



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

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Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 874th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 1 May 2009, at 10 a.m.

Chairperson: Mr. GROSSMAN

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Nicaragua (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.874/Add.1.

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Nicaragua (continued) (CAT/C/NIC/1)

1. At the invitation of the Chairperson, the members of the delegation of Nicaragua resumed their places at the Committee table.
2. Ms. FRIXIONE OCÓN (Nicaragua), recalling that Nicaragua had become a party to the Convention only in 2005, said that more time would be needed to measure the impact of its implementation. She wished to assure the Committee, however, that her Government had taken all necessary steps to incorporate the provisions of the Convention into domestic legislation and to implement that legislation, despite the constraints imposed by the country's economic situation. As had been stated the previous day, Nicaragua's Constitution and laws had long reflected a concern for the promotion and protection of human rights. Although the country had made significant progress in modernizing public institutions and strengthening its legal system, it still needed to build the capacity required to implement and enforce legislation. She hoped that her delegation's dialogue with the Committee would give members a better understanding of Nicaraguan reality so that the Committee could thus better assist her Government in identifying and addressing the country's legislative and institutional shortcomings with respect to the Convention.
3. Turning to the questions asked by the Committee at the 872nd meeting, she said that the delegation would not be able to provide all the statistical information requested, but undertook to submit it in writing at a later date. With regard to the definition of torture in the Criminal Code, it was very similar to the definition contained in the Convention; however, it was broader in that it encompassed all acts of torture, not just those committed by public officials.
4. No one had been tried and convicted of the crime of torture since the adoption of the new Criminal Code. There were torture cases being tried under the previous Code; however, because torture had not been defined as a specific offence under that Code, those cases were being treated, instead, as crimes of abuse of authority with wounding. Acts classified as purely military offences were tried by military courts. Torture was not considered a military offence; hence, torture cases would be tried in civilian courts, even if the offence was committed by a member of the armed forces. Under article 31 of the new Criminal Code, there was no statute of limitations for the prosecution of torture offences.
5. The civil society organizations that had participated in drafting the report included the Asociación de Desarrollo y Promoción Humana de la Costa Atlántica, the Nicaraguan Human Rights Centre, Save the Children Nicaragua and several others.
6. Unfortunately no additional funds had been allocated to the Office of the Human Rights Procurator to enable it to implement the Optional Protocol to the Convention, but the Office would nevertheless play a leading role in that regard.

7. Concerning the rights of detainees, article 95 of the Code of Criminal Procedure established that persons in police custody had the right to legal counsel and medical attention. They were allowed to see a private physician if they wished. By law, detainees who could not afford to hire a private attorney were assigned a public defender. The prosecution of cases could not proceed unless the accused was represented by an attorney.

8. Criminal enforcement judges made visits to detention centres once or twice a week. Her delegation would provide additional information on those visits at a later date. The budget allocated for such visits was indeed insufficient. Infrastructure and living conditions in prisons had deteriorated markedly over the previous 16 years because the previous Government had failed to invest in maintenance. The current Government, with support from the United Nations Development Programme, had carried out an assessment of prison conditions and formulated a medium-term plan for improving existing facilities and constructing several new ones, including a special detention centre for women. Total investment under the plan would be around US\$ 8.2 million over the period 2008-2012. The Government was also investing in the improvement of living conditions in detention centres: the prison system budget had been increased by 20 per cent in 2008 over 2007, mainly in order to improve the quality of food for inmates.

9. Overcrowding was a problem in Nicaraguan prisons, but it was not as severe as in some other Latin American countries. Experts from the Latin American Institute for the Prevention of Crime and the Treatment of Offenders had acknowledged that Nicaragua's prison system was more humane and respectful of the rights of prisoners and had lower levels of inter-prisoner violence than the systems of some other countries.

10. As of the end of March 2009, the prison population had totalled 5,853. Of those, 79 per cent (4,604 prisoners) had been convicted and 21 per cent (1,249 prisoners) were awaiting trial or final sentencing. Of the latter group, the majority (53 per cent) had been held for up to 3 months, 18 per cent had been held for 3 to 6 months, 8 per cent from 6 to 9 months and 5 per cent from 9 to 12 months. All those who had been held for more than three months had been sentenced in a court of first instance but were appealing their convictions. Only 1.7 per cent of the prison population was being held in maximum-security wings.

11. Females made up only about 5 per cent of the prison population. The vast majority of prisoners (98 per cent) were adults; 1 per cent were adolescents and 1 per cent were classified as "special cases", meaning that they had been imprisoned as minors but remained in prison after reaching the age of 18.

12. Fifty-six per cent of prisoners worked voluntarily in a job within the prison, 10 per cent were in semi-open prisons and 3 per cent were in open prisons. Prisoners in the latter two categories were allowed to leave the prison to work, study or visit their families.

13. There was no specific budget for prison education programmes, but thanks to the efforts of prison officials and support from other government agencies and NGOs, prisoners had access to a variety of education opportunities. Some 40 per cent of the prison population (2,378 prisoners, including 149 women and 78 adolescents) were currently participating in education programmes.

Almost all adolescent prisoners were enrolled in an academic programme. A total of 143 prisoners were currently receiving literacy training, 1,183 were enrolled in primary-school courses, 966 were pursuing secondary-level diplomas and 86 were engaged in university-level studies. Eighteen vocational training courses had been offered in areas such as carpentry, agriculture, computer skills and English language; 380 prisoners had taken advantage of those opportunities, including 97 women and 3 adolescents. Education in human rights was also offered.

14. The category of prisoners known as “abandoned” or “forgotten” consisted of prisoners who did not receive visits or material assistance from their families or friends. Such prisoners were assigned priority for external assistance provided, for example, by NGOs.

15. With regard to the questions concerning the concept of “due obedience” mentioned in the report, the fact that an official was acting under orders could not be used to justify any illegal action, including torture. In accordance with the principle of legality enshrined in the Nicaraguan Constitution, orders given by a superior must not contravene the law.

16. As to the NGO reports about the detention of Chinese migrants, no one of Chinese nationality was currently being held by the Nicaraguan immigration authorities. Migrants were dealt with in accordance with guidelines issued by OHCHR and the International Organization for Migration, and there were safeguards to ensure that their human rights were respected. Immigration authority decisions could be appealed. She did not have information on how many such appeals had been filed, but would endeavour to provide it at a later date.

17. The decision to repeal the law authorizing therapeutic abortion had not been religiously motivated. Rather, it had been the expression of the will of the majority. The decision had been made by representatives elected by the people of Nicaragua, a large proportion of whom believed that abortion should be illegal. As to whether the decision had placed doctors in the position of having to violate their Hippocratic oath, the law made it clear that abortion was not to be used as a method of family planning, but nothing in it prohibited doctors from providing care when the life of the mother was in danger. Indeed, they had a legal obligation to do so.

18. Mr. BÁEZ (Nicaragua) welcomed the opportunity to summarize the efforts made by his Government to strengthen the National Police through the promotion of social and ethical values, the forging of close community relations and training. The ratio of police officers serving in 2008 was 171 per 100,000 inhabitants. He compared the incidence of murder, bank robberies and kidnapping with that of other countries in Central America, and took the opportunity to highlight the number of road fatalities, which, at 514 in 2008, was regarded as a serious public health issue.

19. He referred the Committee to the document containing his delegation’s replies that had been distributed the previous day, and drew attention to the statistics provided on the number of complaints against the police concerning which follow-up had been conducted between 2005 and 2008. The complaints included excessive use of force and arbitrary detention; all cases of ill-treatment (approximately 4 per cent of all complaints) had been transmitted to the Public Prosecutor’s Office for the purpose of initiating trial proceedings. In all instances, follow-up

action had been conducted in close coordination with human rights institutions, which also provided their expertise in the organization of training workshops and other programmes for law enforcement personnel.

20. He drew attention to a manual prepared by the Ministry of Internal Affairs, which provided guidance on a variety of matters to be taken into account in the treatment of the public and the promotion of respect for human rights. It asserted the right of all persons to be treated humanely and prohibited the practices covered by the Convention. The Government had improved its capacity to detect human rights violations through the concerted efforts of the police and the Office of the Human Rights Procurator. In coordination with the Nicaraguan Human Rights Centre, in 2008 the police had held forums on the promotion of respect for human rights and improving access to justice.

21. Police policy remained focused on the suppression of violence; domestic violence and other forms of violence that targeted women and children had been given high priority. Working conditions had improved for police officers in general, and a major effort had been aimed at boosting the recruitment of women. He was pleased to inform the Committee that women had reached the highest levels within the service. He briefly commented on some of the gender-mainstreaming activities undertaken within the police force: the establishment of a gender unit; the provision of assistance to women affected by violence; and overcoming the pervasive mentality of male dominance. Since 2007 a national plan had been developed with the aim of preventing violence against women, and the police had launched a number of measures to address the issue, including the establishment of information units on violence within the Public Prosecutor's Office. It was also important to note that the new Criminal Code had streamlined its provisions under which such offences could be prosecuted. A number of programmes had also been set up to address the issue of adolescents in conflict with the law and young people at risk.

22. He outlined four major information campaigns on human rights which had enjoyed resounding success and said that Nicaragua had stood out as a regional pioneer in the mainstreaming of gender issues. He offered to provide additional documentation that illustrated the scope of the programmes, workshops, seminars, visits, conferences and other related activities spearheaded by the Government, in collaboration with civil society, between 2005 and 2008.

23. Ms. FRIXIONE OCÓN (Nicaragua) said there were 50 prisoners with psychiatric illnesses, but her Government had not yet been able to provide the necessary care within the prison system. The interim solution was to provide separate cells for such prisoners. There was one psychiatric hospital in Nicaragua, but it lacked the capacity to deliver mental health care to the entire population; the national hospital was therefore obliged to treat a number of people on an outpatient basis. If the situation warranted it, there was the possibility for prisoners to be hospitalized, but they were often unwilling to follow that course and the hospitals found it difficult to accommodate them.

24. The provision of free legal aid guaranteed that all defendants were represented by legal counsel, irrespective of their means.

25. Referring to allegations that death threats and intimidation were often used as forms of harassment, she stated categorically that there was no policy of persecution of a particular social sector. There had been clashes between groups that were divided along political lines, and the law was applied equally to all people involved in such conflicts. The situation became problematic when the persons involved did not avail themselves of the mechanisms provided for their protection. She believed there might have been one complaint of an alleged offence, but that was a far cry from systematic harassment.

26. Ms. SVEAASS, Country Rapporteur, said she appreciated receiving additional information on the reform of the criminal justice system, prison population and sentences, which provided a useful background to the legal measures adopted.

27. She asked why the scope of the definition of torture had been broadened to encompass all persons, whether or not they were State employees. She was also interested in knowing what the practical consequences of the broad definition had been for the investigation of acts of torture and ill-treatment and the imposition of sanctions.

28. While appreciating the principle of the appointment of independent doctors, she realized that that had financial implications, and wondered whether persons with substantial means would be the only ones to benefit from that provision.

29. Turning to the subject of “abandoned” prisoners, she said she was surprised to learn that the basic living conditions of prisoners, especially in terms of their food, seemed to depend on the attention they received from family members. She asked for confirmation whether that was indeed the case.

30. Regarding the duration of pretrial detention, which had extended to 12 months in some cases, she wondered whether any measures had been envisaged to reduce that relatively long timespan. In that connection, she asked whether that timespan for detention also applied to illegal immigrants.

31. Given the high level of alcohol abuse, which seemed to be responsible for the large number of fatal traffic accidents and the incidence of violence against women and girls, she asked whether the Government intended to create programmes to address the problem of substance abuse.

32. Even though the delegation had explained that life-saving procedures were permitted, she was nevertheless concerned at the fact that the laws governing abortion in Nicaragua were extremely restrictive. It was important to realize that laws that criminalized medical procedures to the extent that they did in Nicaragua actually created a climate of fear and compromised the integrity and judgement of health personnel.

33. She requested information on access to contraceptives. Recognizing that there were good public information campaigns on HIV/AIDS, she asked whether there were similar campaigns on unwanted pregnancy, but noted that such campaigns would be unlikely to reduce the number of unwanted pregnancies resulting from rape or incest. The information booklet provided by the delegation was an example of the good public education initiatives in Nicaragua. Did the Government measure the impact of such campaigns and, if so, how?

34. Mr. GALLEGOS CHIRIBOGA, Alternate Country Rapporteur, said that the replies to the list of issues contained important information on domestic legislation. The statistics provided showed that efforts were being made to find solutions to some of the problems highlighted by the Committee. The efforts being made to train and educate the police, for example, on domestic violence, were an important step towards eliminating the culture of violence. In its concluding observations on the third periodic report of Nicaragua, the Committee on the Rights of the Child had noted that torture and other cruel, inhuman or degrading treatment or punishment were prohibited in the State party, but was concerned about allegations of instances of ill-treatment of children. Those concluding observations contained recommendations for action in a number of areas, including violence against children and the sexual and economic exploitation of children. The issues highlighted were of particular relevance to Latin American countries, where minors made up the majority of the population.

35. Trafficking, which in practical terms was synonymous with slavery, had not been addressed and was a source of concern in connection with the issue of violence against women and children. He asked whether a request to investigate a number of forced disappearances in Nicaragua had been complied with.

36. With regard to the country's efforts to fulfil its commitments under international instruments, it was important for the Government to focus its limited resources and prioritize the protection of human rights and the elimination of torture. As Nicaragua had already passed legislation on the use of torture by the State and private individuals, it was important to raise awareness of the issue in society.

37. The proposed plan to improve the prison situation, with international support, was an indication of the progress being made, and it was important to be as specific as possible in setting targets for the plan.

38. As to complaints from civil society, there needed to be greater consultation with civil society as part of the process of change. Civil society acted as a counterweight that forced Governments to take note of certain situations.

39. It was necessary to monitor the application of sentences and the efficiency of the justice system, which was related to the treatment of prisoners. The statistics provided showed that a minority of prisoners were in pretrial detention and that over 70 per cent of prisoners had been sentenced. It was important to know who was in that minority, as there were extreme cases of people being abandoned in the system because they lacked support. The delegation had mentioned the term "abandonment" in relation to prisoners who did not have family visitors. While he understood the financial limitations and the culture of support from family members in Nicaragua, it was the State's responsibility to meet the needs of prisoners.

40. He expressed concern that internal disciplinary measures were often imposed on offending members of the armed forces and police instead of bringing cases before the courts. The armed forces must be subject to scrutiny and be held accountable by society.

41. The submission, consideration and discussion of the State party's report was a first step towards finding solutions to the problems referred to. He invited the delegation to seek the

cooperation of OHCHR or the Committee with a view to working together to solve those problems. The elimination of torture and other cruel, inhuman or degrading treatment or punishment required a change of attitudes on an individual level, and he encouraged the Government to continue its progress towards that goal.

42. Mr. MARIÑO MENÉNDEZ said that the definition of torture in domestic legislation was broader than that of the Convention: in Nicaragua it covered not only torture by State agents but also torture by private individuals. If a State agent committed an act of torture, it would be a violation of the Convention, but that would not be the case if the act was committed by a private individual. The discrepancy between those definitions could raise legal questions and cause complications.

43. Under the Optional Protocol to the Convention, ratified by Nicaragua, were military prisons subject to unannounced inspections by the Special Procurator for Prisons appointed by the Office of the Human Rights Procurator?

44. The new Refugee Protection Act had been widely praised. He asked whether there had been any cases in which the provisions of article 3 of the Convention had been invoked.

45. He asked whether court rulings were published and whether restrictions were applied in any cases.

46. He asked how the “principle of proportionality” was applied in practice when police and prosecutors wanted to obtain information from a detainee. He requested examples of cases.

47. Ms. BELMIR said that the different stages in legal proceedings and the corresponding locations were clearly defined in domestic legislation; for example, detainees in pretrial detention should not be held with convicted prisoners. Those provisions must be complied with.

48. She expressed concern about the length of time it took to implement the various measures relating to applications for refugee status.

49. Mr. WANG Xuexian said that the problem of discrimination against women was serious in Nicaragua. A two-pronged approach was required to address that problem: first, effective legislation must be put in place; and second, a nationwide public education campaign was needed to raise awareness of the problem.

50. Ms. KLEOPAS said that the number of public defenders was small in relation to the number of people who could not afford to pay for a private lawyer. She requested information on the role of the Office of the Human Rights Procurator in investigations of allegations of torture. NGOs had reported that they were denied access to places of detention, and she recalled that civil society could play an important role in improving conditions of detention and the treatment of detainees.

51. The CHAIRPERSON said that statistics were useful when formulating public policies; there were many ways of gathering such statistics in spite of a limited budget, including through universities. Statistics made it possible to measure the extent to which legislation was enforced.

52. In cases of torture committed by members of the armed forces or police officers, the accused were often charged with a lesser offence with lighter penalty, such as ill-treatment. In the Military Criminal Code, the penalty for ill-treatment was lighter than that in the revised Criminal Code. The former did not contain provisions on the offence of torture committed by a member of the armed forces in the performance of his or her duties, even though it was recognized as an ordinary offence in the Criminal Code. He requested clarification in that regard.

53. The Committee remained concerned about Nicaraguan women's inability to obtain therapeutic abortions. Domestic law and "sovereignty" could not be asserted as pretexts for overturning international obligations that had been freely entered into by the State party. Since the issue was one of protecting the rights of minorities and applying legal standards, the "decision of the majority" - whether by popular referendum or in Parliament - was no basis for non-implementation of the Convention. By way of illustration, the majority view might be that a person suspected of terrorism should not have access to justice, but that would not be a valid reason for denying him due process. The State party appeared concerned to ensure that the most vulnerable in society enjoyed access to justice, but although well off Nicaraguan women had the option of travelling to another country for an abortion, poor women did not.

54. The Committee's experience had shown that the issue of domestic violence was closely related to lack of empowerment of women, particularly in the poorest sectors of societies. Everyone should be allowed to act according to their own conscience and convictions, but only within the framework of international agreements to which a State party had acceded.

55. The Committee was concerned that domestic legal remedies were not always exhausted, since that was a requirement for the submission of petitions. The fact that there was a small number of complaints was not necessarily an indication that a system was working. In some Latin American countries, the police and judiciary were seen to be neither objective nor legitimate, and people thus saw little point in making appeals.

56. Ms. FRIXIONE OCÓN (Nicaragua), responding to various additional questions, said that individuals detained for 12 months were engaged in lengthy appeals against convictions that were not yet final. Some cases still related to the previous Criminal Code. Nicaragua had made much progress with respect to pretrial detention, but since a review of the situation was still under way, her delegation had no further information at present.

57. She wished to assure the Committee that migrants had the same rights and responsibilities as all Nicaraguan citizens. Nicaragua tended to be not a destination country for human trafficking, but only a transit country, and few statistics were available. The issue was, however, a concern of the Government. Both the State and civil society were involved in the work of the National Commission on Trafficking in Persons, and a new 10-year national plan to combat human trafficking had been formulated.

58. The new Criminal Code specified particularly heavy penalties for sexual crimes against children and adolescents. Her Government was aware of the importance of increasing public awareness of the issue. As evidence of good cooperation with an NGO, some cases had been brought to court by Casa Alianza, with which the Government worked. The participation of civil society in combating such crimes did, however, require further strengthening.

59. Although the offence of “femicide” was not defined as such in the new Criminal Code, it was covered by provisions on the ill-treatment of women.
60. Her delegation shared the Committee’s concern about alcohol consumption, which was on the increase in Nicaragua. Increased taxes were being considered by the Government.
61. She had not understood the point raised by the Committee regarding the definition of the offence of torture in the new Criminal Code. Her Government did not consider that definition to be in contradiction with the Convention.
62. The Committee’s concern about the prohibition of therapeutic abortions would be transmitted to the Government. She was not aware of any doctor having been accused of negligence for not acting to save the life of a pregnant woman.
63. Her delegation recognized the importance of enhancing the training of civil servants involved in implementing laws and regulations. The country was in transition and although several monitoring mechanisms were in place, more remained to be done.
64. “Abandoned detainees” was not a discriminatory term. It was simply informal police jargon for accused or convicted persons who received no visits from family members, either because they had been abandoned or because the detainee did not wish to be moved to another facility closer to home. Those detainees whose families did not provide food and or meet other needs tended to become depressed and needed special attention. They were not, however, being detained owing to abandonment.
65. Preliminary disciplinary measures applied by Nicaraguan military courts did not exclude criminal sanctions if a criminal offence was found to have been committed. A police or prison officer might, for example, be suspended from duty pending a decision on the matter by a criminal court. Civilian inspectors could investigate if necessary, and human rights defenders had a right to visit detention facilities. However, no statistics were available.
66. Most trials were public, except special hearings for adolescents or drugs traffickers, where the safety of participants must be guaranteed.
67. When a migrant was detained, the State had five days in which to inform the Ministry of Foreign Affairs, the relevant embassy and the Public Defender’s Office. If an NGO had been prevented from entering a detention facility, it could appeal.
68. The country did not have many public defenders, but efforts were being made to increase their number, including in isolated regions. Efforts were always made to ensure that persons charged with an offence had some form of defence, as well as access to legal aid.
69. On the question of military justice, the State authorities would ensure that there was no conflict between the Criminal Code and the Code of Military Justice.
70. Mr. BÁEZ (Nicaragua) said that accused persons were always interviewed since, for the purposes of determining whether an offence had been committed, it was important to gather evidence, and also material for forensic analysis. In that connection, practices and manuals were being updated in line with new criminal procedures.

71. Further cooperation was needed to ensure that staff were better trained and to improve the infrastructure in prisons and police stations. Some costings had already been made, and plans had been drawn up to strengthen respect for human rights, including gender rights, which were a cross-cutting theme in all national plans.

72. Effective cooperation was in place between the Nicaraguan police and various national human rights institutions and NGOs. When violations occurred, relevant information was received. Preventive activities must, however, be fully systematized to ensure the highest level of compliance. The police force admitted shortcomings, but was on the right track.

73. Mr. ROBELO RAFFONE, reiterating Nicaragua's continuing commitment to human rights, thanked the Committee for the opportunity to hold a dialogue and expressed his delegation's confidence that the Committee's recommendations would help the Government to comply with the Convention and fill existing gaps. He invited the NGOs present to work with the Government to that end.

The public part of the meeting rose at 12.30 p.m.