



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families
Twentieth session**

Summary record of the 246th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 2 April 2014, at 10 a.m.

Chairperson: Mr. Carrión Mena

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Second periodic report of El Salvador (continued) (CMW/C/SLV/2; CMW/C/SLV/Q/2; HRI/CORE/SLV/2011)

1. *At the invitation of the Chairperson, the delegation of El Salvador took places at the Committee table.*
2. **Ms. Velásquez de Avilés** (El Salvador) said that foreigners, including migrants, enjoyed the same economic, social and cultural rights as Salvadoran nationals. Courts and administrative bodies could receive petitions and complaints from any individual who felt that their rights had been violated. Moreover, article 3 of the Constitution established that all persons were equal before the law, and that no restrictions could be placed on the enjoyment of civil rights on account of nationality, race, sex or religion. The appropriate mechanisms were in place to ensure that everyone had access to justice.
3. In the event of a conflict between an international treaty and the provisions of domestic law, the treaty prevailed. As a result, article 26 of the Labour Code had been tacitly revoked, meaning that migrant workers whose contracts had expired were no longer expelled from the country. Rather, they were given reasonable time to arrange their return to their country of origin.
4. Migrant workers in the agricultural sector were also entitled to file petitions and complaints, and the Ministry of Agriculture and Livestock was authorized to carry out inspections of workplaces in order to verify compliance with labour standards. With regard to domestic workers, the Government acknowledged that there were significant shortcomings in national legislation, and was considering the possibility of acceding to three International Labour Organization (ILO) conventions, notably the Domestic Workers Convention, 2011 (No. 189). In spite of difficulties related to the need to respect the privacy of the home, steps were being taken to conduct inspections and tackle the issues of low wages, unpaid overtime and long working hours with little or no rest.
5. Since ratifying the Convention on the Rights of the Child in 1990, El Salvador had worked to bring its domestic legislation into line with the provisions of that Convention, notably through the Child and Adolescent Protection Act. The Government was, however, unable to give full effect to article 10 of that Convention, on family reunification, as the United States was not a party to it and had yet to harmonize its legislation with international standards.
6. Lastly, in reference to State expenditure on health, she said that the Government did not quantify the cost of services provided to migrant workers. Its social investment policy was aimed at all residents, and made no distinction on the basis of nationality.
7. **Mr. Arène Guerra** (El Salvador), responding to questions about the expulsion of individuals from countries in the Northern Triangle in connection with drugs-related violence and organized crime, said that a dialogue had been initiated with the Office of the United Nations High Commissioner for Refugees (UNHCR) through the Central American Integration Secretariat. The objective of the discussions was to deal with what amounted to a new form of forced migration, and decide what status to give those directly affected. The magnitude of the problem made it particularly difficult to tackle, with annual proceeds from the illegal drug trade in the region standing at around US\$ 100 billion.
8. **Mr. García** (El Salvador) said that remittances were important in guaranteeing economic stability in El Salvador. They accounted for 34 per cent of the income of families that received them, and brought in three times more money than foreign direct investment.

As a result, the Government had devoted significant efforts to analysing the nature of remittances and proposing policies on their use. Given that over 80 per cent of remittances went towards household expenditure, there was little money left over for investment in productive activities. The Government had developed financial training programmes for families, to encourage a more rational use of remittances and discourage luxury consumption. The programmes were part of a pilot scheme aimed at turning remittances into a driver of human development and putting an end to paradoxical situations whereby small communities that received sizeable remittances were nevertheless affected by poverty, exclusion, inadequate social services and precarious infrastructure.

9. El Salvador's Migration Act dated back to 1958 and needed to be updated. Over the past five years, progress had been achieved in drafting a bill that was more in tune with the real situation. Although the first draft had been produced during the 2000s, it had not been until 2011 that consultations had been held with members of civil society and their views incorporated. The substantial delays in the process were due in part to the tense political situation, which had culminated in the presidential elections of 9 March 2014. One of the priorities of the new Government would be to present the bill to the Legislative Assembly for adoption.

10. In June 2009, heads of state from Central America had met in Costa Rica and approved the formulation of a Central American migration policy. The task of shaping the policy had been assigned to the Central American Integration Secretariat, which had produced a draft in 2011 and held consultation workshops with civil society organizations. The Regional Conference on Migration was an important forum for discussing the policy, which it was hoped would be adopted in the near future.

11. **Ms. Velásquez de Avilés** (El Salvador) said that many Salvadoran nationals chose to emigrate because of poverty, war and violence. The State applied *jus soli* and *jus sanguinis*, meaning that individuals whose children were born in El Salvador could settle in the country. In accordance with article 204 of the Labour Code, all persons had the right to join a trade union, but article 225 stipulated that members of a union's governing body had to be Salvadoran by birth. The restriction had been imposed in the interests of national security and public order, as provided for by article 40 of the Convention.

12. **Mr. García** (El Salvador) said that, owing to the impossibility of gathering accurate statistics, public policy decisions on migration were based on qualitative analyses and estimates. Nevertheless, a study carried out by the Ministry of Foreign Affairs had concluded that the number of children who had remained in El Salvador after their parents had emigrated, or who had returned, was approximately 900,000. Further research had found that those children enjoyed better socioeconomic conditions, standard of living and access to education and health care than those whose parents had not emigrated. Despite that, all the child respondents had stated that they were unhappy, and that they would willingly forgo their privileged economic status in order to be with their parents. The studies had led the Government to develop a policy of support for such children, who accounted for the significant growth in the numbers of unaccompanied migrant children. Between 2012 and 2013, there had been a threefold increase in the number of children repatriated from Mexico and the United States, and almost 7 per cent of the individuals deported during that period had been children. In an effort to tackle the issue, discussions were being held with Canada, Mexico and the United States at the Regional Conference on Migration. Those discussions were all the more important as there was no regional policy of support for migrant children.

13. Over the past five years, substantial progress had been made in the development of consular services for the protection of rights. A network of consular offices had been set up in southern Mexico to address the humanitarian crisis faced by migrants travelling to the United States. In December 2011, Central American ministers of foreign affairs had signed

an agreement on consular cooperation, leading to the organization of joint consular activities with Guatemala and, in the near future, Honduras. El Salvador had also made progress in the creation of consular protocols for the protection of migrants in transit and in countries of destination. Handbooks on consular protection gave guidance to consular officers in their efforts to support Central American migrants.

14. **Ms. Ladjel** asked whether the Government believed parents who travelled abroad for work were shirking their parental responsibilities by placing their children in the care of the State. She asked how it intended to improve its response to such situations.

15. **Mr. Pime** asked for more information on the measures taken to tackle the sale, trafficking and sexual exploitation of children, as recommended in the concluding observations on the State party's report to the Committee on the Rights of the Child in 2010 (CRC/C/SLV/CO/3-4, para. 83).

16. Given that international instruments took precedence over domestic legislation, he wished to know whether a migrant worker who considered that their rights had been violated was able to file a case with the domestic courts on the basis of the Convention. According to information before the Committee, migrant workers in an irregular situation were sometimes the victims of xenophobic behaviour by the authorities, resulting in their deportation from the State party; he wished to know whether the Government was aware of that situation and whether it was taking action to remedy it.

17. **Mr. Tall** wished to know how the State party had implemented the Committee's concluding observations on its initial report (CMW/C/SLV/CO/1) and in particular, the recommendation to amend the law in order to permit migrant workers to hold office in trade unions. As he understood it, the law had not yet been amended, and he asked whether that was because no action had been taken or because of some deliberate decision, for example to consult stakeholders.

18. He asked whether corruption was widespread, how it affected migrant workers, whether any migrant workers had made complaints about corruption and what action was being taken to combat it. He also wished to know whether migrant workers had filed any complaints about violence on the part of the security forces, and if so, whether any sanctions had been applied. Was there any data on the complaints filed and the outcomes?

19. **Mr. Ceriani Cernadas** asked, whether, in light of the tripling in the number of children being detained in the United States and deported to El Salvador, sufficient advances had been made in consular protection for unaccompanied minors in Mexico. He also asked whether specific measures were in place to prevent children being placed in detention, what kind of establishments they were held in and whether the consular authorities cooperated with child protection authorities in the minors' country of origin in order to determine whether repatriation or some other measure was most appropriate in each case.

20. He would appreciate more information on the content and purpose of migration policy initiatives and whether there were plans to include Mexico in the Central America-4 Border Control Agreement, known as CA-4. Since migrants often travelled through Mexico, he asked what steps were being taken to protect them from falling into the hands of organized criminal groups in that country.

21. Remittances from migrants were reported to represent 17 per cent of GDP. He wished to know whether the Government was considering providing more significant resources to help migrants, since they made such an important contribution to the State party's economy.

22. **The Chairperson**, speaking as a Committee member, asked for more information on migration agreements between the State party and European and South American countries. He wished to know whether measures were in place to direct remittances towards productive sectors of the economy, such as construction, and how the State party worked with neighbouring countries to combat corruption. He also wondered whether persons who moved to another CA-4 country were permitted to work in their new country of residence, at what point they were considered migrants in an irregular situation and how checks were carried out on persons entering and exiting CA-4 countries.

23. Information on the situation of Honduran citizens in El Salvador would be appreciated, as well as information on Honduran and Salvadoran nationals who lived in the border regions of the two countries.

The meeting was suspended at 11.25 a.m. and resumed at noon.

24. **Ms. Velásquez de Avilés** (El Salvador) said that her country met its obligations to workers under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and had also ratified the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Labour Code established the right to freedom of association and the right to form trade unions without distinction as to nationality, gender, religion or membership of political organizations. Although migrant workers were free to join trade unions, in order to protect national security, only Salvadorans who had acquired their nationality at birth could sit on trade unions' governing bodies. That policy was consistent with article 40 of the Convention permitting restrictions on the right to form associations and trade unions in certain circumstances.

25. The Convention took precedence over domestic legislation, and El Salvador was in full compliance. It would nonetheless need to repeal certain provisions of migration law in order to ensure that migrant workers were not forcibly expelled from the country on expiry of their work contracts.

26. The Government had held numerous meetings on migration with trade unions and civil society. Civil society organizations and NGOs had been the Government's chief critics in the past and made a valuable contribution to the development of a human rights-based approach. Significant work had been done to implement the Committee's concluding observations and highlight the problems related to the various forms of migration. Her country was not generally considered xenophobic and tried to treat nationals and foreigners fairly, as human beings, in the hope that Salvadorans abroad would be treated likewise.

27. Guidelines were in place for dealing with public officials who incited hatred or promoted xenophobic behaviour, and to ensure that migrants were treated with respect. In one case, where a number of Asian migrants had been detained unlawfully for 27 days, the court had ordered their immediate release and the official responsible had been punished.

28. **Mr. García** (El Salvador) said that the Government was particularly concerned about the plight of children left behind while their parents sought work abroad, as they were especially vulnerable to violence and organized crime. Accordingly, the Government had undertaken to raise public awareness of the reality and dangers of migration. It was vital to the country's development that the cycle of migration should be broken by fostering the population's attachment to their communities and involving women and youth in the economy. In the meantime, financial planning information was provided to families who relied on remittances.

29. There were no reported cases of migrants encountering corrupt public servants; however, that might be a result of the difficulty of filing a complaint. The Government had nevertheless taken steps to promote an anti-corruption culture, for example through the adoption in 2013 of a law on access to and transparency of information.

30. El Salvador had signed a number of regional agreements on migration matters, such as consular services and the repatriation of children. It had also concluded agreements with countries outside the region; for example, a cooperation agreement with Ecuador on assistance to their respective nationals and an association agreement with the European Union in which the latter undertook not to treat migrants without residency permits as offenders. A key agreement had been signed between El Salvador, Guatemala, Honduras and Nicaragua, allowing free movement of their nationals in those countries for 90 days. Not only did the authorization amount to a de facto work permit, but the Salvadoran Constitution also exempted nationals of those countries from the status of foreigner, so they had equal rights to health care, education and other services. Naturally, some migrants exceeded the 90-day period but the Government had begun to regularize the situation of Nicaraguan migrants and, building on the success of that process, would soon launch a similar one for Guatemalans. Regarding Salvadorans living in border areas of Honduras, he said that a series of fairs had been held since 2010 to provide identification documents free of charge.

31. The Government had made great strides on human trafficking during the reporting period, including the establishment of the National Council on Trafficking in Persons and two awareness-raising media campaigns. Nevertheless, bringing traffickers to justice remained a challenge.

32. **Ms. Velásquez de Avilés** (El Salvador) said that article 144 of the Constitution gave international treaties primacy over national laws but not over the Constitution itself; doing so would require a complex amendment process. As to the protection of children, the challenge for governments was to adopt policies that addressed the root causes of migration and encouraged parents to work in their own countries.

33. **Mr. Kariyawasam** pointed out that, although the delegation's replies were very detailed, they lacked substance and mainly constituted a statement of intent.

34. **Ms. Castellanos Delgado** commended the State party on its commitment to the integration of migrants, especially those on either side of the border with Honduras. She said that the region faced serious problems that pushed people to migrate, so it was vital that countries cooperated to ensure that migrant workers' rights were upheld.

35. **Mr. Núñez-Melgar Maguiña** asked how long migrant workers could remain in the country once their contracts ended, what specific programmes were in place to channel remittances back into the economy and whether trafficking in persons was a criminal offence. He also requested further information about the association agreement, as it was his understanding that the European Union did not consider that detaining migrants amounted to criminalizing migration.

36. **Ms. Velásquez de Avilés** (El Salvador) replied that there was no statutory period in which migrants could remain in El Salvador once they stopped working; it was determined on a case-by-case basis depending on the logistics of their return home. None were forced to leave the country immediately following the expiration of their contract. The Criminal Code had been amended to cover all forms of human trafficking and provided for a minimum of 8 years' imprisonment for that offence.

37. **Mr. García** (El Salvador) said that remittances were primarily used to cover daily expenses; however, migration yielded other benefits and ultimately helped create employment that would encourage young people to remain in their communities. Migration

issues were now firmly on the Government's agenda and migrant workers were recognized as rights holders. Although El Salvador had made progress in implementing the Convention, it was aware that much still needed to be done, in particular with regard to updating its migration legislation. He was hopeful that the Government would have concrete actions to communicate in that connection in its next periodic report.

The meeting rose at 1 p.m.