

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report -**

Universal Periodic Review:

NICARAGUA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Nicaragua ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1980. Nicaragua has also acceded to the *1954 Convention relating to the Status of Stateless Persons (1954 Convention)* on 15 July 2013¹ and to the *1961 Convention on the Reduction of Statelessness (1961 Convention)* on 29 July 2013.²

The refugee definition of the *1951 Convention* and the extended refugee definition of the Cartagena Declaration of 1984 are included in Article 1 of the Law on Refugee Protection (Law No. 655 of 3 June 2008). Furthermore, the General Law on Migration (Law N. 761 of 28 June 2011) regulates some aspects of the asylum regime.

The national Refugee Status Determination (RSD) procedure is implemented by an inter-institutional commission, the National Refugee Commission (NRC). UNHCR is a member of the NRC, with voice but without vote. An officer of the General Directorate on Migration and Foreign Services, with expertise in the field of human rights, acts as the Secretary of the National Commission for Refugees. The Secretary is assisted by one staff members, and together they form the Secretariat of the NRC and oversee the processing of asylum applications.

Nicaragua is a country of origin of economic migrants and is largely a transit country for asylum-seekers and refugees moving towards the North in mixed migratory flows. Nicaragua hosts a total of 146 refugees, most of whom are Salvadorans and Hondurans. Nicaragua receives few asylum claims on an annual basis. 39 persons applied for asylum in 2011 and 69 asylum claims were lodged in in 2012. During this period, 75 cases had to be closed, as the asylum-seekers had left the country before the asylum process concluded.

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<http://treaties.un.org/pages/ViewDetailsII.aspx?src=UNTSO&no=V-3&chapter=5&Temp=mt&lang=en>

² <http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=2&no=V-4&chapter=5&lang=en>

Given the small number of asylum-seekers and refugees and the pressing nature of other national political priorities (such as combating poverty, unemployment etc.), the issue of asylum is not a priority for the Government of Nicaragua. Nevertheless, there is a need to develop migration and detention standards that comply with basic international human rights.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

A. Accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness

On 24 May 2013, the Nicaraguan Parliament adopted two legislative decrees (National Assembly Decree N. 7156 and National Assembly Decree N. 7157) approving the accession of Nicaragua to the two Statelessness Conventions. Nicaragua acceded to the *1954 Convention* on 15 July and to the *1961 Convention* on 29 July.

UNHCR welcomes the commitment shown by Nicaragua to protect the rights of stateless persons. UNHCR also appreciates the fact that one member of the Nicaraguan Parliament and one Government official attended the 2013 Regional Latin-American Workshop on Statelessness in San Jose, Costa Rica, which was organized by UNHCR and the Costa Rican authorities. One of the workshop's goals was the harmonization of the identification of stateless persons in the sub-region.

B. National legal framework relevant to international protection and its implementation

The Nicaraguan national legal framework on asylum is one of the most advanced in the region. The Law on Refugee Protection incorporated the extended refugee definition of the 1984 Cartagena Declaration. Gender-based persecution is recognized as a ground for recognition of refugee status. Article 21 of the Law on Refugee Protection establishes that unaccompanied or separated minors shall be assigned a guardian to support them in the asylum proceedings. Article 24 of the Law provides for the use of a female interviewer for female asylum-seekers and for "special attention and care" during interviews with unaccompanied minors seeking asylum. Article 26B of the Law on Refugee Protection establishes a short deadline for the processing of asylum applications (30 days), which is also observed in practice. This timeframe is respected. By virtue of Article 23 asylum-seekers receive certificates that entitle them to work and to access all health care and education services.

The Law provides for a strong civil society participation in the NRC: UNHCR's implementing partner in Nicaragua as well as the Catholic Church and the Evangelical Church are members of the Commission with the right to speak and to vote. UNHCR and a number of Nicaraguan NGOs are entitled to attend the NRC sessions with a right to voice but without vote.

Article 220 of the General Law on Migration establishes that complementary protection status can be granted in Nicaragua to persons who do not qualify as refugees under the Law on Refugee Protection, but who nevertheless are in need of international protection. Article 219 of the General Law on Migration also recognizes certain rights to asylum-seekers and refugees. This includes a total fee waiver for the obtainment of temporary residence and a 50% reduction on the

fees related to permanent residence for refugees. According to Article 53 of the Law applications for naturalization can be submitted after four years of legal residence in the country.

C. Training of Authorities in Addressing Migration Issues

The Government has taken steps to provide training in the field of migration on issues related to refugees, victims of trafficking and stateless persons to national police, migration officers and other authorities.

UNHCR welcomes the interest, collaboration and participation of relevant authorities in capacity-building initiatives. For instance, immigration officers working at the international airport in Managua participated in training sessions organized by UNHCR and its implementing partners, in collaboration with the Government, in February 2013. UNHCR encourages the Government to continue using UNHCR's expertise for relevant capacity-building initiatives.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Protection of Persons in Mixed Migration Flows

UNHCR and its implementing partners IP are pursuing efforts to ensure that national police and migration officers in the field, particularly at airport, land, and sea border points, are informed, trained, and sensitive to the situation of migrants, including persons in need of international protection. However, more efforts are required to strengthen the identification of persons in need of international protection, so that the Government does not inadvertently violate the *non-refoulement* principle, due to gaps in the knowledge of immigration, customs or police personnel who come into contact with undocumented persons on the territory of Nicaragua. In the context of the mixed migratory flows arriving to Nicaragua, it is crucial for the Government to establish proper identification and referral mechanisms to be able to respond to the specific needs of all categories of persons in need of international protection.

Recommendations:

UNHCR recommends that the Government of Nicaragua:

- Strengthen its efforts to manage mixed migration flows in a protection-sensitive manner;
- Adopt measures to establish appropriate mechanisms aimed at early identification, referral, assistance and support for persons in need of international protection; and
- Incorporate the Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations³ in its national practice.

Issue 2: Child Protection Systems

In the last few years there has been an increase of families with children who seek asylum in Nicaragua. Notwithstanding the strong commitment on the part of the Nicaraguan authorities to provide protection to children, including asylum-seeking and refugee children, there is a need for formal procedures for the treatment of cases involving foreign children with specific needs in the

³ Adopted unanimously at the Regional Conference on Migration (RCM), where participating governments – including Nicaragua – displayed a clear political commitment.

country. UNHCR remains at the disposal of the Government of Nicaragua to continue providing support for relevant capacity-building initiatives.

Recommendations:

UNHCR encourages the Government of Nicaragua to:

- Formalize its internal mechanisms and adopt formal child protection procedures, including for best interest determinations; and
- Adopt measures to ensure that the determination of the “best interests of the child” is a primary consideration in all decisions throughout the immigration and refugee processes that affect children.

Issue 3: Livelihoods and self-reliance opportunities for refugees

Refugees in Nicaragua have very limited, and usually short-term and precarious, employment options that relegate them in poor economic conditions. In some cases, due to the lack of options, female refugees had to resort to unsafe coping mechanisms in order to cover their basic needs and those of their children. This should not undermine Nicaragua’s commitment to the protection of persons in need of international protection.

Recommendation:

UNHCR encourages the Government of Nicaragua to:

- Continue the efforts initiated by the National Commission for Refugees to include refugees and asylum-seekers in public policies as well as livelihoods and self-reliance programs available for vulnerable populations in Nicaragua, including access to decent work.

Issue 4: Convention Travel Documents

UNHCR notes that Article 31 of the Law on Refugee Protection recognizes the right of refugees in Nicaragua to be issued a 1951 Convention Travel Document (CTD), enabling them to travel outside the territory of the country, as established in Article 28 of the *1951 Convention relating to the Status of Refugees*. However, the Government has so far not issued any CTDs. According to the information provided, the Government of Nicaragua is in the process of preparing the issuance of CTDs, but delays have taken place apparently due to budgetary constraints. Therefore, refugees in Nicaragua are currently unable to travel outside the country, unless they hold a valid national passport.

Recommendation:

UNHCR encourages the Government of Nicaragua to:

- Prioritize, to the extent possible, the issuance of CTDs to ensure that the travel documents are finally issued to refugees and stateless persons.

Issue 5: Living Conditions in the Pre-Removal Administrative Detention Facility

Asylum-seekers can be detained for up to seven days in Nicaragua. However, the Law on Refugee Protection does not establish any proper referral mechanisms to the asylum procedures for migrants in administrative detention. Although informal mechanisms are in place to identify

persons in need of international protection and to refer them to the asylum system, authorities acknowledge that procedures still need to be further improved.

Moreover, despite the commitment by the General Directorate on Migration and various improvements (i.e. separation of men and women, provision of new mattresses, installation of fans), the conditions at the pre-removal administrative detention facility for migrants and undocumented asylum-seekers in Managua remain inadequate. In particular, the shelter – and especially its open space – is very small and it lacks outdoors activities or recreational facilities. Problems were also reported concerning insect infestations.

Recommendations:

UNHCR also encourages the Government of Nicaragua to:

- Improve and formalize referral mechanisms to the national asylum procedure for migrants in administrative detention who may be in need of international protection; and
- Take the necessary measures to ensure that the living conditions in the shelter for migrants comply, to the extent possible, with international standards.

Issue 6: Statelessness Determination Procedure

UNHCR welcomes Nicaragua's recent accession to the 1954 Convention. Establishing a statelessness determination procedure is the most efficient means for States party to the Convention to identify the beneficiaries of the Convention with the view to providing them with a clear legal status and appropriate treatment in compliance with their commitments under the 1954 Convention.

Recommendations:

UNHCR encourages the Government of Nicaragua to:

- Adopt and implement a statelessness determination procedure to ensure the protection of stateless persons who are not refugees in Nicaragua; and
- Implement national legislation that codifies the protections guaranteed in the *1954 Convention*.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
September 2013**

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies

Nicaragua

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Nicaragua.

I. Excerpts from UN Treaty Monitoring Bodies

Committee on the Rights of the Child

CRC/C/NIC/CO/4, 57th Session

1 October 2010

Allocation of resources

18. While welcoming that spending on health and education has increased somewhat over the past years especially from national resources, the Committee is concerned at the insufficient level of resources available overall for social policies and for specific plans and programmes for children. The Committee is further concerned that, due to the financial crisis and the low public revenue base, financial resources may decrease even further including from contributions for budget support and for specific programmes from international cooperation.

19. The Committee recommends that the State party conduct an overall budget exercise in line with the preparation of a comprehensive national plan of action for children, as recommended in paragraph 15 above, that takes full account of existing health, education, nutrition and social welfare policies and special protection programmes and programmes and their budget needs. It further recommends that the State party satisfies criteria of transparency and balance in budget allocations also with regard to international cooperation.

20. In particular and in line with the Committee's recommendations resulting from its day of general discussion on "Resources for the rights of the child - responsibility of States" (2007), the Committee encourages the State party to:

(a) Increase the level of social investment for the promotion and protection of child rights, including to MIFAN, ensuring the expansion and equitable allocation to disadvantaged regions and groups and addressing gender and ethnic disparities, among others;

(b) Utilize a child rights' approach in the elaboration of the State budget by implementing a tracking system for the allocation and the use of resources for children throughout the budget, thus providing visibility to the investment on children and enabling monitoring and evaluation;

(c) When possible, follow UN recommendation to start budgeting-by-results to monitor and assess the effectiveness of resource allocation and, if necessary, seek international cooperation to this effect;

(d) Protect children's and social budgets from any external or internal instability, such as situations of economic crisis, natural disasters or other emergencies, in order to maintain the sustainability of investments;

(e) Define strategic budgetary lines for those situations that may require affirmative social measures, such as birth registration, especially in the Caribbean Coast autonomous regions

(RAAN and RAAS), chronic malnutrition, violence against children and women, children without parental care, indigenous and migrant children, among others;

(f) Ensure proper accountability by municipal and national authorities in an open and transparent way that enables participation by communities and children in budget formulation and monitoring, as appropriate; and

(g) Seek technical assistance from UNICEF and other international organizations, included in the Alliance Group for Investment, as appropriate.

Definition of the child (Article 1 of the Convention)

34. The Committee remains concerned that the State party establishes a low and unequal minimum age for marriage (15 years for boys and 14 years for girls with parental consent).

35. The Committee reiterates its recommendation that the State party adopt the draft Family Code, ensuring the minimum age for marriage for girls and for boys at 18 years.

Birth registration and the right to identity

44. The Committee notes with interest the National Plan to reduce the number of unregistered children (*Plan Nacional para la Reducción del Subregistro de la Niñez Nicaragüense*), with vast efforts including by NGOs, and which has resulted in 20% decrease to date. It also notes other efforts such as the Law on Responsible Paternity and Maternity, which allows for DNA testing. However, the Committee is concerned at the high number of children who are still not registered and lack birth certificates (around 40%), particularly those of indigenous and Afro-descendant origin.

45. The Committee recommends that the State party:

(a) Approve without delay the new Civil Registry Law and assign the resources needed for its application, enabling modernisation of the current registry apparatus at both the municipal and central levels;

(b) Prioritize training of civil registrars and health and education service officials to rapidly finish closing the gap, particularly in the Caribbean Coast autonomous regions (RAAN and RAAS); and

(c) Conduct communication programmes and campaigns to massively disseminate the contents of the new law and encourage birth registration as a routine practice.

Sexual exploitation and trafficking

76. The Committee is concerned at the high number of children, particularly girls, who fall victims to trafficking, and the insufficient priority given to combat this crime. The Committee notes that the Penal Code establishes urgent protection measures for the victims of sexual violence and exploitation, but is concerned at the lack of effective strategies and institutional developments to ensure rapid detection, protection and support for the victims.

77. The Committee recommends that the State party allocate adequate resources and enhance government action and coordination in order to combat sexual exploitation and trafficking of children and women. In particular, the State party should:

(a) Renew through a participatory process the National Plan against Commercial Sexual Exploitation of Children and Adolescents, which expired in 2008;

(b) Intensify the training of police, prosecutors, judges and other public officials on how to identify, investigate and sanction sexual exploitation and trafficking of children and women; and

(c) Implement appropriate policies and programmes for the prevention, recovery and reintegration of child victims, in accordance with the outcome documents adopted at the

1996, 2001 and 2008 World Congress against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro, respectively.

(d) Refer to the concluding observations adopted by the Committee on the State party's initial report on the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (CRC/C/OPSC/NIC/CO/1).

Children in migration situations

78. The Committee notes with concern that migration for economic and employment reasons has steadily increased in the State party and that a high proportion (25%) corresponds to children, of which 17.3% are adolescents 13 to 17, and that 49% of the total are women. The Committee also notes that the State party is actively participating in regional agreements and seeking specific agreements and programmes with recipient countries to protect migrants, including those who transit through the territory. Yet, the Committee is concerned that the State party lacks a specific focus on children in migration situations, including migrant children, children who emigrate with their families and children who are left behind by migrating parents.

79. The Committee recommends that the State party:

(a) Ensure that the draft General Migration and Aliens Law currently in the consultation stage in the National Assembly specifically deal with the effects on children of the different situations they face in relation to migration and takes appropriate policy and programme measures to prevent negative effects and protect children and women;

(b) Enter into bilateral and regional agreements focusing specifically on the promotion and protection of the rights of children and women in migration situations, including family reunification; and

(c) Develop awareness raising programmes and campaigns to educate the public, parents and children regarding the effects on children of migration and the need to guarantee their rights and coordinate with civil society, religious, labour and other organizations in order to monitor the situation of children and women.

Protection of witnesses and victims of crimes

82. The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).

Committee on the Rights of the Child: Optional Protocol to the CRC of the child the Child on the sale of children, child prostitution, and child pornography

CRC/C/OPSC/NIC/CO/1, 55th Session

1 October 2010

Legislation

7. While welcoming the adoption of the Penal Code which entered into force in 2008 and the Regulations of the General Tourism law, the Committee however regrets that the State party has not fully implemented its obligations under the Optional Protocol. Furthermore, the Committee is concerned that the Penal Procedure Code, adopted in 2001, has not been adapted to the Penal Code of 2008.

8. The Committee recommends that the State party urgently amend its Penal Procedure Code in order to harmonize it with the Penal Code. The Committee reminds the State party that its legislation must satisfy its obligations with regard to the definition of the sale of children. The concept of sale of children is not identical to that of trafficking, and in order to fully implement the provisions on sale of children contained in the Optional Protocol, the State party must ensure that its legislation contains specific provisions on the sale of children, as provided by the Optional Protocol.

National Plan of Action

11. The Committee notes that according to the declaration of the delegation, the State party has a new Strategic Plan against Trafficking in Persons (2010-2014) which is implemented by the National Coalition against Trafficking in Persons (Coalición Nacional Contra la Trata de Personas). However, the Committee has no information on how this Plan is coordinated with the Programa Amor, if it has the mandate to prevent and combat all the offences under the Optional Protocol and if it is adequately resourced in human and financial terms.

12. The Committee recommends that the State party:

(a) Ensure that the new Strategic Plan against Trafficking in Persons (2010-2014) is adequately resourced in human and financial terms, that it includes specific time-bound and measurable goals, and that it is widely disseminated and regularly monitored;

(b) Pay particular attention to the scope of the Strategic Plan to implement the Optional Protocol, in particular to combat and prevent all the offences it covers;

(c) Link the Strategic Plan with the Programa Amor and the National Plan of Action for Children and Adolescents 2002-2011 and/or a new comprehensive plan of action for children; and

(d) Be inspired by the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congress against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008, respectively.

Measures adopted to prevent offences referred to in the Protocol

19. While noting the development of various offices and programmes for the prevention of offences referred to in the Optional Protocol, such as the National Coalition against Trafficking in Persons, the National Police special stations for women and children, the role of the Special Ombudsperson for children and adolescents and the special Unit for Children and adolescents within the office of the Ministerio Público, the Committee notes that preventive measures are weak, fragmented and inadequate, and that documentation and research are insufficient on the root causes, nature and extent of the sale of children, child prostitution and child pornography.

20. The Committee encourages the State party to carry out further documentation and gender-sensitive research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems, including within the indigenous and Afro-descendant populations, and undertake prevention measures and adopt targeted measures.

Recovery and reintegration

37. The Committee is concerned at the absence of a sustained intervention over a period of time for victims, in particular of trafficking. It is further concerned that the State party has not put in place measures for the recovery and reintegration of victims of all offences under the Optional

Protocol. The Committee regrets the fact that victims of offences under the Optional Protocol wanting to obtain compensation have to introduce a civil process.

38. The Committee recommends that the State party:

(a) Implement the recovery programmes for child victims proposed by the Programa Amor, including psychological and health care services, the development of education, training and employment opportunities, and the implementation of processes for safe family reinsertion;

(b) Ensure that resources be earmarked in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular by providing interdisciplinary assistance for child victims; and

(c) Guarantee that all child victims of the offences described in the Optional Protocol have access to adequate procedures and to seek, without discrimination, rapid compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.

Committee on the Rights of the Child: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

CRC/C/OPAC/NIC/CO/1, 55th Session

1 October 2010

Data

11. The Committee regrets the lack of disaggregated data on many areas covered by the Optional Protocol, including the number of Nicaraguan children and asylum-seeking or immigrant children who have been recruited or used in hostilities by non-State armed groups abroad.

12. The Committee urges the State party to establish a centralised data system with a view to collecting information and statistics on the implementation of the Optional Protocol, and for the identification and registration of all children present within its jurisdiction who may have been recruited or used in hostilities by non-State armed groups abroad including refugee and asylum-seeking children, and to provide information on the implementation of this recommendation in its next periodic report under the Convention.

Assistance for physical and psychological recovery

19. The Committee regrets the insufficient measures taken to identify children, including refugee and asylum-seeking children, who may have been recruited or used in hostilities abroad, as well as inadequate measures taken for their physical and psychological recovery and social reintegration.

20. The Committee encourages the State party to establish an identification mechanism for children who may have been recruited or used in hostilities, and take the necessary measures for their physical and psychological recovery and social reintegration. Such measures should include careful assessment of the situation of these children, reinforcement of the legal advisory services available for them and the provision of immediate, culturally responsive, child sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with the Optional Protocol.

Committee against Torture

CAT/C/NIC/CO/1, 42nd Session

10 June 2009

Positive Aspects

5. The Committee commends the State party for its establishment of the National Coalition against Trafficking in Persons in 2004 and its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also in 2004.

8. The Committee welcomes the Refugee Protection Act, which was adopted by the National Assembly on 4 June 2008 with all-party support.

Redress, including the right to rehabilitation and compensation

25. The Committee notes with concern the lack of information in the State party's report on the practical application of the right of victims of torture to redress, including their right to the most complete rehabilitation possible and to fair and adequate compensation by the State, and especially the lack of data on cases and on the judicial and administrative decisions adopted (art. 14).

25. The State party, in accordance with article 14 of the Convention, should ensure that redress, compensation and rehabilitation are guaranteed to all victims of torture, both in law and in practice. The Committee also requests the State party to include detailed information on the following matters in its next report:

- (a) Applicable procedures for the rehabilitation and compensation of victims of torture and their families, along with an indication of whether those procedures are available only to nationals or also to other groups, such as refugees;**
- (b) A detailed description of the rehabilitation programmes that exist at the national level for victims of torture;**
- (c) Examples of actual cases of compensation and rehabilitation, together with the relevant judicial and administrative decisions adopted.**

Human Rights Committee

CCPR/C/NIC/CO/3, 94th Session

12 December 2008

Trafficking

9. The Committee is concerned at the absence of specific penalties for trafficking in and the sexual exploitation of women and children, and the fact that women and children are trafficked for sexual exploitation purposes in the State party (arts. 3, 8 and 24).

9. The State party should step up efforts to combat the trafficking of women and children and, in particular:

- (a) Explicitly make trafficking in and the sexual exploitation of women and children criminal offences;**
- (b) Ensure that punishment commensurate with the gravity of the offences is inflicted upon anyone who exploits women and children for such purposes;**
- (c) Maintain its efforts to make the general public aware of the criminal nature of the sexual exploitation of women and children;**
- (d) Arrange training courses for the competent authorities;**
- (e) Protect and assist the victims of sexual exploitation**