



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families
Twenty-fifth session**

Summary record of the 332nd meeting

Held at the Palais des Nations, Geneva, on Thursday, 1 September 2016, at 10 a.m.

Chair: Mr. Brillantes

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Initial report of Nicaragua (continued) (CMW/C/NIC/QPR/1; and text distributed in the meeting room in Spanish only)

1. *At the invitation of the Chair, the delegation of Nicaragua took places at the Committee table.*
2. **Mr. Estrada Román** (Nicaragua), replying to questions raised at the previous meeting, said that, unlike the practice adopted in other countries, Nicaraguan legislation did not criminalize non-documented migration. Instead, the Migration and Immigration Act contained wide-ranging provisions with a view to, inter alia, facilitating the issuance of humanitarian visas, expediting the return of Nicaraguan child and adolescent migrants and assisting victims of trafficking. The Act also regulated the detention of migrants with irregular immigration status and defined a regularization procedure that was to be completed within a period of 30 days.
3. A foreign migrant was considered to be in an irregular situation when he or she entered the country clandestinely, presented a false passport or visa, remained in the country past the expiry of his or her lawful stay in the country, was a wanted criminal or had been apprehended by the relevant authorities when attempting to leave the country through unauthorized points.
4. Migrants suspected of being in an irregular situation were transferred by the police or migration authorities to the national migrants' shelter, which was run by the Directorate General of Migration and Immigration, until such time as their status could be determined. If their unlawful status was confirmed, they received a deportation notice that was substantiated and issued on the basis of an administrative decision, and their diplomatic or consular officials were notified. The shelter accommodated only non-documented foreign migrants and provided them with basic comforts, personal hygiene kits and free medical care, as well as access to interpreters free of charge. Vast improvements had been made to the facility since 2007, in spite of enormous budgetary constraints, with support from the Office of the United Nations High Commissioner for Refugees (UNHCR). Migrants whose immigration status was regularized by means of documents issued by the Director General of Migration and Immigration were permitted to leave the shelters.
5. While Nicaragua had one of the best security situations in Latin America, the root cause of Nicaraguan emigration was poverty: the country was the second poorest in Latin America. With that in mind, the Government had placed a priority on developing and implementing policies aimed at improving the economic, social and cultural rights of its citizens. A social welfare programme had been introduced with a view to improving food security, health, education and housing, thereby reducing the rampant poverty and inequality that plagued the country and eliminating the primary reason for migration. In fact, in 2013, Nicaragua had been commended by the Director-General of the Food and Agriculture Organization (FAO) of the United Nations for its efforts to reduce food insecurity and malnutrition, and the number of families living in poverty or extreme poverty had also been reduced significantly. Despite the fact that the proportion of Nicaraguan migrants in 2015 had fallen by 3 per cent, there had been an upsurge in the number of foreign migrants transiting through its territory, with more than 4 million migrant crossings in 2015.
6. Regarding allegations that Nicaragua had refused entry to thousands of Cuban migrants crossing its border from Costa Rica, he pointed out that, when it had been informed of that migratory influx, the Government of Nicaragua had immediately called for

an urgent meeting with the heads of State of Costa Rica and other affected Central American countries in an effort to coordinate a solution. The armed forces had been ordered to scale-up their presence at the border as a means of ensuring that those migrants did not fall victim to transnational organized crime or to human trafficking. In solidarity with Cuba, Nicaragua had urged the United States of America to change its discriminatory migration policy, which was the root cause of the issue, since it incentivized Cuban migrants to risk life and limb to travel to the United States, caused dangerously large migration flows and placed unsustainable demands on the infrastructure of several Central American countries. Priority should be given to more orderly, safe and legal migration that safeguarded the rights and physical integrity of Cuban migrants.

7. In response to the large number of persons seeking asylum in Nicaragua as a result of ongoing conflicts in other Central American countries, the National Commission on Refugees had been established, and legislation on the protection of refugees had been enacted. The provisions of the Refugee Protection Act drew inspiration from the rights and definitions set out in the 1951 Convention relating to the Status of Refugees, while the Commission was responsible for issuing decisions to grant or deny refugee status to asylum seekers.

8. Regarding the disappearances of Nicaraguan migrants abroad, most notably in Mexico, the Government of Nicaragua had taken action to assist Mexican authorities in the identification of human remains and to provide families with information and access to justice. A raft of new legislation, including laws on trafficking, organized transnational crime and violence against women, had been introduced between 2010 and 2015 so as to establish the necessary legal framework to prevent and combat trafficking in persons. Nicaragua was also part of a Central American coalition that was working to combat such trafficking. A shelter for victims had been set up in Managua, and a strategic plan had been formulated to foster the harmonization of regional mechanisms for tackling the phenomenon.

9. The *Amparo* Act provided for the establishment of administrative mechanisms whereby decisions taken by the Ministry of the Interior to expel migrants in an irregular situation could be challenged. In addition to the usual border protection methods, as practised by all States in the world, some points along the frontiers of Nicaragua had been reinforced with the presence of the military, particularly to combat drug trafficking and in order to protect public security and stability, which was one of the Government's fundamental objectives. In order to ensure that human rights were protected, the Office of the Human Rights Advocate was intensifying the training it provided to members of the police and armed forces and officials of the Directorate of Migration and Immigration.

10. In the course of 2016, 290 Nicaraguan nationals had been repatriated following deportation from the United States. Upon arrival in Nicaragua, such persons were offered medical support and financial assistance to return to their places of origin in the country. Although the number of persons repatriated in that way was low in comparison with other countries, the authorities were doing everything possible to engage with the United States Government in order to understand the reason behind the deportations.

11. Remittances sent by migrant workers were an important and growing feature of the national economy. In March 2013, the Central Bank of Nicaragua had begun issuing quarterly reports containing statistics on such remittances, disaggregated by market sector, geographical area and other factors. That information, which was gathered from money transfer agencies and commercial banks and was processed thanks to support from international organizations such as the International Monetary Fund, was helpful in determining public policy.

12. **Mr. Vargas Rojas** (Nicaragua) said that the State's consular offices offered various services to Nicaraguans abroad, including the issue of travel and identity documents; the registration of births, deaths and marriages; and the provision notary services. Consulates also worked to protect the human rights of Nicaraguan migrants, including those in both regular and irregular situations. Due to budgetary constraints, there was no officially funded programme for the repatriation of the remains of Nicaraguans who had died abroad, particularly in view of the fact that the national custom was for the burial rather than the cremation of deceased persons, which significantly increased the cost of such repatriations. Nonetheless, consular officials did everything in their power to provide support to bereaved families, also acting as intermediaries between them and the local authorities and civil society organizations.

13. Nicaraguan citizens detained abroad received visits from local Nicaraguan consular officials. Such officials received training in handling cases of human trafficking and coordinating with local authorities in such cases. Consular offices also maintained ties with informal groups of Nicaraguan citizens abroad and supported cultural activities such as the celebration of national and religious festivals.

14. At the beginning of 2016, the coordination of consular services had been transferred from the Ministry of Foreign Affairs to the Ministry of the Interior. The purpose of the change had been to maximize the use of financial and human resources and take into account the fact that the Ministry of the Interior was responsible for the issue of passports. Although national legislation gave all Nicaraguans, including those abroad, the right to vote, the mechanisms necessary to give effect to that right were extremely complex, and no political grouping or party had yet sought to activate them.

15. **Mr. Estrada Román** (Nicaragua) said that his own experience in consular service had led him to believe that the most important quality for an official to have was an ability to understand the needs of others in order to show empathy and solidarity.

16. **Mr. Ceriani Cernadas** said that, whatever terminology the State party chose to use to describe migrant for holding centres, if persons were held in a place that they were not free to leave, then they were in detention. The Committee's view was that the detention of migrants who were in an irregular situation was a measure to be used only in exceptional circumstances and as a last resort, and he wished to know what alternatives to detention were available. He wondered whether a decision to place a migrant in detention could be challenged before the courts and, if so, whether the person concerned remained in detention while his or her case was being considered. The delegation should confirm the veracity of reports to the effect that persons subject to expulsion had to pay their own transport costs as well as a fine. What happened in cases where they were unable to defray that expense?

17. Without wishing to enter into the political considerations that had led the State party to increase security along its borders, he recalled that the Committee was concerned about the protection of persons in situations of vulnerability, and in its experience, such measures could lead to less security for migrants, particularly those in an irregular situation who might be forced into the hands of traffickers. The delegation should comment on those security measures and explain whether and how they improved the security of migrants. Lastly, he asked whether Nicaraguans who were returned from the United States were deprived of their liberty at any stage and whether the effectiveness of regional migration processes had been evaluated.

18. **Ms. Dzumhur** said that she had not received replies to the questions she had asked at the previous meeting concerning the Office of the Human Rights Advocate, the Public Defender Service, bilateral agreements with Costa Rica and the United States and cases of sexual violence. She also wished to know what measures had been taken to promote gender

equality in daily life and whether Nicaragua intended to ratify the United Nations human rights conventions to which it was not yet a party.

19. **Ms. Landázuri de Mora** said that the State party's achievements in terms of improving public safety were admirable and set a positive example for other countries in the region. It was important for the State party to take steps to disseminate the Convention widely. She asked whether any bilateral agreements had been concluded to protect the labour rights of Nicaraguans employed in Costa Rica and would appreciate receiving information on migration agreements concluded with other Central American countries.

20. **Mr. El-Borai** said that, while he would normally enquire about legal aspects related to the implementation of the Convention, the generality of the dialogue with the delegation had precluded him from doing so — a situation not helped by the fact that the State party's report had been submitted late. He hoped that the State party's next report would be submitted on time and that, when presenting it, the delegation would be prepared to provide more substantive replies to the questions put by Committee members.

21. **Mr. Núñez-Melgar Maguiña** said he wished to have more detailed information on a number of matters. It would be useful to know what measures were in place to support Nicaraguan victims of human rights violations abroad; whether cross-cutting policies had been developed to prevent human trafficking and provide assistance to victims; whether the Government was cooperating with neighbouring countries and private companies to facilitate the return of migrant workers; what was being done to protect vulnerable returnees and to promote their economic and social reintegration; how the flow of remittances into Nicaragua was facilitated and whether its impact on the economy had been gauged; and what measures had been adopted with regard to labour dispute prevention and resolution.

The meeting was suspended at 11.45 a.m. and resumed at 12.10 p.m.

22. **Mr. Estrada Román** (Nicaragua) said that Nicaragua wished to exercise its right to respond to the questions put to it by the Committee at a later date.

23. **Mr. Ceriani Cernadas** said that, while it was not ideal for answers to be given at a later date, the receipt of additional information was always welcome; without it, the Committee could not contribute in the best manner to ensuring respect for the rights of migrant workers.

24. **Mr. Núñez-Melgar Maguiña** said that States parties needed to take account of the multiple dimensions and causes of migration and of the fact that human rights were a cross-cutting issue, thus demanding a certain amount of effort from Governments when preparing their reports. Those reports were not intended to serve as a tool of control but rather, among other things, as an aid to the Committee in preparing its concluding observations. The concluding observations, in turn, were intended to help States parties comply fully with the Convention. In light of the circumstances, he suggested that the State party should submit a fresh report to the Committee.

25. **Ms. Castellanos Delgado** congratulated the members of the delegation for their efforts, despite the fact that they had not been provided with the resources needed to respond to the Committee's questions properly. The Committee nevertheless needed the State party's input, and she hoped that the delegation would convey to its capital the Committee's interest in helping the State party on the basis of an exchange concerning what had and had not worked in its efforts to implement the Convention.

26. **The Chair** said that the Committee would expect to receive all of the State party's replies to the outstanding questions in due course, bearing in mind that States parties needing additional time to reply to questions raised by the Committee during the interactive dialogue were expected to provide their answers within 48 hours of the conclusion of the

consideration of their report in order to allow enough time for the Committee to take that information into account in its concluding observations.

27. **Mr. Estrada Román** (Nicaragua), thanking Committee members for their questions and comments, said that his delegation's participation in the dialogue with the Committee had been on orders from the President of Nicaragua. Although some Committee members had pointed to shortcomings in that participation, he wished to reiterate his Government's desire to fulfil the State's obligations under the Convention, as evidenced by its political will to launch a preliminary dialogue with the Committee. With regard to the 48-hour deadline, he would like to know the specific rule of procedure that provided for it, as his delegation could find no evidence of the existence of such a rule.

28. **Mr. Smith** (Secretary of the Committee) said that the 48-hour deadline was not a rule of procedure but rather a practice of the Committee. As a courtesy, delegations were allowed 48 hours — often less, depending on the circumstances — to provide the Committee with additional information. The secretariat was subject to its own time constraints, and the Committee had to prepare concluding observations before the end of its current session. He recalled that a notice regarding that procedure had been sent to the State party prior to the start of the session.

29. **Mr. Estrada Román** (Nicaragua) said that, in light of the fact that the 48-hour time limit was not a rule but merely a practice and that the State party was not bound by the secretariat's practices but rather by those pertaining to States, his delegation reserved the right to submit its replies at the convenience of the Nicaraguan Government, which it would do within a reasonable time period between the Committee's sessions.

30. **Mr. Tall**, speaking on a point of order, said that discussions concerning the Committee's working methods should take place, not in a public meeting with a State party, but rather in a closed meeting of the Committee.

31. **Mr. Ceriani Cernadas** said that the priorities of both the State party and the Committee, as a United Nations body, must be to meet their commitments and assume their responsibilities for improving the situation of the vulnerable persons covered by the Convention. That required a constructive and respectful dialogue. Although it was true that the State party had no legal obligation to submit its additional replies within 48 hours, the Committee nevertheless had to prepare its concluding observations on its consideration of the initial report of Nicaragua, and if additional information was not received in time from the State party, the Committee would have less information on which to base those conclusions.

32. **Ms. Dzumhur** said that the State party had failed to meet its international obligations under the Convention, and the delegation that it had sent to participate in the interactive dialogue lacked the requisite technical expertise. Given that the Committee had nevertheless met with the delegation and had given it time to consult with the Nicaraguan authorities in Managua, the delegation should, in return, acknowledge its own responsibility for its situation and take advantage of the opportunity it had been provided to engage in dialogue with the Committee.

33. **Mr. Núñez-Melgar Maguiña** said that the entire framework of international relations was dependent on dialogue, which was necessary for enhancing understanding. When States acceded to the Convention, they did so voluntarily; in so doing, however, they also voluntarily ceded a portion of their sovereignty, given the supranational nature of multilateral treaties. The Committee's role was to help States parties comply with their obligations under the Convention, and participation in the dialogue with the Committee on the State party's report was part of that compliance.

34. The Committee's practice of allowing for the transmittal of additional information following an interactive dialogue was a goodwill gesture, since it could easily decide to draft its concluding observations solely on the basis of the report it had received or even in the absence of a report. It was therefore up to the State party to decide whether or not to take advantage of the 48-hour grace period.

35. **The Chair** thanked the delegation for its replies and said that the Committee looked forward to continuing its dialogue with Nicaragua and to receiving its next periodic report.

The meeting rose at 12.55 p.m.