



**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

Ninth session

SUMMARY RECORD OF THE 89th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 24 November 2008, at 3 p.m.

Chairperson: Mr. EL JAMRI

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (continued)

Initial report of El Salvador (continued) (CMW/C/SLV/1; CMW/C/SLV/Q/1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of El Salvador took places at the Committee table.
2. Mr. LARIOS LÓPEZ (El Salvador), noting the great number of migrants from El Salvador living overseas and the significant number of foreign citizens in El Salvador, said that migration acted as a driving force for development since migrants contributed economically, socially and culturally to their host countries. The State party was committed to respecting the rights of migrants regardless of their migration status. In combating the illegal trafficking of persons, it was important not to criminalize irregular migrants. Moreover, in light of current regional and international efforts to promote dialogue and cooperation in the field of migration, countries needed to have mechanisms and structures in place that met the needs and rights of their citizens abroad.
3. In its capacity as a country of origin, the State party had made progress in many areas. The Office of the Deputy Foreign Minister for Salvadorans Abroad, whose mission and areas of work were listed in paragraphs 14, 117 and 118 of the initial report (CMW/C/SLV/1), had been created in 2004. Resolutions had been adopted and agreements signed at the international, regional and bilateral levels with respect to human rights and legal assistance in such areas as repatriation and combating illegal trafficking of persons. Visits had been undertaken to ascertain the conditions and human rights situation of Salvadoran migrants abroad and to assess the risks they took in migrating without the necessary papers. Progress in terms of consular assistance included the introduction of “protection consulates” in Mexico and the United States of America, a videoconferencing system for holding interviews with migrants in the United States and a computerized system for electronically issuing provisional passports. The Department of Humanitarian Work and Migrant Care had been created to address the needs of Salvadorans abroad in such areas as medical care and the repatriation of sick or vulnerable persons, and a centre for migrants had been established in 2005 on the border at La Hachadura to provide medical care, food, clothing and a place to rest for Salvadoran migrants repatriated by land. In the area of migrant stability and family reunification, work was being undertaken under the Temporary Protection Status programme with the United States of America, on which 240,000 Salvadorans were registered, and other programmes and memorandums of understanding with Guatemala, Mexico, Nicaragua and Spain. In addition, El Salvador ran programmes for Salvadoran seasonal workers in Australia, Canada, Italy and Spain and was working to promote access to health and housing for Salvadoran migrants abroad.
4. As a transit and receiving country, the State party did not class the act of entering the country irregularly as a criminal offence, but as an administrative infringement of the Migration and Aliens Bill, incurring removal from the national territory and a fine that could be paid in kind through community service. The 1958 Migration Act and the 1986 Aliens Act, along with the Constitution, were the main legislative instruments dealing with the subjects covered by the International Convention on the Protection of the Rights of All Migrant Workers and Members

of Their Families. The Migration and Aliens Bill, which covered the principles, provisions and requirements of the Convention, had been prepared in order to bring the legal framework into line with the Convention, and was currently being examined pending submission to the Legislative Assembly. The Comprehensive Care Centre for Migrants had been established in July 2008 to provide shelter for migrants in El Salvador who were in the process of being repatriated to their countries of origin; details were provided in the State party's written reply to question 10 (d) of the list of issues. The administrative and procedural manual for the centre covered such principles as equality and non-discrimination and the rights to life, protection, and due process and minimal detention. The Ministry of Public Security and Justice, through the Department of Migration and Alien Affairs, was responsible for migration control, while the National Civil Police was responsible for guarding borders, ports and airports.

5. He described a series of measures that had been taken in the interests of ensuring respect for human rights, avoiding all types of discrimination and combating illegal trafficking in migrants. Passports had become the sole legal travel documents for Salvadoran children and young persons in August 2006, and progress had been made in the area of repatriation of children in accordance with the repatriation procedures manual, a guide for civil servants that focused on the human rights and best interests of the child. Under the Seasonal Workers Regularization Programme, which pointed out that it was easier for seasonal workers to get their papers in order than for migrants applying for long-term residence, the situation of 2,282 temporary workers from Honduras and Nicaragua had been regularized. The Ministry of Labour and Social Welfare and the Department of Migration and Alien Affairs carried out inspections of workplaces in order to raise employees' awareness of their rights, monitor workplace practices and prevent discrimination. The Welcome Home Programme, described in paragraphs 76 to 80 of the initial report, provided emergency care to vulnerable Salvadorans returning to their country of origin. The Centre for Salvadoran Migrants provided assistance in such areas as employment, education and medical care. A total of 88,312 Salvadorans - 12 per cent of them women and 78 per cent men - had received assistance between the beginning of the Welcome Home Programme in 1999 and October 2008. A national committee had been established to coordinate action to combat trafficking in persons. A shelter had been set up in 2006 to provide immediate care, protection and assistance to victims of trafficking, including children and young persons, and to date had helped 141 children, young persons and women of various nationalities, including Salvadorans, Guatemalans and Mexicans.

6. Activities to raise awareness about the Convention had included induction courses and workshops for new migration officials and the preparation of a comprehensive communication strategy to highlight the risks of migrating without the necessary papers. In addition, a pilot plan to standardize border transit documents in the El Salvador-Honduras border area had been drawn up jointly by the State party and Honduras; details of the plan were provided in the State party's reply to question 25 of the list of issues.

7. He briefly outlined progress made at the regional level. A policy of freedom of movement by land between the CA-4 countries (El Salvador, Guatemala, Honduras and Nicaragua) had been launched in June 2006 and covered such areas as the simplification of migration control procedures between the countries and the creation of intraregional travel documents. Similarly, a policy of freedom of movement by air had been launched in October 2007. The single Central American visa had been introduced in November 2007 and the CA-4 residence permit had been launched in June 2008.

8. Mr. ALBA (Country Rapporteur) commended the State party on its initial report, which demonstrated the progress it had made in terms of both economic and political stability and human rights. He welcomed the State party's openness to dialogue with the Committee and its serious approach to its responsibilities under the Convention. It seemed that the State party endeavoured to treat migrants on its territory as it would want its own migrants, who represented 20 per cent of its population, to be treated abroad. However, the initial report was rather formalistic and lacking in facts, and further information had been requested to demonstrate how the country's policies worked in practice. It was clear from the written replies and the delegation's opening statement that the State party had taken numerous initiatives to protect migrant workers abroad and within its borders and that efforts were being made to align existing legislation on migration and aliens with the obligations contained in the Convention. Since the prime obligation incumbent upon States parties to international conventions was to implement those conventions, the State party should continue with its efforts to ensure that its entire legal framework was aligned with the provisions of the Convention. In that connection, the Committee eagerly awaited the approval of the Migration and Aliens Bill.

9. He asked the delegation to clarify the exact location of the Comprehensive Care Centre for Migrants established in July 2008 and requested further information on official procedures and time frames for dealing with irregular migrants. He observed that the fact that administrative decisions on expulsions appeared not to be subject to any kind of appeal indicated an area of conflict between the State party's legislation and the principles of the Convention. It appeared that the sugar cane companies were granted considerable powers of discretion with respect to their treatment of seasonal workers; he therefore wished to know whether such workers were identified under the law as a category to which specific rules applied. He noted that migrant workers suffered frequent injuries in transit to other countries and at work, as a result of the type of work that they performed. He emphasized that it was the responsibility of the State party to reach agreements with other countries on sharing the financial burden of the costs of accidents and disabilities caused in the workplace, for which enterprises could be prosecuted, and, more importantly, to find funding to deal with the costs of accidents and disabilities caused in transit. With regard to the growing problem of child migrants, he suggested that the time was ripe for El Salvador to form a united front with other countries to tackle the problem in a coordinated fashion.

10. The written replies appeared not to emphasize sufficiently the right of migrant workers and members of their families to participate in public affairs, vote and be elected to office in their countries of origin. States parties were obliged to consider ways in which their citizens could exercise that right; if the Constitution did not already address that issue, it should perhaps be amended. The written replies on trafficking in persons and the prosecution of traffickers were unclear because of discrepancies between the statistics provided by the National Civil Police and the Department of Migration and Alien Affairs. Greater clarity would be possible if their efforts were coordinated and the statistics standardized. An explanation of the responsibilities of each of those offices would also be helpful.

11. Mr. KARIYAWASAM observed that the State party was a country of origin, transit and destination and that some 30 per cent of its population worked abroad. The fact that the State party had acceded to the Convention provided clear evidence of its desire to ensure that its

nationals abroad exercised their rights. Although not all destination countries were parties to the Convention, the authorities in the State party remained responsible for the rights of migrant workers, whether in the State party, in transit or abroad.

12. The expulsion of migrant workers had a considerable impact on individuals and their families and was a matter of crucial importance to the Committee. The increase in expulsions without due process was a particular cause for concern. While the majority of expulsions took place in cases where migrant workers were in a country illegally, it should be stressed that the Convention recognized the rights of all migrant workers, regardless of their legal status. He therefore wished to know whether the State party extended protection and assistance through its consulates to nationals living and working abroad illegally and, if so, whether they received the same levels of protection and assistance as nationals living and working abroad legally. He also sought further information on the arrangements in place and the facilities and welfare services provided for that purpose.

13. The Committee would be interested to know how the State party worked with destination countries to ensure that expulsions were carried out in a dignified way and that those expelled were not criminalized. In that connection, he asked how the State party dealt with the return to the State party of members of gangs involved in organized crime, and whether opportunities were provided for their reintegration as normal citizens on their return, or whether they were treated as criminals. Although the Welcome Home Programme was commendable, he wished to know whether exceptions were made, for example, in the case of individuals bearing tattoos.

14. He asked the State party to provide information on its strategy to deal with the large numbers of its nationals reported maimed or killed on freight trains to Mexico. He also asked how the State party took the best interests of the child into account during the repatriation of unaccompanied minors, whether there was any procedure for the child to be heard and how many children had been deported from the State party to their country of origin since 2003. Lastly, he asked how the children of irregular migrant workers gained access to the school system, and requested further information on the regulations governing the regularization of their parents.

15. Mr. EL-BORAI said that, while he welcomed the establishment in 2004 of the Office of the Deputy Foreign Minister for Salvadorans Abroad, he was concerned that a significant number of Salvadorans living abroad still did not have the right to vote. He requested clarification concerning the legal status of the Convention. If the Constitution of El Salvador provided for the incorporation of the Convention into domestic law, then there was no need to amend the 1958 Migration Act. The fact that members of a trade union's board of management must be Salvadoran by birth contravened both the International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87), which El Salvador had ratified in 2006, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

16. Ms. DIEGUEZ requested additional information on the functions and services of the "protection consulates" that the Salvadoran consular service had established in various countries. She asked what measures the Government was taking to identify and address the needs of the children left behind in El Salvador by parents who had emigrated.

17. Mr. SEVIM said it was alarming that the number of Salvadorans living abroad was equivalent to almost half of the total population of El Salvador. It would be useful to have statistics on the age groups of such persons and to know what impact such a high level of migration had had on the national labour market. He asked whether the Government envisaged taking measures to keep Salvadoran workers from migrating abroad or to encourage those abroad to return to El Salvador.

18. With regard to expulsions, he wished to know whether El Salvador had concluded readmission agreements with receiving countries such as the United States, Canada and European Union member States, and if so, what types of provisions were contained in such agreements. He wondered whether they included procedural safeguards.

19. He enquired whether El Salvador planned to accede to the ILO Convention concerning Migration for Employment (Revised 1949) (No. 97), the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the ILO Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security (No. 118).

20. Ms. POUSSI KONSIMBO said that several provisions in Salvadoran law, including in the Constitution, set forth the principle of non-discrimination between Salvadoran nationals and foreign migrants. She asked whether the migrants concerned and those responsible for enforcing the law were aware of those provisions. She expressed concern at the high number and proportion of the population that lived abroad, many of whom were deprived of the right to vote and thereby of the right to participate in the affairs of their country. She wished to know what, exactly, the main objection was to granting such persons the right to vote. She enquired whether the law contained special provisions concerning the remittances of Salvadoran migrants living abroad so as to enable them to contribute to the development of the national economy.

21. Mr. BRILLANTES said that the “protection consulates” set up by El Salvador represented an innovative mechanism that could potentially serve as a model for other States parties. He asked whether, as part of the services they provided, protection consulates offered legal assistance to Salvadoran migrants living abroad or whether, conversely, they were required to hire local legal practitioners. He enquired whether El Salvador paid for all or only part of the expenses associated with the deportation or repatriation of its citizens living abroad. He wished to know whether Salvadoran policymakers had envisaged the use of a “repatriation bond”, which could be drawn upon when it became necessary for a Salvadoran citizen to be returned to El Salvador. Such bonds could be arranged by the recruitment agencies that sent workers abroad before they left El Salvador and would enable workers to be returned automatically and without cost to either the sending or receiving State.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

22. Mr. LARIOS LÓPEZ (El Salvador) said that article 144 of the Constitution of El Salvador stipulated that international treaties concluded by El Salvador with other States or with international organizations were recognized as an integral part of Salvadoran law on their entry into force, as provided for by the Constitution. The law could not amend or derogate from the provisions of a treaty that was in force in El Salvador. In the event of a conflict between the treaty and the law, the treaty prevailed.

23. Ms. FLAMENCO (El Salvador) said that work had been under way for several years to prepare the Migration and Aliens Bill and to ensure it was consistent with the principles of the Convention. The bill was currently at the stage of review by the Office of the President. It was also being reviewed by the Department of Migration and Alien Affairs, the Ministry of Public Security and Justice and other relevant government agencies. Once finalized, the bill would be transmitted to civil society organizations and to the Office of the Procurator for the Protection of Human Rights for comment before being referred to the Legislative Assembly.

24. The fact that amendments were in the process of being made to the 1958 Migration Act and the 1986 Aliens Act did not mean that El Salvador was not implementing the provisions of the Convention. It implemented certain self-executing provisions of the Convention and others that did not require any legal or procedural changes. Thus certain decisions had been issued in the past year that were based on the principles of the Convention but were not provided for by the Migration Act. For example, whereas previously workers' residence permits were revoked on termination of employment and they were required to leave the country, one such decision provided that workers whose contracts were terminated had from 60 to 90 days to file a new application for residence with another employer.

25. The inauguration of the Comprehensive Care Centre for Migrants in July 2008 meant that persons awaiting repatriation were no longer held by the border police, but were sent to the centre instead. The fact that it was located in the department of San Salvador meant that persons detained by law enforcement officials anywhere in the country could be transported to the centre in no more than three hours. The centre could hold 80 persons, but it was rarely full and currently accommodated only five persons. Thus, only a small number of persons were being processed for repatriation. The centre was divided into separate facilities to accommodate men, women, families and vulnerable persons. It provided food, housing, medical care and social and psychological counselling. A special space was designated to allow foreign consular services to assist their nationals. To date, the centre had provided services to 96 migrants. In coordination with the national police, an administrative manual containing rules and procedures for the centre had been drafted.

26. Foreigners who were arrested by the National Civil Police were granted the right to a hearing. They were informed of the offence with which they were being charged, the corresponding penalty and the legal provisions they had violated and were given the opportunity to submit evidence. If necessary, they were entitled to the services of an interpreter. Once a decision had been handed down, they had the right to file an appeal. Many cases did not end in repatriation, and a number of alternatives to detention had been established.

27. Although the Migration Act did not refer to seasonal workers, the Government had begun using that term following the ratification of the Convention by El Salvador when it realized that it had a large number of agricultural workers from Central America who came to work only during the sugar cane harvest. It was necessary to regularize those workers because they did not stay or live in El Salvador. Such workers were granted work permits for a maximum period of six months. The process of granting seasonal work permits was carried out through the employer or at the request of the individual worker. The law was not aimed exclusively at sugar cane or coffee plantation workers, but was open to other types of seasonal workers too, as set out in the Migration Act. Amendments to the Act were required in order to take into account seasonal workers in other sectors and to establish appropriate regulations pertaining to them.

28. The Welcome Home Programme had been conducted as a pilot project from 1999 to 2004, with the help of funding from the United States. In 2004, the programme had been taken over by the Ministry of Foreign Affairs and the Ministry of Public Security and Justice, and had been funded from the budget of the latter ministry. After 2006, the programme had been transferred to the Ministry of Public Health and Social Welfare. The programme provided assistance to Salvadorans who had been deported from the United States. On arrival in El Salvador they were interviewed about why they had been to the United States and what they had done there, and they were given something to eat and told about the situation in El Salvador. The programme also provided information on other services available to returnees. A centre for legal assistance had been opened in 2008, in cooperation with the Human Rights Institute of the José Simeón Cañas University of Central America (IDHUCA). Measures were also in place to help returnees to find work, through a recruitment service assisted by the Ministry of Labour and Social Welfare. Vocational training in subjects such as baking, mechanics and information technology was also available for returnees, and, under an agreement with the Ministry of Education, they were given the possibility to return to secondary education, either in a school or through distance learning. Psychological assistance was provided, and a team of social workers was available to help the returnees involved in the Welcome Home Programme. Basic health care and medical assistance were provided, and a physician visited the returnees on a daily basis and admitted them to hospital for treatment when necessary.

29. Mr. GUERRA (El Salvador) said that government officials were able to visit irregular migrants in the new Comprehensive Care Centre for Migrants, which had been built to replace the police facilities in border areas where irregular migrants had previously been held. The furthest distance between a border point and the centre was 440 kilometres, which meant that irregular migrants could be transferred there quickly after having been apprehended at the border. Cases of irregular migration were reported immediately to the Department of Migration and Alien Affairs.

30. Members of gangs returning to El Salvador were not subject to discrimination. Problems did, however, arise if the gangs resorted to violence, in which case the police might be required to intervene. Many repatriated gang members had access to the Welcome Home Programme and other social programmes. A procedure had been established to remove any tattoos they had, and to facilitate their reintegration into society.

31. Mr. CASTRO GRANDE (El Salvador), in reply to a question from Mr. Sevim, said that El Salvador had not ratified ILO Convention No. 97 or No. 143. The Government had given priority to ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families, which it considered more comprehensive than the two ILO conventions. However, El Salvador might ratify those conventions at some time in the future.

32. Ms. RIVAS POLANCO (El Salvador) said that the Department of Humanitarian Work and Migrant Care had been established in the Ministry of Foreign Affairs, and provided services to protect Salvadorans abroad. Efforts were being made to encourage Salvadoran consular services abroad to ensure that adequate social and humanitarian management services were in place to meet the needs of Salvadorans living abroad. The department was authorized to sign agreements with the International Organization for Migration (IOM) on the arrangements for the return of migrants who had died, been injured or taken ill, or who were victims of trafficking. From 2005 to 2008, a total of 407 dead bodies, 200 sick people and 2,224 minors had been repatriated.

Maintenance grants were provided for some families living abroad. The legal situation of Salvadorans in custody abroad was checked regularly: there were currently 3,655 Salvadorans awaiting deportation. The new Comprehensive Care Centre for Migrants was run by the Department of Humanitarian Work and Migrant Care.

33. The Office of the Deputy Foreign Minister for Salvadorans Abroad was beginning to organize activities to inform the 2.3 million Salvadorans living abroad about presidential elections and electoral candidates, and to enable them to vote. Efforts were also being made to provide Salvadorans living abroad with identity cards, although the process was complex and costly: to date, 32,000 identity cards had been provided for Salvadorans living in Washington, Los Angeles and New York. The cost of the project had been estimated at approximately \$34 million.

34. The situation of children left behind in El Salvador by parents who had emigrated was cause for particular concern. The Government was conducting a qualitative and quantitative study to assess the true impact on children who had been left behind, as well as their prospects for the future. In that regard, three major research projects had been undertaken at the national level in cooperation with the United Nations Population Fund (UNFPA), IOM, the United Nations Children's Fund (UNICEF) and other organizations. The feminization of migration was also under discussion and there were plans for a study to assess the impact of migration on women migrants who were in transit, living in receiving countries or in the process of being returned. Such a study should provide an assessment of changing migration patterns and their impact on Salvadoran society. The Government had requested advice from international organizations on suitable policies and programmes in that respect. Particular attention was being paid to communicating with young people in El Salvador, to find out whether they wanted to emigrate, and if so, to address their reasons for wishing to do so.

35. Mr. LARIOS LÓPEZ (El Salvador) said that the large number of Salvadoran consulate offices that had been opened around the world reflected the increasing number of emigrants from El Salvador. The Government communicated regularly with those offices and sought to maintain the links between expatriates and their homeland.

36. The CHAIRPERSON asked whether the research into the children left behind by emigrants and into migration patterns for young people had been completed or were still under way. He requested further information on the code of practice for the National Civil Police, which he understood had been published. He particularly wished to know how the operational and functional capacities of individuals working in the field of migration had been strengthened, and how the codes of practice of the various bodies concerned were coordinated.

The meeting rose at 5.55 p.m.