



**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 90th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 25 November 2008, at 10 a.m.

Chairperson: Mr. EL JAMRI

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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 (agenda item 3) (*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 Salvadoran delegation resumed places at the Committee table.*

2. Mr. LARIOS LÓPEZ (El Salvador) drew attention to a number of social plans and programmes that El Salvador had put into effect since 2005 to guarantee every citizen decent living conditions. Most of them comprised three sections. The first concerned poverty reduction, including measures to eliminate the disparities between urban and rural areas, with priority until 2009 going to the 100 poorest municipalities, and measures to guarantee universal access to primary education and basic health care in remote and disadvantaged areas. The second section concerned the development of basic services, particularly piped water and sanitation, and the electrification of rural areas. The third section concerned productive projects, especially on behalf of 100,000 extremely poor families. More than 6,000 microloans had already been granted, most of them to women to enable them to start small businesses and meet their families' basic needs. The "Alianza por la Familia" (Alliance for the Family) programme, in which the Government intended to invest 54 million dollars, comprised 19 measures, chief among them the abolition of fees for high-school students from 2008, large-scale recruitment of teachers, the awarding of more scholarships to prevent school dropout by adolescents forced to work to meet their families' needs and an obligation for employers to continue paying their full wage to women who took maternity leave. Among measures to alleviate the effects of the economic crisis, the Government had decided to freeze all tariffs for electricity and other energy sources.

3. Ms. RIVAS POLANCO (El Salvador), replying to questions put by Committee members at the previous meeting, said that the Office of the Deputy Foreign Minister for Salvadorans Abroad, which had been established in 2004, was responsible for helping people, whatever their migration status, who were injured or left handicapped because of an accident during their journey to their destination country. The Office contacted the transit or destination country in order to provide the handicapped with practical assistance, including prostheses. His country maintained close ties with Mexico, where most accidents occurred. On their return to El Salvador everyone concerned naturally had access to health care and no effort was spared to facilitate their access to the job market. In the case of work accidents suffered by Salvadorans abroad, the Office contacted the Salvadoran consulate in the destination country to obtain compensation for the workers from their employers. In 1999 his country had, with the assistance of the International Organization for Migration (IOM), set up a national fund for the repatriation of Salvadoran migrants. There was also a regional repatriation and aid fund for migrants in particularly vulnerable situations.

4. All children of migrants had access to schooling, irrespective of their migration status. Responsibility for protecting unaccompanied minors intercepted in El Salvador and for ensuring observance of their rights during repatriation lay principally with the National Institute for the Comprehensive Development of Children and Adolescents (ISNA). The first step was to determine

the unaccompanied minor's identity and age. It was usually the State of origin which paid the repatriation costs, but the family could be called on to do so if it could afford it. Minors aged under 12 were asked whether they wanted to be repatriated or not because the Salvadoran authorities had found that the children were often exploited in their families. Whatever the case, ISNA prepared a report on the child's psychological and social situation which was sent to the competent authorities. All in all, his country's authorities were very attentive to the problems that migrants' children could face.

5. There were currently nine "protection consulates", eight in Mexico and one in the United States of America, and it was planned to set up seven more, mostly along migrants' route to the United States. Protection consulates' duties were to protect Salvadoran migrants, most of whom were in an irregular situation, to ensure that their rights were respected and to assist them during repatriation to El Salvador. In emergencies, such consulates also helped non-Salvadoran migrants.

6. The social plans and programmes mentioned by Mr. Larios López were carried out in poor localities where the emigration rate was high and the inhabitants were likely to become clandestine migrants. A communication strategy emphasized the problems clandestine migration could cause: inter alia, short messages were broadcast on radio and television. In addition, the Ministry of Education had launched a campaign entitled "The Dangers of the Road to the North". A study supported by an inter-institutional group comprising UNICEF, the United Nations Population Fund, the United Nations Development Programme and the International Organization for Migration and coordinated by the Office of the Deputy Foreign Minister for Salvadorans Abroad had been undertaken to assess the consequences of child migration. Within the country the consequences of migration were particularly visible in family structure, interpersonal relations and consumption patterns. The 2.5 million Salvadorans resident abroad maintained very close social and cultural ties with their families in El Salvador and made regular remittances that in 2007 had totalled 3.7 billion dollars, or 18% of GDP. Migration was such a large feature of it that Salvadoran society could be considered transnational.

7. Ms. FLAMENCO (El Salvador) said that El Salvador did not currently have any readmission agreements with other countries. An agreement with the European Union was under negotiation; if the negotiations were successful, bilateral agreements would have to be concluded with Italy and Spain. Repatriations had so far been forced rather than voluntary, which was why the Government had established the Welcome Home programme. That programme now comprised a second phase that would help gradually to resolve returning Salvadorans' problems and to further their reinsertion. Her country had signed two memorandums of understanding concerning repatriation, one with Guatemala and the other with Mexico. There was also a regional memorandum of understanding between Mexico, El Salvador, Guatemala, Honduras and Nicaragua concerning the humane, orderly, swift and safe repatriation by land of migrant Central American nationals. It had been signed in 2006 and provided for differing treatment for girls, boys, unaccompanied adolescents and women. On 8 November of the current year, the signatory countries had reviewed that instrument and proposed a series of amendments; negotiations were under way to apply the memorandum to air travel to El Salvador by unaccompanied minors. Between 2005 and the current year a large number of Salvadorans, especially children, had been repatriated by land under those memorandums. Her country was currently working closely with Mexico and other countries in the region on a procedural guide to improve the repatriation of Central American nationals.

8. There were regional guidelines for the protection of trafficked children and adolescents who were repatriated. Since 2007, her country had had its own procedural guide for the repatriation of trafficked minors; it concerned both foreign children returned to their countries and Salvadoran children returned to El Salvador. The procedure for the repatriation of children aged 12 or more was the same as for adults, meaning that, when such children were found by the National Civil Police (PNC), the migration authorities or ISNA, they were informed of the procedure that would be applied to them. The consulate of the child's country of origin was also informed so that it could issue the necessary documents. Children from Nicaragua and Guatemala had been repatriated under that procedure. When the children were the victims of offences, the Procurator's Office was also called in, but it was not empowered to decide whether the child could or could not be repatriated. Children who had committed an offence could not be prosecuted if they were less than 12 years old. Those aged between 12 and 18 were subject to juvenile criminal law and their cases were referred to the juvenile courts; following the proceedings, they were handed over to the repatriation authorities. In all, 89 minors had been repatriated from El Salvador in 2007 and 51 in the current year. The handbook on administrative and legal procedures for the "*Centro de atención integral*" migrants' aid centre had been drawn up in conjunction with the PNC. The first part described the principles, scope and objectives of the handbook, the structure of the centre and the functions and responsibilities of the centre's staff, while the second concerned mostly procedure. The handbook had been signed by the Minister for Public Security, who was responsible for the PNC and the Directorate-General for Migration and Aliens.

9. Mr. GUERRA (El Salvador), replying to Mr. Alba's question concerning statistics on trafficking of migrants, said that since February 2004 matters relating to trafficking had been the responsibility of the PNC's Frontiers Division. That division, which was now responsible for assisting the Office of the Procurator in investigating cases of trafficking, worked both locally and internationally. By 2007, 154 cases concerning a total of 280 victims had been opened and had led to 140 arrests. The difference between the Office of the Procurator's figures and those of the Frontiers Division was attributable to the fact that the Procurator's San Salvador office focused on regional cases, whereas the Frontiers Division had to coordinate with the Procurator's other offices nationwide.

10. Mr. CASTRO GRANDE (El Salvador) said that migrant workers in a regular situation were entitled by article 47, paragraph 1, of the Constitution and article 204 of the Labour Code to form associations and join trade unions. His country had no precise figures on the number of migrant workers who belonged to trade unions. Article 47, paragraph 4, of the Constitution provided that certain conditions, particularly that of being Salvadoran by birth, must be met to be a member of a trade union's governing body. His country had ratified International Labour Organization (ILO) Conventions Nos. 87 and 98, respectively the Freedom of Association and Protection of the Right to Organise Convention and the Right to Organise and Collective Bargaining Convention, in 2006 and was therefore a party to the eight core ILO conventions. The provisions of international instruments ratified by El Salvador were transposed into domestic law. He pointed out that, in its general survey of 1994 concerning Conventions Nos. 87 and 98, the ILO Committee of Experts on the Application of Conventions and Recommendations had said with regard to eligibility and in particular nationality that "legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country". The Committee of Experts would examine his country's report on the application of those two conventions in November and December of the current year and

the Government would pay close attention to the conclusions and recommendations that it made. El Salvador was not a party to ILO Convention No. 118, the Equality of Treatment (Social Security) Convention, but had acceded in June of the current year to the Ibero-American Multilateral Convention on Social Security, under which migrant workers could receive in their country of origin social security benefits, such as a retirement or disability pension, that they had earned while working abroad. That rule applied to both employed and self-employed workers and to members of their families. The Multilateral Convention also provided that persons who had worked in several Latin American countries could receive their pension in any of them. Administrative cooperation between social security systems was encouraged with a view to avoiding all delay and discrimination in the payment of benefits.

11. Ms. ALFARO (El Salvador) said that, with a view to helping their owners find work, the personal belongings and professional equipment of persons entering El Salvador were exempt from customs duty. Such persons could also import duty-free new personal effects to a maximum value of 1,000 dollars. Salvadorans who returned to the country for good after living abroad for more than three years could re-import duty-free personal effects to a maximum value of 15,000 dollars.

12. Mr. KARIYAWASAM asked if, as in many other countries and because of ignorance of the provisions of the Convention, the Salvadoran border police subjected migrants, whether they were asylum-seekers, undocumented persons, persons in an irregular situation or victims of human trafficking, to criminal penalties simply because they were migrants. He also asked if border guards were taught about migrant workers' rights. Referring to the written reply concerning item 6 in the list of issues, he asked whether there were still training workshops on human trafficking for police officers and immigration service officials and, if not, what plans there were to train the police and border guards in respect for migrants' rights. He invited the delegation to comment on the expulsion referred to in the reply concerning issue 12, which had taken place before the outcome of the migrant's application for habeas corpus had been known.

13. Mr. TAGHIZADE, noting that El Salvador's total population had variously been put at 5, 6 or even 7 million, asked whether the figures from the 2007 census were correct and whether the census had taken into account Salvadorans abroad.

14. Mr. ALBA (Country Rapporteur) asked what was the real scope of the agreements on free movement of persons concluded between the CA-4 countries (El Salvador, Guatemala, Honduras and Nicaragua) and approximately how many nationals of those countries had taken advantage of the transit opportunities under those agreements to take up illegal temporary, seasonal or permanent work in El Salvador. Since, according to the written replies, the migrants' aid centre had a total capacity of 80 migrants but currently only housed five, he would welcome any general estimate of the number of people in an irregular situation in El Salvador. It would also be helpful to know whether El Salvador had really become an important transit country and what the Government's policy was regarding the aspects of migration he had mentioned.

15. He hoped the delegation would clarify exactly how long people with a work permit had to leave El Salvador when their contract of employment expired and whether children born to undocumented migrant workers in an irregular situation were in practice given Salvadoran nationality. He also wished to know whether the Government intended to withdraw the reservations it had entered to articles 46, 47, 48 and 61, paragraph 4, of the Convention.

The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

16. Ms. ALFARO (El Salvador) said that the Government had made not reservations but declarations concerning articles 46, 47, 48 and 61 of the Convention. Consequently, all migrant workers in El Salvador were entitled, subject to prior payment of the relevant taxes, to transfer their earnings, savings, goods and personal effects to their country of origin.

17. Ms. FLAMENCO (El Salvador) said that there had been a variety of training modules for migration officers, particularly new recruits, during the current year. They had been held with the assistance and participation of the Office of the Procurator for the Protection of Human Rights and the topics covered had included the Convention and repatriation. It was true, however, that migration officers, who were stationed at the borders or worked in various branches of the Directorate-General for Migration and Aliens or on patrol, had a greater and permanent need for training in migrants' rights. In 2009, it was planned to hold in-depth training sessions specifically devoted to the study of the various parts of the Convention for all concerned: not only migration officers, but also staff of the National Civil Police, the Office of the Procurator and the Ministry of Labour. All proposals, suggestions and offers of assistance in that regard would be welcome.

18. El Salvador had applied the principle of free movement between the CA-4 countries with respect to transit across peripheral and intermediate frontiers, but not to the right to work, since June 2006. Hence Guatemalans, Hondurans, Nicaraguans and Salvadorans had the right to enter and leave each other's countries temporarily or permanently with ordinary identity papers and, except in the case of minors, without a passport; they did not have the right to work. Further agreements currently under study or gradually being adopted concerned the introduction by the CA-4 countries of common restrictions on migration, as well as the introduction of a Central American visa, a Central American passport and a Central American residence permit. The countries of Central America were encountering the same obstacles to integration in those regards as the countries of the European Union.

19. There having been no targeted census, her delegation could not at present give any reliable estimate of the number of persons in an irregular situation in El Salvador. The only figure it had was that for the total number of holders of residence permits registered with the competent authorities, which was 32,104.

20. The Directorate-General for Migration and Aliens was well aware that all orders for the expulsion or repatriation of migrants who applied for habeas corpus were suspended pending the final decision. The case mentioned in the written replies was an exception: it concerned a Colombian who had claimed on his arrest to have Guatemalan nationality and had submitted an appeal to the Constitutional Chamber of the Supreme Court of Justice, which was independent of the relevant executive organ. The migration authorities had therefore only been notified of the suspension of the procedure by the Constitutional Chamber after the person in question had been expelled. The Supreme Court had still not ruled on the case.

21. The Salvadoran authorities systematically awarded initial one-year residence permits to foreigners who came to work in the country. Those permits could subsequently be extended on request. Although the Migration Act provided that the Directorate-General for Migration and Aliens must immediately order aliens whose occupational link with El Salvador was broken to

leave the country, in practice and in accordance with the Convention such persons had 90 days to apply for a new work permit, which was granted in the event of marriage with a Salvadoran woman or conclusion of a new employment contract, etc., or to make arrangements for their departure.

22. There were no particular provisions in the Migration Act concerning children born in El Salvador to migrant workers in an irregular situation. With respect to family status the Act made no distinction between Salvadorans and non-Salvadorans, whether or not they had identity papers. Hence aliens in an irregular situation could perfectly well register their children in order for them to obtain Salvadoran nationality, providing they could produce some form of identification bearing a photograph.

23. El Salvador had recently become a transit country on the route used by migrants, most of whom were South American or Chinese, seeking to reach the United States or Canada. The policy of the Directorate-General for Migration and Aliens towards them was not repressive: the Directorate made no migration check when transit was by air; in the event of overland transit, the PNC made the usual identity checks and only arrested smugglers and “mules”, giving migrants, even those with false identity documents, the benefit of the doubt so that they could continue their journey.

24. Ms. RIVAS POLANCO (El Salvador) said that according to the 2007 census her country had a population of 5,743,103, not counting the 3 million Salvadorans who lived abroad, 90% of them in the United States. El Salvador was a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It had established the National Committee against Trafficking in Persons in 2006 and had a national policy to eliminate such trafficking. It also had a strategic plan for the period 2008-2012 that included a section on prevention, in which connection it had developed together with civil society organizations and other institutions systematic training on issues relating to human trafficking for PNC officers, staff of the Directorate-General for Migration and Aliens and the Office of the Procurator and judges. Recognizing the importance of training concerning human trafficking, it was determined to continue its efforts in that regard and willingly worked with neighbouring countries (Guatemala and Mexico) to that end.

25. Mr. GUERRA (El Salvador) said in answer to the question about criminalization of migrants that the powers of the police regarding surveillance of the country's borders and communication routes were defined in article 4, paragraph 12, of the PNC Organization Act. Under article 60, paragraph 2, of the Migration Act, police officers and other administrative authorities had to report offences, together with all the information needed to decide whether a repatriation order was warranted, to the Directorate-General for Migration and Aliens, which was in turn responsible for ensuring that all the relevant safeguards were observed during repatriation.

26. There were several programmes aimed at informing police officers of migrants' rights, as well as at preventing and combating smuggling and trafficking of persons. Under them, border surveillance personnel had been given training concerning the provisions of the Convention, refugee issues, smuggling of persons, the problems encountered by women, human rights and human smuggling and trafficking. In 2007, 480 people had received such training; in the current

year, 180 people had been trained in the principles set forth in the Convention. PNC officers had also been trained in information analysis and processing and in detecting false identity papers.

27. Mr. ALBA (Country Rapporteur) congratulated the delegation on having given competent and professional responses that demonstrated El Salvador's determination to respect and defend the rights of all migrant workers without distinction. The presence of decision-makers and officials responsible for the application of national migration policy had been especially welcome. The very fruitful exchange with the delegation had unquestionably helped the Committee in its task of learning how States applied the Convention and monitoring and furthering their efforts to that end.

28. The Government's approaches to migration issues, particularly the role of cooperatives in transferring money, constituted good practices on which other countries could usefully draw. The Government was to be commended for having recognized that reform of domestic law and national standards was a continuing process aimed at, without ever really attaining perfection. The reforms undertaken were a first stage; others would follow. The Committee would seek to formulate concluding observations that would assist El Salvador in its efforts.

29. Mr. KARIYAWASAM commended the delegation for the high quality of its information and El Salvador for its efforts to apply the Convention. The Committee was well aware what difficulties the Government faced because Salvadorans' destination countries were not parties to the Convention and would draw up its comments and recommendations so as to help it apply the Convention better, to the benefit of the migrant workers who played an important role in the national economy.

30. The CHAIRPERSON thanked the delegation for its frank dialogue with the Committee. It was regrettable that the written replies to the list of issues had arrived too late to be translated. He commended the members of the delegation for their competence and welcomed the presence of a representative of the national police with in-depth knowledge of migration issues. El Salvador, as both a country of origin, transit and destination for migrants and a country facing development challenges, showed great dynamism regarding migration and was an excellent example of good practice. The Committee hoped it would continue its efforts and would seek to include in its concluding observations recommendations to that end so as to help it implement the Convention more fully.

31. Mr. LARIOS LÓPEZ (El Salvador), thanking the Committee for the time it had given to the consideration of his country's initial report, said that the Committee's comments and recommendations would be given all due attention. His country intended to shoulder all its responsibilities: the steps so far taken to that end were "first generation" measures and the delegation expected to be able to present the results of the "second generation" at a future meeting.

The meeting rose at 12.40 a.m.
