



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined sixteenth and seventeenth periodic reports of El Salvador*

1. The Committee considered the combined sixteenth and seventeenth periodic reports of El Salvador, submitted as a single document (CERD/C/SLV/16-17), at its 2297th and 2298th meetings (CERD/C/SR.2297 and SR.2298), held on 12 and 13 August 2014. At its 2315th meeting, held on 25 August 2014, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the State party's combined sixteenth and seventeenth periodic reports. The Committee expresses its appreciation to the State party for the presentation made by the high-level delegation and for the informative responses given to the numerous questions posed by members of the Committee.

B. Positive aspects

3. The Committee takes note with satisfaction of the amendment of article 63 of the Constitution of El Salvador, which now, for the first time, accords recognition to the indigenous peoples of El Salvador. The article establishes that "El Salvador recognizes the indigenous peoples and shall adopt policies to preserve and develop their ethnic and cultural identity, world view, values and spirituality."

4. The Committee takes note with interest of the adoption of the Municipal Ordinance on the Rights of the Indigenous Community of Izalco, which is formulated in much the same terms as the Municipal Ordinance on the Rights of Indigenous Communities Established in the Municipality of Nahuizalco.

5. The Committee notes also the organization of the First National Indigenous Congress in 2010, at which President Mauricio Funes apologized, on behalf of the State, to "... indigenous communities for the persecution and slaughter of which they were victims for so many years".

* Adopted by the Committee at its eighty-fifth session (11–29 August 2014).



6. The Committee also welcomes the State party's accession to the following international human rights instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2014;

(b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2011.

7. The Committee takes note with satisfaction of the open invitation extended to the special procedures of the United Nations in 2010.

C. Concerns and recommendations

Structural discrimination

8. The Committee notes with concern that rates of poverty and social exclusion are particularly high among indigenous peoples and Afro-descendent communities. The study entitled "Profile of Indigenous Peoples in El Salvador", prepared in 2003 with the support of the World Bank, estimated that 38.3 per cent of indigenous families live in extreme poverty and 61.1 per cent are below the poverty line. That study also illustrated the gap existing between the indigenous population and the non-indigenous population in terms of housing, health and access to basic services such as drinking water and electricity (art. 2, para. 2).

The Committee urges the State party to continue to implement social inclusion and identity-sensitive development policies designed to reduce inequality and poverty and to strengthen indigenous peoples' and Afro-descendants' enjoyment of their economic, social and cultural rights with a view to eliminating the structural discrimination that is rooted in the country's history. It recommends that the State party adopt special measures or take affirmative action to break the link between poverty and racism and, in so doing, that it bear in mind the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Statistics

9. The Committee remains concerned by the fact that the report does not provide recent, reliable and complete statistics on the composition of the population and on migration flows within the country or disaggregated socioeconomic indicators. It also remains concerned that the report does not furnish information on the results of social inclusion measures and on their impact on the living conditions of indigenous peoples and the Afro-descendent population.

The Committee wishes to remind the State party of the urgent need for disaggregated information that makes it possible to develop public policies and programmes that are geared to the population's needs and to assess the impact of the implementation of the Convention on those groups in Salvadoran society which are protected under the Convention. The Committee requests that, in keeping with the harmonized guidelines on reporting (HRI/GEN.2/Rev.6, chap. I), the State party include disaggregated statistics in its next report.

Population census

10. The Committee takes note of the State party's intention to conduct a population census in 2017 and reiterates its concern about the results of the 2007 population census (art. 2).

The Committee urges the State party to take the shortcomings of the 2007 population census into account in the course of its preparations for the 2017 census and, bearing in mind the principle of self-identification, to upgrade its census methodology in close cooperation with the United Nations and the country's indigenous peoples and Afro-descendent communities. The Committee wishes to stress the importance of ensuring that indigenous peoples and the Afro-descendent population are actively involved in the relevant stages of the census process, including the preparatory stage and the implementation of the census itself. It recommends that initiatives, such as awareness-raising campaigns, be undertaken in order to engender a climate of trust among indigenous peoples and people of African descent before the census is conducted and to ensure that persons who identify as indigenous persons or as persons of African descent will feel free to express identity.

Definition of racial discrimination

11. The Committee wishes to express its concern at the absence of a definition of racial discrimination in the laws of the State party that includes all the elements of the definition of racial discrimination set forth in the Convention (art. 1).

Bearing in mind its general recommendations No. 14 (1993) and No. 29 (2002) on article 1, paragraph 1, of the Convention, the Committee recommends that the State party bring its existing legal provisions on racial discrimination into line with the definition set forth in article 1 of the Convention. The Committee wishes to highlight the usefulness of having a law that is specifically designed to combat racial discrimination.

Prohibition of racial discrimination

12. The Committee observes that articles 246 and 292 of the Criminal Code and article 4 of the Government Ethics Act cover only certain types of acts of racial discrimination when committed by public officials or in the workplace. The Committee is concerned by the fact that Salvadoran law does not cover all the types of offences listed in article 4 of the Convention and does not, for example, have legal provisions that prohibit racist organizations (art. 4).

Bearing in mind its general recommendation No. 15 (1993) on article 4 of the Convention and its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party bring its legal provisions relating to the offence of racial discrimination into line with article 4 of the Convention. The Committee also recommends that the State party take steps to raise awareness about racial discrimination and foster an intercultural dialogue as a means of combating racial stereotypes and all forms of discrimination.

Complaints filed with the courts

13. The Committee is concerned by the fact that the State party has reported that no complaints of discrimination have been filed with the Salvadoran courts. The Committee is also concerned by the absence of information on any judicial action taken to combat discrimination against migrant workers in the enforcement of municipal ordinances. It observes that the absence of complaints does not equate with an absence of discrimination but may instead be a reflection of a lack of trust in the judicial system and law enforcement authorities or a lack of knowledge on the part of the most vulnerable sectors of the population about the legal remedies available (art. 6).

The Committee recommends that the State party carry out information campaigns among the most vulnerable sectors of the population on human rights, especially the

right to non-discrimination, and on the legal remedies available. The Committee also recommends that the State party bear in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. More specifically, the Committee wishes to remind the State party that it is under an obligation to facilitate access to justice, provide legal information and advisory services to victims and guarantee access to those services so that migrants and members of indigenous peoples and Afro-descendent communities can file individual or collective complaints.

Implementation of decisions on the protection of human rights

14. The Committee is concerned by the fact that the Amnesty Act of 1993 remains in force despite the decision handed down by the Supreme Court on 26 September 2000 and the commitment made by the State party regarding the repeal of that law. The Committee takes note of the progress made by the State party in implementing the decisions of the Inter-American Commission on Human Rights regarding the Las Hojas massacre and the decision of the Inter-American Court of Human Rights regarding the El Mozote massacre. The Committee is nonetheless concerned by the fact that victims have still not received reparation or satisfaction (art. 6).

The Committee reiterates its recommendation (CERD/C/SLV/CO/14-15, para. 18) that the State party repeal the Amnesty Act of 1993 and implement the decisions of the inter-American human rights system concerning the adoption of a programme of reparation and material compensation for the victims, thus creating a climate of trust that will enable indigenous peoples to express their identity without fear.

Situation of migrants

15. Although article 3 of the Constitution and article 12 of the Aliens Act establish that Salvadorans and foreign nationals have equal rights (with the exception of political rights), the Committee is concerned by the discriminatory treatment of migrant workers and particularly of those who appear to be in an irregular situation. The Committee takes note with concern of reports that municipal ordinances such as the Markets Regulation of the City of Usulután and the Public Commerce Regulatory Ordinance of the Municipality of La Unión contain provisions that discriminate against migrant workers (art. 2).

The Committee recommends that the State party take steps to ensure that article 3 of the Constitution and article 12 of the Aliens Act are fully enforced and that it ensure that, the autonomy of the municipalities notwithstanding, all public institutions and authorities at both the national and local levels act in accordance with the obligation not to discriminate and adopt public policies to eliminate racial discrimination.

Legal framework for the protection of the rights of indigenous peoples

16. The Committee takes note with interest of the municipal ordinances developed in Izalco and Nahuizalco, but also observes that they are as yet isolated initiatives. The Committee takes note of the Government's commitment and efforts to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as demonstrated by the study prepared by the Ministry of Labour and Social Security. Nevertheless, the Committee is concerned by the fact that the State party has not yet ratified that Convention (art. 2, para. 2).

The Committee reiterates its recommendation (CERD/C/SLV/CO/14-15, para. 15) that the State party take the necessary steps to ratify ILO Convention No. 169. The Committee also encourages the State party to develop a legal framework, in

consultation with indigenous peoples, for the recognition and protection of the rights of indigenous peoples.

Titling of land

17. The Committee acknowledges the State party's efforts to provide land titles to indigenous and other persons and observes that more property deeds have been issued in the last 3 years than in the preceding 20 years. The Committee also welcomes the establishment of the Gender Affairs Unit of the Salvadoran Agrarian Reform Institute.

The Committee encourages the State party to continue its efforts to ensure that people have access to their land and territory by issuing the corresponding property deeds while ensuring, in the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the participation of indigenous peoples and Afro-descendent communities.

Participation and consultation

18. While the Committee takes note of the establishment of forums such as the Multisectoral Forum of the National Directorate for Indigenous Peoples and Cultural Diversity, which is attached to the Cultural Secretariat of the Office of the President, it is concerned by the fact that these platforms have not been equipped with all the mechanisms that they need to ensure the full participation, through representative structures, of indigenous peoples in the formulation of plans and in decision-making regarding matters that affect them.

In the light of its general recommendation No. 23 (1997), the Committee urges the State party to develop practical mechanisms for ensuring the participation of indigenous peoples, through representatives elected by them, in the adoption of decisions that are likely to affect them. The Committee also recommends that practical mechanisms be developed to uphold the right to prior, free and informed consultation with a view to securing the consent of the peoples and communities concerned and to ensure that such consultations are held on a systematic basis and in good faith.

Languages of indigenous peoples

19. The Committee observes with concern that although the State party has furnished information about a programme for revitalizing the Nahuatl language, it has not provided information on other indigenous languages. In view of the repression of indigenous communities in the past, the Committee is concerned by the absence of information on efforts to determine whether other indigenous languages are still being spoken (art. 7).

The Committee recommends that the State party continue its efforts to revitalize the Nahuatl language and that it take steps to determine whether other indigenous languages are in use in the State party and, based on its findings, take the necessary steps to revitalize them.

Intercultural health and education

20. The Committee takes note of the State party's efforts in the field of education, which include the modification of textbooks in order to eliminate all stereotypical or degrading images, references, names or expressions of opinion and the establishment of the Educational Support Committee for Indigenous Affairs. However, the Committee is concerned about the lack of participation and full consultation of indigenous peoples in the development of these initiatives. The Committee also observes that work on the preparation of a proposal for developing an intercultural approach to health in areas having a strong

indigenous heritage was begun in 2011 and takes note of the potential impact of the country's intercultural health policy.

The Committee recommends that the State party redouble its efforts to narrow the gap between educational achievement in urban and rural areas and to facilitate access to culturally appropriate health services in both urban and rural areas. The Committee recommends that, with the participation of indigenous peoples and Afro-descendent communities, the State party evaluate existing health and education programmes and that, with the active participation of indigenous peoples and Afro-descendent communities and in consultation with them, it develop intercultural health and education programmes.

Situation of people of African descent

21. While taking note of the efforts of the State party in this respect, the Committee reiterates its concern about the socioeconomic situation of the Afro-descendent population and about its lack of recognition and visibility.

The Committee reiterates the recommendation made in its preceding concluding observations (CERD/C/SLV/CO/14-15, para. 20) and urges the State party to redouble its efforts to ensure that persons of African descent are able to enjoy their economic, social and cultural rights. It also urges the State party to adopt a plan, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent, for according recognition to the Afro-descendent population and increasing its visibility.

Multiple discrimination

22. The Committee is concerned by the fact that women in indigenous and Afro-descendent communities continue to face multiple forms of discrimination in all areas of social, political, economic and cultural life. The Committee also notes with concern the persistence of violence against indigenous women (art. 2, para. 2).

The Committee recommends that the State party take into account general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and mainstream a gender perspective in all its policies and strategies for combating racial discrimination as a means of addressing the multiple forms of discrimination to which women in indigenous and Afro-descendent communities in particular are subjected. It also recommends that the State party compile disaggregated statistics on these matters.

D. Other recommendations

Ratification of other treaties

23. The Committee encourages the State party to ratify international treaties to which it is not yet a party, especially the Convention against Discrimination in Education, adopted by the United Nations Educational, Scientific and Cultural Organization in 1960, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance of 2013.

Declaration provided for under article 14

24. The Committee urges the State party to explore the possibility of making the optional declaration provided for under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Amendment to article 8 of the Convention

25. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

26. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination of reports and concluding observations

27. The Committee recommends that the State party make its reports available to the general public as soon as they are submitted and that it ensure that the Committee's concluding observations are also publicized and disseminated in the State party's official language and other languages commonly used in the State party, as appropriate.

Consultations with civil society organizations

28. The Committee recommends that the State party continue consulting and broadening its dialogue with civil society organizations working to protect human rights, in particular those combating racial discrimination, in the context of preparing its next periodic report and its follow-up to these concluding observations.

Follow-up to concluding observations

29. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 15 and 16 above.

Paragraphs of particular importance

30. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8, 9 and 17 above and requests the State party to provide detailed information in its next periodic report on the specific measures that have been taken to implement them.

Preparation of the next report

31. The Committee recommends that the State party submit its eighteenth and nineteenth periodic reports, combined into a single document, by 20 December 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its

seventy-first session (CERD/C/2007/1), and that it address all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports (see the harmonized guidelines on reporting (HRI/GEN/2/Rev.6, chap. I, para. 19)).
