



International Covenant on Civil and Political Rights

Distr.: General
27 October 2020
English
Original: Spanish
English and Spanish only

Human Rights Committee

Information received from El Salvador on follow- up to the concluding observations on its seventh periodic report*

[Date received: 5 October 2020]

* The present document is being issued without formal editing.



Supplementary report on the implementation of the recommendations made by the Human Rights Committee in respect of the seventh periodic report of El Salvador on compliance with the International Covenant on Civil and Political Rights

1. The Human Rights Committee considered the seventh periodic report of El Salvador (CCPR/C/SLV/7) at its 3456th and 3457th meetings (see CCPR/C/SR.3456 and 3457), held on 13 and 14 March 2018. At its 3478th and 3479th meetings (CCPR/C/SR.3478 and 3479), held on 28 and 29 March 2018, the Committee adopted concluding observations on the report.
2. Paragraph 44 of the concluding observations states that: “In accordance with rule 71 (5) of the Committee’s rules of procedure, the State party is hereby requested to provide ... information on its implementation of the recommendations made by the Committee in paragraphs 16 (voluntary termination of pregnancy), 18 (serious human rights violations that took place during the armed conflict) and 22 (extrajudicial executions and enforced disappearances).”
3. This information is provided below.

Paragraph 16

The Committee urges the State party to amend its abortion legislation as a matter of urgency in order to guarantee safe, legal and effective access to voluntary termination of pregnancy where the life or health of the pregnant woman or girl is at risk or where carrying the pregnancy to term could cause the pregnant woman or girl substantial harm or suffering, especially in cases where the pregnancy is the result of rape or incest or when it is non-viable.

4. In 2016, a draft amendment was submitted to the Legislative Assembly in which it was proposed to add an article 133-A to the Criminal Code, establishing four grounds on which abortion would not be punishable, with the aim of saving the lives and preserving the health of pregnant women. These grounds were: (a) when the abortion is performed to save the woman’s life and preserve her health; (b) where the pregnancy is the result of rape or human trafficking; (c) where there is a fetal abnormality that is incompatible with life outside the womb; and (d) in cases of rape and statutory rape, when the procedure must have the consent of the minor and the authorization of her parents or legal guardians.
5. In 2017, the Committee on Women and Gender Equality of the Legislative Assembly examined the draft amendment and held consultations with various national stakeholders. This was the first time since the Assembly approved the absolute prohibition of abortion in 1997 that an open and interdisciplinary dialogue, including political, academic and scientific actors, had taken place on the subject.
6. Ultimately, the legislature as a whole did not adopt the draft amendment, which was sent to the archive for subsequent study.

The Committee reiterates its previous recommendation and urges the State party to suspend immediately the criminalization of women for the offence of abortion. The State party should also review all cases of women who have been imprisoned for abortion-related offences, with the aim of ensuring their release, and ensure that these women have access to legal assistance and to due process.

7. Between 2014 and June 2019, 147 women were prosecuted for committing acts related to obstetric emergencies. Of these, 61 were convicted – 34 for aggravated homicide and 27 for abortion.
8. The situation of the women who were prosecuted during the period from 2014 to July 2019 is shown in the table below.

<i>Judgment</i>	<i>No. of cases</i>
Acquittal	6
Stay of proceedings	3
Conviction	9
Commutation of sentence	
Pardon	1
Early release	3
Review of judgment	1
Sentence served	1
Alternative measures to pretrial detention	3
Investigation by the Attorney General's Office	2
Unknown	2
Total	31

It should not apply criminal sanctions to women and girls who undergo abortions or to medical service providers who help them to do so, since such measures compel women and girls to resort to unsafe abortions, and it should ensure that the professional secrecy of medical staff and patient confidentiality are observed.

9. Article 2 of the Constitution guarantees the right to honour, to personal and family privacy, and to physical and moral integrity.

10. Article 265 (2) of the Code of Criminal Procedure provides for an exception to the obligation to report offences, should the knowledge acquired by medical staff be protected by professional secrecy. Women with obstetric health problems are generally treated in accordance with Ministry of Health technical guidelines, which do not envisage that medical staff will report women with obstetric complications, since obstetric complications are not a crime in El Salvador. On the contrary, the Ministry of Health has developed training courses for the safe handling of miscarriages and has organized rights-based training and awareness-raising for post-miscarriage care personnel.

Furthermore, it should ensure unimpeded access to high-quality sexual and reproductive health services nationwide, as well as educate and raise awareness among men, women, adolescents and health service providers.

11. The National Cross-sectoral Strategy for the Prevention of Child and Adolescent Pregnancy 2017–2027 was adopted in 2017 as a management tool designed to address the problem of child and adolescent pregnancy. In 2016 alone, the number of recorded pregnancies in girls and adolescents stood at 21,407, while in the past five years, 121,456 girls and adolescents have had their life projects disrupted by motherhood.

12. The overarching goal of the Strategy is to eradicate pregnancy in girls and adolescents through coordinated, inclusive cross-sectoral interventions that incorporate the human rights and gender perspectives, facilitating the empowerment of girls and adolescents for their full development and seeking to overcome obstacles and challenges.

13. The implementation of the Strategy will directly contribute to the fulfilment of commitments assumed under various international and national human rights instruments. It will also contribute to the achievement of objectives set out in the programme frameworks of various public policies intended to guarantee the rights of girls and adolescents in El Salvador.

14. With regard to the promotion of sexual and reproductive health and efforts to reduce maternal mortality, the aim of the National Strategic Plan for Comprehensive Maternal and Child Health Care 2015–2019 is to make continued progress towards universal coverage and access to health services and to progressively expand the provision of care through the integrated comprehensive health-care networks, while making these networks accessible, affordable and effective. The Plan includes the following five major components:

- (a) Environments friendly to women's and children's health;
- (b) Quality in health service provision;
- (c) Immunization;
- (d) Community and cross-sectoral partnerships;
- (e) Monitoring, supervision and evaluation.

15. The Plan's approach is centred on the person, the family and the community and takes into consideration human rights, gender equity, risk as a social determinant and sustainability.

16. In addition, the Government has developed the following instruments for the treatment of women of childbearing age at various stages of the life cycle (prior to conception, during pregnancy, childbirth and puerperium, and during the climacteric and menopause):

- (a) Clinical guides for gynaecology and obstetrics;
- (b) Clinical care guides for climacteric and menopause;
- (c) A guide for the operationalization of hostels for expectant mothers;
- (d) Technical guidelines on comprehensive care for women at high reproductive risk; women's health care prior to conception and during childbirth and puerperium and newborn care; the application of the yellow, orange and red codes; contraceptive services; and the organization of educational groups for pregnant teenagers;
- (e) The National Cross-sectoral Strategic Plan for the Promotion, Protection and Support of Breastfeeding 2016–2019;
- (f) The standard for comprehensive health care for people affected by violence and injuries;
- (g) The General Regulations of the Medicines Act;
- (h) The Child and Adolescent Protection Act;
- (i) The National Cross-sectoral Strategy for the Prevention of Child and Adolescent Pregnancy 2017–2027;
- (j) The National Condom Strategy.

17. Maternal health care is linked to strategies to improve care in other areas, including care for victims of all forms of violence, care for persons with high priority chronic diseases such as diabetes and chronic high blood pressure, oral health, and nutrition, as well as all health-care support services (such as clinical laboratories, blood banks, radiology, physiotherapy and psychology services).

18. In the area of sexual and reproductive health, pre-conception care and counselling are being provided and programmes and policies implemented to eradicate maternal morbidity and mortality.

19. Within this framework, extensive work has been done to inform the general public and health personnel about sexual and reproductive rights and human rights in general. There are educational programmes which place an emphasis on sexual and reproductive health and on new perceptions of masculinity.

20. In terms of access to sexual and reproductive health services, one of the most important achievements is the clear decrease in the rate of maternal deaths, which fell from 49.7 per 100,000 live births in 2009 to 24.3 per 100,000 live births in 2019. This was achieved thanks to the different strategies implemented at the national level by the Ministry of Health and at the local level by community family health units and hospitals, as well as the coordinated work done by the integrated comprehensive health-care networks, including the monitoring, supervision, evaluation and follow-up of programmes.

21. El Salvador has an online morbidity and mortality information system which provides access to all information on maternal mortality, including data on the main morbidities of pregnant patients.

22. Analyses of mortality data are conducted on an annual basis to assess the impact of the strategies pursued. Individual cases of mortality are analysed through medical audit.

It should also ensure that all procedures are followed to obtain the full and informed consent of persons with disabilities with regard to sterilization.

23. In El Salvador, surgical sterilization is not performed on patients with disabilities, nor are they provided with methods of contraception, unless they have received adequate counselling and given their informed consent in writing.

24. In patients with cognitive impairments, the severity of the case is assessed by a doctor or health professional and they are given the opportunity to access methods of contraception voluntarily and on a thoroughly informed basis.

25. In this regard, article 147 of the Criminal Code provides for consent as an extenuating circumstance and as a ground for exemption from criminal liability.

“Art. 147. - In offences entailing personal injury, if the free, spontaneous and express consent of the offended party is given, the perpetrator shall be punished by 6 months’ to 2 years’ imprisonment or a fine of 30 to 60 days.

“Consent shall confer an exemption from criminal liability in cases of donation or transplantation of human organs or tissues, sterilization and sex reassignment surgery performed in accordance with the Health Code by a physician.

“Consent given by a minor or a legally incompetent person, or by his or her legal representatives on his or her behalf, shall not be valid for these purposes.

“However, the sterilization of a legally incompetent person with a serious mental impairment, when authorized by a judge or court at the request of the incompetent person’s legal representative and on the basis of a medical opinion, shall not be punishable.”

To this end, the State party should offer special training to health personnel to better acquaint them with the harmful effects and consequences of forced sterilization.

26. All health personnel, especially doctors, nurses and health promoters, have been trained in sexual and reproductive health, human rights and the World Health Organization medical criteria for contraceptive use, so that they understand the potential benefits and harm that contraception and forced sterilization may entail.

Paragraph 18

The State party should: (a) Ensure that the special unit has the human, financial and technical resources it needs to carry out investigations into the serious human rights violations that took place during the armed conflict, and guarantee access to all information related to such violations, including the archives of the Armed Forces.

27. The special unit to investigate the grave human rights violations that took place during the armed conflict in El Salvador was established by the Attorney General’s Office decision No. 129 of 7 December 2016. Its main function is to give effect to the provisions of Judgment No. 44-2013/145-2013 of 13 July 2016 of the Constitutional Chamber of the Supreme Court, which declared, in a general and binding manner, the General Amnesty (Consolidation of the Peace) Act to be unconstitutional and ordered the investigation of the grave human rights violations that took place during the internal armed conflict.

28. To perform this task, the unit has its own funds and resources from the regular budget of the Attorney General’s Office. It has a workplan for carrying out its duties, the implementation of which is supported by the human rights unit and various prosecutors’

offices that hear cases of human rights violations which occurred in the context of the internal armed conflict.

29. The unit has received technical assistance and specialized training provided by the Office of the United Nations High Commissioner for Human Rights. It has also contributed to the development of the policy for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador, which was officially adopted in December 2018 and which takes account of the systematic patterns that allowed for the commission of serious human rights violations and the complexity of the violations in question.

30. The unit is legally authorized to request information for the purpose of its investigations into serious crimes and human rights violations that occurred during the armed conflict, including from the archives of the Armed Forces.

31. In the same vein, article 19 of the Access to Public Information Act, in its final paragraph, provides that the confidentiality of information held by public institutions may not be invoked in investigations into grave violations of fundamental rights or crimes of international concern.

- (b) Ensure the full protection, personal safety and independence of the Attorney General and his staff, as well as the full implementation of the precautionary measures granted by the Inter-American Commission on Human Rights, and take the necessary measures to prevent the intimidation of public officials and members of civil society who are investigating these cases.**

32. The Government of El Salvador has implemented the precautionary measures ordered by the Inter-American Commission on Human Rights in relation to the former Attorney General, whose term of office ended on 5 January 2019, through an agreement reached with the beneficiary that is overseen by the Commission.

33. With regard to the alleged intimidation of public officials and members of civil society investigating this type of case, it should be noted that the Attorney General's Office is the authority responsible for investigating crimes, while civil society organizations act as strategic allies, cooperating and sometimes appearing as complainants in these cases.

- (c) Step up the search for missing persons and provide adequate resources for this purpose, including through the National Commission on the Search for Adults who Disappeared during the Internal Armed Conflict and the National Commission on the Search for Children who Disappeared during the Internal Armed Conflict. The Committee encourages the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

34. The National Commission on the Search for Children who Disappeared during the Internal Armed Conflict was established in 2010. It has a remit to investigate disappearances of children who are now adults, to locate them and reunite them with their biological families, and to provide psychosocial support to families who have been victims of enforced disappearance.

35. At the end of 2019, having been operational for a little more than eight years, the Commission had 346 case files on missing children, of which it had resolved 103. It has also initiated 16 exhumation procedures with the prosecutorial and judicial authorities, providing psychosocial support during an experience which is painful but necessary for reclaiming memory and truth.

*National Commission on the Search for Children who Disappeared during the Internal Armed Conflict,
overall data, 2011–2019*

<i>Category</i>	<i>No. of case files</i>
Investigations in progress	243
Cases resolved	103
Total	346

<i>Outcome of resolved cases</i>	<i>No. of case files</i>
Family reunion	38
Missing children (now young people) located pending reunion	14
Missing person located, deceased	36
Case file closed	15
Total	103

36. The National Commission on the Search for Adults who Disappeared during the Internal Armed Conflict was established by Executive Decree No. 33 of 21 August 2017. Its main purpose is “to investigate and determine the whereabouts and situation of adults who were forcibly disappeared during the internal armed conflict in El Salvador and to facilitate reunions with their families or the restitution of their remains, with respect for the dignity of the victims”.

37. As of December 2019, the Commission had received and registered a total of 193 cases; it has also identified 1,229 records based on a review of the lists contained in the report of the Commission on the Truth and compiled by the Working Group on Enforced or Involuntary Disappearances. It is in the process of setting up a national register of forcibly disappeared persons and is receiving significant support from organized civil society for that purpose. On 30 August 2019, the Commission received a document index of the complaints received by the Socorro Jurídico Cristiano (Christian Legal Assistance) office of the Central American University between 1966 and 1981.

*National Commission on the Search for Adults who Disappeared during the Internal Armed Conflict,
overall data, 2018–2019*

<i>Category</i>	<i>No. of case files</i>
Individual cases	193
Collective cases	1

<i>Status of the case file</i>	<i>No. of case files</i>
Investigation in progress	193
Family reunited	0
Missing person located pending reunion	0
Exhumation carried out	1
Case file closed	0

38. In addition to the establishment in 2016 of a special unit to investigate the grave human rights violations that took place during the armed conflict, the Attorney General’s Office has integrated training modules on international humanitarian law and techniques for the investigation of enforced disappearance into the curriculum of the School for Prosecutors. It has also cooperated with the Office of the United Nations High Commissioner for Human Rights and the Inter-American Institute of Human Rights and has received technical assistance on the search for missing persons.

39. With regard to specific investigations into cases of enforced disappearance that took place during the internal armed conflict, the Attorney General’s Office has reported that it is investigating several cases of enforced disappearance,¹ attributed to both parties in the conflict. Investigations are also being conducted into homicides, massacres, bombings of

¹ These include the Guzmán case, the Flores case, the Escobar case, the Reyes case, the Morán case, the La Gruta case and the Sánchez case.

trade union offices, forced recruitment and other crimes that were committed during the armed conflict.

Paragraph 22

The State party should strengthen the role of the National Civil Police in the maintenance of law and order and enable it to assume the law and order functions exercised by the Armed Forces. It should ensure that all cases of alleged extrajudicial execution, arbitrary detention and enforced disappearance are investigated in a prompt, thorough and impartial manner, that searches are carried out for missing persons, that the perpetrators are prosecuted and punished, and that victims receive full reparation.

40. Various efforts have been made to ensure a coordinated response to challenges in the area of public security, which is a national priority. Since June 2019, the Government of President Nayib Bukele has been implementing the Territorial Control Plan, which focuses on reclaiming areas dominated by criminal gangs, cutting off the gangs' sources of funding and adopting specific interventions in prisons.

41. The Plan also focuses on restoring the social and community fabric and therefore includes measures to prevent adolescents and young persons from joining criminal gangs. Such measures include technical training programmes in various fields, university scholarships and job creation projects for young people. Under the Plan, public works are carried out and basic services are established in communities; all government departments participate in these initiatives under the coordination of the National Directorate for Restoring the Social Fabric, which is part of the Ministry of the Interior and Territorial Development.

42. With regard to the investigation of alleged extrajudicial execution, arbitrary detention and enforced disappearance, the Government, in keeping with its obligations and principles, maintains a clear commitment to use all legal resources at its disposal to address the actions of groups that violate people's rights, whether they be criminal gangs or individuals who abuse the security functions entrusted to them in order to break the law.

43. The National Civil Police has been guided by a conceptual framework for the use of force and lethal weapons since 2017. A campaign to raise awareness of this framework was conducted in 2018, while the Police Action and Human Rights Committee – a forum for dialogue between the Government and civil society on police conduct issues – developed a system of indicators for jointly monitoring the use of force by the security forces.

44. Specialized prosecution units have led investigations into cases in which there is evidence of extrajudicial executions, with positive outcomes. The internal oversight mechanisms that monitor the conduct of law enforcement officials have been strengthened.
