



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

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## Committee against Torture

### List of issues prior to the submission of the third periodic report of El Salvador (CAT/C/SLV/3) adopted by the Committee at its forty-eighth session, 7 May-1 June 2012\*

#### Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations<sup>1</sup>

##### Articles 1 and 4

1. In light of the concluding observations of the Committee (para. 10), please provide detailed information on legal reforms undertaken to bring the legislation on torture into line with articles 1 and 4 of the Convention, in particular regarding:

- (a) The inclusion of the purposes of torture in its definition;
- (b) The inclusion of aggravating circumstances;
- (c) The inclusion of the crime of attempted torture;
- (d) The inclusion of intimidation or coercion of the victim or a third person or discrimination of any kind as a motive or reason for inflicting torture;
- (e) The inclusion as an offence of torture inflicted at the instigation of or with the consent or acquiescence of a public official or other person performing official functions;
- (f) The inclusion of provisions for the application of appropriate penalties in light of the serious nature of the crime of torture.

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\* The present list of issues was adopted by the Committee at its forty-eighth session according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic reports. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/SLV/CO/2.

## Article 2<sup>2</sup>

2. In light of the concluding observations of the Committee, please provide information on steps taken to guarantee the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (para. 12). In particular, information should be provided on steps taken to establish an independent body to safeguard the independence of the judiciary. Please also provide information on the relationship between the Police Commissioner and the Inspector-General of the Police (see CAT/C/SR.902 and CAT/C/SR.904). In addition, please indicate the current status of Decree 743, which orders the Constitutional Chamber of the Supreme Court of Justice to take decisions unanimously.
3. In light of the Committee's expression of concern (para. 18), please indicate whether amendments have been made to article 45 of the Prisons Act, which established a 15-day time limit for lodging complaints by prisoners, and please explain what other measures ensure that prisoners' complaints about conditions of detention will be heard.
4. Please indicate the steps taken to cancel any programmes that authorize the army to intervene in law enforcement activities and prevention of ordinary crime (para. 13).
5. In light of the concluding observations of the Committee, please provide information on the measures undertaken to strengthen the Office of the National Counsel for the Defence of Human Rights and to ensure that it is provided adequate funding (para. 26). Please also indicate the steps taken to ensure that its recommendations are consistently and adequately followed up.
6. Please indicate whether the State party aims to amend the General Amnesty (Consolidation of the Peace) Act to make it fully compatible with the Convention (para. 15). If not, please provide information as to why this is not the case. Please also indicate whether any law has been enacted to guarantee the right to information, applicable to cases of enforced disappearance.
7. Please provide information on the status of the Convention in national law (see CCPR/C/SLV/CO/6, para. 4; CEDAW/C/SLV/CO/7, paras. 11-12). In particular please indicate whether the Convention takes precedence over domestic law, and whether there are procedures for ensuring that draft legislation is in line with the Convention. Please also indicate whether there have been any cases of direct application by Salvadorian courts of the provisions of the Convention. If this is the case, please provide information on such cases.
8. Please provide information on the implementation of the law making gang membership a criminal offence. Please describe any measures taken to ensure that the law does not weaken legal safeguards with regard to apprehended and detained persons, in particular by ensuring that pre-trial detention is not used as a form of punishment for those who cannot be successfully prosecuted. Please also indicate what safeguards are in place to ensure that the new law will not be used to persecute former gang members, or individuals associated with or working to rehabilitate current or former gang members.

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<sup>2</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As stated in general comment n°2, paragraph 3, "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further Chapter V of the same general comment.

9. In light of the Committee's concluding observations (paras. 21-22), please provide information on:

(a) The number of complaints, investigations, prosecutions and convictions (including the type and, if applicable, length of sanctions) in cases of violence against women and girls in the context of domestic violence;

(b) Measures undertaken to ensure that protection measures are put in place for violations against women and girls in the context of domestic violence, including any awareness-raising campaigns and training on domestic violence for officials;

(c) Measures undertaken to ensure that all allegations of violence against women and girls are promptly, impartially and effectively investigated and that the perpetrators are prosecuted and punished;

(d) Measures undertaken to protect women who have been victims of violence, including by providing shelters and counselling services in sufficient numbers and with adequate standards;

(e) Measures undertaken to improve coordination among bodies responsible for preventing and punishing domestic violence;

(f) Whether steps have been taken to recognize violence against women and femicide as separate categories of crime. Please provide updated information and data on femicide and killing of women. Indicate the number of complaints, investigations and convictions in cases of femicide and killing of women, in particular concerning the case of three sisters, Jennifer Yamilet (17 years old), Elsy Yaneth (12 years old) and Silvia Esmeralda (11 years old) Calderón Martínez, murdered in March 2012.

10. In light of the Committee's concluding observations (para. 27), please provide information on measures to combat harassment, death threats, and violence directed at human rights defenders, journalists, and other members of civil society engaged in the promotion of human rights.

11. Please describe measures to prevent the murder of prison inmates, including murders perpetrated by fellow inmates. Please describe efforts to investigate the murders of four inmates at Quezaltepeque prison in San Salvador in November 2011 and the murders of three inmates at Ciudad Barrios in San Miguel in October 2011. Beyond transferring prisoners to separate facilities to lessen overcrowding, please explain what strategies are being employed to identify and eliminate the root causes or social conditions, such as unemployment, that contribute to violence (A/HRC/WG.6/7/SLV/2, para. 15). Furthermore, indicate what measures have been taken to improve the conditions of pre-trial detention in particular for youths.<sup>3</sup>

12. Please provide information on the number of complaints, investigations and convictions (including the type and, if applicable, length of sanctions) in cases of human trafficking, disaggregated by sex, age, ethnicity (or the origin of victims) (para. 24). Please provide details on the measures taken to provide rehabilitation and reintegration for victims of trafficking, including through the provision of shelters. Please also indicate whether there are any new training programmes for law enforcement officials, migration officials and border police on the causes, consequences and incidence of human trafficking. In addition, please provide information on any initiatives to establish systems and mechanisms

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<sup>3</sup> Working Group on Arbitrary Detention, statement upon the conclusion of its mission to El Salvador (23 January to 1 February 2012). Para (d).

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.

### Article 3

13. Please provide data referring to the reporting period, disaggregated by age, sex and ethnicity (para. 25), on:

- (a) The number of asylum applications registered;
- (b) The number of applicants in detention;
- (c) The number of applicants whose application for asylum was accepted;
- (d) The number of applications for asylum submitted and those accepted on grounds that the applicants had been tortured or might be tortured if returned to their country of origin;
- (e) The number of cases of refoulement or expulsion, with information about the grounds upon which individuals were refouled or expelled;
- (f) The number of cases of non-return on the ground that the person may be subjected to torture.
- (g) The number of requests for extradition received and their outcome.

14. In light of the Committee's concluding observations (para. 25), please provide information on:

- (a) Measures undertaken to ensure that the State party fulfils all its non-refoulement obligations under article 3 of the Convention, including the provision, in practice, of all procedural guarantees to the person expelled, returned or extradited, in particular regarding the right to defence and the requirement that a representative of the Office of the United Nations High Commissioner for Refugees be present during the proceedings;
- (b) Training programmes for immigration police and administrative officials responsible for deciding on refugee status and deportation aimed at ensuring that these obligations are fulfilled;
- (c) Whether a person may be extradited, returned or expelled, on the basis of diplomatic assurances, to a country where there is a risk of torture, and if so, what the minimum content of such assurances are and what subsequent monitoring measures are taken in such cases;
- (d) The status of the draft migration and aliens act.

15. Please indicate whether "diplomatic assurances" or the equivalent thereof have been offered to or accepted by the State Party relating to the returning of persons to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture. If so, please provide detailed information on:

- (a) The procedures in place for obtaining diplomatic assurances;
- (b) Steps taken to establish an appropriate mechanism for review of diplomatic assurances in any applicable case;
- (c) Steps taken to guarantee effective post-return monitoring arrangements;
- (d) Cases of refoulement, extradition and expulsion subject to receipt of diplomatic assurances that have occurred since the consideration of the previous report;

(e) Assurances that have not been honoured and any appropriate actions taken in such cases by the State party.

### **Articles 5, 6, 7, 8 and 9**

16. Please provide information on any judicial cooperation mechanisms or agreements with another State or regional organization and whether these have led to any cases of expulsion or return to any State or requests for extradition, including of an individual suspected of having committed torture or ill-treatment.<sup>4</sup> Please indicate whether the State party has rejected, for any reason, any such extradition request and has started its own prosecution as a result. If so, please provide information on the status and outcome of such proceedings. Please also provide information on any informal arrangements with other States in judicial matters which may have a bearing on the prosecution and extradition of individuals.

17. Please provide detailed information on how the State party has exercised its jurisdiction over the offences referred to in Articles 4, 5 and 16 of the Convention. Please also give details of any laws adopted in accordance with article 5, paragraph 3, of the Convention.

### **Article 10**

18. In light of the Committee's concluding observations (paras. 11 and 28), please provide information on what measures have been undertaken to:

(a) Ensure that all relevant personnel involved with detainees receive specific training on how to identify signs of torture and ill-treatment on the basis of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1999 (the Istanbul Protocol);

(b) Strengthen training on the Istanbul Protocol for all professionals involved in the investigation and documentation of cases of torture;

(c) Develop and implement a methodology to regularly assess the effectiveness of such training provided to law enforcement officials on the reduction of cases of torture, violence and ill-treatment;

(d) Include information on all provisions of the Convention, especially on the absolute prohibition on torture, in the training modules on rules, instructions and methods of interrogation.

(e) Integrate the principle of non-discrimination, as described in the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, in training provided to law enforcement officials, particularly those officials who interact with women, girls, street children, trafficking victims, and members of minorities or other vulnerable or marginalized groups.

(f) Develop training and monitoring programmes for medical personnel, in particular on the issue of women seeking post-abortion or miscarriage care, and ensure the application of the non-discrimination principle, in accordance with World Health Organization guidelines.

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<sup>4</sup> See CAT/C/SLV/2, paras. 165-177, regarding the existence of such agreements.

- (g) Ensure due process to girls or women who are prosecuted for obtaining abortions.

## Article 11

19. Please provide statistics, disaggregated by type of offence, ethnic origin, age and sex, on the number of convicted prisoners and persons held in pretrial detention (paras. 17-20). Please also provide statistics on populations in detainment centres of all kinds in relation to their recommended capacity, including information on location and type of detention centre. In addition, please provide statistics on the application of alternatives to imprisonment.

20. In light of the concluding observations of the Committee, please provide information on the measures taken to restrict the use and length of pretrial detention, as well as initiatives to develop alternatives to pretrial detention (para. 16).

21. Please provide information on the steps taken by the State party to revise its use of incommunicado detention (paras. 17-20). Please also provide detailed statistics on the use of solitary confinement in detention centres, including information on the length of and the reason for such confinement.

22. In light of the concluding observations of the Committee (paras. 17-19), please provide information on:

- (a) Steps taken to reduce overcrowding in prisons;
- (b) Measures undertaken to improve infrastructure, sanitary conditions and health services in detention facilities;
- (c) Measures undertaken to ensure that accused persons are kept separate from convicted prisoners, women are kept separate from men, and children kept separate from adults in all places of detention;
- (d) The current status of programmes for prisoner resocialization and reintegration.
- (e) Steps taken to identify and release those who have served their sentences but still remain in detention.<sup>5</sup>
- (d) Measures undertaken to ensure that searches of prisoners, their relatives or their lawyers are not invasive or humiliating, in particular since the armed forces have been charged with security in prisons.<sup>6</sup>

23. Please provide statistics on the prevalence of violence in places of detention, disaggregated by type of violence and type of detention facility, as well as the ethnic origin, age and sex of those involved. Please also provide information on the steps taken 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 (paras. 17-19).

24. In light of the concluding observations of the Committee, please provide information on the steps taken to improve the conditions at the Security Centre under the Special

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<sup>5</sup> Working Group on Arbitrary Detention statement upon the conclusion of its mission to El Salvador (23 January to 1 February 2012), Recommendation (e).

<sup>6</sup> OHCHR press release of 2 February 2012 "El Salvador: Right to security must not override rights to be free from arbitrary detention, urges UN expert body".

Internment Regime so that they comply with the minimal international standards and principles relating to the rights of persons deprived of their liberty (para. 20).

25. Please provide information on the measures taken to eliminate torture and ill-treatment of juvenile offenders (para. 19). Please also indicate what steps have been taken to ensure that the deprivation of liberty is only used as a last resort and used for the shortest time possible in the case of children.

### **Articles 12 and 13**

26. Please provide statistical data on the number of complaints of alleged torture and ill-treatment, their investigation and prosecution and results of the proceedings, including both penal and disciplinary sanctions applied in case of conviction (paras. 11, 12, 15). The information should be disaggregated by gender, age, geographical region and ethnicity of the individual filing the complaint.

27. In light of information before the Committee indicating that incidents of torture and ill-treatment conducted by law enforcement and penitentiary officials are not thoroughly investigated and prosecuted (paras. 11-12), please provide information on the measures taken to:

(a) Prevent the excessive use of force by law enforcement and penitentiary officials;

(b) Ensure that all other allegations of torture and other cruel, inhuman or degrading treatment or punishment, including complaints of use of force, are promptly, impartially and effectively investigated, and that suspects are suspended from duty or assigned to other tasks during investigations when there is an indication that torture and ill-treatment may have occurred;

(c) Establish an independent body with authority to receive and investigate all complaints of use of force and other abuses by law enforcement and penitentiary officials.

(d) Ensure that the security of the detainees is guaranteed if they lodge complaints against the personnel in whose custody they are being held.

(e) Establish effective complaint mechanisms at both health care and detention facilities.

28. Please provide information on the measures undertaken to implement the recommendations of the Truth Commission and those of the Working Group on Enforced Disappearances regarding human rights violations during the war (para. 15), in particular:

(a) To investigate and prosecute those responsible for the acts of torture, ill-treatment or enforced or involuntary disappearance documented by the Truth Commission;

(b) To remove all officials who have been identified as alleged perpetrators of human rights violations from their posts;

(c) To ensure that the penalties for the offence of enforced disappearance are appropriate, in light of the serious nature of the crime.

### **Article 14**

29. Please provide details on steps taken to ensure that adequate compensation and appropriate rehabilitation programmes, including medical and psychological assistance, are provided to victims of torture and other ill-treatment (para. 29). Please also elaborate on the

allocation of adequate resources to the National Reparations Programme as well as any measures taken to clarify the legal framework for the activities of this programme.

30. Please provide statistics on redress and compensation measures ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report (para. 29). This information should include the number of requests for compensation made, the number granted, and the amounts ordered and those actually provided in each case.

### **Article 15**

31. Please provide information on how the legal provisions making forced confessions or other statements inadmissible as evidence are implemented in practice.<sup>7</sup> Please provide statistics on the number of times these legal provisions have been invoked by defendants, and what the outcomes of those invocations were.

### **Article 16**

32. Please provide information on the measures undertaken to render the new National Search Commission for Disappeared Children effective (para. 14). Please indicate the steps taken to ensure progress in the search for missing persons. Moreover, please also provide information on the steps taken to establish a programme of redress and compensation for victims and their families.

33. Please indicate whether steps have been taken to explicitly prohibit corporal punishment at home, as well as in all alternative care institutions, and to provide information about and enforce such a prohibition.<sup>8</sup> If this is not the case, please indicate why. Furthermore, please indicate whether steps have been taken to review and reform the legislation on abortion in particular:

(a) To provide access to safe abortion for women who have become pregnant as a result of rape and endure mental suffering in addition to the physical pain.<sup>9</sup>

(b) To develop and to gather reliable statistical information regarding the prevalence of illegal abortions throughout the State and the level of mortality resulting therefrom.

(c) To enhance the conditions in prison for women who have been incarcerated for violating prohibition of abortion and ensure they receive adequate health care.

### **Other issues**

34. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those

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<sup>7</sup> See CAT/C/SLV/2, paras. 213-227, for the legal provisions regarding the admissibility of forced statements.

<sup>8</sup> CRC/C/SLV/CO/3-4, para. 54; Global Initiative to End All Corporal Punishment of Children, "El Salvador – Country Report", February 2011; A/HRC/14/5, para. 81, points 37-40.

<sup>9</sup> According to the recommendations of the Human Rights Council (CCPR/C/SLV/CO/6), the Committee on Economic, Social and Cultural Rights (E/C.12/SLV/CO/2), and the Committee on the Elimination of Discrimination against Women (CEDAW/C/SLV/CO/7).

measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

35. Please indicate whether the State party is intending to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (signed on 4 April 2001). Please also indicate whether the State party is intending to become a party to the Convention on the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court.

### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

36. Please provide detailed information on relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial report, including any relevant jurisprudential decisions. In particular, please provide information on the measures which have been taken to revise national legislation on migrants in an irregular situation, refugees, asylum seekers and foreigners to bring it into conformity with the 1951 Convention relating to the Status of Refugees.<sup>10</sup>

37. Please provide detailed relevant information on new political, administrative and other measures taken to promote and protect human rights at the national level that have occurred since the initial report, including on any national human rights plans or programmes, and the resources allocated to these, their means, objectives and results.

38. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 2001, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.

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<sup>10</sup> Working Group on Arbitrary Detention, statement upon the conclusion of its mission to El Salvador (23 January to 1 February 2012), recommendation (d).