

Executive Summary

Alternate Report in Follow-up to the Recommendations of the United Nations Human Rights Committee for El Salvador CCPR/C/SLV/7



LAS DIGNAS

The United Nations Human Rights Committee (hereafter "the Committee") adopted the concluding observations **CCPR/C/SLV/7** which include several recommendations to the State of El Salvador.

According to paragraph 44 of the Concluding Observations, the Committee requested, among other things, information on the implementation of the recommendations made on **serious human rights violations committed during the armed conflict**.



The purpose of this report is to contribute to the evaluation of the Committee by providing additional information from **the perspective of civil society organizations** and has been prepared by the following organizations:

- Cristosal
- Due Process of Law Foundation (DPLF)
- Fundación de Estudios para la Aplicación del Derecho (FESPAD)
- Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos
- Asociación de Mujeres por la Dignidad y la Vida (LAS DIGNAS)
- Asociación Febe Elizabeth Velásquez (ASOFEBE)
- Comité de Presos Políticos de El Salvador (COPPE)
- Fundación de la Comunicación para el Desarrollo (COMUNICÁNDONOS)
- Concertación Monseñor Romero

 ASOFEBE
MEMORIA Y JUSTICIA

I. Alternate Report

i. Actions of the Attorney General's Office of the Republic

In December 2018, the Attorney General's Office (FGR) issued the Policy of Criminal Prosecution of War Crimes and Crimes against Humanity committed during the armed conflict in El Salvador.

However, the approved policy has not been put into practice. The Group for the Investigation of Crimes Committed During the Armed Conflict has not been provided with sufficient financial or technical resources. This unit is composed of only five prosecutors who are responsible for approximately 182 cases under investigation (BAIRES QUEZADA, 2020).

Public statements by the Attorney General of the Republic show his rejection of the sentence of the Constitutional Chamber on the General Amnesty Law of 1993 (UCA, 2019). Victims' organizations have noted that the FGR has not produced results for the 160 cases filed by the El Salvador Working Group Against Impunity (*Mesa Contra la Impunidad de El Salvador*, MECIES) (HERNÁNDEZ, La Prensa Gráfica, 2019).



I. Lack of access to information which is in the possession of the armed forces and acts of intimidation of public officials investigating cases

Despite the fact that President Bukele expressed his willingness to open the military archives in public statements, particularly in the case of the massacre at El Mozote and surrounding areas, the actual attitude towards the investigating judge's official request was again to express that such information has not been "located" or that there was no record of the documents requested (CRISTOSAL, 2019).

Furthermore, on March 3rd, 2020, the Institute for Access to Public Information (IAIP) held a hearing with the participation of the Ministry of Defense to request military files relating to the intervention of the Armed Forces at the University of El Salvador. Again, the response was that the information requested was "non-existent" (EFE, Yahoo Noticias, 2020).

The IAIP ordered an inspection of the Central Archive of the Joint Chiefs of Staff of the Armed Forces to determine the existence of the documents and information requested (EFE, Yahoo Noticias, 2020). On the day scheduled for the inspection, military personnel prevented the entry of the IAIP commissioners, who were also subjected to intimidation through surveillance and they were photographed and recorded on cameras, cell phones and a drone while they were waiting to enter the military installations (RIVAS, 2020).

II. The National Commission for the Search for Children Who Disappeared during the Internal Armed Conflict

More than 15 years after the judgment in the Case of the Serrano Cruz Sisters Vs. El Salvador, the State of El Salvador continues to violate the standards for creating the commission as established by the Inter-American Court.

Since 2017, the Legislative Assembly has not re-opened discussion in order to pass this law (Asamblea Legislativa, 2017).

Although the National Commission for the Search for Children Disappeared during the Internal Armed Conflict (CNB) has continued through the change of government in 2019, it has not received the necessary support to carry out its work.

The current government authorities cut the already small budget allocated to the CNB from US\$242,535 in 2019 to US\$240,920¹ (Asamblea Legislativa, 2018, pág. 119)² by 2020, demonstrating the Executive Body's lack of interest in fulfilling its obligations. (Asamblea Legislativa, 2019, pág. 70).

¹ Distributed in US \$173,155 in personnel costs, and US \$69,380 for procurement of goods and services.

² Of which, US\$173,155 corresponds to personnel costs; US\$66,565 for acquisitions of goods and services, and US \$1,200 for financial and other expenses.

III. The National Commission for the Search for Adults Who Disappeared during the Internal Armed Conflict

The National Commission for the Search for Adults Who Disappeared during the Internal Armed Conflict in El Salvador (CONABÚSQUEDA) began its work in September 2018 (DPLF, 2018) .

The 2019 National Budget law included a line item of operations for CONABÚSQUEDA as part of the budget of the Ministry of Foreign Affairs of \$350,000 (Asamblea Legislativa, 2018, pág. 119). However, as in the case of the CNB, under the new administration the budget for CONABÚSQUEDA was reduced to US\$217,315³ in the nation's overall budget by 2020. This represents a decrease of nearly 38% of the initial allocated amount. (Asamblea Legislativa, 2019, pág. 70)

IV. The Programme of Reparations for Victims of Serious Human Rights Violations Committed during the Internal Armed Conflict

In its Concluding Comments, the Committee also considered as one of the positive aspects, “the creation in 2013 of the Programme of Reparations for Victims of Serious Human Rights Violations Committed during the Internal Armed Conflict”.

In compliance with Decree 204, the Victims' Register was created by a Board of Directors – known as "CODREVIDH"– under the coordination of the Secretariat of Social Inclusion.

On June 1st, 2019, when the current President of the Republic came into office, the Council of Ministers eliminated the Secretariat of Social Inclusion⁴, suspending opportunity for dialogue and coordination of governmental institutions with victims' organizations.

The victims demanded that the Government continue with the Reparations Programmeme (Radio Izcanal, 2019) and expressed concern about protecting data on victims. They requested a hearing with President Nayib Bukele. They have not received a response to these requests from the President. (Diario El Mundo, 2019)

The de facto shutdown of the Victim Reparations Programme; the absence of mechanisms and opportunities for dialogue with victims and their organizations; lack of transparency in the management of public institutions as well as the lack of timely information and response to victims mean serious setbacks in their right to reparation contradicting international standards in relation to the matter. (GUZMÁN, 2019)

V. Failure to comply with the judgment of unconstitutionality of the 1993 Amnesty Law

Contrary to the standards set in the judgment declaring the Amnesty Act of 1993 unconstitutional (Corte Suprema de Justicia, 2016, pág. 35) and subsequent ruling (Corte Suprema de Justicia, 2018, págs. 3, 15), on the 14th of June 2018, the Legislative Assembly created an Ad Hoc Commission for the Study of the Implications of the Judgment of

³ Divided into US \$128,350 for salaries; US\$87,765 for acquisitions of goods and services, and US\$1,200 for financial and other expenses.

⁴Through Article 10 A.D. 1/2019, which reformed Article 46 of the Rules of Procedure of the Executive Body (RIOE).

Unconstitutionality of the Amnesty Act 1993 and the creation of a National Reconciliation Act. This was put forward by legislators with conflicts of interest⁵ due to their direct participation in the armed conflict or, as in the case of Deputy Rodolfo Parker, due to their role in covering up crimes against humanity.

The “consultation” processes have included little participation from victims' organizations given the lack of credibility the integration of the Ad Hoc Commission and the clear intention to create a new thinly veiled amnesty law. (YSUCA, 2019) (Mesa Contra la Impunidad de El Salvador, 2019)

The proposed “Special Law on Comprehensive Reparations and Access to Justice for Victims of Serious Human Rights Violations Committed during the Armed Conflict”, prepared by the victims, was not considered by the Legislative Assembly. (ARPAS, 2019)

On May 28, 2019, the President of the Inter-American Court of Human Rights–IDH Court – issued urgent action measures and ordered the Salvadoran State to immediately suspend the legislative process of the proposed “Special Law on Transitional and Restorative Justice for National Reconciliation”. (Corte Interamericana de Derechos Humanos, 2019)

On February 27th of this year, the Legislative Assembly passed the “Special Law on Transitional Justice, Reparation and National Reconciliation”, in spite of rejection of the victims and the associations and organizations that represent them (CRISTOSAL, 2020). It was, however, vetoed by the President and therefore not in force.

II. Conclusions

According to the information submitted to the illustrious Committee, it can be concluded that the State of El Salvador has not complied with the recommendations issued by the Human Rights Committee, in its Concluding Comments CCPR/C/SLV/7, because:

1. It has not strengthened the Group for the Investigation of Crimes Committed during the Armed Conflict by providing it with the technical, financial and human resources necessary to expedite the inquiries regarding the serious violations of human rights committed during the internal armed conflict.
2. The Attorney General's Office of the Republic has not taken the appropriate actions to promote investigative measures in cases reported by victims and their representatives; it has not decreed the detention of any person responsible or filed new accusations at the court office.
3. The Attorney General's Office denies information about the cases to the victims and their representatives, obstructing their right to truth, justice, and reparation.
4. The Government of El Salvador continues to refuse to produce the information in the possession of the Armed Forces and has also concealed the military historical archives from both the judicial and administrative authorities with the authority to request it. It has also engaged in acts of intimidation towards the commissioners of the Institute Access to Public Information.

⁵ <https://www.contrapunto.com.sv/opinion/columnistas/no-permitamos-otra-amnistia/1314>

5. The Salvadoran State, via the Legislative branch, continues to not fully comply with the sentence in the Serrano Cruz Sisters case, as it has not passed legislation to permanently create and put into operation the national commission to search for children and adolescents who disappeared during the internal armed conflict, in accordance with the standards established by the Inter-American Court.

6. As of the start of the current administration, the Executive branch has had serious setbacks in fulfilling its responsibilities to search for persons who disappeared during the armed conflict in El Salvador, weakening the budgets for the CNB and CONABÚSQUEDA. This hinders the operation of both commissions and makes it difficult to achieve favourable results for the rights of the victims thereby violating the principle of non-reversibility as established in Article 5.1 of the ICCPR.

7. Contrary complying with the obligation to advance mechanisms of comprehensive reparation for victims, the Government has regressed in this regard by freezing the Victim Reparations Programme that had been implemented, by closing off important opportunities for dialogue with victims and their organizations and denying information and response to victims.

8. The Legislative Assembly issued a “Special Law of Transitional Justice, Reparation and National Reconciliation”, whose content disregards the standards established by the Inter-American Court and the Constitutional Chamber of the Supreme Court of Justice, in the judgments on the case of the Massacres of El Mozote and surrounding areas v. El Salvador and the unconstitutionality of the 1993 General Amnesty Law and effectively setting up a veiled amnesty.

III. Recommendations

We propose that the illustrious Committee make the following additional recommendations to the State party:

1. Take all urgent action, in order to move forward with due diligence in investigations and judicial processes in cases of serious human rights violations committed during the internal armed conflict, including providing all necessary human, technical and financial resources to the Group for the Investigation of Crimes Committed during the Armed Conflict, applying the gender focus in investigating serious human rights violations, placing particular emphasis on acts of violence and sexual torture and acting with transparency with victims and their representatives.
2. Ensure the protection, personal security and independence of all judicial and administrative authorities with the authority to request and obtain information on military archives, and take the necessary measures to prevent acts of intimidation against public officials and members of civil society who are investigating these cases.
3. Request the President of the Republic, as Commander-General of the Armed Forces, to open military archives and to make available to the Courts all information that contributes to fulfilling the rights to truth, justice, reparation of victims and guarantees of non-repetition.
4. Create, through a law issued by the Legislative Assembly, the National Commission for the Search for Children and Adolescents who Disappeared during the internal armed conflict,

according to the standards established by the IHR Court in the judgment of the Serrano Cruz Sisters vs. El Salvador case.

5. Assign the financial, technical and human resources, including full access to information held by state institutions and civil organizations, to the national search commissions (CNB and CONABÚSQUEDA) in order to fulfil their mandates.
6. Comply with the recommendations made by the Special Rapporteur on the Promotion of truth, reparation and guarantees of non-repetition, Fabián Salvioli, in particular on:
 - i. The design and implementation of a policy for comprehensive reparations for victims, which meets current international standards, including a gender perspective.
 - ii. Expand the coverage of the Reparations Programme for Victims of Serious Human Rights Violations Committed during the Internal Armed Conflict, to include all the categories of victims that have been left out of the Register.
 - iii. Adjust the amounts of compensation to recognized international standards or at the least to the value of the current market basket.
7. Guarantee the confidential protection of the information contained in the Register of Victims of Serious Human Rights Violations Committed during the Internal Armed Conflict and guarantee the inclusion of all victims.
8. Urgently approve a “Special Law on Comprehensive Reparations and Access to Justice for Victims of Serious Human Rights Violations Committed during the Armed Conflict” that reflects international standards on the human rights of victims, applying the parameters established by the Inter-American Court of Human Rights and the Constitutional Chamber of the Supreme Court of Justice.
9. Guarantee that the victims and their representatives will obtain timely, true, and sufficient information on the measures that concern them, and that they will be consulted with on the plans and Programmes that are developed.