

AMNESTY INTERNATIONAL PRESS RELEASE

AI Index: AMR 29/005/2004 (Public)
News Service No: 144
16 June 2004

Embargo Date: 16 June 2004 01:00 GMT

El Salvador: Unconstitutional law should be repealed and new approaches to public security considered

Amnesty International calls on the Legislative Assembly of El Salvador to annul current legislation and abandon any attempt to pass further Anti-Maras legislation that contravenes the Constitution and international human rights standards.

"It is particularly worrying that the law penalised members of 'maras' or gangs simply on the basis of their appearance and social background. The text directly referred to tattoos and identity symbols typically used by these groups," said Amnesty International. "A further major concern is the fact that under the legislation minors are treated as adults in the judicial process."

Amnesty International supports the ruling of the Supreme Court which stressed that it is unnecessary to have special legislation to deal with the activities of 'maras' since appropriate judicial instruments already exist - in the Penal Code - for judges to punish behaviour which amount to criminal activity.

"The Legislative Assembly should not ignore the Court's decision and should repeal the law currently in place", Amnesty International said.

"It is very likely that any new proposal for a permanent law will differ much, if at all, from the previous laws and that, even if the wording were different, the concepts and substance of the new permanent proposal would remain the same as those declared unconstitutional."

"We call on the government to use the already available judicial instruments contained in the Penal Code and other legislation to punish criminal activity; and to consider proposals from civil society organizations and work with them to find solutions to the serious problems of public security", Amnesty International said.

Background

The Anti-Maras Act (AMA) was approved in October 2003 for a period of six months.

On 1 April 2004 the Constitutional Division of the Supreme Court of Justice of El Salvador found all the articles in the Anti-Maras Act to be in breach of the constitution because they violated basic

principles of equality before the law. The court found that the Act presumed that individuals would engage in criminal activity, based on personal or social circumstances and not on whether they actually committed a crime. Furthermore, the court found that by providing the possibility for a child to be prosecuted as an adult the Act put children in an unfavourable situation, as well as breaching the Convention on the Rights of the Child.

The United Nations Committee on the Rights of the Child recently considered the AMA to be in breach of the Convention on the Rights of the Child and said that the authorities of El Salvador should suspend its application.

A proposal submitted to El Salvador's Legislative Assembly to make the legislation permanent was rejected in April and only approved as a temporary measure lasting until July.

Public Document

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