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Human Rights Committee

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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 sixth periodic report of El Salvador (CCPR/C/SLV/6) at its 2744th and 2745th meetings (CCPR/C/SR.2744 and 2745), held on 11 and 12 October 2010. At its 2767th meeting (CCPR/C/SR.2767), held on 27 October 2010, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of the State party, which gives information on the measures taken by the State party to promote the implementation of the Covenant. It also welcomes the delegation's openness and frankness in its replies to the Committee's questions, the written replies to the list of issues (CCPR/C/SLV/Q/6/Add.1) and the additional information supplied.

B. Positive aspects

3. The Committee welcomes the following measures taken since its consideration of the State party's previous periodic report:

(a) The establishment, by Executive Decree No. 5, of 18 January 2010, of the National Commission on the Search for Children who Disappeared during the Internal Armed Conflict;

(b) The establishment, by Executive Decree No. 57, of 5 May 2010, of the National Commission on Reparations for the Victims of Human Rights Violations in the context of the Internal Armed Conflict;

(c) The adoption of Decree No. 56, of 4 May 2010, which contains provisions to prevent all forms of discrimination in the civil service on grounds of gender identity or sexual orientation;

(d) The establishment, by Executive Decree No. 1, of 1 June 2009, of the Secretariat for Social Integration within the Office of the President;

(e) The ratification in 2006 of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

C. Principal subjects of concern and recommendations

4. The Committee is concerned that there are no specific mechanisms in the State party to resolve any discrepancies between domestic laws and the Covenant, or any procedure for ensuring that draft legislation is in line with the Covenant (article 2 of the Covenant).

The State party should take steps to bring its legislation into line with the Covenant. It should ensure that draft legislation is in line with the Covenant and that judges, prosecutors and lawyers have access to in-service training on the provisions of the Covenant.

5. Although the State party has taken steps to address past human rights violations, such as the public recognition of responsibility by the President and steps to honour the memory of the murdered Monsignor Óscar Romero, the Committee expresses concern that these steps may not be enough to put an end to impunity for such violations, which include, according to the Truth Commission, thousands of deaths and enforced disappearances. The Committee reiterates its concern that the General Amnesty Act of 1993 is still in force and impedes the investigation of these events. Although the Constitutional Chamber of the Supreme Court provided a narrow interpretation of the Amnesty Act in 2000, the Committee is concerned that this judicial precedent has not resulted in practice in the reopening of investigations into these serious events. In particular, no investigations into the murder of Monsignor Óscar Romero have been pursued since 1993 (articles 2, 6 and 7 of the Covenant).

The Committee reiterates its recommendation that the State party should repeal the General Amnesty Act or should amend it to make it fully compatible with the Covenant. The State party should actively pursue investigations into all human rights violations documented by the Truth Commission, notably the murder of Monsignor Óscar Romero. The State party should ensure that those responsible are identified in the investigations and prosecuted and punished in proportion to the seriousness of the crimes.

6. Although the Criminal Code was amended in 1998 to exclude the application of a statute of limitations to a range of serious offences such as torture and enforced disappearance, the Committee is concerned that such a statute has been applied to serious human rights violations that took place in the past, such as the murder of six Jesuit priests and their co-workers (articles 2, 6 and 7 of the Covenant).

The Committee reiterates its recommendation that 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 those responsible prosecuted and punished in proportion to the seriousness of the violations committed (see the Committee's general comment No. 31, on the nature of the general legal obligation imposed on States parties to the Covenant, paragraph 18).

7. In view of the gravity and scale of the human rights violations documented by the Truth Commission, the Committee is concerned that the National Reparations Programme does not appear to fully guarantee all aspects of the right to adequate reparation, and also that the Programme does not provide for the involvement of victims at every stage of its

implementation and does not have an adequate budget or clear legal framework for its work (article 2 of the Covenant).

The State party should include in the National Reparations Programme all measures that are consistent with the right to reparation, such as rehabilitation measures, fair and adequate compensation, satisfaction and guarantees that there will be no repetition. Steps should also be taken to ensure that victims are involved at every stage of implementation and evaluation of the Programme and that specific legal provisions and funds are in place to enable it to function properly.

8. Despite the fact that the role of the Inspectorate-General of the National Civil Police has been strengthened to monitor and oversee the actions of the National Civil Police, and that the State party has taken measures to provide continuing human rights training to students at the National Public Security Academy of the National Civil Police, the Committee remains concerned by the fact that since the 1990s only 139 National Civil Police officers responsible for human rights violations have been dismissed, and that the number of acquittals in the figures provided to the Committee is much higher than the number of convictions. The Committee is also concerned about the complaints of sexual harassment and workplace harassment of women police officers by their colleagues and superiors (articles 2 and 3 of the Covenant).

The State party should thoroughly investigate all human rights violations attributed to police officers, especially those involving torture and ill-treatment, identify and prosecute those responsible, and impose not only the relevant disciplinary sanctions, but also, where appropriate, criminal sanctions commensurate with the seriousness of the offence. The State party should also guarantee the right of victims to reparation, including fair and adequate compensation. It should also investigate complaints of sexual harassment and workplace harassment of women by police officers and impose appropriate penalties on those responsible. The State party should extend human rights training to all National Civil Police officers.

9. The Committee expresses its concern about the situation of women in the State party, the persistence of stereotypes and prejudices regarding the role of women in society, reports that the number of murders of women has remained constant or even increased during the reporting period, impunity for these murders, the lack of disaggregated statistical data on crimes against the lives and integrity of women, the high rates of domestic violence in the State party, inadequate coordination among State bodies involved in preventing and punishing domestic violence, and the still sparse representation of women in public or elected office (articles 3, 6, 7 and 25 of the Covenant).

The State party should design and implement programmes aimed at eliminating gender stereotypes in society. It should implement the right of women victims of violence to justice and reparation, including fair and adequate compensation. The State should also use all the means at its disposal to investigate acts of violence against women, especially murders of women, identifying those responsible, prosecuting them and imposing appropriate penalties, and establishing a statistical system that can provide disaggregated data on gender violence. The State should also improve coordination among the bodies responsible for preventing and punishing domestic violence, in order to make them more effective. The State party should also ensure that those responsible for domestic violence are identified, prosecuted and duly punished, and should adopt special measures to further increase the participation of women in public or elected office.

10. The Committee expresses its concern that the current Criminal Code criminalizes all forms of abortion, given that illegal abortions have serious detrimental consequences for women's lives, health and well-being. The Committee remains concerned that women

seeking treatment in public hospitals have been reported to the judicial authorities by medical staff who believe they have been involved in abortions, that legal proceedings have been brought against some of these women, and that in some cases these proceedings have resulted in severe penalties for the offence of abortion or even homicide, an offence interpreted broadly by the courts. Even though the Constitutional Chamber of the Supreme Court has ruled that in cases of vital need a woman facing criminal proceedings for abortion can be absolved of criminal responsibility, the Committee is concerned that this legal precedent has not been followed by other courts and that criminal proceedings against women accused of abortion have not been dropped as a result (articles 3 and 6 of the Covenant).

The Committee reiterates its recommendation that the State party should amend its legislation on abortion to bring it into line with the Covenant. The State party should take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion. Furthermore, until the current legislation is amended, the State party should suspend the prosecution of women for the offence of abortion. The State party should open a national dialogue on the rights of women to sexual and reproductive health.

11. The Committee expresses concern about the situation of women and girls performing domestic work in the State party, which primarily concerns rural and indigenous women and girls and those in vulnerable situations. The Committee is concerned that domestic workers are subjected to particularly harsh working conditions, excessive working hours and unpaid or poorly paid work (articles 3 and 26 of the Covenant).

The State party should adopt effective measures to remedy the discriminatory treatment of women domestic workers, and ensure that there is no discrimination in their working conditions.

12. The Committee expresses its concern about the high school dropout rate in the State party, affecting mainly girls in rural areas (articles 2, 3 and 24 of the Covenant).

The State party should take all necessary steps to improve the attendance rate of children, and especially that of girls in rural areas, at all levels of education.

13. The Committee is concerned about the situation with regard to trafficking in persons, which affects mainly women, the fact that there have been investigations, prosecutions and convictions in only a very small proportion of cases, and the fact that there are only a limited number of shelters for trafficking victims (articles 3, 7 and 8 of the Covenant).

The State party should effectively investigate trafficking in persons, identify and prosecute those responsible and apply penalties commensurate with the seriousness of the offence. It should also ensure the protection of the rights of victims of trafficking, including by providing an adequate number of shelters for them. The State party should also compile reliable statistics in order to combat the problem effectively.

14. The Committee is concerned that police custody, which can last for up to 72 hours, may be extended by a further 72 hours by decision of a judge (article 9 of the Covenant).

The State party should amend the legislation on police custody to bring it into line with the Covenant and to ensure that pretrial detention does not exceed 48 hours and is never extended after the individual has been brought before the court.

15. The Committee is also concerned that pretrial detention may be extended under certain circumstances up to 24 months (article 9 of the Covenant).

The circumstances under which pretrial detention may be extended should be interpreted narrowly to ensure that pretrial detention is applied as an exceptional measure.

16. Although the State party has adopted a public security policy that focuses not only on punishing offences but also on preventing crime and reintegrating into society those who have committed a criminal offence, the Committee remains concerned at the high number of persons deprived of their liberty in overcrowded prisons in the State party and at the fact that a significant proportion of those persons have not been sentenced (articles 7, 9 and 10 of the Covenant).

The State party should continue to make use of alternative measures to pretrial detention, and should also eliminate the problem of prison overcrowding without delay.

17. The Committee is concerned at the situation of foreigners facing deportation and expulsion proceedings in the State party, particularly with regard to an effective right to be heard, to have an adequate defence and to have their case reviewed by a competent authority (article 13 of the Covenant).

The State party should ensure that persons subject to deportation proceedings benefit from an effective right to be heard, to have an adequate defence and to request that their case be reviewed by a competent authority.

18. The Committee is concerned at the marginalization of the various indigenous peoples in the State party, the lack of full recognition of indigenous peoples, the lack of statistics on indigenous peoples in the 2007 census, the absence of special measures to promote the realization of their rights as peoples, and the absence of measures to protect indigenous languages.

The State party should promote the full recognition of all indigenous peoples and consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169). Following consultations with all indigenous peoples, and with their free and informed consent, the State party should include in the next population census questions relating to the identification of indigenous peoples; design and implement public policies to move towards the full realization of their rights; and adopt special measures to address their marginalization. The State party should also, after consultation with all indigenous peoples, adopt measures to revive their languages and cultures.

19. The State party should disseminate the text of its sixth periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations, as well as among the general public.

20. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 5, 10, 14 and 15.

21. The Committee requests the State party to provide in its seventh periodic report, due to be submitted by 1 July 2014, specific, up-to-date information on all of its recommendations and on the State party's compliance with the Covenant as a whole. The Committee also recommends that the State party, when preparing its seventh periodic report, consult civil society and the non-governmental organizations operating in the country.