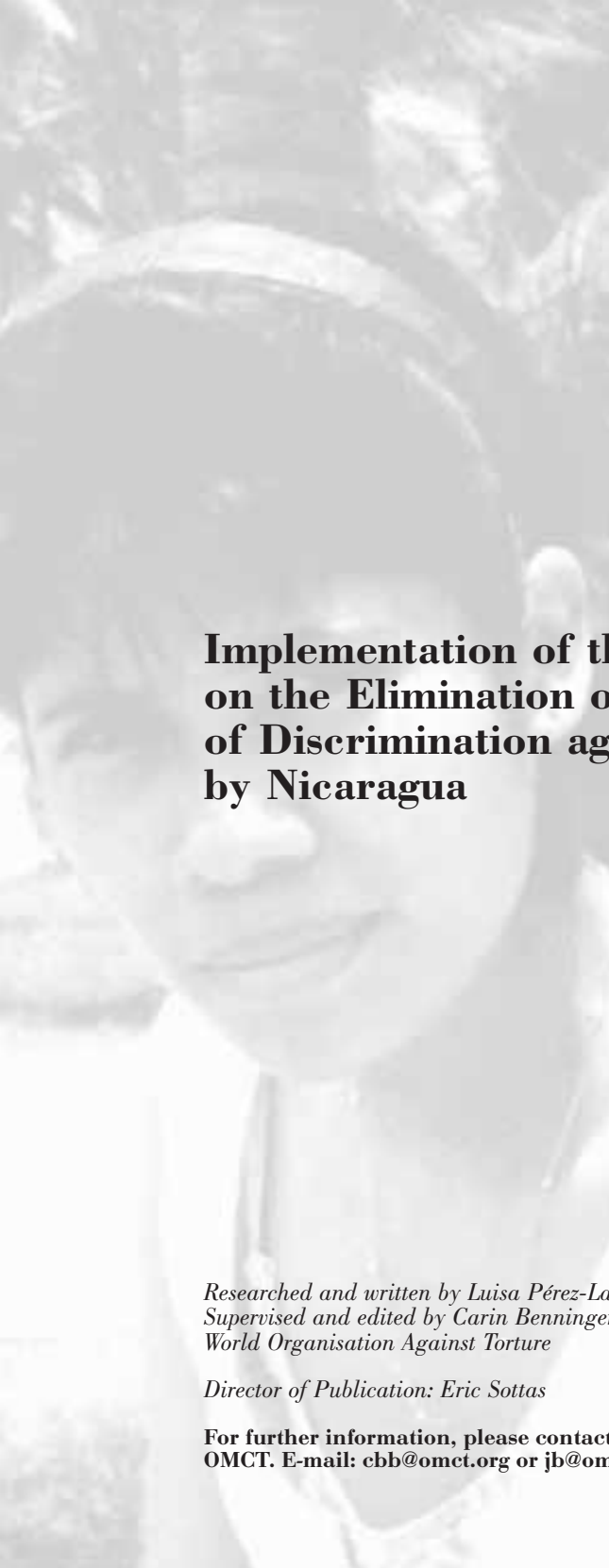




Violence against Women in Nicaragua

*Report prepared
for the Committee
on the Elimination
of Discrimination
against Women*





**Committee
on the Elimination
of Discrimination
against Women**

*Twenty-fifth session
2-20 July 2001*

**Implementation of the Convention
on the Elimination of All Forms
of Discrimination against Women
by Nicaragua**

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The United Nations Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In 1981, the Convention entered into force and the Committee on the Elimination of Discrimination against Women was formally established. The major task of the Committee is to review the reports submitted by the States parties in order to oversee the implementation of the Convention.

The issue of gender-based violence is not specifically addressed in the Convention, but it is however essential to its most fundamental provisions. In the general recommendation No. 19 adopted at its eleventh session in 1992, the Committee on the Elimination of Discrimination against Women formally extended the general prohibition on gender-based discrimination to include gender-based violence. The Committee affirmed that violence against women constitutes a violation of their internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person.

One becomes inevitably aware of the fact that the States present reports that show only a one-sided image of reality, which is frequently incomplete. The case being, the effectiveness of this supervision and control depends on the quality of information available to the members of the various committees. Recent information, verified by reliable sources, is consequently indispensable.

In submitting alternative reports to the Committee on the Elimination of Discrimination against Women (CEDAW), OMCT seeks to provide de facto information concerning violence against women, including torture, in a specific country as well as analyse national legislation that fosters violence against women.

OMCT's reports highlight the legal provisions, both penal and civil, of the States concerned, which discriminate against women or which, without being discriminatory as such, become so through their application. Unequal power relations between men and women have led to the domination of and discrimination against women, which in turn leads to violence against women.

Furthermore, the reports draw attention to the lack of ways for the victims of violence to obtain reparation and identify the mechanisms guaranteeing the impunity of torturers.

The reports include recommendations for reform of de facto practices and legislation aimed at reducing the incidence of violence against women in the country in question.

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I

Preliminary Observations

Nicaragua is a very poor country with a predominantly agricultural economy. Hurricane Mitch hit the country in 1998 with a devastating effect on the economic infrastructure, exacerbating unresolved land disputes. Nicaragua is a large recipient of foreign aid, and this increased with the passage of Mitch. According to the 2001 Human Development Report, Nicaragua has 4.9 million inhabitants, with 43.1% of the total population being under 15 years of age. Its population growth rate is 2.4%, with women composing 51% of the population.¹ Nicaragua's population is, as in many of Latin American countries, multiethnic and multilingual. 96% of the population is of mixed origins, while the indigenous Miskitos, Sumos and Ramas represent 3% of the total population.

Nicaragua is a constitutional democracy with an unicameral legislature and a president elected by direct suffrage. Current president Arnoldo Aleman Lacayo was elected in 1996 over Daniel Ortega of the Sandinista National Liberation Front. The Constitution provides for an independent judiciary although the judicial power is sometimes subject to political influence.

Nicaragua ratified the Convention on the Elimination of All forms of Discrimination against Women (hereinafter the CEDAW), on 17 July 1980. This Convention entered into force at the national level on 27 October 1981. However, Nicaragua has not yet ratified the Optional Protocol which contains both a communications procedure allowing individual women or groups of women to submit claims of violations of rights to the Committee on the Elimination of Discrimination against Women and an inquiry procedure that enables the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. OMCT urges Nicaragua to ratify this protocol in order to ensure that women in Nicaragua have access to these provisions.

Also at the international level, Nicaragua has ratified the International Covenant on Economic, Social and Cultural Rights (1980), and the International Covenant on Civil and Political Rights (1966), all specifically mentioned and endorsed in Article 46 of the Nicaraguan Constitution. In addition, Nicaragua ratified the International Convention on the Rights of

1 – UNDP, Human Development Report 2001,
http://www.undp.org/hdr2001/indicator/cty_f_NIC.html.

the Child in 1990. However, it is of great concern to OMCT that Nicaragua has not yet ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

At the regional level, Nicaragua has ratified the American Convention on Human Rights, Article 1 of which provides that the “States Parties to this Convention undertake to respect the rights and freedoms recognised herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex...” and Article 5 paragraph 2 of which prohibits torture and other cruel, inhuman or degrading treatment or punishment. Nicaragua has also signed the American Declaration of Human Rights and Duties (1948), Article 1 of which provides that each person has the right to life, to personal freedom and security, Article 25 of which requires humane treatment for detainees and Article 26 of which prohibits cruel, inhuman or degrading punishment.

A number of these international and regional Human Rights instruments are specifically mentioned and applied directly in national law by virtue of Article 46 of the Nicaraguan Constitution.

Also at the regional level, Nicaragua has ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women which defines violence against women as “... any act or conduct based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” Additionally, Nicaragua is a party to the Inter-American Convention on Women’s Civil Rights (1948) and to the Inter-American Convention to Prevent and Punish Torture (1985), according to which torture shall be understood as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose” as well as “the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish” (Article 2) and against which States Parties shall take effective measures (Article 6).

II

Legal status of women in Nicaragua

The 1987 Constitution of Nicaragua is the supreme law of the country as stated in its Article 182.

In its Article 5, the Constitution establishes freedom, justice, respect for the human person, social, political and ethnic pluralism as the principles of the Nicaraguan nation.

Article 24 establishes that every person has rights and duties within the family. Article 25, when read in conjunction with Article 26 guarantees individual freedom, security, legal personality, and the right to privacy. Article 27 deals with every person's equality before the law and specifies that there is to be no discrimination on the basis of "birth, nationality, political beliefs, race, sex, language, religion, political opinion, ethnic origin, economic status or social condition."

Article 36 states that "every person has the right to be respected in their physical, psychological and moral integrity. No one will be subject to torture, procedures, punishments or treatments of a cruel, inhuman or degrading nature." Article 39 establishes that women prisoners will be placed in separate detention facilities from men, and that guards will preferably be of the same sex as the prisoners.

Article 48 establishes equality of political rights and gives the State the obligation to eliminate the *de facto* obstacles that hinder equality in economic, political and social life. However, in reality, the number of women in political positions is quite limited.

There is a Supreme Court of Justice that deals with appeals brought against decisions of the Nicaraguan courts of lower instance, as well as the appeals against the violation of rights guaranteed by the Constitution, in accordance with the Law on the Protection of Rights (*Ley de Amparo*).

Family rights are guaranteed by the Nicaraguan Constitution in its Chapter IV. Article 70 places the family under the protection of society and of the State. Article 72 and 73 codify marriage as based upon the voluntary agreement of the couple, where dissolution can be obtained by one of the parties, and family responsibilities are shared by both man and women equally. The Law on Alimony (1992) regulates family responsibilities,

specifying that both the parents are responsible for supporting the household by common effort, with equal rights and duties. All members of the household must contribute to domestic work, regardless of their gender.

However, this provision is contradicted by Article 245 of the Civil Code that establishes that the father is actually the head of the household while the mother is relegated to a participatory status. It is the father that “especially, during marriage and as chief of the family, holds the power to represent and defend his children.” Additionally, Article 151 of the Civil Code provides that the husband is the representative of the family and that the wife may only take his place by default. Article 152 establishes that husband and wife must live together and that the wife must follow her husband to wherever he decides to establish his residence.

Article 100 of the Civil Code sets the marrying age for men at 21 years old and at 18 years of age for women. This is a discriminatory measure that allows women to be subordinate to men and could prevent women from pursuing higher education before marriage. Additionally, according to Article 52 of the Civil Code, a woman who has divorced or whose marriage has been nullified may not remarry within 300 days of the decree of personal separation of the spouses or of the declaration of nullification. This provision is discriminatory and constitutes a violation of Article 16.1.a of CEDAW as it imposes different conditions on women and men in relation to remarriage.

The State provides that pregnant women shall be entitled to labour and social security benefits. Denying employment because of pregnancy, as well as firing a woman during pregnancy or the post natal period is not permitted. In reality, not hiring pregnant women is still a current practice, however it is very hard to prove that the pregnancy was the cause, especially in a country where there is a high level of unemployment and competition for jobs is fierce.

Also, according to the Constitution, all children have equal rights within the family and all dispositions reducing or denying this equality are void. In addition, the State protects responsible paternity and maternity, establishing the right to investigate both.

Article 82 of the Constitution establishes an equal salary for equal work regardless of sex, as well as equal opportunity of being promoted. However, it is reported that jobs considered as “feminine”, such as domestic work are less well paid and offer less secure working conditions.

Largely due to the efforts of several Nicaraguan women's organizations, both the Civil and Criminal Codes have been reformed. Law 150 concerning rape and other sexual offences was reformed in 1992, Law 230 on reforms and modifications to the Criminal Code regarding domestic violence and Law 143 or Alimony Law of the Civil Code have also been reformed as has the Unilateral Divorce Law. The Childhood and Adolescence Code was also recently approved with a novel approach, where children and adolescents are considered as social and legal subjects.

The creation of these laws is only a first step towards solving the problem of violence against women and girls, since it is their implementation that is crucial, along with monitoring and evaluation. Several studies² conducted in collaboration with women's organizations have shown that these laws have a very restricted application mainly due to the limited knowledge of the population about their rights and their enforcement, and because of cultural factors such as stereotypes and prejudices.

Discrimination and violence against women remain a problem in Nicaragua. According to the 1999 Report by the Centro Nicaraguense de Derechos Humanos (CENIDH), violence against women is a generalized practice that occurs in everyday life in both the private and public spheres.



Violence in the Family

3.1 Domestic Violence

The Government Report recognizes that the subordination of woman is mostly felt within the domestic sphere and that male domination is a common situation in most homes. Patriarchal practices and attitudes manifest themselves in many ways including in the area of decision-making concerning sexual relations and contraceptive use. The report also

2 – UNDP RLA/97/014 “Informe Nacional Nicaragua”, March 1999; Asociacion de mujeres profesionales por la democracia en el desarrollo Las Bujias, “Los derechos de las mujeres en Nicaragua; un analisis de genero”, Sept. 1996, Nicaragua.

recognizes the presence of widespread domestic violence and the lack of sufficient forensic and medical expertise regarding these offences.

In Nicaragua, many women refer to domestic violence as “the cross one must carry”. In this sense, domestic violence is perceived of as being as much a part of being a woman as childbirth or menstruation and it is so sanctioned by culture that many women cannot conceive of life as being different. On the other hand, older women have been often been reported as stating that battering is as a “right” for the husband and that a “good woman” must endure it for the sake of her children or for preserving the family honour.

The official Demographic and Health Survey (ENDESA) for 1998 indicates that 29% of all women in Nicaragua who have cohabited with a partner have suffered some kind of physical or sexual abuse. 94% of the women that suffered abuse reported that the physical violence was accompanied by verbal offences and humiliations, along with a strong control over their daily activities. 31% of the women suffered violence while pregnant, and one out of three women subject to violence has also been forced to have sexual relations. 97% of the women reported that the violence was carried out by their current or former partner, and that the incidents generally occurred inside the home.³

As indicated in the social audit carried out by the Civil Coordinator for Emergency Reconstruction, domestic violence has increased in those regions affected by Hurricane Mitch. Nevertheless, domestic violence is not divided along social or geographic boundaries, in Nicaragua it affects all levels of society; urban, rural, wealthy and poor.⁴

The prevention and punishment of domestic violence has not been codified in a specific law, but does come within the Nicaraguan Criminal Code under the title of bodily injuries (*lesiones*). The reform of the Criminal Code by Law 230 deals with bodily harm, but it does not consider the particularities of violence when it occurs within the family. This undermines the efficacy of the judicial system in the promotion and protection of women’s human rights as the specificity of the family relationship and its consequences for women are not taken into account.

3 – UNDP RLA/97/014 “Informe Nacional Nicaragua”, March 1999

4 – CENIDH, “Informe sobre la situación de los derechos humanos en Nicaragua durante 1999”, Nicaragua.

Law 230 reforms the Criminal Code through the:

- Establishment of security measures (such as restraining orders, etc.);
- Recognition of the infliction of psychological injuries as a criminal offence, as well as the definition of psychological harm and the acknowledgment that this may constitute one of the effects of domestic violence. Before this reform, only visible (physical) injuries were recognized. This law includes some acts of domestic violence in the criminal sphere instead of treating them as only relevant to civil or family law;
- Annulment of adultery as an offence;

Several of the limitations inherent in Law 230, such as the fact that the security measures do not have a preventive character, but are only punitive and happen after the offence has been committed have been highlighted by women's organizations. In addition, the available human and material resources are not sufficient to establish the presence of psychological injuries; the 10 day period given to determine the presence and extent of these injuries is largely insufficient. The lack of adequate forensic and medical psychologists is also mentioned in the governmental report as one of the causes of the low level of enforcement of the provisions on psychological injuries.⁵

OMCT welcomes the inclusion of psychological integrity in the legal definition of injuries. However, OMCT also notes that in the law, while psychological injuries are recognized, they do not lead to a specific punishment. Only physical injuries are considered when applying a sentence, while in the case of domestic violence, psychological harm has serious consequences for the lives of women.

The *Confites en el Infierno* report⁶ indicated that only 2 out of 10 battered women reported the violence to the police. The main reasons for hiding the violence were: fear of further violence, shame, feelings of isolation and lack of economic resources to pay lawyers, problems with attending hearings (especially for women living in remote rural areas), and difficulties in paying for evidentiary documents. This is particularly true for women,

5 – Prado, C y Acevedo A. “La Violencia Intrafamiliar y la Ley 230”, July 1997, Nicaragua, cited in UNDP, “Informe Nacional Nicaragua”, March 1999.

6 – Ellsberg, M; Peña, R; Herrera, A; Lilijestrand, J and Winkvist, A. “Confites en el Infierno: Prevalencia y características de la violencia conyugal hacia las mujeres en Nicaragua” 2 ed. Red de Mujeres Contra la Violencia, UNAN Leon, Nicaragua 1998.

since many of them do not possess other economic means than those earned by their husbands.

Besides the cultural idea that domestic violence is a “normal” part of spousal relations, other factors limiting women’s access to justice are the persistence of myths and prejudices amongst officials charged with the application of the law such as the police or the judicial system and the ignorance of the laws protecting women amongst the general public. Additionally, within the population there is no confidence in the judicial response when the accused is in any position of power.⁷

3.2 Marital Rape

Nicaragua’s Criminal Code does not contain any provisions regarding marital rape. In cases of rape “when there exists between the offender and the victim a relationship of authority, dependency or trust” or “when the author and the victim have been united in marriage or in a stable *de facto* union”, these relations are considered as aggravating circumstances. This provision is, however, inadequate since it only covers past relationships.

All the provisions and aggravating circumstances regarding rape exclude rape within marriage, in accordance with societal values that dictate that women should be obedient to their husbands. In Nicaragua, some human rights organizations call marital rape “a well kept secret” and data is hard to obtain.

The impunity of a husband who forces his wife to have sexual intercourse is contrary to the woman’s right of equality in the family. OMCT strongly believes that marriage does not, in any circumstance, nullify the criminal responsibility of a husband in the case of rape or other kinds of violence committed within the family. As Article 16 of the Convention on the Elimination of Discrimination Against Women stipulates, all State Parties must take all necessary measures to eliminate discrimination against women in all matters regarding marriage and family life.

OMCT would urge the government to provide the necessary resources to investigate psychological injuries against women and to codify their

7 – The case of Zoilamerica Narvaez, where she accused her step-father Daniel Ortega (ex-President and Deputy to the National Assembly) of sexual abuse during her childhood, has not yet been heard in Nicaraguan courts. The case has been taken to the Interamerican Commission on Human Rights and sparked a national debate about impunity and violence against women.

punishment. OMCT also recommends an amendment to the current provision on rape in the Criminal Code to specifically address marital rape.

3.3 Crimes of Honour

If the father or older brothers living with their daughters or younger sisters not older than 21 years of age, kill those lying down (having sexual contact) with the woman when surprising them in the act, they may be sentenced to 2 to 5 years of prison, while the standard punishment for homicide is 6 to 14 years. This lesser sentence encourages the commission of “crimes in the name of honour”, where the male relatives are seen as the guardians of women’s honour and reinforces the feeling that women are the property of their male relatives.

IV

Violence against Women in the Community

4.1 Sexual Violence

The government report acknowledges that in 1998 there were 3,329 recorded sexual crimes which included rape, attempted rape, *estupro*, abduction, indecent abuse, and sexual harassment. The most prevalent violations of women’s rights involved domestic and sexual violence, which were widespread and under-reported. The National Police reported that of 20,905 reports filed by women between January and August 2000, more than 11,086 concerned physical or sexual abuse. According to statistics from the National Police, the police received 1,181 rape complaints during the year. In 1999 there were 1,367 reported instances of rape.

Rape is codified in Chapter VIII of the Criminal Code. Article 195 says “is guilty of rape who, using force, intimidation or any other way that deprives a person of his/her will, reason or sense, has carnal access [sexual contact] with him/her, or that with a sexual purpose introduces any organ,

instrument or object". If "the author is a relative of the victim within the fourth grade of consanguinity or second of affinity, tutor or guardian, or that is linked by marriage or *de facto* union with the father or the mother of the victim" the offence has an aggravating circumstance.

In Article 196 of the Criminal Code, *estupro* is defined as having sexual relations with a person older than 14 but younger than 16, or having sexual relations with a person older than 16 who has never had sexual relations before, by means of deception. This is punished with 3 to 5 years of prison, but if the victim marries or forgives the aggressor, the procedure is stopped and the sentence annulled. There is thus a tendency to solve these cases by means of an "extra judicial" settlement which involves pressuring or forcing the victim to marry or forgive the aggressor. OMCT is very worried that offenders may take refuge in these provisions and remain unpunished, increasing the sense of impunity for crimes of violence committed against women in order to preserve the family honour.

Article 200 of the Criminal Code establishes dishonest abuse as an offence. It consists of lascivious acts or touching of another non-consenting person, by means of force, intimidation, or any other mean that deprives the person of their will, reason or sense, without having carnal access nor sexual intercourse as defined above in Article 195. Non-consent is assumed when the victim is younger than 14 years old.

As stated above, the main reasons for hiding the violence are: fear of further violence, shame, feeling of loneliness, the ignorance of the laws protecting women by the population. Additionally, the population does not believe in the judicial response when the accused is in any position of power, as well as the persistence of myths and prejudices in those charged with the application of the law such as the police or the judiciary.

4.2 Sexual Harassment

There are no other data on sexual harassment, but according to police reports, in 1999 they received 180 reports, 208 in 2000 and for the year 2001 the same tendency follows. However, the police recognize that these offences are rarely reported mostly because sexual harassment is "hardly recognized as such, because it is quite difficult to place the limits between attraction and harassment, and it is embarrassing to recognize it ..."⁸

8 – UNDP, "Informe nacional Nicaragua", *Informes nacionales sobre la situación de la violencia de genero contra las mujeres*, March 1999.

Nicaraguan law includes a small provision dealing with sexual harassment. Article 197 reads: "...the one who submits a person to harassment or blackmail with sexual purposes without carrying out the offence of rape or of illegitimate seduction, will be punished with one to two years of prison."

No mention is made of sexual harassment in the governmental report. It has been mostly women's organizations that have undertaken prevention campaigns among working women.

4.3 Trafficking and Exploitation of Prostitution of Women

The prohibition of trafficking is codified in Article 203 of the Criminal Code and deals with those who engage or entice persons, either with their consent or by means of menace, offerings, deception or any similar ruse, to practice prostitution in or outside Nicaragua, or brings persons to the country for that purpose. The penalty for trafficking is 4 to 10 years imprisonment.

The government's report only mentions Article 40 of the Constitutions that prohibits trafficking. However, it does not provide any further information on the issue. The CENIDH reports several cases of teenage girls who have been tricked into going to Guatemala and El Salvador for the purposes of forced prostitution in bars and clubs. The CENIDH has information on 38 disappearances of women between January 1998 and June 1999. The great majority of them left for Costa Rica (44.7%), Guatemala (28.9%), Mexico (10.5%), the United States (7.9%) and El Salvador (7.8%).⁹

Nicaraguan legislation does not punish prostitution itself, but establishing or operating places of prostitution or, for a financial gain, forcing another person to enter and remain in a place of prostitution or to indulge in any kind of sexual commerce, by means of physical or moral violence, abuse of authority or any kind of deception. This is punishable with 3 to 6 years imprisonment; if the author is married or in a *de facto* union with the victim a harsher penalty of up to 10 years is applicable.

Corruption of minors is also penalized with 4 to 8 years imprisonment and applicable to those who induce, promote, facilitate or favour the sexual corruption of a person younger than 16 years of age, even if the victim

9 – CENIDH, "Informe sobre la situación de los derechos humanos en Nicaragua durante 1999", Nicaragua.

consents in participating in or observing sexual acts. The sentence can be increased up to 12 years if the victim is younger than 12 years of age, if the act is committed with a lucrative end or to satisfy a third party, if violence or authority abuse had been used, if it is carried out on a large scale or if the author is a relative of the victim or in a position of authority.

Regarding prostitution, at page 41 the government's report recognizes that "in the past five years the number of sex workers in Nicaragua has increased in step with the country's economic crisis. In most cases, women are becoming sex workers in order to survive." "Although forbidden by law, adolescent girls are often found in bars as clients or as dancers and also in the roads outside at specific locations whose names are well-known."

However, besides citing the legal provisions against this kind of conduct, the governmental report does not explain how these laws are implemented in practice. It does not say either what it does to prevent and punish the exploitation of young girls and women or what is the impact of its policies.

According to the CENIDH, there are nearly 1,200 prostitutes in the city of Managua, 40 per cent of whom are younger than 18 years of age. According to a study directed by the Ministry of the Family with 300 child prostitutes, 56 per cent of girls started their sexual life around 12 or 13 years, 28 per cent had suffered rape and 50 per cent of them see more than 5 clients per day.

16 – Centre for the Study of Developing Countries, Cairo University, *Comprehensive Development Report in Egypt*, 1998, quoted in: Alternative NGO Report by Al-Nadim Centre for the Rehabilitation of Victims of Violence, the Hisham Mubarak Law Centre, and the New Woman Resource Centre, see footnote 5, p. 11.

17 – Nemat Guenena and Nadia Wassef, see note 6, p. 35.

18 – *Ibid.*

19 – *Ibid.*



Violence by the State

The Constitution of Nicaragua in its Article 188 provides a Law for the Protection of Rights (*Ley de Amparo*) “against all disposition, act or resolution and in general against every action or omission of any official, authority or agent of mentioned authority who violates or attempts to violate the rights and guarantees enshrined in the Political Constitution.” Article 189 establishes the right for all citizens to obtain a writ of habeas corpus in favour of “those whose liberty, physical integrity and security are violated or are in danger of being violated.”

V.1 Torture and Ill-Treatment

As noted in the introduction, Nicaragua is not a party to the Convention against Torture that provides detailed protection against torture and ill treatment. The Nicaraguan Constitution guarantees the physical, psychological and moral integrity of every person in its Article 36. It states that “no one will be subject to tortures, procedures, punishments or treatments of a cruel, inhuman or degrading nature.”

The Nicaraguan General Assembly is currently in the process of drafting a new Code of Criminal Procedure which states that “in the penal process every person must be treated with all respect due to the dignity inherent to the human being, protecting the rights that from this dignity derive and in conditions of equality.” This draft determines that “proofs will only be valid if it has been obtained by licit means and incorporated to the process according to the dispositions set in this code.”

Book I Title III Chapter I of the draft Code recognizes the guarantees established in the Nicaraguan Constitution and in international human rights instruments ratified by Nicaragua. It states that the Public Ministry and the National Police must respect these in the exercise of penal and public action.

Book I Title III Chapter III of the draft states that the accused has the right:

- of being informed of the acts he or she is being charged for;
- of communicating with their family or a lawyer within the first three hours of the detention;
- of being free from torture or other cruel, inhuman or degrading treatment;

- of being free from techniques or methods altering his or her free will;
- of being examined by a doctor before being presented to the judicial authority;
- of being presented to a competent authority within forty-eight hours following detention;
- of being counselled by a lawyer and assisted by an interpreter;
- of not giving a deposition and of not being judged in absentia.

Besides the provisions contained in the Nicaraguan Constitution, Book II Title I Chapter I of the draft Code of Criminal Procedure explicitly prohibits use of torture and any other method that harms human dignity during the conduct of a police investigation.

The only punishable offences regarding public officers or employees are codified in Article 369 of the Criminal Code, concluding abuse of authority if any public officer or employee:

- prolongs detention of an individual for more than 24 hours without turning the accused to a Judge;
- keeps incommunicado a prisoner without a judicial order;
- employs towards the detainee an unnecessary severity;
- illegally detains a person or that on duty commits any injury or unnecessary penalty against a person.

Penalties range from absolute suspension varying from six months to a year and a fine. It must be noted, however, that the Nicaraguan Criminal Code does not include any provisions dealing specifically with torture or ill-treatment by a public officer.

While the prohibition of torture is very important, it is necessary to set up penalties and sanctions that punish the perpetrators and assure the victims a fair and adequate compensation as well as rehabilitation. OMCT would urge the government to provide information on the legal proceedings against perpetrators of torture and the sanctions against them.

5.2 Women in Custody

Article 39 of the Constitution establishes that women prisoners will be placed in different penal facilities from men, and that guards will be preferably of the same sex as the prisoners. Additionally, Article 389 of the

Criminal Code establishes a punishment from 2 to 6 years of prison for guards, officials or wardens of a penitentiary centre or any other detention establishment that seduce or “request” any woman in custody. It applies the same penalty to any other public officer that seduces or “requests” any woman by abusing of their authority.

As of September 2000, women made up 2.6 percent of the prison population. However, only Managua has a separate prison for women; outside of the Managua area, women are housed in separate wings in prison facilities and are guarded by female custodians. The Public Defender’s office has assigned two full-time employees to work with the women’s prison system to help ensure its proper functioning in such areas as timely release of inmates granted parole.

Despite these guarantees, OMCT is concerned about the lack of any commentary regarding this issue in the governmental report. The report is silent on the question of custodial violence against women as well as on custodial rape. This absence of information is worrying since, while it is hard to find gender specific data, in its 2000 Report, Amnesty International documented several cases of torture and ill-treatment in police custody. Beating, overcrowded cells and detainees being locked up for long periods without food, water or sanitary facilities were common in Nicaraguan prisons. Prisons suffer from a lack of adequate facilities and financial resources, which result in overcrowded cells, virtually non-existent health services and widespread malnutrition among inmates.

OMCT would urge the government to provide information on torture and ill-treatment of detained women in Nicaragua.

5.3 Administrative Abuses

Several women’s non-governmental organizations such as *Si Mujer*, the *Cooperativa de Mujeres Maria Luisa Ortiz de Mulukuku*, the *Coordinadora Civil para la Emergencia y la Reconstruccion* and the *Movimiento de Mujeres* suffered prosecution by the State. These groups, that work for women’s health, with communities, or coordinating social development programs, were accused of being illegal entities, pro-abortion or related to rebel armed groups.¹⁰

10 – The Observatory for the Protection of Human Rights Defenders “Comunicado de prensa de la mision internacional del Observatorio,” Managua, May 24, 2001.

Reproductive Rights

VI

The Nicaraguan governmental report recognizes that “men continue to have a greater say in the decision as to whether a couple has sexual relations, and whether or not women may use contraceptives.”

In Nicaraguan legislation there is no legal body dealing with reproductive rights, nor an adequate legal framework to guarantee these rights.

A very serious problem in Nicaragua is the high number of early pregnancies among adolescents. Especially in rural areas, these pregnancies were generally wanted, as maternity is considered to be a reaffirming experience for women and is encouraged by men’s desire of “her having his children.” In urban sectors, the majority of adolescents did not desire their pregnancy and they were due to unprotected sexual relations or sexual abuse. In Nicaragua, the fecundity rate of adolescents is the highest in Latin America and one of the highest in the world, where two out of three births happen in a risk situation, 11% because of the mother is younger than 18 years of age.

Other statistics show the gravity of the situation. 10% of 15 year-old girls already have children, 54% of Nicaraguan girls are pregnant or are already mothers, and 46% of 19 year old Nicaraguan women have children. Only 11% of 15 to 19 years-old women use any kind of contraception.

Maternal mortality is also a problem for women in Nicaragua. The Pan-American Health Organization estimates that there are 150 deaths for every 100 thousand live-births, but this situation is believed to be widely under-reported. Generally this is due to pregnancy or labour complications, or to unsafe abortions. High maternal mortality rates are linked to the large number of children per woman and high fertility rates in women under 19 and over.¹¹

According to governmental statistics, two out of ten women die after an unsafe abortion.¹² In Nicaragua, between 27 and 36 thousand abortions are practiced per year. While abortion is illegal in Nicaragua according to Article 162 of the Criminal Code and penalised with 1 to 4 years imprisonment, there is a significant lack of access to sexual education.

11 – Nicaragua: Basic Country Health Profiles, PAHO, 1999.

12 – CENIDH, “Informe sobre la situación de los derechos humanos en Nicaragua durante 1999”, Nicaragua



Additionally, religious bans on “artificial” contraceptives and the husband’s authority over women’s bodies make it very hard for women to take control over their own sexuality.

VII Conclusions & Recommendations

OMCT would urge Nicaragua to ratify Optional Protocol to CEDAW in order to ensure that women have access to its petition and inquiry mechanisms.

OMCT is concerned about the fact that Nicaragua has not ratified the Convention against Torture and recommends that the government ratify the Convention and rapidly implement it in national law.

The discriminatory provisions in the Nicaraguan Civil Code relating to the rights of women in marriage and upon the dissolution of marriage should be repealed and guarantees of equality between partners enacted in law. OMCT recommends, in particular, that the age of marriage be the same for both men and women and that women be recognised as having the same right to be acknowledged as the head of the household as their male partners.

Domestic violence is a very serious problem in Nicaragua, affecting the daily lives and welfare of many women. While the reforms brought about by Law 230 have had a positive impact on increasing general awareness of domestic violence, OMCT would urge the government to provide sufficient resources for the investigation of cases of psychological violence and to codify its punishment. The absence of legal and social sanctions concerning violence perpetrated by an intimate partner reflects the view that a wife is subordinate to a husband and his property. This is why OMCT also recommends an amendment to the current provision on rape in the Criminal Code to specifically address marital rape.

OMCT would recommend that law enforcement personnel and members of the judiciary are provided with in-depth gender-sensitive training concerning the prevention, investigation and punishment of domestic violence. Increasing the confidence of women in judicial mechanisms for enforcing their right to be free from violence is a vital step in the fight

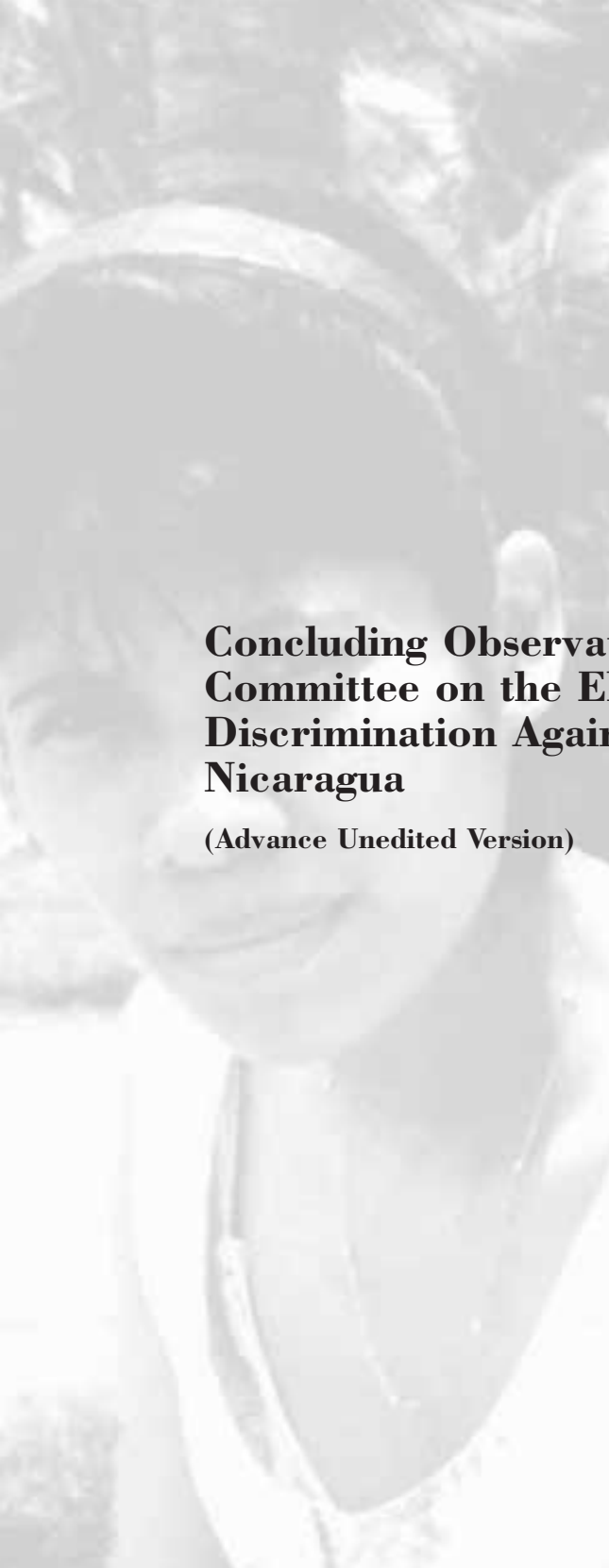
against impunity for family-based violence. Greater measures must also be taken to actively and effectively enforce the law in relation to domestic violence and consideration could be given to the adoption of legislation to specifically deal with the issue.

OMCT would encourage the government to amend the Criminal Code in order to repeal Article 196 which creates a defence of “reparatory marriage” when the victim of sexual violence agrees to forgive or marry the perpetrator. This provision is incompatible with women’s right to be free from violence and encourages an unacceptable climate of impunity for acts of sexual violence.

Regarding crimes of honour, the lesser sentence applied to the perpetrators of these crimes encourages the view that male relatives are the guardians of women’s honour and reinforces the feeling of women being the property of her male relatives. OMCT strongly encourages the Nicaraguan government to eliminate this provision and to punish the offenders with proportionate sanctions.

OMCT is seriously concerned about the lack of adequate information in the government report regarding certain kinds of violence, especially violence committed by the State agents. OMCT would urge the government to provide information on torture and ill-treatment of detained women in Nicaragua.

A lack of information and access to contraceptives hinder woman’s control of their sexuality. OMCT recommends that Nicaragua ensure that reliable, safe and low cost contraceptive methods in order to curb maternal mortality rates. ■



*25th session
2-20 June 2001*

**Concluding Observations of the
Committee on the Elimination of
Discrimination Against Women:
Nicaragua**

(Advance Unedited Version)

Introduction by the State Party

1. The Committee considered the fourth and fifth periodic reports of Nicaragua (CEDAW/C/NIC/4 and CEDAW/C/NIC/5) at its 525th and 526th meetings, on 17 July 2001.

2. In introducing the report, the representative of Nicaragua informed the Committee that the reports covered the period from 1991 to 1998 and described some important innovations during that time.

3. She informed the Committee that the Government had committed itself to the implementation of the Convention but several obstacles impeded full implementation. Those included the persistence of stereotyped attitudes, in particular “machismo”, and the poverty Nicaragua faced. The Government had implemented a Reinforced Strategy to Reduce Poverty, and other programmes to improve the health and education of women, girls and boys. The law provided a general framework of human rights protection and the Constitution and the ley de amparo which protected individuals against administrative abuses and provided for injunctions to stop administrative acts which could be adverse to the rights of citizens, ensured the implementation of those rights. A common agenda on women’s priorities had been established in collaboration with civil society and political parties. Draft revisions to the Penal, Penal Procedures and Family Codes would remove discriminatory provisions and the Constitution and the Civil Code included provisions on nationality. The Childhood and Adolescence Code, which had been approved in 1998, established that children were entitled to know their parents, and carry a name. The Commission for Women, Childhood, Youth and Family had presented a Law of Equal Opportunity to the National Assembly for approval.

4. The Nicaraguan Institute for Women had been established as the national machinery with the mandate to define, formulate and promote public policies and develop strategies to ensure equal opportunities for men and women, including through actions to improve female living conditions on the basis of equality, development and peace. The Ministry for the Family had also been created, and aimed to promote projects and programmes relating to families, girls and boys, and teenagers in situations of social risk. The promotion of women had also been included in the Ministry’s activities with respect to domestic violence, which was addressed as a violation of the right to life and the right to security of

person. However, a reduction in financial resources had limited the impact of these projects and programmes.

5. The representative of Nicaragua indicated that, among the different policies that had been implemented by the Government to promote the advancement of women were the social policy, the national population policy, the citizen participation policy, the sex education policy and the equal opportunity policy. Other mechanisms to promote the dialogue between the Government and civil society had been implemented through the inter-institutional commissions. In addition, two positions, attorney for human rights and special attorney for children, youth and women, had been created.

6. The representative informed the Committee about the advancement of women in the education sector and the positive results that had been achieved in terms of women's access to education at all levels, and high levels of attendance at schools and universities, to which the National Plan for Education (2001-2015) had contributed. Results were particularly significant in respect of girls in rural areas. Women's rate of illiteracy was lower than men's, and women made up the majority of the student population. The National Institute of Technology (INATEC), responsible for professional training, had created a specific unit to develop programmes to build the capacity of women in geographical areas with high levels of unemployment, rural women, single mothers and teenagers in risk situations. Those programmes aimed to host the creation of microenterprises for women and to provide them with access to credit at low interest rates and to ensure that they were offered jobs in non-traditional sectors.

7. The representative of Nicaragua indicated that the life expectancy for women had increased, but maternal mortality was still a critical health problem. Measures taken to address the problem included the establishment of specialized hospitals, with female staff offering disease-prevention and prenatal-monitoring services.

8. The representative admitted that women tended to be concentrated in low pay sectors. In rural areas, discrimination in access to opportunities and productive resources and services was still significant. In 1997, the Inter-institutional Commission for Women and Rural Development had been created to promote the interests of rural women, and had subsequently implemented a project entitled "Women and credit" to widen women's access to credit. The representative made it clear that domestic

violence affected a large number of women in Nicaragua. The Government had created Offices for Women and Children as a result of the cooperation between the Nicaraguan Institute for Women, the Women's Anti-violence Network, the National Plan to Prevent Domestic and Sexual Violence (2001-2006) and the National Commission on Violence against Women, Children and Young Persons to address the problem. The Penal Code had also been reformed to provide greater protection for victims. Trafficking in all its forms was also prohibited by article 40 of the Constitution.

9. In conclusion, the representative informed the Committee that the number of women in decision-making positions and in politics had increased significantly in recent years.

Concluding comments of the Committee

Introduction

10. The Committee expresses appreciation to the Government of Nicaragua for its fourth and fifth periodic reports. The Committee notes, however, that the reports do not incorporate sufficient statistical data disaggregated by sex.

11. The Committee appreciates the information in the reports and the frankness with which the reports were prepared. It commends the Government on the comprehensive written replies to the Committee's questions that sought to clarify the situation of women in Nicaragua, and on the Government's sincere oral presentation of the reports.

Positive aspects

12. The Committee welcomes the efforts of the Government to implement the Convention, as reflected in a range of laws, institutions, policies and programmes to address discrimination against women in Nicaragua. The Committee recognizes that the Nicaraguan Institute for Women was one of the first national machineries to be established in the region in 1982. The Committee welcomes the Government's collaboration with civil society and other actors in reaching a common agenda on women's priorities.

13. The Committee commends the Government on the publication and dissemination of a handbook explaining the provisions of the Convention.

14. The Committee commends the Government on its efforts to include the teaching of human rights in kindergarten, primary, secondary and technical or vocational schools, and military and police training academies, and on the integration of a gender perspective into the National Development Plan and school curricula and teacher training.

15. The Committee notes with appreciation the efforts to combat violence against women, including the adoption of legislation against domestic violence (Act. No. 230); the establishment of the National Commission on Violence against Women, Children and Young Persons; the National Plan for the Prevention of Domestic and Sexual Violence 2001-2006; and the coordination with different sectors of society, including the National police force, in particular the women's police stations (comisarías), in combating gender violence.

Factors and difficulties affecting the implementation of the Convention

16. The Committee notes that the high level of poverty in Nicaragua, aggravated by natural disasters, poses a serious obstacle to the implementation of the Convention and women's full enjoyment of their rights.

Principal areas of concern and recommendations

17. The Committee is concerned about the persistence of stereotypes concerning the role of women in the family and society, including expectations of women's subordination to men expressed by some religious institutions, and attitudes and behaviour driven by "machismo" in public and private life. The Committee is concerned that, notwithstanding the Government's recognition of the problem and efforts to address it, including legislative changes, such stereotypes continue to constitute an obstacle to the achievement of equality for women.

18. The Committee calls on the Government to strengthen measures to change stereotypical attitudes about the roles and responsibilities of women and men, including awareness-raising and education campaigns

directed at both women and men, as well as the media, in order to achieve de facto equality between women and men. It also calls on the Government to undertake an assessment of the impact of its measures to identify shortcomings, and adjust and improve these measures accordingly.

19. The Committee is concerned at the high incidence of poverty among women, in particular rural women and households headed by women.

20. The Committee urges the Government to give priority attention to rural women and women heads of households, including in the allocation of budgetary resources, and to monitor research into their situation, with a view to developing effective policies and programmes to strengthen their socio-economic situation and ensuring that they receive needed services and support. The Committee emphasizes that social investment in women not only ensures their enjoyment of the human rights outlined in the Convention, but also constitutes one of the most effective means of combating poverty and promoting sustainable development.

21. The Committee is concerned at the custom, particularly in rural areas, of sexual abuse of young girls by older men. It notes that this violates the rights of girls to reproductive health, as well as other rights under the Convention.

22. The Committee urges the Government to introduce awareness-raising and penal measures to eliminate this sexual abuse of young girls.

23. The Committee is concerned about the high infant and maternal mortality rates in Nicaragua. The Committee is furthermore concerned that the leading causes of mortality among women are cervical and breast cancer, and pregnancy-related problems, including post-partum haemorrhage and toxæmia. The Committee notes with concern a lack of information on abortions and on the incidence of related death or illness.

24. The Committee recommends that the Government make every effort to increase access to health-care facilities and medical assistance by trained personnel in all areas, including rural areas. The Committee recommends the implementation of programmes to prevent cervical and breast cancer, and to ensure pregnancy-related medical care. The Committee requests the Government to include in its next report information on the number of abortions performed and related death and/or illness, within the general framework of women's health condition.

25. The Committee is concerned about the high fertility rate in Nicaragua.

26. The Committee calls upon the Government to improve its family planning and reproductive health policy and programmes, including availability and accessibility of affordable modern contraceptive means for both women and men. It encourages the Government to promote education programmes on reproductive rights and responsible sexual behaviour on the part of both women and men, particularly young people.

27. The Committee notes with concern the persistence of a high level of illiteracy among certain groups of women in Nicaragua.

28. The Committee encourages the Government to develop programmes specifically designed to reduce female illiteracy.

29. The Committee is concerned that women workers have been replaced by men in both the formal and informal sectors of the economy, that men's wages are three times greater than those of women and that unemployment and underemployment of women are high. It is also concerned at the indirect discrimination against women because of their limited access to credit due to lack of collateral.

30. The Committee recommends that measures be taken to improve the status of working women, including the introduction of training programmes to promote the integration of women into the labour force and to diversify their participation; the establishment of childcare centres; improved access to credit, with special emphasis on rural women; and greater efforts to achieve equal pay for work of equal value.

31. While the Committee welcomes the Government's efforts to combat domestic violence, it is concerned at the continuing extent of domestic violence against women in Nicaragua. The Committee stresses that, since violence against women is an infringement of human rights, it is the Government's responsibility to prevent such violence and take measures to protect the victims of such violence.

32. The Committee calls on the Government to take practical measures to follow up and monitor legislation, and to strengthen its policies and programmes addressing violence against women, including assessing their effectiveness and making adjustments accordingly.

33. The Committee welcomes the national machinery for women, the

Nicaraguan Institute for Women, but is concerned at the lack of institutional support for the Institute and its dependence on international cooperation.

34. The Committee urges the Government to provide the Nicaraguan Institute for Women with the required finances, personnel and political decision-making capacity to be able to exercise effective influence in the promotion of gender equality in Nicaragua.

35. While the Committee welcomes the adoption of legislation to protect and promote women's human rights, including domestic violence legislation and the Equal Opportunities Law, the Committee expresses concern that discriminatory laws continue to exist and that there is no legislation dealing with education.

36. The Committee urges the Government to reform existing legislation and enact new legislation to protect the equal rights of women and men in regard to education. It also recommends the speedy adoption of a non-discriminatory family code.

37. The Committee is concerned about the lack of information in the reports on migration of women and girls, women working in the maquila factories/free trade zones, older women, minority and indigenous women, prostitution and trafficking in women and girls.

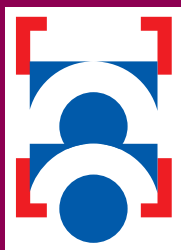
38. The Committee requests the Government to provide in its next report information on: migration of women and girls, including why these movements are occurring, their destination points, and the extent to which these women and girls become vulnerable to sexual exploitation, including trafficking, prostitution and sex tourism; the situation of women working in the maquila factories/free trade zones, including the measures taken to ensure these women's rights are protected; older women and minority and indigenous women, especially as regards their health, employment and educational status; prostitution, including the measures taken to protect women who are prostitutes and to reintegrate them into society, as well as the measures taken to counteract the root causes of prostitution, and the measures taken by the Government to combat trafficking and the impact of such measures.

39. The Committee urges the Government to sign and ratify the Optional Protocol to the Convention and to deposit as soon as possible its instrument of acceptance of the amendment to article 20, paragraph 1, of the Convention on the meeting time of the Committee.

40. The Committee requests the Government to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention. It also urges the Government to improve the collection and analysis of statistical data, disaggregated by sex, age and minority or ethnic group and to submit such data to the Committee in its next report. The Committee invites the Government to seek international cooperation in connection with the collection and analysis of such data.

41. The Committee requests the wide dissemination in Nicaragua of the current concluding comments in order to make the people in Nicaragua, in particular government administrators and politicians, aware of the steps that have been taken to ensure the de jure and de facto equality of women as well as of further steps that are required in this regard. It also requests the Government to continue to disseminate widely, in particular to women's and human rights organizations, the Convention, its Optional Protocol, the Committee's general recommendations and the Beijing Declaration and Platform for Action, and the results of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".

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