



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic of Nicaragua to the 19th Session of the Universal Periodic Review, Human Rights Council, April – May 2014

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EXECUTIVE SUMMARY

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRCOU) submits the following report to the 19th Session of the Universal Periodic Review, Human Rights Council. This report concerns indigenous communities of Nicaragua and surveys Nicaragua's compliance with certain human rights obligations. The report focuses on the selected areas of Indigenous Health, Children's Rights, Education, Land Rights, Women's Rights, and Special Ombudsman's Office on Indigenous Rights. The purpose of this report is to provide a balanced view of indigenous concerns in Nicaragua and recommend measures to address those concerns. The IHRC-OU notes the commitment expressed by Nicaragua to develop and expand programs and policies for the protection of indigenous peoples.

I. Indigenous Health Services

Normative and Institutional Frameworks:

International Provisions: In 2008, the ICERD urged the State party to step up its efforts to guarantee the right to public health, medical care, social security and social services to the indigenous peoples and communities of African descent, particularly in the Atlantic autonomous region, and provide them with financial and institutional support in the practice of, and access to, traditional indigenous medicine. Realizing that the maternal mortality rate for the Atlantic autonomous region continues to be much higher than the national average, the ICERD specifically urged the State party to take effective measures to combat maternal mortality. ICERD also encouraged the State to provide indigenous communities with the financial and institutional support for the access to and practice of traditional indigenous medicine. In 2010, The UN Human Rights Council (HRC) recommended the state continue efforts to expand the coverage of and access to health services. Despite the ICERD and HRC recommendations, Nicaragua has not taken sufficient concrete or measurable steps to implement the recommendations. Governmental programs have failed to facilitate or enact special programs to foster the implementation of these recommendations, thereby failing to provide an actual improvement in the situation of indigenous communities over those found in the last country review in 2010.

Domestic Undertakings:

In 2008, the ICERD urged the State to take significant actions to guarantee the right to public health and medical care and address maternal mortality in the indigenous peoples of Nicaragua. Despite the ICERD and HRC recommendations, the current activity of the State has not provided concrete, measurable steps to implement the recommendations. While seemingly taken formal actions, the final result of governmental actions demonstrates the State has failed to appropriately consult with indigenous communities to facilitate enactment and implementation of programs to improve the health and wellbeing of indigenous peoples.

Human Rights on the Ground:

Indigenous communities face significant practical barriers to access available health care resources. Most indigenous peoples, especially in rural areas, lacked access to public services, suffered from deteriorating roads and lack of transportation that caused medicine and health care almost unobtainable for many. According to the UN Commission on Human Rights, the health infrastructure is so inadequate that patients with significant illness or injury must be transported by helicopter to appropriate medical facilities, located only in more urban regions.

Direct representatives of indigenous peoples of Nicaragua describe the relative inability to access medical care and resources reportedly provided by the State. Practical barriers include the lack of a local infrastructure to support and allow the physical access necessary to utilize the limited governmental resources. In addition, the lack of an integrated medical and wellness system that

incorporates the traditional customs and cultures, often force those seeking medical care to choose between the state-sponsored resources and their long-held values and beliefs. The result is that even when medical care and resources are seemingly available to the outside observer, the actual impact in indigenous communities is negligible.

Recommendations:

- Effectively implement Law No. 759, Ancient Traditional Medicine Law, as Published in Official Gazette No. 123, 07/04/2011. As a part of this implementation, improve consultation with indigenous peoples to ensure the adequate provision of culturally appropriate health care that both respects and incorporates traditional medicine practices.
- Consider developing mobile medical resources that could provide basic medical services and preventative services to vulnerable peoples in their local setting.
- In consultation with indigenous peoples, develop and maintain indigenous health systems in coordination with governmental activities and the Ministry of Health. An emphasis should be placed on the development of local resources, including the use of local providers and provide for increased emphasis on training indigenous persons as physicians, nurses, and other medical providers to provide medical care to indigenous peoples.

II. Children's Rights

Normative and Institutional Frameworks:

International Provisions: In its last review of Nicaragua, conducted in 2010, the Committee on the Rights of the Child expressed concern at the high number of children still not registered, especially those of indigenous descent. The Committee is also concerned with the extreme poverty-affecting children. The high level of poverty affects all areas of a child's life including, education, food, health care, and water. The 2010 UPR Working Group Report recommended that Nicaragua take "appropriate and effective measures to improve the welfare of children, including the fields of healthcare, adequate living conditions, and the right to an education." Nicaragua has implemented measures to increase the number of registered births, improve the living conditions of children, improve the healthcare of children, and increase access to food. However, Nicaraguan government has allocated insufficient resources due to, among other things, budget cuts, the fiscal crisis, geographic barriers, natural disasters, and the lack of human resources.

Domestic Undertaking: The Nicaraguan government is currently attempting to fully implement the Code of Children and Adolescents (*Código de la Niñez y la Adolescencia*, 1998). Part of the Code of Children and Adolescents includes the National Council for the Comprehensive Care and Protection of Children and Adolescents (CONAPINA). However, the CONAPINA is now located within the Ministry of Family, Adolescence and Childhood (MIFAN) and has lost its authority. Nicaraguan government has set up Municipal Commissions on Children and Adolescents (*Comisiones Municipales de la Niñez y la Adolescencia*) in a majority of their municipalities. Nicaragua has the "Right to a Name and a Nationality" program which helps to register children in rural areas. Nicaragua has made great strides in this regard. Thousands of children in both the North Atlantic Autonomous Region and the South Atlantic Autonomous Region have been registered.

Human Rights on the Ground:

In the testimonies presented to the International Human Rights Clinic from the University of Oklahoma (IHRC-OU) while visiting the indigenous community of Uluse the Jobo located in the north of Nicaragua, a high concern was placed on the pollution of their waters by persons

wanting to expel them from their lands. Uluse the Jobo's waters are being polluted with items including dead animals and military devices. The lack of clean water leads to many diseases that could otherwise be prevented including typhoid, dysentery and cholera. These diseases affect children more readily and children are dying from these diseases. Access to clean water is provided for in the Code of Children and Adolescents.

The lack of registered births in the indigenous communities means these children do not legally exist. Their rights as Nicaraguan citizens are limited. They will not have access to certain benefits like health care, education, or social security. Indigenous peoples are among the poorest in Nicaragua. For the community of Uluse the Jobo, access to education and health care along with registered births are of great importance to them. The children suffer from, among other things, malnutrition, lack of an education, and lack of timely access to health care --- all of which require money.

Recommendations:

- In consultation with the indigenous communities, invest in clean water initiatives and sanitation infrastructures in indigenous communities.
- Guarantee children born in indigenous communities of the Pacific, Central and Northern regions of Nicaragua are registered at birth and those that are currently not registered will become registered by 2016.
- Invest in programs that help subsidize the additional costs of school to allow indigenous children the chance to get an education.
- Ensure access to medications for diseases common from contaminated waters like cholera, typhoid and dysentery more accessible and reduce the cost of such medication to help prevent the deaths of children in accordance with Article 6 of the Convention on the Rights of the Child.
- Take concrete steps to fully implement the Code of Children and Adolescents.
- Seek assistance from international organizations such as UNICEF, UNESCO, and Action Against Hunger in order to help fully implement the laws directed at children's rights.
- Establish a method for data collection in the areas of education, health care and registered births of the indigenous children in the Pacific, Central and Northern regions of Nicaragua.

III. Nicaraguan Educational System

Normative & Institutional Framework:

International Provision: In 2008, the Committee on Economic, Social and Cultural Rights recommended that the government should "effectively guarantee indigenous people's right to education and ensure that it is adapted to their specific needs." Although Nicaragua claims that it has adopted its education system, the government has not provided a sufficient update or follow-up to fulfill this recommendation.

Domestic Undertakings: The 2010 UPR report recommended that Nicaragua increase its educational budget. This raises two concerns. On one hand, Nicaragua's education budget is considerably low for the region and teachers are barely paid. On another, Nicaragua's government has pledged to substantially increase its educational budget. However, this promise was made only this year. Prior to this pledge, Nicaragua's budget for education was not substantially raised to accomplish the intent behind the 2010 UPR recommendation. Thus, while Nicaragua has now pledged to increase its educational budget, this does not account for the holistic widespread lack of educational funding.

Human Rights on the Ground:

Indigenous communities do not receive sufficient support from the government. School children must rely on others in the community to provide them with an education. Community members often teach the children themselves even though their education may not be at the level needed to sufficiently instruct a growing youth. Likewise, the communities are isolated from government-sponsored programs in urban areas that boost higher attendance rates and literacy rates as well. Based on several interviews and discussions with community leaders and members inside of communities, such as the Uluse the Jobo in the northern area of Nicaragua, education has not improved. Aside from being isolated, current sources show there is a lack of trust by indigenous communities who do not support the education model used by the Nicaraguan government. Rather, they prefer a system that is more adept to their own cultural beliefs and traditions.

Recommendations:

- Consider a significant and continuous budget increase for education in general and in the indigenous communities.
- Modify the core curriculum to account for each indigenous community's cultural norms and adjust to ensure instruction is provided in the native language of the community.
- Increase teacher salaries to make the positions competitive and recruit qualified and capable instructors.
- Eliminate any government sponsored discriminatory tactics that may be used to deprive indigenous communities of a sufficient education.

IV. Nicaraguan Land Rights

Normative and Institutional Frameworks:

International Provisions: In 2010, the Report of the Special Rapporteur regarding the right to food recommended that, in order to ensure security of land rights and improve access to agricultural lands, the implementation of a national titling program should be accelerated in order to limit potential conflicts over land claims in the future. This recommendation has yet to be put into full effect by the Nicaraguan government.

Domestic Undertakings: In 2008, the Committee on the Elimination of Racial Discrimination (CERD) urged Nicaragua to accelerate the process of adoption of the act relating to the indigenous peoples of the Pacific, Central, and Northern regions of Nicaragua. In 2010, the Report of the Special Rapporteur on the right to food made the same recommendation to the Nicaraguan government.

Human Rights on the Ground:

Despite provisions in the Nicaraguan Constitution meant to prevent the confiscation of indigenous lands, the indigenous communities in the Pacific, Central, and Northern regions of Nicaragua are continuously faced with intrusions onto their ancestral lands by wandering settlers as well as the Nicaraguan government. These lands are often confiscated and reallocated to those in political favor, without local consultation or approval by the indigenous communities. Additionally, legally invalid land titles are issued to the indigenous populations by the government as a means to pacify the indigenous leaders. However, these titles lack validity and do not hold up in a court of law. Currently, the continued confiscation of their ancestral property prevents the indigenous populations in Nicaragua from working off of their land in order to make a sufficient living. Further, combined with the lack of resources accessible to rural populations, future generations of indigenous peoples continue to suffer as the children in these areas are currently unable to even attend school due to a level of poverty that prevents the purchase of basic needs, such as school supplies and adequate seasonal clothing.

Recommendations:

- Create forums for open communication between indigenous leaders and government officials and associates to better address localized community needs.
- Ensure the recognition and legal validity of the ancestral land titles in the indigenous communities in the domestic courts in Nicaragua.
- Take concrete steps for a definite approval of the Act relating the Indigenous Peoples of the Pacific, Central, and Northern regions of Nicaragua.
- Review confiscation of lands and consider restoration to balance consistent rural poverty and lack of access to government institutions.
- Aid in the development and institution of a method of land title record keeping that would help to alleviate current and future confusion regarding land ownership.

V. Special Ombudsman's Office on Indigenous Rights

Normative and Institutional Frameworks

International Provisions: In March 2010 the UPR recommended that Nicaragua strengthen the independence and impartiality of the Ombudsman Office of Human Rights and ensure its full adherence to the Paris Principles. The current state indicates the Ombudsman and related offices lack the independence of action and objectivity to assess the human rights needs and situation on the indigenous peoples of Nicaragua. Recent actions indicate the office does not have the resources or political support to achieve its stated mandate.

Domestic Undertakings: The 2010 decision by the Human Rights Ombudsman's Office to eliminate the Special Ombudsman's Office on Indigenous Rights and then replace the indigenous person operating in this capacity with three non-indigenous persons that were tasked with many new responsibilities was a clear violation of the rights of indigenous peoples. The actions of the state to effectively eliminate the position granted responsibility to oversee all activities relating to indigenous peoples is a clear indication of the State's intention to minimize the importance of the issues of the indigenous communities and effectively eliminate a potential safeguard of the basic rights of indigenous peoples.

Human Rights on the Ground:

According to NGO reports submitted to the UPR in 2010, the Ombudsman's Office on Human Rights lacks autonomy, independence and impartiality, as well as a sufficient budget for fulfilling its mandate. This poses a huge obstacle to safeguarding the human rights of all Nicaraguans, but likely has a disproportional effect on indigenous peoples.

Recommendations

- Legitimacy and independence should be returned to the Ombudsman's Office on Human Rights through appointing new authorities with significant authority and responsibility to take actions on behalf of the state, in order to give effect to constitutional and statutory protections afforded to the indigenous peoples.
- The Special Ombudsman's Office on Indigenous Rights should be reinstated and empower with the authority to ensure enforcement of relevant international agreements, Nicaraguan Constitutional elements, and statutory requirements relating to the rights of all indigenous peoples. This must include adequate personnel and all necessary financial resources.

VI. Women's Rights

Normative and Institutional Frameworks

International Provisions: The 2010 Report recommended that Nicaragua review its compliance with the Convention for the Elimination of Discrimination Against Women and ratify the

Optional Protocol to CEDAW. Nicaragua has not at this time seen fit to make any additional commitments.

Domestic Undertakings: The 2010 Report recommended that Nicaragua create a national council of women and that it intensify its efforts in the fight against violence against women and girls. The government promotes a policy that women should hold 50 percent of government offices, though this is currently not the case. Nicaragua amended its penal code in 2012 to include the Law On Violence Against Women.

Human Rights on the Ground

In 2011, there were 37,000-recorded cases of sexual and domestic violence, and 80 women per year are killed by their spouses. Maternal mortality rates are 95 per 100,000, and infant mortality rates are 21.09 per 1,000 live births. Nicaragua has increased access to health services in rural areas, reducing the maternal mortality rate from 212 in 2006 to 90 in 2009.

Recommendations

- Develop victim protection resources to provide counseling, health services, and other treatment for victims of rape and sexual assault
- Reconsider total abortion ban in conjunction with health-based research.