



# 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 245th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 1 April 2014, at 3 p.m.

*Chairperson:* Mr. Carrión Mena

*later:* Mr. Taghizade

## Contents

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

*Second periodic report of El Salvador*

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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)*

*Second periodic report of El Salvador (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. *Mr. Taghizade (Vice-Chairperson) took the Chair.*
3. **Mr. García** (El Salvador) said that the second periodic report was the fruit of collaboration between the Government, the judiciary and some civil society organizations. Although the country had made great strides in various areas covered by the Convention, it had to be acknowledged that adopting a comprehensive and coherent approach to migration remained a significant challenge. The defence of migrants' rights, which was at the heart of the current Government's policy, fell primarily to the Vice-Ministry of Foreign Relations for Salvadorans Abroad.
4. Among the substantial advances on migration issues, it was particularly worth noting the adoption, on 24 January 2013, of the Special Act on voting from abroad in presidential elections, which granted Salvadorans living abroad the right to vote. Progress had also been made in disseminating the Convention; for example, employers and public servants working on migration issues had received training in its provisions. The Government had made considerable efforts to collect disaggregated statistical data and information on migration flows. However, it did not have statistical data on migrants from Central America because they were covered by the CA-4 agreement on freedom of movement in Central America. Furthermore, the Labour Code gave Central American workers the same status as national workers.
5. Between 2009 and 2012, the Ministry of Health had implemented various measures to ensure adequate health-care provision for migrants, resulting in tens of thousands of migrants receiving emergency or day-patient care. The Ministry of Education, for its part, had lobbied for the Child and Adolescent Protection Act, which had been adopted in 2009 and provided for free education up to the secondary level, including for migrant children. As part of efforts to align national legislation with the Convention, in 2011 the Government, in conjunction with civil society and Government bodies dealing with migration issues, had resumed work on the bill to amend the 1958 Act on Migration and Foreigners. Once it had been considered by the Presidential Secretariat for Legislative and Legal Affairs, the bill would be submitted to the Legislative Assembly for adoption.
6. The Act on the Protection and Advancement of Salvadoran Migrants and Members of Their Families, which enshrined the fundamental principles for the protection of Salvadoran migrants, had been adopted in 2011. Pursuant to the Act, the National Council for the Protection and Advancement of Migrants and Members of Their Families, which was made up of representatives of public entities, universities, migrant associations and civil society organizations, had been established in 2012. Furthermore, the Directorate-General for Migrants and Foreigners had set up a project for the reintegration of returnees as part of its "Welcome Home" programme. Despite the Government's austerity policy, the Office of the Human Rights Advocate had seen an increase in its human and financial resources since 2009. Moreover, a unit for the promotion and protection of the fundamental rights of migrants had been set up within the Office of the Deputy Advocate for Civil Rights, and the National Council to Combat Trafficking in Persons had been established in 2011.

7. Regarding the children of migrant workers, child protection councils, which existed countrywide, had the authority to handle all cases of children's rights violations in the areas of education and health. In addition, the Child and Adolescent Protection Act, the National Council for Child and Adolescent Protection and the national policy on children and adolescents (2012–2013) guaranteed the observance of the rights of all children, including migrant children. Having noted an increase in the number of unaccompanied migrant children, the Government had resolved to tackle the issue.

8. In the matter of administrative and judicial remedies, migrant workers had the same rights as Salvadoran nationals and could, if necessary, be given the services of an interpreter. Discrimination in employment was an offence under the Criminal Code, punishable by imprisonment. Expulsion decisions were taken on a case-by-case basis by the competent authorities under the relevant procedures, but El Salvador had not to date expelled any migrant workers or members of their families. Moreover, article 26 of the Migration Act, which obliged migrant workers to leave the country once their employment contract expired, was not enforced because it breached the Convention. It should be noted that in judicial proceedings, migrants, whether victims or defendants, had the same rights as Salvadoran nationals.

9. The competent national institutions had endorsed the possibility of making the declarations provided for in articles 76 and 77 of the Convention. A proposal to that effect from the Secretariat for Legislative and Legal Affairs would be submitted to the President, and subsequently to the Legislative Assembly. The Government was also considering the possibility of ratifying the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the ILO Domestic Workers Convention, 2011 (No. 189).

10. **Ms. Velásquez de Avilés** (El Salvador) said that officials of the Government entities responsible for migration issues received training in migrant rights. The Government planned to promote equal rights between migrants and Salvadorans in its 2015 programme. Given that labour law was often flouted in the context of migration, the Government also aimed to accede to ILO Convention No. 189.

11. **Mr. Carrión Mena** said that he wondered how reliable and relevant the statistical data were that formed the basis for the State party's migration policies. He requested further information on the "Welcome Home" programme, relations between the Government and NGOs working on behalf of migrants, and measures taken to protect migrants who were victims of trafficking. He invited the delegation to provide statistical data on remittances sent by Salvadorans working abroad and to indicate whether there was a mechanism in place to channel those remittances towards productive sectors of the economy rather than consumption.

12. He enquired about Government efforts to combat corruption in the context of migration procedures and guarantee the protection of female domestic workers and migrant children. He wished to know whether there was a link between migration and acts of violence committed by youth gangs and what action the Government was taking to combat such violence. Had the State party reached an agreement with the Government of the United States of America to take in Salvadorans expelled from the United States?

13. **Mr. Ceriani Cernadas** requested additional information on how the activities of the various institutions working on migration issues were coordinated as well as on the implementation and impact of consular assistance protocols aimed at promoting and protecting the rights of Salvadorans living abroad. He also wished to know more about the public policies implemented for the benefit of children whose parents had emigrated. Recalling that migrant children should not be deprived of their liberty, he asked what action

the Government was taking, through its consulates, to protect migrant children, especially those transiting through Mexico. He also asked whether steps had been taken to make it possible for children to join their parents who had emigrated to the United States and for migrant children to recover their rights when they returned to El Salvador.

14. He enquired about the state of progress on the bill to amend the 1958 Act on Migration and Foreigners. He requested further details on the procedures for regularizing the situation of undocumented migrants and on the enforcement of the relevant legislation. He also wished to know whether children born in El Salvador to migrant parents in an irregular situation automatically received Salvadoran nationality. He invited the delegation to describe measures taken to combat xenophobia towards migrants at the local level and to provide updated information on the searches undertaken to find Salvadoran migrants who had disappeared in Mexico and the measures taken to protect their rights.

15. **Mr. El-Borai** asked whether the bill intended to replace the 1958 Act on Migration had been adopted or whether it was still being drafted. Specifically, he wished to know whether the new law would integrate the provisions of articles 25, 28, 30 and 40 of the Convention regarding working conditions, medical care, the right of access to education for migrant children and trade union rights. He enquired about the role of NGOs in the preparation of periodic reports. He wished to know what training was provided to public servants working on migration issues at the national and local levels.

16. **Ms. Ladjel** said that the figures provided by the delegation were insufficient for a proper assessment of the situation. She enquired about El Salvador's current migration strategy and whether the State party considers itself a country of destination, transit or origin for migrants. She also asked whether the State party had a policy on family reunification and whether vulnerable persons whose families had left the country or who had arrived alone received special attention.

17. **Mr. El Jamri** requested further details about the policy to reduce the number of undocumented Salvadoran migrant workers and its results. He wished to know how many training initiatives on migrant rights had been carried out and what their content and impact had been. He asked whether the State party had statistical data on Salvadorans living abroad and whether persons who entered the country on a 90-day CA-4 visa were considered as workers or tourists. He requested information on how the migrant health-care costs mentioned in the report had been calculated, whether they took account of workers' contributions and whether the cost of other services, such as education, was calculated in the same way. He also requested additional information on the social security system.

18. He asked what position the National Migrants' Council occupied in the country's institutional order and whether its decisions were binding. He enquired about the state of collaboration between El Salvador and its neighbouring countries on migration policy and about differences in the treatment of migrants from countries in the region and other countries in terms of access to basic health care and pre-expulsion detention.

19. **Mr. Haque** asked how the Government collaborated with civil society to encourage the population to adopt a positive attitude towards migrants and what measures had been taken to protect persons in transit, especially unaccompanied minors and women.

20. **Mr. Núñez-Melgar Maguiña** asked whether the State party had statistics on the number of migrants in an irregular situation living in the country. Pointing out that the information on Nicaraguan migrant workers provided in the report was very approximate, he asked why it was so difficult to determine to which category they belonged. He requested further information on the number and status of migrants from other continents.

21. He wished to know what civil society entities other than NGOs had helped prepare the report. He requested additional information on the multisectoral consultations with civil

society under way since 2010 in preparation for ratifying ILO Conventions Nos. 97 and 143 and on any steps taken by the Government since March 2013 to review its declarations under articles 32, 46, 47, 48 and 61, paragraph 4, of the Convention.

22. **Mr. Pime** welcomed the increase in the resources allocated to the National Human Rights Institution and enquired about the impact of that measure.

23. **Mr. Brillantes** asked what legal provisions could be invoked to challenge expulsion orders and what amendments had been made to legislation on expulsion procedures to ensure that migrants in an irregular situation were afforded due process and that appeals had a suspensive effect. He wished to know whether the programmes implemented in 2011 for Nicaraguans in an irregular situation had been extended to nationals of other countries.

24. **Mr. Tall** asked what action had been taken on the Committee's 2008 recommendations, in particular regarding discrimination in employment, and whether any specific measures had been taken to guarantee access to employment for all migrant workers and members of their families. Had civil society been involved in the implementation of the recommendations and what difficulties had arisen?

25. Recalling that, in 2008, only Salvadorans by birth could be trade union leaders, he asked whether the Committee's relevant recommendation had been acted upon. The Committee had also invited the State party to abrogate article 26 of the Migration Act, which obliged migrant workers to leave the country upon termination of their contracts. It was true that that provision was no longer applied, but it still had not been abrogated. What was preventing its repeal since the State party had acknowledged that the article breached the Convention?

26. **Ms. Castellanos Delgado** recalled that young people who migrated northwards in search of a better quality of life suffered enormously during migration and fell victim to organized crime in the region. Given that countries of transit were under the obligation to protect them, she asked what measures, the Government took to address that serious issue, including within the Central American integration system.

*The meeting was suspended at 4.35 p.m. and resumed at 5.10 p.m.*

27. **Mr. García** (El Salvador) said that most Central American migrant workers were from Guatemala, Honduras and Nicaragua. The CA-4 agreement on freedom of movement in Central America, which had been concluded with those three countries, stipulated that their nationals were entitled to a 90-day temporary residence permit. According to data from the consular registry of Salvadorans abroad and other sources, the number of Salvadorans living abroad was estimated at just under 3 million, including 2.5 million in the United States, 60,000 in northern Italy and 50,000 in Belize.

28. In 2011, an observatory had been set up as part of the Salvadoran consular network in southern Mexico in order to track migration flows through Mexico towards the United States, ascertain the most common violations of migrant rights and engage in meaningful dialogue with the other countries concerned. Preliminary findings appeared to show that the border between Guatemala and Mexico was a border in name only because the cost of crossing the Suchiate River was only 10 Mexican pesos, or less than US\$ 1. The true border between Central America and the United States was between the ports of Lázaro Cárdenas and Coatzacoalcos, on the Tehuantepec isthmus. It was a violent area where human rights were regularly violated. The only specific data on the number of Salvadorans abroad were drawn from censuses conducted in countries of destination; for example, between 2000 and 2010, 276 Salvadorans had entered the United States daily and had been allowed to remain there legally. In fact, Salvadorans constituted the second largest Hispanic group, after Mexicans.

29. As indicated in paragraphs 27 to 30 of the periodic report, since 2009 there had been an ongoing dialogue between the authorities and civil society on matters of public policy, including policy on migration. The dialogue had led to the adoption, in 2011, of the Act on the Protection and Advancement of Salvadoran Migrants and Members of Their Families, which had provided for the establishment of the National Migrants' Council composed of representatives of seven public entities, the diaspora, public and private academia, migration NGOs and entrepreneurs. The Council, which was currently drafting a national policy on migration, was also tasked with formulating policies on protecting and monitoring the implementation of migrants' rights, as well as strengthening ties with the diaspora with a view to boosting the country's development. Its decisions were binding on the relevant migration authorities. Despite being funded by the Ministry of Finance, the Council operated independently and autonomously.

30. Collaboration with civil society had resulted in the establishment, in 2010, of a database that could be used to identify the remains of migrants who had died while in transit to the United States and the launching of a programme, in partnership with an NGO, to monitor and improve the living conditions of Salvadorans deprived of their liberty abroad. The Ministry of Foreign Affairs would shortly be submitting to the legislature an institutional policy on the protection of human rights and relations with the diaspora. The number of Salvadorans expelled from the United States and Mexico had risen from 10,000 in 2006 to more than 35,000 in 2013. In 2006, the Government had set up the "Welcome Home" programme to facilitate the return and reintegration of Salvadorans into social and professional life, in part by providing them with a minimum assistance package and the means of staying in the country. In addition, the Government had signed a memorandum of understanding with the United States which established rules of dignity and humanity in expulsion procedures. Agreements had also been reached with the Government of Mexico guaranteeing that if unaccompanied minors and vulnerable individuals were expelled, full account was taken of their dignity and rights and that the best interests of the child prevailed in the event of expulsion.

31. The Government was stepping up anti-trafficking efforts. The National Council to Combat Trafficking in Persons had been established in 2012, in cooperation with the International Organization for Migration and civil society, among other partners. Furthermore, civil society organizations had been involved in designing an anti-trafficking policy (2013–2023) and strong efforts were being made to criminalize trafficking. Noteworthy progress on the protection of trafficking victims had been achieved through collaboration with the Salvadoran Institute for the Advancement of Women and the Salvadoran Institute for Child and Adolescent Development. In addition, regional anti-trafficking programmes were being conducted in the context of the Regional Conference on Migration.

32. **Mr. Ceriani Cernadas** emphasized the importance of qualitative data, on such matters as the causes of migration and the situation of migrants in transit, and asked whether the bilateral agreements on the repatriation of minors provided that the child's best interests should always be taken into account and that children should not necessarily be repatriated to El Salvador, for example if their family lived elsewhere.

33. **The Chairperson** requested the delegation to provide more detailed information, especially on the repatriation of minors.

*The meeting rose at 6 p.m.*