



**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

Annex

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ANNEX

1. In May 2013, members of the International Human Rights Clinic of the University of Oklahoma College of Law (IHRCOU) conducted a research site visit to Nicaragua. The itinerary included visits to Managua, Matagalpa, Masaya, Esteli, and Jinotega. The team met with a large group of the indigenous people living in the vicinity of Matagalpa. Clinic students met with representatives from the Supreme Court of Justice, Defensoria Publica (Ombudsman), indigenous groups, and NGOs in an effort to synthesize a broad range of perspectives on the status of indigenous peoples in Nicaragua. In addition to national perspectives, this report reflects the direct concerns of the specific indigenous groups represented in on-site meetings.
2. Native Nicaraguans acted as the students' tour guides to various indigenous communities. The students found the people of Nicaragua to be friendly and hospitable, but often in desperate need of assistance and a means to make their concerns heard on a widespread basis – both nationally and internationally. The students visited indigenous people who lived in poorly organized and politically isolated communities, in largely rural areas that suffered from a virtual dearth of governmental services and modern infrastructure.
3. Meetings with governmental representatives provided the opportunity to gain exposure to the official governmental position on indigenous issues and plans for addressing relevant concerns. The meetings followed a rigid agenda and largely contained prepared presentations on governmental activities highlighting the perceived successes of governmental activities. The meetings were professional but did not include any direct representatives of indigenous peoples or specific discussion of more controversial issues relating to the rights and privileges of the many indigenous peoples of Nicaragua.

I. Indigenous Health Services

Best Practices

4. Currently, the Nicaraguan government has put in place Constitutional provisions and statutes that should provide equity in the provision of services to all Nicaraguans.
5. Beginning in 2007, the Ministry of Health (MOH) conducted consultation meetings with representatives of Indigenous Peoples and Ethnic Communities of Nicaragua. The goal was to prepare the Planning Framework for Indigenous Peoples and Ethnic Communities in order to provide the principles for the inclusion of indigenous peoples and ethnic communities in the MOH project "Improvement of Family Health Community Health Services SILAIS of Nicaragua "and comply with Operational Policy 4.10 (Indigenous Peoples).
6. Law No. 759, ANCIENT TRADITIONAL MEDICINE LAW, as Published in Official Gazette No. 123, 07/04/2011. As a part of this implementation, the law should improve consultation with indigenous peoples to insure an adequate provision of culturally appropriate health care that both respects and incorporates traditional medical practices.

Challenges and Obstacles

7. The current health systems does not include an effective mechanism to analyze and develop health care practices and programs that are sensitive and incorporate the traditional medical customs into an overall healthcare system. The government has instituted programs to include indigenous representatives in the development of health programs, but these activities have not reached the necessary level of indigenous peoples' participation.

8. The rule of law in Nicaragua, as it applies to indigenous peoples, does not provide an objective and balanced judicial mechanism for the enforcement of the rights of indigenous peoples. Many indigenous individuals and peoples face financial, social, and political hurdles as they seek to exercise the rights to health and well-being guaranteed by the Nicaraguan Constitution and statutory laws.
9. The transportation infrastructure is poorly developed and maintained in rural regions. These conditions disproportionately affect indigenous peoples and their ability to access governmental benefits and services.

National priorities, initiatives, and commitments

10. In September of 2012, the Inter-American Development Bank (IDB) approved \$56.2 million in financing to Nicaragua for a program to improve health care. It is projected to benefit approximately 2.3 million people living in vulnerable areas. The funds will finance the construction and rehabilitation of 80 health care centers as well as the integration of the health system's clinical and management areas in seven targeted local components of the Sistemas Locales de Atención Integral en Salud (SILAIS). The program is designed to raise health care professionals' awareness of indigenous and Afro-descendant peoples' cultures and values and include traditional medicine into treatment protocols and practices.

Expectations in terms of capacity-building and technical assistance

11. The IDB financing is a significant opportunity to improve the efficacy and effectiveness of the Nicaraguan health care system, especially in the rural areas.

12. With proper inclusion of direct representatives of the various indigenous peoples on the development, implementation, and maintenance of the improvements to the Nicaraguan health care system, the current IDB-financed program can dramatically narrow the health disparities among the various components of the Nicaraguan population, especially among indigenous peoples.

II. Children's Rights

Best Practices

13. In May 2012 the Government of Nicaragua agreed to a loan of \$20,000,000 USD from the Inter-American Development Bank (IDB) for the implementation of a program to support cognitive, motor, and social development of children under age six.¹ The program seeks to improve comprehensive care for 80,000 children under the age of six in thirty-seven of the country's municipalities.² The program will aspire to promote nutrition, health, and education for the children.³

14. To date, the government has set up over a hundred Municipal Commissions on Children and Adolescents.⁴

15. The Nicaragua Rural Water Supply and Sanitation Project received an additional \$6,390,000 USD in loan money from the International Bank for Reconstruction and Development (IRBD) in January 2013.⁵ The project's objective is to increase access to

¹ Inter-American Development Bank, NI-L1059 : Program to accompany the implementation of the National Policy for children in P Overview, available at <http://www.iadb.org/en/projects/project-description-title,1303.html?id=NI-L1059>

² Inter-American Development Bank, News, available at <http://www.iadb.org/en/news/news-releases/2012-05-25/nicaragua-improve-cognitive-development-of-children,9998.html>

³ Id.

⁴ Consideration of reports submitted by states parties under article 44 of the convention, Report to the Committee on the Rights of the Child, CRC/C/NIC/CO/4, p. 3 [*hereinafter* CRC Report 2010]

⁵ The World Bank, NI AF Rural Water Supply and Sanitation Overview, available at <http://www.worldbank.org/projects/P132102/rural-water-supply-sanitation-additional-financing?lang=en>

sustainable water and sanitation services in certain rural areas.⁶ Eligible municipalities in the North Atlantic Autonomous Region (RAAN) and the South Atlantic Autonomous Region (RAAS) are among some of the areas to receive funding.⁷

Challenges and Obstacles

16. Many of the programs and laws set forth by the Government involving children's rights have not been fully implemented. The programs lack the necessary institutional, human, technical and financial resources for their full implementation.
17. The National Council for the Comprehensive Care and Protection of Children (CONAPINA) is responsible for the government's comprehensive policy on youth.⁸ However, since Law 290 was passed, the CONAPINA has lost much of its authority.⁹
18. 17% of the population in Nicaragua lives in extreme poverty,¹⁰ 76% of whom live in rural areas.¹¹ While the Nicaraguan government recognizes the right of children to an education and to health care, the children of indigenous parents are unable to afford either.¹² The government also recognizes a constitutional right to food¹³, but indigenous children suffer from chronic malnutrition as their parents are unable to afford food and have little access to food.¹⁴

⁶ Id.

⁷ Document of the World Bank, available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/01/02/000425962_20130102105553/Rendered/PDF/NonAsciiFileName0.pdf

⁸ See Código de la Niñez y la Adolescencia, Libro Segundo, Título I

⁹ CRC Report 2010, CRC/C/NIC/CO/4, p. 3

¹⁰ Food and Agriculture Organization of the United Nations, FAO Initiative on Soaring Food Prices, available at <http://www.fao.org/isfp/country-information/nicaragua/en/>

¹¹ Id.

¹² Personal interview, May 14, 2013, record on file with the University of Oklahoma College of Law.

¹³ National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council resolution 5/1, A/HRC/WG.6/7/NIC/1, p. 10 [*hereinafter* UPR National Report 2010]

¹⁴ See The Nicaraguan Federation of NGOs Working with Children and Adolescents (CODENI), Universal Periodic Review, p. 5

19. Only 68% of Nicaraguan people in rural areas have access to safe drinking water.¹⁵ The waters in the community of Uluse El Jobo are being contaminated with dead animals and military devices.¹⁶ Other waters are being contaminated from the lack of sanitary infrastructures. Contaminated water can cause diarrhea, arsenic poisoning, typhoid, cholera, and in some instances intestinal worms.¹⁷ These diseases can be fatal for children, particularly if the children do not have access to proper health care.¹⁸ Most deaths from contaminated water occur in children under the age of five.¹⁹
20. Registration at birth allows a child to be recognized as a citizen of Nicaragua, thereby conferring on them the rights and benefits of citizenship. While the number of unregistered births has gone down in recent years, there are still hundreds of thousands of unregistered children, a majority of which live in the North Atlantic Autonomous Region and the South Atlantic Autonomous Region. Indigenous children have a much higher chance of being unregistered given the rural areas in which they are born and the lack of access to medical facilities.

National Priorities, Initiatives, and Commitments

21. Nicaragua ratified the Convention on the Rights of the Child in October 1990²⁰ and the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. The

¹⁵ Water for People, Nicaragua, available at <http://www.waterforpeople.org/programs/central-america/nicaragua.html>

¹⁶ Personal Interview, May 14, 2013, record on file with the University of Oklahoma College of Law.

¹⁷ UNICEF, Water, Sanitation and Hygiene, available at http://www.unicef.org/wash/index_wes_related.html

¹⁸ Madre, Nicaragua: Liwa Mairin | Women Waterkeepers, available at <http://www.madre.org/index/meet-madre-1/our-projects-20/nicaragua-liwa-mairin--women-waterkeepers-149.html>

¹⁹ UNICEF, Water, Sanitation and Hygiene, available at http://www.unicef.org/wash/index_wes_related.html

²⁰ United Nations Treaty Collection, Chapter IV Human Rights, available at http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en

Constitution was later amended to reflect the ratification of the Convention and give special rights to children.²¹

22. In 1998 the Código de la Niñez y la Adolescencia entered into force.²² The Code of Children and Adolescents provides for, among other things, the right of children and adolescents to be free from discrimination, to live with their family, to an education, to health care, to the full protection of the law, to protection from exploitation, and to a national identity.²³
23. Nicaragua has the National Plan to reduce the number of unregistered children²⁴ and has registered more than 90,000 children and adolescents in the North Atlantic Autonomous Region while starting to register children in the South Atlantic Autonomous Region.²⁵
24. The Government has passed the Food and Nutrition Security and Sovereignty Act and has initiated programs like Zero Hunger, Zero Usury, and the Child Nutrition Program.²⁶

Expectations in Terms of Capacity-Building and Technical Assistance

25. Due to natural disasters, a fiscal crisis, understaffing, and underfunding of programs directed at children's rights, many of these programs have not been fully implemented. Collaboration and coordination with international children's organizations like UNICEF could help to ensure all of Nicaragua's programs directed at children's rights to be fully implemented.

²¹ See UPR National Report 2010, A/HRC/WG.6/7/NIC/1, p. 4

²² Informe para el Examen Periódico Universal (EPU), Sistema de las Naciones Unidas en Nicaragua, p. 7

²³ Código de la Niñez y la Adolescencia

²⁴ CRC Report 2010, CRC/C/NIC/CO/4, p. 8.

²⁵ Follow-up to the recommendations of the Permanent Forum, Report to the Permanent Forum on Indigenous Issues, E/C.19/2009/4/Add.11, p. 6.

²⁶ UPR National Report 2010, A/HRC/WG.6/7/NIC/1, p. 10.

III. Education

Best Practices

26. In 2008, the Committee on Economic, Social and Cultural Rights reviewed Nicaragua's progress towards meeting the previous year's goals in the areas of education, economic development, and cultural rights—specifically those of indigenous communities.
27. The Committee noted that many indigenous communities suffered racism that affected their ability to integrate into society and receive the same resources as non-indigenous communities.²⁷ Specifically, the Committee stated the communities suffer in the area of “health, education, and government presence.”²⁸
28. The Committee also recommended that Nicaragua should ensure indigenous people's right to education and that it should be tailored to their individualized needs.²⁹
29. In response to the Committee's observations, the Nicaragua's leaders stated that they would provide instruction in the language of indigenous communities and passed legislation to strengthen indigenous education.³⁰

Challenges and Obstacles

30. After the fall of the ruling political party, the new government implemented a literacy campaign geared to tackle the country's poor literacy rate. Although literacy was a major goal, the Sandinista government instituted the campaign with two reasons in mind: 1) a moral obligation to the population; 2) to increase access to education to all populations as

²⁷ Comm. on Economic, Social and Cultural Rights, Rep. on its 41st Sess., Nov. 3-21, 2008, U.N. Doc. E/C.12/NIC/CO/4 (Nov. 28, 2008).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Economic and Social Council, Information received from Governments (Nicaragua) on its Eighth Sess., May. 18-19, 2009, U.N. Doc. E/C.19/2009/4/Add.11 (Apr. 8, 2009).

part of a national movement.³¹ Immediately after launching this campaign, Nicaragua's literacy rate of 50.3% was lowered to 12.19%.³² This program and subsequent results were not without criticism. Several groups of stakeholders accused the Sandinistas of using the program to politically indoctrinate the community.³³

31. Nicaragua's education system includes two groups of participants: indigenous communities and city-dwelling children. Each group faces challenges to obtain an education, however, indigenous children tend to have more problems seeking education. As of February of this year, there were 1.6 million children in the Nicaraguan education system.³⁴ Public schools generally have 200 class days.³⁵ Children usually attend for roughly four and a half years.³⁶ Looking at rural versus urban children, 41% of urban children complete primary school while only 7% complete primary schools in rural communities.³⁷ Regarding illiteracy, 33.6% of rural children are illiterate, compared to only 11.1% in urban towns.³⁸ Each teacher must manage 40 students in poor learning conditions such as the lack of sufficient books or physical structures.³⁹

32. Aside from political indoctrination complaints, the United Nations Working Group on the Universal Periodic Review (Working Group) recommended that Nicaragua increase its

³¹ United Nations Education, Scientific and Cultural Organization Institute for Education, Hamburg, Germany, March 2005, *Nicaragua's literacy campaign*, U.N. Doc. 2006/ED/EFA/MRT/PI/43 (Mar. 2005).

³² *Id.*

³³ *Id.*

³⁴ David Hutt, *Is Nicaragua's education system failing*, Tico Times (Feb. 1, 2013), http://www.ticotimes.net/Region/Is-Nicaragua-s-education-system-failing-_Friday-February-01-2013.

³⁵ *Id.*

³⁶ *Access to Education*, Monterey Institute of International Studies Blog (June. 8, 2013), <https://blogs.mii.edu/educationinnicaragua/2013/05/12/access-to-education/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

spending on education within the country.⁴⁰ Nicaragua has not fully implemented this recommendation.

33. In addition to having the lowest paid teachers, Nicaragua also has the lowest budget for education, and in 2012, lowered its gross domestic product (GDP) percentage spending.⁴¹

The government has responded to criticism about the education system by stating it will increase the budget for education—supposedly devoting nearly half of the social programs budget to this cause.⁴² They also pledged to increase teacher salaries, but this increase has still left salaries below Nicaragua’s minimum wage.⁴³

34. In recent years, there are more children attending school and a decrease in student withdrawals.⁴⁴ Students who do withdraw do so to find employment in order to support their families.⁴⁵

35. For rural communities, usually indigenous, racism is a barrier to receiving a quality education. A Special Rapporteur for the UN Commission on Human Rights acknowledged the prevalence of racial barriers for indigenous communities and made several recommendations to combat the problem, particularly in the administration of government programs such as education.⁴⁶ Particularly, the Rapporteur recommended that the country adopt a “Bilingual Intercultural Education Programme” which would integrate communities’ languages and customs with education.⁴⁷

⁴⁰ Human Rights Council, Rep. on its 14th Sess., Feb. 8-19, 2010, U.N. Doc. A/HRC/14/3 (Mar. 17, 2010).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Supra* note 8.

⁴⁵ *Id.*

⁴⁶ Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N.Doc. E/CN.4/2005/18/Add.6 (Mar. 5, 2005) (by Doudou Diene).

⁴⁷ *Id.*

36. Leaders of indigenous communities have expressed their frustration with the Nicaraguan education model for failure to keep their traditions in mind. In a recorded interview with three indigenous leaders, there were several common concerns. First, there is resistance to government run education since it is influenced by a western (primarily United States) model of education.⁴⁸ Second, the native language is not being taught in the school systems which results in a loss of identity.⁴⁹ Lastly, by using a western educational system, the indigenous culture loses its identity as well.⁵⁰
37. During a discussion with several members of an indigenous community, Uluse El Jobo in Matagalpa, it is clear that there is a lack of government involvement in education. One member stated, “We primarily rely upon each other to educate children. That and the Catholic Church are our only means to education.”⁵¹ She then stated, “Children often have to travel a great distance to attend class. By the time they get there they might be so tired it makes it hard for them to learn.”⁵² The indigenous leader reported that “The government does not care about us. We have to provide for ourselves. If we’re not able to do that, then our children suffer.”⁵³
38. In addition to this personal interview, several children approached the clinic participants and requested money to help purchase school supplies and books because the children in the community of Matagalpa live in difficult conditions.

⁴⁸ Jeremy Harrison-Smith, *Indigenous Perspectives: The Struggle For Land, Culture and Education In Rivas, Nicaragua* (July 1, 2011) (unpublished graduate capstone paper, SIT Graduate Institute) (on file with SIT Graduate Institute).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Personal Interview, May 14, 2013, record on file with the University of Oklahoma College of Law.

⁵² *Id.*

⁵³ *Id.*

National Priorities, Initiatives and Commitments

39. The aforementioned literacy campaign resulted in a large number of citizens, children and adults, receiving educational training—specifically in the area of literacy. With nearly half a million citizens becoming literate, Nicaragua put forth strong efforts to conquer illiteracy. This resulted in UNESCO declaring Nicaragua “A Land Free of Illiteracy.”⁵⁴

Expectations in terms of capacity-building and technical assistance

40. The government must provide a reasonable education budget. Having recognized this as a priority for the future, Nicaragua’s President, Daniel Ortega, and his administration have made it a priority to increase funding for schools.

41. Aside from general budget increases, the government must make schools accessible for rural and indigenous communities. Considering that most areas are very hard to reach, the government should consider instituting a mobile classroom which would provide individual attention to each community’s needs.

42. Governmental education should also be politically unbiased and non-discriminatory in its teaching or administration.

43. Efforts to teach communities in their native language should be increased as well. Working with community leaders or elders to tailor education to fit the community’s culture will help maintain its traditions and customs.

⁵⁴ Statement to the 55th Sess. of the Comm. on the Status of Women (Feb. 21, 2011) (by Marcia Ramirez Mercado).

IV. Nicaraguan Land Rights

Best Practices

44. According to a 2011 report addressed to the United Nations, the Nicaraguan government has recently restored the “economic, social, and cultural rights of [the] indigenous peoples . . . in particular [their] right to property.” This transformation was conceivably accomplished through the legal recognition of their ancestral ownership rights at the constitutional level.⁵⁵
45. Nicaragua states that as of April 18, 2011, the government has “handed over 15 land titles to communal indigenous territory, covering an area of 22,479 square kilometers, or 17.4% of the national territory, and benefiting 103,790 members of 24 communities.” The report to the UN further claims that as an “act of justice,” the Nicaraguan government is fully dedicated to the eventual restoration of 100% of the ancestral land to the indigenous communities of Nicaragua.⁵⁶
46. In 2010, Nicaragua ratified ILO Convention No. 169, specifically concerning the rights of indigenous and tribal peoples. This legally binding international instrument requires a country to align legislation, policies, and programs to the Convention within one year after ratification. Countries are then subject to the supervision and monitoring of the International Labour Organization (ILO) to ensure continued compliance.⁵⁷

Challenges and Obstacles

47. In 2006, the indigenous populations of the Pacific, Central, and Northern regions of Nicaragua drafted a law that was submitted to the Commission on Ethnic Affairs. This

⁵⁵ Note verbale from the Permanent Mission of Nicaragua to the UN, April 18, 2011, p. 4.

⁵⁶ Id.

⁵⁷ <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

law requested that an institution was to be established in order to better meet the individualized needs of the indigenous peoples. To date, the draft law has been approved but has yet to be fully accepted and put into effect by the Plenary.⁵⁸

48. Despite ongoing claims by the government that the ancestral lands of the indigenous populations have been returned to the communities themselves, the “titles” provided have in fact proven to grant no legal basis for property ownership.⁵⁹ Therefore, lands that have been used for generations for farming, agriculture, and economic prosperity of the indigenous populations have been turned over to those in government favor. Such continued actions by the government has rendered the indigenous populations helpless, as no other legal vehicle currently exists to aid them in their ongoing battle for their stolen lands.
49. The Nicaraguan government has voluntarily submitted to the binding jurisdiction of the Inter-American Court of Human Rights under Article 62 of the American Convention on Human Rights on February 12, 1991.⁶⁰ The country has since been party in two different disputes before the Court. The first ruling, issued in 2001 and related to the indigenous Awas Tingni people, has been complied with by the government. However, as of the date of the last inquiry in 2011 into compliance with the 2006 court decision, Nicaragua is not in full compliance with the mandates of the Inter-American Court of Human Rights.⁶¹ The government’s failure to comply follows at least three inquiries into the matter by the Court following their initial ruling and further and directly

⁵⁸ Permanent Forum on Indigenous Issues, E/C.19/2009/4/Add.11, p.3, ¶ 9

⁵⁹ Personal Interview, May 14, 2013, record on file with the University of Oklahoma College of Law.

⁶⁰ Order of the Inter-American Court of Human Rights, June 30, 2011, Monitoring Compliance with Order in Case of Yatama v. Nicaragua (2005), p. 3.

⁶¹ UPR National Report 2010, (A/HRC/WG.6/7/NIC/3, p. 10.)

contradicts the overarching principle in international law mandating “a good faith compliance” with decisions of such a judicial body.⁶²

National Priorities, Initiatives, and Commitments

50. The United Nations Declarations on the Rights of the Indigenous Peoples (UNIDRIP) articulates the rights indigenous people have regarding land. These rights include the right to land occupation, utilization, and development and control. Further, the State has an obligation to provide legal recognition and protection of those lands.⁶³ Indigenous people also have the right of land conservation and State enforced environmental protection.⁶⁴
51. To ensure enforcement of the rights outlined in the UNIDRIP, indigenous people have been granted the legal right to remedies when lands have been used or taken without free, prior, and informed consent.⁶⁵ Additionally, the State has a duty to create a system to recognize and enforce indigenous peoples’ land rights by including the indigenous people themselves in the legal process.⁶⁶
52. Reports of valid compliance with the previous rulings of the Inter-American Court of Human Rights regarding the restoration of ancestral lands to their indigenous owners, have incorporated a myriad of skewed data as the “titles” provided have not proved to be legally valid.
53. Title searches often fail to reveal real property ownership due to poor record keeping in property registries. Additionally, prominent organizations exist inside of Nicaragua

⁶² Id.

⁶³ UNIDRIP, Article 26.

⁶⁴ UNIDRIP, Article 27.

⁶⁵ UNIDRIP, Article 28.

⁶⁶ UNIDRIP, Article 27.

that currently aid people in stealing land by selling false titles and documents to the highest bidder. The judicial system is too slow to respond to have a legitimate effect on the illegal confiscation and the continuous change in differing political regimes has caused the process of titling and registration of land titles to be difficult and unpredictable.⁶⁷

54. According to Article 180 of the Political Constitution of Nicaragua, the ““State shall guarantee [indigenous] communities the enjoyment of their natural resources, the validity of their methods and communal property ownership . . . [and] it shall also ensure the preservation of their, cultures, languages, religions, and customs.””⁶⁸

However, the desire for political control has historically outweighed the necessity for economic stability in the management of state enterprises that produce cotton, coffee, sugar, beef, bananas, rice, and tobacco. Therefore, the government has historically failed to secure formal tenure for individual small producers and cooperative members.⁶⁹ The continued lack of access to natural resources as essential as clean water and the disparaging division between those who live in the urban and those in the rural areas of Nicaragua continue to feed a poverty rate that hovers close to 70% in rural areas.⁷⁰

V. Special Ombudsman’s Office on Indigenous Rights

Best Practices

55. The Ombudsman for Human Rights in Nicaragua is responsible for protecting the rights of all Nicaraguans.

⁶⁷ http://nicaragua.usembassy.gov/econ_property_office.html

⁶⁸ Permanent Forum on Indigenous Issues (E/C.19/2009/4/Add.11, p.2-3, ¶ 3.)

⁶⁹ *Agriculture Property Rights and Political Change in Nicaragua*, Mark Everingham; *Latin American Politics and Society*, Vol. 43, No. 3 (Autumn 2001).

⁷⁰ Report of the Special Rapporteur on the right to food (A/HRC/13/33/Add.5, p.5, ¶ 9.)

56. In 2009, Nicaragua appointed an ombudswoman for sexual diversity to defend the rights of the gay community, a traditional target of discrimination in Nicaragua. The new Ombudswoman's office was tasked to recognize the constitutional rights and duties of all citizens, whatever their sexual orientation, as universal rights which must be respected.

Challenges and Obstacles

57. The Ombudsman for Human Rights is a highly politicized position, perceived both locally and internationally to lack the objectivity and independence from undue political influence in order to take the steps required to truly protect the rights of those people not aligned with the current ruling political party.

58. In 2005, the Human Rights Ombudsman's Office decided 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.

59. The essential elimination of the Special Ombudsman's Office on Indigenous Rights reduces the political representation of indigenous peoples in governmental activities. Without a dedicated voice, not only are many indigenous issues unheard, but when they are discussed, there is unlikely to be an informed advocate present to focus on resolving the health disparities among the Nicaraguan population.

National Priorities, Initiatives, and Commitments

60. The appointment of an Ombudswoman for sexual diversity indicates the potential for governmental action on behalf of groups that are viewed by the government and popular society as worthy of governmental action and direct protection of their rights.

61. The elimination of the Special Ombudsman's Office on Indigenous Rights following its recent creation suggests a lack of governmental concern over the plight and current situation of the indigenous peoples.

Expectations in terms of capacity-building and technical assistance:

62. None at this time.

VI. Women's Health

Best Practices

63. Since 2006 Nicaragua has steadily reduced maternal mortality rates by increasing healthcare access to rural, indigenous, and Afro-descendant populations.

64. In 2012 Nicaragua enacted a Law on Violence Against Women which for the first time includes the concept of "femicide," or "the killing of a woman by a man simply because she is a woman."⁷¹

Challenges and Obstacles

65. The 2007 CEDAW report on Nicaragua concluded that Nicaragua was not fully in compliance with CEDAW and urged Nicaragua to implement procedures into civil society that would bring it into full harmonization with CEDAW Article 2.

66. Although the Nicaraguan government has set goals for the inclusion of women in the public sphere, many of these goals have yet to be realized.

67. Nicaragua promotes a policy that women should occupy 50% of the government positions.⁷² Currently 40% of Parliament positions are held by women, as found in 2010 by the Inter-Parliamentary Union.⁷³

⁷¹ <http://mrzine.monthlyreview.org/2012/riddell211112.html>

68. Violence against women and girls continues at high rates despite Nicaragua's commitment to eliminating such violence. 84% of sexual crimes are perpetrated against minors.⁷⁴ In 2011 there were 37,000 reported cases of domestic violence.⁷⁵ Three out of every ten women have experienced violence. In the North Atlantic Autonomous Region the figure is six out of ten.⁷⁶ Nearly half the rapes reported between 1998 and 2008 were perpetrated on girls aged 14 and under.⁷⁷
69. In addition to the rapes and violence that are reported, many victims are reluctant to report sexual violence for fear of shame and humiliation. Domestic violence victims are similarly unlikely to report violence in the home if they have no supporting resources available.
70. In 2007 Nicaragua enacted a total ban on abortions, including those performed in cases of rape or incest and those performed to save the life of the mother.⁷⁸ Although prosecutions are rare, Amnesty International reports that women fear seeking treatment for obstetric emergencies are delayed in receiving such care and are denied life-saving abortions. In addition, nearly 1400 babies are born each year to girls aged ten to fifteen who cannot get abortions.⁷⁹ Since the presumed age of consent is sixteen, all of these pregnancies are the product of statutory rape.

National Priorities, Initiatives, Commitments

⁷² ECOSOC Report, 55th Session CEDAW, 24 Feb. 2011, New York, NY.

⁷³ <http://www.ipu.org/wmn-e/classif.htm>

⁷⁴ <http://hrbrief.org/2013/03/right-to-personal-integrity-of-women-and-girls-in-nicaragua/>

⁷⁵ http://www.huffingtonpost.com/bianca-jagger/violence-against-women_b_2733708.html

⁷⁶ <http://www.healthpovertyaction.org/where-we-work/latin-america/nicaragua/training-young-people-to-tackle-violence-against-women/>

⁷⁷ <http://www.amnesty.org/en/50/campaigns/reproductive-rights>

⁷⁸ <http://www.hrw.org/reports/2007/10/01/over-their-dead-bodies-0>

⁷⁹ <http://hrbrief.org/2013/03/right-to-personal-integrity-of-women-and-girls-in-nicaragua/>

71. The 2012 Law on Violence Against Women, Law 779, aims to protect women who are victims of domestic or family violence. It recognizes unequal power dynamics between women and defines the crime of “femicide,” or “the killing of a woman by a man, simply because she is a woman.” It also recognizes psychological abuse, workplace violence, and property abuse as crimes punishable by law.
72. The law also calls for the creation of an inter-institutional commission to study the effects of violence against women and to ensure its implementation in government and civil society.⁸⁰
73. It also increases the criminal penalties for crimes of femicide and other acts of violence against women.

Expectations in Terms of Capacity-Building and Technical Assistance

74. Nicaragua’s government and INIM must work to ensure that recently-enacted laws are actually implemented usefully.
75. In addition, increases in family planning services – including reconsidering the total abortion ban – will help to ensure family solidarity and increased family strength.
76. Youth education must stress the importance of consent and discourage sexually coercive behavior at all ages and levels of society.

⁸⁰ <http://en.maquilasolidarity.org/node/1042>