



**International Convention
on the Protection of the
Rights of All Migrant
Workers and Members
of Their Families**

Distr.
GENERAL

CMW/C/SLV/1
20 August 2007

ENGLISH
Original: SPANISH

COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION**

Initial reports of States parties due in 2004

EL SALVADOR*

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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ABBREVIATIONS AND ACRONYMS

CARECEN	Central American Resource Centre
CA-4	Group of 4 of Central America
CIF	Cost, insurance and freight
CIM	Inter-American Commission of Women
CISNA	Centre of the National Institute for the Comprehensive Care of Children and Adolescents
CONCULTURA	National Council for Culture and the Arts
CRM	Regional Conference on Migration
DGME	Directorate-General for Migration and Aliens
DIGESTYC	Directorate-General for Statistics and Censuses
DUI	Single identity document
EAD	Employment authorization document
ECLAC	Economic Commission for Latin America and the Caribbean
FISDL	Social Investment Fund for Local Development
FOSALUD	Fund for Health
FSV	Social Fund for Housing
IDHUCA	Human Rights Institute of the José Simeón Cañas University of Central America
INSAFOCOOP	National Institute for the Promotion of Cooperatives
INSAFORP	National Vocational Training Institute
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
ILO	International Labour Organization
IPEC	International Programme on the Elimination of Child Labour
IRCA	Immigration Reform and Control Act
ISDEMU	National Institute for the Advancement of Women
ISNA	National Institute for the Comprehensive Development of Children and Adolescents
ISSS	National Social Insurance Institute
NUI	Single identification number
OCAM	Central American Commission for Migration (formerly Central American Migration Organization)
PAECA	Central American Economic Plan of Action

PASCA	Central American Plan of Action on AIDS
PNC	National Civil Police
RNPN	National Register of Natural Persons
SIBASI	Basic Comprehensive Health System
SICA	Central American Integration System
SIEMMES	System of Statistics on Migration in Mesoamerica
TPS	Temporary Protection Status
TSE	Supreme Electoral Court
UIF	Financial Investigation Unit
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
VAT	Value-added tax

INTRODUCTION

1. The Government of El Salvador, pursuant to the provisions of article 73 of the International Convention on the Rights of All Migrant Workers and Their Families, submits to the Committee on the Rights of All Migrant Workers and Their Families its initial report, which contains information pertinent to the steps taken and the progress made in ensuring respect for the rights recognized in the Convention.
2. The present report was prepared in accordance with the Provisional Guidelines on the form and contents of the reports due from States parties under article 73 of the Convention (HRI/GEN/2/Rev.2/Add.1).
3. The information contained in the report is the outcome of the work of an inter-institutional team representing 23 institutions, coordinated by the Ministry of Foreign Affairs; the following bodies and persons are represented: the Legislative Assembly, the Supreme Court of Justice, the Ministry of Public Security, the Ministry of the Interior, the Directorate-General for Migration and Aliens, the Ministry of Labour and Social Insurance, the Ministry of Public Health and Social Welfare, the Ministry of Education, the Office of the Deputy Foreign Minister for Salvadorans Abroad, the National Civil Police, The Supreme Electoral Tribunal, the Office for Oversight of the Financial System, the Office for Oversight of the Pensions System, the National Institute for the Comprehensive Development of Children and Adolescents, the National Institute for the Advancement of Women, the National Council for Culture and the Arts, the National Social Security Institute, the Directorate-General for Statistics and Censuses, the Directorate for Prisons, the National Vocational Training Institute, the National Registry of Natural Persons, the Office of the Procurator-General of the Republic, and the Office of the Attorney-General of the Republic.
4. It should be pointed out that the Office of the Procurator for the Protection of Human Rights was invited to take part in this exercise, but it declined to assist for obvious reasons of independence and the incompatibility of its oversight duties with regard to the rest of the institutions of the State with this kind of inter-institutional work.
5. International migration has been acquiring greater importance world-wide, as may be seen from the reports of the World Bank, the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian bodies carrying out research in this area. Migration has caused a number of changes in States, be they States of origin, transit or destination. This prompted the international community to turn its attention to the situation and created a need for instruments to guarantee respect for the human rights of the world's migrants.
6. The International Convention, which El Salvador ratified on 13 March 2003, requires States parties to produce a report on the progress made in applying its provisions. El Salvador is now fulfilling its obligation as a State party to the Convention.
7. The present report seeks to reflect the current status of migration in El Salvador, which is aware that it is a State which sends out large numbers of migrant workers to destination countries and, although to a lesser extent, to transit countries. It is also aware of the consequences of this status, such as the emergence of victims of the crimes of trafficking in persons (in all its forms) and of the illicit transport of migrants, as well as the instability affecting undocumented

Salvadoran migrants in other countries. Accordingly, as far as possible El Salvador pursues policies to attend to the needs of its migrant population, both those migrants living abroad and those returning home in vulnerable circumstances.

8. El Salvador is further aware that as a destination and transit State for migration it must take steps to protect migrants' rights.

9. It has therefore made great efforts to address the topic of migration; it is a challenge to the country to guarantee absolute respect for the human rights of migrants.

INFORMATION OF A GENERAL NATURE

A. Socio-demographic description of El Salvador

10. The Republic of El Salvador has an area of 21,040 square kilometres. It is located in the south-east of Central America on the Pacific coast; it is the only country of the region lacking a coast on the Atlantic Ocean. It is contiguous to the north and east with the Republic of Honduras, to the west with the Republic of Guatemala, and to the south with the Pacific Ocean. Its population numbers 6,756,800, with a population density of 321 persons per square kilometre according to the multi-purpose household survey conducted by the Directorate- General for Statistics and Censuses (DIGESTYC) in 2004. It has unemployment rates of 6.5 per cent in urban areas and 7.2 per cent in rural areas.

Figure 1. Map of El Salvador

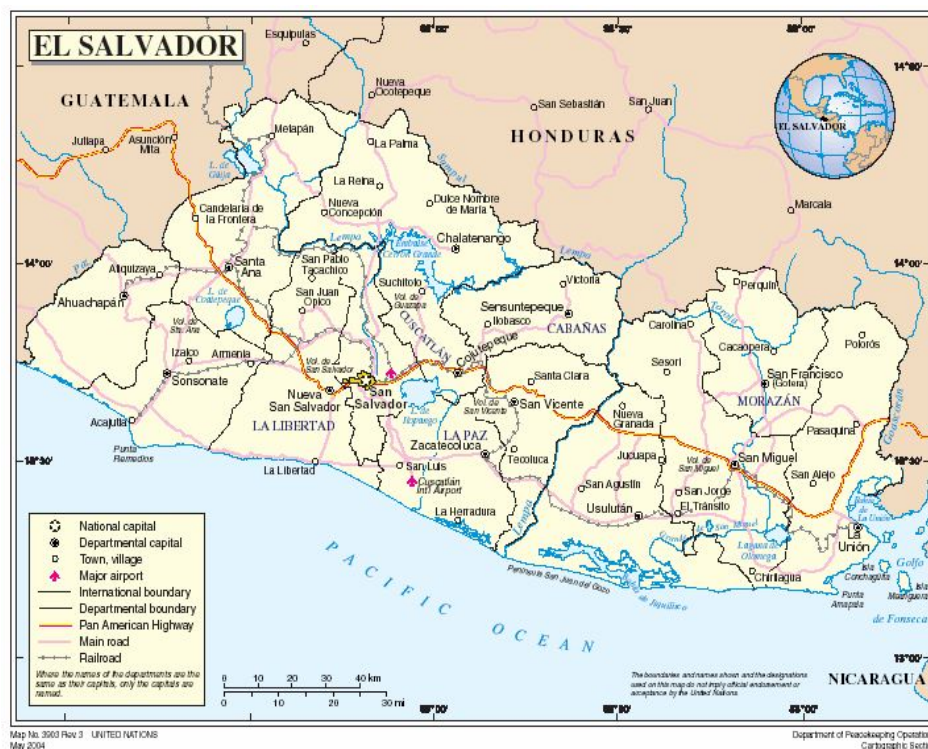


Figure 2. Geographical location of El Salvador in Central America



B. Current status of the practical implementation of the Convention

1. Legal and structural framework

11. Article 144 of the Constitution of 1983 stipulates that the international treaties concluded by El Salvador with other States or with international bodies become laws of the Republic on entry into force. The law may not amend or derogate from what has been agreed in a treaty which is in force for El Salvador; in the event of a conflict between a treaty and a law, the treaty prevails.¹

12. El Salvador has a Migration Act dating from 1959; it was enacted to establish control of migration and contains provisions on the entry and departure of persons into and from the national territory. There is currently in existence a draft migration and aliens act which is intended to replace the 1959 Act in its entirety in order to incorporate the relevant provisions both of the Constitution and of the migration instruments ratified by El Salvador. The Directorate-General for Migration (DGME) and Aliens has been created to deal with these matters.²

13. El Salvador also has an Aliens Act dating from 1863, which was amended in 1986 to bring it into line with the Constitution and other, secondary, laws; it had been enacted to give effect to article 100 of the Constitution, which provided that the status of aliens shall be regulated by a

¹ Reformulated in the 1992 Peace Accords. A copy of the Constitution will be found in annex 1.

² See annex 2.

special act. The Aliens Act will also be replaced by the new migration and aliens act in order to bring together in a single piece of legislation matters affecting migrants and those affecting aliens in general.³

14. The year 2004 saw the creation of the Office of the Deputy Foreign Minister for Salvadorans Abroad as an agency responsible for formulating, applying and coordinating public policies for Salvadorans living abroad; it focuses on the following areas: human rights and legal assistance, migrant stability and family reunification, remittances and local development, social and humanitarian assistance, economic integration, consular services, links to organized communities abroad, and political participation and national identity.

15. El Salvador has also ratified other international human rights instruments which support the application of the Convention:

- (a) The International Covenant on Civil and Political Rights;
- (b) The International Covenant on Economic, Social and Cultural Rights;
- (c) The International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (e) The Convention on the Rights of the Child;
- (f) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- (g) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- (h) The Convention on the Elimination of All Forms of Discrimination against Women;
- (i) ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (1999);
- (j) The United Nations Convention against Transnational Organized Crime;
- (k) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- (l) The Protocol against the Smuggling of Migrants by Sea, Land and Air, supplementing the United Nations Convention against Transnational Organized Crime;
- (m) The International Convention for the Suppression of the White Slave Traffic;

³ See annex 3.

- (n) The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- (o) The Vienna Convention on Consular Relations;
- (p) The American Convention on Human Rights;
- (q) The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights;
- (r) The Inter-American Convention to Prevent and Punish Torture;
- (s) The Inter-American Convention on International Traffic in Minors;
- (t) The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

16. El Salvador is also a party to a number of bilateral arrangements, including the following:

- (a) Agreement between the Ministry of the Interior of the Republic of El Salvador and the Secretariat for the Interior of the United Mexican States for the orderly, swift and safe repatriation of Salvadoran nationals by land from Mexico;⁴
- (b) Memorandum of Understanding between the Government of the United Mexican States and the Government of the Republic of El Salvador for the protection of persons, especially women and minors, victims of illicit trafficking and transport;⁵
- (c) Arrangements to facilitate the orderly, swift and safe repatriation of Salvadoran nationals by land from Mexico agreed between the Directorate-General for Migration and Aliens of the Republic of El Salvador and the Directorate-General for Migration of the Republic of Guatemala;⁶
- (d) Memorandum of Understanding between the Republic of El Salvador and the Republic of Guatemala on the protection of victims of trafficking in persons and illicit transport of migrants;⁷
- (e) Memorandum of Understanding between the Republic of El Salvador and the Republic of Guatemala on implementing the migration mechanism for the temporary protection

⁴ Instrument attached. See annex 4.

⁵ Instrument attached. See annex 5.

⁶ Instrument attached. See annex 6.

⁷ Instrument attached. See annex 7.

and regularization of Guatemalans and Salvadorans in irregular situations and proving their settlement in the country of destination;⁸

(f) Memorandum of Understanding between the Governments of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras and the Republic of Nicaragua on the decent, orderly, swift and safe repatriation by land of migrant Central American nationals.⁹

C. Characteristics of migratory flows

17. El Salvador is considered to be a country of origin, transit and destination of migrants all at the same time, although the first two categories predominate - unsurprisingly since they have been expanding over the years.

18. Migration is associated with factors of community, family and personal well-being, which in turn may be associated with the various socio-economic, geopolitical and other factors which may influence community and personal life.

19. Where history and culture are concerned, migration research has established that resident indigenous groups and itinerant groups such as traders, *tlamenes*,¹⁰ *corredores*,¹¹ and *calpizque*,¹² were involved in all aspects of daily and religious life, and this facilitated the movement of migrants.

20. In this context of migratory movements for community, family and even personal reasons, the indigenous communities of this region were drawn involuntarily into another migratory flow alien to their customs, economies, religious beliefs, etc. The year 1542 saw the birth of a *New World*, which in turn generated fresh migrations, now not just regional but continental in scale. The resulting new contacts encouraged various historical processes which in turn gave rise to new flows of migrants, ever stronger and more continuous, from other continents, bringing in new aspects of human development.

21. Those migratory flows were similar to the present ones; in other words, history witnessed the reception of large numbers of migrants seeking knowledge, expansion, dominion, trade, etc., but also the migration of Salvadorans who saw at that time, as today, the possibility of realizing similar desires in foreign lands and who set out under better, similar or more difficult travel conditions.

⁸ Instrument attached. See annex 8.

⁹ Instrument attached. See annex 9.

¹⁰ Persons who transport food and ceramics.

¹¹ Persons responsible for maintaining the *Temascal* or sauna bath tradition.

¹² Tax collectors.

22. Research into international migration by Salvadorans must take the historical factors into account, for in some cases the behaviour and movement of migrants may have their roots in very distant periods. The current international migration of Salvadorans has one of its roots in contemporary history as shaped by the First World War, which even today still affects a number of social, economic, political and cultural circumstances, above all the causes and motives of migration.

1. El Salvador as a country of origin

23. At the beginning of the XXth century the migration of Salvadorans to Central American countries was caused chiefly by shortages of land and of job opportunities, especially in rural areas. Those migrants set out for the north of Honduras, to the banana plantations of the United Fruit Company. Some 25,000 Salvadorans migrated in the 1930s; in the next decade the figure was 40,000. The 1950s and 1960s saw migration on a massive scale as a result of the departure of peasants from the coastal zones which were being occupied for the large-scale cultivation of cotton; in this case Salvadorans went not only to work but also to settle permanently in Honduras. By the 1970s there were already 350,000 migrants.

24. Salvadorans began to migrate to the United States and Panama during the Second World War. At that time the United States needed unskilled labour to produce armaments, food and supplies for the troops and their allies fighting the war; the United States formally entered the war in 1941 and its men went to battle, leaving their places in the factories to be occupied by women and by workers from Mexico, Central America and the Caribbean who entered the country to take some of these jobs at good rates of pay. Some of the Salvadorans who migrated to the San Francisco Bay area had already been port workers in Acajutla. Others went to work in construction on the Panama Canal, taking their families with them. One category of migrants from El Salvador's middle and upper classes went to the United States and Europe for reasons of education, tourism, health, etc.

25. In July 1969 the so-called Hundred Hours War (the conflict between El Salvador and Honduras) marked a turning point in Salvadoran migration, for those Salvadorans living and working in the farming areas of Honduras had to return home owing to violations of their human rights. This period was marked by other important events, such as the break-up of the Central American Common Market and mistakes and omissions in maintaining respect for civil and political rights. These events caused thousands of refugees to go in search of work, health, education and other basic social benefits. In short, El Salvador found itself in a situation of social, economic and political instability.

26. Many social factors, such as the lack of land to work, unemployment, political violence before and during the civil armed conflict, and social insecurity, prompted many Salvadorans to abandon the country for good. The flow of migrants during this period was constant and intense and it had the United States as its destination. The migrants of that time were professionals, skilled workers, members of religious orders, community leaders, and members of the political opposition and trade unions.

27. In the 1970s the United States embarked on a process of economic restructuring. The radical change in the structure of production caused by microelectronics altered the profiles

of the skills required, thus creating two categories of employment. One consisted of jobs calling for a high degree of specialization and the other of routine jobs.¹³

28. There are two studies which tried to describe systematically the profile of the Salvadoran migrant who left to go to work in the United States in the 1970s. The chief characteristic found were that this was both urban and rural migration. The education level of Salvadoran migrants in this moment of history was only middling, and lower than that of Mexicans and other Central Americans in the same circumstances. The scale of the involvement of women at this time was greater than had been thought, for women had begun to migrate in larger numbers to other countries and it was women who initiated the migration networks.

29. The Salvadoran migrants in the United States formed migration networks which came to have great importance in later years. United States legislation allowed these new citizens to legalize their own and their families' status rapidly (between 1970 and 1979), and the networks combined to help Salvadorans to enter the United States with their undocumented families, relations and friends. The road to the "American dream" had been opened.

30. The widespread violence generated by the civil armed conflict between 1980 and 1991 lead to instability in all sectors and increased migration to the United States, where it was easy to obtain migrant status if relatives were already settled there; another factor in those years was the assistance programmes of European countries, together with Canada and Australia, for persons persecuted for political reasons.

31. The commonest route to the United States in this period was the irregular one taken by "wetbacks" travelling on their own resources or brought in by traffickers and other irregular carriers. The other reason for the increased migration to this destination was the improvements furnished from 1986 by the Immigration Reform and Control Act (IRCA), which facilitated family reunification and the legalization of many migrants but prevented employers from giving work to persons in irregular situations.

32. The armed conflict came to an end in the 1990s, and the Peace Accords were signed in 1992 in Mexico. Many Salvadorans who had left the country for whatever reason returned; the economy became a little more stable, and politics took a turn for the better with the participation of the opposition armed front in a political party. However, despite the signature of the Peace Accords and the other positive changes, the economic difficulties persisted, and some people decided to migrate once more. The situation was aggravated by world problems such as the decline in coffee prices, and natural calamities such as Hurricane Mitch and the 2001 earthquakes, not to mention the post-war crime rate.¹⁴

33. According to information drawn from consular records, some 2.9 million Salvadorans are living abroad; their distribution is shown in table 1.

¹³ The review *Entorno*, Technological University of El Salvador, No. XXIII, February-March 2002, p. 8.

¹⁴ More information on the history of international migration will be found in the *Human Development Report, El Salvador 2005: A new look at ourselves. The impact of migrations*.

Table 1. Salvadorans living abroad¹⁵

Country or region	Numbers
Canada	135,500
United States	2,584,767
Mexico	28,015
Central America and Caribbean	137,449
South America	2,956
Europe	42,254
Asia, Africa and Oceania	19,285
Total	2,950,126

34. Some sources hold that Salvadoran migration may have increased by 70 per cent.¹⁶ And the destinations have changed, for now 93 per cent of those who leave go beyond Central America, as against 24 per cent in the 1960s. One of the current difficulties is to determine in statistical terms the percentage migrating beyond the region and what proportion of this population migrates to the United States.

35. The fact is that any Salvadoran who can go to the United States does so, to such an extent that about 1,070 Salvadorans leave the country every day; not all of them arrive at their destination, but many of those who return keep trying until they succeed.¹⁷

36. It may be concluded from the foregoing information that El Salvador needs a national information system on which it can rely. A national population and housing census, including questions about the migration status of Salvadoran families, was due to be carried out in 2007. The multi-purpose household survey conducted in 2004 produced data which gives some idea of the impact of remittances on Salvadoran households; the number of rural households receiving remittances totalled 130,018, for the metropolitan area the figure was 106,605, and for other urban areas 232,171.

37. The number of Salvadorans in the United States is an expanding minority: Salvadorans account for as much as 4.9 per cent of all Latin American migrants and for 2.6 per cent of migrants who reach the United States; in any statistical terms the number of Salvadorans in the

¹⁵ Ministry of Foreign Affairs, 2005: *Salvadoreños en el exterior*. Data from www.rree.gob.sv/website/comunidades/asociaciones/datossalmun.pdf.

¹⁶ Information from Maguid, A., “*Gente en movimiento: dinámica y características de las migraciones internacionales en Centroamérica*”, 2003. Taken from www.siemca.iom.int/descargas/documentos/siemca06.pdf.

¹⁷ Statistics produced by DIGESTYC for 1951-1995, IOM for 1981-1995, and SIEMMES/DGME for 1996-2005. Data taken from *Human Development Report, El Salvador 2005: A new look at ourselves. The impact of migrations*.

United States is in the ascent; this exodus may be attributed to economic, social, socio-economic, political, social security and other problems. The networks of Salvadoran migrants have also expanded, facilitating the arrival of more of their compatriots; at the start of the new century the United States recorded a total of 655,165 Salvadorans and many more than 180,000 new migrants since the preceding decade.¹⁸ In 2002 the United States Immigration Service determined that 1,272,000 recorded but undocumented Salvadorans were settled in the country.¹⁹ It is apparent that the United States has conflicting data on migratory flows.

38. *American FactFinder* (United States census information) reports a total of 817,336 Salvadorans; and the Mumford Institute of the University of Albany reports the presence of 1,117,960 Salvadorans in the United States. A revision of the Mumford Institute census reduced the 2002 figure for Salvadorans to 958,487.²⁰

39. The exodus of Salvadorans has fostered economic growth as a result of the remittances. This contribution from Salvadorans living abroad represents a subsidy for their families and helps to boost levels of consumption and reduce poverty. It should be pointed out that since 1970, the year in which Salvadoran migration started to increase, the volume of remittances increased as well, but remittances to families are effected by both formal and informal means, and those in the latter category are not recorded by the country's financial authorities.²¹

40. Many different States may be regarded as final destinations of Salvadoran migrants, including Belize, Canada, Mexico, Italy, Australia, Sweden and Norway.

41. It may be concluded from all of this that El Salvador is very much a country of origin, but it is a country of transit and destination as well.

2. El Salvador as country of destination

42. As a country of destination El Salvador is undergoing a process of Central-Americanization as a result of the vast flows of Guatemalans, Hondurans and especially Nicaraguans who are settling in El Salvador permanently and without documents, drawn by the opportunities available there to work in agriculture and construction in the jobs vacated by Salvadorans who have quit the country.

¹⁸ Figures taken from *Human Development Report, El Salvador 2005: A new look at ourselves. The impact of migrations.*

¹⁹ Andrade-Eekhoff, K, *Mitos y Realidades. El impacto económico de la migración en los hogares rurales*, 2003.

²⁰ Ibid.

²¹ Morales Barahona, "*Análisis Histórico-Económico del Impacto de las Remesas Familiares en la Macroeconomía. El Salvador, 1980-2004*". Thesis for a master's degree in economics, 2005.

43. The Migration Act establishes a number of categories of migrants entering the country according to their reasons for entering and settling in El Salvador:

(a) Tourists: persons entering for tourism purposes are granted a tourist visa or tourist card which enables them to remain in the country for 90 days;

(b) Temporary residents: persons entering in order to carry on some kind of remunerated activity for a specified period or persons who change their migrant status in accordance with the legal requirements;

(c) Permanent residents: persons who enter in order to engage in remunerated activity for an unspecified period, provided that they satisfy the legal requirements.

44. The town of Santa Rosa de Lima in the Department of La Unión, in the eastern part of the country on the frontier with Honduras, offers an example of the flow of Nicaraguans into El Salvador, which is due also to the ease of entry provided under Agreement CA-4,²² because persons crossing between Honduras and El Salvador via the El Amatillo frontier post are required to produce only an identity card; they are allowed to remain in El Salvador for 90 days as tourists without stating their true reason for entering, which is to work. At the end of the 90 days some persons return to Nicaragua to deliver their earnings to their households, but others decide to remain irregularly, without applying for work permits. This makes it difficult to establish the exact numbers of Nicaraguans, Hondurans and Guatemalans working in El Salvador.²³

45. They are also attracted by the dollar wages paid by various employers for work in, for example, cooperatives, the farming and domestic sectors, and the construction of the Port of La Unión, which are double the wages earned in their countries of origin.

46. It is important to mention one feature of the eastern part of the country, and of some of its towns in particular, namely that it is young Salvadorans who have emigrated and the relatives who stay behind are not prepared to work for the wages offered or to do work which they regard as too arduous; they prefer to wait for the money remitted to them or to join their relatives abroad. Jobs are therefore available for others to take, and they are taken by Central Americans.

47. For all these reasons El Salvador is becoming a host country for Central Americans, but the information on these migratory flows is not very clear.

²² Regional Agreement CA-4 on Migration Procedures (issuance of the single Central American visa under the Framework Treaty on Movement of Persons in the Region of July 2005). See annex 10.

²³ See the online newspaper *elfaro.net*, 17 to 23 April 2006.

3. El Salvador as a country of transit

48. El Salvador is considered to be a country of transit because of the numbers of people who use Central America as a corridor to Mexico, from where they cross the border into the United States.

49. Officers of the Frontiers Division of the National Civil Police (PNC) carry out migration-control procedures designed to “locate”²⁴ persons crossing through El Salvador without documents. In 2004, for example, 2,332 persons without documents were located, in 2005 - 2,255, and up to June of 2006 - 739,²⁵ making a total of 5,326. They were of various origins: from South America, Europe, Asia, Central America (predominantly), and from other continents.

50. Entry into the country with false documents has been legally characterized as the offence of moral or material forgery,²⁶ which consists of the manufacture of public or certified

²⁴ “Located persons” - designation of persons entering El Salvador illegally who are caught during the PNC control operations.

²⁵ Data supplied by the PNC Frontiers Division.

²⁶ Article 283 of the Criminal Code states: “A person who makes a public or certified document which is wholly or partially forged or alters an authentic document shall be sentenced to imprisonment for three to six years. If this act is committed in relation to a private document the same sentence shall be imposed if the perpetrator acted with the intent to cause harm to a third party.

Any person authorized by the Tax Administration to affix an official stamp on documents relating to the administration of the tax on the transfer of movable property and the provision of services who produces, facilitates, circulates or makes available any of the documents in question in the name of a person not listed in the Register of Taxpayers of the Directorate-General for Internal Taxation or a document containing information or details which do not pertain to the taxpayer in whose name it is issued shall be sentenced to imprisonment for four to six years.

If a person behaving in the manner described above is not authorized by the Tax Administration to affix an official stamp on documents relating to the administration of the tax on the transfer of movable property and the provision of services, the sentence to be imposed shall be increased to two thirds of the maximum penalty stipulated.”

Article 284 of the Criminal Code states: “A person who with the intent of issuing or authenticating a public or certified document inserts or causes to be inserted a false statement concerning a fact which the document purports to prove shall be sentenced to imprisonment for three to six years. If this act is committed in relation to a private document, the same sentence shall be imposed if the perpetrator acted with the intent of causing harm to a third party.

A person issuing or delivering documents relating to the administration of the tax on the transfer of movable property or the provision of services who declares that he has performed an operation which he has not performed or who in performing an operation declares amounts or details different from the true ones shall be sentenced to imprisonment for four to six years.

documents which are wholly or partially forged or altered copies of authentic documents; any person who forges documents for this purpose is punished in accordance with this characterization. Both nationals and foreigners have been prosecuted for the offence of material forgery: from 2000 to June 2006 a total of 486 persons (15 foreigners and 471 nationals); prosecutions for the offence of moral forgery totalled 513 in the same period (11 foreigners and 502 nationals).²⁷ There is also the offence of use or possession of false documents,²⁸ committed by persons using a forged or altered document, be it public, certified or private; a total of 109 prosecutions for this offence was recorded from 2000 to June 2006 by a number of magistrate's courts.²⁹

If a document referred to in the preceding paragraph certifies as signatory a person not listed in the Register of Taxpayers of the Tax Administration or contains information or details which do not pertain to the taxpayer in whose name it is issued, the sentence shall be increased to one third of the maximum sentence indicated in the preceding paragraph.”

²⁷ Data supplied by the Supreme Court of Justice, as reported by 25 magistrate's courts. See annex 11.

²⁸ Article 287 of the Criminal Code states: “A person who having knowledge of an act of forgery without having participated in it, uses or has in his possession a forged or altered document, either public, certified or private, shall be sentenced to imprisonment for three to five years.

A person who, having knowledge of an act of forgery without having participated in it, has in his possession or has used documents relating to the administration of the tax on the transfer of movable property and the provision of services which certify as signatory a person not listed in the Register kept by the Tax Administration, when it is proved that the documents were not issued or ordered to be stamped by the taxpayer to whom the documents pertain, shall be sentenced to imprisonment for four to six years.

The same sentence shall be imposed on a person who uses for commercial purposes documents relating to the administration of the tax on the transfer of movable property and the provision of services without being authorized by the Tax Administration to print such documents or who is so authorized but it is proved that the documents were not requested by the taxpayers to whom they relate.

In both cases, if the document certifies as signatory a person not listed as a taxpayer in the Register of the Tax Administration or contains information or details which do not pertain to the taxpayer whom they certify, the sentence shall be increased to one third of the maximum sentence indicated in the preceding paragraph.”

²⁹ Data supplied by the Supreme Court of Justice. See annex 12.

Table 2. Prosecutions for forgery of documents between 2000 and June 2006

Offence	Number of prosecutions
Material forgery	486 (15 foreigners and 471 nationals)
Moral forgery	513 (11 foreigners and 502 nationals)
Use or possession of forged documents	109

51. The Government carries out a number of measures to combat the illicit transport of persons, for it is a known fact that huge amounts of money are charged for transporting migrants to the United States and that the promises are often not kept and the migrants abandoned to their fate; and in some cases transnational criminal networks and trafficking in persons are involved. Since 2004 the illicit transport of persons has been legally characterized as an offence, in article 367-A of the Criminal Code, which reads:

“A person who himself or through another person or persons, in contravention of the law, attempts to introduce or introduces aliens into the national territory, or shelters, transports or guides them, with the intent of evading the migration regulations of El Salvador or other countries, shall be sentenced to imprisonment for four to eight years.

The same sentence shall be imposed on a person who shelters, transports or guides Salvadorans with the intent of evading the migration regulations of El Salvador or other countries.

The same sentence shall be incurred by persons who, with false or forged documents, attempt to secure or secure the departure from the country of Salvadorans or nationals of any other country and by persons who use authentic documents belonging to another person.

If as a result of the commission of this offence the passive subjects suffer deprivation of liberty abroad, are victims of offences of any kind, or die from violent or other culpable causes, the sentence shall be increased by two thirds.”

52. The Unit to Combat Illicit Transport of Persons, which was established in the Office of the Attorney-General of the Republic in April 2004, reports the following activity: in 2004, 150 persons arrested; in 2005, 515 criminal cases opened; in 2006 (up to June), 236 cases opened.

53. In 2004 trafficking in persons was legally characterized as an offence in article 367-B of the Criminal Code,³⁰ which reads:

³⁰ Establishment of the shared responsibility of the beneficiary family requires: acceptance and voluntary signature of an agreement by the mother or father or the responsible person; satisfaction by the chief woman beneficiary and administrator of the basic preventive health requirements, attendance at training courses, enrolment of children of nursery-school to sixth-grade age, and participation in community development.

“A person who himself or as a member of a national or international organization with the intent of obtaining an economic benefit recruits, transports, transfers, harbours or receives persons, within or outside the national territory, in order to carry out an act of sexual exploitation, to put such persons to forced labour or service in circumstances analogous to slavery, to remove organs, or to conclude fraudulent adoptions or forced marriages shall be sentenced to imprisonment for four to eight years. Any person who facilitates, promotes or encourages any of the acts described above shall be sentenced to imprisonment for three to six years.

When the acts described above are carried out in commercial premises or in premises of any kind which require a permit from a competent authority, the permit shall be revoked and the premises closed immediately.”

54. This offence may be accompanied by aggravating circumstances, which are also addressed in the Criminal Code, in article 367-C, which reads:

“The offence referred to in article 367-B of this Code shall attract the maximum corresponding penalty increased by one third of such maximum penalty and disqualification of the perpetrator from engaging in his occupation for the duration of the sentence, in the following cases:

1. When the offence is committed by a civil servant, public or municipal employee, public authority, agent of an authority, or member of the National Civil Police;
2. When the victim is aged under 18 years or lacks legal capacity;
3. When the offence is committed by a superior of the victim in a relationship of trust, domestic association, education, work or any other relationship;
4. When as a consequence of the commission of the offence the passive subjects suffer deprivation of liberty abroad, are victims of offences of any kind, or die from wrongful or culpable causes.”

55. The offence of trafficking in persons is also handled by the Unit to Combat Illicit Transport of Persons of the Office of the Attorney-General. In 2004, 12 persons were arrested in one operation, which was the first experience of dealing with this problem since the reform of the Criminal Code which established trafficking as an offence; in 2005, 33 investigations were opened and warrants for the arrest of 23 persons were issued; up to June 2006 there were four cases at the stage of consideration by an examining magistrate, and 29 investigations were opened, involving the arrest of 12 persons.

D. Difficulties in the practical application of the Convention

56. El Salvador is facing the following challenges in its application of the Convention:

- (a) Building a country, in a context of shared international responsibility, which offers its inhabitants the conditions for securing a decent life and attaining their full potential as the only approach consistent with human rights, with the objective of suppressing irregular migration;

(b) Establishing a system of up-to-date information which can furnish reliable and sufficient statistics to make good the lack of basic data on the phenomenon of internal migration, as well as describing the characteristics of the migrant population and of migration for work, with a view to the provision of information to facilitate the formulation of suitable public policies;

(c) Conducting a population census in 2007 in an effort to acquire a more accurate record of citizens who are outside the country;

(d) Where legislation is concerned, adapting the country's laws to the commitments contained in the Convention. It may be noted here that the draft migration and alien affairs act takes the humanitarian and human rights approach established by the Convention;

(e) Recognizing that, in addition to these challenges, there is a need to intensify the training of migration officials and police officers to enhance their knowledge of the Convention and other human rights instruments. It will also be necessary to include the personnel of the judicial system and the general public in this exercise;

(f) Reinforcing the joint work being done with other State institutions and civil society;

(g) Improving coordination with international bodies working in this area;

(h) Coordinating and improving the joint work being done with other countries of the region.

E. Measures to overcome the difficulties

57. El Salvador now has its Government Plan for a Secure Country, the aim of which is to enhance the country's human capital and the dignity of each and every Salvadoran by satisfying their most basic needs and providing them with the necessary tools to take advantage of opportunities; work is proceeding to this end in the areas of education, health, housing and social and family development.

58. The State is carrying out the following programmes as a response to these social challenges:

1. Anti-poverty programme

59. The Social Opportunities Plan was established to enable every Salvadoran to have access to a decent life, with their basic needs satisfied by means of the measures now described.

60. The Fund for Health (FOSALUD) expands the medical services provided in the health units, with special attention given to mothers and children, low-risk deliveries, oral health, and emergency surgery. This programme also provides integrated health and nutrition services, especially in rural areas; it guarantees families health protection focused on reducing inequalities in coverage and providing free access to and use of better-quality health services. One aim of this programme is to reduce maternal and infant mortality.

61. FOSALUD was launched on 18 April 2005. Its operational funding is provided by taxes on cigarettes, alcohol and weapons.

62. Attention is drawn to the programme known as CONÉCTATE (Get connected), under which the Ministry of Education, as the programme's lead agency, provides sustainable support for the efforts to construct a top-quality education system for Salvadorans by making productive use of information and communication technology. This programme seeks to facilitate modernization and encourage competition in the education system over the next four years.

63. The CONÉCTATE programme will be divided into specific components:

(a) Computer rooms. Under this component the Ministry intends to equip the public schools with computer centres where teachers and pupils can receive training. The project includes training in information technology for teachers;

(b) "Edunet". This component will seek to connect up 30 per cent of the country's total of 5,100 public schools, especially the secondary schools and schools in rural areas;

(c) "Computers for my school". The purpose of this project is to collect and recondition computers donated by private business and the public sector.

64. The JÓVENES (Young people) programme encourages the integrated development of young Salvadorans by opening up spaces for their participation and connecting them to opportunities which will enable them to develop and achieve prosperity. The following are the focuses of the National Plan for Youth 2005-2015:

(a) Youth independence: youth employment, scholarships, skills development, "Expo U", "Edupuntos" and housing for young people;

(b) Youth welfare: integrated health care, secure environment, youth in the park, opportunities during holidays, football and sports in general;

(c) Youth citizenship: youth camps, youth leadership, volunteer network, youth solidarity, student councils and municipal youth committees;

(d) Youth creativity: youth month, youth power festival, youth creativity festival, youth talent, youth agenda and excellence.

65. This programme is run by the National Secretariat for Youth.

66. The MICROCRÉDITO programme helps to boost family incomes by furnishing financial support to production units such as micro-enterprises and new enterprises; in specific terms it seeks to give the most vulnerable families an opportunity to generate income as a means of securing their definitive and sustainable escape from poverty. This component encourages and supports the development of new sources of income from self-employment.

67. The basic concept of micro-financing is the provision of financial services such as loans, savings, insurance, and transfers to low-income households. The aim is also to expand the

availability of credit in all the departments of the country in the form of loans made through specialized micro-finance institutions already in the market.

68. The RED SOLIDARIA (Solidarity network) programme, which is run by the Social Investment Fund for Local Development (FISDL) brings education, health, improved nutrition and basic services to extremely poor rural families. This programme endeavours to provide services directly to some 100,000 Salvadoran families living in extreme poverty. The aims are to secure a comprehensive improvement in these families' living conditions by expanding their opportunities and providing the necessary resources, by means of: (a) improvement of the network of basic social services (nutrition, health and elementary education); (b) improvement of housing, water supply and basic sanitation, electricity supply, and rural roads; and (c) delivering access to production-development and micro-finance programmes. The programme has the three main components described below.

69. Component No.1, the family solidarity network, is the pillar of the programme. It consists of measures focused on families living in extreme poverty in the priority municipalities and includes earmarked transfers for the mother of household, training and shared responsibilities.³¹

70. Component No. 2, the core services network, seeks to boost the availability of basic services in education, basic health, and nutrition. It also includes a heavy emphasis on core infrastructure and a commitment to provide a water supply, lighting and basic sanitation to 100 per cent of schools and health units and posts.

71. Component No. 3, the family sustainability network, concentrates on production and micro-credit projects as key tools for helping small farmers to diversify their sources of income and increase their productivity, as well as for improving the management of the environment.

72. The programme's specific objectives include inter alia enhancement of the health and nutrition status of children aged 0 to 5 years by improvements in the areas of diet, vaccinations, and monitoring of growth, upgrading of the living conditions of extremely poor mothers, better education for the 6-14 age group, and expansion of the supply of basic services (drinking water, sanitation, decent housing, etc.) in order to increase the access of extremely poor families to these services in the municipalities and communities covered by the programme.

2. Training

73. A series of training activities concerning the human rights of migrants and refugees has been carried out by international bodies such as the International Organization for Migration (IOM) and UNHCR for migration officials and members of the National Civil Police and the exterior service.

3. Links to civil society organizations

74. This section describes the various activities carried out jointly with civil society organizations.

³¹ See www.crmsv.org.

Civil society

75. Activities have been coordinated with civil society organizations in specific areas such as the ones described below.

76. *Welcome Home* programme. This programme was introduced in 1999 as a pilot project of the Regional Conference on Migration as a means of addressing the situation of all those Salvadorans who were deported following the reform of United States immigration legislation in 1996. El Salvador was chosen as the location for the project because it was the Central American country with the largest number of nationals deported from the United States. It was supported from the outset by funding from the United States channelled through IOM. It was implemented by Catholic Relief Services and supported in El Salvador by a technical committee consisting of representatives of governmental and non-governmental bodies, the private sector, and academic and ecclesiastical circles.

77. The Government assumed charge of the project's institutional arrangements in 2002 in order to restore it as an integrated and sustainable undertaking; the Programme of the Integrated Development Foundation took over in 2005.

78. The components or areas of activity of the *Welcome Home* programme have been focused chiefly on providing emergency care for Salvadorans returning home in vulnerable circumstances.

79. On arrival, all such persons are referred to the *Welcome Home* office at the international airport, where they are interviewed for entry in the programme's database. The assistance furnished to them may be summarized as follows:

- (a) Initial information/orientation;
- (b) Accommodation/assistance;
- (c) Urgent medical care;
- (d) Documentation;
- (e) Assistance with education matters;
- (f) Jobs guidance.

80. Between the start-up of the *Welcome Home* programme in 1999 and June 2006 a total of 35,842 Salvadorans was assisted (12 per cent female and 78 per cent male).

81. *Repatriation of the sick, wounded and deceased.* Following the increase in the number of deaths of migrants travelling irregularly to the United States by land, a meeting was convened by the Central American Resource Centre (CARECEN) and the Foreign Ministry to try to find a solution to the problem of repatriation of the bodies. This meeting led to the creation of the Fund for the return of wounded or seriously ill Salvadoran migrants who are in vulnerable circumstances or have died on their journey to countries of destination; this initiative was vested with formal status in 2003 by the signature of a memorandum of understanding between

the Ministry of Foreign Affairs, IOM and CARECEN. The institutional aspects of the Fund have now been further reinforced by the Office of the Deputy Foreign Minister for Salvadorans Abroad.

82. *Publicizing of the Convention.* In 2004 information on the content of the Convention was disseminated by means of several workshops held in conjunction with the Human Rights Institute of the José Simeón Cañas University of Central America (IDHUCA) for the benefit of public officials from the Interior, Labour, Health and Foreign Ministries and representatives of the National Civil Police and the Offices of the Procurator-General, the Attorney-General and the Procurator for the Protection of Human Rights. IDHUCA was assisted with the production and distribution of posters.

83. In addition, in 2005 the Foreign Ministry joined forces with IDHUCA to conduct a consultation exercise for the drafting of the document entitled “Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families in El Salvador”. The purpose of this document was to address the harmonization of national legislation and policies with the content of the Convention, and it was brought to the attention, with a view to their taking action on it, of the ministries involved in the application of the provisions of the Convention.

84. *Assistance for victims of trafficking.* The Shelter for Victims of Trafficking in Persons was opened on 30 November 2005, following the signing of a Memorandum of Understanding between the Government, IOM and the Huellas Foundation on the execution of the project “Shelter for assistance to victims of trafficking in persons in El Salvador: a pilot project”. The Shelter is managed by the Huellas Foundation in conjunction with the Inter-institutional Subcommittee of the National Committee against Trafficking in Persons.

85. *Minimum platform of migrants’ rights.* The Office of the Procurator-General for the Protection of Human Rights and the Ministry of Foreign Affairs met with the bodies members of the Office’s Standing Committee on Migrants to draft a joint programme of work to address the various situations described in the minimum platform of migrants’ rights. This platform, formulated by the Standing Committee, contains recommendations on matters requiring stronger action by the State:

- (a) Migrants in transit;
- (b) Interception on route;
- (c) Treatment by foreign authorities;
- (d) Deportation to El Salvador;
- (e) Reception and reintegration;
- (f) Length of stay abroad;
- (g) Remittances;
- (h) Migrants from Central America and outside the region in El Salvador;
- (i) Migrants from Central America and outside the region passing through El Salvador.

International organizations

86. In conjunction with a number of institutions the Government has made several visits to the frontier between Mexico and Guatemala; one such visit took place in August 2002 and the most recent ones on 25-27 July 2005 and 25-28 September 2006. The purpose of these visits was to study the situation of migrants at the frontier in terms of the treatment of Salvadorans detained for trying to emigrate without proper documentation, as well as to learn more about the illicit transport of migrants and trafficking in persons.

87. International organizations including IOM, UNICEF and UNDP took part in the visits.

88. These visits to frontier zones established the need formulate a communication strategy on the question of migration with a view to addressing it in an integrated manner. UNDP, IOM, UNICEF and Meridiano 89 participated in this undertaking, which was coordinated by the Office of the Deputy Foreign Minister for Salvadorans Abroad.

89. This strategy is now being formulated: the aim is to produce campaigns to combat the illicit transport of migrant children and adolescents and trafficking in persons and to publicize the consequences and risks of travelling without documents (neglect of children, physical and sexual abuse, sale of organs, illegal adoptions, abduction, etc.). These campaigns will be directed at the consular offices of El Salvador in the United States, Mexico and Guatemala and at the general public, as well as at public and private schools, municipal town halls, cultural centres, and children's NGOs.

90. Meetings have already been held with the competent institutions, at which agreement was reached on the production of posters, leaflets, videos and advertising spots.

91. In addition, in 2005 the Office of the Deputy Foreign Minister in conjunction with Ministry of Education and UNICEF launched the campaign entitled "The dangers of the road to the north" as part of a strategy to make people aware of the risks of irregular migration. This campaign is aimed at children in the country's primary and secondary schools and uses wall posters and leaflets. It has also been conducted in communities of Salvadorans abroad in a number of the places where they settle (Los Angeles, Long Island, Houston).

Work at the regional level

92. The aim of the coordination of activities at the regional level is to prevent the duplication of efforts, in both financial and human terms. El Salvador is convinced that an integrated and regional approach, through the Regional Conference on Migration (CRM), is a better way of dealing with international migration.

93. *The Regional Conference on Migration.* El Salvador has taken an active part in the CRM, which met for the first time in Mexico in 1996. It was founded by the countries which make up the region of North and Central America (Belize, Canada, Costa Rica, El Salvador, the United States, Honduras, Guatemala, Mexico, Nicaragua and Panama). In 1999 the CRM agreed to the Dominican Republic's request for membership, so that it now comprises 11 countries. In addition, five countries participate as observers: Argentina, Colombia, Ecuador, Jamaica and Peru. A number of international organizations, including IOM, UNHCR and ECLAC,

are also involved, simply because of their knowledge of the subject. NGOs of member countries are also invited.

94. The first meeting considered the situation of migration in the region, which was exhibiting an increase in migratory flows to the United States and Canada, illicit transport of migrants from within and outside the region, and xenophobic attitudes to migrants in the countries of destination, even including clear infringements of their human rights. It was on this occasion that the Mechanism of the Regional Conference on Migration (the Puebla Process) was established and the first meeting of Deputy Ministers was held: it was attended by the Deputy Ministers for Foreign Affairs or the Interior of the 11 member States.

95. El Salvador has been a leader in this forum in terms of its active participation and its defence of the interests of its migrants at the various CRM meetings. It provided the acting chairman in both 1999 and 2006.

96. The CRM activities include the analysis of the existing thinking on the basic standards relating to information, the issuance and security of migration documents at the regional level, the establishment of coordinated training exercises as an ongoing CRM activity, the use of some of the communications media to publish the results of the efforts and programmes to prevent the illicit transport of migrants and trafficking in persons.

97. Coordination arrangements have also been established with regard to consular protection and national legislation; a start has been made on the implementation of bilateral and regional agreements on the humane, orderly and safe return by land of the region's migrants; there is a programme of multilateral cooperation for the assisted return of migrants from outside the region stranded in countries members of the CRM;³² projects have been formulated for the reintegration of repatriated migrants in society and the labour market, and measures of regional cooperation have been adopted to prevent and combat violations of the human rights of migrants, including refugees, by means of campaigns to publicize those rights. All these measures are designed to boost public awareness as a means of promoting respect for migrants' dignity, combat anti-migrant attitudes, and suppress illegal acts against migrants. This list of activities is not exhaustive.

98. These arrangements include a plan of action structured as follows: (a) migration policies and management; (b) respect for the human rights of migrants; and (c) migration and development.

99. El Salvador is also a member of the Tuxtla Mechanism, comprising Mexico and the countries of Central America, under which the question of migration is discussed in the political affairs committee; progress has been made in combating the illicit transport of migrants and trafficking in persons, as well as in securing respect for the human rights of migrants.

100. *Participation in the Central American Commission for Migration (OCAM)*. OCAM (the acronym was formed at the first meetings when this body was called *Organización Centroamericana de Migración*) was established in October 1990 at San José, Costa Rica, at the request of the Presidents of the Central American countries in the context of the

³² These countries include Guatemala, Honduras, El Salvador and Nicaragua.

Central American Economic Plan of Action (PAECA). El Salvador has been a member of this Commission from its inception.

101. The purpose of OCAM is to provide a regional mechanism for coordination and consultation on matters of international migration. This was why OCAM was established within the Central American Integration System (SICA); in the early days SICA was the body responsible for providing secretariat services. In January 1999 IOM took over the function of technical secretariat for OCAM under an agreement with the OCAM general secretariat, with a view to supporting the regional work on migration which the Commission was performing.

102. OCAM had initially been set up both as a response to the need to facilitate the transit of migrants between the countries of the region and also in recognition by the member countries that migration was a vital process in Central American integration and therefore required a stronger coordination machinery to boost the positive contribution of migration to the region's economic and social development.

103. OCAM was also a response to the need to furnish effective answers to the shared problems of migration. From the outset OCAM promoted concerted action to obtain and process information on migrants, train officials of the migration agencies of the member countries, modernize the administration of migration, introduce common tools and procedures for dealing with migration, promote efforts to standardize the requirements for the entry of aliens, ensure the humane, safe and orderly return of migrants from within and outside the region, and combat the illicit transport of migrants and trafficking in persons, as well as working on other topics of common concern.

104. The main agreements concluded under the Commission's auspices include:

(a) Introduction of the phased and progressive issuance of the single Central American passport in order to harmonize and standardize migration procedures (visas and requirements for entry of aliens). To this end the countries signed in June 2005 the CA-4 Regional Agreement on procedures relating to issuance of the single CA visa, the scope of the Framework Treaty, and movements of persons in the region;

(b) Introduction of free transit through the CA-4 countries from 1 June 2006, in accordance with the Declaration of Panama;

(c) Strengthening of the common technical migration arrangements and integrated migration controls and the introduction of the single Central American visa;

(d) Fulfilment of various plans and commitments acquired under the "Secure Central America" initiative, such as the regional strategy for social action to prevent violence and rehabilitate and reintegrate young people at risk or in conflict with the law, the regional action plan to combat the activities of criminal gangs, the ad hoc plan to combat trafficking in persons and the illicit transport of persons, and the regional plan to combat organized crime. Issuance of an instruction to the Security Committee to continue and expand its work on matters connected with regional anti-crime measures, movement of weapons, trafficking in persons, international criminal prosecution, frontier security, and the fight against criminal gangs, as well as

incorporating in its agenda questions relating to the Central American arrest warrant and crimes against women.

105. The following are some of the matters on which agreement was reached at the meeting in March 2006:

(a) Formulation of a consolidated version of a memorandum of understanding on the humane, safe and orderly return of migrants within the region;

(b) Provision of training by IOM for migration officials and members of other key bodies on trafficking in persons and care of its victims;

(c) Drafting of a regional agreement on the humane, safe and orderly return of the Cuban boat people in the Central American region, which was signed in May 2006 at the 11th meeting of the CRM, following consultation of the Central American foreign ministries;

(d) Presentation of a project for the establishment and/or upgrading of shelters to accommodate migrants from outside the region during the return process.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES OF THE CONVENTION

A. General principles

1. Articles 1 (para. 1) and 7: Non-discrimination

106. Article 3 of the Constitution of the Republic of El Salvador states: “All persons are equal before the law. Where the exercise of civil rights is concerned, no restrictions shall be established on the basis of differences of nationality, race, sex or religion.

107. El Salvador applies both internal and external legislation to prevent any kind of act of discrimination, including ILO Convention No. 111 of 1958 concerning discrimination in respect of employment and occupation, which was ratified by El Salvador in 1995.

108. There is also the Special Unit on gender and prevention of discrimination in employment of the Ministry of Labour and Social Insurance, which has to date not received any reports of discrimination against migrant workers; if such a report is submitted, the labour inspection procedure is followed, in accordance with article 1 of ILO Convention No. 111.

109. It should also be pointed out that, in accordance with the Constitution, the Directorate-General for Migration and Aliens (DGME) makes no distinction as to sex, race, colour, language, religion or beliefs, or opinions of a political or other nature in respect of persons seeking temporary or permanent residence; the only requirement is satisfaction of the provisions of the Migration Act.

110. With regard to discrimination in employment, article 246 of the Criminal Code provides: “A person who commits an act of serious discrimination in employment on the basis of sex, pregnancy, origin, civil status, race, social status or physical condition, religious or political beliefs, membership of a trade union or acceptance of its agreements, or kinship with other

workers in the enterprise and who does not restore the situation of equality before the law, after having been required to do so or following administrative sanction, by making good any economic harm resulting from such an act shall be sentenced to imprisonment for six months to two years.”

2. Article 83: Right to an effective remedy

111. Article 17 of the Constitution establishes this right in the following terms:

“No organ, authority or official may assume jurisdiction of cases pending before the courts or reopen terminated cases or proceedings. In the event of reversal of a decision in a criminal case, the State shall compensate in accordance with the law the victims of duly verified errors of justice.”

112. This article also provides for compensation for delays in the administration of justice: the law must establish the direct responsibility of the official and, secondarily, of the State.

113. The Code of Criminal Procedure provides for the remedy of appeal, which may be lodged against an executory sentence at any time with a view to prevention of errors of justice leading to the wrongful conviction of an innocent person. Article 431 of the Code lists the cases in which appeals may be lodged.³³ Successful recourse to this remedy may result either in the release of the convicted person or the ordering of a precautionary measure in accordance with 435 of the Code.³⁴ The sentence may be quashed if it is found that the conviction contained an error, and an

³³ Article 431: “An appeal may be lodged against any executory sentence at any time, but only in the interest of the convicted person, in the following cases:

1. When the facts on which the sentence is based are incompatible with the facts established in the sentence or in another executory criminal sentence;

2. When the contested sentence is based on documentary evidence or testimony declared to be false in a subsequent executory sentence;

3. When the sentence was handed down as a result of perversion of justice, bribery, violence or some other wrongful act, whose existence is declared in a subsequent executory sentence;

4. When the sentence directly and manifestly violates a constitutional guarantee;

5. When subsequent to the imposition of the sentence new facts or evidence come to light which alone or in conjunction with the facts already examined in the proceedings demonstrate that the offence did not exist or that the convicted person did not commit it or that the act committed is not punishable by law; and

6. When a more favourable criminal law is applicable.”

³⁴ Article 435 (Suspensive effect): “While the appeal is being processed the court may suspend the enforcement of the sentence imposed and order the release on bail of the convicted person or a precautionary measure which does not restrict that person’s liberty.”

order may be made for restitution of any amount paid as a pecuniary penalty and of confiscated items, when possible. The revised sentence automatically rules on compensation for any damage or harm caused by the quashed sentence, to be paid by the State either to the convicted person or to his or her heirs, in accordance with article 439 of the Code.³⁵

114. Article 49 of the Code sets out the procedure for civil claims against the State.³⁶ Article 50 addresses questions of civil claims against officials enjoying constitutional privilege in criminal cases.³⁷ Lastly, article 58 of the Code sets out the procedure to be followed in a civil claim against a judge of first instance.³⁸

3. Article 84: Obligation to implement the provisions of the Convention

115. Rule 34 of the rules of procedure of the Executive Branch of the Government stipulates that the Ministry of the Interior is responsible for justice, public security and other interior matters:

“To administer migration, to process applications for naturalization submitted by aliens and statements of renunciation and applications for restoration of Salvadoran nationality, to issue passports, and to carry out other measures called for under the migration policy.”

³⁵ Article 435 (Damage and injury): “The new sentence shall automatically rule on compensation for damage or injury caused by the quashed sentence. Such compensation shall be paid by the State, except when the convicted person contributed wrongfully or culpably to the judicial error. Civil compensation may be awarded only to the convicted person or his or her heirs.”

³⁶ Article 49: “Civil claims against the State shall be submitted to the civil courts of the first section of the Centre, which shall hear them in first instance as a preliminary measure. Claims against municipalities, the Salvadoran Social Security Institute or decentralized entities of the State shall be lodged before the ordinary courts.”

³⁷ Article 50: “Civil claims against officials enjoying constitutional privilege in criminal cases shall be submitted in first instance to the civil courts of first instance of the first section of the Centre, regardless of the nature or origin of the contested right and the specified or unspecified value of the claim. If a claim is lodged against any of the judges of the courts of first instance, it shall be heard by a court of second instance of the same section. Both in these cases and in the case described in the first part of the preceding article the decisions handed down by the courts shall be heard in second instance by the Civil Division of the Supreme Court of Justice, and appeals shall be heard by the Plenary Court, subject to the exclusion of any judges of the Division who handed down the contested decision.”

³⁸ Article 51: “A civil claim against a judge of first instance shall be heard and ruled on by another civil judge, if there is one in the place of the proceedings, or otherwise by his deputy; if neither is available, it shall be heard by the nearest judge of the same status. In both cases, a court of second instance shall conduct any review of the decision if the amount claimed does not exceed five thousand colons and shall hear any appeal if the claim exceeds this amount or is unspecified.”

116. In view of the commitment of States parties to adopt legislative and other measures for the effective application of the Convention, El Salvador has produced a draft migration and aliens act, which will replace the current acts regulating these matters. This legislation is at the stage of review by the Secretariat for Legal and Legislative Affairs of the Office of the President and will next be referred to the Legislative Assembly. It is consistent with the provisions of the Convention.

117. Being a country which sends large numbers of its citizens to work abroad and being concerned about the rights of these Salvadoran nationals, in 2004 El Salvador created the Office of the Deputy Foreign Minister for Salvadorans Abroad as a governmental agency within the Ministry of Foreign Affairs responsible for formulating, applying and coordinating public policies on Salvadorans abroad. It focuses on:

- (a) Ensuring that Salvadorans are treated with respect and providing comprehensive protection of their rights and interests while they are abroad;
- (b) Establishing conditions which promote the stability of Salvadoran migrants abroad and family reunification;
- (c) Procuring reductions in the cost of sending remittances home and promoting local development with the communities of origin in El Salvador;
- (d) Providing social and humanitarian assistance to respond to the needs stated by Salvadorans abroad and their communities of origin;
- (e) Integrating Salvadorans abroad in the processes of economic and social development and investment in El Salvador;
- (f) Improving the quality and coverage of consular services;
- (g) Promoting projects with Salvadoran communities abroad and encouraging civic participation.

118. In short, the mission of the Office of the Deputy Foreign Minister is to ensure the integrity of Salvadorans abroad, protect their interests and attend to their needs. It also has to implement this component of foreign policy in order to link Salvadorans abroad in the world with El Salvador, defend their rights, expand their opportunities, strengthen their ties, promote their projects, and strengthen their national identity.

B. Part III of the Convention: Human rights of all migrant workers and members of their families

1. Article 8: Right to leave and enter any State, including one's State of origin

119. Article 5 of the Constitution states: "All persons shall be free to enter and remain in the territory of the Republic and to leave it, subject to the restrictions established by law." Article 2 of the Aliens Act is couched in similar language.

120. Article 44 of the Migration Act provides that all permanent residents are free to leave and return to the national territory and to be absent from it for one year, but if they wish to remain abroad for longer than one year they must seek permission from the Ministry of the Interior through DGME, which grants such permission for a period of not more than two years; if the person concerned is outside the country he may apply through a consular office. Similarly, Article 33 of the Migration Act states: “Temporary residents may leave and return to the country but will lose their migrant status if absent for more than 90 days.”

2. Articles 9 and 10: Right to life; prohibition of torture; prohibition of cruel, inhuman or degrading treatment or punishment

121. With regard to article 9 of the Convention, article 1 of the Constitution states: “El Salvador acknowledges the human person as the origin and end of the activity of the State, which is established to provide for justice, legal safety and the common good. It also recognizes every human being as a human person from the moment of conception.” Accordingly, the State has an obligation to guarantee the inhabitants of the Republic liberty, health, culture, economic well-being, and social justice.

122. Article 2 states: “All persons have the rights to life, physical and moral integrity, liberty, security, work, and ownership and possession and the right to be protected in the preservation and defence of these rights.” Furthermore, article 27, paragraph 2, of the Convention prohibits every kind of torture: “Imprisonment for debt, life imprisonment, infamous punishments, proscriptive penalties, and all kinds of torture are prohibited.” All of these provisions are in compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which El Salvador has been a party since 1996, and with the Inter-American Convention to Prevent and Punish Torture.

123. This right is further reinforced in article 53 of the Labour Code, which reads:

“A worker shall have the right to terminate his labour contract for reasons attributable to the employer in the following cases:

(...)

4. For an act of abuse by deed or word committed by the employer or the head of the enterprise or establishment against the worker or his or her spouse, ascendant or descendant relatives or siblings, provided that the employer or head was aware of the kinship.

(...)

7. For exposing the worker’s life or health to a serious hazard owing to poor conditions of hygiene in the workplace or in housing provided by the employer under the labour contract, and, in general terms, for failing to introduce the measures of prevention or protection prescribed by law or by an administrative order of a competent authority.”

124. Article 244 of the Criminal Code characterizes as a criminal offence any infringement of the labour or social security regulations and prescribes a penalty of imprisonment for six months to two years; this covers cases when an employer, by deception or by taking advantage of a situation of need, recruits migrants to work for him under working conditions or social security

arrangements which infringe, suppress or restrict the rights established in legislation or in individual or collective labour contracts.

3. Article 11: Prohibition of slavery and servitude

125. The personal right to freedom is established in article 3 of the Constitution, which reads: “Everyone is free in the Republic. Nobody entering its territory shall be a slave, and nobody who trades in slaves shall be a citizen. Nobody may be subjected to servitude or to any other status which impairs his dignity.” Article 9 states: “Nobody shall be obliged to perform work or provide his personal services without fair remuneration and without his full consent, except in the event of a public emergency and in the other cases prescribed by law.”

126. This article of the Convention is related to ILO Convention No. 29 of 1930 concerning forced or compulsory labour, which was ratified by El Salvador on 15 June 1995.

127. El Salvador is 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; in order to fulfil the commitments contained therein it established the National Committee against Trafficking in Persons by Decree No. 114, published in the *Diario Oficial*, No.224, Vol. 369, dated 1 December 2005; this Committee was sworn in on 6 March 2006.

128. The Committee is made up of representatives of the following ministries and institutions: the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Finance, the Ministry of Education, the Ministry of Labour and Social Insurance, the Ministry of Health and Social Welfare, the Ministry of Tourism, the National Secretariat for the Family, the National Civil Police, the Directorate-General for Migration and Aliens, the National Institute for the Comprehensive Development of Children and Adolescents, and the National Institute for the Advancement of Women.

129. The Committee has the following functions:

- (a) To formulate a national plan of action to combat trafficking in persons which will establish the priority areas on which will be targeted the efforts to combat and prevent this problem and to rehabilitate and care for its victims in El Salvador;
- (b) To carry out and coordinate the work of investigating and preventing this crime and caring for its victims through national institutions and international bodies;
- (c) To introduce instruction and training activities on this subject, covering all the various modalities of trafficking in persons;
- (d) To disseminate to the public information about the efforts to combat the scourge of trafficking in persons;
- (e) To promote, through any member of the Committee and with the approval of the President of the Republic, any legislative initiatives which are deemed needed;

- (f) To make recommendations to the representatives of governmental bodies on the Committee concerning actions and projects to advance the cause;
- (g) To promote action to strengthen and facilitate the participation of public and private institutions in combating and preventing trafficking and caring for its victims;
- (h) To collaborate, at the request of the Ministry of Foreign Affairs, in the production of the international reports on this subject required from the Ministry;
- (i) To attend specialized seminars, courses and conferences at the national and international levels;
- (j) To propose to the Chairman of the Committee initiatives to strengthen El Salvador's participation in international forums dealing with this matter;
- (k) To perform any other functions which the Committee deems necessary to the better attainment of its chief objective.

130. It has been decided that the Committee should enjoy the advice and technical cooperation of IOM, ILO through ILO/IPEC, UNICEF, the Inter-American Commission of Women (CIM), PASCA/USAID and of any other bodies as the Committee deems necessary.

131. In order to provide support for victims of trafficking, a donation from the United States and backing from IOM was used to open a shelter, following the signature of a memorandum of understanding between the Government, IOM and the Huellas Foundation on the execution of the project "Shelter for assistance to victims of trafficking in persons in El Salvador: a pilot project", on 30 November 2005. The shelter began operations on 29 April 2006; it is run by the Huellas Foundation in conjunction with the Inter-institutional Subcommittee of the National Committee against Trafficking in Persons. Up to September 2006 a total of 72 persons of various nationalities and ages had received attention.

132. There is also a Memorandum of Understanding between El Salvador and Guatemala on protection of the victims of trafficking in persons and the illicit transport of migrants, the aim being to establish joint coordination and cooperation activities to protect such victims in the frontier areas, especially women and minors, and a Memorandum of Understanding between Mexico and El Salvador on the protection of victims, especially women and minors, of trafficking and illicit transport, with the aim of establishing coordination arrangements to facilitate the efforts of the two States to combat this crime.³⁹

133. The Unit on Trafficking in Persons was created in the Frontiers Division of the National Civil Police in February 2004; in that year it recorded a total of 14 cases, followed by 26 in 2005 and 34 up to June 2006. In addition, a total of 53 minors of Nicaraguan, Guatemalan, Honduran and Salvadoran nationality was rescued.⁴⁰

³⁹ Trafficking and the illicit transport of persons have been characterized as crimes in the national legislation (see para. 51 above).

⁴⁰ See table in annex 13.

134. A handbook on trafficking in persons has been produced for the Foreign Service of El Salvador, with publication funded by ILO. The purpose of this handbook is to inform diplomatic and consular officers (members of the Foreign Service) and boost their awareness concerning the scourge of trafficking in persons. It includes information about what to do when brought into contact with possible victims, what information to obtain and which national institutions to notify; in addition, training in this subject has been provided for consular officers of El Salvador at the national seminars held every year.

4. Articles 12, 13 and 26: Freedom of expression; freedom of thought, conscience and religion; right to join freely any trade union

135. With regard to articles 12 and 13 of the Convention, article 6 of the Constitution states:

“All persons may freely express and impart their thoughts, provided that they do not disturb public order or damage the morals, honour or privacy of others.

Exercise of this right shall not be subject to prior examination, censorship or security, but any person who in exercising it breaks the law shall be held liable for the offence committed.”

136. And on the subject of the freedom of religion, article 25 states: “This Constitution recognizes the free exercise of all religions, subject to no other limitation than the requirements of public morals and order.”

137. There are, however, restrictions on the freedom of expression: article 97, paragraph 2, of the Constitution states: “These restrictions are also specified in articles 3 and 8 of the Aliens Act.”

138. The right to join any trade union is addressed in article 47, paragraph 1, of the Constitution, which reads: “Private employers and workers, without distinction as to nationality, sex, race, religious belief or political opinions and regardless of the activity or the nature of the work performed, have the rights to associate freely for the defence of their respective interests and to form professional associations and trade unions. Employees of official autonomous institutions have the same rights without distinction as to nationality, sex, race, religious beliefs or political opinions and regardless of the activity or the nature of the work performed.” Questions of training and functions are addressed in articles 204 to 234 of the Labour Code.

139. The disbanding of such organizations may be ordered only in the cases and subject to the formalities specified by law, as set out in articles 235 to 254 of the Labour Code.

140. There is a restriction on the participation of migrant workers in trade unions, for possession of Salvadoran nationality is one of the requirements for membership of a trade union’s board of management.

141. Article 247 of the Criminal Code characterizes as a crime coercion with respect to the exercise of trade union freedoms and the right to strike and stipulates a sentence of imprisonment for one to three years for any person who uses coercion to prevent or limit the exercise of these freedoms or the right to strike. Sentences are also specified for persons acting as a group to coerce other persons to initiate a strike, work to rule or suspend work.

142. As at the end of 2006 there was no database for determining how many migrant workers join trade unions. Some social organizations do have data on this point, but the data do not indicate the nationality of the members of trade unions.

5. Articles 14 and 15: Prohibition of arbitrary or unlawful interference with privacy, family, home, correspondence or other communications; prohibition of arbitrary deprivation of property

143. The following articles of the Constitution address the prohibition of arbitrary or unlawful interference.

144. Article 2 states: “The right to honour, personal and family privacy and one’s own image is guaranteed. Compensation shall be paid, in accordance with the law, for injury of a moral nature.”

145. Article 20 states: “The dwelling place shall be inviolable and may be entered only with the consent of the person living there, or by judicial warrant, or in cases of *flagrante delicto* or imminent danger of the commission of an offence, or in the event of a grave risk to persons. The violation of this right shall give rise to a claim for compensation for any damage or injury caused.”

146. Article 24 states: “Correspondence of all kinds shall be inviolable; intercepted correspondence shall not be given credence or produced as evidence in any legal action, except in cases of receivership and bankruptcy. Interference and intervention in telephonic communications are prohibited.”

147. With respect to attempts to infringe these rights, the Criminal Code characterizes as crimes calumny, defamation and insulting behaviour, either public or covert, for these acts are regarded as interference in the privacy of the person; migrant workers may report any such acts committed against them. The acts are regulated in articles 177 to 182 of the Criminal Code. Interference in private communications, interception of communications and unlawful entry into a dwelling are also classified as crimes and are regulated in articles 184, 186 and 188.⁴¹

148. Article 11, paragraph 1, of the Constitution recognizes the right of ownership: “No one may be denied the rights to life, liberty, ownership and possession or any other of his rights without first having been tried and judged in accordance with the law; nor may a person be tried twice on the same charge.” And article 103, paragraph 1, states: “The right to private ownership is recognized and guaranteed as a social function.”

149. Article 106 of the Constitution regulates expropriation in the following terms: “Expropriation shall be admissible for reasons of legally proven public usefulness or social benefit, subject to payment of fair compensation.” The equality of all persons established in article 3 of the Constitution also applies here.

150. Accordingly, a migrant worker may suffer expropriation of his property solely for reasons of public usefulness or social benefit, subject to payment of fair compensation.

⁴¹ See annex 30.

151. The Administrative Litigation Division has addressed the question of compensation for expropriation in the following terms:

“ Compensation is an integral element of expropriation which acts as a means of reparation for a unilateral act of expropriation executed by the State. In our legal system compensation is an essential element of expropriation established in article 106 of the Constitution, which states: “Expropriation shall be admissible for reasons of legally proven public usefulness or social benefit, subject to payment of fair compensation.” Compensation for expropriation acts as an essential means of reparation for a unilateral act of the State.

The decisions of 11 September 1998 (Ref. 26-I-96) and 26 May 1998 (Ref. 70-M-94) establish in their preambular parts the parameters of compensation, which, according to Marienhoff, must satisfy the criterion of objectivity, which holds that the amount of compensation must be equivalent to the cash value of the item in the market; this satisfies the condition of actuality and immediacy and is a derivation of commutation of values. This leads to the adoption of the criterion of cost of reproduction or replacement, meaning the amount which has been paid out to obtain a similar item.”

152. Article 11 of the Constitution guarantees all persons due process, on the terms described above, before being deprived of any right, so that there can never be arbitrary denial of any of the rights of the person.

6. Articles 16 (paras. 1-4), 17 and 24: Right to liberty and security of person; protection from arbitrary arrest and detention; recognition as a person before the law

153. With regard to article 16, paragraph 1, of the Convention, article 2 of the Constitution states:

“All persons shall have the rights to life, physical and moral integrity, liberty, safety at work, and ownership and possession, and the right to protection in the preservation and defence of these rights.”.

154. El Salvador has legislation which allows the reporting of acts which have caused harm to a person, provided that such acts are characterized as crimes in the Criminal Code. Accordingly, legal procedures begin with a report, which may be made to the National Civil Police or the Office of the Attorney-General or to a local magistrate, as appropriate. It is thus possible to obtain the effective protection of the State in any situation which impairs the right to personal liberty and security.

155. With regard to the means of identifying migrant workers, DGME has established a procedure for obtaining authorization to reside in El Salvador; once this authorization has been given, the migrant worker and the members of his family are issued with residence cards proving the regularity of their status in the country.⁴²

⁴² Article 47 of the Migration Act states: “An alien who enters as a permanent resident or has acquired that status in accordance with article 31 must present himself, within 15 days of his entry or the notification of his change of status, to the Directorate-General for Migration in order

156. In order to prevent arbitrary arrest and detention and to deliver the guarantees due to persons subject to prosecution, article 11 of the Constitution stipulates: “No one may be denied the rights to life, liberty, ownership and possession or any other of his rights without first having been tried and judged in accordance with the law; nor may a person be tried twice on the same charge.”⁴³ In addition, articles 1 to 18 of the Code of Criminal Procedure set out guiding principles and constitutional guarantees applicable in judicial proceedings to all persons residing in or in transit through the national territory.⁴⁴

157. Article 8 of the Criminal Code states: “The criminal law of El Salvador shall apply to culpable acts committed entirely or partially in the territory of the Republic or in places subject to its jurisdiction.” Accordingly, migrant workers are assured effective protection against acts of violence and other criminal acts committed in the national territory.

158. This provision is acted on in practice. As already seen, El Salvador is a country of transit and, this being the case, many persons travelling irregularly are arrested every day, but at no time does the National Civil Police (PNC) act in such a way as to jeopardize the physical or mental integrity of “located” migrants: evidence of this is offered by the fact that such migrants are held in installations of the PNC Frontiers Division separately from other detainees; these installations have become a shelter rather than a place of custody.

159. However, it is recognized that these installations are not of a sufficient standard to provide comfortable and decent accommodation for detainees; efforts are therefore being made, in coordination with DGME, to establish more suitable facilities for holding irregular migrants.

to be recorded as such in the Register, where he will be issued with a document certifying that he is legally resident in the Republic.”

Article 49 states: “An alien registered as a temporary resident shall receive a special identity card certifying such registration, which shall constitute proof of his right to reside temporarily in the country.”

Article 30 of the Regulations of the Migration Act states: “The documents and special identity cards referred to in articles 47 and 49 of the Migration Act shall be issued solely by the Directorate-General for Migration following entry in its registers. These documents and cards shall contain any information deemed necessary and shall be numbered consecutively and bear the stamp of the issuing office and the signature of the issuing official.”

⁴³ There is an exception in the case of the right to life. Article 27 of the Constitution authorizes the imposition of the death penalty but solely in the cases specified in military legislation in time of international war.

⁴⁴ Basic principles and constitutional guarantees: prior trial, legality of proceedings, impartiality and independence of judges, presumption of innocence, deprivation of liberty, no retrial on the same charge, status of accused, inviolability of the right to defence, defence counsel, provision of interpreter, victim, victim’s rights, equality, admissibility of evidence, failure to apply the guarantees, interpretation of law, general matters.

160. Article 11 of the Constitution states: “No one may be denied the rights to life, liberty, ownership and possession or any other of his rights without first having been tried and judged in accordance with the law; nor may a person be tried twice on the same charge.” Paragraph 2 of this article establishes the guarantee of *habeas corpus*, which applies when any individual or authority unlawfully or arbitrarily restricts a person’s liberty and when any authority attempts to impair the dignity or the physical, mental or moral integrity of a detainee.

161. The Constitutional Procedures Act of 1960 regulates specifically the remedy of *habeas corpus* and the cases and forms in which it may be used and its effect, which is the immediate release of the detainee (personal appearance), as well as the procedure to be followed by the Supreme Court of Justice. No authority, court or jurisdiction enjoys any privilege or exemption in this matter, according to article 74, and in any event a writ of *habeas corpus* is the primary guarantee of the integrity of the person, regardless of his nationality or place of residence.

162. A specific example of the use of this remedy is provided by decision 10-J-9647 of the Constitutional Division of the Supreme Court of Justice, which admitted the complaint and decided in favour of five persons possessing the nationality of the People’s Republic of China who were being held by the PNC Frontiers Division for entering the country unlawfully on 9 January 1996. They were all tried by the magistrate’s court of San Luis Talpa for the offence of using false identity documents, and one of them for the offence of use and possession of false documents; the court decided to try them under an abbreviated procedure and sentenced them to imprisonment for one year; they were granted conditional suspension of the sentence and were ordered to return to their country of origin and banned from entering El Salvador for two years. Once the funds for purchase of their air tickets had been obtained, they were sent back to China. In this specific case the Constitutional Division declared certain provisions pertaining to migration to be unconstitutional.⁴⁵

163. The PNC Inspectorate-General is investigating the following three cases involving improper procedure by members of the Ports and Airports Division:⁴⁶

(a) On 19 October 2003 there was a case of use of improper procedure to the detriment of Colombian citizens carrying false documents: the officers concerned did not follow the internal procedure setting out the steps to be taken on detection of irregularities in documents such as passports, visas and birth certificates;

(b) On 19 September 2004 there was a case concerning a Peruvian citizen, Julio R. Melgar Salomón, who arrived at El Salvador Airport from Lima; he presented to the immigration officer his Peruvian passport, which was due to expire in 2007 and contained a valid visa issued by the consulate of El Salvador in Washington; the official nevertheless asked him to produce his green card to prove his residence in the United States. As he did not have his green card with him he produced other documents, including his driver’s licence and his labour contract with the Ministry of Public Works, where he was employed as a consultant. But the officer still demanded the green card, saying that he had to enter its serial number in the system. In the end he called over another officer so that they could put Mr. Melgar Salomón on a return flight to Lima. The

⁴⁵ See annex 14.

⁴⁶ Data supplied by the PNC Inspectorate-General.

complainant later made inquiries to DGME, and he learned from the airline COPA that DGME had refused him entry because he had not given satisfactory answers to the questions put to him, which according to him was untrue. He had been obliged to buy a new ticket but encountered no problems on his return to El Salvador airport;

(c) Lastly, a complaint was received from the Ambassador of Peru, Sergio Tristky, in which he stated that a Peruvian citizen, Walter Marratuch, who had been issued with a 650-day visa to come to settle his affairs before returning to Nicaragua, where he had a contract. On 13 October 2004 he arrived by land at the El Amatillo frontier post, where improper questions were put to him. The officer dealing with him said that he was the competent authority and that he would allow him 30 days; in the end he allowed 55 days.

164. These three cases are being investigated by the PNC Inspectorate-General to determine for disciplinary purposes the liability of the officers concerned before proceeding in accordance with the PNC disciplinary regulations.

165. When it comes to arresting persons whose papers are not in order, the PNC has an established procedure to be followed in conducting checks of migrants in order to “locate” such persons, a procedure which treats them with due respect:

(a) Through the personnel of its Frontiers Division stationed at the various points of entry into El Salvador the PNC coordinates its efforts with the migration control patrols operated by DGME; checks are carried out in the vicinity of the country’s various frontier posts (La Hachadura, Chinamas, Anguiatú, San Cristóbal, El Poy and El Amatillo);

(b) In addition to this coordinated work with the DGME patrols, the PNC also collaborates with the joint El Salvador-Guatemala police force to mount round-the-clock patrols at various “blind spots” near the frontier posts;

(c) Once the control points have been set up on the roads through the frontier posts, checks are made on the papers of persons crossing either in vehicles or on foot in order to detect the persons of other nationalities crossing without documents or in some other irregular manner;

(d) Checks are also made on hotels and other places of resort concerning which information has been reported by citizens or by police intelligence in order to track down and “locate” persons without documents;

(e) “Location” is effected in accordance with article 60 of the Migration Act currently in force. “Located” aliens are then referred to DGME, which decides whether they should be repatriated or qualify for some kind of migratory status in El Salvador;

(f) The consular office of the embassy of the country of origin is notified in order for it to issue the necessary papers and verify at the same time whether the person in question holds the nationality which he claims to hold. If he so wishes, the person may speak to his consulate, in accordance with article 36 (b) of the Vienna Convention on Consular Relations;

(g) INTERPOL is contacted in order to verify the person’s identity and establish whether any kind of arrest warrant has been issued against him in any country;

(h) The person is then held in custody at central headquarters while DGME resolves the issue of his status in El Salvador, always in collaboration with the Department for Persons in Irregular Situations of the Frontiers Division and in strict compliance with the person's guarantees and rights.

166. This procedure ensures that no collective arrests are made and that every person who enters the country irregularly is treated as an individual case as his situation requires.

167. In addition, articles 3 and 4 of the Aliens Act contain the following provisions, which are designed to ensure the proper application of the corresponding procedures:

“Article 3. Aliens in the national territory shall enjoy the personal guarantees on an equal footing with nationals, subject to the limitations established in the Constitution and by the country's secondary laws.

Article 4. From the moment they enter the national territory aliens shall be obliged to respect the Constitution, the secondary laws and the authorities of the Republic and shall acquire the right to be protected by them.”

168. The procedure applicable to migrant workers in transit who are found without documents is for the PNC Frontiers Division to transfer them to police headquarters and place them at the disposition of DGME, which then completes the administrative procedure for their departure from the country. Migrant workers arrested for unlawful entry are kept separate from persons detained for criminal offences. They remain subject to the procedure described above until sent back to their own countries.⁴⁷

169. One improvement made in this area is that migrant children and adolescents who are detained for entering without documents are transferred to the National Institute for the Comprehensive Development of Children (ISNA) or its Centre (CISNA) to be cared for until their consulates identify them and they are sent back to their countries of origin.

170. El Salvador made progress in its efforts to attend to the needs of Salvadorans abroad by creating the Directorate for Humanitarian Services and Care of Migrants in the Ministry of Foreign Affairs, which carries out measures to provide efficient and effective services for Salvadorans abroad, as well as attending to the formalities and procedures connected with documentation and provision of the necessary funds to furnish assistance and protection to Salvadorans finding themselves in difficult or vulnerable situations.

171. The procedure followed in the case of Salvadorans detained in irregular situations in other countries is for the Directorate for Humanitarian Services and Care of Migrants, in coordination with the country's consulates, to verify the legal status of the persons detained abroad and the state of their health and then to seek their release or immediate deportation, helping them to obtain any necessary criminal or police records, birth certificates or other documents to facilitate their relationship with the migration, legal and police authorities of the foreign country and thus speed up their release, deportation or repatriation.

⁴⁷ See the procedure followed by the PNC Frontiers Division (para. 49).

Table 3. Cases dealt with by the Directorate for Humanitarian Services and Care of Migrants

Cases	2005	2006
Locations	120	235
Care of deported families	720	1 339
Aliens detained in El Salvador	9	47
Legal situation of Salvadorans detained abroad	201	191
Totals	1 050	1 812

172. Pursuant to article 17, paragraph 4, of the Convention, migrants workers who are serving sentences must have access to programmes of rehabilitation and reform. Article 9 of El Salvador's Prisons Act establishes the rights of persons serving sentences, which include the rights to health, decent accommodation, remunerated work, etc.⁴⁸

⁴⁸ Article 9 reads: "Without prejudice to the rights established in the Constitution of the Republic and other legal provisions, every prisoner shall enjoy the following rights:

1. The provision by the establishment where he is being held of sanitation facilities and medical services of a minimum standard to ensure the preservation of his life, health and physical integrity. These medical services shall be furnished to him free of charge and in good time by qualified medical personnel;
2. An adequate diet for the maintenance of health;
3. Use of his own name. If the prisoner has an identity document, it shall be kept by the prison administration, which shall deliver it to him immediately to execute any act which he is legally empowered to execute; if he has no identity document, action shall be taken to obtain or replace it. The administration shall issue every prisoner with an internal identity document.
4. Respect for his dignity in any situation or activity;
5. Use of his clothes and respect for his personal customs, subject to the limits set out in the regulations;
6. Remunerated work which is not excessively arduous;
7. Freedom of movement within the establishment, subject only to the restrictions of the regime applicable to him;
8. Acquisition of information in writing or by television or radio;
9. Maintenance of family relationships;
10. Access within the establishment to a suitable and decent area for visits by family and friends;

173. The treatment of prisoners embraces all measures of therapy and assistance designed to secure their social reintegration, including services following release. The Prisons Administration, acting through the national and regional crime councils and the technical staff of each prison establishment provide prisoners with progressive, individualized and comprehensive treatment by specialists tailored to the prisoner's personality.

174. El Salvador has 20 prison establishments, each providing rehabilitation programmes to permit inmates to find jobs once they have completed their sentences; these programmes include bakery, cooking and carpentry classes. Talks are also given on personal hygiene and HIV/AIDS in conjunction with the local health unit of the National Social Insurance Institute.⁴⁹

175. La Esperanza Prison (the country's largest) provides both general and specialized programmes. The inmates take part in the work programme run in the central establishment, which includes tailoring, carpentry, silkscreen printing, and bakery workshops. There is also a school offering courses from the first grade up to the final year of the baccalaureate.

176. Usulután Prison runs work programmes in collaboration with a number of institutions, including Cáritas El Salvador and the National Vocational Training Institute (INSAFORP), which provides machines and raw materials for the bakery, tailoring, handicrafts and carpentry workshops operated under the supervision of the prison's administration. Teachers provide education for the inmates from the primary to baccalaureate levels, using the Distance Baccalaureate method.⁵⁰

11. Private interviews with a judge responsible for supervising prisons and enforcement of sentences, the director of the establishment, his defence counsel or any other professional to assist him in dealing with a personal problem or with any situation affecting his rights;

12. Qualified assistance in dealing with any incident which arises while he is serving his sentence;

13. A guarantee that decisions affecting him in terms of his regime, treatment and privileges in the establishment are based on technical and scientific criteria; and

14. Any other rights specified in this Act or its Regulations.

⁴⁹ See the website of the prison establishments of El Salvador:

[www.gobernación.gob.sv/eGobierno/SeccionesPrincipales/Direcciones/CentrosPenales/Centros Penitenciarios](http://www.gobernación.gob.sv/eGobierno/SeccionesPrincipales/Direcciones/CentrosPenales/CentrosPenitenciarios).

⁵⁰ The Distance Baccalaureate is a mode available under the "Edúcame" programme and is aimed at young people not enrolled in the education system. The course lasts a maximum of 24 months for the baccalaureate and third cycle. It is managed by external bodies (universities, churches, private schools and NGOs), which recruit tutors for the students enrolled in the programme. On completion of the course students receive a diploma from the body managing the programme.

177. Minors who have committed an offence are transferred to ISNA,⁵¹ where they receive special treatment in the re-education centre. It should be pointed out that this centre accepts only children aged under 12 years; children aged 12 to 17 years are subject to the Juvenile Offenders Act⁵² and are sent to a detention centre for juvenile offenders.⁵³ Figures are available on minors sent to ISNA for committing an offence: 11 were admitted in 2003, 17 in 2004, and 14 in 2005, all of other nationalities: Guatemalan, Honduran, Brazilian, Nicaraguan, and United States.

⁵¹ The ISNA Act states:

“Article 55. The execution and supervision of measures imposed by the juvenile courts shall be a matter for the Institute, which shall periodically report to the court in question on any changes in the juvenile’s conduct and on the execution of the measures.

Article 56. The duration and termination of the measures shall be determined by decision of a court following consideration of the reports submitted by the Institute.

Article 57. When a minor subject to the jurisdiction of the juvenile courts is sent to the Institute, he shall be accepted provisionally and brought before a juvenile court at its next session.”

⁵² Article 2 states: “This Act shall apply to persons aged at least 12 but under 18 years.

Minors aged 16 to 18 years who possess criminal responsibility or to whom criminal responsibility is attributed in respect the commission of or participation in a criminal offence shall be subject to the measures established in this Act.

Antisocial behaviour on the part of minors aged 12 to 16 years constituting an offence or minor misdemeanour shall be examined in accordance with the procedure set out in this Act. If the facts constituting the antisocial behaviour are found to be accurate, the juvenile court shall resolve to impose on the minor any of the measures set out in the Act governing the National Institute for the Protection of Children or in the present Act, provided that they will work to the minor’s benefit.

Minors aged under 12 years exhibiting antisocial behaviour shall not be subject to this special juridical schedule or to the ordinary law; they shall be exempt from criminal responsibility and shall be referred immediately to the National Institute for the Protection of Children for their comprehensive protection.”

The National Institute for the Protection of Children changed its name to “National Institute for the Comprehensive Development of Children and Adolescents”.

⁵³ These centres apply the General Regulations of Detention Centres for Juvenile Offenders, article 3 of which reads: “Without prejudice to the rights established in the Constitution and the treaties, agreements, covenants and other international instruments signed and ratified by El Salvador, as well as in secondary laws, every inmate shall enjoy the following rights: (...) (e) Education to facilitate his physical, cultural and emotional development, which shall include vocational instruction and training suited to his personal aptitudes;”.

They remained in the Institute for an average of 90 days and were then sent back to their home countries or returned to their families.⁵⁴

178. The Convention protects the right of detained migrant workers to be visited by their families. Article 9, Nos. 9 and 10, of the Prisons Act establishes that one of the rights possessed by detainees is to be visited by their families and maintain their relationships with them. “Located” aliens held in police stations may receive visits from their families and friends.

179. In addition, for Salvadorans detained at a frontier for trying to emigrate irregularly the Directorate for Humanitarian Services and Care of Migrants has helped with the issuance of visas to families on humanitarian grounds so that they can visit relatives who are sick or in custody. Both the migrants and their families are comforted by the opportunity to maintain personal contact and establish how each other is faring.

180. The right of the members of the families of migrant workers to be assisted by the State in dealing with problems arising as a result of arrest is respected by the Salvadoran authorities: when a migrant worker is being held by the PNC, the police station notifies his family of his arrest and location and facilitates communication by telephone with his family and with the consulate of his country of origin.

181. If a migrant worker or a member of his family is arrested for having committed a violation of the migration legislation, i.e. he has entered the territory irregularly or DGME decides that he must leave the country, the costs of carrying out the administrative procedures are not charged to the migrant worker, who is responsible only for the cost of his air fare; this charge is made because, as already pointed out, no fund has been established to cover the cost of air fares. In the case of children and adolescents, DGME bears the costs of repatriation; on an exceptional basis IOM will pay the fare of adult migrants from outside the region.

182. Article 47, paragraph 2, of the Constitution recognizes the legal personality of professional associations and trade unions and the need for them to be duly protected in the performance of their functions.

183. With regard to article 24 of the Convention, article 47 of the Constitution states: “Private employers and workers, without distinction as to nationality, sex, race, religious belief or political ideology and regardless of the activity or the work in question, have the right to associate freely for the defence of their respective interests and to form professional associations or trade unions. Employees of official autonomous institutions also enjoy this right. Such associations and trade unions have the right to recognition as legal persons before the law and to be duly protected in the performance of their functions.” This article goes on to state: “The special rules on the establishment and functioning of professional associations and trade unions, in rural areas and in the towns, shall not restrict the freedom of association. All exclusion clauses are prohibited.”

184. This is how the Constitution recognizes the legal personality of migrant workers and the members of their families who wish to join a professional association or trade union.

⁵⁴ Figures supplied by ISNA (see annex 15).

7. Articles 16 (paras. 5-9), 18 and 19: Right to procedural guarantees

185. Article 11 of the Constitution states: “No one may be denied the rights to life, liberty, ownership and possession or any other of his rights without first having been tried and judged in accordance with the law; nor may a person be tried twice on the same charge.”

186. Article 3 of the Constitution establishes equality before the law, including for foreigners: “All persons are equal before the law. The enjoyment of civil rights shall not be subject to restrictions based on differences of nationality, race, sex or religion.”

187. Article 12 of the Constitution states: “Any person charged with an offence shall be presumed innocent until his guilt is proved, in accordance with the law, in a public trial, during which he shall enjoy all the guarantees necessary for his defence.”

188. It is further established that when a person is arrested he must be informed, immediately and in a form which he understands, of his rights and the reasons for his arrest. He must have the assistance of a defence counsel and if he is unable to pay for one, the State assigns him a counsel nominated by the Office of the Procurator-General of the Republic. For 2005 the Office reported that defence counsel had been provided for 189 aliens charged with involvement in various offences, and for a total of 179 from January to June 2006.⁵⁵ Article 12 goes on to provide that statements made during judicial proceedings must be voluntary; otherwise they have no evidentiary value, and criminal responsibility is incurred if they are obtained by force.

189. Article 13 of the Constitution prohibits all governmental organs, authorities and officials from issuing orders for arrest or detention except in accordance with the law, and such orders must always be issued in writing. Administrative detention may not exceed 72 hours, during which period the detainee must be brought before a competent judge. Detention pending inquiries may not exceed 72 hours, and the court is obliged within that period to notify the detainee in person of the reason for his arrest, hear his statement and order his release or pre-trial detention.

190. Article 3 of the Aliens Act provides that aliens in the national territory shall enjoy the personal guarantees on an equal footing with nationals, and article 12 stipulates that aliens shall enjoy the same rights as nationals with the exception of political rights.

191. According to article 22 of the Aliens Act, aliens who commit punishable offences in the national territory shall be prosecuted under the criminal law and shall be tried by the country’s courts.

192. The Code of Criminal procedure addresses inter alia the rights of accused persons, in the following terms:

“Article 87. The accused shall have the right:

1. To be informed, immediately and in a form which he understands, of the reasons for his arrest and the authority which ordered it;

⁵⁵ See annex 16.

2. To designate a person or authority to be notified of his arrest, such notification being given immediately;
3. To be assisted and defended by a lawyer of his choice or by a public defender, in accordance with this Code;
4. To be brought without delay and within the time limit before a judge or other official empowered by law to perform judicial functions;
5. To decline to make a statement;
6. Not to be subjected to measures which impair his dignity;
7. Not to be subjected to treatment or techniques which impair his free will;
8. Not to be subjected to measures which impede his essential movements in the place and during the conduct of a procedural act, without prejudice to any supervisory measures which in the considered opinion of the judge or prosecutor are needed in special cases; and
9. To be assisted by an interpreter if he does not understand Spanish.

When a person is arrested, he must be informed of these rights immediately and in a form which he understands by a prosecutor, judge or police officer, who shall have the issuance of this caution recorded in writing under the exclusive authority of the prosecutor in charge of the preliminary steps of the investigation or, as appropriate, of the judge.

193. There is a specific limit on the period during which a person may be held in custody before being brought before the corresponding court. Article 13 of the Constitution prescribes 72 hours both for administrative detention and for detention pending completion of inquiries.

194. Article 15 of the Constitution states: "No one shall be tried except in accordance with the laws promulgated prior to the offence and by the courts previously established by law." Article 21 authorizes retroactive application when a law enacted subsequent to the offence is more favourable to the accused.⁵⁶

195. If a migrant worker is arrested illegally he may submit to the Constitutional Division of the Supreme Court of Justice an application of *habeas corpus*, the effect of which is his immediate release; this procedure is regulated by the Constitutional Procedures Act.⁵⁷ Any delay in the

⁵⁶ Article 14 of the Criminal Code: "If the law in force at the time of the commission of the offence and the subsequent laws on the same subject are of different content, the provisions more favourable to the accused in the case in question shall be applied."

⁵⁷ See paragraph 162 above on the case of *habeas corpus* decided by the Supreme Court of Justice (and annex 14).

administration of justice gives rise to compensation for the injured party, and the official who caused the delay is held responsible for it.⁵⁸

196. The single chapter (Basic principles and constitutional guarantees) of Book I (General provisions) of the Criminal Code sets out the basic principles and constitutional guarantees applicable to all persons subject to judicial proceedings:

“Prior trial

Article 1. No one may sentenced or be subjected to a security measure except by virtue of an executory judgment handed down following a trial of the facts in an oral and public hearing conducted in accordance with the principles established in the Constitution of the Republic, in this Code and in other legislation and in strict compliance with the safeguards accorded to the person.

Principle of legality of proceedings

Article 2. All persons charged with a misdemeanour or crime shall be tried in accordance with the laws in force prior to the commission of the offence in question and before a competent court previously established by law.

This principle shall also govern the enforcement of sentences and the application of measures of security.

Impartiality and independence of judges

Article 3. The magistrates and judges having competence to hear criminal cases shall be subject solely to the Constitution of the Republic and the secondary legislation, and their proceedings shall be impartial and independent.

The same judge may not administer justice in different courts in the same case.

As soon as the investigation of an offence begins, both the administrative authorities and the judges shall establish in their respective proceedings the circumstances in the accused person’s favour and the circumstances against him; and when taking decisions they shall substantiate these circumstances and the evidence for and against the accused.

On no grounds may the other organs of the State take it upon themselves to try cases or to reopen cases terminated by an executory judgment or to interfere in the conduct of judicial proceedings.

In the event of interference in the exercise of his functions the judge shall report to the Supreme Court of Justice of the facts affecting his independence. If the interference comes from the Supreme Court itself, from one of its judges or from another court, the report shall

⁵⁸ Article 17, paragraph 2, of the Constitution: “Compensation shall be paid for delays in the administration of justice. The law shall establish the direct responsibility of the official and the subsidiary responsibility of the State.”

also be sent to the Office of the Attorney-General of the Republic and to the National Council of the Judiciary.

Presumption of innocence

Article 4. Any person charged with a criminal offence shall be presumed innocent until his guilt is proved in accordance with law and in a public hearing in which he is accorded the guarantees of due process. The burden of proof rests on the accusers.

Doubt

Article 5. The judge shall give the benefit of any doubt to the accused.

Deprivation of liberty

Article 6. A person's liberty shall not be restricted in criminal proceedings except in the cases and subject to the requirements prescribed in this Code.

The duration of pre-trial detention shall be in proportion to the expected sentence. It no case shall it exceed the maximum penalty stipulated by law or a limit of 12 months for less serious offences or 24 months for serious ones. Criminal liability shall otherwise be incurred.

In actions brought under private law pre-trial detention shall be ordered only when the offence carries a penalty of deprivation of liberty and when in the case in question the suspension of the sentence is not possible.

Single prosecution

Article 7. No one shall suffer criminal prosecution more than once for the same offence. Final acquittals handed down abroad in respect of facts which may be heard by the national courts shall produce the effect of *res judicata*.

Status of accused person

Article 8. Any person cited by or to the police, the Office of the Attorney-General of the Republic or a judge as the perpetrator of or a participant in a punishable offence shall have the status of accused person and, as such, may exercise all the rights established in the Constitution of the Republic, this Code and the other laws from the first act of citation to the conclusion of the case.

When the commission of a criminal offence is charged against a legal person, the natural persons who agreed to or carried out the offence shall have the status of accused persons.

Inviolability of defence. Material defence

Article 9. The conduct of the defence in the proceedings shall be inviolable.

The accused shall have right to intervene in all stages of the proceedings where evidence is produced and to enter any requests and make any comments which he deems appropriate,

without prejudice to the exercise of its disciplinary powers by the judicial authority if such intervention impairs the normal conduct of the case. If the accused person is deprived of his liberty, the person responsible for his custody shall transmit to the judge within 24 hours any requests or comments which the accused may make and shall at all times facilitate his communication with his counsel.

Any authority which intervenes in the proceedings shall ensure that the accused is informed immediately of the rights accorded to him by the Constitution of the Republic, international law and this Code.

Technical defence

Article 10. All accused persons shall enjoy the inalienable right to the assistance of a defence counsel from the moment of his arrest or his acquisition of the status of accused person until the completion of the enforcement of the sentence.

If the accused does not designate a defence counsel, the Procurator-General of the Republic shall immediately be requested to do so, and the public defender whom he nominates shall appear within 12 hours of receipt of the request.

If the accused is a lawyer, he may defend himself.

Interpreters

Article 11. An accused person who does not understand Spanish properly shall be entitled to choose a translator or interpreter whom he trusts to assist him in all the procedures necessary for his defence. If he does not avail himself of this right, a translator or interpreter shall be appointed automatically within the time limit specified in the preceding article.”

197. Appeals may be lodged against judicial decisions unfavourable to any of the parties. The appeals admissible in criminal cases are set out in articles 406 to 440 of the Code of Criminal Procedure.⁵⁹

198. The Juvenile Offenders Act applies to children and adolescents aged 12 to 17 years who commit an offence. Following their arrest they are held in a juvenile detention centre, where they receive assistance with their social reintegration. If the juvenile is at least 12 years old he is transferred to the National Institute for the Comprehensive Development of Children and Adolescents.⁶⁰

199. When a migrant worker is arrested or imprisoned, El Salvador applies the Vienna Convention on Consular Relations, article 36 (b) of which provides that if a national of the sending State requests to be allowed to communicate with his consulate, the authorities of the State where he is being held must comply immediately. According to paragraph (c), consular

⁵⁹ See annex 17.

⁶⁰ Discussed above (see para. 177).

officers have the right to visit the detainee, to talk with him and to prepare his defence before the courts; they may also visit persons serving a sentence.

200. Criminal proceedings may not be subjected to any undue delay. Article 120 of the Code of Criminal Procedure provides that the proceedings shall be conducted on working days and during working hours, except for the initial investigation procedures and the examination proceedings.⁶¹ In order to continue the hearings without prejudicial delay the judge or court may nominate whichever days and times are deemed necessary.

201. If a dilatory plea is entered during the proceedings, article 283 of the Code provides that once the plea has been admitted the case may be suspended until the reason for the delay has been addressed and the case may continue.⁶² In such cases the judge may order the release of the accused or the termination of any precautionary measure, as appropriate.⁶³

202. Applications may be entered for review or substitution of precautionary measures at any stage of the proceedings and whenever deemed necessary, without prejudice to the professional liability of the defence counsel.⁶⁴ According to article 306 of the Code of Criminal Procedure, such an application must be heard within 48 hours of its submission, provided that the judge rules that it is not a delaying tactic or repetitive within the meaning of article 307 of the Code.

8. Article 20: Prohibition of imprisonment, deprivation of authorization of residence and/or work permit

203. Article 10 of the Constitution stipulates that the law shall not authorize any act or contract entailing the loss or irreparable sacrifice of the freedom or dignity of the person or authorise

⁶¹ This exception is provided because the initial investigation procedures and the examination proceedings are designed to establish the facts and are urgent in nature; and in any event their purpose may be frustrated if they are dragged out over time and are not conducted at appropriate times on appropriate days. In view of the need for the proceedings to be conducted without undue delay, the judge or court may nominate days or times which are in principle non-working for continuation of hearings which have begun.

⁶² A dilatory plea relates to matters which delay or defer the conduct of a case or its arrival in court but which do not entirely exclude or terminate the proceedings; for this reason it is also known as a plea for temporary suspension. Its distinguishing procedural characteristic is that it is addressed and resolved as a matter requiring prior resolution and that the principal proceedings are meanwhile suspended. Cabanellas de Torres, Guillermo: *Diccionario Jurídico Elemental*, Editorial Heliasta, 2000, Argentina, p. 158.

⁶³ A precautionary measure is any measure adopted during the hearing or proceedings, *ex parte* or on the judge's initiative, to facilitate the proceedings.

⁶⁴ There are no limits on the option to request the changing of a precautionary measure, but such requests are not admissible when entered as a delaying tactic, and the defence counsel is held responsible in such cases. Accordingly, the document in which the request for change is made must be well argued and substantiate the grounds for the request.

agreements entailing exile or expulsion. Attention should also be drawn to article 27, paragraph 2, of the Constitution, which states: “Imprisonment for debt shall be prohibited.”

204. The Civil Code spells out the consequences if one of the parties to an agreement fails to comply with it. Article 1360 provides that if one of the parties to a contract does not fulfil it, the injured party may seek the dissolution or the fulfilment of the contract, with compensation for damage and harm.⁶⁵ According to article 1427 this compensation includes *damnum emergens* and *lucrum cessans* arising from the failure to fulfil the obligation or to fulfil it completely or from delay in fulfilling it.⁶⁶

205. The Ministry of Labour and Social Insurance establishes the following requirements to be met by persons wishing to work in El Salvador and obtain a work permit: copies of the duly registered deed of constitution of the enterprise, a duly registered document certifying the election of the board of management, a labour contract; and a duly certified sworn statement. The work permits issued by the Ministry to aliens relate exclusively to the enterprise in which they are going to work; if the paid employment with the employer in respect of whom the permit was issued ceases and the alien receives a new offer of work, he has to initiate the formalities for the issue of a new permit, in accordance with article 9 of the Labour Code, and satisfy the requirements set out in articles 7 and 8 thereof, stating details of the change of employer and the new offer of work.

206. The Labour Code establishes the various causes which can lead to the termination of a labour contract, including some causes for which the employer is liable and involving payment of compensation to the worker; other causes may not be attributable to the employer, relating instead to a failure by the worker to fulfil his contract, and do not attract compensation; a contract may also be terminated owing to *force majeure* without fault on either side.

207. However, migrant workers who terminate their labour contract for whatever reason must leave the national territory, except when they have obtained legal permission to remain by concluding a new contract or changing their migrant status, for example when a temporary resident becomes a permanent resident. If they do not legalize their continued presence in the country they are sent back to their countries of origin, in accordance with article 26 of the Migration Act. Article 38 of the Regulations of the Migration Act stipulates that DGME shall keep a register of the expiry dates of labour contracts in order, when appropriate, to require the migrants workers in question to leave the country. Expulsion is also used as a sanction if a migrant worker infringes his contract, in accordance with article 27 of the Migration Act.

⁶⁵ Compensation for damage and harm includes not only the value of the loss suffered but also the profit which the creditor failed to gain. Reparation for damage refers to the loss unjustly suffered, while the harm which must be made good relates in particular to the profit lost.

⁶⁶ *Damnun emergens* is the material damage, loss or destruction of property regardless of the patrimonial or other effects which the tort causes. A loss suffered by the creditor through the debtor's fault or action in not fulfilling the obligation results in a diminution of his assets. *Lucrum cessans* is the profit or benefit which has failed to materialize as a result of the action of another person prejudicial to one's own interests.

208. It should be noted that the termination of the contract is not in itself a reason for leaving El Salvador: in accordance with the provisions of the Convention, DGME allows migrant workers to remain, provided that they can substantiate their arguments for so doing.

9. Articles 21 to 23: Protection from confiscation and/or destruction of identity and other documents; protection against collective expulsion; right of recourse to consular or diplomatic protection

209. El Salvador's public officials are not empowered to confiscate or destroy identity documents, permits authorizing entry, sojourn or temporary or permanent residence, or work permits. PNC officers are the only agents of the authorities empowered to retain identity documents when they believe them to be false, since the possession of false documents is punishable as a criminal offence;⁶⁷ police officers apply the following procedure to combat this offence:

(a) An on-the-spot check is made when a person is identified as or suspected of carrying false documents; this consists of a comparison of the carrier's physical characteristics and an examination of the document's security protection;

(b) Contact is made with the agency which issued the document in order to establish whether it has been registered;

(c) If the agency replies that the document is unregistered or has not been issued and the on-the-spot check bears this out, the carrier is arrested *in flagrante delicto* pursuant to articles 283 to 297 of the Code of Criminal Procedure, for he has committed the offence of use or possession of false documents and at that moment he acquires the status of accused person; arrests are always effected in compliance with the guarantees contained in article 12 of the Constitution and article 287 of the Code.

(d) The various statutory bodies are notified of the arrest (Office of the Procurator for the Protection of Human Rights, Department of Information on Detained Persons, the Official Guardian's Department of the Office of the Procurator-General of the Republic) and the accused is referred, within eight hours of his arrest, to the Office of the Attorney-General of the Republic, in this case its Unit on the Illicit Transport of Persons;

(e) The Office of the Prosecutor-General states his requirement that within 72 hours the accused shall be brought before a magistrate's court in the jurisdiction where he is being held;

(f) The magistrate sets the date for the initial hearing, at which he hands down his decision in the light of his assessment of the facts and the evidence produced by the Office of the Attorney-General;

⁶⁷ See paragraph 50 above.

(g) False documents are passed to the PNC Technical and Scientific Division for examination and are then transmitted to the court prior to the hearing. If the accused is released at the initial hearing, he is then “located” for being in the country illegally.⁶⁸

210. The national legislation sets out the grounds for expelling aliens from the country, on the basis of articles 60, 61 and 63 of the Migration Act, together with the procedure for the expulsion of migrant workers. The following are the offences giving rise to such expulsion:

“Illegal entry

Article 60. An alien who enters the country in violation of this Act shall be fined 10 to 100 colons and expelled from the national territory. This fine may be replaced by detention for up to 30 days, as appropriate.

For the purposes of the preceding paragraph, the agents of public security and the other administrative authorities of the Republic have an obligation to inform the Directorate-General for Migration of cases which arise and to supply all possible information about the offenders, so as to enable the Directorate-General to carry out investigations and, when necessary, request expulsion orders, which shall be issued by the Ministry of the Interior.⁶⁹

Commission of an offence

Article 61. An alien who has entered the country illegally and during his stay commits an offence in respect of which the competent authority imposes a sentence on him shall serve that sentence; on its completion the judge in the case has an obligation to make him available to the migration authorities with a view to application of the preceding article.

Expulsion of aliens

Article 63. The Ministry of the Interior may approve at its discretion the expulsion of any alien whose presence is contrary to the national interest.”

211. The procedure applied by DGME is governmental⁷⁰ pursuant to the provisions of the Migration Act, since no special procedure has been introduced to deal with cases of expulsion. On the basis of the articles mentioned above, DGME does not apply measures of collective

⁶⁸ “Location” is an operation carried out by the PNC in order to establish the identity of persons entering the country illegally.

⁶⁹ The *Ministerio del Interior* is now known as the *Ministerio de Gobernación* [no change in English].

⁷⁰ A governmental procedure is one followed in the exclusive sphere of the Government, or the political authorities, in which the Government is to some extent both judge and party. It is an administrative procedure which is not applied by the courts but by the independent organs of the Executive, whose decisions may generally not be contested in the organs of the Judiciary (Manuel Osorio. *Diccionario de Ciencias Jurídicas, Políticas y Sociales*. Editorial Heliasta, 1982, Buenos Aires, Argentina.

expulsion; each case is examined and resolved individually under the administrative governmental procedure, in accordance with article 42 of the Consolidated Political System Act, which provides in this connection:

“Article 42. When the law prescribes the governmental procedure in civil cases and there are no applicable special procedures, the authority in question shall establish the facts by any of the methods of proof set out in the procedural Code, hearing the party concerned at a time which it deems appropriate; it shall take his evidence within the third day if he so requests, plus an allowance for distance, and shall issue its ruling within the following 48 hours.”

212. This procedure safeguards the right to be heard and to present evidence of all persons subject to a procedure of expulsion.

213. The governmental procedure is applied in the following manner, in accordance with article 67 of the Migration Act and article 42 of the Consolidated Political System Act:

(a) The alien is interviewed in exercise of his right to be heard, and this interview is noted in a record;

(b) The alien’s consulate is informed by official means to ensure that the alien is properly documented. If he requires some kind of assistance and if he so wishes, he may be put in contact with his consulate, in accordance with the Vienna Convention on Consular Relations;

(c) If the party concerned so wishes, his evidence is taken within the third day, plus an allowance for distance;

(d) Any expulsion order is issued by the Ministry of the Interior within 48 hours;

(e) The expulsion order is notified to the alien;

(f) The order is enforced.

214. DGME does not restrict the assistance offered by consulates to migrant workers; on the contrary, it works with embassies and consulates to facilitate the processing of the necessary documents, and it reports to them in accordance with article 36 (a) and (b) of the Vienna Convention, which read:

“(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities

without delay. The said authorities shall inform the person concerned without delay of his rights under this paragraph.”

215. This procedure facilitates the coordination of the return of aliens to their countries of origin, and their return is notified to their consulates so that they may arrange for any kind of assistance which may be needed.

216. The considerations on which the expulsion of an alien from El Salvador is based include his manner of entering and his migrant status on entry (with or without documents, type of documents carried).

217. If a migrant worker disputes an expulsion order he may appeal against it pursuant to article 47 of the Aliens Act, which states:

“Applications for judicial review of the decisions of the Ministry of the Interior shall be admissible for hearing only by that Ministry, which must notify its decision within the following three days.”

218. If the decision on an application for judicial review submitted to the Ministry goes against the migrant worker, he may still appeal to the Administrative Litigation Division of the Supreme Court of Justice with a request for administrative review on the ground that the administrative act (the decision to expel) was illegal. The effect of such an appeal is the immediate suspension of the contested administrative order pursuant to article 16 of the Administrative Jurisdiction Act and the suspension of the expulsion process.

Action taken by El Salvador to assist Salvadorans abroad

219. With regard to the action taken by El Salvador to assist Salvadorans abroad and prevent their deportation, between June 2004 and May 2005 the Directorate-General for the Foreign Service operated 87 mobile consulates to deliver services to Salvadorans living in places remote from a Salvadoran consular office. In December 2004 and January 2005 it prepared the session on temporary assistance status (TPS), with the help of sponsors, the communications media, communities of Salvadorans, churches, etc. From January to March 2005 the Embassy of El Salvador in the United States and 12 consulates processed 17,672 applications, interviewed 15,400 persons, and dealt with 34,619 telephone calls and 612 e-mails. A total of 23 special working missions visited the cities with the biggest concentrations of Salvadorans, with the participation of the President of the Republic, the Deputy Foreign Minister for Salvadorans Abroad, the Ambassador of El Salvador in Washington, and almost all the officers of the various consulates in the United States.

220. The Salvadoran consulates in the United States held special working sessions at the weekends for thousands of Salvadorans, providing them with assistance in completing the TPS registration forms.

221. El Salvador has also opened “protection consulates” to provide legal advice and consular protection; this protection consists of approaches to the local authorities in the country where a Salvadoran is living in order to ensure that his rights are respected and that he is treated with dignity as a human being. Consulates of this type have been opened in:

(a) Nogales (Arizona, United States): opened on 1 November 2004 to cover the states of Arizona and New Mexico;

(b) Santa Ana, California, United States): opened on 1 March 2005 to cover Orange, Riverside, Imperial and San Diego counties in the state of California);

(c) Choluteca (Honduras): opened on 22 April 2005 to cover the departments of Choluteca and Valle;

(d) Vera Cruz (Mexico): opened on 1 March 2006 to cover the states of Vera Cruz, Tabasco, Campeche, Yucatán and Quintana Roo;

222. Services in Mexico were further expanded following the strengthening of the service capacity of the consulate in Tapachula, covering the states Chiapas, Oaxaca and Guerrero, and the consulate in Mexico City, covering the states of Puebla, Tlaxcala, Hidalgo, Estado de México, Aguas Calientes, Jalisco, Guanajuato, Nayarit, Colima, Michoacan, Morelos and Queretaro.

223. In addition to providing consular protection, these consulates deal with all administrative matters and community services.

10. Articles 25, 27 and 28: Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment, social security, and right to receive urgent medical care

224. The principle of equality as established in article 3 of the Constitution is a fundamental right of all persons; this principle is also regulated in article 11 of the Labour Code, which reads: “All aliens shall enjoy the same freedom of employment as Salvadorans with no more limitations than those established by law. However, the Executive Organs for labour and social insurance and interior affairs, with a view to maintaining a balance in the movement of manpower in the Central American area, may take whatever action they deem fit, subject to any agreements or treaties on these matters which are effectively in force.”

225. Article 38 of the Constitution regulates the rights and obligations of all workers with a view to improving their living conditions. Paragraph 1 states: “In the same enterprise or establishment and under identical circumstances workers shall receive equal remuneration for equal work, irrespective of their sex, race, religion or nationality.” The rights in question include the right to a paid weekly rest day (para. 7) and paid leave on public holidays (para. 8), as well as entitlement to Christmas bonuses and a working day of eight hours with payment for overtime and night work. The Labour Code regulates and promotes the exercise of these rights as a special law.

226. El Salvador has ratified ILO Convention No. 100 of 1951 concerning equal remuneration for men and women workers for work of equal value, which seeks to secure the best legal guarantees and protection for workers, regardless of their nationality. As a member of ILO, El Salvador has an obligation to use, in the words of the Convention No. 100, “means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”

227. With regard to other employment matters, such as minimum age and work at home, agricultural and domestic workers enjoy the same rights as are established in article 38 of the Constitution with respect to remuneration and paid rest days and holidays, and they are accorded special protection by its articles 41 and 45. In addition, the Labour Code regulates and attends to the application of these terms of employment in articles 161 to 202 as a special law.⁷¹

228. Where health services are concerned, El Salvador has a network of health units and public hospitals providing coverage for persons, both nationals and migrant workers, not affiliated to the social insurance system; they also constitute a health-care option for persons who are in the country irregularly.

229. Any alien who is an active contributor to the National Social Insurance Institute (ISSS) receives the same treatment as a national under the ISSS Act.⁷² There is also the Multilateral Agreement on the health protection of persons in transit insured by the social insurance institutions of Central America, the purpose of which is to extend full entitlement to health benefits to all insured persons of the countries of the Isthmus of Central America who are in transit in any one of these countries and to furnish them with urgent medical treatment when they are in transit in any country of Central America.⁷³

230. ISSS also respects the right of migrant workers and members of their families to receive any kind of urgent medical care in emergencies: on 14 April 2004 it signed the Agreement on Cooperation between the Ministry of Public Health and Social Assistance and the National Social Insurance Institute, which sets out the terms and conditions under which hospitals provide emergency services to persons insured by ISSS, together with the arrangements for reimbursement by ISSS of the costs incurred by the hospitals.⁷⁴ In order to expand the coverage, these services are being provided in all the national hospitals in the Basic Comprehensive Health System (SIBASI).⁷⁵ The National Health System comprises 27 SIBASI hospitals and three

⁷¹ See annex 18.

⁷² Article 3 of the Act states: “The compulsory social insurance scheme shall apply originally to all workers dependent on an employer, regardless of the type of labour relationship between them or the form in which the remuneration has been established. It may be extended in due course to cover categories of worker not dependent on an employer.”

⁷³ See annex 19.

⁷⁴ See annex 21.

⁷⁵ SIBASI is the fundamental operational structure of the National Health System; it concentrates on primary health care, which, through the provision of comprehensive and coordinated health services at the first and second levels of care, informed and effective grass-roots participation, and the sharing of responsibility with other sectors, helps to improve the standard of health of a specific population. SIBASI concentrates on primary health care and furnishes access for individuals, families and communities to the comprehensive model of health care, which includes recourse to the various service providers and the subsequent solution of previously identified problems in the local context by means of measures to promote health, prevent and treat illness, and ensure rehabilitation focused on the individual, the family, the

specialist hospitals for referral of patients; these facilities report that treatment was provided for 10,165 migrants in the period January-August 2005; for July to December 2005, 14 SIBASI hospitals reported a total of 2,647, and from January to June 2006 a total of 3,081; most of the persons treated were from Honduras and Nicaragua, and they attended for treatment in the frontier areas of El Salvador; the figures reflect the health care provided for all migrants regardless of their nationality.

231. The Ministry of Public Health and Social Assistance reports a total of 56,791 patients of other nationalities receiving treatment between 2003 and June 2006: 16,135 in 2003; 18,363 in 2004; 22,293 in 2004; and 11,492 between January and June 2006. These figures come from the eastern, para-central, western, central and metropolitan areas of the country.⁷⁶

11. Articles 29 to 31: Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment, respect for the cultural identity of migrant workers and members of their families

232. With regard to article 29 of the Convention, article 36, paragraph 3, of the Constitution states: "Every person has the right to a name which identifies him." The Natural Persons (Names) Act and the Transitional Family Status Act are also applicable.⁷⁷

233. The Convention on the Rights of the Child, to which El Salvador is a party, stipulates the right of the child to be registered immediately after birth, to have a name and acquire a nationality and, as far as possible, the right to know and to be cared for by his or her parents.

234. A person born in the national territory is considered to be Salvadoran by birth and therefore enjoys Salvadoran nationality and must be entered in the Register of Family Status; no restrictions of any kind apply to this right of a citizen of El Salvador, in accordance with articles 1 and 4 of the Natural Persons (Names) Act. Furthermore, article 90 of the Constitution provides that persons born in the territory of El Salvador and children born abroad to a Salvadoran father or mother are Salvadorans by birth and that Salvadoran nationality shall be granted to persons born in the other States of the Federal Republic of Central America

community and the environment, thus securing standards of health which contribute to social development.

See article 14 of the SIBASI Act (annex 20): "For the purposes of this Act, the Basic Comprehensive Health System shall be regarded as the local organizational component by means of which the Executive Organ for public health and social assistance delegates the provision of comprehensive health services at the first level of care through an integrated network of establishments covering a specified area of the country and serving a target population with emphasis on its most vulnerable members, in coordination with the second and third levels of care.

⁷⁶ See annex 21.

⁷⁷ See annex 31.

(Guatemala, Honduras and Nicaragua) who are domiciled in the country and express the wish to be Salvadorans.

235. Article 48, paragraph 2, of the Migration Act provides in respect of permanent residents that the names of any of their children born in the national territory shall be entered in their residence permits; this does not apply to children of Central Americans by birth.⁷⁸

236. With a view to solving the problem of children who, for reasons of family or social neglect or for financial reasons, have not been entered in the Register of Family Status, the National Registry of Natural Persons drafted a special transitional act which is currently being considered by the Legislative Assembly; its title is “Special Transitional Act concerning entry in the National Register of Natural Persons of the births of minors who have not been entered in the Register of Family Status”; the aim is to facilitate the registration of the births of minors not entered in the Register of Family Status in order to safeguard their identity.

237. The new register will have the status of a special register, and registration in it will not be subject to the payment of fees or fines or any kind.

238. Furthermore, the regulations of this draft act will set out speedier procedures for registering children who have no birth certificate either because their parents or legal representatives omitted to obtain one or because they are children of unknown parents not entered in the Register and are living in shelters.

239. To supplement this draft act, the National Registry of Natural Persons is carrying out a project to establish a single identity document for students; this project is at the second stage of feasibility study. The basic proposal is to submit the Ministry of Education the procedure to be used by the National Registry to identify children born and registered in the country’s 262 municipalities in the period 1988-2005; this will mean establishing a database containing images of the birth certificates of children registered during this period; each image will be assigned a unique identification number. This project will also benefit children of migrant workers born in El Salvador, who, as already indicated, are considered to be Salvadorans.

240. Children born abroad to Salvadorans are entitled to be registered in the consulate serving the jurisdiction in which they are living.

241. Children of migrant workers also enjoy access to education in the various public institutions in El Salvador, which has a set of regulations on equivalency and certification of achievement in primary and secondary education and on the recognition of secondary education qualifications. The purpose of these regulations is to integrate in the education system children who have enrolled in primary or secondary education abroad and wish to continue their studies in El Salvador; they are entitled to have their qualifications accepted as equivalent.

⁷⁸ Article 47 of the Migration Act regulates the issuance of permanent residence permits in the following terms: “An alien who enters as a permanent resident or has acquired that status in accordance with article 31 (change of migrant status from temporary to permanent resident) shall present himself within 15 days of his entry or notification of his change of status to the Directorate-General for Migration to be entered as such in the appropriate register, when he will be issued with a permit certifying his legal residence in the Republic.”

242. Migrant workers may participate in the cultural events which their embassies in El Salvador put on in conjunction with the National Council for Culture and the Arts. These events are also designed to acquaint Salvadorans with the customs and culture of other countries. There are other types of event, such as the one put on in Santa Rosa de Lima, La Unión, home to many Nicaraguans, who attended a mass in the town square, outside the church, in honour of the Blessed Virgin, the patron saint of Nicaragua.⁷⁹

243. In accordance with article 30 of the Convention, which protects the right of migrant workers and members of their families to have their cultural identity respected, and always bearing in mind that there many Salvadorans settled in the United States and other countries, the Office of the Deputy Foreign Minister for Salvadorans Abroad promotes cultural programmes for Salvadorans abroad in order to reinforce their cultural identity; it has carried the following measures to this end:

- (a) A number of training courses on the preservation of traditional Salvadoran dances for members of the Salvadoran communities in Italy and Canada;
- (b) Forty travelling exhibitions under the programme “This is my land”;
- (c) Ten travelling exhibitions under the programme “This is my land”, to be managed by 10 consulates in North, Central and South America;
- (d) Support for the Los Angeles house of culture in the shape of the photographic exhibition “Our colour”;
- (e) Organization, design and delivery of three exhibitions for the communities in Mexico, Peru and Chile, with the titles “El Salvador from the sea”, “The friends of Gabriela Mistral” and “400 years of friendship between Peru and El Salvador”;
- (f) Design and organization of the Culture Plan of the Office of the Deputy Foreign Minister for Salvadorans Abroad 2005-2009;
- (g) Design, drawing and production of 10 giant play maps entitled “Our Tom Thumb” to reinforce the national identity, to be sent to the cities abroad having the largest concentrations of Salvadorans;
- (h) Design and managerial assistance for the Domingo Herrera Miniatures Museum with the mounting of 10 exhibitions of Ilobasqueña miniatures entitled “El Salvador in miniature”;
- (i) Preparations for the holding of the third “This how I see El Salvador” competition on the theme “Virtual artistic photography”;
- (j) Preparation of materials for production of the civic cultural kit to be distributed through 50 consulates around the world.

⁷⁹ Online newspaper *www,elfaro.net*, 17-23 April 2006.

244. September every year sees the holding of community celebrations abroad to commemorate National Independence, which include processions, festivals and other community and cultural activities in various cities of the world where there are significant concentrations of Salvadorans.

12. Articles 32 and 33: Right to transfer earnings, savings and personal belongings, right to be informed about the rights arising from the Convention and dissemination of information

245. There are no restrictions on the transfer of earnings or savings when migrant workers wish to return to their countries of origin, except for a limit on the amount of money to be transferred imposed by article 9 of the Money Laundering Act, which sets a maximum of 500,000 colons or the equivalent in foreign currency in order to prevent money laundering and ensure efficient transfer.⁸⁰

246. If a migrant worker returns to his country of origin, he may transfer his personal belongings without any kind of restriction or tax, provided that the weight of the baggage does not exceed the maximum set by the airline on which he is travelling or in the regulations governing other modes of transport.

C. Part IV of the Convention: Other rights of migrant workers and members of their families who are documented or in a regular situation

1. Article 37: Right to be informed before departure of the conditions of admission in the State of employment and of their remunerated activity

247. The Ministry of Labour and Social Insurance has a Migrant Workers Section in its Department of Employment, which is responsible for providing information about terms of employment and the formalities which migrant workers must complete and the authorities to which they may apply.

248. El Salvador runs temporary-migration programmes, which provide information about job offers and operate under bilateral agreements between El Salvador and a friendly country (Canada in the following example) with the aim of helping Salvadorans to go to work for various enterprises.

249. The programme for temporary workers in Canada includes the provision of information about the requirements for applicants, hiring, selection and training. In order to strengthen this programme it was thought useful to establish arrangements for cooperation between IOM and the Government of El Salvador to systematize the fulfilment of commitments to cooperate in programmes for temporary workers; accordingly the two parties agreed to sign the Agreement on Cooperation between the Ministry of Foreign Affairs and the Ministry of Labour and Social Insurance of El Salvador and IOM -El Salvador; the signature took place on 6 April 2006.

⁸⁰ Pursuant to article 9, institutions are required to notify the Financial Investigation Unit (UIF) in writing or by any electronic means within three working days of any operation or multiple transaction made by one customer which exceeds in one day or over one month 500,000 colons or the equivalent in foreign currency, depending on the fluctuations in the national currency, provided that there are sufficient grounds for considering the operation or transaction irregular, or when the UIF so requires.

250. This Agreement is also intended to support and streamline the programmes at the various stages of worker selection and training and completion of migration formalities and to define the scope of the participation of the institutions involved; IOM also furnishes technical assistance with the development, systematization and administration of programmes of temporary migration. The two Salvadoran ministries and the competent authorities of the offering country inform the workers of their rights, obligations and terms of employment.

251. There is a possibility that temporary-worker programmes will be established with Spain and Australia,

2. Articles 38 and 39: Right to be temporarily absent without effect upon authorization to stay or to work

252. Articles 38 and 39 of the Convention address the right to be temporarily absent without loss of authorization to work and liberty of movement in the State of employment. Article 33 of the Migration Act regulates temporary absences of temporary residents, setting a time limit of 90 days.

253. The Act places no restriction on liberty of movement. Pursuant to article 44, permanent residents may be absent from the national territory for up to one year. They may be given authorization to be absent for up to two years if they justify the longer period; but if while still outside the national territory they decide to stay away for longer, on justified grounds, they will be granted a maximum extension of one year, on pain of loss of their permanent resident status.

3. Articles 40 to 42: Right to form associations and trade unions; rights to participate in public affairs of their State of origin and to vote and be elected in elections of that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

254. Article 47 of the Constitution accords to private workers and employees of official autonomous institutions, without distinction as to nationality, sex, race, religious beliefs or political ideology and regardless of the activity or the nature of their work, the right freely to form trade unions for the defence of their interests. This matter is also regulated by the Labour Code, from article 204 on, which restates the principle established in the Constitution. The Labour Code goes into greater detail in its regulation of both the formation and the disbanding of trade unions, as well as of their powers and the prohibitions applicable to them. The Ministry of Labour keeps a register of the trade unions established in the country and of their membership, but there is no record of the nationality of individual members.

255. However, there is an exception applied to the members of a trade union's board of management: they must all be Salvadoran by birth, in accordance with the last paragraph of article 47 of the Constitution and the first paragraph of article 225 of the Labour Code. El Salvador ratified ILO Conventions Nos. 87, 98, 135 and 151, on trade union rights, on 28 August 2006.

256. The instruments of ratification were deposited and registered on 6 September 2006 through the Office of the Legal Adviser of the International Labour Office.

257. In order to implement these four Conventions it was decided to propose reforms only to the Civil Service Act and to make two changes in articles 47 and 48 of the Constitution. The Conventions will enter into force 12 months after the date of the registration by ILO of the instruments of ratification.

258. El Salvador's current electoral legislation does not establish arrangements for citizens living abroad to exercise their right to vote; it states that for such purposes the country's electoral constituencies are municipal, departmental and national, corresponding respectively to the administrative municipalities and departments and the whole territory. Legal studies are being conducted with a view to making it possible for citizens to cast their votes while abroad through diplomatic and cultural offices.

259. The legislation also states that in order to exercise the right and duty to vote it is essential be entered in the electoral roll prepared by the Supreme Electoral Court and to possess a single identity document (DUI) issued by the National Registry of Natural Persons.

260. Thus all Salvadorans have a constitutional right to vote and may exercise that right, provided that on the day of the election they possess a DUI and can deposit their ballots in the urns within El Salvador itself. This applies to Salvadorans living abroad who despite having their domicile and physical residence in another State still satisfy the requirements for voting in El Salvador: they may exercise their right by presenting themselves to vote in Salvadoran territory.

261. Up to now there have been no arrangements or system for Salvadorans to exercise the right to vote outside the national territory; this will require an amendment of the Constitution.

262. However, there is an initiative to enable Salvadorans living outside the country to obtain a DUI: the National Registry of Natural Persons has signed a contract with the DOCUSAL company for the issue of DUIs abroad, and the administrative arrangements for installing the offices and training the personnel are going ahead. This project was initiated in June 2006. The DUIs will be issued by DUI centres, which will be private companies.

263. On 22 September 2006 the Consulate-General of El Salvador in Long Island, in conjunction with representatives of the National Registry, announced to community leaders and the public at large the requirements which must be met by Salvadorans in order to obtain a DUI while abroad.

264. At a later stage DUIs will be obtainable in San Francisco, Chicago, New York, Miami, Boston, Las Vegas, Dallas and Houston.

265. While for the moment work is proceeding on the issue of the DUI abroad as a necessity for providing Salvadorans with a document to enable them to perform legal acts in El Salvador, the issuance of the DUI abroad is also regarded as a move to make it easier to vote while abroad.

266. A person wishing to stand for election to public office in El Salvador is required by the Constitution and the secondary legislation to satisfy the following requirements:

(a) For the office of President or Vice-President of the Republic: Salvadoran by birth and born to a Salvadoran father or mother (art. 151 of the Constitution);

(b) For the office of member of the Legislative Assembly or the Central American Parliament: Salvadoran by birth and born to Salvadoran father or mother (art. 126 of the Constitution);

(c) For the office of member of a municipal council: resident in or in the vicinity of the municipality for at least one year before the election in question (art. 202 of the Constitution).

267. In the first two of these cases only Salvadorans by birth may stand for election; the Constitution prohibits naturalized Salvadorans from doing so.

268. In the mayoral and Legislative Assembly elections in March 2006 Mr. Hugo Salinas, leader of the Salvadoran community in Washington D.C. and resident in the United States, stood for election as mayor of the town of Intipucá in the Department of La Unión.

4. Articles 43, 54 and 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal and unemployment benefits

269. Article 12 of the Labour Code states: “The State shall ensure respect for the principles of equality of opportunities and treatment in work and employment, including access to vocational training.”

270. Article 30.12 of the Code prohibits the establishment of any distinction, exclusion or preference based on reasons of race, colour, sex, religion, political opinions, or national or social origin, subject to the exceptions provided by law for the protection of the person of the worker.

271. Migrant workers enjoy equality of treatment in access to education institutions and services at all levels. The Higher Education Act sets out the requirements for admission to courses of higher education: possession of the baccalaureate qualification or an equivalent qualification obtained abroad and legally recognized in El Salvador; and satisfaction of the admission requirements of the institution in question. Persons who have successfully completed courses in an institute of higher education abroad may request that these courses be recognized as equivalent to courses of the same kind taught in Salvadoran institutes of higher education.

272. With regard to access to the vocational guidance and placement service, the Ministry of Labour and Social Insurance offers these services through its jobs placement section, which has to date received applications for guidance solely from Central Americans, who are regarded as Salvadorans under article 10 of the Labour Code.

273. Migrant workers also enjoy access to the health and social assistance services, as pointed out earlier, whether or not affiliated to ISSS, through SIBASI and the network of health units and public hospitals.

274. With regard to access to cooperatives, the National Institute for Promotion of Cooperatives (INSAFOCOOP) furnishes technical assistance on request; in 2005-2006, for example, it granted legal personality to a cooperative association concerned chiefly with housing and numbering three foreigners among its founding partners, in compliance with article 3 (b) of the General Cooperative Associations Act, which stipulates that all cooperatives shall recognize the equality of rights and obligations of all the partners without any discrimination. It has also offered

guidance to the Norwegian Society for Development (Norges Vel), contributing to its work with the country's women members of cooperatives.

275. The Social Fund for Housing (FSV) has lines of credit available for tackling housing problems, and anyone may apply for them; however, there is just one additional requirement imposed on migrant workers: legal proof of their migration status.

276. Applicants for loans must be contributors to the provisional pensions system and their monthly incomes must be sufficient for them to assume the debt.

277. Migrant workers who engage in an economic activity producing a variable income or who work in the informal sector may also apply for the line of credit for restoration of housing.

278. To date FSV has made 14 loans to migrant workers, 13 of which are active, the remaining one having been fully repaid. Eight of these 14 loans were for the purchase of new housing, four for purchase of housing owned by FSV, and the remaining three for the purchase of a second home, repairs and improvements respectively.

279. INSAFORP runs two types of programme for persons wishing to take training courses or learn a trade: the first is the Initial Training Programme, offering a qualification following work experience in an enterprise or establishment; the second is the Further Training Programme for workers in enterprises. There are requirements for admission to both these programmes.

280. For admission to the Initial Training Programme a person must be unemployed or underemployed; the education requirement varies according to the occupation in question, from ability to read and write and perform the four basic arithmetical operations up to the baccalaureate level; the minimum age also varies according to the occupation, from 16 to 18 years.

281. Unemployment or underemployment is also a requirement for admission to the work-experience mode; the education requirement varies from sixth grade to baccalaureate, and the age from 16 to 25 years.

282. The Further Training Programme requires an applicant to be working in the enterprise where the training takes place.

283. With regard to article 54 of the Convention, article 38, paragraphs 11 and 12, of the Constitution set out the rights of a worker who is unfairly dismissed: entitlement to compensation from the employer and to a cash payment if he gives up his job. Articles 48 and 50 of the Labour Code address specifically the grounds on which an employer may terminate a labour contract without liability (i.e. without payment of compensation); the grounds on which a worker may terminate the contract with employer liability (payment of compensation) are addressed in article 53; the payment of compensation to a worker for unfair dismissal is regulated in articles 55 to 58.

284. Unfair dismissal entitles a worker to bring his case to the labour courts, a special jurisdiction established by article 49 of the Constitution for speedy settlement of disputes by means of conciliation and arbitration.

285. El Salvador has no a system for providing economic or other benefits to workers who have lost their jobs.

286. The Ministry of Labour and Social Insurance organizes jobs fairs as a means of combating unemployment: the participating enterprises offer jobs for which certain requirements must be met; any unemployed person may attend and submit job applications; however, no record is kept of the number of foreigners attending these fairs.

5. Articles 44 and 50: Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of the death of a migrant worker or dissolution of marriage

287. With regard to the protection of family unity, DGME issues members of a migrant worker's family with temporary residence permits so that they can accompany him during his stay in the national territory. The procedure is for the migrant worker to submit to DGME the documents listed below so that it can issue its approval of the permits following examination of the content and form of the documents:

- (a) Passport;
- (b) Certificate of good character or good conduct (authenticated or stamped);
- (c) Report on a general medical examination;
- (d) Birth certificate (authenticated or stamped);
- (e) Confirmation of the application by the worker.

288. Article 42 of the Migration Act allows foreign spouses of Salvadorans to obtain permanent residence permits, which remain valid even if the marriage is dissolved. The person concerned must submit an application together with a marriage certificate, a certificate of good conduct during the years preceding his or her entry, and a certificate of good health.

289. Family members who enter the national territory as tourists may also change their status to that of permanent resident, in accordance with article 23, paragraphs (b) and (d), of the Migration Act; or those entering as temporary residents may become permanent residents on payment of the registration fees under article 31 of the Act.

290. Family members may visit Salvadorans who are detained or fall ill while abroad; the Directorate for Humanitarian Services and Care of Migrants has helped with the issuance of humanitarian visas for this purpose.

291. The Directorate will also trace persons in order to help the family members of Salvadorans abroad who have lost contact with them for whatever reasons (address or whereabouts unknown, undocumented travel); in collaboration with consulates visits are made to various locations and help is sought from civil associations and governmental bodies in order to find the persons in question and put them in touch with their family members and calm the latter's fears. This and other information has already been given earlier.

292. Efforts also are made, in collaboration with the Office of the Procurator-General of the Republic and El Salvador's consulates, to obtain maintenance for families left behind in El Salvador and lacking protection owing to the departure abroad of the family's breadwinner. In such cases, regardless of the migrant status of the Salvadorans living abroad, the Directorate obtains assistance for the family in the form of maintenance payments which it remits to the family through the Office of the Procurator-General. An average monthly total of \$US 15,000 in maintenance payments is remitted in this way, the amounts in individual cases ranging between \$35 and \$300 a month; a total of \$174,895.73 was remitted in 2005.

293. In the case of article 50 of the Convention, if a migrant worker dies, the residence permits of the family members living with him remain valid and need to be changed only when their reason for remaining in the country changes. There is no time limitation, but the permits must be renewed on expiry; renewal is granted for periods of one year, provided that continued residence in the country is justified.

294. In order to obtain residence in El Salvador the person concerned must submit an application and satisfy the statutory requirements. These requirements include the submission of a specific and substantiated reason for remaining, for example possession of a work permit, continuation of courses of study, or family settlement. If residence is not granted, the applicant is allowed a reasonable time to settle his or her affairs before leaving the country.

295. When a Salvadoran dies abroad, the Directorate does what is necessary to assist the family members with the repatriation of the deceased's body; figures on the number of families assisted in this way have been published.

296. October 2002 saw the establishment of the Fund for the return of Salvadoran migrants who are injured, seriously ill or in vulnerable situations or who have died in transit to their countries of destination; this Fund was established by IOM to help poor migrants wishing to repatriate members of their families because they have died or have suffered injury or fallen seriously ill while in transit to the United States. It is also possible to repatriate members of vulnerable groups such as children and women.

297. This Fund was set up with an initial capital of \$US 62,000 provided by IOM. It was deposited in a bank account opened by IOM, which is responsible for the accounting procedures for administering the Fund; IOM issues reports on its financial management in December each year. On a yearly basis the Fund is replenished by contributions from the Government of El Salvador and private donors.

6. Articles 45 and 53: Enjoyment of equality of treatment by members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family

298. With regard to article 45 of the Convention, the General Education Act and the Regulations on equivalence and certification of achievement in primary and secondary education and on recognition of secondary education qualifications, approved by Executive Decree No. 82, offer members of the families of migrant workers the possibility of entering the education system by means of a procedure for admission of children to public and private schools.

299. If a child cannot produce the required documents, he or she takes an assessment test to ensure enrolment at the correct level.

300. Like migrant workers themselves, members of their families have access to institutes of higher education, in accordance with articles 17 and 18 of the Higher Education Act and subject to the admission requirements of the institution in question. If they have successfully completed courses in a foreign institution of higher education they may request that these courses be recognized as equivalent to courses of the same kind taught by Salvadoran institutions.

301. There is another piece of legislation applicable to higher education - on the recognition and registration of the qualifications of national and foreign professionals who have taken courses of higher education outside the country; the aim is to establish the requirements and the administrative procedure for the acceptance of national and foreign professionals who have taken courses of higher education outside the country. The acceptance of professionals who have graduated abroad implies recognition and acceptance of the academic validity of their qualifications.

302. There is also the Central American Agreement on the Exercise of University Professions and Recognition of University Studies, which has been in force in El Salvador since May 1964.

303. In the case of access to vocational guidance and placement services, members of the families of migrant workers may apply to the Ministry of Labour and Social Insurance, which offers such services in its Jobs Placement Section; the only registrations have been by persons from the Isthmus of Central America; it is not known whether any of them were members of the families of migrant workers.

304. El Salvador has not adopted any policies to facilitate teaching and learning in Spanish, for the majority of the children enrolling in the schools are of Central American origin or from Spanish-speaking countries of South America and the Caribbean. Some private schools offer teaching in other languages as part of their curriculum.

305. If a member of the family of a migrant worker wishes freely to choose a remunerated activity, he may apply for a permit. The application is attached for processing to the DGME record under the migrant worker's name in order to keep the records on the whole family together.

7. Article 46 to 48: Exemption from import and export duties and taxes in respect of personal effects; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation

306. Remittances sent into the country are exempt from taxes.

307. El Salvador does not levy taxes on the interest earned on deposits in the financial system made by natural persons, in accordance with article 4, paragraph 5, of the Income Tax Act.⁸¹

⁸¹ See annex 22.

308. In the case of funds sent for investment in El Salvador, the legislation offers certain facilities for both foreigners and nationals, which are regulated by articles 4 and 5 of the Investments Act;⁸² furthermore, article 9 of this Act safeguards the transfer abroad of funds relating to such investments. Article 17 of the Free Zone (Manufacturing and Marketing) Act offers tax advantages and incentives to users of the Free Zone, both nationals and foreigners.⁸³

309. The transfer of earnings and savings abroad is not subject to any restrictions, but the Banking Act authorizes banking institutions to seek to attract remittances of earnings or savings for investment.⁸⁴ As pointed out earlier, there is a limit of 500,000 colons on transfers of earnings established by article 9 of the Money Laundering Act.

310. El Salvador's tax legislation makes no distinction between nationals and aliens; article 3 of the Tax Code stipulates that the Tax Administration shall comply in its activities with the following general principle:

“(a) Equality: In accordance with the principle of equality, the activities of the Tax Administration shall not entail differences of treatment among the persons subject to its administration, when such persons are in equal situations under the law; the same advantages shall be offered equally to all persons.”

311. Some of the tax legislation in force in El Salvador is described below:

(a) The Transfer of Movable Property and Provision of Services (Taxation) Act, the purpose of which is to establish a tax on the transfer, import, internal use, export and consumption of movable material property and to the provision, import, internal use, export and own-use of services;

(b) The Transfer of Immovable Property (Taxation) Act, the purpose of which is to establish a tax on the acquisition of immovable property;

(c) The Income Tax Act, the purpose of which is to secure the payment of tax on income from all sources: salaries, wages, commercial and agricultural activities, rentals, production of goods, profits, etc.

312. The advantages available also to migrant workers include the deductions established in articles 29 and 33 of the Income Tax Act: deductions for school and other education costs at all

⁸² See annex 23.

⁸³ See annex 24.

⁸⁴ Article 51 of the Banking Act states: “Banks may carry out the following transactions in national or foreign currency: (...) (g) Attract funds by issuing certificates of deposit, mortgage and other bonds and by any other method of attracting medium- and long-term funds for investment in the financing of housing for low- and middle-income families.”

levels of education of children aged up to 25 who are not themselves taxpayers, and deductions for medical expenses.⁸⁵

313. In addition, on the basis of the principle of equality migrant workers also enjoy the advantage of the tax exemption established in general terms in articles 64 to 67 of the Tax Code.⁸⁶ Articles 45 and 46 of the Transfer of Movable Property and Provision of Services (Taxation) Act provide that goods imported and used internally and the provision of services shall be exempt from tax.⁸⁷ Article 1, paragraph 10, of the Transfer of Immovable Property

⁸⁵ See annex 22.

⁸⁶ See annex 25.

⁸⁷ Article 45 states: “Imports of the following goods for internal final use shall be exempt from tax:

- (a) [abrogated];
- (b) Those effected by diplomatic and consular offices of foreign nations and their members accredited to El Salvador, in accordance with the international agreements signed and ratified by El Salvador, and subject to the condition of reciprocity;
- (c) Those effected by international institutions and bodies of which El Salvador is a member and by their officials, when this is in accordance with the international agreements signed by El Salvador;
- (d) Property of travellers, members of the crews of ships, aircraft and other means of transport, provided that such property is covered by the regulations on traveller’s baggage and is exempt from customs duty;
- (e) Property donated from abroad to the bodies referred to in article 6 (c) (2) of the Income Tax Act previously qualified in accordance with the provisions of that article;
- (f) Donations under agreements concluded by El Salvador;
- (g) Transactions carried out by municipalities, when the goods imported or used internally are intended for public works or directly benefit the community concerned;
- (h) Machinery imported by passive subjects duly entered in the Register of Taxpayers intended to form part of their fixed assets and to be used directly in the production of goods and services not covered by articles 44 and 46 or those exempted under article 174 of this Act;
- (i) Buses, minibuses and rental vehicles intended for the public transport of passengers. The latter two categories of vehicle shall have the characteristics stipulated in the Regulations for the purpose of distinguishing them from the first category.

Ownership of these vehicles may not be transferred until five years have elapsed from the legalization of their import and issuance of the corresponding permits for use.

(Taxation) Act provides that taxes shall not be levied on the alienated property or properties when the value does not exceed 250,000 colons.

In order to take advantage of this exemption, a taxpayer shall record the specific items imported in a register kept by the Directorate-General at least 30 days before the date on which the exemption is to be exercised.

The Directorate-General shall establish the requirements, documents and procedures for registering such goods.

The value at which imported goods are registered shall be their current value in the international market on the date of final import, and this value shall be subject to verification.”

Article 46 states: “The following services shall be exempt from tax:

- (a) Health services provided by public institutions and institutions of public utility designated by the Directorate-General;
- (b) The letting, sub-letting and ceding of the use or temporary use of property intended for occupation as housing;
- (c) Services provided under a relationship of dependency governed by the labour legislation, and services provided by employees of public institutions, municipalities and autonomous bodies;
- (d) Public cultural events designated and authorized by the Directorate-General;
- (e) Services of education and training provided by schools, universities, institutes, academies and other similar bodies;
- (f) Where the payment and earning of interest are concerned, services relating to deposits and other forms of attracting funds for investment and lending operated by banks, non-banking financial intermediaries or any other financial institutions subject to supervision by the Inspectorate of the Banking System or registered by the Central Reserve Bank, leasing and brokerage institutions, cooperative associations and savings and loans institutions, and corporations and foundations established under public law or of public utility engaging in the provision of financing;
- (g) Where the payment and earning of interest are concerned, services connected with the issuance and placement of securities by the State and public autonomous institutions, as well as by private enterprises whose primary offer is public and made through a stock exchange;
- (h) Water supply and sewerage services provided by public institutions;
- (i) The public transport of passengers by land; and
- (j) Personal insurance services with regard to the payment of premiums and to re-insurance in general.

314. El Salvador does not apply double taxation because it no longer taxes income from elsewhere in the world, as some countries do (the United States, for example), following the derogation of certain provisions in the recent tax reforms. By way of illustration, if a person in El Salvador (a national or an alien) provides a professional service, he cannot be taxed twice in respect of that service: he is charged VAT on the net income received but the income cannot be calculated on the basis of the net amount received plus VAT.

315. The import of personal effects and sporting equipment by a migrant worker is exempt from tax, in accordance with article 2 of the Arrival from Abroad (Baggage) Act; article 3 of this Act defines the items qualifying as items of personal use, and they must not exceed a the maximum number of units specified therein for each item.⁸⁸

316. All migrant workers entering the country must present their baggage for customs examination and complete a written declaration of its contents, in accordance with article 14 of the Act and article 9 of its Regulations.

317. Migrant workers are exempt from payment of taxes on the equipment needed for performance of a remunerated activity, pursuant to article 88 of the Uniform Central American Customs Code, which provides that a traveller's baggage also includes the personal effects used by him in the performance of his occupation or job; article 208 of the Regulations of this Code defines what is meant by baggage, and paragraph (g) stipulates that it includes work tools.⁸⁹ Article 89 of the Code provides that any person arriving at a port, airport or frontier post may bring his baggage into the country in question free of duties and taxes.

318. Domestic appliances are regulated as household items, a category which includes all new or used household items, in quantities and of a type which makes it clear that they are intended for domestic use within the meaning of article 92 of the Central American Customs Code; they do not enjoy exemption from taxes. Article 29 of the Baggage Act accords this benefit only to foreign diplomatic or consular officers and officials of international organizations accredited to the Government of the Republic.

319. Salvadorans returning home for good after residing abroad for three years or longer may also bring in their household items free of taxes, provided that the CIF value thereof for customs purposes does not exceed \$US 15,000.

8. Articles 51 and 52: Right to seek alternative employment in case of termination of the remunerated activity for which they were admitted for migrant workers not authorized freely to choose their remunerated activity

320. Article 51 of the Convention provides that migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity. Article 26 of El Salvador's Migration Act currently provides that on termination of his contract, for whatever reason, a migrant worker

⁸⁸ See annex 26.

⁸⁹ See annex 27.

must leave the national territory. This provision is not in keeping with the Convention, but in view of what the Convention stipulates and since in the event of a conflict between a treaty and a secondary law the treaty shall prevail (art. 144 of the Constitution), DGME applies the procedure now described. On his dismissal the alien must notify his situation to DGME, and if his residence permit has not expired he may remain in the country while he looks for a new job; when he finds a new job he must submit documents certifying that he has received the job offer, and DGME, having verified that the requirements have been met, grants him an extension of his residence permit and a new work permit.

321. Accordingly, the essential requirements for residing legally in El Salvador are possession of an offer of work, pursuit of a course of study, or possession of a relative settled in the country (this applies to foreign spouses of Salvadorans and to foreigners having members of their family already residing legally in El Salvador).

322. However, the draft migration and aliens act provides a way of avoiding deportation, for under the new legislation deportation will be permissible only if the alien remains in the country after the expiry of the authorized period or if he works without the required authorization; this means that it will not be necessary for an alien to leave the country if he decides freely to choose a remunerated activity, provided that his authorization to stay in the country has not expired and he informs DGME of his situation.

323. The restrictions imposed by the State on a migrant worker's access to a remunerated activity are set out in article 7 of the Labour Code:

(a) All employers have an obligation to ensure that at least 90 per cent of their staff consists of Salvadorans; if the actual percentage is a mixed number, it shall be rounded up to the next whole number;

(b) Only in special circumstances approved by the Ministry of Labour and Social Insurance may employers have more than 10 per cent of aliens in their workforce, this in order to hire persons for posts which it is difficult or impossible to fill with Salvadorans, i.e. to hire aliens with specialized or technical knowledge not possessed by Salvadorans. In such situations employers have an obligation to train Salvadorans for a period of not more than five years so that Salvadorans may then take the places of the foreign technicians and specialists.

324. According to article 9 of the Code, these exceptions do not apply to persons providing their professional, technical or administrative services to foreign or international enterprises in the management, control and administration of businesses located in various countries.

325. According to article 45 of the Migration Act, remunerated activities or activities carried on for profit may be engaged in by permanent residents, for they have satisfied the requirements for entering with that migrant status, i.e. they possess sufficient resources to establish themselves in financial or commercial activities or they have entered in order to carry on activities demanded by the country's needs; they may enjoy this advantage.

9. Articles 49 and 56: Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion

326. Residence and work permits are issued jointly in accordance with the Agreement on Cooperation between the Ministry of the Interior (through DGME) and the Ministry of Labour and Social Insurance, under which the two permits are issued simultaneously, i.e. residence is granted together with authorization to work. The two permits have the same duration.⁹⁰

327. A residence permit may be extended following examination of the case in question, provided that the applicant can demonstrate a specific reason for remaining in the country, for example proof of employment, study or family settlement.

328. The legislation establishes following grounds for requiring a migrant worker in a regular situation to leave the national territory:

(a) His labour contract has expired and he has no other offer of work and cannot demonstrate any other reason for remaining in the country (Migration Act, art. 26);

(b) He entered the country illegally (art. 60);

(c) He entered the country illegally and during his stay he has committed a criminal offence for which a sentence has been imposed, and on completion of the sentence the migration authorities decide to expel him (art. 61);

(d) He is participating directly or indirectly in the country's internal politics (Constitution, art. 92, para. 2);

(e) He has made a false statement regarding his origin, nationality or tourist status (Migration Act, art. 16).

329. The factors taken into account in a decision to require a person to leave the national territory, and the procedure to be followed, were described earlier.⁹¹

330. The draft migration and aliens act addresses in a single article the cases in which a person may be required to leave the country; it also sets out the procedure for the enforcement of expulsion orders, including the time limits for action by the parties and for enforcement, and establishes the remedy of appeal for legal review solely to the authority which issued the order, in this case the Ministry of the Interior. The governmental procedure currently in use will no longer be applied once the draft act enters into force.

331. In addition, the draft act stipulates that decisions to refuse temporary or permanent residence may not be contested, but the remedies of reconsideration and appeal will be admissible in such cases.

⁹⁰ See annex 28.

⁹¹ See annex 10.

D. Part V of the Convention: Provisions applicable to particular categories of migrant workers and members of their families

332. The application of articles 57 to 62 of the Convention brings in matters addressed in article 11 of the Labour Code, which reads: “Aliens shall enjoy the same freedom of employment as is enjoyed by Salvadorans, subject to no more restrictions than those established by law. However, the Executive Organ for labour and social insurance and the Executive Organ for interior affairs may take any action which they deem fit in order to maintain a balance in the movement of manpower in the Central American area, except when these matters are regulated by agreements or treaties which in are force and effectively applied.” Accordingly, the only bodies empowered to adopt measures to maintain a balance in the workforce are the Ministry of Labour and Social Insurance and the Ministry of the Interior, acting through DGME.

333. The movement of migrant workers within the national territory is permitted, and the following comments may be offered on each of the categories mentioned in the Convention:

1. Frontier workers

334. Where this category is concerned, it is acknowledged that Guatemalans, Hondurans and Nicaraguans enter El Salvador to work on farms in the harvest season or in cooperatives, or as informal vendors.

335. Salvadoran legislation contains no specific provisions on the entry of workers across the frontiers; many such workers in fact enter simply by showing their identity document to prove their nationality, in accordance with the CS-4 Agreement, which facilitates this mode of entry;⁹² accordingly, the entry of this category of worker is not registered as such but as the entry of tourists (for a maximum of 90 days), since these workers do not state that they are entering the country to work (some of them enter irregularly without obtaining the relevant work permit).

336. However, a person entering as a tourist may obtain a change of status under article 23 of the Migration Act if he or she is a Central American, an alien married to a Salvadoran citizen, a technical or specialized worker hired by an industrial or commercial enterprise at the written request of the employer concerned, a member of a religious order, or an accompanying spouse or child of a technical or specialized worker. The only condition applied to applications for this change of migrant status is that the migrant worker must have entered the country in possession of a passport endorsed by the consul of El Salvador accredited to his or her country of origin.

2. Seasonal workers

337. Nicaraguan and Honduran nationals in this category enter Salvadoran territory to work during the coffee-harvest and cane-cutting seasons, from November to January and from November to March respectively. The only requirement is possession of a special permit issued by DGME pursuant to article 59 of the Migration Act. At the end of the season these workers are required to return to their own countries.

⁹² Idem.

3. Itinerant workers

338. Persons putting on artistic events, attending conferences or sporting events or engaging in trade fall into this category.

339. According to article 21 of the Migration Act, persons entering for business purposes, either as travelling agents or representatives of foreign firms or in some similar capacity, may not engage in any activity for profit other than the one designated in their tourist card or visa.

340. In order to obtain the necessary permit, performers must submit to DGME proof of a contract in El Salvador, on which an advisory opinion is sought from the legally established trade union for the artistic activity in which the applicant is going to engage.⁹³ They must also pay to the trade union in question a performance fee equal to 10 per cent of the gross remuneration received in El Salvador; in the case of circuses and similar shows, the performance fee is 2.5 per cent of the daily gross box-office takings. They may perform for a maximum of 30 days consecutively or at intervals over a period of one year reckoned from the date of the first performance.

4. Project-tied workers

341. Migrant workers enter the national territory to work on the construction of roads or buildings, i.e. as technical or specialized workers; they may be involved in scientific, cultural or sporting activities or other legal temporary activities, and the duration of their stay may not exceed the duration of the project or the activity in question. They therefore have the migrant status of temporary resident, which may be granted for up to one year under article 7 of the Migration Act.

342. An application for entry or change of migrant status (from temporary to permanent resident)⁹⁴ may be submitted by a potential employer under article 26 of the Migration Act; such applications must be accompanied by the relevant documents, including a copy of a draft contract for the provision of services; on the expiry of this contract the worker must leave the country.

343. Extension of temporary residence may also be granted under article 29 of the Migration Act; the request must be submitted at least one month before the expiry of the temporary residence permit, and such residence may not exceed a total of five years except in individual cases approved by the Ministry of the Interior.

⁹³ Article 62 (a) states: “For the purposes of this decree, performer means any person who acts individually or in company with another person or persons to perform music, song, dance or readings or to present shows, either in person (live) before an audience of whatever size or on radio or television.”

⁹⁴ Article 31 of the Migration Act provides that temporary residents may change their migrant status on payment of the registration fees.

5. Specified-employment workers

344. This category includes persons who enter El Salvador to engage in training or support activities or to do work of a very specialized nature for which there are no Salvadorans available. There are no specific legal provisions applicable to migrant workers in this category; they are therefore admitted as temporary residents on the same terms as persons in the category of project-tied workers.

6. Self-employed workers

345. Persons wishing to work on their own account are granted the migrant status of permanent resident, but they must satisfy the following conditions stipulated in article 34 of the Migration Act: they must be in good health and possess a profession, occupation or skill or sufficient resources to enable them to set themselves up in a financial, industrial or commercial activity. The Ministry of the Interior may authorize the entry of professional, technical or expert personnel or business persons who intend to carry on activities which meet the country's needs. However, it may not authorize entry as a permanent resident when the activity in question will displace Salvadorans.

346. In accordance with article 35 of the Migration Act, persons wishing to enter the country as permanent residents must first submit an application to the Ministry of the Interior through the corresponding consular office or through a legal representative or authorized agent domiciled in El Salvador.

347. Permanent residents may engage freely in remunerated and for-profit activities under article 45 of the Migration Act.

E. Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

1. Article 65. Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

348. In order to secure progress in the application of article 65 of the Convention, DGME is executing plans for monitoring all aliens who enter the country and decide for whatever reason to remain; to do so, such aliens must satisfy certain requirements set out in the applicable national legislation. Visits are made to enterprises, markets, shopping centres, etc., in order to encourage all aliens in the country irregularly to obtain the necessary documents. The tactic for such visits is to make irregular migrants aware of the requirements and the procedures for legalizing their situation.

349. Where employment is concerned, and still with reference to article 65, the Ministry of Labour and Social Insurance has trained personnel both at its headquarters and in its various regional offices who can offer interviews, guidance and exchanges of information, with both employers and workers, concerning the various policies, laws and regulations on employment, as well as providing advice on the conventions and agreements concluded with other States.

2. Article 66: Authorized operations and bodies for the recruitment of workers for employment in another State

350. In coordination with other governmental and non-governmental bodies DGME authorizes projects and agreements which may include recruitment of the kind described in the preceding article in order to ensure the efficient implementation of the project. One example of this is the hiring of Honduran and Nicaraguan workers to harvest coffee and sugar cane.

351. In order to encourage regular migration and make things easier for Salvadorans wishing to work abroad, the Office of the Deputy Foreign Minister for Salvadorans Abroad runs temporary-workers programmes, which include a procedure, under a bilateral agreement between El Salvador and some other friendly country, by which Salvadoran workers to go to work temporarily in another country, provided that they have the minimum skills required for the job in question and, above all, that they comply with the migration regulations of the receiving country.

352. These recruitment projects, such as the one agreed with Canada, address such matters as the basic starting hourly rate of pay, the possibility of working overtime, award of punctuality and productivity bonuses, and benefits available under Canadian law (for example medical and life insurance, trade union membership, occupational safety courses, English courses, etc.). Other benefits may include return air travel between San Salvador and Canada, one month's accommodation, one week's maintenance allowance, local transport pass for one month, and possibility of internal promotion or advancement depending on performance and training. The initial labour contract is for 12 calendar months, with the possibility of renewal and permission to apply for permanent residence in Canada.

353. The Ministry of Labour, acting through its Directorate-General for Social Insurance and Employment, is responsible for the intermediation procedures in the recruitment and selection of workers in accordance with the profile required by the employer enterprise (this includes interviews and psychological tests, and obtaining employment histories and the other necessary documents); it establishes a final list of candidates to be submitted to the Canadian Embassy for transmission to the consulate for selection; this latter process includes interviews with consular officers and medical checks.

354. The National Vocational Training Institute (INSAFORP) runs an 80-hour course in basic English, to which the enterprises concerned contribute teaching and technical materials for use by the instructors.

355. For the purposes of speedy communication with the successful candidates once they are abroad the Ministry of Foreign Affairs requested the Ministry of Labour to introduce a course for such workers on use of the Internet, which reduces the communication costs run up abroad. The Directorate-General for Services to the Community Abroad can also use this tool to maintain direct contact with the workers and learn about their problems.

356. Salvadorans who are going abroad to work attend induction talks organized by the Directorates-General for the Foreign Service and for Services to the Community Abroad at which the workers are informed about their rights and obligations and the support and care services which they can call on once they are outside the country. They are furnished with more detailed information by the Consulate-General, together with details of contact points.

357. Between 2002 and March 2006 Maple Leaf Pork, a pork products company with its headquarters in Brandon, Manitoba, hired a total of 394 Salvadorans. Olymel, another meat-processing company, with its headquarters in Red Deer, Alberta, hired a total of 171 Salvadorans between October 2004 and December 2005. A total of 565 Salvadorans have benefited under this temporary employment programme.⁹⁵

358. El Salvador is now interested in expanding the current programme with Canada into other occupations, such as construction, agriculture and the hotels industry, and it has been engaging in intensive lobbying with various Canadian agencies.

359. In addition, approaches have recently been made to the Australian and Spanish authorities concerning the possible introduction of temporary-employment programmes in construction, services, health and agriculture; these inquiries indicate the great potential of implementing such programmes with these countries.

360. A project relating to construction and administrative workers in the state of Baja California Sur was executed with Mexico in 2002.

3. Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

361. El Salvador has signed two instruments on irregular migration, one with Guatemala and the other with Mexico:

(a) The Agreement between the Ministry of the Interior of the Republic of El Salvador and the Secretariat for the Interior of the United Mexican States concerning the orderly, swift and safe repatriation of Salvadoran migrants by land from Mexico, signed on 17 May 2005;⁹⁶

(b) Arrangements to facilitate the orderly, swift and safe repatriation of Salvadoran migrants by land from Mexico agreed between the Directorate-General for Migration and Aliens of the Republic of El Salvador and the Directorate-General for Migration of the Republic of Guatemala; signed on 18 August 2005.⁹⁷

There is also a Memorandum of Understanding between the Governments of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras and the Republic of Nicaragua concerning the humane, orderly, swift and safe repatriation by land of migrant Central American nationals, signed on 5 May 2006 in El Salvador at the eleventh meeting of the Regional Conference on Migration.

362. Successful work is also being done in conjunction with the Polus Center (which funds a care centre for vulnerable migrants in Tapachula, Mexico) under the project “Integrated repatriation of Salvadorans”: migrants are not only transported to El Salvador but also furnished

⁹⁵ See annex 29.

⁹⁶ See annex 4.

⁹⁷ See annex 6.

with support in reintegrating themselves in the country's production activities; this has already proved successful with two migrants, Maria Magdalena Brizuela, the mother of three children, and Nelson Quintanilla, a young man who has been found work in the Office of the Deputy Foreign Minister; both these persons had had limbs amputated as a result of accidents suffered on their way to the United States.

363. With a view to the reintegration in productive work of Salvadorans who have become incapacitated as a result of accidents on the way to their country of destination, regardless of their migrant status during the journey, El Salvador is working on the project "Repatriation of Salvadorans who have suffered physical incapacity", the aim of which is to set up a fund to finance their repatriation and reintegration in productive work.

364. As explained earlier, there is also the *Welcome Home* programme, which helps all those Salvadorans deported from the United States following the reform of the immigration legislation in 1996 to cope with their situation.

365. For Salvadorans who try to cross irregularly through Guatemala and Mexico, who are arrested or who suffer some kind of accident or health problem there is the Care Centre for Migrants, created by Executive Decree No. 535 of 4 July 2005 and located at the La Hachadura frontier post; its purpose is to take in and provide care for Salvadorans deported by land and returning home in vulnerable circumstances. Children at the frontier who are returning to El Salvador or have been arrested by the migration authorities are also attended to; they are cared for and referred to the National Institute for the Comprehensive Development of Children and Adolescents (ISNA) before being restored to their parents. Women and persons with injuries or health problems also receive attention in the form of temporary shelter while they find their feet back in their own country. A total of 3,796 men, women and children received attention between July 2005 and May 2006.

4. Article 68: Measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation

366. DGME conducts inspections of enterprises and establishments and other places where any type of work activity may be performed, in order to ensure effective monitoring of migration, legalize the situation of irregular workers, and fine the enterprises and establishments which employ this kind of labour. The Migration Act states in this connection:

"Contracting of specialized services

Article 26. In the case of the aliens referred to in subparagraph (b) of articles 7 and 23 of this Act, applications for entry or change of status may be submitted by the employers concerned and shall be accompanied by, in addition to the relevant documents, a copy of the draft contract for the provision of services to be concluded with the alien or an outline of the main provisions of such contract. The decision to approve the application shall state the period for which residence is authorized, in accordance with article 7.⁹⁸

⁹⁸ Article 7: "Temporary residents are all persons entering the Republic for periods of up to one year for the following purposes:

The final version of the contract shall be drafted in accordance with the draft version or outline referred to in the first paragraph and once it has been formally processed the employer concerned shall submit a copy, for registration and monitoring purposes, to the Ministry of the Interior and Social Insurance and to the Directorate-General for Direct Taxation. Infringement of the provision contained in the present paragraph shall attract a fine of 100,000 to 500,000 colons.

When the contract is terminated, for whatever reason, the alien shall leave the national territory; if he does not do so, he shall be expelled therefrom.⁹⁹

Sanctions for infringement of contracts

Article 27. Employers are prohibited from contracting the services of persons referred to in the preceding article who have broken earlier contractual obligations; if an employer nevertheless does so, he shall incur a fine of 100,000 to 500,000 colons. The person wrongfully recruited shall be expelled from the national territory.

The same fine shall be imposed on employers who fail to notify the Ministry of the Interior within a time limit of 15 days that an employee has ceased to furnish his services.”

367. It is worth drawing attention once again to the efforts made by the PCN, through its Frontiers Division, to prevent clandestine movements of persons by operating frontier patrols to combat the illegal transport of persons, an activity characterized as a crime in the Criminal Code. These efforts are pursued in conjunction with the Office of the Attorney-General of the Republic.

368. In view of the vulnerable situation of persons who migrate irregularly, the State has taken steps to eliminate irregular and clandestine movements of migrant workers either by preventing them or by providing assistance to persons in this situation.

(...)

(b) To work in a technical or specialized capacity.”

Article 23: “Aliens entering the country as tourists may change their migrant status only in the following cases:

(...)

(b) Technical and specialized personnel recruited by industrial or commercial enterprises domiciled in the Republic, at the written request of the employer concerned.”

⁹⁹ Temporary residents are all persons entering the Republic for periods of up to one year for the following purposes:

(a) To engage in a scientific, cultural or sporting activity;

(b) To work in a technical or specialized capacity;

(c) To engage in some other temporary legal activity.

369. Efforts have been made to publicize the difficulties and dangers of leaving the country irregularly, such as the campaign on the dangers of the road to the north launched on 27 June 2005 with the aim of making the Salvadoran population in the United States aware of the risks of travelling irregularly, especially for children and adolescents. Materials published by UNESCO were supplied to the country's consulates and to associations of Salvadorans (community leaders). This campaign was launched in cities in the United States such as New York and Washington, where events were put on both for members of the Salvadoran community there and for the local communications media, in order to publicize these materials.

370. In addition, the Office of the Deputy Foreign Minister for Salvadorans Abroad organized a working visit to the Guatemala-Mexico frontier on 25-27 July 2005, with the following aims:

- (a) To inaugurate the Care Centre for Salvadoran Migrants at the La Hachadura frontier post;
- (b) To learn about the circumstances of migrants at the frontier between Guatemala and Mexico in terms of the treatment received by Salvadorans who emigrate without documents;
- (c) To gain a clearer idea of the illicit transport of migrants and trafficking in persons;
- (d) To put up information posters on the risks of undocumented migration, etc., in the chief places where Salvadorans cross or are arrested.

371. The members of this mission included representatives of the Legislative Assembly, governmental agencies, international organizations, civil society, and the communications media. The visit resulted in the signature of memorandums of understanding with Guatemala and Mexico.

372. In addition to this action by the State and in order to prevent more people from falling victim to illicit transport and trafficking in persons, a communication strategy was formulated to provide comprehensive information about the various aspects of migration. UNDP, IOM, UNICEF, UNFPA and Meridiano 89 joined in this undertaking, which was coordinated by the Office of the Deputy Foreign Minister; the work is being focused initially on a campaign to publicize the risks of emigrating without documents, including the topic of trafficking in persons. The campaign will be run on radio and television and in the press.

373. With regard to the action taken to combat the sexual and commercial exploitation of migrant workers, action which also helps the members of their families, November 2004 saw the signature the Letter of Understanding on the eradication of the sexual and commercial exploitation of children and adolescents. This document was signed by 15 institutions, which undertook to step up their efforts, and a working party was set up to combat and prevent sexual and commercial exploitation and provide care for its victims. The Office of the Deputy Foreign Minister is represented in this working party. These are its aims:

- (a) To create forums for debate and dialogue with a view to the formulation of proposals, programmes and projects to eradicate and prevent and to provide protection against the sexual and commercial exploitation of children and adolescents;

(b) To reinforce the institutional approach to the problem by promoting the formulation of a plan of action for the period 2005-2010, which would take into account the international and regional recommendations and agreements on fighting the problem, such as the ones emanating from the meetings in Stockholm (1996) and Uruguay and Yokohama (2001), and the San José Agreements (2004);

(c) To publicize the problem: a poster and four leaflets have been produced for distribution to members of every one of the institutions represented in the working party. And a project is being formulated for such activities as forums, campaigns and personnel training;

(d) To implement article 69 of the Convention.

374. The PNC Frontiers Division, through its Unit for Human Rights and General Inspection, applies the general procedures for identification and deportation of migrant workers, usually on the ground of irregular entry into El Salvador, in conformity with the provisions of article 60, paragraph 1, of the Migration Act. Migrants entering in violation of the Act are fined 10 to 100 colons and expelled from the national territory. This fine may be replaced by detention for up to 30 days, according to the case.

375. However, in practice the fine is not collected, and DGME initiates the administrative procedure for immediate return.

376. For the purposes of the preceding paragraph, members of the public security forces and the other administrative authorities of the Republic have an obligation to notify DGME of cases which occur and to supply all available information about the offenders, so that DGME can conduct investigations and, when appropriate, request the Ministry of the Interior to issue expulsion orders.

377. El Salvador recognizes that it must make an effort to implement the necessary policies, including programmes to regularize the status of migrant workers who have entered the country irregularly.

378. On 27 August 2004 El Salvador and Nicaragua signed a Memorandum of Understanding on implementation of the temporary migration arrangements for the protection and regularization of Nicaraguans and Salvadorans in irregular situations who can demonstrate that they have settled in the country of destination, with a view to formulating and introducing a mechanism for providing temporary protection for migrants by means of documentation facilities, simplification of procedures, etc. There will first be meetings of the migration authorities with representatives of the foreign ministries of the two countries to coordinate the implementation procedure in accordance with their respective legislation.

379. In addition, on 18 August 2005 El Salvador and Guatemala signed an agreement on the regularization of migration entitled "Memorandum of Understanding between the Republic of El Salvador and the Republic of Guatemala on implementation of the temporary migration arrangements for the temporary protection and the regularization of Guatemalans and Salvadorans in irregular situations who can demonstrate that they have settled in the country of destination". A corresponding plan of action has been formulated and will be implemented.

380. Agreement has been reached within the framework of these instruments on the production of procedural handbooks for implementation of the arrangements for temporary migration and the regularization of migrants.

381. El Salvador has taken action to extend temporary protection status (TPS), a procedure introduced in 1990 by the United States Congress under which the Attorney-General (this is currently a function of the Department of Homeland Security) may accord TPS to nationals of other countries who are in the United States irregularly and are temporarily unable to return to their countries of origin owing to armed conflicts, natural disasters or other extraordinary temporary circumstances. For the duration of the period assigned to a country under a TPS programme, the beneficiaries are not asked to leave the United States and they may obtain an employment authorization document (EAD), which amounts to a work permit. However, the award of TPS does not lead to permanent resident status. When the TPS period assigned to a country comes to an end, the beneficiaries revert to their former migrant status. In 1991 the United States Government allocated the first TPS period to El Salvador, to run from 1 January 1991 to 30 June 1992, in order to protect Salvadorans living in the United States with irregular migrant status who had fled there because of the war.

382. The current TPS period was awarded to Salvadorans, thanks to their Government's efforts, following the earthquakes which struck El Salvador in 2001; it benefited Salvadorans who entered the United States before 13 February 2001 and ran from 9 March 2001 to 9 September 2002. El Salvador has requested four extensions of this period: the first was granted from 9 September 2002 to 9 September 2003, the second from 9 September 2003 to 9 March 2005, the third from 9 March 2005 to 9 September 2006, and the fourth from 9 September 2006 to 9 September 2007.

383. In addition, under the migration regularization programme, since 2001 Mexico has been allowing Salvadoran migrants to put their status in order. This programme was extended to 31 October 2006 and its scope was amended to allow the regularization of aliens who entered Mexico before 1 January 2005; the beneficiaries total 3,326.
