



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Summary record of the first part (public)* of the 904th meeting

Held at the Palais Wilson, Geneva, on Friday, 6 November 2009, at 10 a.m.

Chairperson: Mr. Grossman (*Chairperson*)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.904/Add.1.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of El Salvador (continued) (CAT/C/SLV/2; CAT/C/SLV/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of El Salvador resumed their places at the Committee table.*
2. **Mr. Larios López** (El Salvador), replying to a member's question concerning the implementation of article 1 of the Convention, said that the Committee should refer to the information provided in paragraphs 1 and 2 of El Salvador's written replies (CAT/C/SLV/Q/2/Add.1).
3. In reply to the questions about the Truth Commission, he said that the chapter on human rights in the Government Plan 2009–2014 envisaged the promotion of a policy of justice, truth and reparation, as well as assistance to citizens requesting an investigation and clarification of cases of human rights violations. It should be noted in that context that the President of the Republic would attend a memorial service on the next anniversary of the assassination of the Jesuit priests referred to by some members.
4. With regard to questions asked about conditions in prisons and detention centres for women and juveniles, he said that the Salvadoran Institute for the Development of Children and Adolescents had four centres for the protection and rehabilitation of young offenders which provided vocational training to help them readjust once their sentence had been served.
5. Sentence enforcement judges and representatives of the human rights division of the Prison Service and the Office of the Procurator for the Protection of Human Rights (Ombudsman) regularly visited prisons and places of detention. Notwithstanding a report by the Office referring to the critical state of detention centres, food was provided and the electricity functioned; and visits were prohibited only after prison rebellions or in connection with other special problems. The current Government planned to hold consultations with a view to adopting the Optional Protocol to the Convention. With regard to the request for disaggregated statistics on serious and ordinary offences, he said that more detailed data did not exist.
6. Turning to a question about the failure of the law enforcement authorities to respond to requests by the Ombudsman's Office for information on acts of torture and ill-treatment committed in prisons, he reiterated the Government's commitment to collaborate with the Office in following up decisions adopted on the procedures of government institutions, to which reference was made in paragraph 3 of the written replies. Paragraphs 31 and 32 of the written replies discussed the action taken on the reports of the Office and investigations carried out in response to cases which it had cited.
7. As to the questions on whether the definition of torture in El Salvador's Criminal Code was sufficient, whether the crime of torture was subject to prescription, whether El Salvador regarded a punishment of three to six years' imprisonment as commensurate with the seriousness of the offence and whether national legislation had created problems of compatibility with the Convention, especially in cases of offences committed by persons in a position of public authority, he referred to the information provided in El Salvador's second periodic report and in paragraphs 1 and 2 of the written replies.
8. With regard to the questions asked about the many cases of murders of women, he said that in recent years there had in fact been an increase in the number of such crimes, from 195 in 1999 to 348 in 2008. The majority of the victims had been between 15 and 39

years of age. The departments in which the majority of the murders of women had occurred were San Salvador, La Libertad, Santa Ana and Sonsonate. The number of women killed in domestic violence as a percentage of all murders of women had risen from 6 per cent (14 cases) in 2003 to 11.14 per cent (15 cases) in 2006.

9. In November 2005, the first national investigation of murders of women, conducted with the involvement of a number of State bodies and institutions and NGOs had found that the main causes had been ordinary crime, gang violence and domestic violence, although in most cases the motive was unknown. In the period 2005–2008, 244 women had been murdered in their own homes. Of the total number of women murdered over the same period, 1,024 had been shot, 218 had been killed with a blunt instrument, 101 had been strangled and 76 had been stabbed. A bill aimed at combating and eradicating all forms of violence against women currently under consideration in the Legislative Assembly was to include the crime of femicide and had been endorsed by State bodies and civil society organizations.

10. As indicated in the written replies, for the past four and a half years the Inter-Agency Commission set up to search for children who had disappeared during the armed conflict in El Salvador had worked with the relevant public institutions to find them and reunite them with their natural families. As of 31 May 2009, 70 children had been found in response to 212 search requests, 51 of those disappearances having been the result of the armed conflict and the other 19 of consensual adoptions; 29 families had been reunited. The Commission was empowered to cooperate with other institutions, such as the Supreme Court and the Ombudsman's Office as well as private bodies active in the area. It conducted interviews with witnesses, former combatants and military personnel, and with the persons who had last seen the children. Sometimes it requested information from State bodies and spoke with magistrates, mayors, and officials of the national registry and the Salvadoran Institute for the Comprehensive Development of Children and Adolescents, as well as members of the Salvadoran Red Cross, churches and orphanages.

11. At the current time, there was no programme for paying compensation to victims of child disappearances. However, as part of the Commission's work, psychological assistance was provided to children who had been recovered and to their biological and adoptive families, in addition to social assistance in the form of medical care, material and legal assistance, and family-reunion workshops.

12. As part of the Government's commitment to addressing the problem of children who had disappeared during the armed conflict, on 1 June 2009 a new project had been launched to restructure and redefine the functions of the Commission to permit the participation of civil society and give effect to the parameters set by the Inter-American Court of Human Rights in its *Hermanas Serrano Cruz v. El Salvador* ruling.

13. In reply to questions about the appointment of judges, he said that in the capital (San Salvador) judges were appointed by the secretariat responsible for petitions filed with the Supreme Court, and elsewhere in the country by the competent courts established by law. Thus, the Attorney General's Office did not have the authority to appoint or remove judges. Any party to criminal proceedings could seek to have a judge removed for the reasons set out in article 73 of the Code of Criminal Procedure.

14. With regard to the questions on cases of abuse of office and disciplinary sanctions, he said that the main offences with which police officers had been charged had been homicide, first-degree robbery, aiding and abetting the escape of prisoners, petty theft, smuggling, physical and sexual violence, and misconduct. There had been a number of imprisonments, dismissals and suspensions.

15. As to other questions concerning violence against women, he said that a programme for the rehabilitation of family relations under way since 1996 had been reaching out to

women in vulnerable groups, including those deprived of liberty. Campaigns focused on mental health, awareness-raising and the prevention of domestic violence, sexual aggression against children and child abuse. On 6 July 2007, in the context of those activities, an anonymous complaint had been received concerning the sexual harassment of female detainees. In response, an official letter had been sent to the ministry responsible for the detention centres, recommending that action should be taken to put an end to such acts and that all searches and medical examinations, and above all gynaecological examinations, should be carried out by female staff. Training was provided to medical and administrative staff and also to psychologists and social workers at detention centres for women. There had not been any further complaints of such acts.

16. On the question of cases of rapists marrying their victims and measures to address that phenomenon, he said that under the old Criminal Code of 1974 it had been possible to avoid criminal responsibility for such acts, but under the new Criminal Code of 1998 marriage was no longer an attenuating circumstance. Thus, such rapists could no longer hope to escape punishment.

17. The National Civil Police had an internal administrative procedure for filing complaints against police officers which could be used by female officers who were victims of sexual abuse. Through its programme for the rehabilitation of family relations, the Salvadoran Institute for the Advancement of Women had dealt with such complaints and provided support and follow-up, as well as legal consultation and psychological therapy for female victims. A female police officer could also file a complaint directly with the public prosecutor. If no action was taken, she could turn to the Ombudsman's Office. Once she had exhausted domestic remedies, she could take her case to the Inter-American Court of Human Rights.

18. The police force was a particular focus of the work of the family relations rehabilitation programme, which conducted awareness-raising campaigns and training courses on the prevention of domestic violence, sexual aggression and child abuse.

19. In reply to the questions asked about the training of police officers and medical and health-care personnel, he said that article 13 of the Police Code of Conduct provided that police officers must not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. Article 9 (8) of the Police Discipline Act, which had entered into force on 25 January 2008, provided that persons who committed serious offences, including torture, cruel, inhuman or discriminatory treatment or harassment, were liable to dismissal. In order to combat such offences, in the past two years training programmes had been conducted on the Convention against Torture; 110 higher-ranking police officers and 593 less senior officers had participated. Training courses on human rights lasting several days were organized annually at most police stations. The human rights unit of the National Civil Police was responsible for preparing and disseminating a bulletin on such efforts with the support of human rights specialists from governmental and non-governmental institutions.

20. Between 2005 and 2008, a number of training days had been organized for police officers and specialized units around the country, with a focus on the following issues: women's rights; equality of male and female police officers before the law; rights and obligations of female police officers; rights of vulnerable groups and the police; police ethics as they related to vulnerable groups; the vulnerable situation of persons working for the police; the rights of the child and national and international standards; and national and international standards in the area of human rights and humanitarian law. A number of well-known bodies had been involved in those initiatives, including the Fundación de Estudios Superiores para la Aplicación del Derecho, the Olof Palme Foundation, the Instituto de Derechos Humanos de la Universidad Centroamericana, the UNDP Office in El Salvador and UNICEF – El Salvador.

21. In order to assess the progress made through human rights days, workshops, training courses and seminars for police officers, the Inspector-General of Police distributed an annual questionnaire, to be filled out by police officers at all levels.
22. In response to questions about the fate of young members of criminal gangs (*maras* and *pandillas*), he said that the National Council on Public Security had been running the farm-school project since 2005 for former gang members and had rescued 63 young people, including women, from the gangs. They engaged in poultry-farming and market gardening and received training in bakery, mechanics and other skills. Preventive programmes were also arranged for non-offenders, young people at risk and those who had already served sentences. The new Council authorities intended to develop further programmes and projects in the areas of prevention and protection of young people at risk.
23. An increasing number of Salvadorans were seeking refuge from criminal violence abroad. Witnesses of crimes had been threatened by gangs and others were victims of extortion rackets or kidnapping. In recent years some had sought asylum in the United States, claiming that their lives would be at risk if they were deported to El Salvador. That argument was not always accepted by the United States authorities. There were no official statistics for such cases, but the authorities had been informed of cases in which victims of the gangs had been offered protection in the United States on Mexico. Many prospective asylum-seekers who were still in the country appealed for assistance through visits and telephone calls. They were directed to the Ministry of Foreign Affairs, which provided them with information on the asylum procedure.
24. With regard to article 99 of the Constitution cited in paragraph 119 of the report, he assured the Committee that foreigners in El Salvador enjoyed equal treatment with nationals except in the area of political rights. They could apply for consular assistance unless they were asylum-seekers invoking persecution by the authorities of their country of origin as a ground for obtaining refugee status, in which case it would be inappropriate to have contact with the consulate. The norms applied in assessing refugee status were those of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. However, the provisions of the Cartagena Declaration on Refugees were also taken into account.
25. Pursuant to article 28 of the Constitution, foreigners could not be extradited for political offences. Recognized refugees could request permanent residence and Salvadoran citizenship in accordance with the Constitution and other applicable legislation.
26. Asylum-seekers had entered the country not only by land and air but also by sea, especially from African and Asian countries. To date nobody had been deported by sea. In September 2009, a wooden vessel carrying 71 persons of different nationalities had been intercepted on its way from Ecuador to Guatemala, where the passengers were to be transferred to another vessel heading to the United States. All the passengers had been interviewed and provided with medical care and food. The repatriation process would be initiated after consultation with the various consulates. However, some of the migrants' countries of origin were not represented in El Salvador.
27. Unaccompanied minors received priority treatment, including medical and psychological care. Deportation to their countries of origin had never been contemplated.
28. Police officers and members of the Department of Migration and Foreign Nationals at the country's border crossings and international airport attended training and awareness-raising courses on the identification of refugee cases. The courses were organized by the Commission on Refugee Status Determination with the support of the UNHCR liaison office.
29. During the period April 2005–November 2009, care had been provided to 163 victims of human trafficking. According to a report by the Admission, Assessment and

Diagnosis Division of the Salvadoran Institute for the Comprehensive Development of Children and Adolescents, 18 children had been admitted to the refuge for child victims of trafficking during the period January–July 2009. The Office of the Attorney General had investigated 47 cases of human trafficking during the current year. There had been two convictions, one for fraudulent adoption and the other for forced labour or services. Eight persons had been arrested for trafficking since the beginning of the year. He presented three tables: the first showed the number of persons investigated, tried and convicted during the period 2004–2009; the second showed the number of persons detained and the number of victims during the period 2004–2008; and the third showed the number of victims, disaggregated by gender and nationality, during the period 2004–2009. There were no figures for suspended sentences.

30. With regard to the alleged use of excessive force by the police at a school in San Jacinto, the police had entered at the request of the teaching staff to control a parent protesting against alleged threats to his son. The Director-General of the National Civil Police had acknowledged that excessive force had been used and had apologized. Although the Minister of Education had requested an investigation, none had been undertaken.

31. With regard to the extrajudicial executions in the Department of Sonsonate and the existence of death squads, the National Civil Police had asked the Ombudsman's Office to present evidence of the charges but none had been provided.

32. As to the homicide of José Gilberto Soto, a Salvadoran member of a United States trade union, the Criminal Division of the Supreme Court had ordered a retrial.

33. His Government would send replies to all other unanswered questions in a later report.

34. **Mr. Gallego Chiriboga**, First Country Rapporteur, commended the delegation for its spirited effort to answer the numerous questions raised by the Committee the previous day. He was somewhat disappointed, however, that the replies to a number of substantive questions would be forwarded in due course. It was preferable to discuss such matters in the presence of the delegation.

35. His question regarding article 1 had concerned the apparent failure to incorporate the offence of cruel, inhuman or degrading treatment in Salvadoran legislation. Drawing attention in that connection to the Committee's general comment No. 2, he asked whether there were any plans to remedy the omission.

36. He fully accepted that El Salvador, as a developing country emerging from a very difficult period in its history, was making valiant efforts to seek solutions to persistent problems. He referred in that connection to vulnerable groups such as women, children, persons with disabilities and ethnic minorities. It was also essential to establish procedures to meet the needs of migrants, since El Salvador was both a receiving and a transit country.

37. The delegation had not answered the Committee's question about arbitrary detention, especially of gang members. Fourteen people charged with terrorist acts under the 2006 counter-terrorist legislation had filed complaints in that regard in July 2007. He requested further information on how the legislation in question was applied.

38. With regard to allegations of excessive use of force by the police, he was surprised to hear that although an investigation had been requested, none had been carried out, and that in another case the Ombudsman's Office had failed to provide the evidence requested. The perpetrators therefore presumably enjoyed impunity.

39. The Committee was concerned about recourse to pretrial detention for unreasonably long periods. The delegation had failed to reply to questions about institutionalized violence

in detention centres and the lack of oversight, which was obviously impeded by severe overcrowding. How did the State party propose to deal with the problem?

40. According to the delegation, a written reply would be sent in due course regarding the General Amnesty (Consolidation of Peace) Act. The Committee believed that the Act should be repealed. There should be no statute of limitations for the crimes that had been committed and the perpetrators should not enjoy impunity.

41. **Ms. Belmir**, Second Country Rapporteur, congratulated the delegation on its detailed answers to many of the questions raised by the Committee.

42. With regard to femicide, she was particularly shocked to hear that 244 women had been murdered in their homes between 2005 and 2008. The Committee on Economic, Social and Cultural Rights had linked the phenomenon of violence in El Salvador to economic and social problems, and the State party had said in its report that violence was hampering economic development and social stability.

43. The delegation had referred to a preliminary bill to counter violence against women, which was currently before the Legislative Assembly. But what could be done in the short and medium terms to prevent domestic violence and to ensure that the perpetrators were brought to justice? There was an immediate need for telephone helplines and for coordination between the judicial system and the law enforcement agencies. In the longer term, families should have access to economic assistance to prevent child labour and trafficking.

44. The Committee would welcome more detailed information about the judiciary and the proposed modernization of the judicial system.

45. **Mr. Gaye** said that the delegation's replies clearly demonstrated the State party's desire to cooperate fully with the Committee.

46. According to the report, the Office of the Attorney General formed part of the Public Prosecutor's Office and its main function was to defend the interests of the State and society by investigating and prosecuting crimes, and to institute legal or criminal proceedings, either *ex officio* or on application by a party. The Attorney General's Office also appointed and removed prosecutors attached to the Supreme Court, appellate courts, military tribunals and courts of first instance. He feared that a conflict of interest might arise in such circumstances since there was no clear separation of powers between those responsible for investigating and adjudicating cases.

47. The report referred in several contexts to disciplinary proceedings for abuse of authority. He gathered that cases of physical violence might be regarded as abuse of authority, but physical violence might also constitute torture and should entail criminal rather than disciplinary proceedings. Moreover, disciplinary proceedings were not transparent since they were held in private without public scrutiny. The perpetrators should be brought to justice and the victims compensated.

48. **Mr. Mariño Menéndez** thanked the delegation for the major effort it had made with the resources at its disposal. He looked forward to receiving replies to the more complex questions in due course.

49. The delegation had confirmed that gang violence sometimes prompted Salvadorans to seek refuge abroad, usually in the United States or Mexico. He was puzzled by the information that persons were referred to the Ministry of Foreign Affairs for information on the asylum procedure. Did that mean that Salvadoran nationals who were victims of violence were encouraged to seek refuge abroad, since the State was unable to afford them protection in their own country?

50. **Ms. Gaer** said that, according to the statistics provided by the State party, the proportion of women who had been murdered in El Salvador in the period 1999–2006 had doubled. That was a tragic finding in any case, but she wondered whether it meant that the figure had doubled in real terms or that efforts to document the phenomenon had been intensified. She enquired what elements were covered under the offence of femicide, which the State party was considering defining as a criminal offence.

51. On the question of exculpatory circumstances that had previously been recognized in the case of a rapist who married his victim, she enquired whether such circumstances were still being recognized despite the change in the State party's law. She would be grateful for any information the delegation might be able to provide on any such cases, especially concerning measures to ensure compliance with the laws in force.

52. **Ms. Sveaass** asked whether, as part of the Government Plan 2009–2014, the Government intended to repeal the General Amnesty (Consolidation of the Peace) Act. Although she welcomed the events planned in remembrance of the Jesuit priests killed in 1989, she would also welcome more information about the investigation of those killings.

53. **Mr. Wang Xuexian** said that he wished to register his indignation at the phenomenon of the murder of women in El Salvador. It was inconceivable that such a phenomenon could be permitted to exist. He strongly urged the Government of El Salvador to take all necessary measures, including the prompt enactment of a bill on violence against women, in order to prevent and eradicate that scourge.

54. **Ms. Kleopas** said that she wished to echo the concerns expressed by other members of the Committee about the existence of impunity in the State party. On another matter, she asked whether a bill under consideration to prohibit corporal punishment in all settings outside the home, which reiterated the legal defence for the use of corporal punishment by parents, meant that the Government had no intention of abolishing corporal punishment in the home, despite what had been recommended by the Committee on the Rights of the Child.

55. **The Chairperson** said that he wished to endorse statements made by other members of the Committee about the report of the United Nations Truth Commission on El Salvador (S/25500) concerning the murders of six Jesuit priests and two other persons on 16 November 1989. It was important to recall the main facts in the case, and to examine the findings and recommendations of the Truth Commission. After reading out portions of the report summarizing the incident, he highlighted, in particular, the fact that three of the five convicted military officers had been released on bail and had remained in the armed forces. He also highlighted the fact that the murders had been premeditated and that their organization and execution had involved a large number of military personnel. The United Nations and the international community had played an important role in ending the conflict in El Salvador through the efforts of the Truth Commission. Subsequent to its findings, the Truth Commission had recommended the establishment of a special fund to award appropriate compensation to the victims of violence in the conflict, which had resulted in 70,000 casualties. It had also recommended the construction of a national monument bearing the names of all the victims of the conflict; recognition of the good name of the victims and of the serious crimes that had ended their lives; and the institution of a national holiday in memory of the victims, to serve as a symbol of national reconciliation.

56. He noted that all of the Truth Commission's recommendations had been rejected by the Government at the time they had been issued; however, the current Government had stressed the importance of fulfilling those recommendations and had pledged to do so in its current Plan. The Salvadoran delegation had an important role to play in contributing to the dialogue with the Committee and in communicating to the Government the importance

attached by the Committee to the fulfilment of the recommendations of the Truth Commission, which had carried out such valuable work in El Salvador. Impunity for the crimes relating to the killing of the Jesuit priests not only affected the past, but also cast a shadow over the future. He therefore welcomed the symbolic act of the President of the Republic in paying tribute to the deceased in that tragedy.

57. The international community, and the Committee in particular, were following current events in El Salvador with great interest. One aspect with which he was especially concerned was the question of the selection and training of law enforcement personnel. Since the Salvadoran people had legitimate reason for being concerned about public security, that question took on added importance and required the use of appropriate screening methods, which, of course, had to be reconciled with respect for the human rights of applicants for places in the National Public Security Academy.

58. The international community had been supporting El Salvador during the entire transition period and looked forward to the State party's continued progress in fulfilling its obligations under the Convention.

59. **Mr. Larios López** (El Salvador) assured the Committee that his Government recognized the gravity of the issues that had been raised, and also the valuable efforts of the Committee in helping Salvadoran society to improve its human rights record. The Government was aware that it must squarely face the painful reality of El Salvador's past. He understood the indignation of Committee members at the unfortunate events that had occurred in his country and expressed deep regret for them. The Government that had been elected in June 2009 was fully committed to meeting all the challenges it faced in that regard. It was encouraged by the fact that significant improvements had been noted during the period since El Salvador had presented its initial report to the Committee, and he hoped that its next periodic report would testify to further improvements. If his delegation had decided to respond to some of the Committee's questions in writing, it was due not only to the current unavailability of the information requested but also to the fact that the seriousness of the questions raised deserved an equal degree of seriousness in the Government's replies. He thanked the Committee for its efforts in support of El Salvador.

The public part of the meeting rose at 11.25 a.m.