

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 33rd Session

NICARAGUA

I. BACKGROUND INFORMATION

Nicaragua acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* on the 28th March 1980. Nicaragua also acceded to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* in 2013. The *National Refugee Law* was adopted in 2008.¹ The law, which is in line with international standards, is referred to as a model in Central and Latin America. This law recognises the extended refugee definition contained in the *1984 Cartagena Declaration on Refugees* in its article 1 C) and stipulates the principles of non-discrimination (article 2), confidentiality (article 19), family unity (article 3), non-*refoulement* and non-expulsion (Articles 8 and 9) and non-penalization for irregular entry (article 10). The law also provides for the issuance of identity documents to both asylum-seekers and refugees (articles 23 and article 29), the right to have legal representation (article 20) and provides access to work for asylum-seekers (article 23). It also recognizes UNHCR's role during the refugee status determination procedure.

Despite this comprehensive legal framework, and the previous practice on refugee status determination, with high rates of recognition, the asylum system in Nicaragua is *de facto* suspended since 2015, with a significantly reduced protection space for both asylum-seekers and refugees. UNHCR does not have a presence in Nicaragua, but implements its mandate through its partner, Council of Protestant Churches of Nicaragua (CEPAD). UNHCR and CEPAD collaborated in the presentation of refugee status determination cases to migration authorities (DGME² for its acronym in Spanish). However, in mid-2016, and in line with the suspension of the asylum system, DGME informed CEPAD that no more communications on individual cases would be accepted.

As per the 2017 UNHCR Annual Statistical Report for Nicaragua, on the 31st December 2017, there were 328 refugees and 408 asylum-seekers, mainly from El Salvador followed by Honduras.³

¹ *Ley N. 655 de 26 de Julio de 2008. Ley de Protección a Refugiados*, available at:

<http://www.acnur.org/fileadmin/Documentos/BDL/2008/6435.pdf?file=fileadmin/Documentos/BDL/2008/6435>

² Dirección General de Migración y Extranjería

³ It is important to note that the figure of Asylum Seekers include those whose asylum request were received by the DGME until mid-2016, as well as those assessed by UNHCR to meet the refugee definition but that have been unable to submit a formal request to the DGME due to the suspension of the asylum System. Concerning the nationalities, out of the 328 refugees, 217 are from El Salvador, 74 from Honduras, 15 from Cuba, 10 from Guatemala, 6 from Colombia, 2 from Peru, 1 from Dominican Republic, 1 from Central African Republic, 1 from Russian Federation). Asylum seekers are mainly from El Salvador, with 408, followed by 48 from Honduras, 3 from Guatemala, 2 from Colombia and 1 from Uruguay).

The current situation in Nicaragua is severely affecting refugees and asylum-seekers. As the socio-political crisis deepens, refugees and asylum-seekers in Nicaragua lack access to basic services, such as education or medical care, a fact which has increased their socio-economic vulnerability. Many have lost their jobs or have been forced to close their small businesses as the inflation and the reduced demand are not allowing them to make a profit⁴. The insecurity and the protests have also negatively impacted their freedom of movement. As a result, many refugees and asylum-seekers have started to leave the country. Some of them have preferred to return to their country of origin, while others are looking for international protection in neighbouring countries. The crisis has increased forced displacement in the region, with considerable increased numbers of asylum claims of Nicaraguans in Costa Rica since mid-June.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no 114.70: “Continue working towards the adoption of the new civil registration law in the country” (Guatemala); **recommendation no 114.73:** “Facilitate birth registration and provide easy registration procedures for indigenous children and children of African descent” (Sierra Leone); and **recommendation no 114.74:** “Revise its legislation related to the birth registration to ensure birth registration to all indigenous children and children of African descent.”(Tunisia)

UNHCR commends Nicaragua on passing in 2015 a new law on *Rectification and Repository of Civil Registry Records*.⁵ The Law is in line with the Early Childhood National Policy approved in Nicaragua in 2011, and authorizes the delayed registration of births at no cost.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Access to the territory

Linked to 2nd cycle UPR recommendation no.114.144: “Continue the efforts aimed at dealing with mixed migration flows and implement appropriate identification mechanisms and other measures deriving from them in order to respond to the special needs of all persons in need of protection and support.” (El Salvador)

Nicaragua is part of the Central America-4 Border Control Agreement (CA-4⁶) signed in June 2006 between the Central American nations of El Salvador, Guatemala, Honduras, and Nicaragua. The CA-4 agreement establishes a framework of free movement across borders

⁴ FUNIDES, Fundación Nicaragüense para el Desarrollo Económico y Social, estimates in the report “Impacto Económico de los Conflictos Sociales en Nicaragua 2018” that between 20.000 and 150.000 persons could lost their Jobs as a result of the crisis. Available at: <http://www.funides.com/publicaciones/informe-y-estudios/300-impacto-economico-de-los-conflictos-sociales-en-ni/>

⁵ *Ley N. 908 de Reposición y Rectificación de Actas del Registro del Estado Civil de las Personas, Ley 908* Available at: [http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/15a7e7ceb5efa9c6062576eb0060b321/7d06a231292177c906257ec2004f4035/\\$FILE/2015-08-25-%20G%20Ley%20No.%20908.%20Ley%20de%20reposicion%20y%20rectificacion%20de%20actas%20del%20R%20egistro%20del%20Estado%20Civil%20de%20las%20Personas.pdf](http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/15a7e7ceb5efa9c6062576eb0060b321/7d06a231292177c906257ec2004f4035/$FILE/2015-08-25-%20G%20Ley%20No.%20908.%20Ley%20de%20reposicion%20y%20rectificacion%20de%20actas%20del%20R%20egistro%20del%20Estado%20Civil%20de%20las%20Personas.pdf)

⁶Convenio Centroamericano de libre movilidad. Available at: <https://www.migob.gob.ni/migracion/tramites/solicitud-de-ingreso-ordenado-y-seguro-de-visitantes-invitados-por-motivos-diferentes-al-turismo/>

among the four signatory States without any restrictions or checks. Reports indicate Nicaragua has introduced stricter controls at its Northern border since 2016 and proceeded to interviewing and questioning citizens from Guatemala, Honduras and El Salvador. Adult males travelling in public transportation have been especially targeted for in-depth controls. Human rights organizations in Nicaragua denounce migration authorities' increased reliance on undue restrictions on entry into the country as well as their resort to coercion, threats, use of force, illegal detentions and inhuman treatment.⁷

Additionally, since mid-2017, DGME has been applying migration procedures regulating the entry and exit of visitors of all nationalities, including citizens of Guatemala, Honduras and El Salvador in breach of the CA4. This new procedure, namely the "Procedure for the Safe and Organized Entrance and Exit to Nicaragua of Visitors of Other Nationalities" imposes on all visitors the obligation to request to enter the country at least 7 days prior to arrival and receive authorization from the Ministry of Interior. The new procedure is applicable at any border entry point in all its modalities (Terrestrial, Aerial and Maritime)⁸.

Before the suspension of the asylum system in Nicaragua in 2015, border authorities used to refer persons in need of international protection to the DGME in Managua. Border authorities would also contact CEPAD to follow up of these cases, including the provision of legal assistance for the RSD procedure. The authorities at the borders areas were issuing an official report for the referral to the DGME central office in Managua. Since the suspension of the asylum system these referral mechanisms are no longer being applied.

UNHCR has documented since 2017 several cases of *refoulement* and/or denial of entry of Honduran and Salvadoran families. The persons that are affected include: recognized refugees and asylum-seekers, and persons with international protection needs who could not access the asylum procedures due to the suspension of the asylum system.

Recommendations:

UNHCR recommends that the Government of Nicaragua:

- (a) Ensure access to the territory and asylum procedures for those in need of international protection, and in so doing fulfil its non-*refoulement* obligations under Article 33(1) of the *1951 Convention* and international customary law;
- (b) Eliminate restrictions on entry to the country for nationals of El Salvador, Guatemala and Honduras in line with the CA-4; and
- (c) Ensure border authorities respect and protect the human rights of all persons arriving at borders, irrespective of status and without discrimination.

Additional protection challenges

Issue 2: Access to effective asylum procedure

The National Commission for Refugees (CONAR – Comisión Nacional para los Refugiados) has not held sessions or considered asylum applications since 2015. Asylum-seekers used to be given an appointment receipt when they first applied for asylum with DGME, with a validity of one month that served as an identification document, until the date of the RSD eligibility interview. However, since mid-2015 DGME has not conducted any RSD eligibility interviews and persons on the waiting list have had their appointment receipts extended on a monthly basis. In mid-2016, DGME ceased renewing the appointment slips and started informing asylum-seekers that they were no longer receiving asylum requests. Currently,

⁷Centro Nicaragüense de Derechos Humanos, Annual Report 2016, available at:

https://www.cenidh.org/media/documents/docfile/Informe_Cenidh_2016_Final2017.pdf

⁸<https://www.migob.gob.ni/migracion/tramites/solicitud-de-ingreso-ordenado-y-seguro-de-visitantes-invitados-por-motivos-diferentes-al-turismo/>

persons wanting to submit asylum applications in Nicaragua are unable to do so, both in Managua's main DGME office and at the borders. Asylum-seekers do not have valid documents attesting their asylum requests, either because they were never issued one or because the documents expired and have not been renewed. Most asylum-seekers are, therefore, in an irregular situation in Nicaragua, which carries administrative fines. In order to ensure a valid legal stay under the framework of the CA4, some Salvadorians and Hondurans began doing "visa runs" to the border in order to renew their three months permission to stay. However, current border restrictions are making this strategy more difficult, as described in the previous section. Further, all asylum-seekers in an irregular situation cannot legally exit the country unless they first pay off their fines⁹. This hinders their prospect of seeking asylum in a third country or try to regularize themselves in Nicaragua through alternative migratory routes.

This situation affects both asylum-seekers and recognized refugees who experience difficulties renewing their residency permits. Many refugees have been unable to renew their residency files in the DGME since 2015 as they are being requested to comply with additional requirements and are being provided with unclear information. As a result, some refugees were unable to present their residency renewal files on time and are being requested to pay fines for the time they remained without a valid residency permit in Nicaragua. UNHCR considers that DGME may be incorrectly applying immigration regulations instead of the Asylum Law with regard to the procedure for the renewal of residency permits for refugees as well as the application of penalties and fines.

Recommendations:

UNHCR recommends that the Government of Nicaragua:

- (a) Ensure effective access to the right to seek and enjoy asylum by resuming the reception and processing of asylum claims in accordance with international obligations and national legislation;
- (b) Establish official identification and referral mechanisms for persons in need of international protection in border areas;
- (c) Provide asylum-seekers with adequate documentation proving their status and lift the application of penalties or other fines; and
- (d) Provide refugees with residency permits in line with the National Refugee Law.

Issue 3: Access to rights for persons under UNHCR's mandate

Refugees and asylum-seekers are currently in a legal situation that is not conducive to the protection of their rights. The lack of legal status hinders refugees and asylum-seekers' access to the enjoyment of essential human rights. Despite the Nicaraguan law prescribes for universal access to the right to education, refugees and asylum-seekers report having problems accessing official exams and obtain official education certifications due to their lack of legal status. In the absence of residency permits, refugees and asylum-seekers face barriers in accessing the labour and housing markets. The application of penalties and deprivation of liberty in relation to irregular residency have led a number of refugees and asylum-seekers to self-limit their freedom of movement, and hence rely heavily on humanitarian assistance. The penalties levied proportionately with the number of days of residence in the country without valid documentation submerges refugees and asylum-seekers in debt and increases their socio-economic vulnerability.

The violence and insecurity in Nicaragua traps refugees and asylum-seekers into a condition of destitution resulting from loss of employment and inability to access basic services. The

⁹ It is to mention that due to the current situation in Nicaragua, the authorities are granting exemption of payment of fines to Salvadorians that are willing to leave the country permanently. This exemption requests are presented through the Salvadoran Consulate.

impossibility to access effective protection in Nicaragua forces refugees and asylum-seekers to flee, but the lack of documentation attesting their status, the penalties erroneously imposed on them or the risk of deprivation of liberty entrap them in the country or constrain them to take unsafe routes or return to situations where they risk facing persecution or other human rights violations.

Recommendations:

UNHCR recommends that the Government of Nicaragua:

- (a) Ensure effective access to right to education for refugees and asylum-seekers by allowing them access to official exams and to obtain official education certifications despite their legal status;
- (b) Ensure a safe and secure environment in universities and other educational institutions that have been affected by the recent socio-political situation;
- (c) Ensure that refugees and asylum-seekers have non-discriminatory access to the public health system as well as the labour and housing markets; and
- (d) Guarantee the rights to liberty and freedom of movement for refugees and asylum-seekers, and restrict the use of deprivation of liberty only as a measure of last resort in accordance with international human rights standards.

Issue 4: Access to the late birth registration procedure and issuance of nationality documentation for some Nicaraguan nationals residing in Costa Rica

There is an undetermined number of individuals born in Nicaragua that are currently residing in Costa Rica who need to confirm their citizenship, some of them are at risk of statelessness. These persons were born in Nicaragua, were never registered at birth or their registers were lost -as a result of the internal armed conflict that affected the country in the 80s- and lack documentation to prove their Nicaraguan nationality that automatically acquired at birth pursuant to the Constitution and the nationality law. In Nicaragua, they face significant practical barriers to access the procedure for late birth registration and obtain documentation attesting their Nicaraguan nationality. The current political situation in Nicaragua has rendered these difficulties even more complex. First, these persons are unable to legally and safely travel back to Nicaragua and access the late birth registration procedure (e.g. they need to be physically present in the territory, the cost may be high and length of the procedure is long, they have no information or free legal assistance, they also face difficulties to obtain proofs of birth in the territory). Second, there is no late birth registration mechanism in place that is available at Nicaraguan consular representations in Costa Rica. Lastly, Nicaragua and Costa Rica lack a bi-national project of mobile brigades ensuring late birth registration and issuance of nationality documentation in the border area. As a consequence, many of these persons have remained in an irregular migratory situation in Costa Rica for several years and are in high risk of statelessness.

Recommendations:

UNHCR recommends that the Government of Nicaragua:

- (a) Facilitate access to the late birth registration procedure through the elimination of practical barriers and requirements that cannot be complied with by this concerned population due to their special situation;
- (b) Authorize its Heads of Consular Services to make late birth registrations and to issue nationality documentation; and
- (c) Implement a bi-national project of mobile brigades for the late birth registration and issuance of nationality documentation in border areas, especially with Costa Rica.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

NICARAGUA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to NICARAGUA.

I. Universal Periodic Review (Second Cycle – 2018)

Recommendation ¹⁰	Recommending State/s	Position ¹¹
Ratification of international instruments		
116.2. Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the Committee on Enforced Disappearance, in conformity with articles 31 and 32;	Uruguay	Noted
116.4. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;	Portugal	Noted
Birth registration		
114.70. Continue working towards the adoption of the new civil registration law in the country;	Guatemala	Supported
114.71. Enact legislation that guarantees that all children are registered at birth and are provided with appropriate birth certificates;	Holy See	Supported
114.72. Develop an awareness-raising campaign in the rural, indigenous and Afro-descendant areas with the view of increasing the birth registration of these vulnerable groups;	Mexico	Supported
114.73. Facilitate birth registration and provide easy registration procedures for indigenous children and children of African descent;	Sierra Leone	Supported
114.74. Revise its legislation related to the birth registration to ensure birth registration to all indigenous children and children of African descent;	Tunisia	Supported
Equality and non-discrimination		
114.28. Step up efforts to eliminate discrimination against women and girls, including against rural and indigenous women, improve women's access to education and guarantee their right to health, including the sexual and reproductive rights;	Czech Republic	Supported
114.32. Continue its efforts aimed at ensuring respect for, and eradication of discrimination against, indigenous peoples and persons of African	El Salvador	Supported

¹⁰ All recommendations made to Nicaragua during its 2nd cycle UPR as well as a number of its reviews and replies can be found in: "Report of the Working Group on the Universal Periodic Review of Nicaragua" (1 July 2014), A/HRC/27/16, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/070/68/PDF/G1407068.pdf?OpenElement>.

¹¹ Nicaragua's remaining views and replies, in English, can be found in: *Addendum* (18 September 2014), A/HRC/27/16/Add.1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/165/63/PDF/G1416563.pdf?OpenElement>.

descent, in particular women and girls;		
114.34. Continue with the measures aimed at combating stereotypes and discrimination suffered by lesbian, gay, bisexual, transgender and intersex persons;	Argentina	Supported
Detention		
114.35. Bring conditions of detention in line with international standards, in particular to reduce overcrowding and promote non-custodial measures;	Austria	Supported
114.38. Consider adopting the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, known as the Bangkok Rules, to respond to specific needs of female inmates;	Thailand	Supported
Sexual and gender-based violence		
114.51. Continue its efforts to implement legal protection measures for women-victims of all forms of violence by establishing a witness protection programme as it will increase their access to justice and their protection;	Poland	Supported
114.58. Formulate a national plan to combat violence against children, including corporal punishment and sexual abuse, which includes considerations on prevention, care and reparation;	Honduras	Supported
116.16. Ensure prompt thorough, independent and transparent investigations into all allegations of rape, torture or other ill-treatment by law enforcement officials, hold those responsible to account and provide reparations and redress to the victims;	Hungary	Noted
117.16. Review and amend the Comprehensive Act against Violence towards Women (Act 779) to comply with international standards and ensure its effective implementation;	Slovakia	Noted
Trafficking in persons and exploitation		
114.54. Strengthen the implementation of effective programmes for the protection and rehabilitation of, and comprehensive attention to, victims of trafficking;	Chile	Supported
114.56. Ensure that appropriate resources are provided for the full implementation of laws and programmes to combat trafficking of women and children;	Philippines	Supported
Mixed migration		
114.144. Continue the efforts aimed at dealing with mixed migration flows and implement appropriate identification mechanisms and other measures deriving from them in order to respond to the special needs of all persons in need of protection and support.	El Salvador	Supported

II. Treaty Bodies

Committee on Migrant Workers

Concluding Observations, (11 October 2016), [CMW/C/NIC/CO/1](#)

Border management and migrants in transit

35. The Committee is deeply concerned about the reported death of 10 to 12 Haitian irregular migrants in transit in the State party. The Committee is seriously concerned about reports of the use of force by the Nicaraguan police and military security forces when dealing with thousands of Cuban and Haitian migrants, as well as migrants from African countries

attempting to cross the Costa Rica-Nicaragua border on their way to the United States of America, in recent months. The Committee is also concerned about the lack of information on the measures taken to protect the rights of migrant workers in transit and to prevent security measures from resulting in further violations of their rights. The Committee is further concerned about reports indicating that the security measures have contributed to the proliferation of smuggling networks.

36. In line with the Recommended Principles and Guidelines on Human Rights at International Borders of the Office of the United Nations High Commissioner for Human Rights, the Committee recommends that the State party:

- (a) Ensure that all measures aimed at addressing irregular migration of migrants do not adversely affect the human rights of migrant workers and members of their families and that irregular migrant workers and members of their families are provided with the necessary assistance and afforded due process guarantees;**
- (b) Develop a comprehensive rights-based approach to respond to irregular migrants and abstain from addressing the situation through the use of the military and other security forces;**
- (c) Conduct an in-depth investigation into recent migrant deaths and ill-treatment at the borders and adopt all the measures necessary to prevent their recurrence in the future.**

Due process, detention and equality before the courts

39. The Committee is concerned that detention exceeds the 48 hours provided for by law and may last up to three months and that the migrant centre is sometimes overcrowded. The Committee regrets that the Migration and Alien Affairs Act does not prohibit the detention of children in all circumstances. The Committee is also concerned about information received that migrant workers and asylum seekers are automatically detained in detention centres and about their detention in criminal facilities. It is further concerned about the lack of independent monitoring of the migrant centre by human rights organizations and the Office of the Human Rights Advocate.

40. The Committee recommends that the State party:

- (a) Ensure that migrants are not detained beyond the 48-hour period provided for in article 160 of the Migration and Alien Affairs Act;**
- (b) Expeditiously and completely cease detaining children on the basis of their or their parents' immigration status and adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being reviewed, consistent with the principle of the best interest of the child and the child's right to family life;**
- (c) Allow for the independent monitoring of the migrants centre by civil society organizations and ensure that the Office of the Human Rights Advocate has the independence and sufficient resources to regularly supervise all the facilities used for the detention of migrants based on their immigration status.**

Expulsion

41. The Committee is concerned about the reported expulsion of migrant workers and members of their families at the State party's southern border and from migration-related detention centres, through expeditious removal procedures and without respecting their right to challenge the expulsion decision.

42. The Committee recommends that the State party adopt all measures necessary, including of a legislative nature, to ensure that all migrant workers and members of their families subjected to return or deportation measures are entitled to effectively challenge the decision. The Committee recommends that these remedies have a deferral effect, in line with article 22 of the Convention, and that migrant workers can access both administrative and judicial mechanisms.

Children in situations of international migration

53. The Committee regrets the lack of information on the welfare of children of Nicaraguan migrants in countries of destination and those remaining behind, in particular their vulnerability to violence, abuse, neglect and exploitation and the lack of information on the measures taken to provide them with adequate and comprehensive support. It also regrets the lack of information on the number of children returned to the State party and the policies aimed at facilitating their effective reintegration through the fulfilment of their rights.

54. The Committee recommends that the State party conduct research on children of Nicaraguan migrant workers in the countries of destination as well as in Nicaragua to establish the demographic profile of this segment of the population, and adopt a comprehensive strategy to promote and protect the rights of children of Nicaraguan migrant workers. The Committee further recommends that the State party collect comprehensive and disaggregated data on children returned to Nicaragua and adopt an integral rights-based policy aimed at ensuring the reintegration of children who return to the State party and develop programmes to fulfil their right to an adequate standard of living.

Return and reintegration

59. The Committee notes the large number of Nicaraguans who have been repatriated, both voluntarily and forcibly, in particular from Mexico and the United States of America, but also from European countries. The Committee is, however, concerned about the lack of information on the measures taken by the State party to protect the rights of returning Nicaraguan migrant workers and members of their families and to promote their reintegration.

60. The Committee recommends that the State party take measures to ensure the appropriate social, economic and other conditions necessary to facilitate the return and durable reintegration of Nicaraguan migrant workers and members of their families in the State party, as provided for in article 67 of the Convention and in line with target 10.7 of the Sustainable Development Goals.

61. The Committee is concerned about the reported treatment of Nicaraguans returned to the State party by the National Police upon their arrival and that due process may not have been respected; the returnees may have been deprived of their liberty and subjected to inhuman and degrading treatment; they may not have been provided with appropriate information regarding the process; and they may have been exposed to the media.

62. The Committee recommends that the State party take the steps necessary to ensure that repatriated migrant workers and members of their families are guaranteed due process by law enforcement authorities; that they are not subjected to arbitrary detention and to inhuman or degrading treatment; that they have access to legal counsel and are provided with appropriate information regarding their case; and that they are not exposed to the media.