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IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF  
ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON  
RELIGION OR BELIEF

Addendum to the compendium of the national legislation  
and regulations of States on the question of freedom  
of religion or belief with particular regard to the  
measures taken to combat intolerance or discrimination  
in this field called for by Commission on Human Rights  
resolution 1987/15

Report of the Secretary-General

Addendum

EL SALVADOR

[11 February 1988]  
[Original: Spanish]

As the legal structure of society, the State of El Salvador has shown a high degree of openness, especially as regards religious institutional freedom, and this can be approached from two aspects. The first is that of promoting freedom, tolerance and free organization through constitutional provisions. And the second is that of protecting those constitutional premises by the punishment of harmful acts. The consequence of those two aspects is that El Salvador's secondary legislation maintains that freedom in the various social fields which have any connection with this subject.

#### Constitutional Aspect

El Salvador identifies itself as a State which, as regards religion, can be described as theist. This is seen from the Preamble to the Constitution, proclaimed in December 1983, in the following phrase: "Having placed our trust in God ...".

This principle of religious freedom and tolerance is, however, more distinctly developed in its articles:

#### Civil rights

"Article 3 - All are equal before the law. In the enjoyment of civil rights, no restrictions shall be enacted based on differences of nationality, race, sex or religion.

Hereditary offices or privileges are not recognized."

#### Wide freedom of association

Under article 7, the inhabitants of El Salvador have the right to associate freely and to assemble peacefully, without arms, for any lawful purpose. No one shall be required to belong to an association.

No one may be limited or impeded in the exercise of any lawful activity because of the fact of not belonging to an association.

The existence of armed groups of a political, religious or trade-union character is prohibited.

#### Absolute freedom of worship

Article 25 guarantees the free exercise of all religions, without any restriction other than that required by morals or public order. No religious act shall serve as evidence of the civil status of persons.

#### Possibility of establishment of other churches

Article 26 recognizes the juridical personality of the Catholic Church. Other churches may obtain recognition of their personality in conformity with the law.

#### Religious meetings permitted, even during state of siege

Under article 29, in the event of war, invasion, rebellion, sedition catastrophe, epidemic or other general disaster, or serious disturbances of

public order, the guarantees established in articles 5, 6, paragraph 1, 7, paragraph 1, and 24 of the Constitution may be suspended, except as regards meetings or associations for religious, cultural, economic or sports purposes. Such suspension may affect the whole or part of the territory of the Republic and shall be instituted by a decree of the legislative branch or of the executive branch, as the case may be.

Likewise, the guarantees embodied in article 12, second paragraph, and 13, second paragraph, of the Constitution may be suspended whenever the legislative branch so agrees by a favourable vote of three quarters of the elected Deputies, and in such case administrative detention may not exceed 15 days.

The period of suspension of constitutional guarantees may not exceed 30 days. When this period has elapsed, the suspension may be prolonged for a like period by a new decree if the circumstances that caused it continue. If such decree is not issued, the suspended guarantees are automatically re-established.

Objective of education is to develop the individual  
spiritually and to combat the spirit of intolerance

Under article 55, education has the following objectives: to achieve the full development of the personality in its spiritual, moral and social dimensions; to contribute to the construction of a more prosperous, just and humane democratic society; to inculcate respect for human rights and observance of the corresponding duties; to combat any spirit of intolerance and hatred; to become familiar with national reality and identify with the values of Salvadorian nationality; and to promote the unity of the Central American people.

Parents have a preferential right to choose the education of their children.

Entry into educational centres without limitations  
of a religious nature

Article 58 provides that no educational establishment may refuse to accept students by reason of the marital status of their parents or guardians, or by reason of social, religious, racial or political differences.

Exemption from taxes of real property used as religious premises

Under article 231, no taxes may be imposed except for the public service and by virtue of a law.

Churches and subsidiary buildings for the immediate and direct purpose of religious services are exempt from property taxes.

All of the above relates to the first aspect, i.e. the constitutional aspect.

The protection by punishment that is established by El Salvador's penal law, namely the second aspect, can again be considered from two points of view.

First, unfavourable opinions in religious criticism are not deemed punishable as offences against honour, i.e. they are not defamation or insults.

Article 182 provides that unfavourable opinions in political, literary, artistic, historical, scientific, religious or professional criticism are not punishable as offences against honour; nor are unfavourable views expressed in fulfilment of a legal duty or in the legitimate exercise of a right to inform, provided that the manner in which the critic acted or his lack of restraint, if any, does not demonstrate defamatory or insulting intent.

Secondly, two situations are defined in which conduct is regarded as hurting religious feelings.

Under article 421, any person who prevents or disturbs, by any means whatever, the exercise of functions, ceremonies or practices of a religion which has followers in El Salvador, within the premises normally used for such purposes or in any other place in which they are held, shall be punished by imprisonment for one to three years.

In accordance with article 422, any person shall be punished by imprisonment for six months to one year:

(1) who insults or abuses the minister of any religion during the performance of his functions;

(2) who publicly and factually mocks any of the dogmas of any religion which has followers in the Republic; or

(3) who destroys or damages objects used by a religion which has followers in El Salvador.

Apart from the above, there are a number of scattered provisions which confirm the legislative treatment already noted. An example is article 98 of the Civil Code, which states: After a marriage has been celebrated in keeping with the provisions of the civil law, the parties thereto may, in accordance with the dictates of their conscience, perform the rites of the religion they profess; but this may not be done unless the religious minister who is to conduct the ceremony has been provided with certification that the civil marriage has been contracted in keeping with the provisions of this Code.

In connection with freedom of thought, there is a single constitutional provision, article 6.

This concludes our information relating to the purely legislative aspect.

As to the views and position requested with regard to the preparation of a binding international instrument and to the modalities for creating it, we take the liberty of mentioning the following considerations.

The matter in question is governed by this right. We explain. It is a fact that convictions have been assimilated to religious feelings but they have been kept separate to some extent. We shall quote relevant provisions of the Universal Declaration of Human Rights:

Article 2

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 16

"1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

Article 18

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

In all of the quoted provisions, religion and political convictions, or other freedoms of conscience, are mentioned separately as different substantive matters. We initially suggest that the object of study should be changed and approached from a modern point of view as to subject-matter.