



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

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

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

Initial reports of States parties due in 2007

Nicaragua*

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I. Introduction

1. In acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2004,¹ the State of Nicaragua took a step forward in the protection and defence of the human rights of migrants. The accession was approved by the Legislature of the National Assembly via Decree No. 4336 of 2005² and the relevant instrument of ratification was deposited with the United Nations Secretariat in October 2006.

2. National legislation and the international instruments to which Nicaragua is a party constitute the legal cornerstones that support the work of the Government of Reconciliation and National Unity, led by Comandante Daniel Ortega Saavedra and Compañera Rosario Murillo, evidencing its commitment to and full compliance with the legal principles that govern the Republic of Nicaragua.

3. The Government of Reconciliation and National Unity is likewise committed to ensuring respect for human rights, peace and solidarity and accords special priority to the individual, the family and the community. It has organized itself in such a way as to ensure the common good, undertaking to promote the human development of each and every Nicaraguan, and to this end has launched numerous plans and programmes to restore the human rights of the people, including the rights of migrant workers and members of their families, without discrimination of any kind.

II. Legal protection

4. The provisions of the national law of Nicaragua extend various legal safeguards to migrant workers and members of their families, as required under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and other international human rights instruments to which Nicaragua is a party.

5. The Government of Reconciliation and National Unity undertook a nationwide consultation exercise with a view to updating the Constitution to bring it into line with the times, which culminated in the constitutional reforms of February 2014. Provisions addressing aspects of the Convention are included in various articles of the revised Constitution, notably in Section I (individual rights),³ Section IV (family rights),⁴ and Section V (labour rights)⁵ of Chapter IV, on the rights, duties and safeguards of the Nicaraguan people.

6. Article 27 (2) of the Constitution establishes that non-nationals enjoy the same rights and duties as Nicaraguans, with the exception of political rights and whatever other rights may be established by law; foreign nationals do not have the right to participate in the country's political affairs. Article 46 of the Constitution lists a series of conventions that Nicaragua has ratified and which have thus become legally binding safeguards for the human rights of all people. Article 14 of the Labour Code (Act No. 85) imposes upon employers a requirement that at least 90 per cent of their workforce should be Nicaraguan,

¹ Via Decree No. 104-2007, approved on 28 September 2004 and published in *La Gaceta* No. 191 of 1 October 2004.

² Decree No. 4336, adopted on 22 June 2005 and published in *La Gaceta* No. 136 of 14 July 2005.

³ Articles 40, 29, 30, 31 and 33 of the Constitution of Nicaragua.

⁴ Article 71 of the Constitution of Nicaragua.

⁵ Article 82 of the Constitution of Nicaragua.

giving them scope to use foreign labour to fill up to 10 per cent of posts within their companies.

7. In 2013, Nicaragua ratified the International Labour Organization (ILO) Maritime Labour Convention, 2006, in order to protect and safeguard the rights of Nicaraguan migrant workers who provide labour on international ships.

8. The provisions of the Constitution reflect the Government of Reconciliation and National Unity's commitment to establishing legal safeguards for all persons who enter the country legally to find work, and also for members of their families. Migrant workers and members of their families are subjected neither to ill-treatment nor slavery; they enjoy freedom of movement, freedom of occupation and freedom of religion and all human rights and constitutional safeguards conferred upon them under national law are respected.

9. In line with the above, the Criminal Code of Nicaragua (Act No. 641)⁶ establishes, among other principles, the principle of universality,⁷ specifying that Nicaraguan criminal law is applicable to Nicaraguans and foreign nationals who commit offences of migrant smuggling and/or human trafficking for purposes of slavery or sexual and labour exploitation when outside Nicaraguan territory.

10. The Migration and Immigration Act (Act No. 761)⁸ incorporates legal safeguards that reinforce the human rights of migrant workers and members of their families, guaranteeing them access to consular and diplomatic representation while in shelters, the right to paid work, authorization to work and all relevant rights in the event of their expulsion from the receiving country.

11. There are no bilateral or multilateral migration agreements currently in force between Nicaragua and either Costa Rica, Panama, Mexico or the United States of America. Except with the authorization of the Ministry of Labour, article 15 of the Labour Code of Nicaragua expressly prohibits the conclusion, within the national territory, of employment contracts under which Nicaraguan workers are recruited to provide services or labour in another country. Article 14 of Ministerial Agreement No. JCHG-004-04-07, regulating the operation of private employment agencies and published in *La Gaceta* (official journal) No. 109 of 11 June 2007, reaffirms this prohibition on the conclusion of employment contracts for the provision of services in foreign countries.

III. Restoring labour rights: a priority of the Government of Reconciliation and National Unity

12. The Government of Reconciliation and National Unity has adopted a consensus-based labour policy and strategy that is attuned to the National Human Development Plan for the period 2012-2016.

13. As a result, a key element in the design of the labour policy was that it should strengthen the tripartite cooperation model whereby workers, private enterprise and the Government work together to promote decent work for women and men, formulating macroeconomic, financial, labour, environmental and social policies that are implemented in a coordinated manner with a view to achieving sustained economic growth.

14. The lines of action that the labour policy envisages for the benefit of workers in general include reducing unemployment and underemployment, strengthening social

⁶ Published in *La Gaceta* No. 232 of 3 December 2007.

⁷ Article 16 of the Criminal Code of Nicaragua.

⁸ Act No. 761, adopted on 31 March 2011 and published in *La Gaceta* Nos. 125 and 126 of 6 and 7 July 2011, articles 10, 16, 17 and 167.

security, stability and medium- to long-term labour development and enhancing social dialogue.

15. The key lines of action envisaged under the Good Governance Plan for 2016, meanwhile, are the organization of 244 regional labour committee meetings to promote partnership, dialogue and consensus between workers, employers and the Government; 3,815 workplace inspections throughout the country to verify that no children have been contracted for labour purposes and sign commitment agreements with employers; and 12,079 workplace inspections in all departments of the country in order to monitor the rights of 302,842 persons nationwide. In addition, with the aim of reducing occupational accidents and diseases, 5,000 inspections will be carried out throughout the country to ensure that individual workplaces are complying with occupational health and safety regulations.

16. As an example of good practice, although it is not part of the Government of Reconciliation and National Unity's policy to offer incentives to Nicaraguans who go abroad in search of work, the CODESARROLLO development cooperation project carried out by the Ministry of Labour in association with ILO and with support from the Spanish Agency for International Development Cooperation is considered a very positive initiative. The project combined an outreach campaign to inform Nicaraguans who go to Costa Rica to work about their rights as migrant workers with a programme of joint oversight by the Nicaraguan and Costa Rican authorities to ensure that the rights of migrant workers, as established under Costa Rican law and international instruments, were respected.

17. Another tool considered key is the bilateral trade union agreement concluded between two of the biggest workers' organizations of Costa Rica and Nicaragua with a view to safeguarding the human and labour rights of migrant workers. The agreement is intended to raise awareness and increase knowledge of the labour, economic and social rights that provide protection for waged and unwaged workers in Costa Rica, including the migrant workers, and especially those from Nicaragua, who make up a significant percentage of the Costa Rican labour force.

18. The above measure should also serve to highlight the importance of preventing employer contribution evasion and under-declaration of wages and combating wage insecurity and infringements of trade union freedom, and thus to strengthen the welfare system operated by the Social Insurance Fund of Costa Rica.

19. The Government of Reconciliation and National Unity's concerted efforts to support migrants, as described above, were recognized by ILO officials in April 2012.

20. The Ministry of Labour provides legal assistance to all persons who approach its offices for independent labour advice, whether or not they are currently in employment. The labour authorities also have a facilitating role in ensuring that those foreign nationals who choose to work in Nicaragua in accordance with the law are provided with the certification of their contract of employment needed to fulfil this particular requirement of Nicaraguan immigration law.