



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

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## Committee against Torture Seventy-fifth session

### Summary record of the 1964th meeting

Held at the Palais Wilson, Geneva, on Thursday, 17 November 2022, at 3 p.m.

*Chair:* Mr. Heller

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

*Third periodic report of El Salvador*

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*The meeting was called to order at 3 p.m.*

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

*Third periodic report of El Salvador (CAT/C/SLV/3 and CAT/C/SLV/3/Corr.1; CAT/C/SLV/Q/3)*

1. *At the invitation of the Chair, the delegation of El Salvador joined the meeting.*
2. **The Chair**, welcoming the Permanent Representative of El Salvador to the United Nations Office at Geneva and Other International Organizations in Switzerland to the meeting, explained that all the other members of the delegation would be participating via video link.
3. **Ms. Mira** (El Salvador), introducing her country's third periodic report (CAT/C/SLV/3 and CAT/C/SLV/3/Corr.1), said that, in the post-conflict era, El Salvador had made significant progress in implementing legal reforms and establishing an institutional framework for the protection of human rights. However, her country was facing new challenges to public security and enduring multiple forms of violence, including institutional violence, which had affected entire communities and perpetuated and exacerbated the cycle of violence. The people of El Salvador, who played a key role in the oversight of government activities, widely approved of the security measures which had been taken – and which had garnered extremely positive results – under the leadership of the President of El Salvador, Mr. Nayib Bukele.
4. In the period since her country's previous review, the offence of torture had been defined in national legislation as a crime against humanity; the prohibition of torture and other cruel, inhuman or degrading treatment had been enshrined in several laws, such as the Organic Act on the National Civil Police and the Prisons Act; and El Salvador had become a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. It had also withdrawn its reservation to the Convention against Torture. In 2016, the General Amnesty (Consolidation of the Peace) Act of 1993 had been declared unconstitutional, in the light of which the Legislative Assembly was currently considering a new bill on transitional justice.
5. A special unit of the Attorney General's Office had been set up to investigate the offences committed during the internal armed conflict; a policy for the criminal prosecution of war crimes and crimes against humanity committed during the conflict had been adopted; and the National Commission on the Search for Adults who Disappeared during the Armed Conflict in El Salvador had been established. Amendments had been made to the Criminal Code to incorporate the offence of enforced disappearance, and a national framework for the investigation and prosecution of cases of enforced disappearance had been put in place.
6. The Special Act on Migration and Extradition set out special guarantees for victims of human trafficking, in particular migrants, asylum-seekers, stateless persons and refugees. The Act established the principle of non-punishment of irregular migration by refugees and stateless persons and provided that no foreign national should be expelled or deported if doing so would endanger his or her life, liberty or safety. Among other measures that the Government had taken relating to refugees and displaced persons, it had joined the comprehensive regional protection and solutions framework and had adopted a law establishing a comprehensive national system for addressing and preventing forcible internal displacement based on a humanitarian approach.
7. Public security had been identified as a national priority in El Salvador. Since June 2019, the Government had been implementing its Territorial Control Plan. The aims of that plan included reclaiming areas dominated by criminal gangs, which were the main perpetrators of human rights violations in El Salvador; cutting off the gangs' sources of funding; undertaking specific interventions in prisons; and restoring the social fabric of the country by taking steps to prevent adolescents and young people from joining gangs and pursuing other efforts to that end.
8. In March 2022, the criminal gangs had reacted to those measures by unleashing a wave of violence that had resulted in the killing of at least 92 persons. That reaction had

undermined public order, triggering a national emergency that had threatened the country's independence and security. The Government's response had been decisive, with the introduction of emergency regulations granting extraordinary powers to public security institutions to ensure the effective protection of people's rights. Under the state of emergency, which had been extended by the Legislative Assembly, the Government had introduced only those restrictions on rights that were necessary to contain the alarming situation. The actions of public security institutions were subject to internal and constitutional control mechanisms. For example, an oversight plan had been devised for the National Civil Police, as had a list of 10 principles, based on international standards, concerning the use of force during the state of emergency. The Ministry of Justice and Public Security and the Ministry of Defence had signed a protocol on police and military operations aimed at re-establishing public order and safety in the context of the state of emergency which was based, among other principles, on respect for human rights. The Office of the Human Rights Advocate, which also served as an oversight mechanism, had launched a national plan providing for comprehensive assistance to victims of possible human rights violations. El Salvador welcomed international scrutiny; all the actions that had been taken by her Government had been in accordance with constitutional, legal and treaty frameworks.

9. **The Chair** (Country Rapporteur) said that the State party faced a number of challenges related to the Convention, including in the areas of transitional justice, rising violence perpetrated by gangs and criminal organizations, the impact on human rights of the State party's efforts to tackle that problem, deplorable conditions of detention and prison overcrowding, and weaknesses in the institutional framework for the protection of human rights. The Committee wished to understand the issues more fully in order to be able to prepare recommendations that would aid the State party in its endeavours.

10. He would be interested to know what the impact had been of the work of the Office of the Human Rights Advocate, which, according to reports, had been undergoing a transition and lacked sufficient resources for the fulfilment of its mandate. It would also be useful to know whether the Office of the Presidential Commissioner for Human Rights, which had been created in 2018, still existed as a separate entity. He would welcome an update on the status of the country's plans to become a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it had signed in May 2018 but had yet to ratify.

11. Regarding offences committed during the internal armed conflict, he noted that, in 1993, the Truth Commission had issued a report detailing more than 75,000 cases of torture, killings and disappearances. However, in that same year, the General Amnesty (Consolidation of the Peace) Act had been adopted, setting in motion a mechanism of impunity whose effects were still being felt today. It was his understanding that, in 2016, the Act had been declared unconstitutional and the State party had subsequently adopted a number of legislative, judicial and public policy measures aimed at reviving the transitional justice process. He was also aware of the creation of a number of important entities in that connection, including national commissions on the search for children and adults who had disappeared during the conflict and a special investigative unit within the Attorney General's Office. He wished to invite the delegation to comment on reports that those entities had not been allocated the necessary resources to be able to carry out their work.

12. He noted that the Office of the United Nations High Commissioner for Human Rights and the Inter-American Court of Human Rights had expressed concerns that the bill on transitional justice contained provisions that contravened international standards and could lead to a de facto amnesty for perpetrators of serious human rights violations. The Committee was also concerned about the inclusion of the principle of prosecutorial discretion, whereby perpetrators of human rights violations could receive immunity from prosecution if they cooperated with the investigations. He therefore wished to know what the status of the bill was and wondered what obstacles were preventing the adoption of a law to bring to justice the perpetrators of offences committed during the internal armed conflict. He would also be interested in hearing from the delegation about reports that investigations into the offences committed during the internal armed conflict had been hamstrung by a lack of access to military archives. For example, the Human Rights Advocate had reportedly been refused

access to files by the Ministry of Defence, as had a judge investigating a massacre that had occurred in 1981.

13. In a similar vein, the Committee was concerned at a recent decision of the Supreme Court to dismiss all charges against members of the military accused of killing a Jesuit priest and seven other persons in 1989 because the violations were subject to the statute of limitations. Moreover, according to information received by the Committee, none of the cases being investigated by the special unit of the Attorney General's Office had been prosecuted, and many other cases had not even been investigated. The Committee would therefore welcome information on the status of all investigations and prosecutions relating to offences committed during the internal armed conflict, as well as the sentences that had been handed down to perpetrators and the reparations made to victims.

14. On the issue of public security, he wished to know whether the National Council for Citizen Security and Civic Harmony, which had been created in 2014, was still operational and whether there were plans to gradually phase out the use of the military to maintain public order and prevent criminality. He wished to know how many people in El Salvador were involved in criminal gangs, given that reports suggested that as much as 8 per cent of the population had some kind of connection to them. In addition, the Committee would welcome clarification regarding the definition of criminal gangs as terrorist groups and information on reports of negotiations held between the Government and criminal gangs concerning a reduction of the homicide rate in exchange for the granting of prison privileges to gang members.

15. He wished to know how many people had been arrested in connection with the State party's crackdown on criminal violence since the state of emergency had been declared in March 2022. He would be grateful for comments from the delegation on reports that, during that period, prisoners had had their food rationed and their mattresses and hygiene kits taken away and that mass trials had been held. The Committee was concerned about amendments to the Criminal Code that allowed the identities of judges involved in the trials of gang members to be kept secret, eliminated the limit on periods of pretrial detention and increased penalties for adolescents convicted of serious gang-related offences and allowed them to be imprisoned together with adults.

16. He would appreciate information on any planned institutional reforms – such as the strengthening of the internal affairs unit of the National Civil Police and the holistic implementation of the “Safe El Salvador” Plan – aimed at preventing the commission of human rights violations by members of the police and security forces and at punishing those who did commit such violations. He wished to know how many complaints regarding acts of violence committed by members of the police and security forces had been received and how many investigations and prosecutions they had resulted in. It would be helpful to have updated data on prison overcrowding, which had reportedly worsened significantly following the mass arrests carried out during the state of emergency.

17. He wished to learn about any steps being taken to create channels for safe and regular migration; to promptly investigate the deaths and disappearances of migrants, including through the establishment of regional cooperation mechanisms; and to protect the rights of El Salvadoran migrants abroad. Details regarding any investigations carried out into the fate of disappeared migrants would be appreciated. Information on measures to protect internally displaced persons would also be helpful. He wished to know whether the State party had plans in place to strengthen government institutions and increase funding for the Office of the Human Rights Advocate; put a halt to the practice of mass arrests; institute rehabilitation programmes or non-custodial sentences for detainees; address the structural causes of violence, including poverty; and incorporate accountability mechanisms into policies on public safety and security.

18. **Ms. Racu** (Country Rapporteur) said that she would appreciate information on the work of the training academy for prison staff; the extent to which the training received by law enforcement and judicial officials on the prevention of torture and ill-treatment was based on participants' identified needs; the number of law enforcement officials, judges, medical professionals, prosecutors and prison staff who had received training on the Convention over the preceding four years and the number who still required such training; any training provided to public officials on the prevention of gender-based and domestic violence; and

any training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) provided to medical personnel working with prisoners. She wished to know whether the increase in arrests of alleged gang members during the state of emergency had been accompanied by an increase in the staffing levels of prisons and security forces and, if so, what type of training the new staff members had received. Information would be appreciated on any training provided to members of the military, intelligence agencies, security forces or prison staff on the prevention of torture, the use of force or the protection of human rights under a state of emergency.

19. She wished to learn more about the procedures available to lawyers who wished to file complaints about the searches to which they were reportedly subjected in places of detention, during which even their notes on client interviews were allegedly checked. She wished to know how the State party ensured that persons deprived of their liberty were informed of and could exercise their right to counsel, how many lawyers participated in the State party's legal aid system, what the ratio of such lawyers to detained persons was, how often lawyers were allowed to meet with clients being held in police custody, what facilities were available and how much time was allotted for those meetings, and what remedies were available to detainees who had been denied their right to counsel.

20. It would be helpful to find out about any specific mechanisms for reporting institutional or police violence or providing reparation to victims and about any laws dealing with those subjects. She wished to know how many people had been taken into custody during the mass arrests carried out under the state of emergency and what their current legal status was. She also wished to know whether reports of individuals being sentenced in mass trials without ever having been informed of the charges against them were true and, if so, what steps the State party would take to rectify that situation. She would appreciate further information on the extension of the allowable period of administrative detention from 72 hours to 15 days during the state of emergency. She wished to know how many people had exercised their legal right to challenge their arrests over the preceding four years; whether detainees were notified of their rights in writing and in a language that they could understand at the outset of their detention; whether a comprehensive, unified system was in place for keeping custody records; whether non-governmental organizations (NGOs) were authorized to visit places of detention; and whether any independent mechanisms existed for the monitoring of those facilities.

21. She wished to find out to what extent medical examinations were available to detained persons, what the relevant procedures were if signs of torture, ill-treatment or inter-prisoner violence were found, whether inmates could consult a doctor of their choosing, whether steps were being taken to improve prison health assessments and whether there were any reporting requirements relating to such assessments. She also wished to learn whether there was a register for recording injuries or violent incidents in places of detention, how many injuries and violent incidents had been reported over the previous four years and to what extent they had resulted in investigations, prosecution and punishment.

22. She would like to know whether mechanisms were in place to prevent the torture of suspected gang members or to monitor reports of such torture and whether police officers accused of torture were suspended from duty during the ensuing investigation. She wished to know how many people continued to be held in detention after having completed their sentences and what the State party planned to do to ensure that they were released. She would be grateful for information on measures to prevent, screen for and treat infectious diseases among prisoners; the prevalence of tuberculosis, HIV and other infectious diseases in the nation's prisons, particularly in the Izalco prison complex and Barrios Prison; the impact of the agreement between the Ministry of Justice and Public Security and the Ministry of Health on tuberculosis prevention; measures to ensure the health of detainees living with HIV; the number of medical and psychiatric professionals working in prisons; and the availability of medicines and medical supplies in prisons.

23. She wished to know whether prisons, especially high- and maximum-security prisons, were understaffed and, if so, what steps the State party planned to take to hire and train new staff. She would appreciate statistics on the use of physical force by prison staff; on deaths in custody that had occurred over the previous four years, disaggregated by factors such as

sex, age and cause of death; and on the investigations conducted into those deaths. She would also like to know how such investigations were carried out in practice, what the procedures were for the examination of the bodies and what steps the State party planned to take to prevent deaths in custody, including by suicide.

24. She welcomed the information provided in the State party's report about the juvenile justice system and would like to know whether there was a mechanism in place to monitor the activities of the police and to promptly record, investigate and prosecute any allegations of torture and ill-treatment of children by law enforcement officials. She wondered whether the Government intended to bolster the capacity of the courts to try and sentence perpetrators of such acts. It would be useful to learn of any measures that had been taken to prevent child abuse, including corporal punishment, and torture and to learn more about the role of the national human rights institution in that regard.

25. The Committee had been informed of new criminal penalties for children in conflict with the law, especially those who were members of gangs, that involved serving time in so-called juvenile prisons. It would appreciate detailed information about the new penalties, including how they were applied and how many children had received such penalties. The Committee would also be grateful for data on arrests, charges and trials involving children and would like to know where children who had been arrested and charged but not yet tried were being held. Information on how many children were tried as adults would be useful, as would statistics on trials in which the defendants were children, disaggregated by court, judge, claims against the individual, outcome of the trial and any other relevant criteria.

26. The Committee was deeply concerned that the Mental Health Act and articles 436 and 437 of the Code of Criminal Procedure allowed for the forced medication and involuntary institutionalization of persons with psychosocial or intellectual disabilities and for the use of physical restraints on such persons. It was also concerned at the fact that the Family Code allowed relatives or guardians of persons with such disabilities to hospitalize them, without their consent, based on the presumption that they were "mentally ill". She would welcome the delegation's views on the situation, as well as on the material conditions of psychiatric institutions and social care homes, and would like to know what complaint mechanisms and independent monitoring mechanisms were in place for such institutions. She would also like to know how many complaints had been received regarding the treatment of institutionalized persons and what the outcome of those complaints had been; what measures the Government planned to take to improve the conditions in psychiatric institutions and social care homes; and whether there were plans to amend those of the State party's laws which, according to the Committee and other international bodies, allowed for practices that could be qualified as inhuman treatment or torture.

27. The State party's efforts to address domestic and gender-based violence and to protect victims of such violence, including through the adoption of important legislation, were commendable. Nevertheless, the continuing high levels of violence against women, especially femicide, were cause for concern. She would therefore like to know what steps the State party was taking to hold officials accountable if they failed to investigate reports of domestic and gender-based violence and what measures it had adopted to protect individuals from sexual assault by members of the security forces and to ensure that any such acts did not go unpunished. Statistics on the prevalence of domestic violence and gender-based violence – which included violence against men and boys – and information about any new protection measures, for example shelters and rehabilitation programmes, would be welcome.

28. Several human rights treaty bodies and NGOs were concerned about the State party's total ban on abortion, even when the pregnancy was the result of rape or incest, when the life of the mother was at risk or when the fetus was not viable, which forced women and girls to resort to unsafe and illegal abortions. She would like to know if the Government was still considering the possibility of decriminalizing abortion. It would also be useful to learn how the State ensured that obstetric care was provided in dignified conditions and whether women accused of abortion were represented by counsel and whether they had procedural rights in criminal cases. Information on the conditions of detention of women and girls, including those convicted of abortion, would be welcome; specific information on the accessibility of medical care for such women and girls, especially those who were pregnant or had children, would also be helpful.

29. **A representative of El Salvador** said that the Office of the Human Rights Advocate had a broad mandate to monitor the activities of all Salvadoran institutions. It managed its own budget, which was allocated from the nation's general budget, and the method used to appoint its members shielded the Office from external influence. It was hoped that the Office's work would contribute to the creation of a culture of dialogue and peace. The former Human Rights Advocate had had the opportunity to visit two maximum-security prisons. The current Advocate had already held meetings with the President and the Ministry of Justice and Public Security; those meetings had been open to the public and had focused on the state of emergency and the rights of those being held in detention.

30. **A representative of El Salvador** said that, upon arrest, suspects were taken directly to the Counsel General's Office. They could at that point decide whether they preferred to hire their own private lawyer; otherwise, they were assigned a public defender by the Public Defender's Unit of the Counsel General's Office. In addition to the 211 criminal lawyers already on staff for such purposes, the Government had hired some 40 additional lawyers on temporary contracts to address the increase in demand seen since the declaration of the state of emergency. To his knowledge, there had not been any complaints regarding limitations on lawyers' direct, confidential access to their clients or regarding inappropriate searches of lawyers upon their entry into prison facilities. Although the Counsel General's Office generally had limited resources, it had recently been allocated additional funding by the Legislative Assembly in the context of the state of emergency. The Counsel General's Office had issued guidelines and protocols to ensure that all remedies, including applications of habeas corpus filed with the Constitutional Chamber of the Supreme Court, were available to defendants.

31. **A representative of El Salvador** said that the new members of the Constitutional Chamber were committed to upholding the right of access to justice of the victims of the 1989 massacre of six Jesuit priests. Thus, on 5 January 2022, they had handed down a decision effectively overturning the Criminal Chamber's decision of September 2020 to dismiss the case against the perpetrators.

32. **A representative of El Salvador** said that, in 2015, El Salvador had been witnessing historically high crime rates; for example, the murder rate at that time had been 105 murders for every 100,000 inhabitants. Pursuant to a ruling by the Constitutional Chamber of the Supreme Court in September of that same year, gangs and criminal organizations that sought to arrogate to themselves the exercise of the sovereign powers of the State and that thereby terrorized, placed in grave danger, or systematically and indiscriminately compromised the fundamental rights of the population or a portion of the population, as well as the members, collaborators, apologists and funders of such gangs and criminal organizations, were to be regarded as terrorist groups. In a recent communication conveyed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, it had been stated that, in order to be characterized as an act of terrorism, a crime must fulfil three criteria: the means used must be lethal; the intention must be to provoke a state of terror in the general public or to compel a Government or an international organization to do or to abstain from doing something; and the motivation must be to advance an ideological cause. Since the crimes committed by the gangs in El Salvador met those criteria, the definition of terrorism appeared to apply to the activities of the gangs and other criminal organizations. The horrific acts that they had carried out demonstrated their determination to maintain control of territory through the systematic use of violence, both against rival gangs and against the general population, and thus to set up a parallel State. The lax approach taken by prison and public security authorities under the previous Administration in dealing with the gangs, for example by negotiating concessions and even prison privileges for their members, was well documented. The gangs' influence had been so great that it had even extended to national elections. Prior to 2019, the police had not been able to enter areas controlled by gangs; since the current President had assumed office, however, the State had taken a firm stance towards the gangs and thus had gradually been recovering its sovereignty over the national territory. According to official sources, those criminal groups were responsible for a total of some 117,000 deaths.

*The meeting rose at 5 p.m.*