

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Other core treaties ratified
1980	None	ICERD, ICCPR, 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 combined 2nd, 3rd, and 4th reports to the Human Rights Committee (the Committee) on 22 October 2007.² Nicaragua last appeared before the Committee in December 1993, making it 14 years since Nicaragua last submitted a report to the Committee.

The report covers all the substantive rights contained in the *International Covenant on Economic, Social and Cultural Rights* (the Covenant), but gives precedence to work and employment issues. Moreover, the poverty level of the country is presented as the main problem effecting health, educational level, and the ability to create quality jobs needed to improve working and living conditions. The emphasis of the report is on the development of the legal framework in Nicaragua through the last five to 10 years. In general, the 254-page report addresses many issues with regard to legislation and the need for its further development.

In the previous concluding observations,³ the Committee lists three issues of special concern, namely the poverty level and standard of living, the lack of consistency and effectiveness of regularising land ownership, and mass expulsion of families by the police without any relocation plan. In the current State report, the economic situation and poverty level of the country is viewed as a major problem and the Government is of the view that many of these problems stem from the global economic structure and the measures imposed on Nicaragua by financial organisations. The State report does not comment on the issue of expulsions, but addresses the need for legislation with regard to land rights and programmes addressing the right to housing. Land problems is one area where the State puts forth specific plans regarding land rights in general, for the indigenous population, and with a gender perspective.

List of issues

After having studied the report, on 14 December 2007, the Committee provided its list of issues to the State.⁴ The questions on the list of issues are grouped into several categories: follow-up questions to the previous report; the general framework in which the Covenant is implemented; and questions on specific rights in the Covenant. In general, the Committee asks for specific and updated information on several issues, with emphasis on requests for detailed and concrete information on the implementation and protection of the rights of vulnerable and marginalised groups.

The Committee asks for information on measures adopted to implement the previous concluding observations with regard to **property titles and tenure**. It also asks questions about the general framework of **the Convention in domestic law** and on mechanisms to protect the rights of the most vulnerable groups when the State negotiates trade agreements. In general the Committee asks for further disaggregated statistical data with regard to **employment**, information regarding workers' rights in general and specifically with regard to the Export Processing Zones (EPZs, or *maquilas* in Spanish). Many questions also focus on the marginalisation of indigenous groups and protection of their land rights. The Committee also asks many questions regarding gender equality and what it describes as 'deep-rooted stereotypes that discriminate against women'. It asks for information on concrete measures to strengthen gender equality like education for women and awareness campaigns. A number of questions are raised on the subject of general social security coverage and specific measures adopted to improve and expand social security. The Committee asks about the lack of criminalisation of domestic violence, legislation on trafficking of women and children, and measures

² E/C.12/NIC/4, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

³ E/C.12/1993/14, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

⁴ E/C.12/NIC/Q/2, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

ensuing protection and legal aid for victims. With regard to health, the list includes questions on maternal mortality, health services in rural and marginalised areas, and plans to amend legislation to provide exceptions to the general ban on abortions.

The State's written responses were submitted very late and therefore only available in Spanish. Many Committee members regretted this and pointed out that this hindered the dialogue. However, at the beginning of the session, the delegation presented its replies orally. This was also criticised by the Committee, who insisted that the session should be dedicated to clarification of written information.

NGO information

5 individual non-governmental organisations (NGOs)⁵ and 3 coalitions of NGOs⁶ submitted **written reports** to the Committee.⁷ The NGOs that submitted reports focus on women's rights and health issues, indigenous groups, children's rights, and the right to food. A prevailing issue raised by a majority of the NGOs is sexual and reproductive rights in view of the recent ban on therapeutic abortion in Nicaragua. According to the NGOs, this ban has resulted in an increase in maternal mortality rate, especially in the rural areas, as well as discrimination based on sex, age and socio-economic status. The NGOs suggest that the Committee ask the State about how it will combat the inherent discrimination, if it plans to amend the legislation, and how it will combat influence from religious groups. Interestingly, the State report does not mention the ban on therapeutic abortions; it focuses instead on the provisions in the Labour Code to prevent discrimination against pregnant women and mothers.

Other main issues in the NGO reports are: poverty; lack of food; proper work; labour rights; and the continuing problem of the right of indigenous groups to land and resources. In the State report, the Government is very proud of its 'Zero Hunger' programme and its efforts to help the most vulnerable groups. With regard to land issues, the State report admits that there have been many problems in the past and states its intent to deal with some of the issues.

At the beginning of the session, two NGOs and one coalition of NGOs gave **oral presentations** on the situation of human rights in the State⁸. The focus of the NGO statements was on: the ban on therapeutic abortions; access to health care; criticism of the Government's 'Zero Hunger' programme; and labour and land rights. These issues were also mentioned at the **informal meeting** with the Committee organised by NGOs between the first and second part of the examination of Nicaragua.⁹ The key points that the NGOs raised at this meeting were the ineffective land reforms and land ownership policies, especially with regard to the indigenous populations. The NGOs also criticised the 'Zero Hunger' programme as being politicised and not targeting the most needy. They also criticised the State report for being excessively legalistic and not addressing the real problems of implementing Labour Codes, land rights, and housing programmes. NGOs also criticised the non-independence and politicisation of the legal system. The NGOs recommended that the Committee ask the delegation when the Government plans to approve the food security law, what it will do to create quality jobs, and why it have not ratified International Labour Organization (ILO) *Convention 169*. The Committee members were very interested and asked the NGOs many questions. In the end, the Committee members thanked the NGOs for giving them additional information and reiterated the importance of concrete examples in the dialogue with the delegation.

⁵ Centre for Reproductive Rights, FoodFirst International Action Network (FIAN), Global Initiative to End All Corporal Punishment of Children, Minority Rights Group International, Amnesty International.

⁶ Ipas Central America, Coordinadora Diriangen, Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDDDH).

⁷ The NGO reports are available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

⁸ Nicaraguan Centre for Human Rights representing a coalition of 8 NGOs, FIAN, Centre for Reproductive Rights.

⁹ This meeting was attended by Committee members Mr Eibe Riedel, Mr Philippe Texier, Mr Ariranga Govindasami Pillay, Mr Walid Sadi, Ms Barbara Elaine Wilson, Ms Maria Virginia Bras Gomes, Mr Andrzej Rzeplinski, and Ms Rocío Barahona Riera.

Themes and issues

The delegation of Nicaragua was led by Ambassador Carlos Robelo Raffone. He was supported by a small delegation consisting of representatives of the Permanent Mission in Geneva, Ms Marisol Cruz Chirino, Mr Néstor Abraham Cruz Toruño, and Mr Norman Antonio Somarriba Fonseca. The Permanent Mission in New York was also represented by Counsellor Maria Elena Medal Garrido, and also present was Ms Rosa María Lovo Hernandez from the Ministry of Foreign Affairs.

The opening statement delivered by Ambassador Carlos Robelo Raffone lasted about half an hour and emphasised on how the new Government means to rectify many problems which were a consequence of the ‘neo-liberal Government’ that was in power for 16 years until 2006.¹⁰ The delegation thus seemed keen to separate the new Government from the old and stress that it is taking initiatives to better the situation. The introductory presentation was very repetitive and mainly referred to legislative matters. Mr Raffone repeatedly mentioned governmental programmes on, for instance, the elimination of hunger, housing projects, literacy, and education. He also stressed the need to regularise land ownership, particularly with regard to the indigenous population. However, he concluded that the only way to truly combat poverty and hunger is to change the current global economic structural and international system. The Chairman of the Committee, Mr Philippe Texier, emphasised after the statement that the Committee is interested not just in law but in the actual situation and difficulties the country may have.

The dialogue with the Committee was marked by the fact that the written replies to the list of issues were only handed in a few days before the session and only available in Spanish. When answering questions, the delegation often read from the written replies and did not answer exact questions but only gave general information even though the Committee explicitly asked for this several times. The Committee expressed general dissatisfaction with the lack of specific answers and disaggregated data. Repeatedly the chairman of the Committee Mr Texier stressed to the delegation that it was not giving specific replies to the questions but only stating intent. Throughout the session, Mr Texier repeated his request to the delegation that it provide answers to the actual questions posed by the Committee rather than read directly from the written replies.

The delegation answered the criticism from the Committee saying that it was unable to answer all the oral questions because it did not have representatives from every ministry, and asked the Committee to recognise the effort it was making and the fact that the State was honouring its obligation to submit a report for the first time in 14 years.

Status of the Covenant in domestic law

The Committee asked many questions regarding the Covenant’s standing in the legal framework put forth by the new Government. It wanted to know if the Covenant can be directly invoked in courts, and asked the delegation to provide specific examples.¹¹ The delegation said that it did not have concrete examples but explained that the Convention can be invoked in national courts, and general and specific human rights instruments have been incorporated in the legislation. It also stressed that the legislation in general is in compliance with the rights in the Covenant. Some of the rights are also mentioned in the Constitution.

¹⁰ For example, that situation of 80 percent of the population living under the poverty line.

¹¹ Mr Riedel, Mr Clement Atangana, Mr Pillay, Mr Sadi.

Independence of the judiciary

Committee member Mr Alvaro Tirado Mejia asked a general question about the independence of the judicial system. He mentioned that according to sources this branch is troubled with nepotism, corruption, and its close links with political power. The delegation answered that the guarantee of impartiality and disciplinary punishment is clearly stipulated in the *Organic Law on Judicial Power*. The present regulations are meant to remove any lack of impartiality and combat the ‘negative perception people could have of the system’. The delegation explained that the Supreme Court has approved the law establishing transparency on all issues and on the credentials of a judge. The courts can investigate the judges and their findings can be reviewed by the court at oral hearings. This law has already resulted in 5 magistrates being suspended and 5 judges being arrested.

Indigenous people

Committee member Ms Maria Virginia Bras Gomes repeatedly raised issues relating to indigenous people. She acknowledged the Government’s efforts to better integrate this part of the population in public issues, but stressed that discrimination is widespread. She noted that The Committee on the Elimination of Discrimination against Women (CEDAW) encourages target measures to include indigenous women and women of African descent. She noted that no examples of this are found in Nicaragua, and NGOs working on women’s issues complain that they have not been able to carry out the Government programmes aimed at indigenous people because of ‘the complexity of the situation’.

Committee members Ms Barbara Elaine Wilson and Ms Virginia Bonoan-Dandan asked questions with regard to land issues in the Atlantic coast regions, particularly if the Government is actually implementing the court decision that gives indigenous people the right to exploit their own land. They asked if land titles have been given to indigenous peoples and if the Governmental Secretariat on Indigenous Peoples and People of African Descent, which deals with land dispute issues, also includes people from these groups. Ms Bonoan-Dandan, while recognising the Government’s efforts to provide law on the subject and address grievances, noted that it has taken a long time to implement court decisions on indigenous people’s right to land. Mr Texier asked if the State intends to ratify ILO *Convention 169* concerning indigenous and tribal peoples, pointing out that many articles in the Constitution are apparently in line with it already. The delegation answered that it does not need or plan to ratify *Convention 169* because the contents are already covered by the present legislation. The delegation also recognised that ‘inappropriate situations’ occurred under the previous Government, which denied the indigenous people’s rights. The delegation ensured the Committee that the Government is making every effort to promote the rights of indigenous people but that there are many obstacles, the main one being poverty. The land has been registered and the claims recognised but the delegation emphasised that it is going to be a long process.

Ms Wilson also asked about bilingual programmes for indigenous education. The delegation replied that in 2007 the Government developed an educational system that contains bilingual programmes and an attempt to develop a harmonised curriculum has been made.

In its concluding observations,¹² the Committee strongly criticises the racial discrimination against indigenous peoples in general, especially in the Independent Region of the Atlantic, and in particular against indigenous women and women of African descent. The Committee laments the disproportionate poverty level and lack of access to healthcare and education in indigenous areas, and strongly urges the Government to implement the court decision from 2002 on indigenous peoples’ right to natural resources on their territories.

¹² E/C.12/NIC/CO/4, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

Access to health

Therapeutic abortion

A major issue for the Committee under this article was the total ban on therapeutic abortion put in place by the new Government. The Committee strongly criticised this ‘retrogressive measure’ and emphasised that maternal mortality has risen as a result. The Committee urged the Government to revise the law it described as a violation of women’s right to life, health, and personal integrity. The delegation answered that the Government has no intention of revising the ban on therapeutic abortion, which is the result of a democratic process. It insisted that the law does allow for abortion if the life of the mother is in danger, but ascribes harsh punishments for a doctor who ‘through negligence or fool-heartedly’ performs ‘unnecessary’ abortions. The delegation admitted that this leaves room for interpretation, but reiterated the Government’s position that abortion should not be used as a contraceptive measure. The Government focuses its efforts on a programme supported by civil society and the church in Nicaragua on health and sexual awareness.

Committee member Ms Wilson urged the State to reconsider its stand on this issue, saying that while it is commendable that the Government has an awareness programme and provides access to contraceptives through health centres, this does not help in cases of incest or rape. She also asked about the resources allocated to health centres and health care in general and how the Government is going to guarantee that the programme reaches all parts of the population. The delegation emphasised that the health budget has been increased and much focus has been given to pre- and post-natal care, especially in the rural areas to combat maternal mortality.

In its concluding observations, the Committee strongly urges the Government to revise the ban on therapeutic abortions and the law criminalising medical staff assisting in abortions when the women’s life is in danger. It also urges the Government to allocate money to preventing unwanted pregnancies among young women and girls and promote measures to combat the high maternal mortality rate and generally doubling its efforts in the health area.

HIV/AIDS

Mr Riedel asked about the fight against HIV/AIDS in Nicaragua and requested updated data on this issue. The delegation answered that currently the situation is not fully registered, but a study shows that there is good awareness of the illness, especially among women. It explained that a Governmental programme aiming for the equal treatment, fairness towards, and non-discrimination against HIV/AIDS patients has been established and is seen as a great step towards dealing with the stigma of the illness in Nicaragua.

Employment

Women’s rights

Mr Texier asked about the increasing unemployment rate in Nicaragua and its impact on the vulnerable part of the workforce such as women and young people. Moreover, women primarily work in the informal sector, where the standard for minimum wage does not apply. Mr Texier recognised that Nicaragua has legislation on this subject but inquired about their implementation through, for instance, labour inspectors. Mr Texier also expressed his concern for the low membership of trade unions and asked about the difficulties on setting up trade unions.

The delegation answered by saying that the Government’s ‘Zero Exploitation’ programme is targeted at women, and the budget for this programme has been increased. It also stressed that workers in the informal sector, where women are primarily employed, have the same basic rights under the Constitution as those in the formal sector; thus, minimum wage also applies in the former. Workers in the informal sector also have

the right to social security, but it falls on the employer to register them for it. If that does not happen, however, the workers are entitled to social security from the employer.

Trade unions

Mr Texier inquired about the alleged policy of employers to not employ workers belonging to a union, especially in the *maquilas*. Ms Bras Gomes asked if Nicaragua plans to ratify ILO *Convention 102* and if it plans to include unemployment benefits in the social security system. The delegation answered that labour inspections have been increased in the last year and uncovered several cases of labour code violations and repeat inspections have been carried out. With regard to labour unions and labour rights, the delegation stated that ‘the current Government is promoting the respect of the rule of law and the rights of workers’ and that the provisions of the *Employment Law* are applicable to all people and all companies. Furthermore, the delegation asserted that these are in compliance with the ILO *Convention 102*, which the Government intends to ratify. It also stressed the improved conditions for creating and joining unions under the new legislation. With regard to unemployment, no legislation has been established.

Ms Bras Gomes, on the issue of the free trade agreement of Latin America, asked if the Government has made any assessment of how the Grain and Feed Trade Association (GAFTA) agreement will impact the enjoyment of social and economic rights by individuals in the country. The delegation said that the agreement has meant an increase in jobs in Nicaragua. However, no information is yet available on its impact on economic and social rights. The delegation expected to be able to provide this information to the Committee in the future.

Gender equality

The delegation gave the issue of women’s equality special attention in the opening statement, noting that in 1992 the State had reformed the Penal Code to include sexual offences and punishment of domestic violence. The Government now also focuses on preventing violence against women and children, and raising awareness of women’s rights is stated as a priority. The delegation emphasised that the Government recognises that poverty disproportionately affects women and children, and repeatedly mentioned Governmental programmes developed to enhance gender equality. However, the Committee strongly criticised the lack of statistical data and concrete examples on this issue.

With regard to the right to work, the Committee asked for specific information on effective measures to improve women’s opportunity to move into the formal work sector, and more generally on the application of the principle of equal pay for equal work. The Committee also mentioned reports that women’s rights is not fully incorporated into the national legislation, and asked the Government whether it has adopted legislation on gender equality. Ms Bras Gomes also asked specific questions relating to the discrimination against women in the workforce and the fact that on average they are paid 20 percent less than men. Moreover, women make up the majority of workers employed in the informal sector, which is marked by much lower wages and less access to social security and health care. NGOs have also brought to the Committee’s attention the fact that female workers do not have the right to breastfeed their babies or take maternity leave, and that women are fired because of pregnancy.

Ms Bras Gomes asked about the specific measures being taken to improve this situation. The delegation stated that national legislation has tried to reduce the gender disparities and gap in wages. With regard to workers in the informal sector, it replied that there is a gap in information on this issue because the State does not register domestic workers. As far as the right to breastfeeding during work is concerned, the delegation noted that women tend to prefer to come to work late and leave early instead of taking breaks to breast feed during work.

The Committee also noted the problem of illiteracy among women and the high school drop-out rate of girls. The delegation repeatedly described the many programmes to combat poverty and illiteracy, as well as vocational training programmes. It did not, however, give any concrete information on the impact of these programmes. The Committee in its review of Nicaragua, CEDAW had encouraged target measures to include indigenous women and women of African descent particularly. The Committee remarked that the Government has not taken any real measures. This problem was brought to the Committee's attention by many NGOs working on women's rights. The delegation answered by again describing the 'Zero Hunger' programme, literacy programme and vocational training programmes, which it said also include indigenous women.

Ms Bras Gomes raised the problems of sexual harassment of women and domestic violence. She asked for examples of the implementation of the existing law, the number of cases, and their outcomes. The delegation recognised that in the past there have been major differences and discrimination between men and women in Nicaragua. It ascribed this to cultural traditions, but insisted that there has been a slow decrease in such cases. In its concluding observations, the Committees recommends that the State take measures to promote general gender equality and to implement labour rights for the informal workers and workers in the *maquilas*. It also urged the State to take steps to prevent all violence against women.

Social security

The Committee took a special interest in the development of the social security system and social safety nets in view of the current financial crisis. Many members asked specific questions on how the National Development Plan foresees tackling the present financial crisis and asked questions on the Government's social budget.¹³ These questions implicitly rested on reports that the Government is spending money on debt-servicing rather than on social programmes. The Committee asked for disaggregated data on social expenditure, noting that this issue was also mentioned in the last concluding observations. The delegation answered by saying that the new Government indicated a process of revision in 2007 and the National Development Plan incorporates the strategic vision of fighting poverty with an 'approach to social assistance which is closer to reality'. This updated version, entitled the Human Development National Plan, sets out a timeframe up to 2012 and aims to establish citizens' right to democracy and direct public influence on public policy. Ms Bras Gomes was concerned that more than 85 percent of the Nicaraguan people is without a pension plan and asked about how the Government addresses this issue. The delegation did not answer this question.

Housing

The Committee raised the issue of general living conditions several times. Mr Pillay expressed concern that the housing programmes in Nicaragua are politicised and are not reaching the neediest of the population. He asked the delegation what the State is doing to address the issue of decent housing, homeless people, and forced evictions. In this context, he also stressed the need for regularisation of land ownership. The delegation answered by underlining again the significance of the change in Government in Nicaragua. It insisted that the old system was responsible for much injustice and the new Government is trying to promote development and should be evaluated accordingly. Again, the Committee explained to the delegation that it is interested in the actual situation in the country and what is being done, and not only the intentions of the Government.

In the last part of the session, the delegation provided more statistics on the housing situation and acknowledged that there is a 'huge problem' with the availability decent housing and that the private housing

¹³ Ms Bras Gomes, Ms Barahona Riera, Mr Sadi, Ms Virginia Bonoan-Dandan.

projects do not benefit the poorest. Two Government programmes have been initiated and provide low cost funding to families

In its concluding observations, the Committee urges the Government to adopt social security for all, and to ensure that adequate resources are allocated to the ‘Zero Hunger’ programme and housing programmes for the neediest.

Other issues

Mr Walid Sadi also inquired about the level of dialogue with the national human rights institute, NGOs, and other parts of civil society in **drafting the State report**. The delegation answered that the national human rights institute is in compliance with the *Paris Principles* and that the State has received technical assistance from the United Nations to this end. The delegation the national human rights institute brought together different Governmental bodies, NGOs, and general stakeholders in civil society to help craft the report and make sure that it reflected concern of all sectors.

Mr Sadi and Mr Mejia also expressed concern about the level of **discrimination against homosexuals** in Nicaragua and asked if this continues to be criminalised. Mr Mejia also cited Amnesty International’s report, alleging that the former President wanted to fire all gay Government officials. The delegation answered that very recently the issue of discrimination had been incorporated in the Penal Code. It strongly resented the indication that the Government discriminates against homosexuals and stressed that the new Article 27 of the Constitution prohibits any form of discrimination, and that Nicaragua has a very modern law on sexual and general freedoms.

With regard to **education**, the Committee asked several questions on concrete examples of initiatives to improve literacy and to ensure children’s school attendance. The delegation stressed that in the last 16 years of the ‘neo-liberal Government’, the illiteracy rate has gone up and the new Government wants to solve this problem.

The issue of **trafficking** of women and children was also raised. Ms Wilson and Mr Mejia especially wanted to know about the legislation on statutory rape and if it defines adults from the age of 14. The delegation answered that the age of criminal responsibility is 14, but that different legislation applies for young people from 14 to 16 years old.

Conclusions and next steps

In its final remarks, the delegation asked the Committee to recognise that despite the difficulties caused by the last Government, the State is now committed to the fight against poverty and the fight for freedom. It moreover fully recognises that living with hunger is living without freedom.

In its concluding observations, the Committee regrets that the answers to the list of issues was received late, only in Spanish, and did not address all questions on the list of issues. The Committee commends the State on the legislative efforts to promote women’s equality, the right to work for people with HIV/AIDS, the rights of people employed in the informal sector, and a general strengthening of human rights in their legislation. It also especially welcomes Governmental Secretariat on Indigenous Peoples and People of African Descent.

The next periodic report is scheduled for submission by 30 June 2013.

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TREATY BODY MONITOR STAFF

Eléonore Dziurzynski, Communications Officer, Geneva

Gareth Sweeney, Deputy Manager, Geneva

Katrine Thomasen, Manager International Programme, Geneva

Michael Ineichen, Human Rights Officer, Geneva

Michelle Evans, Representative to the UN, New York

Paul Dziatkowicz, Human Rights Officer, Geneva

Vanessa Jackson, Human Rights Officer, New York

Yuri Saito, Fellow, Geneva

AUTHOR OF THE NICARAGUA REPORT

Birte Mackeprang, Intern

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