



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

List of issues prior to submission of the third periodic report of El Salvador*

Section I

A. General information

1. Please provide details on the national legal framework in relation to the Convention, including:

(a) Measures taken to bring legislation into line with the Convention, in particular the Special Act on Migration and Alien Affairs of 2 April 2019, and measures taken to withdraw the declarations made regarding articles 32, 46, 47, 48 and 61 (4) of the Convention, which may impede the full enjoyment of the rights of migrant workers enshrined in these provisions, as recommended by the Committee in its previous concluding observations (CMW/C/SLV/CO/2);

(b) The existence and scope of bilateral and multilateral migration agreements with countries in the Americas, in particular the Asylum Cooperative Agreement with the United States of America. Please specify how this agreement protects Salvadoran migrant workers' rights in transit and destination countries, as well as the rights of migrant workers in El Salvador.

2. Please provide information on all policies and strategies adopted by the State party in relation to the rights of migrant workers and members of their families, such as the National Policy for the Protection and Advancement of Salvadoran Migrants and Their Families adopted in 2017, including information on specific time-bound and measurable goals and targets that have been established to provide for the effective monitoring of progress in the fulfilment of the rights of migrant workers and members of their families in the State party. Please also provide information on the human, technical and financial resources allocated for the implementation of such policies and strategies, and on the results obtained.

3. Please provide information on the ministry or public institution responsible for coordinating the implementation of the Convention in the State party, whether the Ministry of the Interior, the Ministry of Labour and Social Security, the Directorate General for Migration and Alien Affairs or the Commission on Refugee Status Determination, including information on their oversight activities and follow-up procedures. Please provide information on the mandate of the ministry or institution and on the human, technical and financial resources allocated to it for promoting, protecting and fulfilling the rights of migrant workers and members of their families under the Convention.

* Adopted by the Committee intersessionally on 10 February 2021.



4. Please provide qualitative information and statistical data, disaggregated by sex, age, nationality, ethnic origin, disability and migration status, on labour migration movements to and from the State party, including on migrants in transit, returns, other labour migration-related issues, unaccompanied children and children left behind by migrant parents. Please also provide qualitative and statistical data or, if precise data are not available, details of studies or estimates, on migrant workers in an irregular situation in the State party and abroad. In the light of the Committee's previous recommendations (CMW/C/SLV/CO/2, para. 17), please provide information on improvements in the collection, processing and analysis of information and the compilation of data and statistics disaggregated by sex, age, reason for entry into and departure from the country, and type of work performed, including information on measures taken to make the information publicly available.

5. Please indicate how the powers of the Office of the Human Rights Advocate have been strengthened so as to enable it to investigate human rights violations in migrant detention centres and to implement the rights and promote the recognition and visibility of the migrant community. Please provide information on the human, technical and financial resources made available to the Office. Please also provide information on its activities and the services it offers, such as complaints mechanisms and helplines, and on whether it conducts visits to detention centres for migrant workers and members of their families.

6. In the light of the Committee's previous recommendation (CMW/C/SLV/CO/2, para. 19), please provide information on the steps taken to promote and publicize the Convention and to increase awareness and understanding of its provisions among the general public, border police, social workers, judges and prosecutors, officials of the Ministry of Foreign Affairs and other civil servants who work on migration-related issues. Please also provide information on efforts to raise the awareness of migrant workers and members of their families of the legislative and regulatory framework applicable to them, by providing them with such information in languages they understand. Please indicate any measures taken to raise the general public's awareness of issues such as migration-related offences and trafficking in persons, including cases involving domestic servitude, forced labour and child sexual exploitation. Please also indicate how the media participate in disseminating information about the Convention and in promoting the rights recognized therein.

B. Information relating to the articles of the Convention

1. General principles

7. Please indicate whether the Convention has been directly applied by officials in the public administration. Please provide information on and examples of judicial cases and judgments in which the Convention has been invoked directly before the courts. Please also provide information on:

(a) The judicial and/or administrative mechanisms competent to examine and decide on complaints made by migrant workers and members of their families, including those in an irregular situation;

(b) The number and type of complaints examined by such mechanisms in the past five years, and their outcome, disaggregated by sex, age, nationality, field of occupation and migration status;

(c) Whether legal assistance has been provided to foreign migrants in El Salvador and to Salvadoran migrants abroad;

(d) Any redress, including compensation, granted to victims of violations of rights protected under the Convention;

(e) The measures taken to inform migrant workers and members of their families who are on its territory or subject to its jurisdiction, in particular Honduran and Nicaraguan migrants, about the remedies available to them in the event of violations of their rights.

8. Please provide information on measures taken to facilitate access to justice for all migrant workers and to remove the obstacles that prevent them from reporting abuses and violations; measures leading to the launch of information campaigns on the administrative

and judicial remedies available for filing complaints and receiving reparations; and measures to ensure that abuses and violations are fully investigated and appropriate sanctions are applied against perpetrators.

9. Please provide information on restrictions placed on the full exercise of the rights of migrant workers and members of their families in response to the coronavirus disease (COVID-19) pandemic, including restrictive measures applied at borders that affect their entry to or exit from their countries of origin, transit or destination. Please also provide information on measures taken in relation to voluntary return to their countries of origin in the context of the pandemic. Please indicate the measures taken to ensure that the pandemic does not affect the processing of asylum applications or migration procedures, including in relation to the suspension of procedures. Please provide information on the implementation of the humanitarian corridor for the safe return of citizens of Central American Integration System member countries as part of the Regional Contingency Plan designed to complement national efforts for the prevention, containment and treatment of COVID-19. Please describe the efforts made on behalf of migrant workers and members of their families to:

- (a) Include them in national pandemic prevention and response plans, especially in relation to ensuring access to a vaccine;
- (b) Ensure their access to health-care services;
- (c) Uphold the sanitary measures necessary to prevent contagion and maintain the desired level of health protection at their workplaces;
- (d) Prevent infections in detention centres and provide health-care services to those who have been infected;
- (e) Ensure that families are informed and receive the remains of migrant workers who have passed away as a result of the disease;
- (f) Otherwise protect their rights and mitigate the adverse impacts of the pandemic, in the light of the “Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants” issued by the Committee and the Special Rapporteur on the human rights of migrants.¹

2. Part II of the Convention

Article 7

10. Please indicate whether national legislation, in particular the Constitution and the laws on labour, immigration and nationality, ensure that all migrant workers and members of their families enjoy the rights established in the Convention, without distinction of any kind, and whether such legislation covers all the prohibited grounds of discrimination, including sex, age, gender identity and sexual orientation, disability, language, national, ethnic or social origin, nationality, economic status, property, marital status, birth or other status.

3. Part III of the Convention

Articles 8 to 15

11. Please indicate whether any cases of exploitation of migrant workers and members of their families, whether in regular or irregular situations, have been identified in the State party, in particular cases involving workers in the agriculture (sugar cane), construction and domestic service sectors. Please also provide information on any cases of domestic servitude, forced labour or sexual exploitation involving migrant workers, in particular women and children, identified in the State party, and on measures taken to prevent and combat these practices. Please indicate whether the State party has taken steps to ratify the International Labour Organization (ILO) Protocol of 2014 to the Forced Labour Convention, 1930 and the ILO Domestic Workers Convention, 2011 (No. 189). Please provide information on the

¹ Available at www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf.

implementation of the 2017 protocol for the protection and care of Salvadoran migrant children and adolescents.

12. Please provide information on measures taken by the State party to ensure respect for the rights of child migrant workers, in particular those who are unaccompanied, those in an irregular situation and those transiting through the State party, and to ensure that child migrant workers, particularly those working in agriculture, including the sugar industry, are protected from all forms of exploitation. Please indicate the measures taken or planned by the State party to protect children against the worst forms of child labour, including commercial sexual exploitation. Please provide information on measures taken to implement the recommendation contained in the 2018 concluding observations of the Committee on the Rights of the Child (CRC/C/SLV/CO/5-6, para. 13) and ensure that the principle of respect for the best interests of the child is interpreted and applied consistently in all judicial proceedings related to migrant children.

13. In the light of the Committee's previous recommendation (CMW/C/SLV/CO/2, para. 23), please provide information on measures taken to address cases of corruption and efforts to investigate allegations of corruption on the part of public officials. Please also provide information on any information campaigns conducted or planned with a view to encouraging migrant workers and members of their families who are victims of corruption to report such cases.

Articles 16 to 22

14. Please indicate whether the State party has taken steps to ensure the right of migrant workers and members of their families to liberty and freedom from arbitrary detention in the context of migration-related administrative procedures, including in respect of entry, residence and expulsion. Please provide up-to-date statistical data on the number of migrants and members of their families who are deprived of their liberty, disaggregated by nationality, sex, age and migration status, indicating the duration of their detention and how many persons have been released and are now subject to an alternative procedure. Please also provide information on measures taken to prohibit the detention of children who are, or whose parents are, in an irregular situation, in accordance with joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017).

15. In the light of the Committee's previous recommendation (CMW/C/SLV/CO/2, para. 25), please provide information on cases of expulsion, and in particular on measures taken to ensure that migrants who are subject to administrative deportation and expulsion proceedings are aware of and exercise their right to appeal, and that administrative deportation and/or expulsion proceedings are regulated by law in accordance with article 22 of the Convention.

16. Please provide information on border governance measures, in particular those related to the functions of the National Civil Police, the army and other authorities, and on the procedures applicable to migrant workers and asylum seekers arriving at the State party's international borders. Please include information on reception facilities and on how the State party processes protection claims so as to ensure that it is acting in accordance with the principles of non-refoulement and the prohibition of arbitrary, collective or automatic expulsion.

17. Please provide detailed information on detention facilities for migrants, conditions of detention for migrant workers and efforts to cease immigration detention and adopt alternative measures.

18. Please also provide information on the measures taken by the State party to guarantee due process, including access to justice, legal assistance and interpretation services where necessary, during investigations, arrests, detention and expulsions of migrant workers and members of their families. Please describe the measures taken to ensure, in law and in practice, that detained migrant workers and members of their families can communicate with the consular or diplomatic authorities of their State of origin. Please include information on specific due process safeguards for unaccompanied child migrants, in particular girls, in

migration-related administrative procedures, including the right to be heard and the right to legal representation.

Article 23

19. Please provide detailed information on the assistance and protection provided by the consular services of the State party to Salvadoran migrant workers and members of their families in transit and destination countries, including those who are in an irregular situation and particularly in cases of abuse, arrest, detention and expulsion. Please also indicate the measures in place to facilitate outreach to migrant workers from the State party in transit and destination countries, particularly those where the State party does not have diplomatic or consular representation. Please describe the steps taken by the State party to analyse the causes of the “migrant caravans” that have mobilized since 2018 and the causes of irregular migration in general, and indicate the special measures that have been taken to strengthen consular protection in countries of transit and destination.

Articles 25 to 30

20. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work (for example, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract and minimum wage) are in full compliance with the ILO Equal Remuneration Convention, 1951 (No. 100) and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Please also indicate whether these laws and regulations apply on an equal basis to migrant workers, in both regular and irregular situations, and to Salvadoran nationals. With reference to the Committee’s previous concluding observations (CMW/C/SLV/CO/2, para. 29), please provide information on measures taken to monitor migrant workers’ employment conditions in order to ensure that they enjoy decent and safe working conditions and are guaranteed a wage and access to benefits, including social security, on conditions equal to those applied to Salvadoran nationals.

21. Please provide information on measures taken by the State party to ensure that all migrant workers and members of their families, including those in an irregular situation in the territory of the State party, have adequate access to health-care services and emergency medical care. Please indicate whether migrant workers and members of their families can benefit from the national health insurance programme.

22. Please provide information on measures taken to ensure that the children of migrant workers, including those in an irregular situation in the territory of the State party, have full access to education regardless of their migration status, and information on measures taken to ensure that schools are not required to report children’s migration status to the authorities. Please supply information on measures taken to provide social, psychological or financial support for families affected by migration so that children of migrant parents receive adequate assistance, as recommended by the Committee on the Rights of the Child in its concluding observations of 2018 (CRC/C/SLV/CO/5-6, para. 30).

23. Please also provide information on cooperation with destination countries to ensure that children of migrant workers living abroad can continue their education at all levels, including tertiary and higher education, in those countries.

Articles 31 to 33

24. Please provide information on measures taken to ensure that, at the end of their stay in the State party, migrant workers and members of their families have the right to transfer their earnings and savings, as well as their personal effects and belongings, from the State of employment to the State of origin. Please provide information on measures taken to facilitate the transfer of private funds, especially by reducing the cost of transactions.

25. Please provide information on the measures taken to ensure that migrant workers arriving in or preparing to come to El Salvador have access to clear information on immigration procedures, including full information on the conditions applicable to their admission and stay and the remunerated activities in which they may engage, and on applicable legislation.

4. Part IV of the Convention

Article 37

26. Please provide information on pre-departure programmes for nationals of the State party who are considering emigration, including information on their rights and obligations in the State of employment. Please indicate which government institution is responsible for providing such information and whether any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in this process, and whether they are adequately funded. Please provide information on the mechanisms for follow-up with respect to migrants participating in programmes abroad, and the commitments of partner organizations in El Salvador and destination countries, be they recruitment agencies or not.

Articles 46 to 48

27. Please provide information on the measures taken to ensure that migrant workers can transfer their earnings and savings to their countries of origin. Please also provide information about the measures taken by the State party to guarantee that the families of migrant workers receive these remittances under the best conditions and without restrictions. Please describe the policies in place to improve the portability of social security entitlements and other rights and benefits obtained by migrant workers. Please also provide information on the bilateral and multilateral agreements concluded in the field of migration, in particular temporary labour programmes and other agreements concerning employment, protection, double taxation and social security.

Articles 51 and 52

28. In the light of the Committee's previous recommendation (CMW/C/SLV/CO/2, para. 37), please provide information on measures taken to repeal article 26 of the Migration Act, which stipulates that migrant workers whose work contracts have come to an end must leave Salvadoran territory regardless of the reasons for termination, and to adopt legislative provisions that guarantee the rights of migrant workers in accordance with articles 51 and 52.

5. Part VI of the Convention

Articles 64 to 71

29. Please provide information on short-, medium- and long-term strategies at the national and local levels and on the measures taken, including consultations and cooperation with other States, to promote sound, equitable and humane conditions for the international migration of migrant workers and members of their families, such as the coordination of intraregional migration during harvest times and of commerce and trade at borders. Please provide information on measures taken to clearly define the roles of the authorities with competence in migration matters and to intensify efforts to ensure that they coordinate their work effectively at the national and local levels, especially in border areas.

30. Please provide information on measures taken to ensure the voluntary return of migrant workers and members of their families to the State party when they decide to return or when they are in the State of employment in an irregular situation. Concerning migrant workers in a regular situation, please provide information on programmes for cooperation between the State party and relevant States of employment in promoting adequate economic conditions for resettlement and reintegration in the State party. Please describe the measures taken to assist returning migrant workers and members of their families in their resettlement and reintegration into the economic and social life of the State party, including measures to ensure that they do not fall victim to killings, sexual violence or torture. In particular, please provide information on measures to ensure the rights to health and to social protection as a matter of priority and to combat discrimination, xenophobia and stigmatization against returned migrant workers. Please provide information on the implementation of the technical guidelines for the reception, care and protection of children and adolescents who return to the country, published in 2014.

31. Please describe the measures taken by the State party to prevent the irregular migration of its nationals, in particular women and unaccompanied children, including coordinated plans, policies and programmes aimed at enhancing legal migration channels. The Committee would welcome this information in view of the fact that increasing numbers of both Salvadoran and non-national migrant workers and members of their families in transit are apparently undertaking difficult and dangerous journeys by boat in order to cross the border. Please clarify why the border control strategies applied by the State party include the army and private military security companies.

32. Please describe the specific measures in place to protect migrant women and children, whether Salvadorans or foreign nationals, who are in transit towards the United States from crime of any kind, and particularly from all forms of violence and sexual abuse, and to provide victims with reparation. Please provide quantitative and qualitative data on the results obtained, challenges faced and successes achieved through these measures, taking into account the guidelines set out by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 26 (2008) on women migrant workers.

33. In the light of the Committee's previous recommendations (CMW/C/SLV/CO/2, para. 45), please provide information on the measures taken, including through international, regional and bilateral cooperation with countries of origin, transit and destination, to prevent and combat trafficking in persons, particularly women and children, and on the corresponding human and financial resources allocated by the State party. Please indicate the steps taken to adopt laws and policies to ensure the implementation of legislation combating trafficking in persons. In particular, please provide information on:

(a) Programmes aimed at preventing trafficking in persons, providing effective protection for victims of trafficking and smuggling, and ensuring that victims have access to justice and legal remedies;

(b) Training activities to help members of the judiciary, law enforcement officers, border guards and social workers to identify victims of trafficking and smuggling, particularly in remote and rural areas;

(c) Reported cases of trafficking in and smuggling of migrant workers, disaggregated by sex, age, nationality and purpose of trafficking, as well as investigations and prosecutions carried out and criminal sentences imposed on perpetrators;

(d) The establishment of shelters, protection programmes and measures to help victims to rebuild their lives, including support for their physical and psychological recovery and social rehabilitation;

(e) Measures taken by the State party to continue its initiatives and regional efforts to search for migrant workers and members of their families who go missing or lose their lives along the migratory routes.

34. Please explain what measures the State party has taken to prevent and punish the smuggling of migrants by organized crime groups and to adopt specific legislation and policies to address the issue, in accordance with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, of 2000.

Section II

35. The Committee invites the State party to provide information (in no more than three pages) on the protection of migrant workers and members of their families with respect to the following:

(a) Bills and laws, and their respective implementing regulations;

(b) Institutions and their mandates, and institutional reforms undertaken since 2014;

(c) Policies, programmes and action plans covering migration, and their scope and financing;

(d) Recent ratifications of human rights instruments, including the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the ILO Domestic Workers Convention, 2011 (No. 189);

(e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Section III

Data, official estimates, statistics and other information, if available

36. Please provide, if available, disaggregated statistical data and qualitative information for the past three years (unless indicated otherwise) on:

(a) The volume and nature of migratory movements to and from the State party since the Convention entered into force in the State party;

(b) Migrant workers in detention in the State party, and migrant workers who are nationals of the State party and are detained abroad in States of employment, and whether such detention is immigration-related;

(c) Migrant workers and members of their families who have been expelled from the State party;

(d) The number of unaccompanied migrant children or migrant children separated from their parents in the State party;

(e) The number of migrant workers and members of their families infected with COVID-19 who have received the vaccine or who have died as a result of infection (disaggregated by sex, age and nationality);

(f) Remittances received from nationals of the State party working abroad;

(g) Reported cases of trafficking in and smuggling of migrants, investigations, prosecutions and sentences imposed on perpetrators (disaggregated by the victim's sex, age, nationality and purpose of trafficking);

(h) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals working abroad or in transit through third States.

37. Please provide any additional information on any important developments and measures to implement the Convention relating to the protection of the rights of migrant workers and members of their families that the State party considers a priority, including whether it envisages making the declaration under article 76 of the Convention recognizing the competence of the Committee to receive and consider State-to-State communications or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications.
