

## EL SALVADOR

### CERD A/39/18 (1984)

176. The initial and second periodic reports of El Salvador, submitted in one document (CERD/C/86/Add.3), were considered by the Committee after a brief introductory statement made by the representative of the reporting State, who said that his country adhered strictly, both at home and abroad, to the provisions and principles prohibiting racial discrimination.

177. The Committee underlined that the report marked the beginning of a dialogue with El Salvador which it hoped would develop and prove fruitful. It stated, however, that the information was far from complying with the obligations laid down in the Convention. The report was extremely brief and concerned itself more with the situation outside El Salvador; it did not provide information about the internal tensions which were affecting the exercise of human rights and fundamental freedoms in the country. Serious human rights violations were being reported in many quarters, including the United States Senate. While it could appreciate the difficulties of the Government, the Committee found it unfortunate that virtually no factual information was given on the implementation of articles 2 to 7 of the Convention. The Committee therefore urged the Government of El Salvador to adhere to the Committee's guidelines (CERD/C/70/Rev.1) in preparing its next periodic reports and to provide detailed information with regard to concrete measures taken by the Government in order to implement the obligations imposed by the Convention.

178. The Committee took note of the references made in the report to the Constitution, but indicated that constitutions generally described the conditions that should prevail but not necessarily those that actually existed in a country. Although the report stated that the Constitution could be invoked before the courts, it did not indicate what legislative measures had been taken to implement the Constitution. The Committee wished to know how the principle of equality of all before the law had been put into practice. It also observed that it was unclear whether article 150 of the Constitution of El Salvador consisted of a simple declaration of principles or of something else. Details were also requested concerning the new Constitution.

179. As far as the implementation of article 2 was concerned, the Committee drew the attention of the Government of El Salvador to the lack of information about the situation of indigenous groups and minorities as well as the demographic composition of the population. It was asked how the Government was implementing that article and what its policies were regarding the indigenous population and ethnic minorities. The Government should also provide information on actual measures taken to improve the situation of disadvantaged groups.

180. With regard to article 3, members of the Committee commended the Government for the measures taken against the régime of South Africa. It was recalled, however, that the Convention referred principally to domestic provisions. In this context, one member pointed out that the flagrant violations of human rights committed in El Salvador were of a magnitude comparable to genocide and apartheid.

181. In relation to article 4, the Committee deplored the fact that no information was given in the report about the domestic legislation aimed at punishing incitement to racial hatred. The Committee stated that article 4 required the adoption of legislative measures by States; consequently, the mere incorporation of the Convention in internal law was insufficient. The Committee asked when the reporting State intended to take measures in that respect.

182. Concerning article 5, the Committee observed that the report referred to the principle of equality of everyone before the law but failed to indicate whether that was a principle of positive law or simply a guideline for legislative organs. The Committee stated that, whereas, under various international instruments some political rights could, under very special circumstances, be suspended, the right to life could never be abridged. It was very serious that the report remained silent concerning the security of persons and protection by the State against any violence or bodily harm inflicted by government officials or any individual group or institution, particularly in view of the existence of the “death squads”. The Committee underlined the obligation of States parties to ensure that all persons under its jurisdiction enjoyed the rights spelled out under that article of the Convention. The Committee wished to receive detailed information on the situation prevailing in El Salvador and the intention of the Government to comply with article 5, in particular with respect to the right to security of person, freedom of the press, political parties, workers’ rights, right of asylum, policies on immigration and towards refugees. The Committee also requested explanations regarding the civil and political situation of the indigenous population and disadvantaged ethnic groups who felt themselves to be excluded from participating in the political process.

183. In connection with article 6, the Committee pointed out that the report provided no information regarding either the recourse available to a person who had been the victim of discrimination or how effective the recourse procedure was.

184. In reply to questions raised by members of the Committee, the representative of El Salvador said that the draft constitution had been adopted as of December 1983. He assured the members of the Committee that their concerns and observations would be duly transmitted to his Government.

## **CERD A/50/18 (1995)**

460. The third, fourth, fifth, sixth, seventh and eighth periodic reports of El Salvador, submitted in one document (CERD/C/258/Add.1), were considered by the Committee at its 1108<sup>th</sup> and 1109<sup>th</sup> meetings, held on 4 and 7 August 1995 (CERD/C/SR.1108 and 1109).

461. The reports were introduced by a delegation from the State party, which stated that El Salvador was committed to the preservation of indigenous culture. The State representative further explained that 12 years of civil war had impeded his country's submission of reports to the Committee during that time. He assured the Committee that his country was eager to renew a constructive dialogue with the Committee and would henceforth submit reports in a timely manner.

462. The representative declared that the country had changed in only a few years. The peace process that had begun with the signing of the Peace Accord of 1992 was irreversible. It was reinforced by the change from a military to a civilian police force and the establishment of the Office of the Procurator for the Protection of Human Rights. The State had also benefited from the presence of the United Nations Observer Mission in El Salvador (ONUSAL) and the technical cooperation programmes of the Centre for Human Rights. In the latter connection, El Salvador had received a human rights needs assessment mission from the Centre as part of its technical cooperation programmes in which a member of the Committee had participated.

463. With respect to human rights treaties, the representative explained that El Salvador had ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Indigenous and Tribal Populations Convention, 1957 (No. 107) and other regional and international human rights treaties. With respect to the Convention, however, the representative stated that in El Salvador the phenomenon of racial discrimination did not exist. All persons in El Salvador enjoyed equal rights, including indigenous people. At the same time, he acknowledged that there was no precise demographic data on indigenous persons, but such persons were few and lived in small groups in dispersed settlements. The Government had programmes that aimed to preserve and diffuse the indigenous languages.

464. Members of the Committee expressed appreciation for the resumption of the dialogue between the Committee and El Salvador. Mention was made of the need to evaluate the report in the context of the civil war from which the State party was emerging and expressed appreciation for its efforts reflected in both the report and the core document. Members agreed that the El Salvador of today was different from the El Salvador of only four years before and took note of the fact that, as part of the dialogue between the Government and the Frente Farabundo Martí para la Liberación Nacional, an agreement on human rights was signed in 1990 at San José, containing the rights recognized by El Salvador in its Constitution and within the framework of the human rights instruments of the United Nations and the Organization of American States. The agreement would be monitored by a human rights verification mission.

465. Members expressed concern that the report was incomplete and not in compliance with the Committee's guidelines for the preparation of State reports. A member noted that paragraphs 6 to 49 of the report repeated the same information contained in the core document, which meant that

the report itself consisted only of paragraphs 1 to 5 and 50 to 60. There was no information on the situation of indigenous persons, who, according to the last census in 1930, and taking into account the estimated death toll from the 1932 uprising, should have numbered approximately 50,000 after the uprising. Although many of their descendants had been assimilated into the mainstream society, there continued to exist small indigenous populations that maintained their traditional lifestyles. These communities had limited access to employment and educational opportunities, limited possession of land titles and bank credit and other forms of economic opportunities. The fact that the report failed to recognize the existence of these indigenous communities, and that these communities had been extremely marginalized, constituted a violation of the Convention and were matters of concern. Consequently, the Committee member could not accept the assumption underlying the statement in the report that "in view of the fact that Salvadoran society does not have any problem of ethnic populations, the Government of El Salvador considers it irrelevant and unnecessary to refer to the operative part of the Convention ...".

466. A member referred to article 201 of the Constitution, which provided that "no educational establishment may refuse or admit students on the grounds of the nature of the union of their parents or guardians or of social, racial, or political difference". He asked whether such a provision still existed, why there was no report thereon, what it meant in practice, whether it could be invoked in court and whether there were any court rulings in that respect.

467. With respect to article 1, paragraph 4, of the Convention, a member drew attention to the fact that there was no indication in the Constitution concerning the implementation of the provision.

468. With regard to article 4 of the Convention, it was further indicated that the core document referred to several institutions that were established for the protection of human rights, including the Presidential Commissioner for Human Rights and the Office of the Procurator for the Protection of Human Rights. A detailed explanation was requested of their functions, mandates, activities and relationships with the judiciary and Parliament. The delegation was also asked about the possibility of invoking the Convention in courts of law and noted that while the requirements of article 4 (a) of the Convention appeared to be met by article 406 of the Criminal Code, article 4 (b) of the Convention had not been implemented. A question was posed whether there had been any improvement in the situation of communities of former refugees repatriated from neighbouring countries, which apparently faced obstacles posed by the military with regard to supplies and freedom of movement.

469. A member drew attention to the fact that there was also no indication in the Constitution concerning the implementation of the guarantees contained in article 2 of the Convention, including whether the rights to life, personal security and ownership of property were enjoyed in practical terms.

470. It was also noted that no information was provided with respect to the implementation of article 5 of the Convention.

471. With respect to article 6, concern was expressed that politically motivated acts of violence continued to take place with impunity, since they were rarely followed by an official investigation. In view of that situation, members expressed grave concern over the adoption of the Amnesty Law

and the failure to exclude those who had violated human rights from serving in the military, the national police, the judiciary or other branches of Government. They also commented on the lack of information in the report on developments in the human rights situation since the signing of the 1992 Peace Accord, whereas the Committee had received information from other sources according to which past violators of human rights enjoyed impunity and that violations had been committed by the new civilian police. It was asked whether any specific plans were in place for reparations, compensation and other action to guarantee that human rights violations would not be repeated. Specific information was requested regarding the implementation of the right to effective remedy, as provided for in article 6 of the Convention.

472. In connection with article 7, it was also pointed out that while the report asserted that under the 1983 Constitution international treaties had force of law and could be invoked in court, it was not in the juridical culture of El Salvador to invoke international treaties. It was asked whether this was not an indication of poor dissemination of information. One member emphasized the importance of training law enforcement officials, on which the views of the Committee were elaborated in its General Recommendation 13. The question was asked what actions had been taken towards such training and what influence such training had on the protection of human rights in the State party.

473. Information was requested concerning migratory movements, particularly of refugees, both from the State party in other countries and those seeking refuge in the State party from other countries. It was suggested that the State party undertake a study of its obligations under articles 2 to 7 of the Convention. Other members expressed the view that the civil war was all the more reason for stronger international supervision of the situation in the State party. One member requested further explanation of article 406 of the Penal Code and requested information on what would happen in October when ONUSAL was to withdraw from the territory of the State party.

474. Members of the Committee also requested that the State party accept the amendment to article 8, paragraph 6, of the Convention regarding financing of the Committee and to submit its instrument of acceptance to the Secretary-General at an early date. Some members recommended that the State party consider making a declaration of acceptance of article 14 to recognize the competence of the Committee to receive individual communications.

475. One member described his participation in a needs assessment mission to the State party at the end of May and early June. The mission was organized by the Centre for Human Rights and took place within the framework of its technical cooperation programmes. He explained that the independent expert on the human rights situation in El Salvador had recommended that the Commission end the process of monitoring and embark on the provision of advisory services. Advisory services were recommended with respect to the consolidation of the parliamentary process, reform of the organs of control over society, including the security forces and civil police, development of new laws and definition of the future role of the Procurator for Human Rights with regard to minorities. The member explained that the mission was in response to the State's request for technical assistance, that the information obtained during the mission was currently being analysed by the Centre and that a report would be available when that analysis was concluded.

476. In response to the questions and comments of the members of the Committee, the representative of the State party stated that the civil war had impeded the fulfilment of its obligations

under the Convention. He confirmed that the article prohibiting racial discrimination had been maintained in the 1983 Constitution.

477. The representative explained that the statement in the report that El Salvador had no significant indigenous populations was due to methodological difficulties in identifying and assessing the situation of indigenous persons. He stated that the characteristics used elsewhere to identify ethnic groups, such as special clothing, religious traditions or the use of native languages, were not evident in El Salvador. He further explained that an intensive process of assimilation had been taking place since the Spanish conquest. The civil war served to further scatter the indigenous communities with the effect that they were now very difficult to trace and had become, in that sense, invisible.

478. The representative stated that the Government was aware that indigenous populations existed and was making a concerted effort to preserve indigenous cultures and languages. More attention would be paid to the process called transculturation as well as to appropriate methods of identifying indigenous persons, perhaps with the assistance of the Centre for Human Rights. He pledged that a report would be submitted to the Committee in 1996 describing developments in those efforts.

479. With respect to article 4, the representative further stated that the provision in the Criminal Code which defined as an offence the incitement to hatred against specific groups had not been altered. He agreed to provide information on the number of cases involving that provision after consulting the authorities. There were no court cases invoking the Convention to date, but training for judges and lawyers on the use of international law was being provided by the Supreme Court.

480. In response to questions regarding the role of the public security forces in relation to articles 6 and 7 of the Convention, the representatives explained that a new Ministry of Public Security had been established in June 1995 and that the training of police was undertaken by the new Public Security Academy. It was hoped that new disciplinary regulations for the National Civil Police would be approved within the month. Further, action had been taken to accelerate the investigation of 117 cases of serious offences.

481. Regarding migratory movements, the representatives informed the Committee that approximately 200,000 persons had left the country to seek refuge in neighbouring countries. All had returned under a voluntary repatriation plan, which was recognized as successful by the United Nations High Commissioner for Refugees. However, there were about 500,000 persons who had been internally displaced as a result of the conflict, which undoubtedly affected some indigenous communities, in addition to a number of refugees from Honduras currently in El Salvador.

482. With respect to the withdrawal of ONUSAL, the representative responded that the withdrawal was a decision of the Security Council reflecting the belief that the peace process had become irreversible and now rested with the people and Government of El Salvador to continue. A respected expert in human rights had been appointed as Procurator for the Protection of Human Rights; her office functioned with full powers to promote and protect human rights as provided for in article 194 of the Constitution and its implementing legislation. It had already begun to receive complaints of human rights violations, a function previously performed by ONUSAL. The Committee's observations had been noted and efforts would be made to include all the information requested by the Committee in the next periodic report.

## Concluding observations

483. At its 1124<sup>th</sup> meeting, held on 16 August 1995, the Committee adopted the following concluding observations:

### (a) Introduction

484. The submission of the third to eighth periodic reports of El Salvador, which were combined in a single document, is welcomed. Appreciation is expressed for the opportunity to re-establish the dialogue between the Committee and the State party since the consideration of the combined initial and second periodic report in 1984, as well as for the constructive nature of the discussion. Appreciation is also expressed for the oral answers which the delegation provided to questions raised by members of the Committee.

### (b) Positive aspects

485. The new era of peace and democratization that has recently been established in the State party following 11 years of civil war is a welcome development, as is the signing of the Agreement on Human Rights in July 1990. The Agreement establishes a basis for certain rights and freedoms being overseen by a human rights verification mission. This development will reinforce action against racial discrimination.

486. It is noted with satisfaction that several institutions have been established with constitutional and legal authority to defend human rights, specifically the Office of the Procurator for the Protection of Human Rights, the Presidential Commissioner for Human Rights, the Department of Human Rights within the Supreme Court of Justice and the Commission on Justice and Human Rights under the Legislative Assembly.

487. Note is taken of the fact that, under the Constitution of 1983, international treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, are granted a higher status than domestic law and may be invoked in the courts.

488. The State party's request for advisory services and technical cooperation from the Centre for Human Rights is noted with appreciation. In this connection, it is also noted that the programme which has been organized for El Salvador contains important elements, including the strengthening of human rights institutions and education and training for officials involved in the protection of human rights.

### (c) Principal subjects of concern

489. It is regretted that the possible deficiencies raised in connection with the second periodic report have not been corrected in the present submission, particularly the lack of information regarding the protection of specific rights and action taken under the specific articles of the Convention and the reports' general non-conformity with the guidelines of the Committee for the preparation of State party reports. These problems continue to impede its ability to monitor the fulfilment of the State party's responsibilities under the Convention.

490. The assertion of the State party that, because there are no physical distinctions between the indigenous population and the population as a whole, and because the number of indigenous persons is insignificant, no racial discrimination exists in the State, is not acceptable. The Government's failure to acknowledge the existence of persons of indigenous ethnic origin makes it difficult for the Committee to evaluate the implementation of the Convention.

491. It is regretted that no references to the rights of indigenous persons are made in the Constitution, including their right to participate in decisions affecting their lands, culture, traditions and the allocation of natural resources.

492. Deep concern is expressed at the lack of effort by the authorities to collect information regarding the situation of indigenous ethnic and other minorities which could serve as an indication of the practical implementation of the Convention, particularly when there appears to be clear evidence that the indigenous minorities live in conditions of extreme economic marginalization.

(d) Suggestions and recommendations

493. The Committee recommends that the State party actively foster a legal culture that effectively protects human rights by disseminating as widely as possible information on the international human rights treaties to which it is party, among the authorities responsible for the protection of human rights as well as among the general public.

494. The Committee suggests that the State party take steps to ensure effective coordination between the institutions established in the areas of human rights and requests detailed information in the next periodic report on the legal functions of these institutions, in particular the Procurator for the Protection of Human Rights, their activities undertaken so far and the relationships with each other and with the judiciary and Parliament. It specifically requests information in the ninth periodic report of the State party on the actual and envisaged roles of these institutions in the protection of the rights of indigenous and other minorities.

495. The Committee recommends that reliable quantitative and qualitative information be systematically collected and analysed to evaluate progress in the elimination of racial discrimination and to monitor closely the situation of marginalized persons and groups. It recommends that detailed demographic information be submitted in the next periodic report on the categories of persons enumerated in article 1 of the Convention and in conformity with paragraph 8 of the Reporting Guidelines. The Committee specifically recommends that information be included in that report on the present situation of indigenous people, which at the time of the last census in 1930 numbered approximately 50,000.

496. The Committee recommends that the State party request, as part of the technical cooperation programme currently being implemented in conjunction with the Centre for Human Rights, assistance with the collection of relevant information on the economic and social situation and the legal status of individuals belonging to ethnically distinguished groups in El Salvador, and with the preparation of reports to be submitted to the treaty bodies. It suggests that the State party undertake a thorough review of its obligations under, and its own compliance with, articles 2 to 7 of the Convention. It suggests that technical assistance may also be requested from the Committee in



connection with such a review.

497. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted by the fourteenth meeting of States parties.

498. The Committee recommends that the State party's ninth periodic report, due on 30 December 1996, be a comprehensive report.