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SUMMARY RECORD OF THE 2114th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 23 July 2003, at 11 a.m.

Chairperson: Mr. AMOR

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The meeting was called to order at 11.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Third periodic report of El Salvador (continued) (CCPR/C/SLV/2002/3;
CCPR/C/78/L/SLV)

1. At the invitation of the Chairperson, the members of the delegation of El Salvador took places at the Committee table.
2. The CHAIRPERSON invited the delegation to reply to the oral questions put at the previous meeting by members of the Committee in connection with articles 3 and 26 of the Covenant (questions 6 to 9 of the list of issues (CCPR/C/78/L/SLV)).
3. Mr. HERNANDEZ ZUNIGA (El Salvador) said that the Ministry of Labour and Social Insurance, pursuant to both the Constitution and the ILO Labour Inspection Convention (No. 81), monitored compliance with all labour regulations. A Labour Inspectorate had been set up within the Ministry, with which any woman who felt she had been discriminated against by an employer on the grounds of pregnancy could lodge a complaint, which would then be investigated. There was also an Office for Women and Minors whose responsibility it was to promote their rights. Article 30 of the Labour Code replicated article 1 (a) of ILO Convention No. 111 concerning Discrimination (Employment and Occupation) and consequently prohibited discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. However, it contained no specific provision on discrimination against pregnant women. On the other hand, article 2 of the Constitution guaranteed the right to work and El Salvador's labour legislation stipulated that the Government should regularly monitor workplaces for violations of the right to work, such as not hiring pregnant women, requiring women to submit the results of pregnancy tests or not hiring union members.
4. The Ministry of Labour had set up inspection offices in the free-trade zones, where it ran seminars and provided information to both employers and workers regarding labour rights with the aim of promoting a harmonious work atmosphere. The current Minister of Labour encouraged visits to the assembly plants, where the majority of women worked, comprising three quarters of the labour force. He would distribute a report on those visits. Unfortunately, the NGO which had reported instances of discrimination against pregnant women in some factories in these export processing zones had not reported them directly to the Ministry of Labour, which would have immediately taken corrective action. One of the conditions under the free-trade agreement currently being negotiated with Canada and the United States was the proper enforcement of labour regulations and standards; the Government had allocated approximately 3 million dollars to ensuring that commitments to that effect under the free-trade agreement would be honoured.
5. Mr. FRANCIA DIAZ (El Salvador) said government statistics indicated that about 55,000 persons had been assisted under a family relations programme in areas such as crisis intervention, prevention, group therapy and shelters. Marital rape was punishable under article 162 (1) and (3) of the Criminal Code, the stipulated maximum punishments being increased by one third in relation to other penalties for rape.

6. With regard to his Government's attitude towards sexual minorities, there was no repression of homosexuals, who were free to associate and form their own groups. There had been a recent incident in which the police had had to intervene because of a public disturbance involving homosexuals, but that had not been a case of discriminatory treatment.
7. The very interesting dialogue with the Committee at the previous meeting regarding the question of abortion, and especially the extreme cases that could arise, would undoubtedly prompt the Government to rethink its position and review legislation on the matter. He could not give statistics on the number of deaths resulting from abortion because abortions were generally clandestine. There were statistics on maternal deaths in general, however: the Pan-American Health Organization (PAHO) gave a figure of 100 deaths per 100,000 women in El Salvador, while the Ministry of Health put the figure at 51 deaths per 100,000.
8. Mr. POZAS (El Salvador) said that foreigners had the same possibility of asserting their rights in court as Salvadoran citizens and had the same recourse to the remedy of amparo. The sole exception was that only citizens could challenge the constitutionality of a law or regulation in the Constitutional Court. Otherwise, foreigners could initiate proceedings in the ordinary courts and indeed the Constitutional Court. They also had access to the remedy of habeas corpus to ensure their right to security of person.
9. Under article 29 of the Constitution, states of emergency ended automatically after the prescribed 30-day period and could be renewed as required for subsequent 30-day periods.
10. Mr. HERNANDEZ ZUNIGA (El Salvador) said his Government had recently concluded that one provision of its legislation on HIV/AIDS violated international labour principles and had consequently abolished it. That provision had permitted an employer to require job applicants to submit proof of HIV antibodies before hiring them.
11. The CHAIRPERSON invited the delegation to respond to questions 10 to 17 of the list of issues, relating to the right to life and to liberty and security of person, and treatment of prisoners and other persons deprived of liberty.
12. Mr. FRANCIA DIAZ, responding to question 10 (a), said that the Government's investigation into the 1989 murder of six Jesuit priests, their cook and her daughter in their residence at the Catholic University of Central America had led to the arrest and conviction of several persons who, however, had been later released under the 1987 Amnesty Act. But the Government had not allowed the case to be dropped, and an application for amparo by the rector of the Catholic University was currently pending before the Supreme Court.
13. Responding to question 10 (b), he said that the murder of Monsignor Oscar Romero, Archbishop of San Salvador, on 24 March 1980 had been investigated and the evidence had indicated that Captain Alvaro Rafael Saravia was the guilty party. But that case had also been covered by the Amnesty Act and had been shelved.
14. Turning to question 10 (c), he said it was clear from the evidence taken from survivors of the El Mozote and other massacres that the Atlacatl Rapid Deployment Infantry Battalion had been present in the area at the time of the massacres. Unfortunately, those events, too, had been

covered by the Amnesty Act. As no individual member of the battalion had been identified as responsible for a particular murder, all members had been amnestied. Exhumations had been conducted on the site of the El Mozote massacre and DNA tests undertaken to determine the reliability of the evidence. In addition to international organizations and Salvadoran non-governmental groups, the State itself was deeply concerned to establish the facts in spite of the Amnesty Act. Investigators from the Public Prosecutor's Office had been instructed to leave no stone unturned in order to determine the truth.

15. Mr. MEJIA TRABANINO (El Salvador), responding to question 11 of the list of issues, said that the Asociación Pro-búsqueda de Niñas y Niños Desaparecidos had submitted preliminary draft legislation to Parliament in 1999 for the establishment of a national commission to investigate the disappearance of children during the armed conflict and to identify those responsible. The Family Committee of the Legislative Assembly had taken steps to obtain a cross-section of views of civil society on the matter. An advisory forum had been established but its findings had failed to secure the requisite support in the Legislative Assembly for the association's proposal. An agenda for action had been drawn up for the Office of the Procurator-General but it contained no new proposals. The association had therefore opted to continue with its own work, which had enabled many children to be reunited with their families. In 1999, the Ministry of Internal Affairs had recognized it as a legally constituted organization. State institutions had assisted in the investigation of specific cases, maintaining contacts and holding meetings with representatives of the association. Two cases of disappeared children had been considered by the Inter-American Commission on Human Rights. The hearings had been attended by representatives of the State and the association, and measures that might be taken to resolve the cases had been discussed. The principal investigating body was the Office of the Attorney-General. Some 200 missing young people had been found and the State had taken steps to establish their identity and promote family reunification. No decision had been taken to date on the creation of a compensation fund for young people who had been found.

16. Mr. POZAS (El Salvador), responding to question 12, said that the cases reported to the Committee of violations by the National Civil Police (PNC) of the right to life and of torture, ill-treatment and abuse of authority constituted isolated incidents rather than a systematic policy of the new police force. Any officers who committed unlawful acts were severely punished and in many cases dismissed. With regard to question 12 (a), police training strongly emphasized the right to life and security of person under the Constitution. The 2001 National Civil Police Organization Act established regulations governing the lawful use of force based on criteria such as proportionality and self-defence. In June 2002, the PNC had issued a directive relating to the use of explosives and similar devices, which contained detailed instructions on the use of weapons and referred to the United Nations Code of Conduct for Law Enforcement Officials. The regulations applied at all levels of the police force. Every police officer was therefore well informed of the circumstances in which force could lawfully be used.

17. Turning to question 12 (b), he said that the Organization Act provided for a wide range of complaint mechanisms and guarantees. The PNC was headed by the Inspector-General, who was responsible for supervising police conduct. There was also a Monitoring Unit, a Disciplinary Investigation Unit, an Internal Affairs Unit and a Human Rights Unit. Each unit operated a system of checks and balances. Any infringement of the regulations or human rights

violation was first investigated by an officer's immediate supervisor. If the response at that level was unsatisfactory or the transgression was particularly serious, one of the special units could be asked to intervene. The prime objective was to prevent human rights violations by the police and to punish misconduct without undermining the guarantee of due process. It was sometimes difficult in practice to dismiss a police officer while guaranteeing due process rights. It was unfortunately true that a serious crisis had occurred in the new police force, with many officers repeatedly accused of theft or abduction, or of exploiting their uniform and police logistics to commit offences. Complaints had been channelled through the Office of the Attorney-General and, within the police force, through the Office of the Inspector-General and other units. Drastic steps had been taken to deal with the complaints, including the dismissal of over 1,000 officers from a force of some 16,000. Some police officers had appealed to the Constitutional Court and been reinstated. Nonetheless, the police force was engaged in a process of ongoing self-criticism and self-reform.

18. Responding to question 13, he said that the figure of 60 per cent of female sergeants in the PNC who had allegedly been victims of violence came from a study conducted by the police force itself with the assistance of the European Union. The term "violence" covered not only physical violence but also psychological violence. Of a total of 40 women sergeants in the force, about 23 had suffered some form of violence. It should be noted, however, that the highest-ranking women - police commissioners - had never been victims of violence. Moreover, not all perpetrators of violence were men; some 12 per cent were women. Among the victims, some 70 per cent reported psychological violence such as shouting, threats and humiliation; some 25 per cent reported sexual violence, harassment or abuse; and about 5 per cent reported physical violence. The study was also an exercise in self-criticism and the police planned to take practical action to deal with the problem. An institutional plan to incorporate a gender focus in the police had just been adopted. In the light of an analysis of the existing situation, it set targets and outlined measures to prevent the repetition of acts of violence and to encourage women to play a greater role in the police. Women currently accounted for about 7 per cent of the force. To increase that proportion, it was essential to address the problem of internal violence.

19. Turning to question 14, he said the very fact that the people of El Salvador were complaining about the police demonstrated a growing confidence in the benefits to be gained from asserting one's rights. In qualitative terms, that was an immense improvement on the past.

20. Naturally, the fact that a complaint had been filed did not always mean that a violation had occurred. In the course of their work police officers were often called upon to use force, and the line between acceptable and undue force could be hard to draw at times; that was why complaints were investigated. If it was determined from an investigation that a violation of human rights had occurred, appropriate penalties proportional to the offence, including criminal sanctions, would be imposed. It was not unusual for police officers to be charged and prosecuted for human rights violations; what was important was that sanctions were actually applied.

21. The PNC in fact wanted citizens to file complaints if a violation was serious. A special telephone line had been set up for reporting such violations; the number was easy to memorize and could be called free of charge, and all calls were confidential. However, the police also

believed that prevention was as important as punishment, and had therefore established their own human rights unit. The unit provided special training in a broad range of human rights issues, through classes, workshops and other means, and sought to convince police officers of the importance of human rights.

22. Turning to question 15, he said that the new Prisons Act established the obligation to classify prisoners on the basis of whether or not they had been convicted, with a view to keeping them separated. Given the scarcity of resources in the national budget, it was often hard to keep those types of prisoners separate, although every effort was made to do so. Prisons in El Salvador were generally intended to hold either persons in pre-trial detention or persons actually serving sentences. There was currently only one centre where both categories of prisoner were being held, but even there efforts were made to keep the two groups apart. In addition, a maximum security prison was currently under construction, and would hold psychopathic criminals or criminals whose offences required them to be held in such facilities.

23. With regard to question 16, he said that the main source of violent behaviour among prisoners was juvenile gangs. Efforts were made to keep juveniles in separate facilities, and to keep members of different gangs separated, although that was often quite difficult. Preventive measures were also applied and took the form of periods of manual labour and religious activities for young offenders.

24. With regard to efforts to combat trafficking in persons (question 17), he said that the most important measure taken to date had been the inclusion of trafficking in persons as a criminal offence in the Criminal Code in October 2001. As a result the police, the immigration authorities, the Attorney-General's Office and the court had a useful tool for prosecuting and punishing such acts. El Salvador was basically a transit country between south and north, and most migrants were poor people coming from such countries as Ecuador and Peru. While most of those migrants were in the country illegally, a distinction was drawn between such migrants, who were detained for violating El Salvador's immigration laws but were not essentially criminals, and members of transnational criminal organizations that trafficked in such persons.

25. Investigations had been opened in respect of 570 persons charged with illegal trafficking in migrants: 43 cases had been brought to trial and public hearings had been held in another 25 cases. The migrants themselves were treated with dignity and respect, and every effort was made to return them to their country of origin.

26. Efforts had also been made to tackle the problem from a regional standpoint through such organizations as the Central American Commission of Migration Directors. While Central America was undergoing a process of regional integration, the countries concerned did not want integration efforts to undermine their security or to create conditions that might facilitate the activities of traffickers.

27. The CHAIRPERSON invited the Committee to comment on the State party's replies to questions 10 to 17.

28. Mr. SOLARI YRIGOYEN welcomed the presentation of the report by the Salvadoran delegation, and expressed satisfaction that El Salvador was making a major effort to implement the Covenant more effectively after more than a decade of civil war and to overcome the many

problems that were the legacy of that war. Chief among those problems was the Amnesty Act, and he wished to express particular dismay at the fact that the case of the murder of Archbishop Romero had been closed, even though the murderer's name was known. That situation pointed to an inconsistency between the Amnesty Act on the one hand, and article 2 of the Covenant and the Salvadoran Constitution, on the other. The delegation had alleged that the Act had been necessary to overcome the effects of the war, yet it had had just the opposite effect, and he requested the delegation to convey that view to the Government on behalf of the Committee.

29. Other results of the Amnesty Act and related measures appeared to be that certain military structures had not been entirely dismantled, that a number of the observations and recommendations of the Truth Commission had not been implemented, and that many senior members of the military continued to occupy high-level posts in the current Government. Moreover, not enough had been done to reform the judiciary and thereby inspire complete confidence in the administration of justice.

30. He was also concerned at the fact that the current chief of the PNC had recently been a member of the military and that there were a great many former soldiers in the police. However, the fact that the police had its own human rights unit for training and for prevention of human rights violations was an extremely positive development. Noting that more than 1,000 officers had been dismissed following complaints filed with various State bodies, he wished to know how many of them had been permanently separated and how many reinstated.

31. Another source of concern was the low budget assigned to the Attorney-General's Office, which had done much to defend human rights. Lastly, while he appreciated that the budget for the prison system might be low in El Salvador, he wished to stress the absolute necessity of keeping convicted criminals separate from persons in pre-trial detention if the State party wished to be in full compliance with the Covenant.

32. Ms. WEDGWOOD said it appeared from the information presented that the Amnesty Act applied to all crimes and abuses committed before January 1992. Yet in October 2000 the Supreme Court had ruled that cases of crimes committed during the period from 1989 to 1994 could be reopened by the judiciary. She therefore sought confirmation from the delegation that the 1989 murder of Archbishop Romero was, under that ruling, eligible for reopening. In Argentina and Chile, cases had been kept open, on the basis of the legal argument that disappearance was a continuing offence. It would be interesting to know whether El Salvador had considered using that argument in order to prosecute those responsible for the massacres mentioned in question 10 (c), because people had been buried without any record having been kept, so that, in effect, they had disappeared.

33. In the case of known violators, had the Government considered taking some action with regard to their pension rights? Were they still receiving their salaries and professional privileges or had there been a civil action to punish them? Now that El Salvador had made such progress and had a much more stable democracy, she would be interested to know whether the Government had considered repealing the Amnesty Law.

34. The procurator who had reported on the murder of Monsignor Oscar Romero and, in March 2002, recommended that the case be reopened had received death threats in December 2002. Was there a possible connection and could the case be reopened on that basis?

35. Mr. LALLAH said he fully supported Mr. Solari Yrigoyen's comments on the Amnesty Act, which violated article 2 (3) of the Covenant.

36. It was always laudable for States to try and reopen cases by judicial intervention, but the Committee should look at the situation from the standpoint of the State party's obligations under the Covenant, rather than its obligations under domestic law. The three questions raised in the list of issues showed that amnesty laws entrenched a culture of impunity, particularly among officials who knew that their actions constituted a violation of the basic concepts of human rights.

37. Mr. CASTILLERO HOYOS commended the delegation for the evident improvement in the human rights situation in El Salvador over the last decade. However, the Amnesty Act was a cause of great concern. As a fellow Central American, he was very aware of the crises that the country had undergone and knew that extraordinary situations sometimes called for extraordinary measures. However, amnesty laws tended to evolve and become eroded, because there could not be full reconciliation without some degree of justice. Accordingly, from the political standpoint, the Amnesty Act would necessarily be overridden in practice and it was preferable that it should be the State that took the relevant measures of its own accord.

38. With regard to question 11, what had prompted the Legislative Assembly to eschew the creation of a national commission to investigate the disappearance of children in the armed conflict? How many children had disappeared during the war and how many had been found, alive or dead, through the initiatives of the procurator? How many had been reunited with their families? Why had no consideration been given to creating a compensation fund for the young people who had been found?

39. In its reply to question 12, the delegation had clearly described the progress made in purging the police and making it a more professional force. However, according to paragraphs 279 and 280 of the report, many human rights violations were due to the system for selecting police recruits and, above all, to "the growth of a secret subculture with an unwritten code of loyalty and obedience". The report indicated that police personnel were well informed with regard to human rights; the problem was more one of attitude than ignorance of legislation. Even though a series of controls had been established within the PNC, including a human rights division and an inspectorate, had the Government considered the possibility of creating an external monitoring group?

40. Sir Nigel RODLEY expressed his appreciation for the delegation's helpful replies to the Committee's questions and the excellent information provided in the report.

41. With regard to question 10, he fully agreed with the remarks made by other members of the Committee concerning the issue of impunity and the Amnesty Act. A basic rule of international law was that a State could not unilaterally renounce its obligations under

international law, including its obligation to bring to justice the perpetrators of human rights violations, such as torture, murder and enforced disappearance. Consequently, he would like to know whether the Amnesty Act only applied to the period between 1989 and 1994. If so, was that the reason why the trial of those who might be responsible for the assassination of Archbishop Romero or for the various massacres could not be reopened or was there some other reason?

42. In relation to question 12 on the PNC, the report and the answers given by the delegation to the Committee's questions mentioned the extent to which the United Nations Code of Conduct for Law Enforcement Officials (para. 267) had been adopted. Nevertheless, there was another United Nations document, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which referred in detail to the rights reflected in articles 6 and 7 of the Covenant. Had the State party given any thought to incorporating those principles?

43. Following the restructuring of the Government, it would be useful to know whether the police were directly responsible to the President or, if not, to whom were they responsible. He would also like to know why the PNC Inspector-General was no longer responsible to a Minister but to the PNC Director-General (para. 293).

44. The delegation had mentioned that the police had been purged and that a large number of police personnel had been dismissed. What proportion of those who had been dismissed and not reinstated had been dismissed for acts of torture or similar ill-treatment?

45. With regard to the alleged violence against women police officers, the delegation should reply more fully to question 13, which asked about the number of cases that had actually been investigated, and also their outcomes.

46. Question 14 was formulated on the basis of the report, which stated that between 1996 and 2001 the PNC Inspectorate-General had received 1,222 reports of cruel, inhuman or degrading treatment by police officers. It would be useful to have statistics on the disciplinary and judicial measures taken against those responsible. The report had made a clear distinction between torture and other forms of ill-treatment, and the delegation had referred the Committee to article 297 of the Criminal Code (para. 245) for a definition of torture. However, the paragraph in question referred only to the penalty for acts of torture. The delegation should therefore clarify the distinction between torture and other forms of ill-treatment, and provide information on what action was taken in cases of cruel, inhuman or degrading treatment.

47. Question 15 referred to conditions of pre-trial detention; however, it was difficult to reconcile the delegation's response with paragraph 432. That paragraph listed all prison establishments and gave the number of convicted and non-convicted detainees in each establishment, whereas the delegation had said that the two categories of detainees were together in only a few establishments. It would be useful if the delegation could confirm whether the situation had evolved favourably since the report had been prepared. The second table in paragraph 432 referred to the prison population in relation to installed capacity. Overcrowding was, in itself, cruel, inhuman and degrading treatment, and it was clear from the table that there was serious overcrowding in several establishments. Were the data still accurate?

48. When replying to question 16, the delegation had provided information on measures that could be taken to prevent violence among prisoners, particularly among minors, such as separating gangs by sending members to different establishments, providing religious activities and work. What specific measures had been taken and what had been the results?

49. Lastly, in response to question 17 on trafficking in persons, the delegation had provided some figures on the numbers of people who had been investigated and prosecuted. However, it would be useful to know what proportion of PNC resources was allocated to dealing with the problem.

The meeting rose at 1 p.m.