



# 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

### Concluding observations on the second periodic report of El Salvador\*

1. The Committee considered the second periodic report of El Salvador (CMW/C/SLV/2) at its 245th and 246th meetings (see CMW/C/SR.245 and 246), held on 1 and 2 April 2014, and adopted the following concluding observations at its 261st meeting (CMW/C/SR.261), held on 11 April 2014.

#### A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party using the simplified reporting procedure. The Committee commends the State party for its high-level delegation, headed by Mr. Juan José García, Deputy-Minister for Salvadorans Abroad at the Ministry of Foreign Affairs, and comprising the Permanent Representative of El Salvador to the United Nations Office at Geneva and other representatives of the Permanent Mission. The Committee appreciates the dialogue that took place between the delegation and the members of the Committee, as it has given the Committee a clearer understanding of how the Convention is applied in the State party.

3. The Committee is aware that El Salvador, as a country of origin of migrant workers, has made progress in protecting the rights of its nationals abroad. Nonetheless, it is also aware that, as a transit and destination country, El Salvador faces formidable challenges in terms of the protection of migrant workers' rights.

4. The Committee notes that some countries where Salvadoran migrant workers are employed have still not become parties to the Convention, which could constitute an obstacle to those workers' enjoyment of their rights under the Convention.

#### B. Positive aspects

5. The Committee welcomes the State party's efforts to promote and protect the rights of Salvadoran migrant workers abroad and commends the entry into force of the Special

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\* Adopted by the Committee at its twentieth session (31 March–11 April 2014).



Act on Voting Abroad in Presidential Elections (2013), as well as the Special Act on the Protection and Development of Salvadoran Migrants and their Families (2011).

6. The Committee applauds the implementation in the State party of the Project to Regularize Nicaraguan Citizens and their families in El Salvador in 2011–2012, which made it possible to regularize 400 people.

7. The Committee also applauds the State party's accession to the following international human rights instruments:

(a) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2011;

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2007.

## **C. Principal subjects of concern, suggestions and recommendations**

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

#### **Legislation and application**

8. The Committee again reiterates its concern at the State party's delay in referring the migration and aliens bill to the Legislative Assembly for discussion and approval, with the result that the current regulatory framework for migration (1958 Migration Act) still does not conform to international standards on the protection of migrant workers and members of their families, in particular the Convention.

**9. The Committee recommends that the State party take the necessary steps to ensure that the provisions of the migration and aliens bill are in conformity with the Convention, and urges it to bring the bill before the Legislative Assembly as soon as possible for approval.**

10. The Committee notes the information provided by the State party indicating that steps such as the ratification and implementation of the Multilateral Ibero-American Social Security Convention have been taken to ensure effective implementation of some of the articles of the Convention on which the State party has filed declarations, particularly article 32 of the Convention. The Committee nevertheless reiterates its concern at the fact that the State party has not withdrawn the declarations filed with respect to articles 32, 46, 47, 48 and 61, paragraph 4, of the Convention, which may impede the full enjoyment of the rights of migrant workers enshrined in those provisions.

**11. The Committee reiterates its recommendation that the State party take the necessary steps to withdraw its declarations on articles 32, 46, 47, 48 and 61, paragraph 4, of the Convention.**

12. The Committee notes that the State party is considering making the declarations provided for in articles 76 and 77 of the Convention.

**13. The Committee encourages the State party to make the declarations provided for in articles 76 and 77 of the Convention.**

14. The Committee notes the ongoing consultation process in the State party on the ratification of International Labour Organization (ILO) Conventions No. 97, concerning Migration for Employment (revised in 1949); No. 143, concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975; and No. 189, concerning Decent Work for Domestic Workers, 2011. It

nevertheless reiterates its concern at the fact that the State party has not ratified those Conventions.

**15. The Committee recommends that the State party take the necessary steps to ratify ILO Conventions Nos. 97, 143 and 189.**

#### **Data collection**

16. The Committee takes note of the State party's efforts to improve its system for collecting data on migration flows, particularly with regard to Salvadoran migrant workers abroad and migrant workers in a regular situation in the State party. Nevertheless, it regrets the lack of statistical information on migrant workers from Central America or outside the continent who are in an irregular situation in the State party. The Committee is further concerned at the lack of information on the different criteria required to evaluate the effective implementation of the Convention, in particular with regard to migrants in transit, migrant women, unaccompanied migrant children and cross-border and seasonal migrant workers.

**17. The Committee recommends that the State party step up its efforts to ensure that the system for the compilation of migration-related statistics covers all aspects of the Convention and that detailed data is collected on the status of migrant workers in the State party, those who are in transit and emigrants. It encourages the State party to compile information and statistics that are disaggregated by sex, age, reason for entry and departure from the country, and the type of work performed. In cases where it is not possible to obtain precise information, for example in the case of migrant workers in an irregular situation, the Committee would appreciate at least being supplied with information based on studies or estimates.**

#### **Training in and dissemination of the Convention**

18. The Committee takes note of the information provided by the State party regarding training programmes on the Convention for public officials, mainly in the Ministry of Justice and Public Security, particularly the Directorate-General for Migration and Alien Affairs, and in the Ministry of Labour and Social Security. The Committee is concerned about the lack of information regarding training programmes for border police, social workers, judges and prosecutors, officials of the Ministry of Foreign Affairs and other public officials who work in fields connected with migration.

**19. The Committee recommends that the State party develop continuing education and training programmes on the content of the Convention. It also recommends that such training be made available to all officials who work in migration-related areas, including at the local level. The Committee encourages the State party to ensure that migrant workers have access to information about their rights under the Convention and to work with civil society organizations to disseminate information on the Convention and promote its implementation.**

## **2. General principles (arts. 7 and 83)**

20. The Committee is concerned about the lack of information regarding measures adopted and in operation to safeguard the enjoyment by all migrant workers in the State party of rights provided for in the Convention. In particular, it is concerned by information it has received describing the discriminatory treatment to which migrant workers in an irregular situation are subjected, especially those from Honduras and Nicaragua in the east of the State party.

**21. The Committee recommends that, in accordance with article 7, the State party step up 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 discrimination; and that it work to raise awareness among local authorities, migration officials and the general public of the rights of all migrant workers and members of their families and of the importance of eliminating discrimination against them.**

22. The Committee reiterates its concern about the limited access to justice for migrant workers, regardless of their migration status, due to their lack of awareness of the administrative and judicial remedies available to them to file complaints and obtain effective redress. It is especially concerned about information provided by the State party, according to which cases of harassment and corruption affecting migrant workers are not investigated because they are not in a position to file complaints regarding such abuses and violations.

**23. The Committee recommends that the State party take measures to facilitate access to justice for all migrant workers, for instance by removing all obstacles preventing them from filing complaints for abuses and violations, running information campaigns on administrative and judicial remedies available for filing complaints and obtaining redress, and thoroughly investigating abuses and violations and punishing perpetrators as appropriate.**

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

24. The Committee takes note of information provided by the State party, according to which it is possible to appeal against expulsion orders. It is concerned about the lack of information on the extent to which migrant workers subject to expulsion proceedings make use of that right and on what has been done to pass legislation to fully regulate administrative deportation and expulsion proceedings in the State party, and about the lack of legal provisions guaranteeing the right to request the suspension of expulsion orders.

**25. The Committee recommends that the State party take the necessary steps to ensure that migrants who are subject to an administrative deportation or expulsion order are aware of and exercise their right to appeal against that order. The Committee likewise recommends that the State party take the necessary steps to ensure that administrative proceedings for deportation and/or expulsion are fully regulated by law and in accordance with article 22 of the Convention.**

26. The Committee takes note of progress made in improving and broadening the State party's consular services through the adoption of consular protocols for assisting and protecting the rights of Salvadoran migrant workers in transit and in the destination country. Nevertheless, the Committee is concerned by the lack of information on whether human and financial resources made available to the State party's consulates in southern Mexico and the United States of America are sufficient for them to provide migrant workers with proper assistance and protection.

**27. The Committee recommends that the State party take the necessary steps to ensure that its consular services can effectively meet the needs of Salvadoran migrant workers and members of their families in terms of protecting their rights and providing them with assistance. Those steps should include the allocation of sufficient human resources and funding, and the development of continuing training programmes for consular officials on the Convention and other human rights treaties.**

28. The Committee notes with concern the lack of mechanisms to monitor migrant workers' working conditions, especially in the farming sector (sugar cane), construction and domestic service.

29. **The Committee recommends that, in accordance with articles 25, 26 and 27 of the Convention, and in line with the Committee's general comment No. 1 (2011) on migrant domestic workers, the State party guarantee in law and in practice the labour rights of all migrant workers, particularly unskilled workers, within its territory.**

30. The Committee notes the measures taken to ensure that migrant workers and members of their families have access to health services and education for their children, in particular those in a regular situation. It is concerned about the lack of information on specific programmes to guarantee access to emergency medical care and to open up education to migrant workers and members of their families who are in an irregular situation in the territory of the State party.

31. **The Committee recommends that, in accordance with articles 28 and 30 of the Convention, the State party adopt concrete and effective measures, for example through specific programmes, to ensure access to emergency medical care and to make it possible to enter and remain in the education system, especially for the children of migrant workers in an irregular situation.**

32. The Committee takes note of the considerable flow of remittances received by Salvadoran families in the State party, and of the financial planning programme provided to such families.

33. **The Committee recommends that the State party take steps to expedite and ensure the effectiveness of procedures for receiving remittances, and to lower their cost. The Committee invites the State party to continue offering ways for recipient families to use remittances productively.**

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

34. The Committee reiterates its concern about the fact that article 47, paragraph 4, of the Constitution and article 225 of the Labour Code only reserve the right to occupy leadership posts in trade unions to Salvadorans by birth.

35. **The Committee strongly recommends that the State party adopt the necessary measures, including amendments to the law, to guarantee to all migrant workers the right to occupy leadership posts in trade unions, in accordance with article 40 of the Convention and the ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), which the State party has ratified.**

36. The Committee takes note of the information provided by the State party to the effect that article 26 of the Migration Act, under which migrant workers whose work contracts have come to an end must leave Salvadoran territory regardless of the reasons for termination, is not in fact applied. Nevertheless, the Committee is concerned that migrant workers in a regular situation remain vulnerable because article 26 has not been officially repealed, and also because of the lack of legal provisions safeguarding their rights under articles 51 and 52 of the Convention.

37. **The Committee reiterates its recommendation to the State party that it take the necessary measures to repeal article 26 of the Migration Act. It also urges that provisions be included in migration regulations to safeguard the rights of migrant workers as set forth in the Convention, in particular under articles 51 and 52.**

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

38. The Committee notes the State party's efforts to address the issue of international migration, such as the establishment in October 2012 of the National Council for the

Protection and Development of Migrants and their Families and discussions regarding the development of migration policy in the framework of the Central American Integration System. However, it is concerned about the lack of information regarding a comprehensive national migration policy containing measures aimed at assisting migrant workers and their family members either present in or in transit through the State party, and those who are nationals of the State party or their family members in other countries. The Committee is equally concerned by the lack of detailed information regarding coordination on migration matters between the competent authorities at the national and local levels.

39. **The Committee recommends that, in accordance with article 65 of the Convention, the State party take the necessary steps to formulate and implement a migration policy to deal with the full range of international migration issues. It also urges the State party to clearly define the role of the migration authorities and to step up efforts to ensure that they coordinate their work effectively at the national and local levels, especially in border areas.**

40. The Committee takes note of the State party's efforts to support returning Salvadoran migrant workers, in particular through the "Welcome Home" (Bienvenido a casa) programme and the Reintegration Programme for Returning Migrants. Nevertheless, it is concerned about the lack of information on what impact these programmes have had on the economic, social and cultural reintegration of returning migrants and to what extent they help to prevent them emigrating again.

41. **The Committee recommends that the State party step up its efforts to recalibrate support programmes for Salvadoran migrant workers in accordance with the principles of the Convention, in particular with a view to assisting returning migrants to fully reintegrate into the economic, social and cultural fabric of El Salvador.**

42. The Committee takes note of the information campaigns launched to raise public awareness among Salvadorans of the risks posed by irregular migration, the setting up of a free telephone service for reporting human rights violations and requesting humanitarian aid for Salvadoran migrant workers in transit countries, and the creation of a consular protection network in southern Mexico. The Committee is, however, alarmed by the increase in recent years in the number of migrant workers transiting through the State party and by information provided by the State party regarding confirmed cases of migrant smuggling through its territory. It is equally concerned by the dearth of effective measures taken to detect the flow of migrant workers and members of their families in an irregular situation, or to investigate migrant smuggling and punish the perpetrators.

43. **The Committee recommends that the State party adopt measures to detect, prevent and curtail irregular flows of migrant workers, and to investigate, prosecute and punish individuals, groups and institutions responsible for organizing or directing them. It also urges the State party to intensify local public information campaigns on the risks of irregular migration and that it continue to assist Salvadoran migrant workers in transit countries.**

44. The Committee notes that a national human trafficking policy was adopted in 2012. However, it remains concerned about the fact that few sentences have been passed for the offence of human trafficking. It is equally concerned about the absence of a comprehensive legal framework on human trafficking and the lack of information regarding the extent of the problem in the State party. The Committee is concerned by the absence of information pertaining to mechanisms in place to protect victims.

45. **The Committee recommends that the State party continue its efforts to combat trafficking in persons, in particular by:**

- (a) **Adopting the preliminary draft of a special act against human trafficking and ensuring its immediate application;**
- (b) **Providing ongoing training throughout the country on the problem of trafficking to government employees, particularly police officers, the Directorate-General for Migration and Alien Affairs, criminal court judges and officers, prosecutors, labour inspectors, teachers and health-care professionals, and diplomats and officials in Salvadoran embassies and consulates;**
- (c) **Collecting disaggregated data on a systematic basis with a view to combating trafficking in persons more effectively;**
- (d) **Adopting measures to ensure that human traffickers, including those who are government officials, are tried and sentenced appropriately;**
- (e) **Stepping up campaigns to prevent trafficking in persons;**
- (f) **Developing effective mechanisms for identifying and protecting victims of trafficking;**
- (g) **Drawing up a strategy for ensuring respect for the rights of victims of trafficking, preventing their secondary victimization and helping them to develop individual plans for moving forward that take into account the physical, psychological and social impact of trafficking on its victims;**
- (h) **Stepping up international, regional and bilateral cooperation through agreements with countries of origin, transit and destination on the prevention of trafficking in persons.**

46. The Committee welcomes the information provided with regard to the regularization programme for Nicaraguans and members of their families in El Salvador, carried out in 2011 and 2012. Nevertheless, it is concerned about the lack of clarity regarding the position of migrant workers, especially Hondurans and those Nicaraguans not covered by the regularization process, who are in an irregular situation in the State party.

47. **The Committee encourages the State party to redouble its efforts to draw up and implement comprehensive migrant regularization procedures and to publicize them. These procedures should be in keeping with the principle of non-discrimination and should be readily accessible to migrant workers and members of their families who are in an irregular situation.**

48. The Committee notes the steps taken by the State party to protect unaccompanied migrant children through its implementation of the Child and Adolescent Protection Act. The Committee is, however, concerned about the lack of information regarding measures aimed at the proper identification and protection of unaccompanied minors, who risk becoming victims of abuse and violations while in transit along the migration route. It is also concerned about the increased number of unaccompanied migrant children repatriated to the State party and the lack of effective measures to ensure their lasting resettlement and reintegration. The Committee is concerned about the situation of children and adolescents in El Salvador whose parents have emigrated, especially with regard to their family environment and education.

49. **The Committee encourages the State party to continue focusing on the situation of unaccompanied migrant children and to respect the principle of the best interests of the child. In particular, the State party should:**

- (a) **Focus on developing policies to address the difficulties faced by unaccompanied migrant children and on setting up mechanisms for their identification and protection;**

(b) Strengthen cooperation with transit and destination countries in order to ensure that unaccompanied migrant children who have been the victims of crime are properly protected and that they receive individual care tailored to the specific needs of each case;

(c) Strengthen cooperation with transit and destination countries in order to ensure that unaccompanied migrant children are not detained for having entered transit or destination countries in an irregular fashion, that minors who are accompanied by family members are not separated from them and that families are housed in protection centres;

(d) Strengthen cooperation with transit and destination countries so that unaccompanied minors are repatriated to the State party only if it is in the best interests of the child and when it has been established that the child, upon his or her return, will be safe and provided with proper care and custody, under a procedure with proper safeguards;

(e) Take the necessary steps to ensure that repatriated minors are taken in by family members and resettled and reintegrated in a lasting fashion in their home communities;

(f) Develop policies on support, protection and family reunification for Salvadoran children whose parents have emigrated.

50. The Committee views with concern the systematic detention of Salvadoran migrant workers, prior to repatriation, in destination and transit countries because of their irregular status.

51. The Committee recommends that the State party strengthen cooperation with transit and destination countries in order to ensure that the detention of Salvadoran migrant workers in an irregular situation in such countries is used only as a last resort.

## 6. Follow-up and dissemination

### Follow-up

52. The Committee requests the State party to provide detailed information in its third periodic report on the steps that it has taken to act upon the recommendations set forth in these concluding observations. The Committee recommends that the State party take all appropriate measures to implement these recommendations by, inter alia, transmitting them for consideration and appropriate action to the Legislative Assembly and local authorities.

### Dissemination

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

## 7. Next periodic report

54. The Committee requests the State party to submit its third periodic report by 1 May 2019 at the latest. Alternatively, the State party could avail itself of the simplified reporting procedure whereby the Committee draws up a list of issues which is then transmitted to the State party for a response. The State party's replies to the list of

issues will then constitute its report due under article 73 of the Convention, and the State party will not need to submit a traditional periodic report. This new optional reporting procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, paragraph 26).

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