



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

NICARAGUA

1. The Committee considered the initial report of Nicaragua (CAT/C/NIC/1) at its 872nd and 874th meetings (see CAT/C/SR.872 and 874), held on 30 April and 1 May 2009, and adopted the following concluding observations at its 890th and 891st meetings, held on 13 May 2009 (CAT/C/SR.890 and 891).

A. Introduction

2. The Committee welcomes the initial report of Nicaragua but regrets the delay in its submission. The Committee appreciates the constructive and fruitful dialogue that it held with a capable delegation from the State party and is grateful for its frank and detailed replies to the Committee's questions. The Committee also thanks the State party for the additional information sent by the delegation.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 August 2008, which confirmed its will to combat and eradicate these practices.

4. The Committee welcomes the ratification by the State party of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2005 and its ratification of the Convention on the Rights of Persons with Disabilities in December 2007.

5. The Committee commends the State party for its establishment of the National Coalition against Trafficking in Persons in 2004 and its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also in 2004.
6. The Committee appreciates the efforts made by the State party to improve the operation of the national prison system, especially the adoption on 11 September 2003 of Act No. 473 on the prison system and enforcement of sentences, which establishes rules on how sentences are to be served and custodial measures enforced in accordance with the principles of re-education and social reintegration.
7. The Committee takes note with satisfaction of the adoption of the Code of Criminal Procedure, which is intended to improve the administration of justice.
8. The Committee welcomes the Refugee Protection Act, which was adopted by the National Assembly on 4 June 2008 with all-party support.
9. Furthermore, the Committee expresses its satisfaction at the creation of the post of Special Procurator for Prisons in 2006 for the purpose of monitoring the treatment given to persons held in detention centres.

C. Principal causes of concern and recommendations

Definition and criminalization of torture

10. The Committee notes that the new Criminal Code, which entered into force on 9 July 2008, contains both a characterization and an explicit definition of torture in chapter II (Crimes against humanity), article 486. The Committee is, however, concerned that the definition of torture in the Criminal Code is not fully in line with article 1 of the Convention because it does not specifically refer to offences committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee is also concerned by the fact that the Military Criminal Code does not include the offence of torture but instead refers to “abuse of authority” and “causing injury”, which could entail the application of standards that are more favourable to the accused (arts. 1 and 4).

The State party should adopt a definition of torture fully in line with article 1 of the Convention and ensure that this definition covers all the elements of torture. The State party should also amend the Military Criminal Code to include the offence of torture and bring it into line with the provisions of articles 1 and 4 of the Convention.

Obligation to investigate and the right to complain

11. The Committee notes with concern the complete absence of cases and sentences relating to the offences of torture and ill-treatment, which could be viewed as being akin to impunity. The

Committee further expresses its concern at the fact that, despite the increase in the number of complaints by citizens, the outcome of 68 per cent of investigations of human rights violations by public officials has been negative and only 4 per cent of them have been referred to the Public Prosecutor's Office for the initiation of criminal proceedings, according to the additional information provided by the State party. The Committee considers that the almost total absence of criminal sanctions may constitute an obstacle to the implementation of the Convention (arts. 12 and 13).

The State party should adopt all necessary measures to ensure the immediate and impartial investigation of any complaints of torture or other cruel, inhuman or degrading treatment or punishment and to implement the necessary investigations and sanctions in order to prevent and combat impunity in the face of serious violations of the Convention. The Committee requests the State party to provide detailed statistical data, disaggregated by offence, ethnic origin and sex, in its next periodic report on complaints of acts of torture or ill-treatment allegedly committed by law enforcement officers and on the relevant investigations, the judgements reached and the criminal sentences or disciplinary sanctions imposed in each case. It also requests information on any redress, including rehabilitation or compensation, accorded to the victims.

Independent inspection

12. The Committee takes note of the information contained in paragraphs 83 and 86 of the State party's report, which indicates that both the Office of the Human Rights Procurator and Criminal Enforcement Judges are entitled to inspect detention centres. The Committee is, however, concerned by reports that the inspection of such centres is inadequate and that non-governmental organizations (NGOs) have difficulty in obtaining access (art. 2).

The Committee urges the State party to ensure that there is an effective system for inspecting detainees' detention conditions and treatment and, in particular, to extend the mandate of the Procurator for Prisons to include visits to migrant custody centres, military prisons and psychiatric hospitals and to facilitate access by NGOs to such places. The Committee requests that information be provided in the next report on the number of visits made, complaints received from detainees and the outcome thereof.

Prevention of torture and other cruel, inhuman or degrading treatment or punishment and fundamental guarantees

13. The Committee expresses its concern about the way in which the right to a defence is realized in practice, given that, according to paragraph 34 of the report, most detainees do not have the financial means to pay for a private lawyer and therefore use the services of an officially appointed defender, of whom there seem to be very few, at State expense (arts. 2 and 16).

The State party should adopt all necessary measures to guarantee any person deprived of liberty the right to be defended and, consequently, should increase the number and skill level of the country's public or officially appointed defenders and establish legal mechanisms for appeals against an inadequate defence. The Committee also urges the State party to give priority attention to the cases of detainees without families to care for them, the so-called *donados*.

Administration of justice

14. The Committee notes with concern that the information it has received reveals flaws in the State party's justice administration system. Some allegations suggest that public bodies within the judicial system lack impartiality and independence, essential qualities for ensuring the effective application of the principle of legality. In particular, there have been allegations of irregularities in the appointment of judges, use of the judicial system for partisan ends and instances of corruption among judges and police officers. Furthermore, the Committee is concerned at delays in the administration of justice, which in some cases have led to preventive detention extending beyond three months and delays in the timely review of the status of detainees (arts. 2 and 13).

The State party should take the necessary steps to remedy shortcomings in the administration of justice, in particular by allocating adequate resources and continuing its efforts to combat corruption. It should also take measures to guarantee the full independence of the judiciary in accordance with the relevant international standards and to remedy the shortage of judges. The State party should also establish that the practice of detention must conform to fair trial standards, ensure that time limits established for preventive detention are respected and act in a manner that allows justice to be administered within a reasonable period of time.

Violence against women

15. Although the Committee takes note of the various measures introduced by the State party to combat and eliminate violence against women, it remains concerned by the prevalence of all forms of violence against women and girls in Nicaragua and by the rise in the number of murders of women over the past few years as part of the wider problem of gender violence, particularly domestic and sexual violence. The Committee notes with concern that victims have insufficient access to justice, that information on the court sentences and punishments imposed for violence against women is lacking and that a means to assess the effectiveness of measures adopted to eradicate all forms of violence against women and girls is unavailable (art. 16).

The Committee urges the State party to devote priority attention to the adoption of comprehensive measures to combat and eliminate violence against women. The Committee calls upon the State party to ensure the full implementation of legislation on violence against women, to bring the perpetrators to justice and to impose due punishment. The Committee urges the State party to ensure that all victims of violence have access to immediate redress, protection, support and legal assistance. The Committee further recommends that ongoing training activities should be

organized for police officers, especially those serving in the Special Police Units for Women, on the questions of gender violence and violence against children. In accordance with the latest concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW/C/NIC/CO/6) of February 2007, the Committee urges the State party to adopt and put into practice an integrated and multifaceted national strategy to eliminate violence against women and girls. This strategy should include legal, educational, financial and social components. The Committee also requests the State party to include detailed information in its next periodic report on the measures adopted and their results and, in particular, to provide data on the number and type of reported cases of violence against women, the sentences passed and the penalties imposed on perpetrators, and the assistance provided and compensation granted to victims.

16. The Committee is deeply concerned by the general prohibition of abortion set forth in articles 143-145 of the Criminal Code, even in cases of rape, incest or apparently life-threatening pregnancies that in many cases are the direct result of crimes of gender violence. For the woman in question, this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression. The Committee also notes with concern that women who, for the reasons mentioned above, seek an abortion face the risk of being penalized for doing so. The Committee is also concerned that the law authorizing therapeutic abortion in such cases was repealed by Parliament in 2006 and that, since the prohibition was adopted, there have been several documented cases in which the death of a pregnant woman has been associated with the lack of timely medical intervention to save her life, in clear violation of numerous ethical standards of the medical profession. The Committee also notes with concern that medical personnel may be investigated and punished by the State party for carrying out a therapeutic abortion under sections 148 and 149 of the Criminal Code (art. 16).

The Committee urges the State party to review its legislation on abortion, as recommended by the Human Rights Council, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights in their latest concluding observations, and to consider the possibility of providing for exceptions to the general prohibition of abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest. The State party should, in accordance with the guidelines issued by the World Health Organization, guarantee immediate and unconditional treatment for persons seeking emergency medical care. The State party should also avoid penalizing medical professionals for the exercise of their professional responsibilities.

Protection of children against torture and cruel, inhuman or degrading treatment

17. Although the Committee takes a favourable view of the National Plan of Action for the Prevention of Domestic and Sexual Violence, it is concerned by the fact that domestic violence, including sexual violence, and ill-treatment of children are an enduring and persistent phenomenon in the State party (art. 16).

The Committee urges the State party to intensify its efforts to deal with ill-treatment of children in the family and to strengthen mechanisms for combating all forms of violence, particularly in the family, at school and in social service, educational or correctional institutions or other centres.

Political opposition and human rights defenders

18. The Committee notes with concern the information it has received on alleged cases of systematic harassment and death threats directed at human rights defenders, particularly female defenders of women's rights. The Committee also notes with concern the criminal investigations instituted against women defending reproductive rights, as well as the de facto constraints that limit the enjoyment of the right to freedom of association by organizations of human rights defenders (arts. 2, 12 and 16).

The Committee urges the State party to take the necessary measures to combat alleged cases of systematic harassment and death threats directed at human rights defenders in general and female defenders of women's rights in particular, to conduct impartial investigations and to duly punish the culprits.

19. The Committee expresses concern at the information it has received regarding the violent suppression by some sectors of society, including civilian patrols allegedly supported by the Government, of collective demonstrations in which the political opposition and representatives of NGOs participated. A failure to punish acts of this sort is an inducement to the repetition of such abuse and would appear to indicate the tacit approval of the authorities (arts. 2, 12 and 16).

The State party should adopt effective measures to combat and prevent acts of violence against members of the political opposition, their sympathizers and representatives of NGOs in connection with peaceful demonstrations and to provide proper protection for demonstrators. The State party should also ensure that immediate and impartial investigations are undertaken and culprits duly punished.

Arbitrary detention

20. The Committee shares the concern expressed in the report of the Working Group on Arbitrary Detention (A/HRC/4/40/Add.3) regarding the lack of effective, clear and systematic registers in police stations that would make it possible to establish with clarity and certainty when detainees have entered and left police stations, before which authorities they have been brought and where, and which of the competent authorities is currently responsible for them (arts. 2, 11 and 16).

The State party must arrange for substantial improvements in the system of registers kept in its police stations. These registers should make it possible to accurately determine, inter alia: the situation of all detainees, including the date and time of their arrest; the police officers responsible for taking them into custody; the date and time on which the Office of the Public Prosecutor, the detainees' families and their

defending counsel were notified of their arrest; the date and time on which they were physically brought before a judge; and the date and time on which they left the police station and the authority into whose charge they were handed.

Conditions of detention

21. The Committee expresses its concern over the serious problem of overcrowding and other unsatisfactory detention conditions in custodial centres, which adversely affect the health of detainees. The Committee has also taken note of the especially disturbing situation in the Atlántico Norte and Atlántico Sur Autonomous Regions, particularly with regard to the substandard detention conditions prevailing in the Tipitapa and Bluefields prisons (art. 16).

The State party should immediately adopt measures to reduce overcrowding in prisons and to improve infrastructure and hygiene. It should provide the equipment, staff and budgetary resources needed to ensure that detention conditions throughout the country meet minimum international standards.

22. The Committee notes the information provided during its dialogue with the State party regarding detention conditions for women and minors in prison, according to which, because of overcrowding, there are no separate prisons for women and minors in some regions. Although the Committee appreciates the State party's efforts to find practical solutions for this problem, such as, for example, applying different time schedules and using different parts of the facilities, it recalls that, in the context of the prevention of torture and other cruel, inhuman or degrading treatment or punishment, women must be separated from men, and juvenile prisoners must be held in facilities completely apart from those for adults. The Committee stresses the importance of having an independent monitoring body equipped with adequate human and financial resources in order to guarantee full compliance with the Convention (art. 16).

The State party should ensure that women and men are held in separate facilities and, in particular, that minors are separated from adults. The State party should guarantee that training for prison staff who have to deal with women and minors incorporates gender considerations and the information they need in order to act with sensitivity. It also recommends that the State party strengthen independent procedures for prison inspection.

Training

23. The Committee observes that the duration and quality of training for prison staff and police officers remains insufficient to ensure appropriate multidisciplinary instruction in human rights for staff of the justice and police system, particularly officials coming into contact with children and juveniles and with women who are victims of domestic violence. The Committee is also concerned about the inadequacy of personnel training in regard to the prohibition of torture and inhuman or degrading treatment. The Committee also regrets the scarcity of information provided on the monitoring and evaluation of existing training programmes, as well as the lack of information on the results of the training given to all competent officials and on the usefulness of those programmes in reducing the number of cases of torture and ill-treatment (art. 10).

The State party should take the following action:

(a) Strengthen appropriate forms of multidisciplinary human rights training, including, in particular, comprehensive information on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in professional training programmes for police officers and prison staff;

(b) Provide all staff members with appropriate special training in the detection of signs of torture and ill-treatment. The Committee recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should form an integral part of doctors' training;

(c) Devise and apply a method for assessing the effectiveness of training and educational programmes, as well as their impact in reducing the number of cases of torture, violence and ill-treatment;

(d) Devise and implement specific training on gender issues and ensure that the staff of juvenile centres receive training.

Administration of juvenile justice

24. The Committee is concerned by the inadequacy of the human and financial resources devoted to ensuring the proper administration of juvenile justice, including the appropriate implementation of the Code on Children and Young Persons. The Committee is also concerned by the gaps that exist in the areas of defence and prosecution and in the definition and imposition of non-custodial measures or penalties for persons below the age of 18. The Committee also expresses concern over the lack of special correctional centres for persons below the age of 18 in conflict with the law and the poor detention conditions that currently exist, especially on police premises (art. 16).

The Committee recommends that the State party should bring its juvenile justice system fully into line with the Convention and other United Nations standards relating to juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines), as well as the latest recommendations of the Committee on the Rights of the Child (see CRC/C/15/Add.265). In this respect, the Committee recommends that the State party should, in particular:

(a) Allocate sufficient resources for appropriately implementing the Code on Children and Young Persons in all departments, especially through the establishment of juvenile courts throughout the country;

(b) Adopt all necessary measures to establish separate detention centres for persons below the age of 18;

(c) Improve detention conditions for persons below the age of 18, notably in police detention centres, in particular through compliance with international standards;

(d) Investigate, prosecute and punish, in all cases, ill-treatment committed by law enforcement officers, particularly prison guards, and establish an independent, accessible system for receiving and dealing with complaints from children which takes account of children's sensibilities;

(e) Ensure that children deprived of their liberty under the juvenile justice system maintain regular contact with their families and, in particular, inform parents where their children are being held;

(f) Offer prison staff training on the rights and special needs of children.

Redress, including the right to rehabilitation and compensation

25. The Committee notes with concern the lack of information in the State party's report on the practical application of the right of victims of torture to redress, including their right to the most complete rehabilitation possible and to fair and adequate compensation by the State, and especially the lack of data on cases and on the judicial and administrative decisions adopted (art. 14).

The State party, in accordance with article 14 of the Convention, should ensure that redress, compensation and rehabilitation are guaranteed to all victims of torture, both in law and in practice. The Committee also requests the State party to include detailed information on the following matters in its next report:

(a) Applicable procedures for the rehabilitation and compensation of victims of torture and their families, along with an indication of whether those procedures are available only to nationals or also to other groups, such as refugees;

(b) A detailed description of the rehabilitation programmes that exist at the national level for victims of torture;

(c) Examples of actual cases of compensation and rehabilitation, together with the relevant judicial and administrative decisions adopted.

Data collection

26. The Committee regrets the fact that, for certain areas covered by the Convention, the State party was unable to supply statistics or to disaggregate those supplied sufficiently (e.g., by age, gender and/or ethnic group). During the current dialogue, this was the case with respect to data on violence against women, including rape and sexual harassment, on investigations of possible complaints of torture or other cruel, inhuman or degrading treatment or punishment and on instances of compensation and rehabilitation, etc.

The State party should take such measures as may be necessary to ensure that the competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention. The Committee requests the State party to present detailed, disaggregated statistical data in its next periodic report on its follow-up to the recommendations set forth in paragraphs 10, 11, 14, 22 and 24 of these concluding observations.

27. The Committee calls upon the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

28. The Committee requests the State party to include detailed information in its next periodic report on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee urges the State party to take all appropriate steps to implement these recommendations, including their conveyance to the members of the Government and Parliament so that they may be considered and the necessary measures taken. The State party is also requested to give extensive coverage in the national languages of Peru to the reports submitted by Nicaragua to the Committee, as well as to the Committee's conclusions and recommendations, on official websites, in the official media and among NGOs. The State party is also urged to distribute such reports among national human rights NGOs before submitting them to the Committee.

29. The Committee requests the State party to submit its common core document in accordance with the compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.5).

30. The Committee requests the State party to provide information, within one year, on the measures taken in pursuance of the Committee's recommendations as set forth in paragraphs 10, 11, 14, 15 and 17 above.

31. The Committee decided to request the State party to submit its second periodic report not later than 15 May 2013.
