



**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
24-28 November 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 74 OF THE CONVENTION**

**Concluding observations of the Committee on the Protection of the Rights
of All Migrant Workers and Members of Their Families**

EL SALVADOR

1. The Committee considered the initial report of El Salvador (CMW/C/SLV/1) at its 89th and 90th meetings (see CMW/C/SR.89 and SR.90), held on 24 and 25 November 2008, and adopted the following concluding observations at its 95th meeting, held on 27 November 2008.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party as well as the replies to the list of issues which enabled the Committee to gain a better understanding on the implementation of the Convention in the State party. The Committee also welcomes the constructive and fruitful dialogue initiated with a competent high-level delegation.
3. The Committee recognizes that El Salvador is mainly known as a country of origin, but is also a country of transit and destination, with significant numbers of migrant workers, in particular Guatemalans, Hondurans and Nicaraguans in its territory.
4. The Committee notes that some of the countries in which El Salvador migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee notes with appreciation the opening on 7 July 2008 of the migrants' holding centre "Centro de Atención Integral para Migrantes" in San Salvador, which improves the detention conditions of migrants awaiting deportation.
6. The Committee also notes with appreciation the different initiatives taken by the State party to combat trafficking in persons, including the creation of a National Committee Against Trafficking in Persons, the inauguration in 2006 of a shelter for victims of trafficking and the inclusion of trafficking in persons as a crime under Salvadoran criminal law.
7. The Committee further notes with appreciation the information provided by the State party on the preparation and development of guidelines, manuals and standard procedures, particularly in regard to repatriation of children and victims of trafficking, which compile best practices in the area of migration.
8. The Committee welcomes the efforts of the State Party to promote and protect the rights of Salvadoran migrant workers abroad, including by appointing a Vice-Minister for Salvadorans Abroad in 2004, and by opening protection consulates.
9. The Committee also welcomes the conclusion by the State Party of bilateral and multilateral agreements, at the regional and international level, with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.
10. The Committee further welcomes the ratification of the following instruments:
 - (a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 17 May 2004 and 18 April 2002 respectively;
 - (b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 18 March 2002;
 - (c) International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 1999, ratified on 12 October 2000.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

11. The Committee notes with concern that the draft migration and aliens act, which incorporates some of the provisions of the Convention, remains under consideration by the President's office and has not been submitted for consultation with the National Human Rights Institution (*Procuraduría para la Defensa de los Derechos Humanos*) or civil society.
12. **The Committee encourages the State party to take all necessary measures for the prompt harmonization of its legislation, including in particular the current migration and aliens laws, with the provisions of the Convention.**
13. The Committee notes that El Salvador has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.
14. **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**
15. The Committee notes that El Salvador has made declarations regarding articles 46, 47, 48 and 61, paragraph 4, of the Convention, which may impede the full enjoyment of the rights enshrined in those provisions.
16. **The Committee encourages the State party to review its declarations regarding articles 46, 47, 48 and 61, paragraph 4, of the Convention, with a view to withdrawing them.**
17. The Committee notes that El Salvador has still not acceded to ILO Migration for Employment Convention No. 97 (1949) or to ILO Convention No. 143 (1975) on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions).
18. **The Committee invites the State party to consider acceding to ILO conventions No. 97 and No. 143 as soon as possible.**

Data collection

19. The Committee welcomes the information and statistics provided by the State party but regrets the paucity of information on migration flows and on other migration-related issues. The Committee recalls that such information is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

20. **The Committee encourages the State party to create a sound and coordinated database, in line with all aspects of the Convention, including systematic data - as disaggregated as possible - as a tool for effective migration policy and for the application of the various provisions of the Convention. When supplying precise information is not possible, for instance with respect to migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.**

Training in and dissemination of the Convention

21. The Committee notes the information provided by the State party on training programmes on the Convention for relevant public officials, such as border police officers and migration officials.
22. **The Committee encourages the State party to continue organizing training programmes on a regular basis for all officials working in the area of migration, including border police officers, social workers, judges and prosecutors and invites the State party to provide information in its second periodic report on any such training programmes.**

2. General principles (arts. 7 and 83)

Non-discrimination

23. The Committee is concerned at the information that migrant workers and members of their families may suffer from various forms of discrimination in the area of employment.
24. **The Committee encourages the State party to:**
 - (a) **Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;**
 - (b) **Intensify its efforts by promoting information campaigns for public officials working in the area of migration, especially at the local level, and for the general public on the elimination of discrimination against migrants.**

Right to an effective remedy

25. The Committee takes note of the information received from the State party that every individual, regardless of his or her nationality, has access to the courts of law and enjoys protection of the rights laid down in the legislation, and that complaint mechanisms before the National Human Rights Institution are available for migrant workers. The Committee is nevertheless concerned that migrant workers, irrespective of their legal status, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them.
26. **The Committee encourages the State party to strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and**

to address their complaints in the most effective manner. It recommends that the State party ensure that, in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress mechanisms before the courts, including the labour courts.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

27. The Committee notes with concern that the procedure for expulsion/deportation is not fully regulated by law. The Committee further notes with concern that the right to seek a stay of the expulsion is not provided for in the law.
28. **The State party is invited to ensure that:**
- (a) **Migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by the competent authority following a procedure established by law and in conformity with the Convention, and that this decision can be reviewed on appeal.**
 - (b) **Pending such appeal, the person concerned shall have the right to seek a stay of the expulsion.**
29. The Committee notes with concern that it is not clear from the information provided by the State party how in practice it guarantees and monitors the equality of treatment of migrant workers in agricultural and domestic employment, in accordance with article 25 of the Convention.
30. **The Committee invites the State party to ensure in practice the right of equality of treatment of migrant workers, particularly migrant women, in agricultural and domestic employment and to take measures to effectively monitor the employment conditions of migrant workers in agricultural and domestic employment and requests the State party to report on any measures taken in this regard in its second periodic report.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

31. With reference to article 40 of the Convention, the Committee is concerned at the fact that article 47, paragraph 4, of the Constitution as well as article 225 of the Labour Code reserve to Salvadorans by birth the right to be part of the leadership of trade unions.
32. **The Committee recommends that the State party take the necessary measures, including legislative amendments, to guarantee to migrant workers and members of their families the right to form, and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention, as well as with ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise.**

33. The Committee is concerned that Salvadoran migrant workers abroad are not able to exercise their right to vote.
34. **The Committee encourages the State party to continue its efforts with a view to revising its legal framework and take other steps to facilitate the exercise of voting rights by Salvadoran migrant workers residing abroad.**
35. The Committee takes note of the explanations provided by the State party, that in recent practice migrant workers in El Salvador are given 60 to 90 days after expiration of their contracts in order to find new employment or change their migration status. The Committee notes with concern, however, that article 26 of the Migration Law, requires migrant workers to leave El Salvador upon termination of their contracts, regardless of the reason therefore, or else risk expulsion.
36. **The Committee recommends that the State party derogates article 26 of the Migration Law in order to ensure compatibility of its legislation with provision of the Convention, in particular articles 51 and 52.**

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57-63)

37. The Committee, while taking note of programme for the regularization of seasonal workers, which makes it easier for this type of workers, mainly Nicaraguans and Hondurans, to obtain work permits in the State party, is concerned at the information according to which seasonal workers may be subjected to inequitable working conditions, particularly because employers usually recruit them informally.
38. **The Committee recommends that the State party take all necessary measures to ensure to seasonal workers the enjoyment of the right to the same treatment as national workers, particularly in respect of remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of compliance with international standards in this regard.**
39. The Committee is concerned that frontier workers are at very high risk of being subjected to inequitable working conditions and other abuses.
40. **The Committee encourages the State party to implement as soon as possible the El Salvador-Honduras Pilot Project for regularization (*Plan Piloto El Salvador-Honduras*) aimed at improving the situation of frontier workers and invites the State party to include in its national legislation the definition of frontier worker and of specific provisions related to the protection of their rights in accordance with article 58 of the Convention.**

6. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71).

41. The Committee notes with satisfaction the existence of the “Welcome Home” (*Bienvenido a casa*) programme as well as a reception centre (*Centro de Atención a Migrantes Salvadoreños*) for Salvadoran migrants returning to their country.
42. **The Committee recommends that the State party continues developing the programme, in accordance with the principles of the Convention, with a view to assisting returning migrants in their sound reintegration into the Salvadoran economic and social fabric.**
43. The Committee takes note of the work of the Division for Humanitarian and Migrants’ Assistance in the repatriation of injured and deceased Salvadoran irregular migrants, and in the provision of medical assistance to injured migrants. Nevertheless, the Committee remains concerned at the various dangers that migrants encounter when they migrate irregularly.
44. **The Committee recommends that the State party, while continuing to provide assistance for the reintegration of the injured and the repatriation of the deceased, intensify its efforts in prevention campaigns that counter misleading information relating to emigration and raise awareness about the dangers in irregular migration. The Committee invites the State party to ensure the appropriate means, including sufficient funding, for these purposes.**
45. The Committee notes that the State party, through its Vice-Ministry of Foreign Relations for Salvadorans Abroad, is conducting a study on the impact of migration on children. The Committee nevertheless remains concerned about the situation of children in El Salvador, whose parents have migrated abroad, and the lack of information in this regard.
46. **The Committee encourages the State party to finalize the study on the impact of migration on children and to share its findings widely, with the aim of developing adequate strategies to ensure the protection and the full enjoyment by children of migrant families of their rights.**
47. The Committee, while acknowledging the initiatives taken by the State party to combat the phenomenon of trafficking in persons, is concerned about the lack of studies, analysis and disaggregated data in the State party to assess the extent of the phenomenon in, through and from the State party’s territory. The Committee also notes with concern the relatively low rate of convictions in the cases of trafficking that were brought before the courts.
48. **The Committee recommends the State party to evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking in persons, especially of women and children, and bring perpetrators to justice.**

49. The Committee takes note of the criminal cases initiated for the crime of smuggling of migrants, but remains concerned at the paucity of information on the convictions and sanctions imposed as a result.
50. **The Committee recommends that the State party intensify its efforts to counter migrant-smuggling, especially women and children, inter alia by taking appropriate steps to detect the illegal or clandestine movement of migrant workers and their families and bring those responsible to justice.**

7. Follow-up and dissemination

Follow-up

51. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Congress, as well as local authorities.
52. The Committee encourages the State party to involve civil society organisations in the preparation of the State party's second report.

Dissemination

53. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Salvadoran migrants abroad and foreign migrant workers residing or in transit in El Salvador.

8. Next periodic report

54. The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 December 2010.
