



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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Consideration of reports submitted by States parties under article 9 of the convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

El Salvador

1. The Committee considered the fourteenth and fifteenth periodic reports of El Salvador CERD/C/SLV/14-15, submitted in one document, at its 2014th and 2015th meetings (CERD/C/SR.2014 and CERD/C/SR.2015), held on 3 and 4 August 2010, respectively. At its 2040th meeting (CERD/C/SR.2040) held on 20 August 2010, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the State party's fourteenth and fifteenth periodic report, which is however not in complete conformity with its reporting guidelines. The Committee expresses its appreciation to the State party for the presentation made by the delegation, both orally and in writing, and appreciates the significant answers to numerous questions from the members of the Committee.

B. Positive aspects

3. The Committee notes with satisfaction the significant change in the approach of the State party to human rights and issues relating to the Convention announced by the delegation of the State party. It also notes the position taken by the State party with regard to the contents and accuracy of the information contained in previous reports and regarding compliance with the Committee's recommendations. In addition, the Committee notes with satisfaction the State party's expressed resolve to maintain a constructive dialogue with the Committee and to harmonize its national legislation with the provisions of the Convention and other international treaties.

4. The Committee also notes with satisfaction the agreement signed by four State institutions [Secretaría de Inclusión Social; Registro Nacional de las Personas Naturales

(RNPN); la Corporación de Municipios de la República de El Salvador (COMURES); la Procuraduría General de la República (PGR)] on 28 July 2010 which allows all indigenous persons victims of past persecution to recover their indigenous names and for children to be given indigenous names in the future. It also welcomes the creation of the Pilot Project for an Indigenous Peoples' Birth and Identity Papers Register (Registro de Partidas de Nacimiento e Identificación Civil de los Pueblos Indígenas) in six municipalities.

5. The Committee notes with interest the initiatives taken in favour of indigenous communities in the Nahuizalco municipality, including the right of its inhabitants to be protected from direct or indirect racial discrimination and to enjoy fundamental human rights and freedoms in the political, economic, social and cultural spheres. The Committee encourages this example, to be followed in other parts of the country.

6. The Committee notes that the State party has developed a framework for bilingual intercultural education within the formal education system in order to preserve and revitalize indigenous languages. The Committee also welcomes the measure taken to preserve and disseminate the Nahuat-Pipil indigenous language.

7. The Committee welcomes the adoption on 25 March 2009 of the Comprehensive Protection for Children and Adolescents Act (Ley LEPINA) and the formulation of a National Plan for Young Persons 2005-2015 (PNJ 05-15).

8. The Committee welcomes the announcement of the holding on 12 October 2010 of the First National Indigenous Congress.

9. The Committee notes with satisfaction the invitation extended to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples to visit El Salvador in 2011.

10. The Committee notes with satisfaction that El Salvador was the first country in Central America to ratify in October 2007 the International Convention on the Rights of Persons with Disabilities and the related Optional Protocol, which sets a good example in the region.

11. The Committee appreciates that oral presentation of the State party includes inputs from the Procuraduría de Defensa de los Derechos Humanos (National Human Rights Institution) and two non-governmental organizations dealing with indigenous issues.

C. Concerns and recommendations

12. The Committee expresses its grave concern at the significant discrepancies in the figures regarding the ethnic composition of the country derived from the results of the Sixth Population Census and the Fifth Housing Census conducted in 2007, and other reliable sources. However, it also takes note of the position expressed by the State party in its presentation to the Committee which supersedes its concerns regarding the results of the Sixth Population Census and the Fifth Housing Census. The Committee notes the intention of the State party to hold a new census in 2012.

The Committee recommends that the State party improve its census methodology, in close cooperation with the United Nations, the indigenous peoples, and people of African descent, so that it reflects the ethnic complexity of Salvadoran society, taking into account the principle of self-identification. It also recommends that the State party take note of the Committee's general recommendation No. 8 (1990) and of paragraphs 10-12 of the guidelines for the Committee-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee recommends that the State party consider taking confidence-building measures in order to create a climate of trust with regard to the indigenous peoples and people of African descent prior to the census. The Committee requests the State party to include disaggregated statistics on the composition of the population and data on the census to be taken in 2012 in its next periodic report.

13. The Committee is concerned that the State party's domestic legislation continues to omit a definition of racial discrimination conforming to all the elements set out in article 1 of the Convention.

The Committee reiterates its recommendation contained in paragraph 8 of its previous concluding observations (CERD/C/SLV/CO/13) that the State party should incorporate in its domestic legislation a definition of racial discrimination which includes all elements set out in article 1 of the Convention. It also requests the State party to provide information on affirmative action in the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination.

14. The Committee is concerned that there is no legal recognition of indigenous peoples and their rights in the Constitution of the State party. The Committee is also concerned that members of indigenous peoples' communities may not enjoy equal access to public service.

Taking note of the State party's recognition of indigenous peoples as rights-bearers in its new approach reflected in its oral presentation, the Committee recommends that the State party grant legal recognition to indigenous peoples in domestic law, in keeping with article 2 of the Convention. The Committee requests the State party to provide an update on the motion for Constitutional Reform for the Recognition of Indigenous Peoples in El Salvador submitted to the Legislative Assembly in December 2008 by the Procuraduría de Defensa de los Derechos Humanos (National Human Rights Institution). The Committee also reiterates its recommendation contained in paragraph 13 of its previous concluding observations (CERD/C/SLV/CO/13) that the State party should ensure that indigenous peoples participate in government and the management of public affairs at all levels, and enjoy equal access to the public service (art. 5 (c)).

15. The Committee is concerned that the State party has still not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

The Committee reiterates its recommendation contained in paragraph 10 of its previous concluding observations (CERD/C/SLV/CO/13) and urges the State party to take the necessary legislative steps in order to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (art. 2, para. 2).

16. The Committee is concerned that the State party's legislation does not contain a prohibition of racial segregation in conformity with article 3 of the Convention.

The Committee recommends that the State party amend its legislation to explicitly include a prohibition of racial segregation and to undertake all necessary measures to prevent, prohibit and eradicate all practices of this nature in territory under its jurisdiction.

17. The Committee is concerned that there is currently no domestic legislation that conforms to article 4 of the Convention in relation to banning racist organizations and incitement to racial hatred. The Committee is concerned that the Penal Code only deals with acts of racism committed by public officials but not by private individuals. (arts. 2 and 4)

The Committee reiterates the recommendation formulated in paragraph 9 of its previous concluding observations (CERD/C/SLV/CO/13) in which it reminds the State party that it has an obligation to adopt positive legislative, judicial, administrative and other measures to give effect to the provisions of the Convention, which should also aim to prevent acts of discrimination. The Committee urges the State party to expedite national consultations with a view to modifying domestic legislation in order to bring it into conformity with the Convention.

The Committee also recommends that the State party provide in its next periodic report information and statistics on legal actions and penalties for acts of racial discrimination committed by both public officials and private individuals.

18. The Committee is concerned that the 1993 Amnesty Law continues to be in force. It notes, however, that there have been instances when the Amnesty Law had been declared inapplicable.

The Committee recommends that the State party repeal the Amnesty Law and reiterates its recommendation (CERD/C/SLV/CO/13, para. 15) that the State party put into effect the recommendation made by the Inter-American Commission on Human Rights to adopt a programme of reparation and, where possible, material compensation for the victims, thus creating a climate of trust that will enable the indigenous peoples to express their identity without fear (art. 6).

19. The Committee reiterates its concern that indigenous peoples are unable to fully enjoy their economic social and cultural rights, in particular regarding land ownership and access to drinking water.

The Committee recommends that the State party step up its efforts to improve the enjoyment by indigenous peoples of economic, social and cultural rights, including access to safe drinking water and guarantee their rights to land and resources traditionally owned and used, and invites it to take into account its general recommendation No. 23 (1997) on the rights of indigenous peoples (art. 5). The Committee requests the State party to provide updated information about the land transfer programmes conducted by the Salvadoran Institute of Agrarian Reform (ISTA) and on the manner in which indigenous communities participated in and benefitted from this programme. The Committee requests the State party to provide information on any other programmes affecting indigenous economic, social and cultural rights, including access to safe drinking water and guarantees of rights to land and resources traditionally owned and used.

20. The Committee expresses its concern regarding socio-economic situation of Afro-descendants and regarding their lack of recognition and visibility.

The Committee urges the State party to enhance efforts to improve the enjoyment of economic, social and cultural rights by Afro-descendants. The Committee also urges the State party to adopt a plan for the ethnic recognition and visibility of Afro-descendants.

21. The Committee is concerned that indigenous languages continue to be denied the importance that they deserve given that out of a reported total of 47,940 students enrolled in educational institutions 2009, 22,483 belonged to indigenous peoples, and yet not all of them can study in their own language. As regards Bilingual Intercultural Education, the Committee notes the Ministry of Education Programme for the Revitalization of the Nahuat-Pipil Language of El Salvador, but is concerned about the other indigenous languages (art. 7).

The Committee recommends that programmes for the revitalization of the Nahuat-Pipil indigenous language be expanded to other indigenous languages.. It requests the State party to provide updated information on any such new initiatives, in addition to Casas Temáticas, and programmes, including with regard to the Lenca, Kakawira (Cacaoopera), Mayan and any other indigenous languages of El Salvador. The Committee also recommends that the State party ratify the 1960 UNESCO Convention against Discrimination in Education.

22. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

23. The Committee recommends that the State party continue to consult and expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, as well as with the Office of the Procurador para la Defensa de los Derechos Humanos en El Salvador, in connection with the preparation of the next periodic report.

24. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

25. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148 and 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

26. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and indigenous languages, as appropriate.

27. Noting that the State party submitted its core document in July 2003, the Committee encourages the State party to submit an updated version in accordance with the harmonized

guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 18 and 19 above.

29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 16, 17 and 20, and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

30. The Committee recommends that the State party submit its sixteenth and seventeenth periodic report in a single document, due on 30 December 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document (HRI/GEN.2/Rev.6, para. 19).
