

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 37<sup>TH</sup> SESSION EL SALVADOR, 2<sup>ND</sup> REPORT

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### Information submitted to the Committee

El Salvador submitted its second periodic report<sup>1</sup> to the Committee on Economic, Social and Cultural Rights (the Committee) which oversees the implementation of the *International Convention on Economic, Social and Cultural Rights (ICESCR)*. El Salvador also replied<sup>2</sup> to the Committee's List of Issues<sup>3</sup> but for an unknown reason they could not be translated from Spanish into other languages.

Ambassador Lopez noted that El Salvador had received the List of Issues from the Committee in March 2006. This only provided them with three months to answer the forty questions. He stated that El Salvador had no intention in handing in the report late and that the replies were as extensive as possible given the time constraint.

Much of the dialogue between the Committee and the delegation from El Salvador focused on the first six questions from the List of Issues. These questions focused on general information and the legal framework in El Salvador. Due to this, specific economic, social and cultural rights located at the end of the List of Issues did not receive adequate attention. Additionally, Committee members had to repeat questions so as to receive

<sup>1</sup> E/1990/6/Add.39

<sup>2</sup> E/C.12/Q/SLV/2/Add.1

<sup>3</sup> E/C.12/Q/SLV/2

more substantial answers from the delegation. Even with these requests for more substantial answers, the delegation found it difficult to provide all the details requested and at times did not address the concerns raised by the Committee.

Alternative reports were also submitted by non-governmental organizations (NGOs)<sup>4</sup>. These reports were supplied to the Committee in Spanish form only. Additionally three NGOs provided information to the Committee by oral presentation concerning the current state of economic, social and cultural rights in El Salvador.

## Themes and Issues<sup>5</sup>

### **Status of the Convention in Domestic law and legal framework**

Committee members questioned the delegation concerning the status of international treaties within domestic law. Specifically Mr. Marchan Romero asked if a person whose economic, social and cultural rights (ESCRs) were violated, could he/she go directly to a court and file a suit. The Committee also noted that the written replies did not clarify that when the Convention and domestic law are in conflict, which one prevails.

In response to the Committee's concerns the delegation pointed out that Article 104 of the Constitution states that international treaties can apply in domestic courts, and Article 206 of the Constitution provides that constitutional law supercedes international treaties. Nevertheless, the Convention cannot be invoked directly in domestic courts unless it is constitutionally supported. The delegation also reassured the Committee that rights located in the ICESCR are justiciable in El Salvador but have to be written in the Constitution.

The Committee requested the delegation to provide information on the independence of the judiciary, who allegedly has been associated with corruption, fraud and impunity. In their response the delegation stated that there had been allegations of fraudulent judges and lawyers but that El Salvador has only found two people using falsified papers. To ensure that judges were certified and legitimate, a training course has been developed to ensure that judges can successfully fulfill their duties.

### **Migrants**

The Committee enquired into the issue of migration, focusing on immigration to the USA as well as rural to urban migration within El Salvador. The delegation admitted that 25 percent of the population is located outside the country. To protect the rights of citizens living outside the territory of El Salvador, a Secretariat for Salvadorians Abroad has been established. Activities the Secretariat performs includes family reunifications and consular help. Additionally, El Salvador provides funds for the repatriation of Salvadorians who have been hurt abroad, a 'welcome home' program for immediate care to those who have recently returned home or who were deported, as well assisting with returning the bodies of deceased. The delegation pointed out that El Salvador is attempting to reverse 'the brain drain' effect by introducing various programs.

The delegation stressed that rural to urban migration is a result of rural areas not benefiting from a development strategy. To correct this, the delegation noted that over 260 million dollars is being directed to the development of rural regions. The delegation added that there have been consultations with neglected rural regions that have agreed to work in tourism and agriculture.

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<sup>4</sup> NGOs including: Capitulo Salvadoreño de la Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo; Comité de América Latina y el Caribe para la defensa de los derechos de la mujer; and Procuradora para la Defensa de los Derechos Humanos de El Salvador.

<sup>5</sup> For a press release of the proceedings, please see [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/DF87FEA01C737E4FC125720A0053DC74?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/DF87FEA01C737E4FC125720A0053DC74?OpenDocument)

## **Poverty**

Ms Barohona, a Committee member, requested the delegation to explain what El Salvador is doing to combat poverty. The delegation stated that the government has been creating a poverty map, and with this information, the Solidarity Network<sup>6</sup> along with other institutions will seek to alleviate poverty.

The Committee also asked questions concerning a NGO report, which stated that much of the population is living in poverty. They asked if the delegation has updated statistics or latest information. The delegation replied that they would have a new census in 2007, which will provide better indicators.

## **Labour and Child Labour**

The delegation pointed out that a child labor initiative has been implemented which complies with the International Labor Organization (ILO) Convention 182. In addition, a National Committee on Child Labor is working together with NGOs and the ILO to prevent child labor violations. The delegation noted institutional developments including the establishment of a unit for the ratification of child labor within the Ministry of Labor. Over 20 experts have been hired to deal with child labor.

Further, the delegation responded to the Committee's concerns regarding the need for measures to address child labor in the agriculture and informal sectors. The delegation informed the Committee that around 46 to 48 percent of workers in the agricultural sector are children. The delegation added that compared to other Central American countries, El Salvador has made enormous efforts in reducing the numbers. Over 25,000 children have been taken out of the Sugar industry, 4000 from the fishing sector, while many more children have been taken from the cotton and coffee sectors. After the children are taken from these poor labor situations, they are moved to competent institutions, which are monitored by the Ministry of Labor. The delegation argued that Government programs have benefited over 45,000 children.

The Committee continued with the issues of the right to strike and freedom of association. The Committee stated that union membership is extremely low, around 20 percent and in the last 10 years there has not been one legal strike. The Committee made it clear that it is a serious problem if all strikes are classified as illegal. In response the delegation noted that the right to strike and collective bargaining is an essential aspect of the work of trade unions. They pointed out that there are no restrictions to collective bargaining but strikes are illegal when the area of work is an essential service.

## **Water**

Mr Marachan Romero, a member of the Committee, brought attention to the right to water when he referred to the situation in El Espino. In this location her pointed out the destruction of forests by private and governmental enterprises has led to a precarious situation for water sources. He pointed out that water is a public resource and wanted to know more about the privatization of water in El Salvador, particularly what led to it.

The delegation responded by stating that water has never been privatized and is under the responsibility of the National Institute. But in a contradictory statement the delegation stated that concessions to the private sector have been made in townships. In relation to El Espino, the delegation said that there is a governmental decree, which protects El Espino from this.

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<sup>6</sup> The 'Solidarity Network' is a state intervention program focusing on reducing extreme poverty of families, with a special focus on municipalities.

Mr Marchan Romero responded by providing evidence given by an NGO that over 75 percent of households have water provided by private sources. He asked the delegation to supply answers on how this is happening and if the government has given authority to someone to do this. There was not sufficient time for the delegation to answer this question.

### **Housing**

Referring to a report written by the Procurator of El Salvador, Mr. Texier, a member of the Committee, asked the delegation to provide more information on El Salvador's housing plan as there seemed to be a housing deficit and over 18,000 families are living on the rail line. The delegation responded by saying that some families are relocated when they live in areas that are considered high risk for natural disasters. These families are sometimes moved to provisional housing, but eventually to a more stable area. The delegation pointed out that these organised settlements are at no or little cost to the families. They noted that the state subsidises housing and that people have access to credit in order to purchase housing. The delegation reminded the Committee that the war and natural disasters have instigated migration from a rural to urban areas which have created marginalised neighbourhoods and that the Ministry of Housing is attempting to provide safe and accessible housing..

### **Health**

The Committee enquired into the general health situation in El Salvador and specifically health care for individuals working in the informal sector. Additionally the Committee wanted to know about the curriculum on sex education and reproductive health. The delegation responded by stating that natural disasters have hindered their progress in the field of health but primary health centers, which have both doctors and nurses, have been established. The Government is attempting to strengthen the healthcare situation for the informal sector but it is still a work in progress. Concerning the question about sex education, the delegation stated that programs exist to publicize HIV/AIDs.

### **Conclusion and next steps**

The delegation noted that it had been satisfying to share their problems, hopes and difficulties in ensuring economic, social and cultural rights are realised in El Salvador. The delegation recognized the fact that their answers had not always been satisfactory and understood that the Committee would bear this in mind while assessing El Salvador's situation.

The Committee thanked the delegation for its responses to its questions. Before closing the session the Chairperson did remark that it would have been a more satisfying experience if El Salvador's written replies had provided in other languages in order for the Committee to work effectively.

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## **ABOUT THE PUBLICATION**

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