

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Party to optional protocols?	Other core treaties ratified
1980	None	Yes, party to both.	ICERD, ICESCR, CEDAW, CAT, CRC, CMW, CRPD

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

Information submitted to the Committee

State report

Nicaragua submitted its 3rd report to the Human Rights Committee (the Committee) on 20 June 2007.² Nicaragua last appeared before the Committee in April 1990.³ Its 3rd report is therefore over a decade late. The 120-page report lists the domestic measures Nicaragua has adopted in accordance with the *International Covenant on Civil and Political Rights* (the Covenant). No reference is made to the previous report or Committee recommendations, given the many years since its submission. Nicaragua demonstrates little self-criticism regarding its record of upholding civil and political rights, and even claims that its Constitution is ‘one of the most advanced constitutions with regard to the protection of human rights’, adding that ‘Nicaragua has an outstanding record as a country which promotes the human rights of indigenous peoples’. The report lauds the level of self-determination enjoyed by indigenous people in the State, though fails to mention the obstacles placed by the Government, for instance, in the case of the Awas Tingni community (see below).

Though the report portrays positively the level of gender equality in Nicaragua, it acknowledges room for improvement as suggested by the National Women’s Institution (INIM). This includes bringing the country’s legal framework ‘more closely into line’ with international treaties on women’s rights, applying legislation more effectively, and improving women’s access to justice. Regarding the right to life under Article 6 of the Covenant, the 2006 law that prohibits therapeutic abortion is mentioned briefly, yet the report fails to mention the actual implementation of this law.

Regarding the ill-treatment of detainees, the report pointedly states that ‘no cases of torture have occurred in prison’. The State report admits the existence of isolated cases of excessive use of force against detainees, though claims that these were dealt with promptly. Other issues raised in the State report are the frequent murders of Nicaraguan journalists; child labour; trafficking; domestic and sexual violence; and the sale of children. These issues remain prominent in Nicaragua and the Government has adopted relevant national programmes such as the *National Plan for the Prevention of Domestic and Sexual Violence 2001-2006* and the *National Plan of Action 2002-2011*.

List of issues

After having studied the report, on 4 June 2008, the Committee provided its list of issues to the State.⁴ The Committee requested clarification of the status of the *Second Optional Protocol* to the Convention in domestic law and the application of the Covenant in national courts. Nicaragua was asked to provide disaggregated statistical data relating to the progress of women in Nicaraguan society, and measures taken by the State to stop stereotyping and violence against women. The Committee requested information on incidents of torture and ill-treatment of detainees by the national police and the measures that have been taken to improve prison conditions. The Committee also called for information about marginalisation of indigenous populations in political and in economic realms; the issue of indigenous lands; attacks on journalists and members of human rights organisations as regards freedom of expression; and the consequences of the prohibition of therapeutic abortion adopted in 2006.

Nicaragua submitted extensive written replies to the list of issues on 6 October 2008,⁵ available only in Spanish. In its replies, Nicaragua confirms that it ratified the *Second Optional Protocol* on 11 September 2008, and describes four cases in which the Covenant has been cited in domestic courts. The State also declares that

² CCPR/C/NIC/3, available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

³ Unavailable online.

⁴ CCPR/C/NIC/Q/3, available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

⁵ CCPR/C/NIC/Q/3/Add.1, available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

it is currently implementing a campaign to promote the participation of women in 50 percent of public posts. However, instead of providing statistics on the participation of women in public and private sectors as requested by the Committee, the State merely provides numbers and neglects percentages. Therefore, the proportion of women to men in office remains unclear. In relation to ill-treatment in prisons, the State contradicts its original declaration in the State report that this happens rarely, admitting that 363 complaints were made in 2007, of which only 37.5 percent were successful. Torture, in the written replies, is described as ‘an isolated incident’. The State then lists all the programmes initiated by the Government to improve prison conditions, including the restoration and construction of penitentiary centres country-wide. The State stresses that it is currently promoting the participation and integration of indigenous populations in political and public life. The written replies list the State’s achievements in the titling of the lands of the Awas Tingni community. In relation to freedom of expression, Nicaragua asserts that only three complaints have been made by journalists against the State, all of which have been investigated. The written replies list Nicaraguan laws ensuring freedom of expression, yet little more information is provided on this issue, especially regarding human rights defenders. As regards therapeutic abortion, the report notes that since the 2006 law prohibiting it, there has been a 12 percent drop in maternal deaths. This reply gives the impression that the State maintains its positive view of this law.

NGO information

Four non-governmental organisations (NGOs)⁶ and three coalitions of NGOs⁷ submitted **written reports** to the Committee.⁸ The Global Initiative to End All Corporal Punishment of Children criticised the fact that corporal punishment is lawful in the home, schools and other care centres, while it remains unlawful in prison. The report requests information on whether corporal punishment is legal in the workplace. These issues are also covered in the 58-page report submitted by the coalition headed by the World Organisation against Torture (OMCT). This coalition also claims that the constitutionally declared democracy that Nicaragua has adopted has not, in practice, contributed to the socio-economic development of the State. The coalition criticises the lack of transparency of elections, noting especially the fact that the Supreme Electoral Council has denied the need for external electoral observation. The coalition is concerned about sexual and other violence against women which one in three Nicaraguan women endures; the poor socio-economic situation of children; and the limited participation of women in decision-making. Other issues mentioned include murders by police officials and the army; the use of torture; and the violation of the rights of human rights defenders.

Representing the Awas Tingni Community of Nicaragua, the report submitted by the University of Arizona Indigenous Peoples Law and Policy Program is critical of the ineffectiveness of the Nicaraguan Government in the delimitation, demarcation, and titling of the lands traditionally owned and occupied by the Awas Tingni Community, as demanded by the Inter-American Court of Human Rights in 2001. The Government was given 15 months to accomplish this, and seven years have now passed with few changes. The NGO requests information on the measures that the Government will now take and a timeline. The NGO Conscience and Peace Tax International presented a report concerning the fact that conscientious objection has not been mentioned in Nicaraguan legislation since 1983. The coalition headed by Global Rights submitted a report regarding violations of the rights of lesbian, gay, bisexual and transgender (LGBT) persons in Nicaragua. Specific concerns include lack of access to healthcare for sufferers of HIV/AIDS; discrimination in education, housing, and the workplace; and police brutality. The coalition recommends, *inter alia*, that anti-

⁶ Global Initiative to End all Corporal Punishment of Children, Conscience and Peace Tax Initiative, University of Arizona Indigenous Peoples Law and Policy Program in representation of the Awas Tingni Community of Nicaragua and Human Rights Watch.

⁷ Coalition 1: Alianza de Centros de Mujeres, Centro Nicaragüense de Derechos Humanos (CENIDH), Federación Coordinadora Nicaragüense de ONGs que Trabajan con la Niñez y la Adolescencia (CODENI), World Organisation against Torture (OMCT), Red de Mujeres contra la Violencia (RMCV). Coalition 2: Global Rights, Grupo Safo, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic, Human Rights Program, Harvard Law School, Red de LatinoAmerica y el Caribe de Personas Trans (Red LacTrans). Coalition 3: Movimiento Autónomo de Mujeres, Centro de Derechos Constitucionales, International Women’s Human Rights Law Clinic.

⁸ The NGO reports are available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

discrimination legislation be enacted specifically regarding LGBT persons and that the Government provide funding to HIV/AIDS sufferers. The reports submitted by a third coalition, headed by Human Rights Watch, solely concerns the prohibition of therapeutic abortion, which has led to the denial of access to emergency obstetric care invoked by fear, which in many cases has led to death.

At the beginning of the session, the first two coalitions gave **oral presentations** which highlighted the aforementioned human rights violations. An informal meeting for NGOs was held one day prior to the review and was attended by several Committee members. Discussion was centred on therapeutic abortion, freedom of expression, and prison conditions.

Themes and issues

The delegation of Nicaragua was led by Mr Ivan Lara Palacios, Special Penal Prosecutor of Nicaragua's General Prosecutor's Office. He was supported by a small medium-level delegation consisting of the Ambassador Carlos Robelo Raffone, Advisor Néstor Abraham Cruz Toruño and First Secretary Norman Antonio Somarriba Fonseca from the Permanent Mission of Nicaragua to the United Nations Office at Geneva, and Rosa María Lovo Hernandez, a specialist in international politics from the Ministry of Foreign Affairs.

Mr Lara Palacio's extensive opening speech covered many of the issues of concern to the Committee and was almost taken directly from the written responses. Though Committee members were generally pleased with the improvements in Nicaragua since the last report, there still remained areas of concern. These included the conditions of the penitentiary system, the prohibition of therapeutic abortion, the rights of women, the nature of the judiciary system, the rights of the indigenous population, and freedom of expression.⁹ Moreover, Committee members conveyed their disappointment concerning the tardiness of the review. They were also frustrated by the delay of the submission of the State responses to the list of issues, as well as the fact that it was only available in Spanish.

During the interactive dialogue, the delegation cooperated courteously with the Committee, answering all but few questions. The delegation promised that replies to all unanswered questions will be provided in written form after the session. During the dialogue, there was some confusion about Nicaragua's policies and the statistics provided regarding various forms of human rights violations. This perhaps can be attributed to the fact that only two members of the delegation, namely Mr Lara Palacios and Ms Lovo Hernandez, spoke, neither of whom is an expert in all the fields discussed.

Penitentiary system

Mr Lara Palacios admitted that the conditions of prisons in Nicaragua are poor. Disease is widespread and in some cases, detainees have limited access to drinking water due to the inadequate infrastructure of prisons. Mr Lara Palacios assured the Committee, however, that the Ministry of Finance is increasing the budget for prisons for 2009 to 2010. He explained that the recently passed law on the penitentiary system and serving of sentences has changed the general rules on the management of prisons. The new system, he claimed, is a humane one that aids social re-insertion, promotes the family unit, and provides healthcare and support for finding employment upon release. Sentences, he stressed, are now served with a view to re-education.

Responding to concerns raised over the overcrowding in prisons, the delegation listed the various programmes the State has implemented, or is in the process of implementing. These include the construction

⁹ The list of members of the Nicaraguan delegation is available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

of more prisons, some of which are specifically for adolescents and women, in various locations throughout the country, and the restoration of, *inter alia*, the water supply of already existing prisons.

Several members of the Committee highlighted their alarm at the smallness of the budget dedicated to food for detainees. Mr Ahmed Tawfik Khalil quoted this to be 50 cents per day for three meals.¹⁰ Defending the budget allocation, Ms Lovo Hernandez responded that no health issues related to lack of food in prison have arisen.

The issue of torture and ill-treatment of detainees was frequently mentioned by Committee members. The delegation could not provide information on cases of torture since the State's official identification of torture as a crime was only adopted in May 2008. Regarding the ill-treatment of detainees at the hands of wardens, Mr Nigel Rodley wanted information on the nature of the sanctions against the 221 wardens who are accused of ill-treatment. This, however, remained unanswered throughout the dialogue. The delegation assured the Committee that prison guards are trained in the area of human rights.

The Committee wanted to further understand what was termed the 'tragic plight of the donados', or 'gifts'. The delegation stressed that these prisoners describe themselves as 'donados', as they receive no family support. Mr Lara Palacios admitted that though their situation could be improved, this is not the responsibility of the State, but that of the families of these prisoners. He claimed that efforts have been made by the State to contact families to ask for their support to little avail.

Therapeutic abortion

The Committee voiced its objections to the prohibition of therapeutic abortion adopted in 2006. The delegation insisted that abortion does not constitute a main cause of maternal mortality, only amounting to 4 percent of the total. It openly supported the prohibition, claiming that maternal mortality has decreased by 12 percent since its adoption. Ms Zonke Zanele Majodina and Mr Rodley contested the delegation's claim, stating that alternative data demonstrates that maternal mortality has in fact increased and that in many instances death could have been avoided. Both stressed that many cases of suicide should be considered as maternal mortality. This is especially the case with death caused by the vaginal insertion of pesticides to abort foetuses, which has become common practise in Nicaragua.

The delegation stressed that 90 percent of the Nicaraguans are Christian and that culture heavily influences legislation. In this regard, Mr Abdelfattah Amor inquired how the State proposes to reconcile the secularism of the new liberal Government in Nicaragua with the ban on abortion.

Mr Lara Palacios confirmed that a doctor will not be punished for performing an abortion if the mother's life is at risk. Moreover, if the abortion is not carried out, the issue may become one of homicide. Mr Rodley pointed out that this is contrary to the understanding of the prohibition among civil society, and suggested that perhaps translation might have led to confusion.

Mr Lara Palacios said that the 'thorny issue' of therapeutic abortion currently being evaluated by the National Assembly. He stated that since the prohibition is in its nascent stage, it is premature to evaluate its impact. The State has yet to receive exact statistics on the effect of the ban, but will provide them to the Committee as soon as possible.

Women's rights

¹⁰ This was a fact raised by Nicaraguan NGOs at an informal lunch meeting which Mr Ahmed Tafik Khalil and Mr Nigel Rodley attended.

Domestic violence

Mr Jose Luis Perez Sanchez-Cerro expressed his alarm at the fact that domestic violence has increased by 300 percent¹¹ and that there are no shelters or sufficient mechanisms to lodge complaints. He claimed that many complaints of domestic violence received by the Inter-American Commission of Human Rights have not had an appropriate response from the State. Ms Majodina was concerned that there are no preventive measures or sanctions regarding sexual violence, and that there are excessive delays in investigations.

In response, Mr Lara Palacios claimed that there are 13 centres country-wide for women and children victims of domestic violence. He pointed out that though the State had not yet recognised violence against women in its Criminal Code when it submitted its report to the Committee, it has since amended the text to criminalise domestic and family violence, including intimidation. Mr Lara Palacios presented other efforts being made by the Government to address this issue, including a specialised unit dealing with family violence and awareness-raising campaigns.

Nevertheless, Ms Majodina remained sceptical and voiced some recommendations. These included a more stringent application of legislation, the changing of attitudes towards women who come to police stations to lodge complaints, the training of police to minimise the potential re-victimisation of these women, and the setting up of relevant offices within the Public Ministry.

Political participation of women

Ms Majodina noted that the policy of ensuring 50 percent of posts for women is not respected and that women generally have no decision-making power. Mr Lara Palacios claimed that to enforce this quota, one needs to take into account the situation in the country. Though there is a ‘sea change’ as regards attitudes towards women, machismo is still prominent in Nicaragua Mr Lara Palacios assured the Committee that the 50 percent quota is an official policy, and it is being gradually implemented. He also asserted that there *are* women in decision-making posts, and the State has created a Women’s Secretariat to ensure compliance with this policy. The delegation also pointed out that there are many women in public positions in autonomous regions.

Stereotyping

The delegation insisted that the State is implementing awareness-raising programmes to eliminate stereotypes and transform negative practises against women. There is training at national and municipal levels and the State is using websites to disseminate information on the rights of women. Ms Majodina questioned this, referring to information stating that the campaigns to eliminate stereotypes against women are NGO initiatives not governmental ones.

Other issues

The topic of **freedom of expression** covered the threats, arrest, and abuse of journalists and human rights defenders. Mr Lara Palacios stressed that laws exist ensuring freedom of expression and that there have been no specific cases about the ill-treatment of human rights defenders. Committee members, however, were concerned about the number of assassinations of journalists. The delegation updated the Committee on specific cases of alleged violations of the freedom of expression.

The Committee requested information on the transparency of the **judicial system** and the appointment of judges. Mr Sanchez-Cerro relayed information he had received that impartiality exists only in theory in the judicial system, and that Government officials, major stakeholders in the economy, and religious institutions

¹¹ No timeframe was provided for this figure.

often use the system to advance their personal interests. The delegation stressed that under a law adopted in 2004, all judges must obey the country's laws and the Constitution. It clarified that judges are appointed purely on merit through competitive examination regimes as part of the new judicial career norms adopted in June 2008. Since this is so recent, however, there is little information available to assess any improvements. Mr Lara Palacios assured the Committee, however, that it is now possible to make complaints against the judicial system

The Committee was also concerned about the **situation of the various indigenous populations**, especially in relation to their right to traditionally-owned lands and their participation in public and political life. Mr Johnson noted that the extensive information provided on this issue by the State shows its marked interest in improving the situation of indigenous people. Ms Majodina requested clarification on the number of property titles that have been given to indigenous communities since the decision of the Inter-American Court calling on the Government to demarcate lands to the Awas Tingi community.¹² The delegation stated that the issue of the indigenous population of the Atlantic coast has been considered by the Committee on the Elimination of Racial Discrimination earlier this year and that the State will provide written updates to the Committee on their related achievements. The delegation informed the Committee of Government action in relation to specific indigenous groups, including the Yatama people and the Awas Tingni community.

The Committee also engaged the delegation in discussion on the following themes: pre-trial detention; the right to strike; the consequences of the use of the pesticide Nemagon; the banning of political parties; children born out of wedlock; and the extrajudicial killings of street children.

Conclusions and next steps

Many of the concerns voiced by NGOs were absent from the Committee's dialogue with the State, for instance discrimination against the LGBT population in Nicaragua and corporal punishment. This may be due to the fact that the NGOs devoted to these issues were not present and could not lobby the Committee members. In the cases where NGOs were present, Committee members did raise issues brought to their attention during informal dialogues.

The Chairperson closed the session by acknowledging the improvements in the Nicaraguan legal system, and in the realm of the rights of women and minorities. He stated that there remain issues of concern that should prompt Nicaragua to act 'energetically' in the future. He expressed his hope that Nicaragua will engage more regularly with the Committee than it has in the past.

Last revised and updated: 24 November 2008.

¹² Please refer to report submitted by the University of Arizona Indigenous Peoples Law and Policy Program, available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

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