



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

Seventy-second session

### Summary record of the 34th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 27 September 2022, at 4 p.m.

*Chair:* Mr. Abdel-Moneim

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### Consideration of reports (*continued*)

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#### *Sixth periodic report of El Salvador (continued)*

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*The meeting was called to order at 4 p.m.*

**Consideration of reports (continued)**

**(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)**

*Sixth periodic report of El Salvador (continued) (E/C.12/SLV/6; E/C.12/SLV/Q/6; E/C.12/SLV/RQ/6)*

1. *At the invitation of the Chair, the delegation of El Salvador joined the meeting via video link.*

2. **The Chair** said that, before the delegation could continue replying to the questions raised by Committee members the day before, the meeting would have to be suspended owing to technical difficulties.

*The meeting was suspended at 4.05 p.m. and resumed at 4.25 p.m.*

3. **Ms. Mira** (El Salvador) said that many of the questions raised by members at the previous meeting concerned issues on which the State party had already provided a response, which suggested that the information provided by the Committee's sources was incorrect. It should be recalled that the President of the Republic and the members of the Legislative Assembly had been elected in a popular vote with a historic voter turnout. For the President and the Government of El Salvador, people always came first. President Bukele enjoyed a very high level of public popularity; that metric should also be taken into account by the treaty bodies when conducting reviews of States parties.

4. Her country was committed to cooperating actively with United Nations mechanisms. More than 30 institutions had been involved in the preparation of the State party report and the dialogue with the Committee. The Committee had expressed its regret that the delegation of El Salvador was participating in the dialogue remotely. However, her delegation believed that a paradigm shift was required in that regard. The coronavirus disease (COVID-19) pandemic had shown that it was possible to conduct such meetings virtually, and that should not be seen as a negative factor. Even if it had wished to do so, the Government of El Salvador could not have afforded to send such a large, high-level delegation to attend the meetings with the Committee in person. Given the current international financial crisis, many other States were no doubt in the same position. The Committee might also reconsider the format of the dialogue to ensure that delegations were given sufficient time to respond adequately to all the questions put to them by the members and to avoid repetition of questions. The Committee's concluding observations should take full account of the statements made by the Salvadoran delegation during the dialogue.

5. Responding to the question on the status of international treaties, she said that, under article 144 of the Constitution, duly ratified treaties became part of domestic law once they entered into effect; in case of conflict between the treaty and the law, the treaty prevailed. Accordingly, the provisions of international human rights treaties, including the Covenant, had been incorporated into the jurisprudence of the national courts. For example, the Constitutional Division of the Supreme Court of Justice had cited provisions of the Covenant and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights as well as the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health in rulings on *amparo* proceedings concerning the right to health.

6. When the current Government had taken office, it had been faced with a considerable backlog of conventions to be ratified, including those whose ratification had been recommended by the Committee in previous concluding observations. Work was now under way to clear that backlog. In 2022, for example, El Salvador had ratified five International Labour Organization (ILO) conventions: the Collective Bargaining Convention, 1981 (No. 154), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Maternity Protection Convention, 2000 (No. 183) and the Violence and Harassment Convention, 2019 (No. 190).

7. With regard to statistics, in accordance with the Act on the Dissolution, Liquidation and Transfer of Functions of the Directorate General of Statistics and Censuses, the collection and processing of data, the creation of databases and the publication of censuses and household and socioeconomic surveys were now the responsibility of the Central Reserve Bank. Statistics would continue to be produced; there had simply been a transfer of functions. The Central Reserve Bank and the Ministry of Economic Affairs, to which the Directorate General had been attached, had coordinated to ensure the proper transfer and management of information.

8. **A representative of El Salvador** said that the Government's actions were based on the country's sovereignty, Constitution and laws, all of which should be taken into account by the Committee. With regard to the transfer of functions from the Directorate General of Statistics and Censuses to the Central Reserve Bank, it must be stressed that such organizational changes were the sovereign right of each Government. Although the organizational structure had changed, the purposes and objectives had not. Responsibility for statistics and censuses had been transferred to an institution that already generated the country's main economic statistics and thus had the necessary expertise. The Directorate General of Statistics and Censuses had not conducted any censuses since 2007, but the country had experienced major demographic and social changes in the intervening period. The Central Reserve Bank was cooperating with the International Monetary Fund, the Inter-American Development Bank and the United States Census Bureau, among others, as it prepared to take on its new functions. The Central Reserve Bank had the necessary independence, as it was a semi-autonomous institution with its own resources.

9. It should be noted that only certain rights were restricted during the state of emergency. The rights to freedom of assembly and association and the right to legal counsel were not suspended. The President was taking courageous measures to rid the country of violence. Outsiders had looked on as Salvadorans died but had never offered any assistance to resolve the problem. With regard to the use of the term "terrorism", as was noted in the training module on the universal legal framework against terrorism of the United Nations Office on Drugs and Crime, there was currently neither a comprehensive United Nations treaty on terrorism nor an internationally binding definition of the term "terrorism". Under the plan of action annexed to the United Nations Global Counter-Terrorism Strategy, the States Members of the United Nations resolved to "consistently, unequivocally and strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security". The violent gangs operating in El Salvador had spread terror, undermined the State's sovereignty and prevented the country's development. The Government therefore had the right to apply that definition of terrorism within the framework of the law in order to bring peace to the country.

10. **A representative of El Salvador** said that the reports the Committee had received from so-called civil society organizations were unsubstantiated and did not provide the necessary context to explain the reality in the country. Members of the public welcomed the measures now being taken under the state of emergency to address gang violence. The atrocities committed by such gangs in the past had included setting fire to a bus carrying 48 people as well as rape and murder. The families of the victims of such crimes had often been forced to flee the country. In the past, certain areas had been designated as "red zones" and even the police had been unable to enter them because of the level of insecurity. The acts committed by gangs constituted acts of terrorism. There had been a total of more than 125,000 gang-related deaths – a figure higher than the total number of deaths recorded during the civil war. For that reason, every day with no homicides was a cause for celebration and a step forward for human rights. It was important for the Committee to fully realize the radical changes that had occurred in the security situation in El Salvador in the three years since the Government had taken office. The Committee should also endeavour to support States parties rather than imposing costly obligations, such as attending meetings in person. He hoped that, in preparing its concluding observations, the Committee would thoroughly analyse the arguments made by the delegation in its responses.

11. The country's gangs were described as terrorist groups on the basis of a judgment of the Constitutional Court of 24 August 2015, at a time when, in one week, there had been 29

homicides every day. The Court's judgment, a copy of which would be shared with the Committee, had been based on article 4 (m) of the Special Anti-Terrorism Act of 2006, which took account of the provisions of various international conventions. In the judgment, the Court had cited article 3 of the Declaration on Measures to Eliminate International Terrorism annexed to United Nations Security Council resolution 49/60, which provided that: "Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them". It was thus clear that the judicial decision to recognize gangs as terrorist groups was in line with international standards. That decision must be seen in the context of the almost unimaginable level of violence at the time, which had terrorized the Salvadoran people.

12. There were also many judgments handed down by lower criminal courts – in cases in which the necessary evidence had been submitted and the procedural guarantees of the defendants had been guaranteed – that had concluded that the criminal acts committed by gangs amounted to acts of terrorism in accordance with Salvadoran law and international standards. The United States Department of Justice had also prosecuted gang leaders in United States courts on such charges as conspiracy to commit acts of cross-border terrorism and funding terrorism, on the basis that the acts committed met the criteria for terrorist activities, including the use of violence as a means of intimidation to control the civilian population and influence the actions of the Government. The designation of gangs as terrorist organizations and the arrests made in the framework of the state of emergency did not mean that there was an automatic attribution of guilt to the individuals concerned; all of the persons charged with the crimes in question were afforded due process and all procedural guarantees, in particular the presumption of innocence, in the process of determining whether the acts they had committed fell within the definition of the criminal offences classified as acts of terrorism. That had generated a heavy workload for the Salvadoran courts, but the justice and law enforcement authorities would not waver in their efforts to put an end to the scourge and ensure a life of safety and dignity based on respect for human rights for the Salvadoran people.

13. The separation of powers and the independence of the judiciary were fundamental pillars of El Salvador as a democratic State governed by its Constitution and the rule of law. There was no interference in the decisions of the judiciary, and the dismissal of the Constitutional Court judges should under no circumstances be seen as such. Members of the judiciary must demonstrate high levels of integrity, ethics, competence and responsibility. In the case in question, a series of irregularities and abuses of power by the judges of the Constitutional Court had been identified, including the issuance of judgments based on the personal interests of specific groups rather than the common good. To remedy the situation and ensure the proper administration of justice, the Legislative Assembly, acting under article 186 of the Constitution, had ordered the dismissal of the judges based on objective and legitimate criteria.

14. With regard to the President's candidature for re-election, the prohibition on serving a second term in office was based on an interpretation of the Constitution in a 2014 decision of the Constitutional Division of the Supreme Court of Justice. However, jurisprudence was subject to continual review and, in 2021, the same court had ruled that a second consecutive term was permissible. The latter ruling had been endorsed by various social and academic stakeholders and did not pose any threat to democracy or in any way limit the ability of voters freely to elect their next President.

15. **A representative of El Salvador** said that the state of emergency did not impose any restriction whatsoever on human rights defenders or prevent them from carrying out their work. The open and transparent process that had been followed by the Legislative Assembly in the election of the new Human Rights Advocate attested to the latter's independence and credibility.

16. **Mr. Mancisidor de la Fuente** (Country Rapporteur) said that the Committee's intention was to hold a constructive dialogue with the delegation in a spirit of mutual understanding. Like the other human rights treaty bodies, it treated all States parties equally, following the same procedures with each of them, and would not take a different approach

in the present case. It paid close attention to the delegation's statements, but its mandate was also to make observations on those statements on the basis of international human rights law and the Covenant in particular. Such law did not call into question the sovereignty of the State party. Moreover, the work of the Committee, including its consultations with civil society organizations, was public and transparent.

17. He feared that some of his observations might have been misinterpreted. He had not asked about the Office of the Human Rights Advocate with the intention of impugning its credibility, but in relation to the objective criteria laid out in the Paris Principles. He also noted that the State party was yet to provide a satisfactory response to his question on the reported arrest and detention of around 50,000 terrorists, which pointed to a lack of procedural guarantees in the State party.

18. **Mr. Hennebel** (Country Task Force) said that the constructive dialogue was an opportunity to exchange views and to identify any challenges faced by the State party in implementing the Covenant. The Committee's questions on the independence of judges, the state of emergency and related matters were based on information it had received, including from United Nations special rapporteurs, and were intended solely to gauge the State party's compliance with the Covenant.

19. **Mr. Uprimny** (Country Task Force) said that the Committee endeavoured to understand the context of the State party and the challenges that it faced. To that end, it had examined in detail not only the reports submitted by the State party and civil society organizations, but also data from the World Bank Group and the Economic Commission for Latin America and the Caribbean. It was also paying close attention to the delegation's responses to its questions.

20. **Ms. Mira** (El Salvador) said that her delegation was not asking the Committee for special treatment, but was inviting it to rethink and modernize its approach and its methods generally, a process in which El Salvador would be pleased to participate. Her Government was, after all, a guarantor of the Covenant, like the Committee. The aim of all involved was to build a better society.

21. **A representative of El Salvador** said that the right to strike was protected under the Constitution and the Labour Code and was not affected by the state of emergency. Legislation had been adopted in July 2021 to raise the minimum wage by 20 per cent, as part of efforts to guarantee decent living standards, taking account of the cost of living. Equal pay for equal work, for men and women, was a principle protected by the Constitution and the Labour Code.

22. Women's participation in the workforce was just over half that of men. All Latin American countries faced the same challenge in improving women's access to work. His own Government had taken various initiatives in that regard, passing legislation on the elimination of violence, on equality and on childcare and breastfeeding, and ratifying the ILO Violence and Harassment Convention, 2019 (No. 190), in order to help create favourable conditions for women in the workplace. In addition, large numbers of women had received support in moving into the labour force, under a special programme put in place by the Ministry of Labour and Social Security.

23. Multipurpose household surveys had shown that, in urban areas, the informal labour market accounted for around 48 per cent of workers. It was no easy task to assess the size of the informal sector, particularly as, according to a recent ILO study, El Salvador had one of the least robust statistical systems in the region. However, in cooperation with the Central Reserve Bank, reforms were being implemented with a view to raising statistical reporting standards. The Ministry of Labour and Social Security, for example, had set up a data collection system in order to provide statistics that would support a better understanding of the labour market. In addition, policies were being implemented to support people wishing to transition from informal to formal work.

24. **Mr. Hennebel** said that the Committee continued to be deeply concerned about child labour and child exploitation in the State party and would like to know what formal measures had been put in place, and what effective resources made available, to eliminate such exploitation. He would appreciate a comprehensive update on the situation of the numerous

adolescents who had been detained under the state of emergency and were reportedly being held in conditions that were incompatible with international law and human rights. What steps had been taken to protect the economic, social and cultural rights of minors deprived of their liberty?

25. In the light of reports, notably from the Inter-American Commission on Human Rights, concerning the extremely high levels of violence against women and of femicide, and the State party's failure to prosecute in the vast majority of cases of femicide, he would like to know what measures – such as a national plan of action – were in place to change attitudes, combat sexual violence and eliminate femicide; what reparation and support were offered to victims; and what statistics were available. He wished to hear about the tangible results that the strategy for the prevention of femicide and sexual violence launched in 2018 had yielded. Did the State party plan to accept the individual complaints mechanism under the Convention on the Elimination of All Forms of Discrimination against Women?

26. He would welcome statistics relating to the apparently widespread violence and discrimination against members of the LGBTQI+ communities, who, in some cases, had found themselves forced to leave their homes and seek asylum, as well as information on appropriate countermeasures taken by the State party. In light of reports that conversion therapy was being used to try to change the gender identity and sexual orientation of LGBTQI+ persons, he would welcome any information the delegation could provide on that matter, and its thoughts on ways of eradicating such practices.

27. He wondered what legislative measures were in place to regulate eviction and provide alternative accommodation in the event of eviction and, in general, how the State party guaranteed the right to housing. He wished to draw the delegation's attention to reports to the effect that the recently introduced legislation on water resources did not in fact guarantee access to water and sanitation. He asked what measures the State party had put in place to guarantee the right to food and, in that context, to combat inflation, which risked impairing that right.

28. He would be interested to know what measures were in place to guarantee the right to a clean, healthy and sustainable environment in general, and in particular to protect communities living near waste management facilities from uncontrolled emissions. Was due account taken of indigenous peoples' right to be consulted on development projects that might affect them and their environment? How did the State party protect judges and courts from reprisals in the event that they imposed precautionary measures on governmental or private projects they deemed likely to harm the environment?

29. In the area of reproductive rights and abortion, he wondered how the Government approached the problems raised in various reports the Committee had received, to the effect that women had been prosecuted for the criminal offence of abortion or for homicide and that due process had not been guaranteed in the associated proceedings; that women at serious health risk who had attended health facilities had been reported for allegedly attempting abortion; and that women had been incarcerated after being reported by health workers who feared that they themselves might be incriminated. He would like to know what had been done to stop such human rights violations. In the context of the emblematic case of *Beatriz v. El Salvador* in the Inter-American Commission of Human Rights, and given that an absolute ban on abortion was considered incompatible with international law and human rights law, he would be interested to know how the debate was progressing in society at large and in government circles. He would also like to know whether the State party had granted all the reparations ordered by the Inter-American Court of Human Rights in the case of *Manuela et al. v. El Salvador*.

30. The criminalization of abortion had had a clear impact on the numbers of cases of obstetric emergency and of alleged infanticide, and he would therefore like to know what steps had been taken to address such situations in a manner compatible with international human rights law. What health protocols were in place to guarantee comprehensive health care to girls and women in accordance with the highest international human rights standards; how was medical confidentiality guaranteed; and what progress had been made towards the introduction of a non-discriminatory, science-based and age-appropriate sexual and reproductive health education programme?

31. He wondered how non-discriminatory access to health care was guaranteed for members of the LGBTQI+ communities.

32. In the light of the concerns over appalling prison conditions expressed by the American Human Rights Commission in its report on its visit in 2019, he would like to know what measures the State party had taken to rectify the situation and guarantee prisoners' economic, social and cultural rights, particularly the right to health.

33. Lastly, he asked when the families of those health workers who had died during the coronavirus (COVID-19) pandemic would be likely to receive the promised compensation.

34. **A representative of El Salvador** said that the revelation of deficiencies in the health system during the pandemic had prompted his Government and the Ministry of Health to embark on a thorough overhaul of the country's health system, enhancing infrastructure, equipment, digital capabilities and staffing in the short, medium and long term.

35. The pandemic had affected food security in El Salvador. The country had already begun suffering the consequences of climate change, and its geographical location made it vulnerable to natural disasters such as earthquakes and to climate-related phenomena such as the increased frequency and intensity of droughts.

36. Working through the Ministry of Health and the National Council on Food and Nutrition Security, but with a cross-cutting, inter-institutional approach, the Government had taken a series of comprehensive measures to counter the population's vulnerability to such events and to stem the increase in hunger, malnutrition and poverty, with a view to achieving the Sustainable Development Goals relating to food.

37. Key actors from all sectors – including women, officials, civil society, the private sector and academia, food producers, persons with disabilities and indigenous peoples – had taken part in dialogues aimed at creating a road map, and considerable progress had been made. Malnutrition, for example, had declined by 3.2 percentage points from its 2009–2011 levels, in part as a result of improvements in the supply of basic commodities from national sources through the Ministry of Agriculture.

38. A raft of 11 measures, targeting production, logistics and tariffs, had been put in place to boost supply, including a subsidy for propane gas, which had kept the price at the lowest level in the region and benefited 1 million households.

39. Legislative measures included special laws governing inflation control, food price caps and group purchase of agricultural inputs for small producers. Measures to boost supply to local and national markets included a year-long suspension of import tariffs on fertilizers and on more than 20 staple foodstuffs, and an easing of import-authorization procedures in respect of certain food products.

40. The Ministry of Agriculture's budget had been increased to permit it to maintain the Agricultural Packages Programme and the Agriculture Sector Recovery Master Plan, thereby establishing conditions for sustainable production of healthy, natural food.

41. Other measures to guarantee stability included strengthening of the prices oversight mechanism and the passing of legislation to punish hoarders.

42. Turning to the Committee's questions relating to the prohibition of abortion, he said that the Constitution recognized the right to life from the moment of conception, which was compatible with the State's treaty obligations under international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the American Declaration on the Rights and Duties of Man. The American Convention on Human Rights guaranteed the right to life from the moment of conception. There was thus an obligation on the State to protect the life of children, including by investigating and punishing criminal violations of that right. No regional or international instrument, custom or general principle of law recognized a right to abortion.

43. The Committee's assumption that El Salvador had criminalized abortion was mistaken. In fact the approach El Salvador had adopted was not criminalization but the establishment of conditions that would permit doctors and health workers to decide what

action to take: if a mother's life was in danger, then a case could be made for the necessity of intervention, in which case what the law protected was the right to life and health, not a hypothetical right to abortion.

44. Obstetric emergencies were not defined as crimes. No emergency medical procedures carried out during pregnancy in order to avoid irreparable harm to the life or health of the woman or the baby were considered crimes under the Criminal Code. In law and in practice, the medical authorities were entitled to carry out any procedures they deemed necessary to protect the right to life and health of women and rights-based protocols and internal regulations had been developed to govern emergencies. If the treatment to save a mother's life entailed the death of the child as a tolerated, if undesirable, consequence, then the doctor had committed no illicit act or crime. What was penalized was abortions carried out with malicious intent, i.e., caused or attempted by the pregnant woman herself.

45. In certain cases it was claimed that a woman had been convicted for an obstetric emergency or for abortion, despite the lack of any grounds in law, practice or medicine for considering that an offence of abortion had been committed. Such cases actually often involved aggravated homicide: many of the cases mentioned in international forums and the press were not abortions at all but cases in which, following full-term live births, with delivery at 38 to 40 weeks, the babies were murdered and the cases then claimed as obstetric emergencies or abortions. There was much talk of 40-year sentences for abortion, a penalty that did not exist in El Salvador: the penalty that was being applied in such cases was the penalty for aggravated homicide.

46. In such cases the State was exercising due diligence in complying with its obligations to prevent, investigate, try and punish crimes against children, in accordance with the principle of the best interests of the child under the Convention on the Rights of the Child.

47. The obligation on States to protect the life of newborns and other children, in the same way as they protected the life of all human beings, did not preclude full consideration for women's rights, as exemplified in El Salvador by the Caring Births Act, which was promoted by the First Lady and which focused not only on the child but also on the mother. The Act represented a milestone for the country, inasmuch as it marked a change in a culture that had often denigrated mothers, at the same time as it improved conditions of care from conception right through to birth and post-partum follow-up.

48. The case of *Beatriz v. El Salvador* was still under consideration, so the State would await the conclusion before commenting. In the case of *Manuela et al. v. El Salvador*, the Inter-American Court of Human Rights had handed down a judgement in which the State had been ordered to guarantee comprehensive care in cases of emergency. El Salvador was doing precisely that through the Caring Births Act. It was also investing in all the country's maternity facilities, not only improving infrastructure, but also focusing on the parent-child relationship. Sensitization training was being provided to the various officials and staff involved in the whole process of birth. In addition, the Government was implementing programmes on sexual and reproductive health.

49. In relation to the Court's instruction to amend the criminal dosimetry for infanticide by attenuating the penalties for that crime, he wished to point out that, although it was true that Salvadoran law had in the past been more lenient, the Court had failed to take account of the fact that the attenuated scale of penalties for infanticide under the 1973 Criminal Code predated the treaty obligations the State had subsequently acquired on ratification of the Convention of the Rights of the Child, whereby the State's duty to guarantee the rights of the child had been strengthened. Moreover, while the notion of attenuated penalties related to cases involving children, the State had an obligation to ensure that, in the interests of justice, penalties were equal in all cases, whether involving newborns, nursing infants, schoolchildren, adolescents or adults and older persons. That was the basis of the equitable model of legislation in place in El Salvador.

50. It was also significant that the Court had not ordered the State to amend the criminal offence of abortion since the case in question involved not abortion but aggravated homicide. In El Salvador, the courts needed proper grounds based on evidence in order to establish criminal liability, and their rulings were open to review by the regional courts and treaty bodies but, while women had rights that needed to be recognized and protected – as indeed

they were in El Salvador – children also had rights, which placed corresponding obligations on the State under international law.

51. As to medical confidentiality, the key was to balance the right to privacy and the right to life. In many cases doctors, exercising their professional judgement and expertise in order to reach life or death decisions, prioritized the right to life over the right to privacy. Numerous lives had been saved in those circumstances.

*The meeting rose at 6.25 p.m.*