



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

Distr.: General
9 December 2009
English
Original: Spanish

Committee against Torture

Forty-third session

Geneva, 2 to 20 November 2009

Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

El Salvador

1. The Committee considered the second periodic report of El Salvador (CAT/C/SLV/2) at its 902nd and 904th meetings (CAT/C/SR.902 and 904), held on 5 and 6 November 2009, and adopted, at its 920th and 921st meetings (CAT/C/SR.920 and 921), held on 18 November 2009, the following concluding observations.

A. Introduction

2. The Committee welcomes the second periodic report of El Salvador, prepared in accordance with the general directives concerning the form and content of periodic reports. However, the Committee regrets that the report was submitted six years late. The Committee appreciates the constructive dialogue established with the representatives of the State party, and expresses its gratitude for the replies provided in response to the questions and concerns raised by the Committee.

B. Positive aspects

3. The Committee notes with appreciation that, during the period since it considered the initial report, the State party has ratified the following international instruments:

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol (ratified on 13 December 2006 and 14 December 2007 respectively);

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified on 17 May 2004);

(c) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratified on 18 April 2002).

4. The Committee appreciates the invitations extended by the State party to various components of the special procedures, including the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on violence against women, its causes and consequences.
5. The Committee notes with satisfaction that the State party has eliminated the death penalty. However, it recommends that the State party should also eliminate it for certain military offences stipulated in military legislation during a state of international war.
6. The Committee notes with appreciation the adoption of the Special Act on the Protection of Victims and Witnesses in May 2006.
7. The Committee welcomes:
 - (a) The establishment of the Salvadoran Institute for the Development of Children and Adolescents through the amendment of the Act on the Salvadoran Institute for the Comprehensive Development of Children and Adolescents in July 2006;
 - (b) The establishment of the Commission on Refugee Status Determination in July 2002;
 - (c) The establishment in June 2000 of a Human Rights Unit within the National Civil Police, composed of three departments: promotion, protection and administration.
8. The Committee notes with satisfaction that on 1 April 2004 the Constitutional Division of the Supreme Court found that a number of articles in the Anti-Gang Act violated the Constitution and the Convention on the Rights of the Child, as they breached the fundamental principle of equality before the law; it also found that the Act presupposed that individuals engaged in criminal activities on the basis of their personal or social circumstances rather than the actual commission of an offence, and also ruled that a child may not be tried as an adult.
9. The Committee welcomes the willingness of the Government to institute a policy of full acknowledgement of its international obligations in the field of human rights arising from the international treaties ratified by the State party, and to recognize the right of victims of human rights violations to know the truth, to have access to justice and to obtain adequate reparation.

C. Principal subjects of concern and recommendations

1. Definition of torture

10. Despite the fact that article 297 of the Criminal Code and the Constitution provide a definition of torture, the Committee reiterates its concern, already expressed at the time of its consideration of the initial report, that the State party has still not brought the definition of the crime of torture in its domestic legislation into line with the provisions of article 1 and the requirements of article 4 of the Convention. The Committee notes with concern that the definition of torture does not include specification of the purpose of the crime, that no aggravating circumstances have been indicated, that the possibility of attempted torture is excluded, and that it does not encompass intimidation or coercion of the victim or a third person or discrimination of any kind as a motive or reason for inflicting torture. It also lacks provisions defining as an offence torture inflicted at the instigation or with the consent or acquiescence of a public official or other person performing official functions. The Committee is also concerned that domestic legislation contains no provision for the application of appropriate penalties in the light of the serious nature of the crime of torture (arts. 1 and 4).

The State party should take the necessary steps to ensure that all acts of torture, including all the elements specified in articles 1 and 4 of the Convention, are considered to be offences in its domestic penal legislation and that, in keeping with article 4, paragraph 2, of the Convention, appropriate penalties are applied in every case in the light of the serious nature of such offences.

2. Allegations of torture

11. The Committee is concerned that allegations of serious offences, including acts of torture, committed by personnel of the National Civil Police and prison staff in the performance of their duties, continue to be received, especially in the context of strategies to combat the high level of crime. The Committee is particularly concerned that the allegations of torture which have been received include reference to vulnerable persons such as street children and young people or those from broken families. The Committee also notes with concern that some possible cases of torture have been investigated, under disciplinary rules, as abuses of power, despite their seriousness. The Committee regrets that no independent body exists which could investigate reports of ill-treatment and torture, contributing to a situation in which such offences go unpunished (arts. 2 and 12).

The Committee recommends that the State party should expedite legislative reforms and set up an independent body to monitor the behaviour and discipline of the police forces. The State party should also guarantee that no act carried out by the police forces that violates the Convention will go unpunished and that the investigations into such acts will be effective, transparent and carried out under criminal law. Continuing education programmes should also be stepped up to ensure that all law enforcement personnel are fully aware of the provisions of the Convention.

3. Impunity and absence of prompt, thorough and impartial investigations

12. The Committee notes with concern that widespread impunity is one of the main reasons why torture has not been eradicated. The Committee is particularly disturbed by reports of several cases in which serious accusations against the security forces, in particular National Civil Police officers and prison staff, remain at the increasingly protracted investigation stage, where those responsible have not been effectively brought to justice, and where alleged perpetrators of crimes remain in their posts. The Committee is also concerned that the State party has not established an independent body to safeguard the independence of the judiciary (arts. 12, 13 and 16).

The Committee urges the State party to take steps to combat impunity, including:

(a) **A public declaration that the State party will not tolerate torture and that those responsible for acts of torture will be brought to justice;**

(b) **Prompt, thorough, impartial and effective investigation of all reports of torture and ill-treatment committed by law enforcement personnel. In particular, such investigations should not be in the hands or under the authority of the police or prison staff, but an independent body. Where there is evidence of torture and ill-treatment, the suspect should normally be suspended from duty or assigned to other tasks during the investigation, especially if there is a risk that he or she may obstruct it;**

(c) **Bringing the perpetrators to justice and imposition of appropriate penalties on those convicted, in order to eliminate the impunity of law enforcement personnel who are responsible for violations of the Convention;**

(d) **Guaranteeing the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution**

40/146 of 13 December 1985) and establishment of an independent body to safeguard the independence of the judiciary.

4. Public safety

13. The Committee notes with concern that the State party has assigned 4,000 members of the armed forces to police units known as Joint Task Forces, to undertake policing tasks, such as the prevention and suppression of common crimes linked to the number of gangs, instead of providing support to the police in its work (art. 2).

The State party should take effective steps to support the National Civil Police and cancel programmes, even temporary ones, which authorize the army to intervene in law enforcement activities and the prevention of ordinary crime, which should be carried out exclusively by the police.

5. Enforced or involuntary disappearances during the armed conflict between 1980 and 1992

14. The Committee welcomes the as yet limited efforts of the Inter-agency Commission on the search for children who disappeared during the armed conflict and the plan to restructure the Commission and redefine its functions. It also welcomes the invitation extended by the State party to the Working Group on Enforced or Involuntary Disappearances in 2007. However, the Committee wishes to express its concern at the failure to provide full redress to the victims of enforced or involuntary disappearances during the armed conflict between 1980 and 1992 and their families and, in general, the inadequate investigations and punishment and the lack of full redress and compensation in relation to those crimes. It also regrets the failure to search for adults who have disappeared (arts. 2, 4 and 16).

The Committee reminds the State party that the crime of enforced disappearance is ongoing by nature and should be investigated for as long as its effects continue, until those responsible have been identified. Similarly, the Committee reiterates the recommendations of the Working Group on Enforced or Involuntary Disappearances and notes with concern that they have not been implemented in full. The Committee urges the State party to take rapid steps to ensure progress in the search for missing persons, the establishment of a programme of full redress and compensation for victims and their families and the prevention of further cases of enforced or involuntary disappearance.

6. General Amnesty (Consolidation of the Peace) Act and recommendations of the Truth Commission

15. The Committee notes with satisfaction the Government's statement that it will not maintain the position upheld by previous administrations of justifying the application of the Amnesty Act as necessary for the preservation of peace in the State party. It also notes that in its ruling of 26 September 2000, the Supreme Court held that, although the Amnesty Act is constitutional, judges may decide not to apply it when giving judgements on specific cases, adding that "it shall be for the judge to decide in each specific case when this exception applies, by means of an interpretation in keeping with the Constitution", and that "if the events which gave rise to the civil responsibility of a public official or employee have not been covered by an amnesty — because they involve crimes which cannot be the subject of an amnesty — or if the amnesty granted breaches the Constitution, the obligation to provide compensation may be asserted before the competent courts". However, the Committee considers that this Act violates the right to an effective remedy, since it hinders the investigation and punishment of all those responsible for human rights violations and stands in the way of the right to redress, compensation and rehabilitation of the victims. The

Committee notes with concern that the State party has not implemented the recommendations made by the Truth Commission in 1993 (arts. 2, 4, 5 and 14).

The Committee urges the State party to repeal the General Amnesty (Consolidation of the Peace) Act. In that regard, it draws the State party's attention to paragraph 5 of its general comment No. 2 on the implementation of article 2 by States parties (CAT/C/GC/2), in which the Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability. The Committee likewise recommends that all necessary steps should be taken to guarantee that investigations of cases of torture and other cruel, inhuman or degrading treatment or punishment are carried out thoroughly, promptly and impartially, that the perpetrators are prosecuted and punished and that measures are adopted to provide redress and rehabilitation for the victims, in accordance with the provisions of the Convention.

The Committee notes with satisfaction the willingness of the new Government to adopt a policy of full material and moral redress for the victims of human rights violations which have occurred in the present or the recent past. The Committee nevertheless urges the State party to take prompt steps to implement the recommendations of the Truth Commission, and in particular to prosecute and punish promptly and impartially those responsible for acts of torture, ill-treatment or enforced or involuntary disappearance, to remove from their posts all officials who have been identified as alleged perpetrators of human rights violations, to create a special fund to compensate victims, to construct a national monument bearing the names of all the victims, and to declare a national holiday in memory of the victims.

7. Pretrial detention

16. The Committee is concerned at the length of pretrial detention and the high number of persons thus detained because of a general increase in violence in the country, as the State party has acknowledged (art. 2).

The State party should take prompt steps to restrict the use of pretrial detention as well as its duration, using alternative methods whenever possible and when the accused does not represent a danger to society.

8. Conditions of detention

17. The Committee notes with satisfaction the planned measures and actions to be taken by the administration of the prison system to curb violations of the human rights of the prison population. However, the Committee expresses its concern at the serious problem of overcrowding — according to information supplied by the State party, the prison population stands at 21,671 against a capacity of 9,000 — which has an adverse impact on other prison conditions. The Committee is particularly disturbed at the failure to separate accused persons from convicted prisoners, women from men and children from adults, as well as inadequate health care, hygiene, drinking water, education and visits. The Committee is also concerned by reports of the use of incommunicado detention for long periods of time.

18. The Committee regrets the high levels of violence among prisoners and the lack of surveillance in prisons, which has led to deaths among prisoners. The Committee is also concerned that these incidents have not been promptly and impartially investigated, and that those responsible have not been punished. In view of this, the Committee is disturbed by the fact that article 45 of the Prisons Act has been amended to specify that complaints must be lodged by prisoners within a time limit of 15 days following any incident.

19. The Committee is also particularly concerned about prison conditions for minors, who suffer from ill-treatment and inadequate access to medical services and education (arts. 11 and 16).

The Committee recommends that the State party should:

(a) **Take immediate steps to reduce overcrowding in prisons, in particular through the application of alternatives to imprisonment, and take steps to improve infrastructure, sanitary conditions and health services;**

(b) **Ensure that accused persons are kept separate from convicted prisoners, women from men and children from adults in all places of detention;**

(c) **Provide the necessary equipment, personnel and budgetary resources to ensure that prison conditions throughout the country are brought into line with minimum international standards and principles relating to prisoners' rights;**

(d) **Abolish all forms of incommunicado detention;**

(e) **Pursue the development of programmes for prisoner resocialization and reintegration;**

(f) **Take urgent steps to prevent violence among prisoners and ensure the prompt, impartial and thorough investigation of all incidents of violence in detention facilities and the punishment of those responsible. Prisoners' complaints should not have to be made within a specific time frame;**

(g) **Promptly, impartially and thoroughly investigate all allegations of ill-treatment of child prisoners and take urgent steps to prevent acts of torture and ill-treatment against child prisoners. The State party should also ensure that the deprivation of liberty is a last resort, used for the shortest time possible, and promote the use of alternatives to custodial sentences.**

9. Conditions of detention under the Special Internment Regime

20. The Committee notes with concern the allegations concerning the transfer of detainees to the Security Centre without an official warrant and the reports of incommunicado detention. Furthermore, the Committee is concerned about the conditions of detention at the Security Centre under the Special Internment Regime, with particular reference to allegations of ill-treatment by prison staff at the time of the detainee's admission, prolonged detention in solitary confinement and restrictions on family visits, food, light and air (arts. 11 and 16).

The Committee recommends that the State party guarantee the detainee's right to due process in accordance with the Special Internment Regime and abolish all forms of incommunicado detention. The State party should investigate promptly, impartially and thoroughly all allegations of ill-treatment. It should also take steps to improve the conditions of detention under the Special Internment Regime so that they comply with the minimal international standards and principles relating to the rights of persons deprived of their liberty.

10. Violence against women and femicide

21. The Committee notes the setting up of 14 Inter-Institutional Committees to implement the National Plan on Domestic Violence, the establishment of observatories on violence and the initiation in 2005 of the national research project on femicide. The Committee takes note of a draft bill on violence against women and the touring fairs aimed at educating and informing people about domestic violence. Nevertheless, it is very concerned at the prevalence of numerous forms of violence against women and girls,

including sexual abuse, domestic violence and the violent deaths of women (femicide). The Committee is furthermore concerned at the absence of thorough investigations into reported cases and the impunity enjoyed by the perpetrators of such acts (arts. 12, 13 and 16).

The State party should increase its efforts to ensure that urgent and efficient protection measures are put in place to prevent and combat violence against women and girls, including sexual abuse, domestic violence and femicide. The Committee considers that these crimes should not go unpunished and the State party should provide human and financial resources to punish the perpetrators of these acts. The State party should also organize widespread awareness-raising campaigns and training courses on violence against women and girls for officials in direct contact with the victims (law enforcement officers, judges, lawyers, social workers, etc.) as well as for the public at large.

22. The Committee is also concerned at reports of humiliating body inspections of women visiting places of detention, in particular at the fact that such inspections may be carried out by unqualified persons, including personnel without medical training (art. 16).

The Committee emphasizes that inspections of women's private parts can constitute cruel or degrading treatment and that the State party should take measures to ensure that such inspections are carried out only when necessary, by trained female medical professionals and taking every care to preserve the dignity of the woman being examined.

11. Allegations of violence or incest

23. The Committee is particularly concerned that, according to information received, over half the complaints involving rape or incest come from victims who were minors when the offence was committed. It is also concerned that the current Criminal Code of 1998 penalizes and punishes with imprisonment for periods ranging from 6 months to 12 years all forms of recourse to voluntary interruption of pregnancy, including in cases of rape or incest, which has resulted in serious harm to women, including death (arts. 2 and 16).

With reference to its general comment No. 2, the Committee recommends that the State party take whatever legal or other measures are necessary to effectively prevent, investigate and punish crimes and all acts that put the health of women and girls at grave risk, by providing the required medical treatment, by strengthening family planning programmes and by offering better access to information and reproductive health services, including for adolescents.

12. Trafficking in persons

24. The Committee recognizes the efforts made by the State party to deal with the trafficking of women and girls, such as the creation of a temporary shelter for women and their children who have been victims of commercial sexual and other forms of exploitation and of a shelter for girl victims of trafficking. However, the Committee is concerned about the continuous reports of cases involving the internal and cross-border trafficking of women and children for sexual and other purposes, and deplores the fact that the officials suspected of committing these acts have not been properly investigated, prosecuted and punished (arts. 2, 10 and 16).

The State party should ensure that all allegations concerning the trafficking of persons are investigated promptly, impartially and thoroughly and that the offenders are prosecuted and punished for the crime of trafficking in persons. The State party should continue to conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and offer training to law enforcement officers, migration officials and

border police on the causes, consequences and repercussions of trafficking and other forms of exploitation. The Committee further recommends that the State party increase its efforts to establish systems and mechanisms of international, regional and bilateral cooperation with the countries of origin, transit and destination in order to prevent, investigate and punish cases of human trafficking.

13. The principle of “non-refoulement”

25. The Committee regrets the complaints alleging a systematic failure to comply with the principle of “non-refoulement” and with the right of access to due process and information for refugees and potential asylum-seekers, and the failure to provide proper safeguards against persons being placed at risk when returned to their country of origin. It further regrets the inadequacy of the mechanisms enabling the immigration authorities to establish that a person runs the risk of being tortured on return to his or her country of origin. The Committee further notes with concern the allegations of discriminatory treatment of asylum-seekers by the authorities of the State party (arts. 3 and 6).

The State party should adopt administrative and legislative measures to ensure respect for due process in the procedures for deciding on refugee status or deportation, with particular regard to the right of defence and the requirement that a representative of the Office of the United Nations High Commissioner for Refugees be present. It also recommends the introduction of training programmes on international humanitarian law applicable to refugees, with emphasis on the content and scope of the principle of non-refoulement, for immigration police and administrative officials responsible for deciding on refugee status and deportation.

14. Office of the National Counsel for the Defence of Human Rights

26. The Committee welcomes the increase in the budget of the Office of the National Counsel for the Defence of Human Rights, and the improved dialogue between the Office and the current Government. However, the Committee notes that this budget is still inadequate. It regrets the allegations of interference with the work of this national human rights institution and the threats that have occurred during its investigations of some incidents (art. 2).

The Committee reminds the State party of the importance of the work of the national human rights institution and urges the State party to protect its activities and provide adequate funding. It also recommends that it give adequate follow-up to the recommendations of the Office of the Counsel for the Defence of Human Rights and that the link between its activities, its complaints procedures and other official monitoring mechanisms should be strengthened so as to ensure that the problems encountered are effectively addressed.

15. Human rights defenders

27. The Committee is concerned about reports of acts of harassment and death threats aimed at human rights defenders, and about the fact that such acts remain unpunished (art. 2).

The State party should adopt effective measures to combat harassment and death threats aimed at human rights defenders and prevent any further violence against them. Furthermore, the State party should ensure the prompt, thorough and effective investigation of such acts and the appropriate punishment of the perpetrators.

16. Training on the prohibition of torture and application of the Istanbul Protocol

28. The Committee notes with satisfaction the incorporation by the Public Security Academy of the study and practice of human rights, including the Convention against Torture and the Istanbul Protocol, in the basic training of police officers and the organization of training sessions on human rights for all police personnel. However, the Committee regrets the paucity of information provided on the monitoring and evaluation of existing training programmes, on the results of this training and on the usefulness of these programmes in reducing the number of cases of torture and ill-treatment. It also regrets the lack of information concerning training on the Istanbul Protocol for personnel involved in investigating, identifying and dealing with cases of torture (art. 10).

The State party should devise and apply a method for assessing the effectiveness of training and educational programmes, as well as their impact in reducing the number of cases of torture, violence and ill-treatment. The Committee recommends that the State party intensify its efforts to ensure that all personnel involved in the investigation and identification of cases of torture are aware of the content of the Istanbul Protocol and are trained to apply it.

17. Redress and rehabilitation

29. The Committee is concerned that the State party does not have a programme for compensating and rehabilitating the victims of torture and that not all victims have the right to fair and adequate compensation (art. 14).

The Committee reaffirms the State party's obligation to ensure that all victims of acts of torture have the legal right to fair and adequate compensation and rehabilitation.

30. The Committee invites the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

31. The Committee further invites the State party to ratify the main United Nations human rights treaties to which it is not yet party, namely, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (signed on 25 September 2009), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (signed on 4 April 2001), the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the International Convention for the Protection of All Persons from Enforced Disappearance.

32. The Committee notes that the Government's programme for 2009–2014, under political reform relating to human rights, includes promoting the withdrawal of reservations on the recognition of competence. Nevertheless, the Committee recommends that the State party examine the possibility of making the declarations provided for in articles 21 and 22 of the Convention.

33. The Committee requests the State party to include in its next periodic report detailed information on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee recommends that the State party take all appropriate steps to implement these recommendations, including their transmission to members of the Government and Congress for consideration and adoption of any necessary measures.

34. The Committee recommends that the State party disseminate widely through the media, official websites and non-governmental organizations, including in indigenous languages, the reports it submits to the Committee, together with these conclusions and recommendations.

35. The Committee requests the State party to inform it within one year of the steps taken in pursuance of the recommendations contained in paragraphs 15, 19 and 21.
 36. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6).
 37. The State party is invited to submit its third periodic report by 20 November 2013 at the latest.
-