held on 4 and 5 April 1994 (see CCPR/C/SR.1310-1313), and adopted 27/ the following comments:

### 1. Introduction

210. The Committee welcomes the opportunity to continue its dialogue with the State party following a delay in reporting of over 10 years. The second report contained information about constitutional and legal measures giving effect to the Covenant that was supplemented by the core document. The Committee regrets that the second periodic report neither accurately nor candidly represents the actual human rights situation in El Salvador in the period covered by the report, during which armed conflict and massive violations of human rights have been followed by a peace process supervised by the United Nations Observer Mission in El Salvador (ONUSAL). In particular, it provides little relevant information on such key areas as the protection of the right to life under article 6 of the Covenant, the prohibition of torture under article 7, the right to liberty and security of person under article 9 and the guarantee to due process under the law in accordance with article 14. The Committee regrets, in particular, the complete lack of information regarding either the report of the Truth Commission and the implementation of its recommendations or the Amnesty Law and its impact on the State party's obligations under the Covenant.

211. The Committee expresses its appreciation to the delegation for the useful information it provided in response to the list of issues, as well as to questions and comments of Committee members. However, the Committee regrets that many questions put to the delegation during the discussion remained unanswered.

### 2. Factors and difficulties affecting the application of the Covenant

212. The Committee notes that El Salvador has only recently emerged from a long and devastating civil war during which gross and systematic human rights violations occurred and that it is still in the process of recovery and transition to peace.

### 3. Positive aspects

213. The Committee notes with satisfaction that the human rights situation has improved in El Salvador and that some progress has been made towards the consolidation of peace and the establishment of the rule of law. In that connection, the Committee notes the signing of the peace accords in 1992 and the creation under that accord of the Truth Commission and the Ad Hoc Commission to investigate past human rights abuses, to recommend action against the perpetrators and to avoid a recurrence of such events. The Committee particularly welcomes the establishment

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27/ At its 1318<sup>th</sup> meeting (fiftieth session), held on 8 April 1994

of the Office of the Procurator for the Protection of Human Rights and the Office for Information on Detained Persons as well as the primacy accorded in the Constitution to international human rights instruments over domestic legislation. The Committee also welcomes the legal reform undertaken in some areas, notably with respect to the family code and the establishment of family courts, and the limitation of the jurisdiction of military tribunals.

#### 4. Principal subjects of concern

214. The Committee is concerned that, despite the signing of the peace accord over two years ago, the rule of law has not yet been effectively re-established. The Committee expresses concern that human rights violations continue in El Salvador, particularly serious and systematic violations of the right to life carried out by paramilitary groups. In this regard, the Committee notes with alarm that politically motivated summary and arbitrary executions, death threats and cases of torture have continued to occur since the signing of the peace accord. The Committee also notes that most recommendations of the Truth Commission still have not been implemented. A significant gap persists between constitutional and legal guarantees and the actual application of those legal guarantees. The Committee also notes with concern that the rights and freedoms in the Covenant have not been fully included in the Constitution.

215. The Committee expresses grave concern over the adoption of the Amnesty Law, which prevents relevant investigation and punishment of perpetrators of past human rights violations and consequently precludes relevant compensation. It also seriously undermines efforts to re-establish respect for human rights in El Salvador and to prevent a recurrence of the massive human rights violations experienced in the past. Furthermore, failure to exclude violators from service in the Government, particularly in the military, the National Police and the judiciary, will seriously undermine the transition to peace and democracy.

216. The Committee expresses concern over continuing human rights abuses by the military and security forces. In this context, the Committee notes with particular concern the lack of full and effective control by civilian authorities over the military and the security forces.

217. The Committee expresses concern over the fact that high officials of the judiciary have been implicated by the Truth Commission in human rights violations. In that connection, the Committee notes with concern that until serious reform of the judiciary is undertaken, efforts to strengthen the rule of law and to promote respect for human rights will continue to be undermined. The Committee also notes with concern the lack of support and protection given by the civilian authorities to the judiciary in the performance of its duties.

218. A number of additional concerns remain, including the full and effective application of the Covenant in matters pertaining to the full enjoyment by women of the rights guaranteed under the Covenant and the difficulties encountered in ensuring the full participation of all citizens in the electoral process.



## 5. Suggestions and recommendations

219. The Committee endorses the recommendations of the Truth Commission and strongly recommends that the Government take immediate steps to implement them fully.

220. The Committee emphasizes the obligation of the State party under article 2, paragraph 3, of the Covenant to ensure that victims of past human rights violations have an effective remedy. In order to discharge that obligation, the Committee recommends that the State party review the effect of the Amnesty Law and amend or repeal it as necessary.

221. The Committee recommends that all necessary measures be urgently taken to combat the continuing human rights violations in El Salvador. All violations should be thoroughly investigated, the offenders punished and the victims compensated. In this connection, the Committee also recommends that the Office of the Procurator for the Protection of Human Rights should be strengthened, both with regard to resources and competence, in order to ensure that the Procurator may effectively carry out his or her responsibilities.

222. The Committee recommends that all necessary measures be taken to ensure that human rights are respected by the military. The Committee urges continuing vigorous action to ensure that persons closely associated with human rights abuses do not re-enter the police, army or security forces.

223. The Committee recommends that major reform of the judiciary be undertaken with a view to establishing an independent and impartial judicial system free from political pressure and intimidation that will safeguard human rights and enforce the rule of law without discrimination.

224. The Committee urges that respect for human rights be institutionalized at all levels of the Government and recognized as an essential element of the process of national reconciliation and reconstruction. To that end, the Committee recommends that all articles of the Covenant be fully incorporated into the national legal system; that comprehensive human rights training be provided to judges, the police and the military; and that human rights education be provided in schools at all levels. The active participation of non-governmental organizations in the democratization process should also be encouraged.

## CCPR A/58/40 (2003)

### 84. 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 2113th 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).

#### 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.

#### 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.

#### 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.