

REFERENCE: GH/fup-135

27 de julio de 2022

Excelencia:

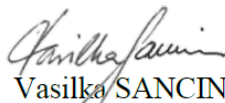
En mi calidad de Relatora Especial para el Seguimiento de las Observaciones Finales del Comité de Derechos Humanos, tengo el honor de referirme al seguimiento de las recomendaciones contenidas en los párrafos 16, 18 y 22 de las observaciones finales sobre el informe periódico de El Salvador ([CCPR/C/SLV/CO/7](#)), aprobadas durante el 122º período de sesiones del Comité, del 12 de marzo de 2018 al 6 de abril de 2018.

El 5 de octubre de 2020, el Estado parte envió una respuesta de seguimiento al Comité. Durante el 135º período de sesiones (del 27 de junio al 27 de julio de 2022), el Comité evaluó la respuesta del Estado parte. La evaluación del Comité y la información adicional solicitada al Estado parte están reflejadas en el Addendum 2 ([CCPR/C/135/2/Add.2](#)) del Informe de seguimiento de las observaciones finales ([CCPR/C/135/2](#)). Por medio de la presente se adjunta, una copia de la sección pertinente del mencionado informe (versión avanzada no editada).

El Comité consideró que las recomendaciones seleccionadas para el procedimiento de seguimiento no han sido plenamente aplicadas y decidió solicitar información adicional acerca de su aplicación. Habida cuenta de que el Estado parte ha aceptado el procedimiento simplificado de presentación de informes, el Comité incluirá la información solicitada en la lista de cuestiones previa a la presentación del octavo informe periódico de El Salvador.

El Comité confía en poder continuar su diálogo constructivo con el Estado parte sobre la aplicación del Pacto.

Acepte, Excelencia, la expresión de mi más distinguida consideración.



Vasilka SANCIN
Relatora Especial para el Seguimiento de las Observaciones Finales
del Comité de Derechos Humanos

H.E. Mr. Joaquín Alexander MAZA MARTELLI
Embajador Extraordinario y Plenipotenciario
Misión Permanente de El Salvador ante la Oficina de las Naciones Unidas y otros
organismos internacionales en Ginebra
Email: mision.ginebra@rree.gob.sv

Evaluation of the information on follow-up to the concluding observations on El Salvador

<i>Concluding observations (122nd session):</i>	CCPR/C/SLV/CO/7 , 28 and 29 March 2018
<i>Follow-up paragraphs:</i>	16, 18 and 22
<i>Information received from State party:</i>	CCPR/C/SLV/FCO/7 , 5 October 2020
<i><u>Information received from stakeholders:</u></i>	NGO coalition , 7 September 2020; CSO coalition (1) , 21 April 2022; CSO coalition (2) , 26 April 2022; Center for Reproductive Rights , 14 April 2022
<i>Committee's evaluation:</i>	16[C][B], 18[C][E] and 22[C]

Paragraph 16: Voluntary termination of pregnancy and reproductive rights

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

Summary of the information received from the State party

Between 2014 and July 2019, 147 women were prosecuted for committing acts related to obstetric emergencies. Those prosecutions included 61 convictions (27 for abortion), 6 acquittals, 3 stays of proceedings, 9 commutations of sentence, 1 pardon, 3 early releases and 1 review of judgment.

The Constitution guarantees the right to honour, personal and family privacy, and physical and moral integrity. The Code of Criminal Procedure provides for an exception to the obligation to report offences that are covered by professional secrecy. Treatment for obstetric complications does not constitute an offence under law, and the Ministry of Health guidelines do not require that medical staff report cases of obstetric complications. The Ministry developed training on the safe handling of miscarriages, and rights-based awareness-raising and training programmes for post-miscarriage care personnel.

The National Cross-sectoral Strategy for the Prevention of Child and Adolescent Pregnancy 2017–2027 aims to prevent pregnancy in girls and adolescents. The

National Strategic Plan for Comprehensive Maternal and Child Health Care 2015–2019 strove to promote sexual and reproductive health, reduce maternal mortality and ensure access to health services. Several other measures are also in place for the treatment of women of childbearing age.

The maternal death rate fell significantly between 2009 and 2019. Several programmes and policies ensure pre-conception care, counselling and information about sexual and reproductive rights. There is an online morbidity and mortality information system, and an annual analysis of mortality data assesses the impact of the strategies pursued.

Patients with disabilities are neither subjected to surgical sterilization nor provided with contraception without adequate counselling and their written informed consent. Patients with cognitive impairments can voluntarily access contraception through consultation and assessment by a health professional. Article 147 of the Criminal Code provides for consent as an extenuating circumstance and a ground for exemption from criminal liability. Health personnel receive training on sexual and reproductive health, human rights and the World Health Organization medical criteria for contraceptive use.

Summary of the information received from stakeholders

Center for Reproductive Rights

At least six women continue to be deprived of their liberty on the grounds of obstetric emergencies; many others continue to be prosecuted and risk being deprived of their liberty. Berta Arana remains in detention, despite the decision of the Working Group on Arbitrary Detention requiring her release in 2019.

CSO coalition (2) and Center for Reproductive Rights

It is judgment of 2 November 2021 in the case of *Manuela et al. v. El Salvador*, the Inter-American Court of Human Rights found El Salvador accountable for, inter alia, arbitrary detention and violations of doctor-patient confidentiality and due process guarantees. According to Center for Reproductive Rights, in the wake of that judgment, several women who had been imprisoned for abortion were released. Nevertheless, they were released under the commutation procedure, which does not allow for removal of the conviction, elimination of their criminal records or provision of redress.

Committee's evaluation

[C]

The Committee regrets the absence of legislative measures taken to guarantee safe, legal and effective access to voluntary termination of pregnancy. While noting the release of some women imprisoned for abortion-related offences, it remains concerned at the continued criminalization, prosecution and imprisonment in this regard and the lack of information on specific measures taken to ensure their rights to legal counsel and due process and to respect patient confidentiality. It reiterates its recommendation and requests statistics on the number of women who have been criminally prosecuted and detained for abortion-related offences, including Berta Arana, during the reporting period and information on any plans to release them.

While noting the safeguards against forced sterilization of persons with disabilities and the provision of training for health personnel, the Committee regrets the absence of information on specific measures taken since the adoption of its concluding observations to ensure the full and informed consent of persons with disabilities and to provide health personnel with training on the harmful effects and consequences of forced sterilization. It reiterates its recommendation.

[B]

The Committee welcomes the information on the reduced maternal mortality rate and national strategies to improve access to sexual and reproductive health services throughout the country, including counselling and pre-conception care. It requests information on the impact of these strategies.

Paragraph 18: Right to life and security of person

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;**
- (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;**
- (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.**

Summary of the information received from the State party

- (a) The special unit to investigate the grave human rights violations that took place during the armed conflict is funded by the regular budget of the Attorney General's Office. Its workplan is supported by the human rights unit and various prosecutors' offices. It received technical assistance and training from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and contributed to developing the policy for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict. It is legally authorized to request information for its investigations, including from the archives of the Armed Forces.
- (b) The Government has implemented the precautionary measures ordered by the Inter-American Commission on Human Rights for the former Attorney General, in accordance with the agreement reached with the beneficiary, which the Commission oversees. The Attorney General's Office investigates cases of alleged intimidation of public officials and members of civil society, while civil society organizations cooperate as strategic allies.
- (c) As at December 2019, the National Commission on the Search for Children who Disappeared during the Internal Armed Conflict had resolved 103 out of 346 registered cases and had initiated 16 exhumation procedures. As at December 2019, the National Commission on the Search for Adults who Disappeared during the Internal Armed Conflict had registered 193 cases and identified 1,229 records, and is now developing a register of disappeared persons. It has conducted one exhumation. There have been no family reunifications, missing persons located or cases closed.

Modules on international humanitarian law and techniques for the investigation of enforced disappearance have been integrated into the curriculum of the School for Prosecutors. The Attorney General's Office has cooperated with OHCHR and the Inter-American Institute of Human Rights and received technical assistance on the search for missing persons. Cases of enforced disappearance, homicide, massacre,

bombing of trade union offices, forced recruitment and other crimes committed during the armed conflict are under investigation.

Summary of the information received from stakeholders

(a) According to NGO coalition and CSO coalition (1), the human, financial and technical resources for the special unit are not ensured and there is insufficient legal support to guarantee its continued existence. According to NGO coalition, the unit is composed of only five prosecutors who are responsible for some 182 cases. The Attorney General's Office has allegedly produced no results for the 160 cases filed by the El Salvador Working Group Against Impunity. The policy for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict issued by the Attorney General's Office in December 2018 has not been implemented and the Attorney General had publicly rejected the sentence of the Constitutional Chamber on the General Amnesty Law of 1993.

According to NGO coalition, despite the President's public expressions of willingness to open the military archives, the requests for military files made by investigating judges and the Institute for Access to Public Information have not been granted. According to CSO coalition (1), no legislation has been adopted regulating access to military archives and in practice, the State is obstructing access to the relevant archives of the Armed Forces. According to NGO coalition, the commissioners of the Institute were subjected to intimidation through surveillance while they were waiting to enter the military installations to inspect the central archive.

(b) According to CSO coalition (1), on 1 May 2021, the State dismissed the Attorney General and judges of the Constitutional Chamber of the Supreme Court of Justice without due process. In August 2021, the State approved amendments to the Judicial Service Act and the Organic Act on the Attorney General's Office allowing for the removal of judges, including judges working on cases of human rights violations committed during the armed conflict. Moreover, the Government backed the move to adopt a law on foreign agents that would restrict the work of human rights defenders and civil society organizations.

(c) According to CSO coalition (1), the State continues to allocate insufficient financial and human resources to the search for disappeared persons. According to NGO coalition, the budgets of the two National Commissions were cut in 2020. The International Convention for the Protection of All Persons from Enforced Disappearance has not been ratified. The effective shutdown of the government programme for reparation for victims of serious human rights violations committed during the internal armed conflict and the lack of dialogue with victims and of transparency in that regard are of concern.

Despite the order of the Inter-American Court of Human Rights to suspend the legislative process, a thinly veiled new amnesty law (the Special Law on Transitional Justice, Reparation and National Reconciliation) was adopted in February 2020 before being vetoed by the President.

Committee's evaluation

[C]: (a) and (c)

While noting the information on the special unit's regular budget, technical assistance and training received from OHCHR and access to information, the Committee remains concerned at reports that the unit has insufficient resources to process its caseload and that its access to military files is being hindered. The Committee reiterates its recommendation and requests information on: (a) the progress of criminal investigations and prosecutions of war crimes and crimes against humanity committed during the armed conflict; and (b) alleged intimidation of Institute for Access to Public Information commissioners.

The Committee notes information on the work by the two National Commissions and the number of cases resolved as well as the development of a register of disappeared persons. Nevertheless, it regrets the limited progress since the adoption of its concluding observations and lack of information on the resources allocated to these bodies and the steps taken to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. It reiterates its recommendation and requests further information on: (a) the budgets allocated to the two National Commissions during the reporting period; and (b) the implementation of the government programme for reparations for victims of serious human rights violations committed during the internal armed conflict.

[E]: (b)

While noting the implementation of precautionary measures, the Committee regrets information about measures taken contrary to its recommendations, such as the dismissal of the Attorney General and judges of the Constitutional Chamber and the amendments made to the Judicial Service Act and the Organic Act on the Attorney General's Office allowing for the removal of judges. It reiterates its recommendation.

Paragraph 22: Extrajudicial executions, enforced disappearances and torture

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.

Summary of the information received from the State party

Since June 2019, the Government has been implementing the Territorial Control Plan, focusing on reclaiming areas dominated by criminal gangs, cutting off the gangs' sources of funding and conducting interventions in prisons. The Plan includes prevention measures, including technical training programmes, university scholarships and job creation programmes for young people, in which all government departments participate.

The Government is committed to addressing human rights violations, whether the perpetrators be criminal gangs or individuals who abuse their security functions. In 2017, a framework on the use of force and lethal weapons by the National Civil Police was established, and a campaign to raise awareness of it was conducted in 2018. The Police Action and Human Rights Committee has developed indicators for jointly monitoring the use of force by the security forces. Specialized prosecution units have investigated cases of alleged extrajudicial execution, with positive outcomes. The internal oversight mechanisms that monitor police conduct have been strengthened.

Summary of the information received from stakeholders

CSO coalition (1)

The State has taken measures contrary to the recommendation by implementing the Territorial Control Plan, under which the financial and human resources of the Armed Forces are significantly increased, to the detriment of those of the National Civil Police, and the law and order functions exercised by the Armed Forces are expanded.

Between 2015 and 2020, the 2,497 alleged armed confrontations between the police and individuals resulted in the death of 1,824 individuals and 36 police or military



agents, clearly demonstrating that the police continue to abuse lethal force with impunity.

The number of cases of enforced disappearance increased by 19.4 per cent between 2020 and 2021. The authorities continue to demonstrate inefficiency in searching for disappeared persons, labelling such cases “voluntary absences”, even in the case of the disappeared person’s death.

The state of emergency imposed on 27 March 2022 in response to the rise in homicides resulted in reforms of criminal law, violations of due process rights and the authorization of 15 days’ administrative detention.

Committee’s evaluation

[C]

While noting the implementation of the Territorial Control Plan and information on the framework on the use of force, the Committee regrets the lack of information on measures taken to strengthen the role of the National Civil Police and enable it to assume the law and order functions exercised by the Armed Forces. It reiterates its recommendation and requests further information on: (a) the budgets allocated to members of the military forces in comparison to the National Civil Police for the reporting period, as well as any impact the Plan has had on the budgets; (b) whether the Territorial Control Plan applies to both military forces and civilian police; and (c) cases of abuse of security functions during the reporting period, investigations conducted and their outcomes.

The Committee notes the information on the specialized prosecution units investigating cases of extrajudicial execution. Nevertheless, it regrets the absence of any detailed information on these and other cases of arbitrary detention and enforced disappearance. It strongly reiterates its recommendation and requests statistics on complaints of extrajudicial execution, enforced disappearance and arbitrary detention, particularly complaints received after the imposition of the state of emergency on 27 March 2022, including information on investigations conducted and their outcomes, especially reparation provided to the victims.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party’s next periodic report.

Next periodic report due: 2027 (country review in 2028, in accordance with the predictable review cycle)
